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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 5

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The occurrence definition also reflects an intention to impose on the insurer a broad obligation to insure bodily injury that is not subject to a temporal limitation. The policy anticipates that “bodily injury” might result from “continuous or repeated exposure to conditions.” The definition does not limit an occurrence to “bodily injury” that results from conditions that take place during the policy period. Rather, the definition uses expansive language to provide that an occurrence will encompass “bodily injury” that results from “continuous” conditions. The use of the word “continuous,” which is commonly understood to mean “marked by uninterrupted extension in space, time, or sequence,” reflects an intention that conditions that result in bodily injury not be temporally limited.¹⁴⁷

An all sums approach to allocating liability for progressive bodily injury claims gives meaning to all of the Penn National policy language that governs a progressive bodily injury claim and is most consistent with those terms:

This policy language is only consistent with an all sums approach to allocation. The result here should be the same as in *Am. Precision Indus.*, *Polar Mohr*, and *Canon Elec.*, where the court held:

[T]he . . . policies at issue here must be allocated based on an “all sums” methodology. Their insuring provisions expressly provide that the policyholder will be indemnified for “all sums” for which it is liable for damages arising from an occurrence, which may be continuous. These policies define bodily injury and damage to contemplate not simply a single injury, but also bodily injury resulting in death thereafter, even if the policy term has expired. These policies expressly provide a transfer of the liability risk from the insured to the insurer for all consequential harms – past, present and future – flowing from that injury. To give meaning to the policies’ provisions that extended protection beyond the policy period for continuing injuries means that “all sums” allocation must be applied. To do otherwise would be to disregard and render these provisions “surplusage”.

¹⁴⁷ “Continuous.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/continuous>. Accessed 2 Dec. 2022.

Cannon Elec., 2017 WL 10992340, at *26. Prorating the insurer’s liability would require the Court to disregard policy terms and rewrite the agreement between Penn National and Covil, which would be contrary to South Carolina law. *B.L.G. Enters.*, 334 S.C. at 535, 514 S.E.2d at 330 (“The court’s duty is limited to the interpretation of the contract made by the parties themselves[.]”)

B. All-sums allocation also is most consistent with the purpose of comprehensive general liability insurance coverage for progressive bodily injury claims.

The all-sums approach to allocation requires Penn National to protect Covil against both the immediate and long-range consequences of asbestos-related injuries, including death. That approach to allocation not only reflects the grant of coverage made by the terms of the Penn National policies. It also is most consistent with the overall purpose of comprehensive general liability (“CGL”) insurance, which is to protect the policyholder from liability.

As the South Carolina Supreme Court has recognized, “[t]he standard CGL policy grants the insured broad liability coverage for property damage and bodily injury which is then narrowed by a number of exclusions.” *Newman*, 385 S.C. at 197, 684 S.E.2d at 546. The protection afforded by the policies is not limited to an injury occurring during a limited period of time. Rather, the policies insure against “consequential risk,” which flows from the policyholder’s tort liability for damage to persons or property. *Bennett & Bennett Const., Inc. v. Auto Owners Ins. Co.*, 405 S.C. 1, 8–9, 747 S.E.2d 426, 430 (2013) (citing *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565–66, 561 S.E.2d 355, 358 (2002), overruled in part on other grounds by *Crossmann Cmyts. of N.C., Inc.*, 395 S.C. 40, 717 S.E.2d 589. Consequential damages in tort, particularly for asbestos-related injury, compensate a victim for both the damages they have suffered and for the damages they will suffer up to and including death. A business with comprehensive general

liability coverage has taken steps to ensure that they are able to pay a claimant for the full scope of this liability.

B. This Court Should Issue A Finding That Penn National Spoliated Evidence.

1. Legal Standard for Spoliation.

The spoliation of evidence is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a current or reasonably anticipated legal proceeding. If proven, spoliation may be used to establish that the evidence was unfavorable to the party responsible. *Black's Law Dictionary* (8th Ed. 2004). The theory behind imposing sanctions for spoliation of evidence is that when a party destroys evidence, it is reasonable to infer that the party had “consciousness of guilt” or other motivations to avoid the evidence being heard or introduced to the jury.

A party bringing a motion for sanctions based on spoliation bears the burden of establishing three (3) independent elements before the Court may determine which sanction, if any, is appropriate. These elements are:

- (1) that the party having control over the evidence had a duty to preserve it at the time it was destroyed;
- (2) that the evidence was destroyed with a culpable state of mind; and
- (3) that the destroyed evidence was relevant to the party’s claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Hawkins v. Coll. of Charleston, No. 2:12-cv-0384, 2013 WL 6050324, *2 (D.S.C. Nov. 15, 2013) (quoting *Cytec Carbon Fibers, LLC v. Hopkins*, No. 2:11-cv-0217, 2012 WL 6044778 (D.S.C. Oct. 22, 2012)).

2. Penn National Admits that it Spoliated Historic Occurrence-Based Liability Insurance Policies and Policy-Related Documents During the Pendency of the Covil Litigation.

Penn National admits that it (1) issued multiple insurance policies to Covil, which included renewal policies,¹⁴⁸ (2) no longer has full, original copies of the policies or policy-related documents it issued to Covil,¹⁴⁹ (3) was first put on notice to search for “all liability policies” issued to Covil with a subpoena in the Finch underlying asbestos lawsuit in 2018 and received subsequent discovery requests as a defendant in insurance coverage litigations to identify and search for “all policies” issued to Covil throughout 2019, 2020, and 2021¹⁵⁰ (4) did not issue litigation holds to stop the destruction of Covil policies or policy-related documents for over three years later on December 17, 2021,¹⁵¹ and only *after* this Court was forced to issue a November 5, 2021 Order for Covil’s underlying asbestos defense counsel, Ellis and Winters, to conduct an independent review of Penn National’s document repositories¹⁵² (5) destroyed historic liability policies that were contained on microfiche on an annual basis in 2018, 2019, and 2020,¹⁵³ (6) did not search for Covil in the documents it destroyed in 2018, 2019, and 2020, and (7) has no record of the historic general liability insurance policies and policy-related documents it destroyed in 2018, 2019, and 2020. Penn National’s admissions warrant a finding of spoliation.

¹⁴⁸ See Covil Trial Exs. 1, 2, 3, 4, 5.

¹⁴⁹ See Covil Trial Ex. 99, Boyd Wright Dep. Transcript, dated Nov. 30, 2022 at 13:1-14:17.

¹⁵⁰ See Covil Trial Ex. 13, Penn National Subpoena Response, dated June 15, 2018; Covil Trial Ex. 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 (*Zurich Am. Ins. Co. v. Covil Corp., et al.*, MDNC No. 1:18-cv-000932; Penn National Trial Ex. 1, Complaint.

¹⁵¹ See Covil Trial Ex. 97, Scott Maier Dep. Transcript, dated Nov. 21, 2022 at 83:3-8.

¹⁵² *Id.* at 169:1-22.

¹⁵³ See Covil Trial Ex. 68, Penn National response to RFA Nos. 2-7; Covil Trial Ex. 84, B. Reifsnyder Dep. Tr. at 97:13-98:11.

a. Penn National Had A Duty To Preserve Covil's Insurance Policy Related Documents At The Time It Was Destroying Historic, Occurrence-Based General Liability Policies.

As to the first element, Penn National had a duty to preserve this evidence. “A party has a duty to preserve evidence during litigation and at any time ‘before the litigation when a party reasonably should know that evidence may be relevant to anticipated litigation.’” *Id.* at *3 (quoting *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001)). There is a common law duty to preserve evidence, and a party can only be sanctioned for destroying evidence it had a duty to preserve. That duty arises when a party has notice that the party possesses evidence that is relevant to litigation or when a party should have known the evidence may be relevant to future litigation. Pre-litigation discussions or requests to inspect can also trigger a duty to preserve relevant evidence and it can be said that the obligation to preserve evidence runs first to counsel, who then has an ethical obligation to notify and advise their client on its obligations to safeguard and preserve the evidence relevant to the litigation on a continuing basis.

To support its contentions regarding the destruction of Covil policies and policy-related documents, the Receiver points to two points at which Penn National had notice as to the duty to preserve Covil's policies. First, as to the insurance industry's general awareness of the need to preserve historic occurrence-based general liability policies, the bankruptcy of Johns Manville, and subsequent litigation over the insurance proceeds that were contributed to the bankruptcy estate for use by the Manville Trust, as reported both in case law and by journalists, provided clear signals of the potential liability insurers faced in the wake of the asbestos litigation as early as 1986. *See infra* at 6-7. As a result, the insurance industry as a whole, and particularly those insurers who wrote occurrence-based general liability policies for insulation contractors, had notice that their insurance policies were potentially relevant evidence in future litigation related to long-tail liabilities, requiring preservation of those materials.

Even setting aside the insurance industry's awareness of long-tail liabilities raised by historic occurrence-based policies, here, Penn National continued to purge its insurance records

on an annual basis between 2018 and 2020, despite that Penn National faced subpoenas and active litigation regarding the historic occurrence-based insurance policies it issued to Covil. The existence of active requests for policy information both in the form of subpoenas and in the form of being named as a party to litigation involving the Covil asbestos cases and associated insurance established a duty on the part of Penn National to preserve its insurance policies.

b. Penn National Destroyed Historic, Occurrence-Based General Liability Policies With A Culpable State of Mind.

By failing to maintain documents relevant to pending and future asbestos personal injury and insurance litigation, Penn National had a culpable state of mind because it either intentionally or negligently destroyed the evidence. The destruction of the documentary evidence that Covil seeks significantly hampers Covil's Receiver's ability to reconstruct its insurance program and other information relevant to pending and future asbestos personal injury and insurance litigation.

The "culpable" state of mind requirement does not require willful destruction. Rather, the moving party need only show that the evidence was destroyed "knowingly, even without intent [to breach the duty to preserve it], or negligently." *Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 109 (2d Cir. 2001). "[T]he Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of the sanctions." *Sampson v. City of Cambridge, Maryland*, 251 F.R.D. 172, 179 (D. Md. 2008) (citing *Silvestri*, 271 F.3d at 590).

Here, the evidence before the Court shows that Covil's conduct of destroying relevant documents satisfies the required minimum level of culpability needed for spoliation sanctions to be imposed. Because culpability encompasses everything from ordinary negligence to willful conduct, the culpable standard merely requires Penn National to have some degree of fault, which is the case in this matter. Whether the Court finds that Penn National was negligent, grossly negligent, or willful in destroying the evidence, the Court should conclude that Penn National had a culpable state of mind when it spoliated the evidence at issue.

c. The Destroyed Historic, Occurrence-Based General Liability Policies Were Relevant To The Receiver's Charge By This Court To Marshall Covil's Insurance Assets.

The last of the three independent elements, relevance to the party's claims, is also clearly present on these facts. Under Rule 401 of the South Carolina Rules of Evidence, "relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." "Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears." *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Thus, any evidence which assists a fact finder at arriving at the truth of an issue is relevant. The determination of the relevancy of evidence is largely within the trial judge's discretion. *Strickland v. Coastal Design Assocs., Inc.*, 294 S.C. 421, 425, 365 S.E.2d 226, 228 (Ct. App. 1987).

Here, Covil has met its burden of showing the spoliated evidence is highly relevant to its case. The fact that Penn National destroyed such evidence is extremely damaging to Covil's ability to reconstruct its insurance policies. As such, Penn National should not profit or benefit from its failure to preserve this evidence. Of course, Covil has no way of knowing precisely what has been destroyed. However, there is reason to believe that the destroyed evidence would have aided Covil's position, which has suffered irreparable prejudice due to Penn National's spoliation.

By destroying relevant evidence, Penn National has succeeded in hiding significant evidence of its insurance coverage and attempted to deprive Covil of the opportunity to present critical evidence of insurance coverage. Thus, the Court should find that Penn National spoliated relevant evidence and issue an appropriate sanction to deter such conduct in the future and attempt to re-level the now uneven evidentiary playing field.

When a party destroys evidence, an inference may be drawn that the destroyed evidence would have been adverse to that party. *Gathers ex rel. Hutchinson v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 83, 427 S.E.2d 687, 689 (Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ. v. U.S. Gypsum Co.*,

302 S.C. 390, 396 S.E.2d 369 (1990)). Over the years, courts have found numerous sanctions to be appropriate for the spoliation of evidence. Courts have allowed adverse inferences to be drawn from the loss or destruction of relevant evidence, dismissed cases or stricken pleadings, issued fines plus attorney's fees and applied almost every other sanction available for the failure to provide discovery.

Among the tools that judges may use to combat spoliation is the adverse inference presumption. Giving the finder of fact the ability to decide what weight to place on the spoliation is the preferred practice in South Carolina. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997). The presumption does not arise from the failure to present the evidence, but rather from the role that the spoliating party had in preventing it from being reviewed by the court. When a party destroys evidence, an inference may be drawn that the destroyed evidence would have been adverse to that party. *Gathers*, 311 S.C. at 83, 427 S.E.2d at 689 (citing *Kershaw Cty. Bd. of Educ.*, 302 S.C. at 395, 396 S.E.2d at 372).

Based on the evidence established by the Receiver regarding the existence of Covil insurance coverage issued by Penn National, and based on the evidence demonstrating Penn National's spoliation of evidence regarding the existence of the coverage, this Court should hold that Penn National issued primary general liability insurance coverage to Covil Corporation prior to the 1986-1987 policy period.

C. This Court Should Award Attorneys' Fees To Covil.

1. Covil is entitled to attorneys' fees as the prevailing party in this declaratory judgment action.

Covil seeks to recover its reasonable and necessary attorney's fees expended in prosecution of its declaratory judgment action. It is well-settled under South Carolina law that a prevailing insured in a declaratory action regarding coverage may recover attorney's fees. *Gordon-Gallup Realtors, Inc. v. Cincinnati Ins. Co.*, 274 S.C. 468, 471-72, 265 S.E.2d 38, 40-41 (1980); *see also Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 550, 243 S.E.2d 443, 444 (1978).

“There is no material difference in the legal effect between an outright refusal to defend and in undertaking the defense under a reservation of rights until a declaratory judgment is prosecuted to resolve the question of coverage.” *Id.* Accordingly, the South Carolina Supreme Court reasoned fees that are expended because of a declaratory judgment are themselves fees expended in defense of a claim. *See id.* And thus, said fees are recoverable. *See id.* “The legal fees incurred by [an insured], in successfully asserting [its] rights against [an insurer]’s attempt in the declaratory judgment action to avoid its obligation to defend, were damages arising directly as a result of the breach of the contract[ual]” obligation to defend. *Id.* at 550-51, 243 S.E.2d at 244 (citing *Cohen v. Am. Home Assur. Co.*, 255 Md. 334, 258 A.2d 225 (1969)).

Thus, in *Hegler*, the South Carolina Supreme Court laid down a rule that an insured who defends against a declaratory action by its insurer can recover fees. Two years later, in *Gordon-Gallup*, the court applied that holding to a situation wherein the insured “was forced to prosecute [an] action to enforce its rights under the policy with its insurer.” *Gordan-Gallup*, 274 S.C. at 472, 265 S.E.2d at 40. That is precisely what Penn Nation compelled Covil to do here.

These holdings have been reaffirmed and remain foundational jurisprudence in South Carolina. *See, e.g., First Fin. Ins. Co. v. Sea Island Sport Fishing Soc., Inc.*, 327 S.C. 12, 17, 490 S.E.2d 257, 259 (1997) (“We decline to overrule *Hegler*...”).

2. Covil is independently entitled to attorneys’ fees as a sanction for Penn National’s discovery misconduct and spoliation in this case.

The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw Cty. Bd. of Educ.*, 302 S.C. 390, 396 S.E.2d 369 (1990). Sanctions can range up to default or dismissal, and “[i]n determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg.*

Co., 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (citing *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974)). The sanction should be aimed at the specific conduct of the party sanctioned. *Id.* at 198, 511 S.E.2d at 719 (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990)).

A court may award reasonable expenses, including attorneys' fees, for a party's failure to make or cooperate in discovery. Rule 37(b), SCRCPP; *see, e.g., Davis v. Parkview Apartments*, 409 S.C. 266, 270, 762 S.E.2d 535, 537 (2014) (affirming award of attorneys' fees and costs as sanctions for refusal to comply with discovery rulings); *Arnal v. Arnal*, 363 S.C. 268, 297-98, 609 S.E.2d 821, 836 (Ct. App. 2005), *affd as modified*, 371 S.C. 10, 636 S.E.2d 864 (2006) (court imposed sanctions awarding attorneys' fees for discovery abuse); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 644, 579 S.E.2d 151, 154 (Ct. App. 2003) (trial court granted attorneys' fees for failure to participate in discovery); *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 305, 529 S.E.2d 45, 56 (Ct. App. 2000) (trial court assessed attorneys' fees for discovery abuses); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) (trial court awarded attorneys' fees for failure to comply with discovery order).

IV. CONCLUSION

For these reasons, Plaintiff Peter D. Protopapas, as the Receiver for Covil Corporation, respectfully requests that this Court enter judgment in favor of Covil on its declaratory judgment claim. The Receiver seeks a declaration as to the interpretation and meaning of the Penn National Policies as follows:

- The aggregate limit of liability for bodily injury damage in the Penn National Policies does not apply to operations claims, but applies to completed operations and products claims only;

- The aggregate limit of liability in the Penn National Policies does not apply to Covil Asbestos Suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos while Covil was performing work at a particular jobsite;
- Penn National bears the burden of proving any exclusion or limitation of coverage, including the application of the aggregate limit of liability to particular Covil Asbestos Suits and the exhaustion of the aggregate limit of liability in its policies;
- Penn National has not met its burden of proving that the bodily injury alleged in the twelve covered Asbestos Suits in which Penn National contributed to settlement payments – *Ashworth, Campbell, D’Amico, Garren, Jolly, Jonas, Knight, Morgan, Sims, Aspray, Wannamaker, and Moss* – are subject to and impair the Penn National Policies’ aggregate limit of liability;
- Penn National has not met its burden of proving that the 1986-1987 Penn National Policy contains the “Completed Operations Hazard and Products Hazard” Exclusion; and
- The Penn National Policies are required to pay or reimburse “all sums” that Covil, as the insured, becomes legally obligated or reasonably required to pay as damages by reason of Covil Asbestos Suits.

The Receiver also requests that this Court find that Penn National spoliated historic occurrence-based liability insurance policies and policy-related documents during the pendency of the Covil litigation and award sanctions against Penn National. Finally, the Receiver requests that (1) this Court award the Receiver his reasonable attorneys’ fees and costs as the prevailing party on his declaratory judgment claim and, independently, as a discovery sanction against Penn National for its discovery misconduct in this case and (2) set a briefing schedule for the submission of the Receiver’s attorneys’ fee petition.

December 5, 2022

Respectfully submitted,

SMITH | ROBINSON

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/s/ Shanon N. Peake

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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
DEPOSITION DESIGNATIONS**

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 counsel and pursuant to the Scheduling Order entered in the above action, hereby provides the following deposition designation that it may offer at trial (except those offered solely for impeachment or cross-examination), cross-designations, and basis for any objections:

Pleading/ Discovery Material	Designated Portion	Cross- designations	Substance	Objection
Deposition of Sharla Frost – Vol. 1 (11/09/2022)	3:1-3:4:2		Statement of deposition and introduction of counsel	
	4:5-4:7		Introduction of Ms. Frost	
	13:18-15:20		Experience dealing with maintenance of historic records focused on documents maintained by companies	

	16:6-16:17		Never consulted with insurer regarding documents it should maintain	
	33:12-33:15, 33:19-34:10		Obligation to maintain records (including policies) applies to companies like Covil	
	67:17-67:25		No knowledge of when Penn National was first tendered Covil asbestos case	
	73:20-74:2		Did not assess settlement value of cases	
	88:13-88:25		Not information about whether other insurers contributed to settlements of cases that analyzed	
	113:7-114:14		Covil products would have ceased including asbestos sometime in 1970s	
	115:15-117:20, 117:22-118:11, 118:13-118:20, 118:22-118:23, Ex. 10		No opinion re amounts paid by Penn National in settlements	
	122:3-122:5, 122:7-122:19, 127:19-128:4		Joint obligation of entities that had policies to collect and protect insurance records	
	124:9-125:11, 125:14, 125:16-126:6		Best practice would be for insurer and insured to maintain insurance documents for significant hold time related to asbestos litigation	
	130:4-130:25		Not aware as to whether she has ever been admitted to	

			testify as an expert	
Deposition of Peter D. Protopapas – Vol. 1 (11/17/2022)	3:3-3:23		Statement of deposition and introduction of counsel	
	28:1-28:17		Covil ceased operations in 1991	
	53:17-55:4		Ellis & Winters has Covil documents, including insurance documents, and he can request Covil documents from them	
	55:22-57:11		Peter has a database of Covil insurance information	
	60:16-61:24, 62:1-63:12		Peter has directed Ellis & Winters to give him any Penn National or other insurance-related information	
	64:3-68:5 68:7-69:9 69:14-70:10 70:12-70:18, 70:20-71:8 71:10-74:9, Exhibit 2		Reviews chart of insurers and policies attached to 2018 Subpoena	
	77:8-77:16, 77:18-81:4, 81:6-82:15, 83:2-90:15, 91:23-92:11, Exhibit 3		Reviews chart of insurers and policies from Dec. 2019	
	92:17-93:21		Covil did not third-party Penn National into the Finch coverage action, but cross-claimed under the 86-87 and 87-88 policies after Hartford brought Penn National into	

			litigation under	
	93:22-94:14, 94:16-95:11		Believes that Covil first tendered an asbestos claim to Penn National in fall of 2019, but could be Feb. 2020	
	95:12-98:2		Not aware of case in which Penn National denied a tender from Covil, and has consistently defended Covil	
	98:4-98:14, 101:16-104:15, Exhibit 4		Reviews Complaint and factual allegations about Covil's operations and Penn National policies	
	111:12-112:17		Seeking declaration as to how Penn National should be adjusting the claims going forward	
	112:18-112:22, 113:16-114:20, 114:24-116:6, 116:15-117:2, 122:3-123:8, Exhibit 6		Familiar with subpoena issued by Receiver to Penn National in Finch state court action and believes Penn National's electronic search could not locate policies for period that interest him (1954 to 1991)	
	132:21-133:14		Good working relationship between Penn National and Receiver for Covil outside of coverage dispute	

Deposition of Charles Miller – Vol. 1 (11/28/2022) ¹	3:1-3:21, 4:15-4:16		Statement of deposition and introduction of counsel	
	4:19-4:24		Introduction of Mr. Miller	
	17:23-18:14		No publications or legal work related to whether aggregate limit applies to ongoing operations, premises claims for bodily injury	
	20:6-20:12		Never worked for insurance company other than Fireman's	
	22:3-22:21		No publications or legal work related to whether ongoing operations loss converts to completed operations or products loss	
	24:18-25:7		Cannot pinpoint specific case handled at Fireman's where he searched for policies going back periods of time	
	32:17-34:10, Ex. 4		Inquired as to what the Receiver's document retention expert thought and only recently learned he would opine on document retention	
	40:10-43:8		Knowledge of document retention at Fireman's Fund	

¹ Page and line designations are made to the "Rough Draft" of the transcript of the deposition of Mr. Miller, which was available as of the deadline for page and line designations under the Scheduling Order in this matter.

	46:17-47:11		Not aware of any carrier other than Fireman's Fund stopping all destruction of GL policies	
	93:3-94:6		No case law or other authority to support position that take home exposure is derivative ongoing operations hazard	
	96:15-97:7		Not able to provide response by industry to Johns-Manville in terms of document retention policies	
	109:25-110:17, 118:9-118:22		Industry standard for insured to assist in locating policies and no information that Covil provided secondary information to locate policies	
	114:1-114:3, 114:5-115:20		Generally insureds have one GL policy per policy period	
	119:1-119:13		Typically umbrella or excess policies list primary policies and has not seen evidence of other Penn National policies identified on such policies	
	119:14-119:18		Has not seen claim files showing other Penn National policies	
	119:19-120:3		Has not seen	

			facultative or reinsurance showing other Penn National policies	
	123:15-124:11		Given that request for policies was not made until 2018, and Covil went out of business in 1991 or 1992, Penn National would not have had any policies for Covil given its 25-year document retention policy	
	126:20-128:7		Only basis for opinion that 25-year retention for GL policies was outside industry standard is testimony of Receiver and Frost (other expert for Receiver)	
	129:12-129:20		Not aware of industry standard for length of time to retain liability policies	
	129:21-130:4		Cannot recall offering opinion as an expert as to retention period previously	
	130:5-130:16		Testified in 3-6 lost policy cases, all for policyholders	
	132:10-132:17, 132:19-132:20		Not offering opinion that Penn National issued additional policies to Covil because no secondary evidence of such policies	

Respectfully submitted this the 5th day of December, 2022.

/s/ David G. Harris II

David L. Brown (N.C. State Bar No. 18942)

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

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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL
4 CIRCUIT

5 COVIL CORPORATION, By and Through Its Duly
6 Appointed Receiver Peter D. Protopapas,
7 Plaintiff,

8 vs. CASE NO. 2020-CP-40-02098

9 PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE
10 COMPANY, SAM J. CRAIN & CO., INC., AND SOUTH
11 CAROLINA PROPERTY AND CASUALTY INSURANCE
12 GUARANTY ASSOCIATION,

13 Defendants.

14 VIDEOTAPED TELECONFERENCE

15 DEPOSITION OF: PETER D. PROTOPAPAS

16 DATE: November 17, 2022

17 TIME: 10:03 a.m.

18 LOCATION: Virtual -- Zoom

19 TAKEN BY: Counsel for the Defendants

20 REPORTED BY: Roxanne Easterwood, RPR

21 VIDEOGRAPHER: Roosevelt Harrison
22
23
24
25

APPEARANCES OF COUNSEL:

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(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

* * * * *

VIDEOGRAPHER: Good morning. We're now
on the record. The time on the monitor is
10:03 a.m. Eastern Standard Time on
November 17th, 2022.

This is the video-recorded deposition
of Peter D. Protopapas in the matter of Covil
Corporation versus Pennsylvania National Mutual
Insurance, et al. This deposition is being held
remotely via Zoom.

Counsel, please introduce yourselves,
after which our court reporter, Roxanne, will
swear in the witness.

MR. YNTEMA: This is Brady Yntema. I
represent Penn National, the defendant in this
case.

MR. NES: Brad Nes, Morgan Lewis,
counsel for the receiver.

MR. HANNA: Fred Hanna, with Smith
Robinson, local counsel for the receiver.

PETER D. PROTOPAPAS
being first duly sworn, testified as follows:

EXAMINATION

BY MR. YNTEMA:

1 Q. Mr. Protopapas, my name is Brady
2 Yntema. And I represent defendant, Penn National,
3 in this action that's been filed by the receiver
4 for Covil.

5 Are you familiar with this action?

6 A. I am.

7 MR. YNTEMA: And we got a -- and this
8 is probably a preliminary matter, we have a notice
9 of deposition and -- that we would like to show
10 you as Exhibit 1, and it takes a moment to call
11 up. I'm sure you've done enough remote.

12 THE WITNESS: No problem.

13 (Exhibit 1, Notice of Deposition and
14 Subpoena, marked for identification.)

15 BY MR. YNTEMA:

16 Q. So this is a subpoena that we have
17 marked as Exhibit 1.

18 MR. YNTEMA: And -- and if you slow
19 down right there.

20 BY MR. YNTEMA:

21 Q. The subpoena notices the date and time
22 of your deposition is November 17, 2022, beginning
23 at 10:00 a.m. Do you see that?

24 A. Yes, sir.

25 Q. And have -- you did, in fact, receive

1 that subpoena?

2 A. I -- I'm sure I did. No problem with
3 service of the subpoena or my presence as being
4 appropriate.

5 Q. Sure. And as part of that Exhibit 1,
6 that notice of deposition there, okay. Just to
7 confirm, the notice of deposition is also attached
8 as Exhibit 1. Let me page down.

9 A. Looks in order. I -- I -- I know how
10 busy lawyers are. I did notice, I think, the date
11 may have been November 29th, but it doesn't bother
12 me in the least bit.

13 Q. No, there was -- you're right,
14 Mr. Protopapas. There was a discrepancy between
15 the notice of deposition and the subpoena. And
16 your counsel and I discussed that, and -- and we
17 decided that you were, indeed, available today,
18 and you're here.

19 A. Good.

20 MR. YNTEMA: You can take that down.

21 BY MR. YNTEMA:

22 Q. Going back to the -- the deposition.
23 I appreciate you being here today and taking the
24 time to answer our questions pursuant to the
25 subpoena and notice of deposition.

1 Mr. Protopapas, have you had your
2 deposition taken before with respect to anything
3 related to Covil?

4 A. I have had two depositions in Covil
5 matters: One, I believe, was the federal Finch
6 action, and I believe the other one was the South
7 Carolina Finch-related action.

8 So Zurich took my deposition with --
9 USF&G was a party to that case, and then USF&G
10 took my deposition, and I can't remember if Zurich
11 was in the case or not.

12 Q. And the USF&G deposition that you just
13 mentioned, that would have been the South Carolina
14 action?

15 A. I believe that was the South Carolina
16 action, and the Zurich deposition was in the North
17 Carolina -- Middle District North Carolina action.

18 Q. Thank you, sir.

19 And in either one of those actions,
20 was Penn National a party?

21 A. I think Penn National may have been a
22 party for a short period of time in the Middle
23 District of North Carolina, and then that case got
24 significantly narrowed to only Finch. So I think
25 at the time of my deposition Penn National was not

1 a party. It may have been a party early in the
2 action, or it may have been moved to be a party
3 earlier in the action.

4 Q. And you anticipated my question, is
5 that was Penn National a party -- to your
6 recollection, was Penn National a party in either
7 of the actions when your deposition was conducted?

8 A. Not at the time of my deposition.

9 Q. Okay. Thank you, sir.

10 Sir, you are the -- appearing as the
11 receiver for Covil in this case, correct?

12 A. Yes, sir.

13 Q. And when were you first appointed as
14 receiver for Covil?

15 A. November 2nd of 2018.

16 Q. And in what court were you appointed
17 receiver for Covil?

18 A. I believe Richland -- well, it was the
19 South Carolina state court. There were two
20 actions that were in default. One was from York
21 County. And I apologize, I don't recall if the
22 second action was a York County action as well.
23 But I believe it was two actions that appoint --
24 that I got appointed in that were default cases.

25 Q. And as being appointed receiver for

1 Covil, was that being appointed as receiver for
2 Covil in all Covil-related asbestos actions?

3 A. Yes, sir.

4 Q. And is that -- were you appointed as
5 receiver as to -- as receiver for Covil in actions
6 for declaratory judgments against various insurers
7 that may provide coverage for Covil?

8 A. Yes, sir. And the way the -- and
9 you-all weren't around for this, so would it be
10 okay if I gave you a two-minute overview of how
11 that unfolded?

12 Q. I'm sure you've had this recitation
13 before, but certainly, please put that on the
14 record.

15 A. So I got appointed November 2nd, which
16 was a Friday. If I'm not mistaken, Monday morning
17 I got a call from a law firm called Rivkin Radler,
18 who were representing Century Insurance, as well
19 as a gentleman named Bill Bulfer, who is a lawyer
20 in North Carolina who represented Zurich. And
21 they asked to come visit me as the receiver for
22 Covil, and I said, Sure; we can -- we can talk
23 about it on the phone; you don't have to get on a
24 plane or anything like that.

25 They wanted to do it in person. So

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1 they showed on Wednesday, November 6th -- well, 2,
2 3, 4. So they called me the 5th. They showed up
3 on the 7th. And on the 7th, I believe Wednesday,
4 the 7th, that morning we met for three or four
5 hours, and they left. And then I got served with
6 a declaratory judgment action in the Middle
7 District of North Carolina against Covil
8 Corporation, brought by Zurich, which at that --
9 and then -- then a decision had to get made by me
10 as to what I do with that, right.

11 So I've been presented with a lawsuit
12 against Covil on a declaratory judgment in the
13 Middle District of North Carolina. My thought was
14 I had to do something about that. And the two
15 things we did was, one, I started hiring lawyers
16 who understood this space, which I think is a
17 somewhat unique space.

18 In the practice of law we're not
19 allowed to use designations like specialties in
20 South Carolina, but for lack of using that word,
21 I'll say it's a unique space with folks that have
22 a deep understanding of issues that arise in these
23 types of insurance declaratory judgment actions.

24 And so I reached around and found
25 lawyers to help me, and we initiated a lawsuit in

1 South Carolina, and we answered the lawsuit or
2 moved to dismiss or whatever in North Carolina.

3 And that's how the coverage piece
4 started. It started on -- I believe they filed it
5 November 6th and served me -- tried to serve me on
6 the 8th. I think I finally accepted service maybe
7 two, three weeks later.

8 Q. And that was in November of 2018,
9 correct?

10 A. Yes, sir.

11 Q. And at that time Penn National was not
12 a party to that action in the Middle District of
13 North Carolina?

14 A. It was not.

15 Q. As far as being appointed in 2018 as
16 receiver for Covil, was that the first time you
17 had been appointed as a receiver for any entity?

18 A. It was.

19 Q. And when were -- when were you first
20 contacted in relation to potentially serving as a
21 receiver for Covil?

22 A. November 2nd of 2018.

23 Q. And who contacted -- I'm sorry.

24 A. I apologize -- I apologize. I was
25 going to probably answer your next question. I

1 got a call from Theile McVey, who said, Do you
2 want to be a receiver? And I said, Sure, not
3 fully understanding what any of that meant. And
4 then I believe somebody -- I believe either Theile
5 or Justice Tolls Lockhart emailed me a copy of the
6 order of appointment. And then Monday I got the
7 phone call from Rivkin Radler.

8 But I had not done asbestos prior to
9 November 2nd of 2018. I had not -- I had done
10 declaratory judgment actions on insurance policies
11 for, like, burglary, home flood, these kind of
12 one-off, you know, things. Legacy liability,
13 insurance policies, and asbestos was not something
14 I had any familiarity with on November 2nd, 2018.

15 Q. And as far as being retained as a
16 receiver, if you could just give us a sense as to
17 how you were retained? Was there a retention
18 agreement, or was it -- if you could just explain
19 that to us, please?

20 A. Certainly. And you stop me when
21 you've heard enough. The -- I had represented
22 receivers or trust -- bankruptcy trustees, and I
23 had worked with receivers. A portion of my law
24 firm's business and one of the first significant
25 cases I worked on was a Ponzi scheme case. The

1 first Ponzi scheme case of size I worked on was
2 called Home Gold, which was a massive loss in the
3 Upstate of South Carolina in the early 2000s. I
4 was a young lawyer. I was certainly not a lead
5 lawyer.

6 The trustee's name was a gentleman
7 named Ralph McCullough. Ralph assembled a group
8 of lawyers to sue everybody and recover money for
9 the victims of the Ponzi scheme. Some folks went
10 to jail, and money was recovered.

11 And over the course of doing Ponzi
12 schemes it became clear that a receiver was an
13 important role to have, and so at the -- there's a
14 gentleman in Greenville named Beattie Ashmore, a
15 tremendous lawyer, who is a receiver in federal
16 court for numerous Ponzi scheme-type cases. He
17 did a case called Three Hebrew Boys. He did a
18 case called Ron Silvers Gold and Silver, if I'm
19 not mistaken. And he had become the receiver in
20 federal court for Ponzi schemes. And we would
21 have jurisdictions of Ponzi schemes that would be
22 suing people. You bump into a receiver, you have
23 to work with that receiver when you have the
24 personal -- when you have the personal plaintiff.

25 So there were no state court receivers

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1 in South Carolina, or weren't very many. It was
2 not a particularly developed area. And I always
3 thought it would be a good idea for somebody to be
4 the counterpoint to Beattie Ashmore. So Beattie
5 is the federal guy. Is there a state guy, and
6 that always piqued my interest.

7 So a company called Compass Academy
8 went into receivership in 2014. I was not the
9 receiver, but I worked very closely with that
10 receiver, and I had half a dozen Ponzi scheme
11 victims. So I think there was a general -- I was
12 not personal friends with Theile McVey or her
13 partner, John Kassel, but very nice people. But
14 one way or another, you know, word got out, I
15 think, that I would be willing to be a receiver if
16 nobody else would do it, or I'd represent the
17 receiver.

18 But mostly it was Ponzi scheme stuff,
19 right. I mean, my law firm does -- we've
20 represented 3- -- I think 300 Ponzi scheme victims
21 on FIP across the country in the last four years.
22 It all resolved last year, but it's a big chunk of
23 our -- of our practice is financial advisor
24 litigation.

25 Q. Thank you for that.

1 And as far as being retain as a
2 receiver for Covil, was there any formal written
3 retainer agreement that you entered into to serve
4 in this capacity?

5 A. No. The way I've been taught and the
6 way I hope lawyers in South Carolina will look at
7 it, when a judge tells you to do something, drags
8 you into something, you don't ask how you're going
9 to get paid. You don't ask anything other than
10 what am I supposed to do, and you hope it works
11 out.

12 And there's some very good examples of
13 that in South Carolina, especially on lawyer
14 discipline where a lawyer gets suspended or kicked
15 out of the practice and somebody is forced to come
16 in as trustee. They're never going to get paid,
17 but you don't -- you never say no, because we have
18 the -- we have the privilege of being lawyers in
19 this state, and part of that privilege is that if
20 you're asked to do something, be appointed for a
21 DSS client or be it whatever, you say yes. You
22 figure the rest out later.

23 So I had no idea how I'd get paid or
24 if I'd get paid. And it didn't bother me then,
25 and it doesn't bother me now. It probably bothers

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1 my partner more than it does me that I take tons
2 of cases and the prospect of getting paid may not
3 be particularly clear, but it's never bothered,
4 and it didn't bother me that day. It was just,
5 Yes, I'll do what -- the best I can.

6 MR. NES: Brady, I don't mean to
7 interrupt you, and I want to make sure the record
8 is clear. So there is a -- you might want to ask
9 him if there is an order appointing him receiver,
10 as opposed to you asking about a retainer
11 agreement, but you might ask him about an order
12 because there is an order appointing him receiver.

13 MR. YNTEMA: I think he mentioned that
14 there is -- he had been ordered, that an order was
15 entered appointing him receiver.

16 BY MR. YNTEMA:

17 Q. My question, Mr. Protopapas, was more
18 outside the order, if there's any other further
19 retention agreement --

20 A. I apologize. There is none. And I
21 think my payment as receiver, there was no promise
22 of payment prior to my appointment or post my
23 appointment. The only way I would ever accept any
24 payment at all as a receiver would be upon
25 application to the court that appoints me, and

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1 they get to determine if I should get paid and how
2 much I should get paid. But no third party,
3 nothing absent court approval would I ever accept.

4 Q. Thank you for that.

5 And since being with appointed
6 receive- -- receiver, have you indeed been paid
7 for your time and services?

8 A. I don't want to be cute with the
9 answer. So I have never submitted, and I have
10 waived payment on the Covil receivership for the
11 receiver. However, I have retained my law firm as
12 coverage counsel, and there have been a series of
13 resolutions over the past couple of years with
14 carriers that generated attorneys' fees. And part
15 of the petitions for approval of attorneys' fees
16 includes payment to my law firm.

17 There are two receiverships. One is
18 called Piedmont. One is called Standard
19 Insulation. Those receiverships, a negotiation
20 was entered into with Great American on that
21 receivership, not Covil. But I want to give you a
22 fulsome answer. In those two receiverships, I
23 have petitioned, pursuant to an agreement with
24 Great American, where they pay me a monthly amount
25 as receiver. That was submitted to the court and

1 approved by the court.

2 Other than those two, Standard
3 Insulation and Piedmont, I have not been paid for
4 my services. I've waived it because my firm has
5 made money as coverage counsel, and the -- I don't
6 feel comfortable -- I didn't feel comfortable
7 doing both. There's going to come a point,
8 perhaps, where I will for Covil, right.

9 There will come a point where the
10 administration is everything and the coverage is
11 nothing, and maybe I change my mind, but as of
12 today I have not received a dollar or sent an
13 invoice as receiver or petitioned the court as
14 receiver to authorize a payment to me as receiver.

15 Q. I appreciate that. As far as the --
16 the coverage cases related to Covil that your --
17 that your firm has received payment in for -- I
18 assume, is that by an hourly rate? Would that be
19 accurate?

20 A. That would be inaccurate.

21 Q. Is it? And if it's inaccurate -- if
22 it's inaccurate, sir, is it by a percentage of a
23 settlement that you received or a resolution of
24 the matter?

25 A. It is my contingency fee. The -- if

1 you -- the very first settlement was Century,
2 Hartford, Riverstone in the spring of 2020. We
3 petitioned for the approval of attorney contracts
4 and for the approval of attorneys' fees and a
5 petition for approval of settlement, and at that
6 point the court granted the professional contracts
7 or granted our -- approve -- ordered approval of
8 the professional contracts and approved the
9 attorneys' fees.

10 So for each settlement that we have
11 entered into for Covil, there is a petition to
12 approve settlement and payment of attorneys' fees
13 that the court then considers and rules upon.

14 (Crosstalk)

15 Q. And essentially -- and essentially,
16 the court ruling upon, is that approving the
17 settlement and the -- and the manner of payout?

18 A. Correct.

19 Q. And for those settlements, is there a
20 particular QSF, or qualified settlement fund, that
21 the settlement proceeds are paid into?

22 A. Correct. It's -- the Covil qualified
23 settlement fund has had a name change, and I
24 believe we -- we changed the name to South
25 Carolina Injured Workers -- and I apologize, I

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1 don't have the exact name at my fingertips. I
2 have always just called it Covil QSF.

3 Q. Certainly. I appreciate that. And
4 the Covil QSF, does -- does that -- does the QSF
5 simply retain and manage the settlement payments
6 made by insurance carriers for Covil?

7 A. Yes. It has a -- we petitioned for
8 approval for the first settlement dollars that we
9 recovered. We petitioned for approval of an
10 operating agreement for the qualify -- the
11 qualified settlement fund, the QSF. And that
12 operating agreement has been modified with -- I
13 believe with each settlement there is a
14 modification to take into account the newest
15 settlement, perhaps other than maybe the Gallivan
16 White & Boyd settlement. I think every one has
17 had an amendment perhaps.

18 And so the function of the qualified
19 settlement fund at a high level is to, one,
20 manage -- or is to -- to manage the monies that
21 are going to be used to pay folks to have a
22 qualified claim against Covil for an asbestos
23 injury, and the -- the qualified settlement fund
24 itself is a manager-managed LLC. We have certain
25 criteria for the payment of claims, and we work

1 closely with defense counsel and the other
2 insurers on the claim as it comes in for Covil.

3 So it is -- and -- and living by the
4 terms of the settlement agreements with the
5 various carriers, insuring the money is available
6 for the payment of claims pursuant to the
7 settlement agreement/qualified settlement fund
8 itself and the dictates of the court. So the
9 court maintains management of the qualified
10 settlement fund. It maintains management of the
11 receivership. The court is the overseer of those
12 two roles that I play, qualified settlement fund
13 and receiver, all under the rubric of the court.

14 And you may have seen in this case in
15 August or thereabouts I filed a receiver's report
16 which detailed -- excuse me -- the activity of the
17 qualified settlement fund and the audit, the
18 annual audit that I undergo.

19 Q. You might be able -- you may be able
20 to determine this more accurately. But is there a
21 termination or expiration date for the
22 qualified -- Covil qualified settlement fund?

23 A. I -- there may be, like, a 20/50 sort
24 of data out there. And I apologize, I'm not sure
25 if there is. I could tell you my thoughts on it.

1 And my thoughts are that as long as there's money
2 in the qualified settlement fund to pay legitimate
3 claims, the qualified settlement fund should
4 continue.

5 I do have in there a residuary clause
6 -- a residual clause that if it comes to a
7 termination point, there is the University of
8 South Carolina, the College of Charleston, and
9 Clemson University would divide in three the
10 residuary -- residual amount, if any, in the
11 qualified settlement fund.

12 Q. Sir, you mentioned Century, Hartford,
13 and Riverstone as being insurers that have paid
14 into the qualified settlement fund through --
15 let's start with Century. Did Century pay a
16 settlement in relation to a coverage action that
17 your firm had filed?

18 A. Yes. The -- the lawyers in the
19 Century case were Morgan Lewis, Smith Robinson,
20 Rikard Protopapas. It is a, you know, a
21 complicated agreement that was submitted to the
22 court to review and approve and -- and an order
23 issued by the court approving the settlement and
24 its terms.

25 Q. Thank you. And as -- as far as

1 Hartford, was Hartford a settlement that was --
2 was Hartford -- did Hartford's settlement payment
3 relate to a coverage action that the receiver had
4 filed with respect to Covil?

5 A. Yes.

6 Q. And then Riverstone, was Riverstone a
7 settlement payment that was paid as a result of a
8 coverage action?

9 A. Yes.

10 Q. All right. Any other Covil insurers
11 that have settled and paid into the qualified
12 settlement fund as a result of a coverage action?

13 A. Zurich, Enstar, and USF&G, but the
14 USF&G resolution was not a policy buyback.

15 Q. If you can state this -- and I'm not
16 trying to ask you to, you know, state con- --
17 anything of confidence. But was the USF&G
18 settlement payment only related to the Finch
19 action?

20 A. It was. And when -- well, it's --
21 it's Finch and some of the underlying alter ego
22 allegations of Finch.

23 Q. Any other settlements with insurers
24 that have paid into the QSF that weren't -- that
25 did not involve a coverage action?

1 A. Can I see the chart? Can I look at
2 that chart you sent me real fast, just to make
3 sure I haven't missed something?

4 Q. Yeah. Sure. Go ahead.

5 (The witness reviews the document, as
6 requested.)

7 THE WITNESS: When I use the words
8 USF&G, I'm also using Travelers. When I use the
9 words Century, I'm also referring to Hardware.
10 When I'm using the term Riverstone, I'm also --
11 they have different names. Like, I'm trying to
12 find their -- their subsidiary entities or their
13 related entities or their whatever entities. I
14 apologize.

15 BY MR. YNTEMA:

16 Q. No apologies --

17 (Crosstalk)

18 A. -- Ranger Insurance, I believe is what
19 I call Riverstone colloquially, and I don't know
20 the exact nature of the relationships between all
21 of those parties.

22 Q. I understand.

23 A. Those are all the settlements -- those
24 are all of the insurer settlements and their
25 related named entities.

1 Q. So the case we're currently sitting
2 here today on is receiver for Covil versus Penn
3 National, correct?

4 A. Yes, sir.

5 Q. Certainly, do you have any other
6 insurance coverage actions pending against any
7 other insurer for Covil currently?

8 MR. NES: Objection. Form.

9 THE WITNESS: There may be something
10 with USF&G. I'm trying to think through the
11 various -- USF&G and I have a tortured
12 relationship, and they may have something up on
13 appeal on Covil. And I apologize, I -- my mind is
14 saying they have something up on appeal.

15 BY MR. YNTEMA:

16 Q. Other than USF&G, is there any
17 currently pending coverage action against any
18 other insurer for Covil, other than Penn National,
19 of course?

20 A. Other than Covil, no.

21 Q. Any other insurer other than USF&G and
22 Penn National that you are currently negotiating
23 with to settle and have payment paid into the QSF?

24 A. Not for Covil.

25 Q. So is it fair to say that Penn

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1 National and USF&G are the last two insurers that
2 you are currently either pursuing coverage actions
3 against or potentially negotiating payment into
4 the QSF?

5 A. That is correct.

6 Q. And upon resolution of the action with
7 Penn National, the only remaining insurer that
8 might be out there would be USF&G?

9 MR. NES: Objection. Form.

10 THE WITNESS: Yes. Now, that I know
11 of, right. I mean, we constantly are looking to
12 fill in what I call gaps in coverage and filling
13 in the areas where we may not have perfect
14 information. And so I think to the great chagrin
15 of the lawyers and paralegals involved, there is a
16 periodic review and re-review of materials to see
17 if we've missed something.

18 New information comes in. For
19 example, a Duke production was -- was made
20 recently in Covil land, and that, I think, has
21 been reviewed to ensure that we haven't missed
22 something or whatever, but we -- you keep looking
23 because you have imperfect information.

24 BY MR. YNTEMA:

25 Q. Thank you for that, sir. And I thank

1 you for kind of stepping me through that.

2 In starting this deposition, I kind of
3 spared you all of the instructions and things of
4 that nature that attorneys typically give fact
5 witnesses and the like, and I -- and so I -- I'll
6 just let you know that I kind of jumped into some
7 details of -- of your role as receiver, and I
8 appreciate that.

9 But, Mr. Protopapas, as a lawyer to
10 lawyer, I'm just saying that I'm not here to keep
11 you captured in this deposition. At any time you
12 would like to take a break, certainly ask. I will
13 be more than happy to allow you that break. All I
14 ask is that you answer the question that I've --
15 I've asked and we can take a break after that.

16 As you know, we try not to overtalk
17 one another, just for the sake of the court
18 reporter. I have several other instructions that
19 I typically give, but I -- I'll -- I'll spare that
20 for you since you've been through this before.

21 A. Thank you.

22 Q. And you mentioned a while ago that --
23 a little while ago that you are a member of a
24 firm. Could you state the firm that you were a
25 member of when you were initially appointed

1 receiver?

2 A. Rikard & Protopapas, LLC.

3 Q. And is that the firm that you're
4 currently with?

5 A. It is. We may have called
6 ourselves -- we may have changed our official name
7 to RP Legal Group, doing business as Rikard &
8 Protopapas. There is a marketing component to my
9 law firm that I'm woefully undereducated on, so.
10 But it is Rikard & Protopapas, are the two equity
11 partners in the law firm.

12 Q. And when you were appointed receiver
13 in November of 2000- -- or in 2018, was Covil an
14 ongoing viable entity?

15 A. What Covil was, Covil was -- the
16 concept of viable entity is -- to me falls into
17 two categories. Like, what is the business of
18 Covil? And so I saw Covil as being an entity that
19 was fielding and defending litigation, that it --
20 insulate- -- insulation -- installation of
21 insulation or construction-styled work at
22 residential or commercial facilities had ceased in
23 1992 or '91, and that its only function in
24 business at the time of my appointment was
25 fielding and defending lawsuits.

1 Q. Thank you. And that was my next
2 question. When did -- and I guess, based on your
3 testimony, is it fair to say that Covil had ceased
4 operations sometime in 1991?

5 A. I believe that's the evidence is -- is
6 pretty good that in 1991 Covil shut its doors.

7 Q. And as far as shutting its doors, when
8 it shut its doors, was Covil an insulation
9 installer?

10 A. I believe so. I think they had moved
11 towards a residential -- residential insulation
12 and had some maintenance contracts at industrial
13 facilities, but that the -- they still did
14 insulation work. They may have done -- they may
15 have done other things, siding or roofing or
16 whatever, but it was still an insulation
17 contractor, I believe.

18 Q. Do you know when Covil Corporation was
19 actually incorporated?

20 A. I believe it's 1954, and it -- I think
21 it conducted as a d/b/a prior to that. But if I'm
22 not mistaken, its official Secretary of State is
23 1954.

24 Q. And so it continued as an ongoing
25 entity from 1954 until, approximately, 1991?

1 A. Yes. It -- it was a company -- a
2 functioning construction-style company, right,
3 that insulation contracting construction-type
4 contracting, I think. And then in 1991 it shut
5 its doors, but it would con- -- it's that -- that
6 gap, right, of '91/'92 to -- to '18, what the heck
7 was happening, and it's my understanding it was
8 fielding and defending lawsuits, presenting
9 witnesses, litigation-related activities and that
10 sort of thing.

11 Q. Thank you. And your understanding --
12 I know you're just speaking as to what your
13 understanding is as -- as receiver today. Covil's
14 primary business was insulation installation at
15 various facilities, correct?

16 MR. NES: Objection. Form.

17 THE WITNESS: Yes. And I believe it
18 did -- it -- so it would tear things out
19 sometimes, put things in sometimes. Heavy
20 industrial component to it through the mid '80s,
21 and then there was a residential component. I
22 think that got more attention, perhaps not
23 profitably, from '85 to '91. And those are rough.

24 You know, the one thing -- and you
25 stop me when I speak too much, okay. The one

1 thing I'll say to give you some measure of comfort
2 as to me as a witness: I don't believe I am a
3 competent witness to events prior to November 2nd,
4 2018, in the sense that a competent witness saw,
5 heard, tasted, touched, participated in events.
6 And so I'm giving you my best summary from what
7 I've read, some of the same things I'm sure you've
8 read or that the insurance defense attorneys at
9 Ellis & Winters have read, but I would not pretend
10 to have that personal, saw, heard, taste, touch,
11 felt, participated in, what occurred at Covil in
12 the '80s. And so I would -- I would not -- I
13 would not present that information as accurate
14 eyewitness testimony.

15 BY MR. YNTEMA:

16 Q. And you mentioned Ellis & Winters.
17 Just to be clear for the record, Ellis & Winters
18 is currently Covil's asbestos defense counsel?

19 A. Right.

20 Q. And when were they initially retained,
21 if you know, to be Covil's asbestos defense
22 counsel?

23 A. I may not know the date exact, but
24 there was some chaos, or there was some healthy
25 amounts of disputes in litigation in Covil land

1 from November 2nd of 2018 or maybe November 6th,
2 when the coverage lawsuit was filed, of 2018
3 through April of 2019. One of those disputes was
4 with a -- the then-defense counsel for Covil.

5 As a result of that dispute, which was
6 significant, the carriers presented Ellis &
7 Winters as attorneys in March of 2019. I believe
8 it's March of 2019. At that time they insisted
9 that another law firm also get involved, law firm
10 called Nelson Mullins. And as a result, those two
11 law firms carried Covil through a very difficult
12 moment on those two default cases which were set
13 for damages trial in April of 2019.

14 And so I believe that was a long
15 answer for me to say March of '19. I apologize.

16 Q. No, I -- it's -- it's -- it's
17 perfectly acceptable. No need to apologize.

18 And so the knowledge that you gained
19 that you have testified to with respect to what
20 Ellis & Winters has been able to provide you has
21 been through their reporting to you as receiver
22 for Covil with respect to the asbestos defense
23 cases and their defense of Covil in those cases,
24 correct?

25 A. Correct. I'd say that Ellis & Winters

1 is a primary source of information for me. I
2 conducted interviews of Rick Link, who is a former
3 officer of Covil; Jim Covil, who is the son of
4 Palmer Covil, a former officer. I am sure I've
5 spoken to half a dozen other people at the
6 beginning of the receivership when I was sending
7 out subpoenas, calling, trying to find out what is
8 all of this all about, and all of that kind of led
9 to a moment where I got a deposition by a
10 gentleman by the name of Palmer Covil from 1977,
11 who was the owner of Covil.

12 I have not read that in some time. It
13 is a lengthy deposition. But I did read it back
14 in the day. And from that there's certain touch
15 points that I remember that I've taken away and --
16 and believe are important milestones, right. That
17 '77/'78 deposition of Palmer Covil, that's a date
18 that I have in my head.

19 The '91 closing of the doors of Covil,
20 I've got it. You know, the -- the -- so there's
21 certain -- but Ellis & Winters has done a good job
22 of putting together Covil and in more detail than
23 I had prior to their getting involved. So I
24 have -- I have knowledge of Covil from reading all
25 this stuff, but I would -- I would -- certainly

1 open to correction from Ellis & Winters.

2 Q. And the asbestos defense reports, if I
3 can call it that, those include summaries of
4 Covil's activities from the -- from the 1950s,
5 '60s, '70s, '80s, and whatever activities it had
6 into the '90s, correct?

7 A. Yes, sir.

8 Q. When I say activities, that means
9 their work activities?

10 A. Yes, sir.

11 Q. And their work activities, to my
12 understanding, and correct me if I'm wrong, were
13 asbestos insulation maintenance or removal; would
14 that be accurate?

15 MR. NES: Objection. Form.

16 THE WITNESS: Yes, with -- within
17 normal insulation normal. Non-asbestos insulation
18 being installed post '72.

19 BY MR. YNTEMA:

20 Q. Thank you for that.

21 A. Now, there's some dispute over that.
22 There's --

23 Q. Yeah.

24 A. -- testimony that maybe asbestos was
25 used in certain facilities, and there is some

1 compelling evidence that may have occurred, but
2 for our purposes, and not to be shared with
3 personal injury plaintiffs lawyers because it's
4 just me saying it, there is allegations that --
5 that Covil may have used asbestos insulation post
6 '72 at several job sites.

7 Q. I understand that there is a issue or
8 differing arguments as to when Covil may have
9 ceased installing asbestos-containing insulation,
10 and that's for the defense of those cases, but I
11 think you've been clear with me as to the -- what
12 Covil's primary activities were between early
13 1950s up until it ceased operations in 1991. And
14 thank you for that.

15 MR. NES: Brady, before you ask your
16 next question, just for the record, to the extent
17 that the transcript reflects discussions of
18 underlying defense strategies now, I will make
19 sure that we have on the record that at least a
20 portion of this deposition will need to be marked
21 confidential.

22 MR. YNTEMA: Sure. As far as defense
23 strategies, do you mean -- I mean, all I was
24 asking was about just the general knowledge that
25 Mr. Protopapas had gained from his counsel's

1 reporting -- I mean, Covil's counsel's reporting
2 and the asbestos defense nature, but I haven't
3 asked about any of their strategies.

4 MR. NES: Yeah. Like I said, you're
5 free to ask. What we don't want is -- you're now
6 asking him about what his lawyers are asking him
7 in the underlying defense. We don't want those to
8 be revealed to the plaintiffs, because you're
9 asking about conversations with his underlying
10 lawyers. I think we share that.

11 We can have that debate later. I just
12 want it for the record to be clear that we want to
13 review this transcript prior to it being
14 disseminated pursuant to our confidentiality
15 agreement.

16 BY MR. YNTEMA:

17 Q. Okay. Well, then to be clear,
18 Mr. Protopapas, to your knowledge and based upon
19 your experience and what you've been able to gain
20 from your research and investigation of Covil's
21 history, is it your understanding that Covil's
22 primary activities from when it began business in
23 the early 1950s to -- well it -- when it ceased
24 operations in 1991 was primarily in the business
25 of installing insulation either in the -- in

1 the -- with respect to manufacturing facilities
2 and residential projects?

3 A. Yeah, installing, removing, repairing
4 insulation.

5 Q. I appreciate that. Thank you.

6 Just going back to when you were
7 appointed as receiver, we had talked about the
8 Finch case maybe to a limited degree. The Finch
9 case was a case that resulted in a significant
10 verdict in the Middle District of North Carolina;
11 is that correct?

12 A. That is correct.

13 Q. And the only defendant -- and correct
14 me if I'm wrong, but the only defendant in the
15 Finch case was Covil at the time that the verdict
16 was reached; is that correct?

17 A. That is correct.

18 Q. All right. And if you could tell me
19 the insurer group that was providing a defense for
20 Covil at the time that the Finch verdict was
21 reached?

22 A. I'm -- I'm going to give you a better
23 answer than the question calls for. Century,
24 USF&G, and Zurich were defending Covil and paying
25 for the insurance defense of Covil at the

1 beginning of the Finch case. There came a moment
2 where a motion -- partial motion for summary
3 judgment was granted in August of 2018. The
4 grounds for the partial motion for summary
5 judgment was that prior to 1975, Mr. Finch was an
6 employee of Covil, and as a result, his claim was
7 barred by the workers' compensation statute,
8 something to that effect. I'm paraphrasing an
9 order I haven't read for a while.

10 As a result, Century dropped off the
11 risk -- and I'm using terms that -- you know, that
12 they stopped being part of the defense of Covil at
13 some time in the summer of 2018, leaving just two
14 carriers in that group, which would be USF&G and
15 Zurich at the time of verdict. So at the time of
16 verdict, those two, but just prior to, Century,
17 Zurich, USF&G.

18 Q. What about Hartford? Was Hartford
19 ever part of the insurer group for Covil prior to
20 the Finch verdict?

21 A. Not that I know of.

22 Q. And was Penn National ever part of the
23 insurer group prior to the Finch verdict?

24 MR. NES: Objection. Form.

25 THE WITNESS: Not that I know of. And

1 when we say insurer group, the group that was
2 taking up the responsibility to defend Covil in
3 Finch.

4 BY MR. YNTEMA:

5 Q. And were you appointed as receiver
6 after the Finch verdict?

7 A. Yes, sir. The Finch verdict is either
8 October 5th or October 6th of 2018. I was -- and
9 then I was appointed November 2nd.

10 Q. And to your knowledge, did Ms. McVey
11 contact you to be receiver for Covil specifically
12 because the -- of the Finch verdict?

13 A. I don't think so. I think there are
14 two default cases that happened at the end of
15 October/early November, and I think the -- the
16 impetus was we have two cases in State Court South
17 Carolina that are in default.

18 There was a very nasty -- not nasty.
19 It was a very contentious relationship between
20 Covil prior to November 2nd of 2018 and the Dean
21 Omar Branham Law Firm. There was a very
22 contentious relationship between USF&G and Dean
23 Omar; Zurich and Dean Omar; Wall Templeton and
24 Dean Omar Branham, who as a -- was a law firm
25 tasked with defending Covil in March of 2018.

1 And prior to Wall Templeton was a very
2 contentious relationship with a firm called
3 Gallivan White & Boyd. So I'm sure the -- or my
4 suspicion would be that I was appointed to be
5 receiver -- I was appointed to be receiver under
6 the two default cases, but that when the carriers
7 called me Monday, filed their lawsuit Tuesday, met
8 with me Wednesday, and then served me with the
9 lawsuit thereafter, I think at that moment it was,
10 We want you to deal with Finch.

11 And so all of that kind of happened
12 very quickly. So I had the two defaults, the
13 Finch, a number of other cases, a mediation in
14 December that I wasn't invited to. It was all
15 sorts of just chaos at first.

16 Q. Okay. No, thank you for that. I
17 appreciate it.

18 When you were appointed receiver for
19 Covil, what were the assets of Covil?

20 A. The primary assets of Covil were
21 legacy insurance policies, claims against
22 professionals, and documents.

23 Q. And you say documents. That's a very
24 broad description. If you could just give me a
25 sense of what documents Covil had in its

1 possession when you were appointed receiver in --
2 in 2018?

3 A. Covil had a -- Covil had a grouping of
4 documents from 1991. When I say from 1991, may I
5 give you the document story to the best of my
6 recollection?

7 Q. I'm sorry, I didn't -- your doc- --
8 your document story?

9 A. Right, the doc- -- not mine, but the
10 document story for Covil, to the best of my
11 knowledge.

12 Q. Oh, certainly. I just wanted to make
13 sure I understand you. Thank you.

14 A. Sure. So Covil -- this is my
15 understanding. So Covil is doing its business,
16 rocking-rolling along, and then in the early 1970s
17 there is a massive warehouse fire. Now, the
18 warehouse fire is something that certain people
19 chuckle at because, apparently, there was more
20 than one insulation contractor that had a
21 warehouse fire in the early 1970s.

22 But Covil had a massive warehouse fire
23 reported in the Greenville News, and a portion of
24 its documents, historical documents, may or may
25 not have been destroyed, depending on who you ask.

1 And then fast-forward to 1991. In
2 1991, when Covil closes its doors, a receiver is
3 appointed named Winston Lee. Mr. Lee is in
4 contact with a gentleman named Danny White. Danny
5 White had been a lawyer for Covil since the late
6 1970s. Danny White grabs a -- what is -- what I
7 believe is eight filing cabinets' or nine filing
8 cabinets' worth of documents. Those then get
9 transferred to Gallivan White & Boyd, whatever the
10 name of that law firm was in '91/'92, whoever that
11 entity is, Gallivan Boyd, Boyd Gallivan, whatever.

12 And then there are other documents
13 that are assembled through the litigation between
14 a plaintiff and a defendant. So there's more
15 documents like complaints and answers. More
16 documents responses, perhaps, to subpoenas or
17 requests to produce, and that eight filing
18 cabinets combined with the lawyers' files, the
19 litigation stock files, and the documents that
20 evidenced litigation and that come out of document
21 discovery litigation, it grows. It becomes maybe
22 100 Bankers Boxes, maybe 200 Bankers Boxes. I
23 can't remember the number.

24 Those are sitting at Gallivan White &
25 Boyd. A copy of the eight or nine bankers --

1 the -- the filing cabinet is at Wall Templeton.
2 So there are two warehouses of prime- -- of
3 primary documents, I will call it; one at Gallivan
4 White Boyd, one at Wall Templeton.

5 There are other document that I would
6 argue are part of the Covil file that are not in
7 those two places. For example, workers'
8 compensation defense attorneys in North Carolina
9 and South Carolina maintain records on Covil, and
10 as part of the workers' comp files they would have
11 job sites that the worker was at on behalf of
12 Covil, years of employment, so on and so forth.

13 And all of those documents end up
14 getting pulled into the receivership and dropped,
15 ultimately, at Ellis & Winters. So that Ellis &
16 Winters has everything that I have, absent
17 coverage litigation.

18 So those -- I think those are assets,
19 and -- and they are a significant amount of
20 documents. Those -- I -- I can't remember if it
21 was 200 Bankers Boxes at Gallivan White, but, you
22 know, litigation from '76 to 2018 will generate a
23 lot of Bankers Boxes, and it certainly did at
24 Gallivan White & Boyd.

25 Q. Okay. Thank you for that.

1 Now, the policies that were recovered
2 from Covil and finally, in essence, con- or
3 consolidated and then provided to Ellis & Winters,
4 did those documents include insurance
5 policy-related documents?

6 A. I'm sure --

7 MR. NES: Objection. Form.

8 THE WITNESS: I'm sure some of it did.
9 Yeah, I mean, whatever Gallivan White had in its
10 files got over there, and that would have some
11 insurance documents in it, including all of the
12 correspondence between Century and Gallivan, USF&G
13 and Gallivan. You know, I would say those are
14 insurance-related documents because they're bills
15 and so on and so forth.

16 The cost share between the three
17 primaries at that time: Century, Zurich, and
18 USF&G, I think it was negotiated, like, in 1978.
19 It was negotiated a long time ago.

20 BY MR. YNTEMA:

21 Q. And when you were appointed receiver,
22 who were the known insurers for Covil?

23 A. So I get appointed on November 2nd of
24 '18 -- when you -- you want to know when I knew
25 who was -- who was insurer?

1 Q. Yes. I would assume that prior to
2 your appointment as receiver you did not know
3 anything about Covil or its insur- -- or its
4 insurance programs, so --

5 A. You're correct.

6 Q. My question is more -- I guess, more
7 flexible than when I initially posed it. When you
8 were appointed as receiver, who was the first --
9 who were the first insurers that you became aware
10 of that were insurers for Covil?

11 A. When I got appointed receiver for
12 Covil, that Friday afternoon when I got -- I got
13 appointed I went home, played with my kids, had a
14 great weekend. Come in Monday and have a phone
15 call that Century Insurance is one of the insurers
16 for Covil -- and it's the Rivkin Radler call and
17 the Bill Bulfer call -- and Zurich is. And they
18 told me that USF&G was also an insurer, but USF&G
19 was not on the phone call and did not come on that
20 Wednesday.

21 But my first understanding of the
22 Covil insurance program, which I was not a
23 particularly sophisticated -- and I'm still not.
24 I'm not an insurance -- legacy insurance coverage
25 guy. But when they brought the lawsuit and served

1 it on me, it listed a bunch of characters. That
2 then informed my knowledge, right. At that moment
3 I was like, what's going on here; why are they
4 bringing this -- what -- you know, what is going
5 on here.

6 But I have to go back and look at the
7 caption of that first lawsuit that Zurich brought.
8 If I remember correctly, there were several
9 insurance companies on it, not Penn, but several
10 others. And then that -- that expanded my
11 knowledge that these people were part of that
12 program.

13 But that lawsuit and my -- the
14 distaste with how it all came about, garnished my
15 undivided attention. I did not like how I had
16 been -- I did not like how it -- it all happened.
17 I didn't like people coming down. I didn't like
18 people coming meeting with me, talking to me about
19 this is where we can work together and do this and
20 do that and then drop a lawsuit on me that they
21 know I'm woefully inadequate to do anything about.
22 And so I went and found the biggest law firm I
23 could talk to to see if they would help me.

24 And then from that point forward, I'll
25 be honest with you, I relied upon my lawyers to

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1 determine what the insurance program with Covil
2 was, because I had never been tasked with this. I
3 had never been given a job of go find insurance or
4 this is what legacy insurance looks like. It had
5 not been something I had any great familiarity
6 with. And so from that point forward I relied
7 upon my lawyers to tell me what the insurance was
8 because I -- I, frankly, wouldn't have known what
9 the heck to do with it if it was standing right in
10 front of me.

11 Q. And to be clear for the record, Penn
12 National was not involved in that first meeting or
13 the lawsuit that was filed against the receiver in
14 the Middle District of North Carolina, correct?

15 MR. NES: Objection to form.

16 THE WITNESS: Correct.

17 BY MR. YNTEMA:

18 Q. And this is just a question just to
19 understand and get on the record your -- what you
20 understand your duties for Covil is. Is part of
21 your duties for Covil, after your employment, to
22 research and investigate Covil's insurance
23 program?

24 A. Yes. I take the duties -- I see it as
25 the duties of the receiver are set by order. The

1 court dictates what I am supposed to do and not
2 supposed to do and all of that. And I interpret
3 her order appointing me as receiver as identifying
4 and managing the insurance assets of Covil,
5 amassing assets to or -- or ensuring assets are
6 responsive to potential creditors or claimants of
7 Covil, managing the Covil litigation. But I go
8 back to that order appointing me as receiver to
9 say this is what I'm supposed to do.

10 Q. And based on your testimony, given
11 that the Middle District of North Carolina
12 coverage action that was initiated by Zurich
13 happened so soon after your appointment as
14 receiver, you did not have a lot of time to
15 independently research and investigate Covil's
16 insurance program before you had to retain counsel
17 to represent you in the Zurich versus Covil action
18 in the Middle District of North Carolina; is that
19 correct?

20 A. That is correct. The information may
21 have been provided to me by Zurich or Century or
22 even USF&G at various times, but it was the first
23 receivership. Today I have a better
24 understanding. Then I did not have much of an
25 understanding of where to find insurance programs

1 or policies.

2 And so I think the -- our first
3 lawsuit in the District Court of South Carolina at
4 the end of November/early December of '18 is our
5 best picture of the insurance program, I think, at
6 that time.

7 MR. NES: Brady, we've been going about
8 an hour. Maybe this is a good time to take a
9 quick, five-minute break.

10 MR. YNTEMA: Yes. Yes, certainly.
11 Yeah, it's at the hour mark. And so, as I told
12 Mr. Protopapas, I'm not here to keep him captured.
13 We can take a five-, ten-minute break, whatever
14 you guys see as sufficient. And we can go off the
15 record.

16 MR. NES: Time for a break.

17 THE WITNESS: Sounds good.

18 VIDEOGRAPHER: The time on the monitor
19 is 11:04. Going off the record.

20 (A recess was taken.)

21 VIDEOGRAPHER: The time on the monitor
22 is 11:11 a.m. We're back on the record.

23 BY MR. YNTEMA:

24 Q. Mr. Protopapas, I appreciated you
25 taking that break and Mr. Nes suggesting to do so.

1 Mr. Protopapas, just a clarification
2 that I had -- I was thinking about on the break.
3 I want to be clear for the record that as far as
4 Covil, would Covil have been essentially a
5 contractor in its business activities?

6 A. I believe so, yes.

7 Q. Would it ever have been --

8 A. It would subcontract with Daniel many
9 times. Sometimes they had a direct contract with
10 the facility, but it was not the -- what I would
11 call the general contractor responsible for
12 heating and air and framing and such.

13 Q. So in a manufacturing facility
14 context, would it be fair to say that -- that --
15 that Covil would not have directly contracted with
16 a facility, but would have been a subcontractor to
17 either the general contractor for another
18 subcontractor?

19 MR. NES: Objection. Form.

20 THE WITNESS: I think that's -- and I
21 would say that's probably more than 50 percent of
22 their business. Something less than 50 percent of
23 their business, I think, were direct contracts.
24 There are, like, four that jump out to me. I'm
25 trying to remember the names of the entities that

1 they contracted with.

2 They had a maintenance contract with
3 Duke that was direct. After the construction of a
4 facility, there would be a maintenance contract
5 from time to time with Covil. Sometimes they
6 would lose it and a different entity would take
7 over. Sometimes they'd win it back.

8 So they -- they -- they were fired
9 from their Duke -- they were fired from their Duke
10 maintenance contract in '86 or '87 or '88. They
11 were -- Daniel and Covil had a lawsuit against
12 each other. I want to say it was '88. I am --
13 I'm going to be off on the years here, but in that
14 mid to late '80s period of time there was
15 litigation, I believe, between Daniel and Covil
16 that resulted in an ending of that relationship or
17 a significant change.

18 So I -- I've seen the standard general
19 contractor, subcontractor, and I have seen -- I've
20 seen either direct invoicing, maybe even a
21 contract itself directly to a facility, but I
22 don't think it's -- I think it's less than
23 50 percent direct with the facility, I think.

24 BY MR. YNTEMA:

25 Q. Okay. Thank you for that.

1 Ellis & Winters as Covil's asbestos
2 defense counsel, do they maintain Covil's
3 insurance policy-related documents?

4 MR. NES: Objection. Form.

5 THE WITNESS: They do not maintain the
6 QSF documents. They do not maintain the coverage
7 charts. They do not maintain the -- like, my two
8 depositions in the prior case or this one. They
9 do not maintain the coverage-related litigation,
10 but all original evidentiary-type/style documents
11 for Covil they should maintain. So it's not -- I
12 would say that I would have a -- I would -- I
13 would have a more complete set or complete
14 documents regarding insurance policies stemming
15 from the coverage litigation productions back and
16 forth. So if I have all of USF&G's 1950s claim
17 files that they could find, I do not know if I --
18 and I'd have to check to see if we had sent those
19 to Ellis & Winters. I'm not -- just sitting here
20 now, I'm just not sure.

21 BY MR. YNTEMA:

22 Q. So Ellis & Winters as asbestos defense
23 counsel is oftentimes required to respond to
24 discovery requests on behalf of Covil, correct?

25 A. Correct.

1 Q. And part of those discovery requests
2 are requests from asbestos plaintiffs' counsel
3 asking for a particular -- well, asking for
4 Covil's insurance policy records and insurance
5 policy program evidence?

6 A. Correct. And what I've told them to
7 do, or I think what their answers would reflect,
8 so -- so that question is not a standard question
9 in South Carolina State Court Asbestos. It is a
10 question in the Federal Court 26As that are
11 sometimes answered and sometimes by agreement not
12 answered. When it is answered, I generally --
13 there is a paragraph, I think, that they use. It
14 either directs it to me, maybe, or I have to go --
15 I have to find the paragraph. I apologize, I
16 don't know it off the top of my head, but there is
17 a statement made.

18 What I would want that statement to
19 convey to a plaintiff's attorney is that there is
20 a lot of contention on what the insurance program
21 is for Covil. It's a lot. And if you're looking
22 for a definitive answer, you're going to have to
23 wait until courts start ruling and appeals start
24 getting decided, because there is certain friction
25 over the course of Covil as to what the program

1 was or is. Now, with each resolution with a
2 carrier, there is a set response.

3 If someone were to ask me today what
4 is the Penn National -- if a plaintiff's lawyer
5 were to say what is the -- would ask Ellis &
6 Winters what is the Penn National coverage
7 obligation to Covil, I would say there are 3,000
8 filings between Penn National and Covil, and
9 everyone's got a position. And if you're looking
10 for definitiveness, you've got to wait, but
11 there's my positions, there's their positions, and
12 that's the uncertainty.

13 Would -- does that make sense?

14 Q. It does. And I'm not sure if it
15 answers my question. Maybe I answered -- asked
16 the wrong question.

17 Does Ellis & Winters have a database,
18 or do they keep storage of Covil's insurance
19 policy-related documents?

20 A. I don't know. I think they have a
21 massive Covil database. I think within that
22 database will be documents. Are they segregated?
23 I don't know -- I don't know if they are into its
24 own category, but they will have documents that
25 will refer to insurance.

1 Q. I'm sorry, the last part of that
2 answer?

3 A. They have documents that refer to
4 insurance. That would be my -- that's my
5 assumption. I would be -- they have to. They
6 have to.

7 Q. Okay. Thank you.

8 Do they have an -- and I'm not going
9 to ask you -- I don't want you to share anything
10 confidential, but I need to ask the question
11 generally.

12 Do they have an asbestos defense
13 database that you, as the receiver for Covil, have
14 access to -- read- -- ready access to?

15 A. This is my basic understanding, is
16 that there is a document platform that Ellis &
17 Winters utilizes. I do not believe I have a seat
18 at that platform. I -- I -- I don't have -- Peter
19 Protopapas does not. I don't believe anybody in
20 my firm does.

21 What we try to do is send them a
22 request and have them, you know, for example, if
23 I'm looking for a specific piece of information, I
24 would ask them, Can you please give me that
25 specific piece of information? But I don't

1 believe we have what I would call a platform where
2 I would log on to a cloud service or something and
3 peer into a Relativity document database or
4 something.

5 Q. Okay. Thank you.

6 And just to be clear, for the record,
7 when Ellis & Winters was retained and they were
8 provided with all Covil-related documents that
9 their prior asbestos defense counsel had and that
10 was pulled -- well, strike that. I apologize.

11 I think it's already been asked and
12 answered. You -- you described kind of what was
13 provided to Ellis & Winters when they were
14 retained, and I think we went through that. So
15 I'll move on. Sorry, Mr. Protopapas.

16 A. No, and I continually --

17 MR. NES: There's no question pending.

18 THE WITNESS: Okay.

19 BY MR. YNTEMA:

20 Q. Sorry. I'm just writing things down,
21 sir.

22 Mr. Protopapas, as far as your storage
23 of Covil-related documents, to be clear, do you
24 store and do you have storage of Covil
25 policy-related documents?

1 A. I do have a database of Covil
2 information, Covil insurance information.

3 Q. And if you could tell me what that
4 entails?

5 A. PDFs of productions from insurance
6 carriers, workers' compensation, files, the law
7 firms that represent me, I'm sure, are maintaining
8 the document productions that have gone from -- if
9 you -- if you look at what I had on Day 1, I had
10 nothing. I could only get information on Covil
11 from third parties, be it the lawyers, the
12 carriers, Freedom of Information Act requests to
13 Industrial Commissions, Workers' Compensation
14 Commissions, searches of the public index,
15 productions from plaintiffs, products from
16 co-defendants, and all of that information
17 ultimately gets warehoused at Ellis & Winters.

18 Though, I will have to double-check to
19 assure that the USF&G production of 1950s
20 information made its way there. It's just --
21 that's a year and a half ago, and I just don't
22 recall. I don't know if it was pertinent for the
23 defense of Covil for them to see that USF&G had or
24 had not done something in 1958 on a minor -- on a
25 particular issue. I just have to double-check

1 that.

2 So everything ends up, ultimately, at
3 Ellis & Winters as a document database, but
4 they're not tasked with knowledge of the insurance
5 program. That I try to keep here and keep them
6 out of coverage issues. And to the extent that
7 the plaintiff wants to depose a 30(b)(6) witness
8 on it, I don't believe that's happened yet. I'd
9 have to double-check, but there would have to be
10 some moment where they say, That's the receiver's
11 area; you have to ask the receiver.

12 Q. Okay. Thank you.

13 With respect to Covil insurance
14 documents, would those documents -- do you know if
15 those documents also contain communications with
16 Covil's insurance brokers?

17 A. If I have them, it would. I don't
18 know if they exist.

19 Q. And do you know who Covil's insurance
20 brokers were from the '50s, '60s, '70s, and '80s?

21 A. There were several iterations, but Sam
22 Crain Company. And there are -- I mean, there --
23 there is in the Ellis & Winters database a Sam
24 Crain letter or two or three or four. But Sam
25 Crain Company. It was Crain and something else,

1 maybe Rebenis or not Crain and Rebenis, Crain and
2 Theodore or Theodore Goldsmith or -- so you had
3 the Goldsmith Agency, Sam Crain and Theodore in
4 the various iterations, if I'm not mistaken.

5 Q. And so, essentially, they were -- I
6 don't know if you can agree or not. But typically
7 a lot of man- -- a lot of contractors have a
8 broker, and they keep that broker for many years
9 for insurance purposes. I mean, would you agree
10 with that?

11 A. I have seen consistent use of one
12 broker from --

13 Q. Yeah, and --
14 (Crosstalk)

15 A. -- sure.

16 Q. I'm sorry. I overtalked you.

17 And would that be the same for -- for
18 Covil? Did they have -- was Crain, quote unquote,
19 "Crain" a consistent broker for Covil from the
20 1950s all the way up until it ceased operations in
21 1991?

22 A. I think they had Goldsmith, but
23 Goldsmith may have turned into Crain, but they
24 had -- I believe they had Goldsmith Agency, Crain,
25 and then something Theodore.

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1 In the -- in an earlier part of one of
2 the coverage cases there is an affidavit from
3 former Lieutenant Governor Theodore. He's a
4 prominent member of the Greek community and a
5 prominent member of South Carolina. He was
6 lieutenant -- Democratic lieutenant governor many
7 years ago. And Lieutenant Governor Theodore
8 worked at -- I believe it's the Goldsmith Agency
9 in the '60s and recalled that the Goldsmith
10 Agency -- I think it was the Goldsmith Agency --
11 issued USF&G policies and was a carrier or was a
12 designated broker or agent for USF&G, which we
13 used to try to tie down a period of coverage from
14 '56 to '64 or '55 to '64 with USF&G.

15 So there was -- there was that broker.
16 There's Crain, and then there is a something
17 Theodore broker, I believe, in the '80s.

18 Q. Okay. Thank you for that. I
19 appreciate it.

20 How about certificates of insurance,
21 do you know if there is any Covil insurance -- I'm
22 sorry. Are there any Covil-related certificates
23 of insurance that you have seen and have been
24 retained?

25 A. I'm sure there are, and I'm -- and

1 they would be part of that Ellis & Winters
2 database. I can't think of a specific one -- I
3 can think of a specific one for Southern Insurance
4 Company from 1967, only because a lawyer stood up
5 in court and said it was a fraudulent certificate
6 of insurance, and then we produced the original
7 certificate and they said, Nope, that's a real
8 one, and so they withdrew that argument.

9 But that -- other than Southern, I
10 can't, sitting here -- I'm sure there are. I
11 mean, we had to give -- my understanding is we had
12 to give some measure of assurances to the
13 contractors and landowners when we did work there.
14 So I'm sure there's some banging around in the
15 Ellis & Winters database.

16 Q. Have you independently ever reviewed
17 the Ellis & Winters database for any
18 policy-related documents that would involve Penn
19 National coverage for Covil?

20 A. I think I have directed that they
21 produce to -- or they give to me any Penn National
22 or other insurance-related information.

23 Q. And they being Ellis & Winters?

24 A. Correct.

25 Q. And when did you make that request --

1 first make that request?

2 A. I'm sure in 2019, when they first got
3 involved. I'm sure something along the lines of
4 I -- you have to -- we have to have one place
5 where documents sit. It's going to be you,
6 because you're tasked with the defense. However,
7 as you come across information that's pertinent to
8 insurance, I do not want you to, you know, take
9 action on insurance because you're the defense
10 attorneys. You have to stay away from them --
11 those questions, but shoot that information to me.

12 And I'm sure that has been repeated
13 consistently over the years. And I think that
14 gives confidence to the carriers. If you want to
15 know what I know they had, I mean, that -- that's
16 the good news about it. They have it, and how
17 they -- specifically what database they use or
18 document management system, I don't recall.

19 Q. So, in essence, they -- they have --
20 Ellis & Winters being they. They, Ellis &
21 Winters, has provided to you -- let me ask you
22 this: Is it -- is it your testimony that you have
23 received from Ellis & Winters all policy-related
24 documents involving Penn National?

25 MR. NES: Objection. Form.

1 THE WITNESS: I would hope so.

2 BY MR. YNTEMA:

3 Q. Okay. And did you -- did you keep
4 those in your own personal -- personal storage
5 system, or did you just simply forward that on to
6 your counsel?

7 A. I would have forwarded that on to my
8 counsel.

9 Q. Okay. Thank you for that.
10 And so would it be safe to say that
11 your counsel has everything that Ellis & Winters
12 would have provided to you? Meaning with respect
13 to Penn National insurance-related documents?

14 A. Yeah, I don't -- I would think they
15 have everything I have, but the -- there's not a
16 ton on Penn National. It -- it's not like --
17 USF&G adjusted hundreds of claims from 1992 to
18 2018. That's a lot of information. I don't
19 believe the Penn National grouping of information
20 is as extensive as the Zurich, Century, and USF&G
21 would have been.

22 I just don't -- you-all weren't
23 involved in that adjusting. You-all weren't
24 involved in those cases. So you don't have the
25 letters between defense counsel. I mean, I

1 consider all of that insurance-related
2 information. If you want me to use a narrower
3 definition, I will.

4 But the -- those adjusting of claims,
5 the submitting of bills from Gallivan White & Boyd
6 to the three carriers, the three carriers talking
7 about it, submitting back, remitting payment,
8 like, all of that I consider insurance related,
9 but none of that has your name on it -- has your
10 client's name on it. Right. I mean, it's a very
11 narrow group of information that would have come
12 from Gallivan White & Boyd and from Penn.

13 Q. Okay. Thank you.

14 A. Maybe Hartford. Or did Hartford
15 attach your policy to the federal case? If they
16 attached your policy to the federal case, it would
17 have come from Hartford, too, but that would have
18 been it.

19 Q. Okay. Thank you.

20 Are you aware of a subpoena that Penn
21 National responded to in the middle district of
22 North Carolina in 2018?

23 A. Yes.

24 Q. Okay. Have you reviewed that subpoena
25 and Penn National's response?

1 A. I have, not -- you know, I don't have
2 -- I think I looked at it a month ago, maybe.

3 MR. YNTEMA: All right. We've
4 marked -- we've marked it as Exhibit 2, I believe,
5 in this case and we'll be calling it up.

6 Can you enlarge that or is this...

7 MS. BOUPLON: How much bigger do you
8 want it? I think I can --

9 MR. YNTEMA: I think I have it.

10 (Exhibit 2, May 2018 Subpoena, marked
11 for identification.)

12 BY MR. YNTEMA:

13 Q. Mr. Protopapas, can you see that
14 exhibit?

15 A. I can.

16 Q. Okay. And we have marked this exhibit
17 as 2. I'm not going to -- if I were -- if I were
18 there in person I would ask you to flip through
19 that and tell me what your understanding of the
20 document is, but I'll represent to you today that
21 this document contains the subpoena that I
22 referenced as the subpoena that Penn National
23 responded to in 2018, and it also includes Penn
24 National's response.

25 If at any point we're looking through

1 this document and you think that it does not
2 reflect what I've represented to you, please tell
3 me, okay?

4 A. Yes, sir.

5 Q. All right. So at the -- you -- you
6 can see the caption. The caption is in the Ann
7 Finch versus -- versus BASF Catalyst, LLC.

8 Is that your understanding, is that
9 the asbestos case in which the, quote unquote,
10 "Finch verdict" was reached, correct?

11 A. Correct.

12 MR. YNTEMA: And if you move down.

13 BY MR. YNTEMA:

14 Q. And that shows that a -- that it's
15 requesting -- essentially, you were commanded to
16 produce at the time, date, and place set forth
17 below the following documents:
18 "Electronically-stored information or objects and
19 to permit inspection, copying, testing or sampling
20 of the materials."

21 And then it seems to be written in
22 here: "Any and all documents related to the
23 topics in Exhibit A." And it also says: "Please
24 see Exhibits B and C for further instruction."
25 And then it provides a response date and product

1 date of June 20th of 2018. Do you agree with
2 that?

3 A. You have read it properly, Mr. Yntema.

4 Q. Thank you.

5 MR. YNTEMA: Okay. You can scroll
6 down. Let's go to Exhibit B. Scroll down to
7 where it says -- it can show the caption and the
8 order.

9 BY MR. YNTEMA:

10 Q. Okay. Mr. Protopapas, have you seen
11 this order by the Middle District of North
12 Carolina essentially instructing for plaintiff in
13 the Finch case, plaintiff's counsel, to issue a
14 subpoena to a certain set of insurers for
15 requesting their insurance policy records?

16 A. I am sure I have seen it at some
17 point. I have not looked at it any time recently.
18 So I can't -- I can't remember the specifics of
19 the order.

20 Q. But you recall that it was attached to
21 the subpoena that was issued in 2018?

22 A. Honestly, I -- I can't tell you one
23 way or the other. If you -- it appears as if it
24 is. I'm willing to accept that representation.

25 Q. Okay. And I -- I -- I -- I appreciate

1 that, as for sense -- for sense of efficiency, I
2 will represent to you that it essentially is an
3 order by Middle District of North Carolina
4 allowing Finch plaintiff counsel to issue a
5 subpoena to certain insurers for Covil.

6 And then also attached as Exhibit C --

7 MR. YNTEMA: Can you rotate that?

8 We're going to rotate that for you,

9 Mr. Protopapas.

10 BY MR. YNTEMA:

11 Q. Okay. Just looking at the -- the
12 initial page --

13 MR. YNTEMA: I don't know if you can
14 call it up in its whole. Right there. Thank you,
15 Vicki.

16 BY MR. YNTEMA:

17 Q. So this is the first page of Exhibit C
18 and it appears that -- that it's listing policy
19 dates, a particular insurer, policy number, type
20 of policy, the address and contact info, maybe,
21 for a broker or for the carrier, and it's a type
22 of Bates reference. Do you see that?

23 A. I do.

24 Q. Okay. Have you seen this Exhibit C
25 before?

1 A. I've seen at least a version of it.
2 If not Exhibit C, at least a version of Exhibit C.

3 Q. Okay. And does this seem to indicate
4 a list of insurers that were known by plaintiff's
5 counsel at the time it issued this subpoena?

6 MR. NES: Objection. Form.

7 THE WITNESS: My understanding of this
8 document is that Ron Tate created the document in
9 2017 or early 2018 and that somebody -- I don't
10 know who -- provided it at some point to the
11 plaintiffs. That's my -- that's my educated
12 guess.

13 BY MR. YNTEMA:

14 Q. Thank you. And could you remind me
15 who Ron Tate is?

16 A. Ron Tate is a lawyer at Gallivan White
17 & Boyd. The South Carolina State Court issued
18 various orders with escalating sanctions, if I'm
19 not mistaken, against Covil, including one
20 regarding insurance. And as a result of that, I
21 believe Mr. Tate undertook to try to answer that
22 question, and I think this is his chart or
23 something close to his chart.

24 Is it accurate? Is it his best
25 efforts? I don't know.

1 Q. All right. Thank you.

2 And the first -- the first date on the
3 policy date column is 1967, correct?

4 A. Yes.

5 Q. And it cites Hardware Mutual Casualty
6 Company, correct?

7 A. It does.

8 MR. YNTEMA: All right. And if you
9 turn and scroll down to Page 4 of Exhibit C.

10 (Discussion off the record.)

11 MR. YNTEMA: I don't know yet.

12 Page 4, yes, ma'am.

13 BY MR. YNTEMA:

14 Q. So on Page 4 -- can you see that okay?

15 A. I can.

16 Q. Good. Just on that first column, it
17 shows a policy date of March 31st, 1985, to
18 March 31st, 1986, for Hartford?

19 A. Yes.

20 Q. And it shows a policy number. And
21 that's, I guess, reflect-- would you agree, that
22 reflects their potential policy number for that
23 period of time for Covil?

24 A. Yes.

25 Q. And it says: "Type of policy there,"

1 and it indicates a CGL. Is it your understanding
2 that CGL stands for commercial general liability?

3 A. It is my understanding that's what it
4 stands for, and it does say "CGL."

5 Q. Yes. And so this -- reading this
6 chart, what it indicates is that Hartford would
7 have had in place a policy -- a CGL policy for
8 Covil that was effective from March 31st, 1985, to
9 March 31st, 1986, correct? Is that your
10 understanding?

11 MR. NES: Objection. Form.

12 THE WITNESS: That's what the chart
13 says.

14 BY MR. YNTEMA:

15 Q. Right. Is that how you read the
16 chart, though, that -- that Hartford would have
17 been a CGL policy in effect for Covil from
18 March 31st, 1985, to March 31st, 1986?

19 MR. NES: Objection. Form.

20 THE WITNESS: That's what the chart
21 represents.

22 BY MR. YNTEMA:

23 Q. Is that how you read it?

24 A. Yeah, I read the chart as saying
25 that -- yeah, that's what the chart says. The

1 chart says: "March 31st of '85 to March 31st of
2 '86, Hartford Accident Indemnity Company."

3 I'm with you, Column 1, Column 2. I
4 got you.

5 Q. Okay. And the type of policy, would
6 you agree that the type of policy that Hartford
7 provided to Covil during those days was a
8 commercial general liability policy?

9 MR. NES: Objection. Form.

10 THE WITNESS: According to the chart,
11 it's a CGL.

12 BY MR. YNTEMA:

13 Q. Okay. And if you go down a few rows
14 down to March 31st, 1987, to March 31st, 1988, do
15 you see that row?

16 A. I do.

17 Q. Okay. And you see next to that is
18 Penn National Mutual Casualty Insurance Company,
19 my client?

20 A. I do.

21 Q. And in that -- and in that chart --
22 and in that row it also -- it provides a policy
23 number to the carrier -- or it provides a policy
24 number, correct?

25 A. Yes, from '87 to '88 it has the policy

1 number.

2 Q. And it says that -- it also says a
3 type of policy that -- that would correspond with
4 that policy number would be a CGL policy; is that
5 how you read it?

6 A. That's how I read this chart.

7 Q. Okay. Then in the -- if you go down
8 to the row of March 31st, 1987, to
9 March 31st, 1988 -- I'm sorry. I apologize. I
10 think we did the wrong row first.

11 So we just went to 1987/1988 row. Two
12 more rows up from that, there is March 31st, 1986,
13 to March 31st, 1987, row. Do you see that?

14 A. I do, and it has -- the one has
15 Pennsylvania National Mutual Casualty Insurance
16 Company in the second column, a space for the
17 policy number that hasn't been filled in, and then
18 it has type of policy, CGL.

19 Q. Right. And so the only policy number
20 on this page that's provided for Penn National
21 policy number is for the 1987 to 1988 policy?

22 A. Yes, this chart provides only one
23 policy number for Penn National.

24 Q. Okay. Thank you.

25 MR. YNTEMA: Okay. Let's go back up

1 to Page 1 of the -- of Exhibit C.

2 And I'll -- I'll try to be as quick as
3 I can in this exercise, Mr. Protopapas.

4 This is Page 1? Yeah.

5 MS. BOUPLON: Yes.

6 BY MR. YNTEMA:

7 Q. Do you see Penn National as an insurer
8 listed on that page?

9 A. I do not.

10 MR. YNTEMA: And Page 2.

11 BY MR. YNTEMA:

12 Q. Mr. Protopapas, do you see Penn
13 National listed on that page?

14 A. I do not.

15 MR. YNTEMA: And then Page 3.

16 BY MR. YNTEMA:

17 Q. Again, do you see Penn National listed
18 on that page?

19 A. I do not.

20 Q. Okay.

21 MR. YNTEMA: And Page 4.

22 BY MR. YNTEMA:

23 Q. Mr. Protopapas, we've already
24 discussed Page 4. Do you see -- other than the
25 two rows 1986 to 1987 and 1987 to 1988, do you see

1 Penn National listed as an insurer anywhere else
2 on that page?

3 A. I do not.

4 Q. Okay.

5 MR. YNTEMA: And going to Page 5.

6 BY MR. YNTEMA:

7 Q. Do you see Penn National listed
8 anywhere as an insurer on that page?

9 A. I do not.

10 Q. Okay. Thank you for that,
11 Mr. Protopapas.

12 MR. YNTEMA: If you could scroll down.

13 THE WITNESS: This would be the type
14 of information Ellis & Winters has. This is
15 spread- -- this is the Ron Tate spreadsheet; I'm
16 almost sure of it. And the Covil Bates numbers on
17 the right-hand side, that -- all of that is the
18 Ellis & Winters database or should be.

19 MR. YNTEMA: Thank you.

20 See if you can pull it up as one page
21 for him

22 BY MR. YNTEMA:

23 Q. Okay. So this is about as good as we
24 can get for this page. But this is a letter dated
25 June 15th, 2008, addressed to Sabrina Stone at

1 Dean Omar in Dallas, Texas. Do you see that,
2 Mr. Protopapas?

3 A. I do.

4 MR. YNTEMA: Okay. And if you go down
5 to the body of the letter, please.

6 BY MR. YNTEMA:

7 Q. It says: "Dear Ms. Stone, pursuant to
8 your firm's subpoena, attached is the policy
9 information Penn National located on Covil
10 Corporation, Incorporated, et al. If you have any
11 questions or need further assistance, please feel
12 to contact the unsigned. Thank you for your
13 attention to this letter."

14 And you see that it's signed and sent
15 by Boyd Wright of Penn National?

16 A. I see the letter.

17 Q. Okay. And you agree that it -- it
18 was -- it indicates that it was sent by Boyd
19 Wright of Penn National?

20 A. Correct.

21 MR. YNTEMA: Okay. If you can go down
22 to the -- the policy information.

23 BY MR. YNTEMA:

24 Q. And just a general question for you,
25 Mr. Protopapas: Do you recall reviewing the

1 insurance policy information that Penn National
2 produced in response to this subpoena?

3 A. I -- I have -- I have looked at it,
4 at -- I have looked at it. I'm not going to say I
5 have a fulsome memory of every page of what was
6 produced.

7 Q. Yeah. And I'm not going to make you
8 go through that exercise. But do you recall that
9 Penn National produced policy-related documents
10 involving two policies for the 198- -- for the
11 1986 to '87 timeframe? Wait. I've got to go
12 back.

13 A. You're right, '86/'87, '87- --

14 Q. '86/'87, '87/'88. Thank you for that.
15 I had a brain skip there.

16 A. They produced --

17 Q. Do you recall --

18 (Crosstalk)

19 A. -- related documents pursuant to this
20 subpoena for the '86/'87, '87/'88 policy time
21 periods.

22 Q. Thank you. I appreciate that
23 correction.

24 Okay. And this subpoena was served
25 prior to your appointment as receiver for Covil,

1 correct?

2 A. Correct. And that's Exhibit 2 or 3?

3 Q. That's Exhibit 2.

4 A. Thank you.

5 Q. The first exhibit was the subpoena
6 and -- and notice of deposition. I'll get to that
7 question.

8 Now, if you could take your policy
9 chart that I sent to you?

10 A. Yes.

11 Q. Does this policy chart look familiar
12 to you?

13 A. It does.

14 Q. Okay. Can you testify -- does this
15 policy chart show the current insurance policy
16 program that you know of for Covil?

17 MR. NES: Objection. Form.

18 THE WITNESS: This is not the latest
19 policy chart.

20 BY MR. YNTEMA:

21 Q. Okay. I'm sorry, go ahead, I may have
22 interrupted.

23 A. No. I mean, I think this policy chart
24 is from December of '19, but I can't say for
25 certain.

1 Q. Well, it -- let's -- let's ask --
2 let's ask this then, let's go through this policy
3 chart and let you provide your interpretation of
4 it, and then I could ask you what's your
5 understanding of what may be different as of
6 Covil's current insurance program; would that be
7 okay?

8 A. I'll do -- do my -- yes, I'll do my
9 best. I mean --

10 Q. I -- yes.

11 A. I'll give you my -- the best I have on
12 it. Let me kind of take a step back. This -- the
13 -- the policy charts -- and we have filed a number
14 of them in various courts at various times; they
15 are somewhat fluid, right. These are secondary
16 evidence including, sometimes, certificates of
17 insurance, sometimes claims information, but all
18 of that secondary evidence informs the chart
19 that -- that we can -- the best that we can.

20 And so there have been changes. One
21 noticeable change in the chart is the white
22 insurance policies are settled in principal.
23 Those were confirmed settlements as of April of
24 2020. The Century or Hardware period of the time
25 from '64 to '70 -- and if you remember correctly

1 on the chart that you just showed me, those
2 attached to the subpoena, it did not have '64,
3 '65, '66.

4 So Ron Tate creates a version of a
5 coverage chart with the information he has. That
6 information changes as more information is
7 learned, and you have additional years of Century
8 identified. You have additional years of
9 Travelers implicated. We have a settlement with
10 Hartford and Riverstone or Range, but we don't
11 have Century settled yet.

12 Century settled in principal in Jan-
13 -- late January/early February of 2020. That was
14 approved in April of '20. So my suspicion is that
15 this chart is prior to the Century settlement
16 being inked but after the Hartford Ranger
17 settlement was inked, and that would have been, my
18 best guess, December/early January of 2019 and
19 2020.

20 So when you look at this coverage
21 chart, the updates to it or the best of my
22 recollection of the updates, which I think was
23 your actual question -- and I'm talking way too
24 much, I am sure -- is -- I would say that '54 to
25 '64 is uncertain. I mean, we put it down as

1 certain on this chart. Like we think -- but
2 sitting here today, I don't know if it's certain.
3 I think that's a contested -- hotly-contested
4 issue. The '64 to '70 period should be white.
5 The '70 to '76 period should be white. That is
6 with Zurich.

7 Q. All right. Say that one more time.
8 I'm trying to write this down, if you could say
9 that.

10 A. Sure. Around '70 to '76, white
11 policies indicate that they had been settled in
12 principal or settled. So those -- that's '64 to
13 '70 settled, '70 to '76 settled, which should be
14 reflected on the chart. The USF&G, red is
15 accurate. The Evanston policies from '78, or
16 may -- I can't -- I don't remember the dates
17 directly, but the Evanston policies in that '79,
18 '80, '81, '82, '83 period are not reflected, but
19 they should be marked off as part of the Ranger
20 insurance settlement.

21 And I think the two orange towers for
22 Penn, I don't think they're partial policies
23 anymore. I think -- I think we have the complete
24 policies.

25 Q. Okay. Yes. Thank you for that.

1 Now, when you -- so would it be fair
2 to say that this chart represents Covil -- Covil's
3 known insurance program prior to any settlement
4 with any Covil insurer?

5 MR. NES: Objection to form.

6 THE WITNESS: Yeah, other than the
7 settlement -- it says settlement in principal,
8 right.

9 BY MR. YNTEMA:

10 Q. Right.

11 A. We inked a deal, but I can't settle a
12 case without approval of the court. And it's
13 missing Evanston. It may overstate Travelers.
14 And I don't think -- I think that those are the
15 two -- the two major things, there's no Evanston
16 and maybe an overstatement of Travelers.

17 I may have some indication of an
18 umbrella coverage with Travelers prior to '64, but
19 this is a good framework, right. It's a good
20 frame. Just like what Ron Tate put together was a
21 framework of information, this has more than
22 Ron's, because it's a year later or two years
23 later.

24 Q. As far as the -- you -- you testified
25 that Travelers's policy periods that are reflected

1 here from, essentially, '54 to about '64 may --
2 may be overstated. If you could tell me, you
3 know, what policies may have been confirmed and
4 would not have been overstated, the policy
5 periods?

6 A. See, it's that classic -- that classic
7 moment of I say they have these policies, they say
8 they do not, and no court has said one way or the
9 other. And so they admit the '76 to '78 policy,
10 but this is a contested -- the pre-'64 policies
11 are contested.

12 Q. Okay --

13 A. Then within that group -- within that
14 group, I think there is a question about who has,
15 if anyone, has umbrella responsibilities.

16 MR. YNTEMA: Okay. And -- and I
17 appreciate your patience with me on this chart for
18 everyone concerned, Court Reporter, Mr. Nes,
19 and -- and Mr. Hanna and Vicki, I'd like to try to
20 get through this policy chart before we kind of
21 talk about a break, maybe for lunch or something
22 like that, if that's okay.

23 THE WITNESS: That's fine by me.

24 MR. YNTEMA: Okay. And it's not going
25 to take too much longer.

1 BY MR. YNTEMA:

2 Q. My next set of questions will be as
3 to -- to kind of the legend up above to the
4 left-hand corner. Now, you see -- I -- I
5 understand all -- all -- each insurer has a color
6 attributed to their policy periods or their
7 policies, and then you look over to the right, and
8 it shows kind of some different representations as
9 to those policies that may have had a partial
10 policy or missing terms. Do you see those?

11 A. I do.

12 Q. Okay. Well, it shows partial policy
13 and missing terms as kind of a striped column, and
14 if you look at Penn National -- I think you've
15 testified a little bit about this -- Penn
16 National's two columns of insurance run from,
17 essentially, '86 to '88, correct?

18 A. That's what -- on the chart it has '86
19 to '88.

20 Q. And that would -- that would conform
21 with the policies that were produced by Penn
22 National in response to the 2018 subpoena that we
23 just reviewed, correct?

24 A. Correct. The policy information
25 provided pursuant to that subpoena indicates those

1 two years.

2 Q. Yes.

3 A. I'm with you, I don't -- but I don't
4 think it was the complete policy, because I think
5 it was -- if it was the complete policy, I don't
6 think it would have been striped in our -- in the
7 chart that we're looking at. So I think it was
8 all that -- it was policy information on those two
9 years, but I don't want -- I don't think it was
10 the complete policy. It was the deck pages, that
11 sort of thing.

12 Q. And that's why -- that's why,
13 apparently, as indicated here, in approximately
14 2019 it -- it had that striped indication that
15 there were missing terms?

16 A. Yes, and so -- and there's all sorts
17 of caveats on these charts, right, that you're
18 pointing to, which is there's limitations on the
19 information. The chart is only as good as the
20 underlying information. There are limitations on
21 the information, and -- and part of it is if we
22 think it's a partial policy or what we're looking
23 at at that moment is partial, we try to indicate
24 it.

25 When I say we, I don't -- I didn't

1 make this chart. When it's secondary evidence, we
2 try to show it's secondary evidence, rather than
3 the actual policy itself. We try to let everybody
4 know that this is our best -- at this moment in
5 time, this is our best view into the bodily injury
6 chart from that secondary evidence, certificates
7 of insurance, primary evidence, the -- you know,
8 that -- that legend is meant to get us that
9 protection, right, that we're not perfect, and --
10 and we -- we're trying to be forthright but not
11 perfect, so that one day in a deposition somebody
12 doesn't beat me up and say, You left out Evanston,
13 or, you know, you didn't do this or you didn't do
14 that.

15 Q. And I appreciate that. As far as --
16 as far as -- who generated this chart, if you
17 know?

18 A. I do not know, but it looks similar to
19 charts that are generated by Morgan Lewis.

20 Q. Your counsel?

21 A. Uh-huh.

22 Q. Yes?

23 A. My direction. You know, I would ask
24 them, Please provide me the coverage chart. All
25 right.

1 Q. And so, again, just to be clear for
2 the record, the -- the Penn National two policy
3 columns just indicate that there are missing terms
4 to those policies, that's the interpretation that
5 your counsel has given to those two -- two policy
6 -- policies --

7 A. And I don't think it's that way today.

8 Q. You think that you have -- I'll let
9 you testify -- go ahead. Go ahead and testify to
10 that.

11 A. I think for those two years I think we
12 have the policies now, right. And I apolo- -- if
13 I've got it wrong, I stand -- I'll stand
14 corrected, but --

15 Q. Yeah.

16 A. -- off the top of my head, I would --
17 when I looked at this yesterday, I looked at it
18 and I was like, okay, you know, Brady, Mr. Yntema
19 is going to probably want to know when it was
20 made.

21 Q. Right.

22 A. And so, you know, I -- I -- I tried to
23 pinpoint it between the two settlements. And I'm
24 sure you're going to ask me, like, why it is
25 striped when -- when you provided the documents,

1 and I didn't want to -- I think you have. I don't
2 think you've done something -- I don't think Penn
3 has done something wrong hiding policy terms. I
4 don't. As far as it comes to those two towers, I
5 think we can say we have them now, but anyway.
6 I'm sorry.

7 Q. No. No. No. And -- and no, I
8 appreciate, you know.

9 As far as the next -- the next kind of
10 indication here for -- up in the upper left-hand
11 corner as to the secondary evidence, it says:
12 "Missing key terms or relies on specimen forms."

13 And so just as an example of an
14 insurance policy that would have missing key terms
15 or relies on specimen forms would be, I guess, the
16 Hardware and Century policies in '64 through, I
17 guess, '67; would that be your interpretation?

18 A. That is my interpretation of the
19 chart.

20 Q. All right. And then the -- I guess
21 how you could say, the polka dot block there, that
22 indicates policies that may have secondary
23 evidence, including deposition testimony in claims
24 files, correct?

25 A. Correct.

1 Q. And just, for example, a policy that
2 would have secondary evidence that may support the
3 policies would be the USF&G policies from,
4 essentially, '54 through '64?

5 A. It should. Now, I don't -- I can't
6 tell if it's polka-dotted on mine. It probably
7 should be polka-dotted, though, if it's not. Is
8 that what -- is that --

9 Q. Yeah, I'm sorry.
10 (Crosstalk)

11 A. -- on yours.

12 Q. I'm sorry, it's not clear on your
13 copy. The copy I'm looking at it has polka dots
14 on it -- on the --

15 A. Yeah, that should be polka dot. And
16 then Travelers was unavailable to find the '76,
17 '77, '78 policies at one time, and then -- and
18 then we found them, I think. So that -- it's --
19 there -- there should be -- and it's polka-dotted
20 on mine for '76 to '77 and '77 to '78. And all of
21 the rest should be polka-dotted, I think, at this
22 point in the coverage litigation with Travelers.

23 Q. Okay. All right. And -- and this is
24 going to be maybe my last question with respect to
25 this policy chart.

1 When it says "secondary evidence,"
2 what is your understanding of a secondary evidence
3 of an insurance policy? What would that include?

4 A. A certificate of insurance, claims
5 files, deposition testimony of Palmer Covil,
6 beyond policy information or documents. And the
7 best one I can give you as an example is USF&G.
8 Palmer Covil has testified to it. There are some
9 claims files. There may be a certificate of
10 insurance from '77 for that -- for that one.

11 They cancelled -- they cancelled --
12 Travelers cancelled the policy in late -- in '78.
13 So, you know, we had that cancellation, that's
14 secondary evidence, that there were the first two
15 years, that sort of thing.

16 Q. Okay. Anything else that may, in
17 your -- in your mind? I mean, I'm not -- you
18 don't have to -- a total universe of what could
19 include secondary evidence, but in your -- to your
20 understanding, is there anything else that may
21 support secondary evidence of an insurance policy?

22 A. So the workers' comp policies that we
23 get from the Industrial Commission will have
24 reference to carriers on workers' comp, bodily
25 injury claims, not civil bodily injury, but

1 workers' comp ones. I think that's the cite for
2 the secondary. I think that's it.

3 Q. Okay. Broker files, maybe?

4 A. If there is a broker file that would
5 say -- that would have notes: This was applied
6 for, you know, or -- or -- or that sort of thing,
7 applications. And there's some -- sometimes some
8 back and forth in those -- in those files for the
9 application. I would probably -- I would include
10 that as secondary evidence.

11 An umbrella looking down into a
12 primary. I may not have the primary, but if I
13 have the umbrella policy listing it, I would
14 consider that secondary evidence. That's --
15 that's the high points of it.

16 Q. Yeah. And I was going to ask you
17 about the excess policy made reference to the
18 primary policy, and you had included that. So
19 thank you for that list.

20 So based on this policy chart, the
21 Penn National policies, there are no second --
22 there is no secondary evidence with any -- let me
23 ask it this way. Strike that. I'm starting to
24 get kind of -- I need a break myself.

25 I think you've already testified to

1 the questions I have with respect to this chart.
2 If I think of any more during a break, I -- I
3 will -- I will come back to it, but I don't think
4 I will.

5 So I guess for purposes of today,
6 would you --

7 MR. YNTEMA: We can go off the record
8 and talk about this, if you want.

9 THE WITNESS: Okay.

10 VIDEOGRAPHER: The time on the monitor
11 is 12:12 p.m. We're going off the record.

12 (A lunch recess was taken.)

13 VIDEOGRAPHER: The time on the monitor
14 is 12:53 p.m. We're back on the record.

15 MR. YNTEMA: All right.
16 Mr. Protopapas, thanks for that break. And then,
17 you know, I just have a little bit more questions
18 to ask of you, maybe -- maybe 45 minutes or so,
19 is -- is my hope. But as you know, lawyers say
20 45 minutes and sometimes extrapolate it into --

21 THE WITNESS: Long-winded witnesses,
22 too. Long-winded witnesses, too.

23 MR. YNTEMA: So, first thing I'd like
24 to do is I did forget to mark our chart that we
25 were discussing, the policy chart that you had

1 just testified to. If I could mark that. I think
2 I'm on Exhibit 3.

3 MS. BOUPLON: I think it's 2. I think
4 it's 2.

5 MR. YNTEMA: No, 2 is the subpoena.
6 So 3 would be the policy

7 MS. BOUPLON: So 3, yes, Exhibit 3.

8 MR. YNTEMA: Okay. So if you can note
9 policy chart as 3. Okay. Thanks.

10 (Exhibit 3, Policy Chart, marked for
11 identification.)

12 BY MR. YNTEMA:

13 Q. All right. I don't have any questions
14 right now as to the policy chart. So you can set
15 that aside, if you like, Mr. Protopapas.

16 A. Okay.

17 Q. My next question is -- is taking you
18 back to the -- the Middle District of North
19 Carolina coverage action that was filed by Zurich
20 that you testified to. And eventually Penn
21 National was third-partied into that Middle
22 District of North Carolina coverage action by, I
23 believe, the Hartford; is that your recollection?

24 A. That is my recollection.

25 Q. And so -- so just to be clear, Covil

1 did not third-party in Penn National into that
2 action; is that correct?

3 A. That is the -- that is correct. We
4 may have asserted a cross claim after the Hartford
5 third-partied in Penn.

6 Q. That was my next question. And then
7 thereafter did Covil -- Covil -- to be clear for
8 the record, Covil was a defendant in the Zurich
9 versus Covil Middle District of North Carolina
10 coverage action, correct?

11 A. Correct.

12 Q. And then -- and then Covil stored -- I
13 mean, Covil cross-claimed against Penn National
14 for coverage in that action, correct?

15 A. Correct.

16 Q. Do you recall whether the coverage
17 cross claim against -- against Penn National was
18 as to coverage under the two policies from '86 to
19 '87 and '87 to '88 that was procured by Penn
20 National to Covil?

21 A. Yes.

22 Q. And do you recall the first -- let me
23 ask you this: Do you recall the first tender to
24 Penn National of an asbestos claim or lawsuit that
25 occurred after you were receiver for Covil?

1 A. I think it's 2019. To be more
2 specific than that, I think it's 2000 -- I think
3 it was fall of '19, maybe.

4 Q. Okay.

5 A. And I apologize, I don't have a direct
6 date.

7 Q. And -- and I shouldn't try to put you
8 to the test like that, but I wanted to see if you
9 did, indeed, remember.

10 If your records reflect that the first
11 tender of a Covil asbestos claim to Penn National
12 after you were appointed receiver occurred in
13 February of 2020, would you have -- would you be
14 able to dispute that?

15 MR. NES: Object to form.

16 THE WITNESS: I would double-check.

17 MR. YNTEMA: Okay.

18 THE WITNESS: But, you know, the
19 tender process -- the tendering process for Covil
20 is -- was a work in progress. I think now it is a
21 set method, and so I'm -- you know, I'm sure our
22 tender list went from, you know, three to four to
23 five and kept increasing. And then at some point
24 Penn got into the tender list. And if it was
25 February of '20, it was February of '20.

1 BY MR. YNTEMA:

2 Q. Okay. Prior to -- let me ask you this
3 way: Do you have any knowledge as to whether Penn
4 National has ever tendered an asbestos
5 Covil-related claim or lawsuit prior to your
6 appointment as receiver for Covil?

7 A. I don't think they were. I don't
8 think you -- I don't think Penn had been tendered.
9 I will say this, I don't recollect seeing any
10 evidence of a tender to Penn National prior to my
11 appointment.

12 Q. Thank you. Has -- after you've
13 been -- were appointed receiver for Covil, has
14 Penn National ever denied a duty to defend Covil
15 with respect to any asbestos lawsuit or claim?

16 A. I don't recollect one, sitting here
17 today. I mean, I think you've got to carve Finch
18 out of that.

19 Q. Right.

20 A. Okay. I think you have to carve that
21 whole mess out, and I -- I don't know if I could
22 ever tender Finch. I -- I -- I don't recollect
23 one. If there was one that would have been denied
24 it would probably have been Finch simply because
25 of the nature of Finch being a judgment prior to a

1 tender.

2 Q. Okay. So other than the Finch case,
3 you don't -- you don't recall or know of any
4 denial of Penn National for -- as to a duty to
5 defend Covil with respect to asbestos lawsuit or
6 claim?

7 A. No. I mean, there may have been -- I
8 mean, there may have been one or two cases that --
9 that Penn -- Penn has a coverage position. I have
10 a coverage position. They don't overlap
11 completely. And so there may be one or two cases
12 where under the Penn coverage position they would
13 say, Look, this does not fall under our policy,
14 right.

15 And -- and I'll give you an example.
16 I think there was a products claim. I'm trying to
17 remember the case. There may have been a products
18 claim that was clearly a products claim. There
19 may have been a case that was a post-1988 case,
20 like a 1991 case, where nobody accepted a duty to
21 defend: not Travelers, not Penn, not anybody.
22 And so then and under -- so there may be one or
23 two out there that are consistent with the Penn
24 coverage position that weren't defended.

25 There may have been a '91 case, and

1 there may have been a product case from 2019. I
2 have to go through the -- I have to go through the
3 chart. And I'm sorry, I -- I think there's one or
4 two, but they are not inconsistent with the Penn
5 coverage position, if that makes sense.

6 Q. Yes, it does. Would it be fair to say
7 that Penn has consistently and routinely provided
8 defense for Covil for all asbestos tendered -- for
9 all asbestos lawsuits or claims tendered to Penn
10 National?

11 A. Yes.

12 Q. And with respect to Penn National
13 providing a defense for Covil with respect to
14 those asbestos -- those tendered asbestos claims
15 and lawsuits, has Penn National participated in
16 mediations and any sort of -- of -- of counsel,
17 defense counsel meetings and -- and -- and -- and
18 case preparation that it was necessary for Penn to
19 participate in?

20 A. Yes. When Penn has accepted the
21 tendered, they have participated in the defense of
22 Covil. You know, there may be -- or may -- there
23 may go one or two that are consistent with the
24 Penn coverage position where they did not
25 participate. But if I've tendered 100 cases, you

1 know, the vast majority of the time they accept
2 the tender. They participate in the defense.

3 MR. YNTEMA: Thank you.

4 I'm going to turn to what we're going
5 to mark as Exhibit 3. It's the -- the complaint
6 for declaratory judgment and breach of contract
7 that was filed --

8 MR. NES: I think we're at Exhibit 4,
9 Brady.

10 MR. YNTEMA: I'm sorry, Exhibit 4. I
11 appreciate that.

12 (Exhibit 4, Summons and Complaint For
13 Declaratory Judgment and Breach of Contract,
14 marked for identification.)

15 MR. YNTEMA: Okay. Mr. Protopapas,
16 I'll represent to you that this is a complaint
17 for -- this is a summons and complaint for
18 declaratory judgment and breach of contract. It
19 was filed in the case that you're testifying in
20 today. We'll be stepping through this complaint.
21 And if at any point you think my representation is
22 incorrect, please let me know.

23 Currently we're looking at the caption
24 of the summons, but if you could go to the actual
25 complaint. And just looking at the -- the -- the

1 caption, if you could show that.

2 BY MR. YNTEMA:

3 Q. The caption is Covil Corporation by
4 and through the receiver versus Penn National, Sam
5 Crain & Company and South Carolina Property and
6 Casualty Insurance Guaranty Association.

7 With respect to that caption, Sam J.
8 Crain & Company, why did you file a lawsuit
9 against Sam J. Crain & Company?

10 A. They were the brokers in the Penn
11 National policy. Those two -- the '86/'87,
12 '87/'88, they were the brokers on that policy.

13 Q. And then as to the South Carolina
14 Property and Casualty Insurance Guaranty
15 Association, can you tell me, to your knowledge,
16 why that a lawsuit was filed against that entity?

17 A. The tower, those two years, '86/'87,
18 '87/'88, there is an insolvent excess carrier
19 sitting on top of that. The South Carolina
20 Property Casualty Insurance Guaranty Association
21 is a creature of statute, and with some
22 responsibilities when there is a defunct or
23 insolvent insurance carrier, they -- I think they
24 have an obligation in situations like this. I
25 think they would dispute that assertion.

1 Q. To my knowledge, I think South
2 Carolina Property and Casualty Insurance Guaranty
3 Association has been dismissed from this lawsuit;
4 is that your understanding?

5 A. They -- they very well may have.
6 They -- they have an agreement, an informal
7 agreement, where they will review Covil claims
8 that would fall under their -- what -- what their
9 obligations are with a kind of a reservation that
10 if we have to resurrect this fight we can.

11 But they're a creature of statute.
12 And I'm not an expert on that statute, but -- but
13 they were initially brought into the litigation
14 because they -- there is a defunct umbrella on top
15 of that.

16 Q. And the Sam J. Crain & Company
17 defendant is still a defendant in this case?

18 A. I believe so. The -- I think we
19 served them or attempted service. And if I'm not
20 mistaken, Mr. Crain has passed.

21 Q. Is the Sam J. Crain -- is the -- do
22 you know, is it still a viable entity?

23 A. I'd have to double-check. I'm not --
24 sitting here, I'm not sure 100 percent.

25 Q. And -- and I know that you have lots

1 of other receiverships, non-Covil receiverships
2 going on as well. But do you know if any sort of
3 entry of default has been filed against Sam J.
4 Crain & Company for its failure to answer the
5 complaint?

6 A. I don't know. I don't believe so.

7 Q. And do you know if there's any
8 intention to default them for their failure to
9 answer the complaint in this case?

10 A. I have not analyzed on that issue.

11 MR. YNTEMA: All right. Going down to
12 the third page of the complaint. You might have
13 gone a little too far. Go a page -- go up,
14 please. Yeah.

15 BY MR. YNTEMA:

16 Q. Paragraph 7, it says: "Factual
17 background." These are just allegations of the
18 complaint, sir.

19 It reads: "Covil's operations from
20 1954 through 1991 include the installation,
21 repair, replacement, removal, or disturbance of
22 thermal insulation and other building materials."

23 The 1954 through 1991, that's
24 consistent with your testimony as to the period of
25 time that Covil was in existence and operating,

1 correct?

2 A. Correct.

3 Q. All right. And then as far as the --
4 the operations that it lists: the insulation
5 repair, replacement, removal, or disturbance of
6 thermal insulation and other building materials,
7 that's also consistent with your test- -- prior
8 testimony and something that you agree with today,
9 correct?

10 A. Correct.

11 Q. The -- the next sentence begins with:
12 "Those operations allegedly exposed persons to
13 asbestos who thereby suffered bodily injury," and
14 that's termed "The Asbestos Allegations." Do you
15 see that?

16 A. I do.

17 Q. And I'm just using that for a
18 reference point for you. The next sentence says:
19 "The alleged bodily injury resulting from the
20 asbestos allegations has resulted in claims and
21 losses against Covil," and it's termed "Covil
22 Asbestos Suits." Do you see that?

23 A. I do.

24 Q. And going to Number 8, it says that:
25 "Penn National issued general liability policies

1 to Covil," and that's termed "The Penn National
2 Policies." Do you see that?

3 A. I do.

4 Q. And it says -- the next sentence says:
5 "The Penn National policies have standard terms
6 and conditions period."

7 Do you know what is meant by that
8 standard terms and conditions?

9 A. I have a layman's understanding, I
10 guess, a non-insurance coverage lawyer's
11 understanding of standard terms and conditions
12 that there were policies that were issued in
13 1986/'87 and '87/'88 that have terms and
14 conditions that are somewhat uniform in the
15 insurance industry.

16 Q. And it's your understanding, I mean,
17 based on the charts that we have previously looked
18 at that Penn National's policies are commercial
19 general liability policies in this case?

20 A. Correct.

21 MR. YNTEMA: If you can scroll down,
22 and -- stop right there, please. Whoops. Just a
23 little bit too far. He needs to...

24 BY MR. YNTEMA:

25 Q. The -- the -- the policies listed

1 there on Page 4 of the complaint, those are the
2 two policies that we -- that have been -- that
3 were identified prior to the filing of this
4 lawsuit on April 20- -- April 27, 2020, correct?

5 A. I apologize, I lost your question.
6 I'm sorry.

7 Q. No, that's okay. That's okay. I
8 mean, I understand.

9 As far as the policies that are listed
10 here as being Penn National policies, those are
11 essentially the -- the policies that had been
12 identified by Penn National prior to the filing of
13 this action on April 27th, 2020; would that be
14 correct?

15 A. Yes.

16 Q. Thank you. And just lawyer to lawyer,
17 I have to go through this and ask you that to
18 confirm the -- the representation of the
19 allegation, if that's okay.

20 A. No problem.

21 MR. YNTEMA: And Paragraph 9, if you
22 can show that to Mr. Protopapas. Here we are.

23 BY MR. YNTEMA:

24 Q. Paragraph 9 states that: "Penn
25 National has failed fully to acknowledge or accept

1 its insuring obligations under the Penn National
2 policies, has reserved its rights, failed to
3 acknowledge or respond to tender of covered Covil
4 asbestos suits, and otherwise breached its
5 contracts of insurance."

6 Is that a -- is that allegation
7 supported as of today?

8 A. Yes. May I -- may I explain?

9 Q. Yes, sir.

10 A. Penn has a coverage position. I have
11 a different coverage position. It does overlap in
12 certain spots, but we have different coverage
13 positions. And if I'm right on the coverage -- or
14 on the, quote unquote, "interpretation of the
15 insurance policies," then Penn hasn't fully
16 acknowledged its ensuring obligations. If I'm
17 wrong, then Penn has fully acknowledged its
18 insuring obligation.

19 And I think y'all have a position on
20 coverage. I think we have a position on coverage.
21 And I think the fairest way to resolve it is a
22 declaratory judgment.

23 Q. What is your position on Penn
24 National's coverage for Covil?

25 MR. NES: Objection to form.

1 THE WITNESS: So I am not a coverage
2 lawyer by trade, okay. I think y'all read those
3 policies, the same policies that we're reading,
4 and we come to one conclusion, and y'all come to a
5 different conclusion.

6 Our conclusion is a more expansive
7 amount of insurance that -- you know, like, one of
8 the big ones that sits behind the scenes involves
9 a case called Wallace and Gale. Like, what is an
10 operations claim? When is an operations claim
11 triggered? Once an operations claim, always an
12 operations claim? You know, it -- there's some --
13 there's some coverage arguments that are peculiar,
14 I think, to legacy liability insurance policies.

15 It's not where I made my practice,
16 okay. I don't pretend to be able to discern the
17 Wallace and Gale and yada, yada, yada cases with
18 any measure of -- of informative depth. But
19 that -- those disputes do exist, right. I mean,
20 it has to get resolved.

21 And so the traditional way of
22 resolving those, in my experience, has been DJ
23 actions where carriers reserve their rights and
24 normally would bring a lawsuit against my client.
25 So -- or a def- -- potential defendant in a

1 personal injury case. You know, a drive-by
2 shooting isn't covered by auto insurance, right,
3 and they -- maybe they defend and file a DJ action
4 or a -- you know, so on and so on.

5 And so to me, those coverage issues
6 which stem from reading the same operative
7 documents have to get settled in what is an
8 unsettled -- perhaps -- everyone's got their
9 arguments on what's settled, what's not settled,
10 so. But there is a dispute over what is the law
11 of South Carolina as applied to these types of
12 policies, what are they -- what are -- they're
13 written, what do they mean? And I -- and I
14 think -- I think Penn is performing consistent
15 with its position, and I disagree with that
16 position.

17 Is that -- is that a fair answer?

18 BY MR. YNTEMA:

19 Q. Yes. And is that -- I mean, is that
20 the extent that you can testify as to what Covil's
21 coverage position is as to Penn National's
22 policies?

23 MR. NES: Objection. Form.

24 THE WITNESS: My -- I think -- I think
25 each carrier -- I think you guys take a more

1 strict position on some of these issues than any
2 other carrier, okay. So I think we're even --
3 Wallace and Gale is certainly an example, or this
4 idea of what is an operation is certainly an
5 example.

6 I think the -- the concept of -- of
7 products when used in operations, I think that's
8 caused a lot of confusion. I think the concept of
9 pro rata has caused a lot of confusion. I think
10 the -- I think the types of claims that are being
11 brought and how they square with the policy
12 have -- have had confusion. And what I mean by
13 confusion, disagreement between the receivership
14 and Penn, right, between me and Penn.

15 And so in a complaint like this you'll
16 see kind of a laundry list of declarations that
17 we're seeking, right, and that would get kind
18 of -- I think is a more fulsome analysis than --
19 than -- than I'm giving right now. And I
20 apologize, I'm -- it's just not my -- I rely upon
21 lawyers, and I know we've got some experts that
22 are going to talk about how policies develop and
23 whatever, whatever so that the court has the best
24 information it can to -- to set some
25 predictability for Penn and some predictability

1 for me.

2 Well, look, I'll give you another
3 example. Like, I -- like, we're saying you have
4 to prove the exclusion, right, or you have to
5 prove any limitation. I know you guys take a
6 different position saying we don't have to prove
7 the limitation; it's in the policy. Like, I know
8 there's a burden of proof issue there, too. Like,
9 there's a bunch of these kind of coverage-specific
10 issues. And I think y'all fight about these
11 issues everywhere, you know, not just in South
12 Carolina. I think you guys fight about it in New
13 York and California and Maryland, so.

14 But I -- what I would hope is that the
15 declarations we're seeking in here give you guys
16 an idea of where it is we see the dispute.

17 MR. YNTEMA: Okay. Mr. Protopapas, I
18 appreciate that.

19 Okay. Next document I think I have is
20 the Penn National's answer to the complaint. If
21 we can pull that up.

22 (Exhibit 5, Penn National's Answer to
23 Complaint, marked for identification.)

24 BY MR. YNTEMA:

25 Q. As with the other documents,

1 Mr. Protopapas, I'll just represent to you that
2 this is Penn National's answer to the complaint
3 that was filed in the Covil versus Penn National
4 case that we just reviewed.

5 I'll just take you to Page 7 of the --
6 of the answer, second defense.

7 MR. YNTEMA: If you can share that
8 second defense in full.

9 (Discussion off the record.)

10 BY MR. YNTEMA:

11 Q. Obviously, this is Penn National's --
12 one of Penn National's defenses that it's asserted
13 with respect to the complaint filed by the
14 receiver in this case. If I could take you to the
15 second sentence of plaintiff's complaint.

16 MR. YNTEMA: If you could put an arrow
17 on that for him. Oh, you moved your little hand.
18 Oh, there it is.

19 BY MR. YNTEMA:

20 Q. It will be the third sentence,
21 Mr. Protopapas. It starts with: "Plaintiff's
22 complaint." Do you see that?

23 A. I do.

24 Q. Okay. It says: "Plaintiff's
25 complaint does not aver any positive language that

1 it contends affords coverage for the claims at
2 issue or the manner in which the claims asserting
3 as Covil in the Covil asbestos suits could trigger
4 coverage under Penn National policy or identify
5 any of the Covil asbestos suits for which it seeks
6 declarations from this court as to coverage under
7 the Penn National policy."

8 I guess my focus would be on the: "Or
9 identify any of the Covil asbestos suits for which
10 it seeks declarations from this court as to
11 coverage under the Penn National policy."

12 Sitting here today, is there -- are
13 there specific or a specific set of asbestos suits
14 that the receiver can point to for which it is
15 seeking coverage?

16 A. So I am not seeking a hard dollar
17 number from Penn National, but I am seeking a
18 declaration that you have to change how you're
19 adjusting -- or -- yeah, I am saying -- I'm not --
20 so for Case 1, if \$100,000 was paid in Case 1 and
21 Penn contributed 10, if QSF contributed 70, and
22 USF&G contributed 20, I'm not saying, You know
23 what, you guys have to give me 35 grand back right
24 now. That's not what I'm saying.

25 What I'm saying is, Look, you can't

1 pay the 10. Going forward you can't. You can't.
2 It's not 10. It's 40. You know, your
3 responsibilities are broader than the coverage
4 position you're currently taking.

5 And so you can look at any Covil case,
6 and I'm going to dispute that the Penn
7 participation was -- was not appropriate. With
8 that said, the way to set the relationship going
9 forward is to clarify what is this policy supposed
10 to be doing.

11 And so when I look at this case, it
12 was not meant for Penn National to, quote unquote,
13 "make up on indemnity claims." It was meant to
14 say, Going forward, this policy means this and
15 this is how we're going to apply it going forward.
16 It's to give us clarity as to the relationships
17 between the two parties.

18 Q. Thank you for that, Mr. Protopapas.

19 MR. YNTEMA: Is this Exhibit 5?

20 MS. BOUPLON: This will be Exhibit 6.

21 (Exhibit 6, 2021 Subpoena, marked for
22 identification.)

23 MR. YNTEMA: I'm getting through
24 documents. That's a good thing, Mr. Protopapas.

25 THE WITNESS: No, that's good. I

1 appreciate the -- I know what goes into getting
2 ready for a deposition and...

3 MR. YNTEMA: Yeah, when your children
4 turn up sick all of a sudden in the morning and
5 you're trying to get here to work to outline your
6 deposition tran, it's not an easy task, when
7 you're saying bye to your wife and she's...

8 THE WITNESS: If you want to take
9 five, ten minutes and -- and, you know, my time is
10 your time.

11 MR. YNTEMA: Oh, no, no. I'm fine.
12 The court reporter is trying to keep up with me
13 while I'm on the record. I apologize.

14 (Discussion off the record.)

15 BY MR. YNTEMA:

16 Q. Mr. Protopapas, we -- what's on your
17 screen now is a subpoena that was entered --
18 generated and -- and issued in the Ann Finch
19 versus USF&G case in South Carolina State Court.
20 I'll just make that representation to you. And it
21 was a -- it was a subpoena.

22 MR. YNTEMA: If you can scroll down
23 just a little bit, Vicki. We're having some
24 technical issues.

25 THE WITNESS: That's okay. I'm -- I'm

1 familiar with the -- the case. That is the
2 Finch --

3 BY MR. YNTEMA:

4 Q. Okay.

5 A. That's the -- I call it the Finch
6 alter ego case where Penn sued everybody, and I
7 third-partied -- I third-partied -- I
8 cross-claimed everybody.

9 Q. Yes.

10 A. USF&G, Zurich, I think Wall Templeton,
11 Covil.

12 Q. Right. And it's -- and it's your
13 recollection that Penn National was not involved
14 as a defendant in that Finch State Court case,
15 correct?

16 A. Correct.

17 Q. All right. And so this is a -- this
18 appears to be a subpoena to Penn National as a
19 non-party in the Finch case, correct?

20 A. Correct.

21 Q. I'm asking you leading questions for
22 efficiency, not to, you know, lead you into
23 testifying one way or the other.

24 If you could go down to -- it just
25 says: "You are commanded to produce and permit

1 inspection and copying of the following documents
2 or objects in your possession, custody, or control
3 at the place, date, and time specified below."

4 And it says that: "See attached Exhibit A."

5 MR. YNTEMA: If you go down to Exhibit
6 A. Whoa.

7 BY MR. YNTEMA:

8 Q. The first -- the first question is,
9 is -- or the first request to produce is --

10 MR. YNTEMA: Stop right there.

11 BY MR. YNTEMA:

12 Q. -- is: "All insurance policies of any
13 type that you issued to Covil Corporation or that
14 include Covil Corporation as an additional
15 insurer, including policies that identify the
16 following entities as the named insurer or as an
17 additional insurer."

18 Do you see that, Mr. Protopapas?

19 A. I do.

20 Q. And then I'll just represent to you --
21 and we can go through it, but it provides a list
22 of maybe hundreds of -- of contractors by name and
23 some of which are associated with a city. Do you
24 see that?

25 A. I do.

1 Q. And as we scroll through, you can tell
2 me if you see any other -- any other information
3 that -- that may help Penn National identify
4 whether they have -- whether they have cover --
5 whether they have coverage for Covil with respect
6 to any of these contractors.

7 MR. YNTEMA: Are you -- are you okay?
8 I mean, is it...

9 MS. BOUPLON: It's just not doing what
10 I'm asking it to do. So I -- I will get through
11 this.

12 THE WITNESS: You're doing great.
13 You're doing great. No. No, you're doing just
14 fine.

15 So that list only contains the name of
16 an entity and many of them, though not all of
17 them, the city upon which the entity operated it,
18 which I think was your question, Mr. Yntema.

19 BY MR. YNTEMA:

20 Q. Yes. And -- and are you familiar with
21 this subpoena? Did you review it before it was
22 issued to Penn National?

23 A. I have seen similar subpoenas. So I
24 have not reviewed this specific subpoena, but that
25 is the -- that's a -- that list of entities are

1 entities that appear within the asbestos
2 litigation in South Carolina.

3 Q. Do you have any information that Covil
4 was a subcontractor for any of these entities?

5 A. I know that for many of them, yes.
6 How many and which ones Covil was a -- you know,
7 at one -- in 1971 Covil had \$15 million in gross
8 income, or 1970. I mean, Covil was a sizeable
9 operation in the '60s and '70s, and so I know that
10 they were in a lot of facilities.

11 It was the North Brothers, Covil, Star
12 Davis, and maybe one or two others that dominated
13 the southeast. And many of them reached into
14 one-off projects in Illinois, one-off projects in
15 Oklahoma, one-off projects in Pennsylvania, but --
16 you know, Covil had a Florida office. Covil had a
17 Georgia office, a North Carolina office, a South
18 Carolina office.

19 There was a time where wherever you
20 saw Daniel you saw Covil, and Daniel became a
21 massive general contractor in the United States.
22 It's now, I guess, Fluor Daniel, one of the
23 largest companies in the world. So they had a
24 footprint that was significant.

25 Q. Okay. And -- and -- and the

1 contractors that are listed here in this list --
2 and I don't intend for you to go through each and
3 every entity with me today -- but to your
4 understanding, this general set of contractors
5 that are listed here, are they contractors that
6 would have hired Covil as a subcontractor?

7 A. Or vice versa.

8 Q. And would it be to your understanding
9 that there would have been a contract between
10 Covil and these entities?

11 A. It could have been a contract. It
12 could have been an invoice, a purchase order. In
13 the '60s and '70s in particular there are lots of
14 informal relationships amongst competitors where
15 they use each other to fill in gaps. There's lots
16 of surging into a project.

17 So there's plenty of evidence of,
18 like, a project A is awarded to Covil or to
19 somebody else, and they need help completing it or
20 they need help with materials or they need help
21 with workmen, and they will call up a friendly
22 competitor and they surge into each other's
23 projects. And -- and I also think there's --
24 there's plenty of years where one commercial or
25 manufacturing facility will switch from one party

1 to the next to the next or let a sub of a sub in.

2 And so it's -- it's -- look, it's an
3 imperfect view into the '60s and '70s because I
4 wasn't there, but it underscores a massive problem
5 that's out there, which is additional insureds are
6 on almost every insurance policy I see, and how we
7 go about locating those policies where Covil is an
8 additional insurer is relevant. It's pertinent,
9 all right, because how it is the insurance program
10 that a court has ordered me to put together.

11 And so I know Penn received this
12 subpoena. I would go ahead and say two dozen
13 other people received this subpoena, maybe more.
14 I mean, there's -- I think it's fair to say that
15 my law firm is active in the issuance of subpoenas
16 in receiverships, and I think you probably have
17 seen evidence of that activity.

18 And every carrier and every commercial
19 in- -- or -- or manufacturing facility try to come
20 to some agreement with us as to how to establish
21 this difficult, you know, this -- this task, which
22 can be difficult.

23 And I know that -- I know it's
24 important for me to try to follow that
25 receivership order. I feel like I've been told

1 this is -- and when a court tells you to do
2 something, you do it to the best of your ability.
3 And I feel like I've been told to find the
4 insurance policies for Covil to the best of my
5 ability. And so this is an example of -- of me
6 just trying to plow through what is an additional
7 insured question, right.

8 And with some carriers we reached
9 agreements. I know we did not with Penn, and I
10 know we have a dispute as to what needs to be and
11 what doesn't need to be done. And I know y'all
12 have your position, and I know my lawyers are
13 advocating my position. But you're not the only
14 ones who got the subpoena.

15 Q. And to your knowledge, did -- did Penn
16 National conduct a search of its policy-related
17 documents as to each of these contractors?

18 MR. NES: Objection. Form.

19 THE WITNESS: So I have -- I have an
20 imperfect understanding. At some point in the
21 Penn National Covil back and forth you -- you --
22 you almost can't dabble. So I have a dabbler's
23 knowledge of some of this, and I will share it
24 with you. I'm more than happy to, but it's still
25 a dabbler's knowledge.

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1 At some point you kind of have to turn
2 it over to those folks that are going to dedicate
3 the time, energy, and effort to understand. So,
4 for example, I have not read any of the -- the
5 deposition -- that if a deposition has taken place
6 on search protocols, and bop-a, bop-a, bop (sic).
7 I have not read it with any thoroughness that
8 would allow me to advocate in a courtroom one way
9 or the other. I rely on my lawyers for that.

10 But from my perspective, this is where
11 the search, from my high understanding, is
12 imperfect and -- and -- and a solution needs to be
13 crafted, is that there is no way -- sitting here
14 today, I am under the impression that there is
15 absolutely no way for Penn to do the search other
16 than by hand or by imaging. That's my
17 understanding from reading and listening at the
18 various hearings and from the various filings.

19 BY MR. YNTEMA:

20 Q. So, I mean, sitting here today -- and
21 I -- I -- I appreciate that, Mr. Protopapas. I
22 appreciate that. I do. I understand that you, as
23 receiver, you're kind of looking at some things
24 from a -- from 30,000 feet, and other things when
25 you're called to do so, you come down into the

1 minutia if you need to, correct?

2 A. Correct.

3 Q. And so sitting here today, you -- you
4 have no knowledge as to whether Penn National did
5 attempt to conduct -- conduct an electronic search
6 on each of these hundreds of contractors as to
7 whether it provided insurance -- an insurance
8 policy for any of them?

9 A. My understanding is that an electronic
10 search was made, but the electronic search is of a
11 database that would not contain additional insured
12 information from the '60s and '70s and perhaps the
13 '80s, and as a result, for me, it's -- it's a
14 search like this: It's like if I tell my -- my
15 eight-year-old to get milk out of the refrigerator
16 or go get the mail, and instead of going to the
17 refrigerator he goes to the laundry room, he's
18 never going to find the milk. It's just not
19 there. I mean, he did search. He did look, but
20 the milk is in the refrigerator. It's not in the
21 laundry room.

22 And I think that the way that your
23 electronic system is set up from -- this is a
24 dabbler's -- this is where things get dangerous.
25 This is a dabbler's knowledge. And I apologize if

1 I have it wrong -- is that your electronic search
2 could not search for these entities in an insuring
3 relationship or those period of times in the '60s
4 and '70s that have a concern that I have --
5 that -- that I'm looking for.

6 Covil is gone in '91. It's not
7 purchasing insurance afterwards. So it would be
8 that '54 to '91 window that is of interest to me.

9 Q. Okay. And I appreciate that window.
10 And I -- and I understand your explanation of it
11 just based on me as counsel for Penn National's
12 involvement in this case. So now that we've
13 looked at the contractors, I assume --

14 MR. YNTEMA: If we could go down to
15 facilities. Yeah. Sorry. It would be on --
16 well, it doesn't really have a page. Yeah. Whoa.
17 Whoa. Whoa. Go back up, please, I'm sorry. Up
18 to the top where it says "Facilities" and it shows
19 Paragraph 2.

20 Okay. Vicki is having difficulties.
21 That's okay.

22 BY MR. YNTEMA:

23 Q. Mr. Protopapas, this is a list -- what
24 you're looking at is a list of facilities, and it
25 was also served with a subpoena for Penn National

1 to conduct -- conduct a search as to whether it
2 had any insurance for facilities, the facilities
3 listed.

4 Could you give me an understanding,
5 are these facilities that Covil had some sort of
6 working relationship with? Meaning that they were
7 actually -- let me ask it this way, I apologize.
8 Strike that.

9 Are these -- is this a list of
10 facilities at which Covil performed insulation
11 installation or removal or maintenance?

12 A. For the many of them, yes. But the --
13 there are some on there where there's not direct
14 evidence of Covil being there, but there is direct
15 evidence those are the South Carolina asbestos
16 cases identified these locations as locations
17 where individual plaintiffs either worked or were
18 exposed to asbestos installation, but a great many
19 of these are ones I recognize as ones which Covil
20 has a direct relationship with, such as Davis
21 Mechanical. You know, Davis Mechanical and Covil
22 work together a number, a number of projects.

23 Q. Davis Mechanical. Okay.

24 MR. YNTEMA: All right. Yeah, I see.

25 BY MR. YNTEMA:

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1 Q. Okay. And can you testify that Covil,
2 with respect to all of the hundreds of companies
3 listed, that Covil did, indeed, work for each one
4 of these -- at each one of these facilities
5 listed?

6 A. For many of the facilities Covil --
7 there's evidence of Covil having worked there.
8 The Covil workforce -- and I -- and I -- the only
9 reason why I pick 1970 or '71 is that's the year
10 we have a Dun & Bradstreet report that reports the
11 gross income. It's \$15 million. It's -- I think
12 it's 175 employees.

13 They -- they had a healthy business
14 that expanded dramatically into the '60s and --
15 and early '70s and began to slow down in the late
16 '70s. So I think their heyday is probably '65 to
17 -- '64 to '75, maybe, that the heyday of -- of
18 their work, which coincides with a lot of the
19 asbestos years.

20 So I know that they were at -- for
21 example, there is -- every Duke site, Bova, the
22 Celanese sites, the Spartanburg mill sites, the --
23 I'm sorry, I'm blanking. But they have a healthy
24 job site list, healthy, healthy, the Daniel, the
25 Daniel Building Construction, the Ocone Power

1 Plant, which is now, I believe, Duke. There --
2 there are a ton of places.

3 They -- they're fundamental liable --
4 Covil is -- there is a reason there's no
5 insulation contractors around today from the '60s
6 and '70s, because they are incredibly responsible
7 for the mesothelioma cases that get filed that
8 have evidence of exposure to Covil. And so if
9 you're at a facility like a Duke facility and it
10 is a Duke employee that has mesothelioma, Covil
11 is -- Covil is almost defenseless to that
12 mesothelioma claim, because it's an insulation
13 contractor.

14 Q. This subpoena was issued on
15 February 8, 2021. I'll -- I'll represent that to
16 you without calling the document back up. At that
17 time did you have any knowledge as to whether Penn
18 National ever -- ever provided any sort of project
19 site or wrap-up-type policies that would apply to
20 facility -- to facilities during the '60s, '70s,
21 or '80s?

22 A. I don't know what policies Penn
23 National provided in the '60s and '70s, and '80s.

24 Q. And the '60s, '70s, and '80s is the
25 same relevant window of time that you would be

1 interested in coverage with respect to the
2 facilities, too, correct?

3 A. Yes. I mean, think of that '54 to '91
4 window, and the '60s, '70s, and '80s are the heart
5 of that window.

6 Q. I'm looking at my outline here so I
7 can mark things off.

8 A. No problem.

9 MR. YNTEMA: What number are we on?

10 MS. BOUPLON: This would be Number 7.

11 MR. YNTEMA: The letter from Penn
12 National to Mr. Protopapas.

13 I'm on my last exhibit, sir. I've
14 kind of thumbed through all of the other documents
15 I have here. I don't think I need to ask you any
16 questions about those. But when Vicki is ready,
17 I'm going to pull up a letter from Penn National
18 to you dated September 1st, 2022.

19 Yes, that one right there. Can you
20 scroll up and down? Is it still kind of -- okay.

21 (Discussion off the record.)

22 (Exhibit 7, Letter to Penn National
23 from Boyd Wright, marked for identification.)

24 BY MR. YNTEMA:

25 Q. I'll represent to you that this is a

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1 letter to you, a September 1st, 2022, that we've
2 marked as Exhibit 7. Do you recall receiving this
3 letter?

4 A. Yes.

5 Q. Okay. And this is a --

6 MR. NES: Hold on, Brady. I think this
7 is maybe Exhibit 8. And I apologize if I'm wrong,
8 but I think 7 was the Finch subpoena.

9 MR. YNTEMA: We have to keep up with
10 that. Yes, the --

11 MS. BOUPLON: 1 is the notice. 2 is
12 the first subpoena. 3 is the chart. 4,
13 complaint. 5, answer. 6, subpoena. 7 is this
14 letter.

15 MR. YNTEMA: We have it recorded as 7
16 would be this letter.

17 MR. NES: Okay.

18 MR. YNTEMA: We'll -- we'll clarify
19 that after these line -- this line of questions.
20 I want to get everybody on the same page as the --
21 as far as the exhibits are concerned.

22 So what we've, I guess, currently
23 marked as Exhibit 7.

24 MS. BOUPLON: Yes.

25 BY MR. YNTEMA:

1 Q. Okay. Currently marked as Exhibit 7,
2 which may be revised -- and we'll put that on the
3 record -- again, I'm sorry, I may not have heard
4 your answer, but, Mr. Protopapas, do you recognize
5 this letter?

6 A. I do.

7 Q. And is this a letter from Penn
8 National to you regarding --

9 MR. YNTEMA: You can scroll down just a
10 little bit.

11 BY MR. YNTEMA:

12 Q. -- regarding, essentially, 14 cases,
13 asbestos cases, that -- in which Covil was a
14 defendant that ultimately settled?

15 A. Yes.

16 Q. And it -- and it reflects Penn
17 National's contribution to -- to the settlement in
18 each of those cases, correct?

19 A. Correct.

20 MR. YNTEMA: If you could -- right
21 there. Stop. That's good. That's good.

22 BY MR. YNTEMA:

23 Q. So -- so Penn National -- and tell
24 me -- my understanding of this letter is -- it is
25 not to your understanding, but Penn National has

1 written a letter to you and it's stating that
2 these are the settlement amounts that we have
3 contributed and which total -- which total a
4 certain amount, correct?

5 A. Yes.

6 Q. And those settlement payments would
7 total \$613,672.50, correct?

8 A. I have not done the math, but I accept
9 that it was done properly.

10 Q. Certainly.

11 MR. YNTEMA: Then if you go down to
12 the last paragraph.

13 BY MR. YNTEMA:

14 Q. And I'll just read this paragraph to
15 you, and then we'll kind of ask a lot of
16 questions. But it says: "As a result of the
17 above referenced settlement payments, this letter
18 serves to advise you, as Covil's court appointed
19 receiver, that the global aggregate policy limits
20 applicable under the two policies issued to Covil
21 are impaired by \$613,672.50. The remaining
22 aggregate limit for the two policy periods is now
23 \$1,386,327.50."

24 The aggregate limit for the two
25 policies for which Penn National was providing

1 Covil coverage, would you agree, is \$2 million?

2 MR. NES: Objection. Form.

3 THE WITNESS: Are you asking me?

4 BY MR. YNTEMA:

5 Q. Yes.

6 A. I don't believe there's an aggregate
7 limit.

8 Q. Okay. So it's the receiver's position
9 that there is no aggregate limit under either the
10 1986 to 1987 policy or the 1987 to 1988 policy
11 that Penn National provided to Covil?

12 MR. NES: Objection. Form.

13 THE WITNESS: Once again, I'm not a
14 coverage lawyer, but my understanding is that
15 operations claims are not subject to aggregate
16 limits.

17 BY MR. YNTEMA:

18 Q. Okay. And that would be only as to
19 operations claims, correct?

20 A. Generally speaking, yes. However,
21 here I don't believe there's an aggregate limit on
22 products claims. Now, once again, am I an expert
23 on insurance? I am not. Do we have experts who
24 are going to have a more fulsome understanding of
25 what insurance companies risk-wise contracted for?

1 And y'all will have your folks who are
2 actually more knowledgeable on insurance and your
3 experts, you do. And I understand that. And I
4 respect the fact that I'm not the most
5 knowledgeable person in the room on these types of
6 insurance policies.

7 With that said, with that caveat,
8 which is an important caveat to me because I am
9 not the end-all/be-all, and I am subject to
10 correction on these things, I don't think y'all
11 have the aggregate limit you're telling me you
12 have, and I think that's part of this declaration,
13 is if y'all have it, so be it, and I'll move on
14 with my life. If y'all don't have it, I think so
15 be it, y'all move on with your life.

16 And I think that kind of clarity is
17 what's going to give predictability to Penn and to
18 the receivership on these asbestos claims that are
19 currently pending and that are going to continue
20 to come for years and years and years.

21 Q. Outside of the coverage dispute
22 between Penn National -- or the coverage issues
23 that Penn National and the receiver have with
24 respect to the applicability of Penn National's
25 policies to Covil asbestos claims, would you term

1 the working relationship between Penn National and
2 the receiver for Covil to be a good working
3 relationship?

4 A. Yes, with this caveat: Penn is
5 proceeding consistent with its coverage position.
6 I am proceeding consistent with my coverage
7 position. And both of us recognize that we have
8 to work together while those issues get sorted
9 out. So I may disagree with Penn on something,
10 and Penn certainly may disagree with something I
11 may do, but we push those things to the side to
12 get the work done on where we can agree and table
13 the differences, and I think it's -- I think that
14 has worked, right.

15 I have tried to be conscious of -- of
16 the -- of the Penn National position. You have
17 not seen 50 Tyger River letters from me, and there
18 are other carriers -- and a Tyger River is a form
19 of bad faith insurance coverage letter that is
20 used to establish a carrier is going to get sued
21 at some point in the future for failing to act in
22 a certain fashion. And those letters have gone to
23 other carriers in other situations.

24 So we try to work together without
25 escalating the day-to-day, and -- and that working

1 relationship is why you'll see there are a bunch
2 of cases settled. Now do I -- do I think Penn
3 should have paid more? You know I do. I think --
4 I think it should be a never-ending -- maybe not
5 never-ending, but it's -- do I think there are
6 broader obligations? Sure, I do. But -- but we
7 have to get the job done because we don't -- we
8 don't want to get hit with a Finch, right. Nobody
9 wants a \$32 million verdict. And certainly each
10 of those cases have that potential, and there's
11 certainly several on there that definitely would
12 have been eight-figure verdicts, and we avoided
13 them all, and that's positive.

14 Q. Is Penn National the only
15 participating -- let me ask it this way, I'm
16 sorry.

17 Is -- is Penn National the only
18 insurer for Covil currently participating in the
19 defense of Covil?

20 A. There is USF&G participating,
21 sometimes called Travelers.

22 Q. I appreciate that. And as far as the
23 contribution to the settlements listed in this
24 letter, was Penn National the only contributing
25 insurer to those settlements?

1 A. I believe USF&G contributed. There is
2 a breakdown maintained by Ellis & Winters as to
3 the three indemnity checks or the three checks
4 that make up a settlement: one is Travelers, one
5 is Penn, and one is the QSF.

6 MR. YNTEMA: Okay. Thank you for that
7 testimony as to the letter, Mr. Protopapas. I
8 have a -- just a few more questions to ask. It is
9 now 2:00 o'clock. Would you like to take a break
10 and allow me to kind of -- kind of narrow all of
11 my questions down to one final set of questions
12 that we can get through?

13 THE WITNESS: Yes.

14 MR. YNTEMA: Thank you so much. We'll
15 go off the record.

16 VIDEOGRAPHER: The time on the monitor
17 is 1:59 p.m. We'll go off the record.

18 (A recess was taken.)

19 VIDEOGRAPHER: The time on the monitor
20 is 2:10 p.m. We are back on the record.

21 BY MR. YNTEMA:

22 Q. Okay. Mr. Protopapas, just a few more
23 questions, and then I think I -- I'll be done.

24 First question I have is as to
25 secondary evidence of any Penn National policy for

1 Covil: Are you aware of the -- of any secondary
2 evidence that may exist as to a Penn National
3 policy with Covil other than the policy numbers
4 that have been provided to -- to Penn National?

5 MR. NES: Objection to the form.

6 THE WITNESS: Yes. I mean, I think
7 the -- the insuring relationship between Covil and
8 Penn, to me, to have inland marine policies, auto
9 policies, and other insuring relationships is
10 indicative of a potential or worthy of
11 investigation, look into additional years of
12 coverage and insurance.

13 So we have pieces of information, a
14 puzzle that is the Covil coverage chart, and
15 exhausting the search, tracking down the leads of
16 where more insurance can be, I think there are
17 leads in the Covil Penn relationship that have to
18 be or should be further explored, or the court
19 could tell me you don't need to, right.

20 I mean, that -- that, to me, is the --
21 that dividing point of if the court says this
22 additional information you have is indicative of
23 an additional insuring relationship, it is --
24 you've done your job. You're done. Done. Done.
25 But I would be remiss -- my opinion is I would be

1 remiss if I didn't explore it vigorously.

2 BY MR. YNTEMA:

3 Q. And the exploration of further Penn
4 National policies, would that window of time be
5 focussed on the '60s, '70s, and '80s?

6 A. Correct.

7 Q. Now, I'm going to switch gears on you.
8 The QSF, I just have two questions as to that. So
9 Covil's -- what we've termed in this deposition
10 Covil's qualified settlement fund. I know it's
11 named something different now.

12 When the first wrapped wave of
13 settlements were paid into the QSF and approved by
14 the court, can you tell me how much that first --
15 how much -- can you quantify the amount that that
16 first wave of settlements totaled?

17 A. I can give you the gross number. I
18 can't break it down by carrier without giving them
19 a heads-up. But I'm more than happy to start that
20 email exchange. They're very sensitive.

21 But the gross amount is \$44 and a half
22 million for Century, Hartford, TIG.

23 Q. And can you tell me how much is in the
24 QSF currently?

25 A. So I could not give you a specific

1 dollar amount. What I can -- not -- one, I
2 couldn't because mentally I don't think I -- I
3 don't think I could. I look at those things on a
4 kind of a quarterly basis, and so I -- I can get
5 that number fairly easily, right.

6 So let me give you the structure
7 without violating the terms and conditions of the
8 settlement policies themselves.

9 Q. And -- and not to interrupt you, sir.
10 I -- if you could give me just an approximation of
11 the total amount, that would be fine, but -- I'll
12 let you continue with your testimony as well.

13 A. Okay. So let's -- let's do -- and I
14 have in front of me a yellow legal pad, and I have
15 written down: "Fred-database, double-check,
16 subpoena, Exhibit 5, Exhibit 2, clarify evidence
17 in Exhibit 3, Exhibit 4."

18 So there's nothing on this sheet of
19 paper of any value. I'll hold it up to you so you
20 know I'm not...

21 Q. Yeah. I see it.

22 A. I just write down because it's easier
23 for me if I wrote down everybody's website. All
24 right. So we have Century has settled. TIG has
25 settled. Hartford has settled. Zurich settled

1 Finch. Enstar Zurich settled the program. USF&G
2 settled Finch. Gallivan White & Boyd settled.
3 Wall Templeton settled. I believe that is the
4 universe of settlements.

5 Without identifying the insurer, there
6 are certain funding obligations that stretch into
7 the future. Meaning that a certain amount of
8 money may or -- may get paid 2023, 2026, 2029.
9 That's one factor I want you to put to the side,
10 because you can ask me to include that money or
11 not include that money in the total.

12 There are several specific sub funds,
13 and the term that is used colloquially is called
14 sunset. Those funds can not be used until a day
15 is reached, 2029, 2035. I can include those funds
16 because they're in a Covil QSF bank account and
17 total amount that's available to Covil or I
18 cannot.

19 So there are terms and conditions
20 within the settlement agreements where money comes
21 in the future. There are terms and conditions in
22 the settlement agreements where money comes on
23 Day 1 but must be held separate and apart and not
24 used until a certain date into the future. And
25 then there are funds which are available today.

1 So when you ask me a question, how
2 much money does Covil have, not to be cute, but
3 without giving you that structure, I don't believe
4 I would give you a complete answer. Does that
5 make sense?

6 Q. Yeah. I mean, I'd have to sit down to
7 study the QSF --

8 (Crosstalk)

9 A. -- money in the future, money I do not
10 have in my hands, but there is a Covil obligation
11 to pay into the future. It is over \$12 million.
12 It's not 13. Maybe it is 13.1 or something, but
13 it's over 12 million.

14 Money that sunsets is right around
15 \$10 million, okay. So those are funds I don't use
16 today. The funds that we use today, ballpark,
17 \$28 million, and I -- and I -- I -- there is a --
18 there is a funding that occurred this summer from
19 a Gallivan White & Boyd settlement that I have to
20 go and -- and look at to make sure the number I'm
21 giving you is accurate, right. So it -- it could
22 be off a couple million dollars.

23 And I -- and I apologize for that.
24 It's just, if you don't look at it and re- -- if
25 you go -- you can very easily, in the land of

1 receivership where there are five QSFs, five bank
2 accounts, multiple investment accounts, you can
3 get it wrong without having it directly in front
4 of you. But as it stands now, the Covil QSF, I
5 believe, is funded on the budget that would have
6 indemnification, ability to meet indemnification
7 obligations of millions of dollars, \$3-or-so
8 million every year for the next ten years and
9 still be in a healthy position.

10 MR. YNTEMA: Okay. Okay. Thank you.
11 Thank you for that explanation. I appreciate
12 that. I understand now why you had to break it
13 down the way you did.

14 I think that is all the questions I
15 currently have. I'm not sure if Mr. Nes has any
16 follow-up questions. But Peter, if I don't have a
17 chance to thank you on the record, thank you so
18 much for your time --

19 THE WITNESS: Thank you.

20 MR. YNTEMA: -- and my opportunity to
21 depose you today. I appreciate it.

22 THE WITNESS: Thank you.

23 MR. NES: I do not have any questions.

24 THE WITNESS: I may get -- I may get a
25 check mark then. I didn't screw up too bad for

1 anyone. Well, thank you, sir. Can we go off the
2 record?

3 MR. YNTEMA: Yes.

4 VIDEOGRAPHER: The time on the record
5 is 2:21 p.m. We're going off the record.

6 THE REPORTER: Could I get orders on
7 the record, please? And also, would you like to
8 read and sign?

9 THE WITNESS: I'll read and sign.

10 MR. NES: We'll order a rough and
11 expedited copy of transcript and the video as
12 well.

13 MR. YNTEMA: For Penn National, we'll
14 do the same.

15 (The deposition was concluded at 2:21
16 p.m.)

17 (The witness, after having been advised
18 of the right to read and sign this transcript,
19 does not waive that right.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of November 2022 at Charleston, Charleston County, South Carolina.



Roxanne Easterwood

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2025

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To: PETER D. PROTOPAPAS

Re: Signature of PETER D. PROTOPAPAS

Date Errata due back at our offices: 30 days

Greetings:

The deponent has reserved the right to read and sign.

Please have the deponent review the deposition transcript, noting any changes or corrections on the attached Errata.

Once the Errata is signed by the deponent and notarized, please mail it to the address below. When the signed Errata is returned to us, we will seal and forward to the hiring attorney for filing with the court.

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If the signed Errata is not returned by the date above, the original transcript may be filed with the court without the signature of the deponent.

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I, the undersigned, do hereby certify that I have read the transcript of my testimony, and that

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Pursuant to the governing rules of Civil Procedure, any changes in form or substance which you desire to make to your testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If additional pages are necessary, please furnish same and attach.

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16 Reason for Change _____

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19 Reason for Change _____

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DEPONENT'S SIGNATURE

22 Sworn to and subscribed before me this _____ day of

23 _____, _____.

24 _____

24 NOTARY PUBLIC

25 My commission expires: _____

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND
3 COVIL CORPORATION, BY AND THROUGH ITS DULY
APPOINTED RECEIVER PETER D. PROTOPAPAS,
4
Plaintiff,

5
vs. Case No. 2020-CP-40-02098

6
PENNSYLVANIA NATIONAL MUTUAL CASUALTY
7 INSURANCE COMPANY, SAM J. CRAIN & CO.,
INC.; and SOUTH CAROLINA PROPERTY AND
8 CASUALTY INSURANCE GUARANTY ASSOCIATION,
9 Defendants.

10

11 VIDEOTAPED

DEPOSITION OF: SHARLA J. FROST
(Appearing via Zoom)

12
13 DATE: November 9, 2022

14 TIME: 10:04 AM (EST)

15 LOCATION: 3230 East 2105 Road
Hugo, OK

16

REPORTED BY: Sandra K. Bjerke, RDR, CRR, CBC
(Appearing via Zoom)

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(Appearing via Zoom)

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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

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,

1 2022?

2 A. Yes.

3 MS. PATTERSON: Again, Sharla, I'm not
4 sure your answer was audible. I think you got cut
5 off.

6 THE WITNESS: Okay. I did see the
7 working draft on the screen as we worked through it
8 to clarify the areas of my testimony.

9 BY MR. YNTEMA:

10 Q. The next portion of that sentence says:
11 The standard for analysis and
12 management of asbestos litigation in the historical
13 context of the litigation.

14 I think that is somewhat similar to
15 your initial disclosure; would you agree?

16 A. I don't have the initial one in front
17 of me. I think the documents speak for themselves.
18 I don't think it's significantly different, but it
19 may differ slightly. I would have to do a
20 word-for-word comparison to tell you if there are
21 any specific differences there.

22 Q. I understand, and I'm certainly not
23 going to put you to the test on that one. Just
24 moving on to the next one, it says -- and this I do
25 have some question, if you can give me some

1 explanation. It says:

2 The knowledge of asbestos defendants
3 and potential asbestos defendants.

4 Could you explain that topic for me?

5 A. Absolutely. As the litigation began --
6 in fact, if you'll look back at that Manville
7 opinion, one of the reasons I found it so helpful
8 is it provides a very good overview of the
9 beginnings of the asbestos litigation going back to
10 the Tomplait cases in the late 1960s.

11 Borel in 1973 was sort of the watershed
12 change in the litigation case. It's a 1973
13 personal injury case out of the 5th Circuit that
14 established the concept that one could have strict
15 liability responsibility for a product under a risk
16 utility analysis simply because of a lack of
17 warning. And that was really a game changer for
18 products liability litigation, not just in the
19 asbestos context but also in a more general sense
20 for tort cases.

21 And from that point onward it became
22 clear that if one made an unreasonably dangerous
23 product, even if the utility of the product could
24 outweigh its risk, it needed to have and have had a
25 warning on it.

1 So that was a red flag for defendants
2 who were current defendants and anyone who had not
3 yet been sued but had similar kinds of products.
4 And that was borne out as you look through the
5 history. As the litigation moved forward more and
6 more product defendants got sued, but along with
7 that you had more and more sort of subsidiary
8 products, products and defendants that were sued.
9 It went -- if you are familiar with Dr. Arnold
10 Brody, by any chance, who is the pathologist who
11 testifies in this litigation a lot --

12 Q. Yes.

13 A. -- he talks about the first, second and
14 third wave of the development of medical problems
15 related to asbestos litigation.

16 There is actually a fascinating
17 historical review on the Kazan website, if you are
18 familiar with Steve Kazan who tried some of the
19 early cases, where Kazan likens the asbestos
20 litigation to the medical situation with asbestos
21 in that there was a first, second and third wave.

22 So starting with the Borel case and
23 then as you start to get into the bankruptcy
24 situations and so on so that there were a -- it's
25 obvious there was going to be a larger view in the

1 corporate world of what -- who might be liable for
2 the kinds of exposures that plaintiffs were
3 complaining of, you either knew you were going to
4 be a defendant, you should have had a good idea you
5 were going to be a defendant. It was reasonable to
6 expect that that litigation was not going to be
7 over soon and that the scope of it was going to
8 broaden.

9 Q. In approximately what year would that
10 expectation have occurred to companies?

11 A. I think it's reasonable to assume that
12 it would have happened, if not by 1973, when Borel
13 was issued. If you'll recall, the Selikoff
14 conference was in 1965, and that -- late '64, and
15 then his seminal article on the risk of insulators
16 and asbestos exposure was published in 1965.

17 So it would be appropriate to have
18 raised that issue with the Selikoff article in '65
19 because industry was on notice at that point. If
20 you were a little late to the game, 1973 with
21 Borel. And if you were really late to the game
22 when Manville filed for bankruptcy in 1982, and
23 that was front-page news all across the country and
24 certainly a topic in the business press, you either
25 knew or should have known. If you were a producer,

1 a user, insurer, it doesn't really matter. I think
2 '65 is probably the right year, but I would not
3 argue with someone who said they didn't have a
4 dawning appreciation until either '73 or '82, but
5 anything beyond that, it was pretty broadly known
6 knowledge.

7 Q. Thank you. I'm just reading here. And
8 I think you've already testified to the next
9 portion of that sentence. It says:

10 As well as their insurers and other
11 indemnitors.

12 And I think you've already spoken to
13 that. Yes? Is that --

14 A. That would be a yes, once the Manville
15 bankruptcy and the structure for that was public
16 knowledge. And it was very public because it was
17 very controversial given that the insurers were
18 going to donate the policy limit proceeds to the
19 qualified settlement trust in return for receipt of
20 a litigation bar of the same type that Manville was
21 getting. And that was very creative, it was very
22 new, it was highly controversial and it was part of
23 the insurance knowledge, not just the man-on-the
24 street knowledge.

25 Q. I'm just reading this disclosure,

1 ma'am. The next sentence says:

2 With regard to the scope of the
3 litigation and the requirement to maintain
4 historical records for policyholders.

5 That sentence in particular, does that
6 apply to insurers and other indemnitors?

7 A. Yes. And that relates back to the
8 concept that once the insurance industry was aware
9 of the creative use of insurance proceeds for
10 purposes of the Manville Trust use and the public
11 information about the long-tail risk of litigation
12 that prompted Manville, yes, that is exactly what
13 that covers.

14 Q. But to be clear, in your background
15 you've never consulted with or advised insurance
16 carriers with respect to the scope of the
17 litigation and the requirement to maintain
18 historical records for policyholders; is that
19 correct?

20 A. I have to think about that. I have
21 never been the direct counsel for an insurer who
22 was making a decision concerning retention of
23 records and handling of the records and
24 policyholders.

25 In my role as defense counsel in those

1 states in which there is joint representation of
2 the underlying insured and the insurer, it is my
3 recollection that I had some discussions with at
4 least some of those teams about the necessity of
5 responding to discovery, which would have included
6 the potentiality of such documents.

7 So I don't think that in the way you
8 phrased the question I had that responsibility, but
9 the phrasing of the question doesn't really cover
10 the breadth of what my experience was in that
11 space.

12 Q. So essentially, if an insurance
13 company -- I'm sorry for the background noise.

14 So essentially, if an insurance carrier
15 was part of a team that you were advising, as part
16 of the team that you were advising that also
17 included a company that had asbestos liability
18 exposure, then that carrier may have been part of
19 the team that you consulted with?

20 A. That is correct, may have been part of
21 the team that I consulted with concerning the
22 necessity to have documents to respond to discovery
23 and maintain those documents for purposes of
24 litigation.

25 Q. But you never had any direct

1 consultation or provided advice directly to an
2 insurer outside of any team-oriented environment;
3 correct?

4 A. I think that's a fair statement. I do
5 not recall having done so.

6 Q. And as you've stated earlier on in this
7 deposition that you are -- you've never been an
8 insurance coverage expert; is that true?

9 A. That was correct then and remains
10 correct now. I am not a coverage expert.

11 Q. Thank you for that. Moving on to the
12 next portion of that sentence:

13 The importance of maintenance of
14 historical records for a defendant in asbestos
15 personal injury litigation.

16 Is that the same as the prior portion
17 of that sentence as far as an insurer's -- I'll
18 just leave it at that. Is that -- let me rephrase
19 it. I apologize.

20 The portion of the sentence that I just
21 read, is that the same as the preceding portion
22 that we just discussed?

23 A. It's very similar, but the nuance is
24 that to the extent that there are documents beyond
25 just the sort of working-day files, there's still

1 that historical requirement to keep those to the
2 extent that they were late to asbestos or the
3 defense of the asbestos litigation cases.

4 Q. And does that also pertain -- does that
5 obligation also pertain to corporate asbestos
6 defendants or corporations that are exposed to
7 asbestos liabilities?

8 MS. PATTERSON: Objection; form.

9 THE WITNESS: Can you ask that again?
10 I'm not sure that I followed the question.

11 BY MR. YNTEMA:

12 Q. In essence, the importance of
13 maintenance of historical records for a defendant
14 in asbestos personal injury litigation, would that
15 obligation also apply to companies like Covil?

16 MS. PATTERSON: Objection; form.

17 THE WITNESS: For any --

18 MS. PATTERSON: Go ahead. Sorry.

19 THE WITNESS: Yeah. For any company
20 that faces or faced asbestos litigation, it is very
21 important for them to maintain -- what I call
22 collect and protect the documents that relate to
23 their business and to their use of
24 asbestos-containing products. They need that for a
25 variety of different purposes, and it's very

1 important to both collect those and maintain them.

2 BY MR. YNTEMA:

3 Q. And as far as with respect to the
4 corporate defendants or corporations that are
5 exposed to asbestos liability, does that also apply
6 to their insurance policy-related documents?

7 A. Whatever documents that company has
8 that relate to asbestos or to their potential
9 asbestos liabilities I believe they should collect
10 and maintain. That is my opinion.

11 Q. And that obligation, at a very minimum,
12 started -- in your opinion, started in 1982 when
13 the Johns-Manville case was published.

14 A. When they filed for bankruptcy. Not
15 that the case was published, but when Manville
16 filed for bankruptcy.

17 Q. In 1982; correct?

18 A. Correct.

19 Q. Thank you, ma'am. I'm just reading
20 this disclosure. And then just reading the last
21 portion of that sentence, ma'am, I think you have
22 that handy there with you.

23 A. Yes.

24 Q. It says:

25 And an evaluation of the asbestos

1 personal injury claims against Covil for which Penn
2 National contributed to settlements.

3 Do you see where it says that?

4 A. I do see that.

5 Q. And do you expect to testify on that
6 topic?

7 A. I do.

8 Q. And that's a change from the initial
9 disclosure that we just reviewed; correct?

10 A. That is an expansion of what I was
11 asked to do in connection with the evaluation of
12 materials in this case.

13 Q. I appreciate that. And, ma'am, with
14 respect to that topic, do you have any opinions as
15 to that topic that you can testify to today?

16 MS. PATTERSON: Objection; form.

17 THE WITNESS: Yes. I went through all
18 eight notebooks and the information on all 14 of
19 the cases identified in the letter from Penn
20 National to the receiver, Peter Protopapas. I
21 believe it's dated September 1st, 2022.

22 But yes, I've gone through those cases
23 and looked at them to evaluate what I thought about
24 verdict risk and the propriety of resolving those
25 cases.

1 BY MR. YNTEMA:

2 Q. I'm just writing that down, ma'am.
3 Verdict risk and the propriety of resolving those
4 cases. Okay. Thank you.

5 Other than the topics that are listed
6 here on this disclosure, do you expect to testify
7 as an expert as to any other topics in this case?

8 A. I have not been asked to so far. In
9 the event that I am asked to do so I presume that
10 that would be disclosed by counsel.

11 Q. Thank you, ma'am. Do you know a
12 Mr. Charles Miller of the Insurance Law Center?

13 A. I know the name. I do not know him.

14 Q. And how do you know Mr. Miller's name?

15 A. I don't know. I recognize the name. I
16 know that he is one of the other experts who's
17 designated in this case. However, he is not
18 someone with whom I am personally acquainted. I
19 don't know that I've ever even met him.

20 Q. I appreciate that. Do you know if
21 you've ever been designated as a witness -- as an
22 expert witness -- I apologize -- in another case in
23 which he was also designated as an expert witness?

24 A. It's possible, but I don't have a
25 recollection as I sit here.

1 Q. Thank you, ma'am. I think I can move
2 off of that exhibit.

3 A. Okay.

4 Q. And again, this deposition is going to
5 be somewhat document intensive. That's not to
6 scare you and think that you're going to be here
7 with me all day.

8 A. Ah, come on.

9 Q. I'll be referring to some other
10 documents throughout. In preparing for today's
11 deposition did you review any documents?

12 A. I reviewed the notebooks that were sent
13 to me by Morgan Lewis. That includes the eight
14 notebooks that comprise the underlying case files
15 for the 14 cases that are referred to in the letter
16 from Penn National to Peter Protopapas.

17 I reviewed the spreadsheet that was
18 provided to me by Lauren Semlinger, which is a
19 summary of those cases, and I annotated that,
20 scanned it, and you should have been provided with
21 a copy of that as it is part of my file.

22 In addition to that I reviewed a 31-tab
23 notebook from Morgan Lewis that's titled Sharla
24 Frost Prep Materials which I received sometime in
25 late October. And I did go back and do some

1 cursory review of that in connection with the
2 deposition for today. I also had a prep call with
3 counsel.

4 Q. Okay. The Sharla Frost prep materials
5 that you just referenced, can you give me a general
6 description of what those materials were or the
7 documents -- or the information that they contain?

8 A. They are Bates numbers 2020.07.24. I
9 can give you sort of an overview. It's my
10 understanding that you were sent the Bates numbers
11 for those materials. I didn't see the production,
12 so I don't know.

13 But it's the pretrial report, the Covil
14 versus Pennsylvania opinion, 30(b)(6) depositions
15 of Mr. Wright and Mr. Brent Reifsnyder, if I'm
16 pronouncing that correctly, and some of the
17 supplemental responses to requests for production
18 and motions to compel by Penn National. So they're
19 things of that nature.

20 Q. I see you're looking at something there
21 to your left.

22 A. I have -- I have the notebook with me.
23 I'm trying to decide what's the easiest way to give
24 you the list of materials that are in the notebook.

25 Q. Maybe the easiest way --

1 A. I received it in hard copy. I didn't
2 receive it digitally. I'm old school. I like to
3 have paper to look at. So they printed them out
4 and sent it to me. I don't have a digital copy, so
5 I can't send you that as part of my file.

6 MS. PATTERSON: And, Brady, I'm fine if
7 you want her to just read to you each tab, what it
8 is. You have it all. It's either pleadings or,
9 you know, opinions or depositions. Do you want her
10 to go through and just tell you what is in each
11 tab?

12 MR. YNTEMA: Yes. Ms. Peterson --
13 Patterson. I apologize. I think that that is
14 something we can do.

15 MS. PATTERSON: Yes.

16 MR. YNTEMA: Ms. Frost also said that
17 there were Bates stamp numbers. So if there are
18 Bates stamp numbers, if you could just -- if
19 they're -- if the Bates stamp numbers run, you
20 know, numerically from beginning to end so you can
21 just give me the complete range that's contained in
22 that binder, that might be the quickest way.

23 MS. PATTERSON: Well, yeah, I'll let --
24 I don't have --

25 THE WITNESS: Yeah.

1 MS. PATTERSON: Yeah, go ahead.

2 THE WITNESS: And I'm looking here.

3 And I told you those were Bates stamp numbers.

4 They may just -- those may be date numbers, looking

5 at it. Because I'm looking here to see if there

6 are actually Bates stamp numbers on here and I

7 don't think there are. There are only 34 of them.

8 So why don't I either read these to you or I could

9 scan it real fast and send it to you.

10 MS. PATTERSON: Why don't you just read
11 it to him real quick. That way --

12 THE WITNESS: Okay. All right. No. 1
13 is the Covil Archer pretrial report. No. 2 is
14 Covil versus Pennsylvania opinion. No. 3, Boyd
15 Wright, dash, Penn National 30(b)(6). No. 4, Penn
16 answer. No. 5, affidavit of Boyd Wright. No. 6,
17 Penn National's supplemental answers to Covil's
18 interrogatories. No. 7, Penn National's
19 supplemental responses to requests for production.
20 8, letter to Shisko regarding the affidavit of
21 Brent Reifsnyder. 9 is a letter attaching the
22 Reifsnyder affidavit. 10, Covil's motion to
23 compel. 11, Covil Boyd Wright national -- Penn
24 National 30(b)(6) deposition. 12, Covil Brent
25 Reifsnyder Penn National deposition. 13, Covil's

1 second supplemental motion to compel. 14,
2 affidavit of Boyd G. Wright in opposition to
3 Covil's motion for summary judgment with exhibits.
4 15, discovery order granting Covil Corporation's
5 motion to compel Penn National. 16, Covil receiver
6 versus Penn National letter to Brad Nes. 17,
7 motion for evidentiary hearing. 18, proposed order
8 on receiver for Covil's motion for protective
9 order. 19, receiver for Covil's notion -- notice
10 of motion to compel. 20, receiver's motion to
11 compel Penn National with exhibits. 21, Penn
12 National's supplemental responses to Covil's third
13 request for production. That may be request for
14 disclosure. It's RPD. 22, Penn National's
15 supplemental responses to Covil's third RPD. 23,
16 letter to B, and I assume this is pronounced
17 Yntema. It's Y-N-T-E-M-A and D. Harris re Penn
18 National document production deficiencies. 24,
19 filed notice of filing report regarding Penn
20 National documents. 25, filed receiver for Covil's
21 supplemental notice of motion and motion to compel.
22 26, letter to Jay Spitz forwarding PN's second
23 supplemental response to discover. 27, Penn's
24 response to receiver's supplemental motion to
25 compel. 28, filed clocked summons and complaint.

1 29, order on discovery motions. 30, notice of
2 deposition Penn 30(b)(6) regarding document purge
3 and coverage. 31, Penn National letter re
4 remaining policy limits. 32, filed clocked Covil's
5 status report. 33, receiver for Covil's fact and
6 expert disclosures. 34, scheduling and pretrial
7 order. And that's the contents of the notebook.

8 BY MR. YNTEMA:

9 Q. And just from my recollection you may
10 have testified to this, but if you have the
11 patience to answer it again, when did you receive
12 those documents?

13 A. I'd have to look at the emails. It's
14 sometime in October.

15 Q. Okay. That gives me a good
16 understanding. That's all I need.

17 A. Okay.

18 Q. Thank you. And my last name is Brady
19 [sic] and it's the most difficult last name I think
20 a lot of people run into. I always tell people I
21 was fortunate enough to meet a woman who was
22 actually willing to take that last name. So she
23 has to live with it on a daily basis too, but you
24 did a fine job in pronouncing it. I appreciate
25 that.

1 A. Thank you.

2 Q. So we've been going at this for an hour
3 now. Do you want to take a break, or are you fine
4 to continue?

5 A. I'm fine to continue for a bit if you
6 would like.

7 Q. Sure.

8 A. If you, however, need to take a break
9 I'm perfectly fine to take a five-minute break.
10 Whatever works for you guys. And for the court
11 reporter.

12 MR. YNTEMA: That's my next question.
13 Miss -- Madam Court Reporter, are we okay to
14 proceed?

15 THE REPORTER: Yes, sir. Thank you.

16 MR. YNTEMA: Thank you. So I'm going
17 to turn to the -- some of the exhibits that were
18 included in the production to our firm of your
19 file. The next one will be what we've marked as
20 Frost Exhibit 3.

21 (EXHIBIT 3, Email to Ms. Frost from
22 Mr. Nes dated 11-6-22, with Attached Stipulated
23 Confidentiality Agreement, marked for
24 identification.)

25 THE WITNESS: Okay.

1 BY MR. YNTEMA:

2 Q. And that is -- while we call it up I'll
3 just represent to you before it's called up on the
4 screen it says Stipulated Confidentiality
5 Agreement.

6 A. Yes.

7 Q. And it's got a cover email to it which
8 I'll show to you once it comes up on the screen.
9 Ma'am, what we have on the screen now is just a --
10 it's like a cover email. It looks like it's
11 attaching the stipulated confidentiality agreement.

12 A. Yes.

13 Q. And what we'll do is we'll go -- we'll
14 move down to the next page. I'll stop there.
15 Ma'am, do you recall seeing this document?

16 A. Yes. As you can see from the cover
17 note I received that on November 6th from Mr. Nes.

18 Q. And do you know why this was provided
19 to you?

20 MS. PATTERSON: Objection; form.

21 THE WITNESS: Not particularly, but it
22 is relatively common that I would anticipate a
23 confidentiality limitation on discussion of the
24 types that we are having in this case.

25 BY MR. YNTEMA:

1 Q. Did you read through this document in
2 detail?

3 A. I did.

4 Q. Is it important -- was this document of
5 any -- is this document of any importance to you in
6 forming your expert opinions in this case?

7 A. It was not, but I certainly am
8 cognizant of the importance of maintaining
9 confidentiality both for my client and for the
10 litigation.

11 MR. YNTEMA: If we could scroll down
12 this document to the signature page.

13 BY MR. YNTEMA:

14 Q. So you see a couple signature blocks
15 there, right, ma'am?

16 A. I do.

17 Q. One is a signature block for what's
18 Penn National's counsel. Do you see that?

19 A. I do.

20 Q. And we see a signature block for
21 Mr. Murrell Smith who you understand is receiver's
22 counsel?

23 A. Yes.

24 Q. You didn't have any -- you didn't
25 put -- you didn't put any assistance in drafting

1 this document, did you?

2 A. No.

3 Q. And your signature isn't on this
4 document.

5 A. It is not.

6 Q. Okay.

7 MR. YNTEMA: Move on to the next
8 exhibit. Just a moment, ma'am, while I collect my
9 thoughts on this one. Are we calling that up?

10 MS. BOUPLON: Yes.

11 MR. YNTEMA: Okay.

12 (EXHIBIT 4, Email to Mr. Nes from
13 Ms. Frost dated 2-7-22, with Attached Expert
14 Witness Retainer Agreement, marked for
15 identification.)

16 (EXHIBIT 5, Email to Ms. Frost from
17 Mr. Nes dated 2-11-22, with Attached Expert Witness
18 Retained Agreement, marked for identification.)

19 BY MR. YNTEMA:

20 Q. Okay, ma'am. This was a document,
21 actually, that has a cover letter email, it shows,
22 from you to a Mr. Brad Nes at Morgan Lewis. Do you
23 see that?

24 A. I do.

25 Q. Okay. And you see the date on that is

1 February 7th, 2022?

2 A. That is correct.

3 MR. YNTEMA: If we could scroll down to
4 the next page.

5 BY MR. YNTEMA:

6 Q. Looking at this first page here it
7 says -- it appears to be that this is your retainer
8 agreement for the Covil versus Penn National
9 matter?

10 A. Correct.

11 Q. And that's the retainer agreement with
12 Morgan Lewis; would that be correct?

13 A. It is correct.

14 MR. YNTEMA: Move back up.

15 BY MR. YNTEMA:

16 Q. And that's dated also February 7th,
17 2022; correct?

18 A. Yes.

19 Q. Ma'am, before sending this retainer
20 agreement to Mr. Nes at Morgan Lewis had you ever
21 been retained as a consultant in this case by
22 Morgan Lewis?

23 A. In this case? No, I had not.

24 Q. Okay. And you understand why I'm
25 trying to distinguish the two. I want to know if

1 you were hired prior to this as -- just as a
2 consultant to the firm rather than as an expert,
3 and your answer to that question is no with respect
4 to the Covil versus Penn National case; correct?

5 A. As it relates to Covil versus Penn
6 National, no. This was my first contact with
7 Mr. Nes, and the agreement came as a result of his
8 call and our discussion.

9 Q. Okay. Thank you.

10 MR. YNTEMA: Just moving down the page.

11 BY MR. YNTEMA:

12 Q. While it's scrolling down I'll just
13 state to you that I'm looking at the fees and
14 expenses portion of the retainer agreement, and it
15 says that you are charged at a rate of \$650 per
16 hour; is that correct?

17 A. That is correct.

18 Q. Has that rate changed as of today?

19 A. It has not.

20 Q. And do you expect that rate to change
21 at any point in the future prior to trial of this
22 matter?

23 A. Not prior to trial. That would be kind
24 of mean.

25 Q. As an attorney, I guess I would agree.

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1 A. Yeah. Kind of bad -- bad form to go up
2 in the middle of a proceeding. So no. It will
3 remain at 650.

4 Q. Sure. And some experts do have a
5 different rate for trial testimony. Do you have a
6 different rate for trial testimony?

7 A. I do not.

8 Q. Thank you.

9 MR. YNTEMA: If you'd go to page 2 of
10 that document, ma'am. Well, page -- I'm sorry.
11 It's page 2 of the letter. I apologize. If you
12 scroll down to the confidentiality provision. Stop
13 right there.

14 BY MR. YNTEMA:

15 Q. Ma'am, I'm sure you're familiar with
16 this document since it's your retainer agreement,
17 but there is a confidentiality provision. I know
18 that there have been several pages of documents
19 that have been provided to our firm in advance of
20 your deposition today. However, my question is a
21 general question.

22 Of the -- of the documents that you
23 provided to Morgan Lewis as part of your file to be
24 produced to our firm, did you withhold any
25 documents based on grounds of confidentiality?

1 A. I did not.

2 Q. Thank you. You were retained in
3 February of -- 7th of 2022. Do you recall the
4 first time that you received any documents from
5 Morgan Lewis to review with respect to this matter?

6 A. It would be reflected in the email
7 traffic. They attempted to send me some things by
8 electronic file transfer at one point, and I spend
9 a lot of my time on my cattle ranch, which is where
10 I am today, and have problems with the internet.
11 So I never actually received those.

12 The first documents I actually received
13 are reflected in the individual attachments on some
14 of the emails and then the hard copy documents, the
15 notebook that we just went through the index on and
16 the eight notebooks that contain the individual
17 file information for the 14 cases referred to in
18 the September correspondence from Penn to
19 Mr. Protopapas.

20 Q. Thank you for that. So based on what
21 has been provided to our firm, your activity with
22 respect to this case in reviewing documents would
23 have started sometime after the 1st of August of
24 this year; correct?

25 A. I believe that's correct.

1 Q. So between the time period of February,
2 this proposed retainer agreement, and the 1st of
3 August, do you recall having any activity in this
4 case?

5 A. I may have had a random phone call or a
6 short email, but in terms of reviewing documents or
7 doing anything substantive, that would have been
8 either very late July or early August.

9 Q. Okay. Thank you. As far as your
10 invoicing to Morgan Lewis's -- Morgan Lewis for
11 your services rendered, have you invoiced Morgan
12 Lewis yet for your services rendered?

13 A. I have not. If I were still at a law
14 firm they would beat me for not sending one out
15 every 30 days even if it didn't have anything on
16 it. I did go through and do a quick analysis, and
17 I've got about 25 hours in the file to date. So
18 prior to today the time spent has been mainly
19 reviewing these enormous notebooks that I've
20 received over the last month.

21 Q. And when you do invoice Morgan Lewis,
22 does that invoice become part of your expert file?

23 A. I don't typically keep it that way. I
24 wouldn't have any objection to doing so if the
25 court preferred it that way.

1 Q. As far as your invoicing, do you
2 invoice on a task-by-task basis, if you understand
3 me?

4 A. I do, and I use the ABA codes to do
5 that even though as an expert I'm probably not
6 obligated to. I find that that is a more standard
7 process, so that's what I do.

8 Q. Meaning the L&A codes?

9 A. Yes, sir.

10 Q. God bless you. I feel your pain.

11 A. I hate those things, yeah.

12 Q. Okay. But you would have no objection
13 to producing that, those invoice statements. And
14 do you deem those -- let me ask you this. I
15 apologize. Do you deem those invoice statements to
16 be confidential?

17 A. I don't. Whether Morgan Lewis does or
18 not, I -- that's an answer that you would have to
19 ask them.

20 Q. I'm just going through my outline here.
21 Okay. I'm going to go to Frost Exhibit 6.

22 (EXHIBIT 6, Email Chain to Ms. Frost
23 from Mr. Nes dated 10-24-22, marked for
24 identification.)

25 BY MR. YNTEMA:

1 Q. Okay. Do you see that on the screen,
2 ma'am?

3 A. I do.

4 Q. Okay. And that appears to be an
5 October 24th email from Mr. Brad Nes to you;
6 correct?

7 A. Correct.

8 Q. And the text of it says:

9 Sharla, Please find attached the cert
10 petition and Supreme Court order denying the cert
11 petition.

12 Is that part of the documents that we
13 discussed earlier that are contained in some of the
14 documents that you provided for production in this
15 case?

16 A. Yes, because the production materials
17 include all the emails along with their
18 attachments. So this should be included in the
19 materials that you received because I do consider
20 all of those the corpus of my file.

21 Q. Thank you. With respect to the cert
22 petition and the Supreme Court order, do you intend
23 to rely on any portion of the cert petition or the
24 Supreme Court order in providing testimony, expert
25 testimony in this case?

1 A. I will answer whatever questions are
2 posed to me at the time. Those materials were
3 referred to in the text of some of the orders that
4 were in the notebook that was sent to me but were
5 not included along with it. So I had asked for a
6 copy of that to make sure that I understood the
7 context of some of the dispute.

8 I have not been asked at this point to
9 render an opinion related to the controversy that
10 was reflected in the cert petition. So to the
11 extent that that answers your question, that's kind
12 of background, in my view.

13 Q. I appreciate that.

14 MR. YNTEMA: If we could scroll down a
15 little further in that email. Stop there, please.
16 Thank you.

17 BY MR. YNTEMA:

18 Q. Just briefly, it says -- this appears
19 to be an email from you just to folks at Morgan
20 Lewis. Am I right?

21 A. That is correct.

22 Q. And it does say:

23 I have completed my reading of the
24 materials in the notebook I received on October
25 7th.

1 Do you remember the notebook? And if
2 you could give me a general description of what was
3 contained in the notebook you might have received
4 on October 7th.

5 A. That's the notebook with the 34 entries
6 that we previously walked through. I was wrong
7 about the date, but this refreshes my recollection.
8 That notebook arrived on October 7th. And if
9 you'll scroll up just a little bit I can tell you
10 when I finally finished reading it. Yeah. My
11 father died on the 10th, so...

12 Q. I understand. Thank you so much. Are
13 you ready to proceed, or would you like to take a
14 break?

15 A. Let's take a break.

16 MR. YNTEMA: Yeah, I thought that would
17 be appropriate at this time.

18 THE WITNESS: Yeah.

19 MR. YNTEMA: So we'll take --

20 THE VIDEOGRAPHER: We're off the record
21 at 11:20 AM.

22 (A recess transpired from 11:20 until
23 11:32.)

24 THE VIDEOGRAPHER: We are back on the
25 record at 11:32 AM.

1 BY MR. YNTEMA:

2 Q. Ms. Frost, good morning again. Thank
3 you for allowing us to take that break. Back on
4 the record, and I just have just a -- like one or
5 maybe two questions left on Exhibit 6 here.

6 A. Sure.

7 Q. If you can see, there's a sentence here
8 that I need to read slowly for the court reporter,
9 but it's the second sentence of that message. It
10 says:

11 In the text of the status report of the
12 receiver (filed September 6, 2022), the Supreme
13 Court chronology lists both a petition for writ of
14 cert and an associated order, period.

15 So I assume that the text of the status
16 report of the receiver is a status report that was
17 filed with the court at the -- on September 6,
18 2022; is that correct?

19 A. Yes. That is the one referred to at
20 tab 32 in the notebook and was the 32nd item that I
21 read into the record.

22 Q. Thank you so much.

23 MR. YNTEMA: So now we'll go to Exhibit
24 7.

25 (EXHIBIT 7, Email Chain to Mr. Nes from

1 Ms. Frost dated 9-27-22, marked for
2 identification.)

3 BY MR. YNTEMA:

4 Q. Okay, ma'am. Looking at this message,
5 this is dated September 27th, 2022, and it seems
6 to -- as we scroll down it's kind of an email
7 exchange that you had with Mr. Nes.

8 A. Correct.

9 Q. And before we scroll down I'll allow it
10 to kind of proceed up, but you'll see this is from
11 you to Mr. Nes. It says:

12 Why don't you send the documents to me
13 in hard copy.

14 As you previously testified, you prefer
15 hard copy rather than electronic. So that was
16 being addressed there, but my interest is below
17 that is a communication from Mr. Nes to you.

18 MR. YNTEMA: If we could scroll down.
19 Kind of put the body of that there.

20 BY MR. YNTEMA:

21 Q. Okay. I see this email in kind of two
22 parts, and I may stand corrected, but the first
23 paragraph there says:

24 Thanks again for your recent call.

25 This is from you to Mr. Nes. From

1 Mr. Nes to you. I apologize. And it says I --
2 Brad Nes says:

3 I tried to send you a zip file with
4 certain documents for your review. Unfortunately,
5 I got a bounce back in light of the size of the
6 attachment.

7 So he's referring to the fact that
8 he -- I'm interpreting this -- that he emailed you
9 a zip file that was -- that got bounced back and
10 then you requested that he send it to you by way of
11 hard copy; correct?

12 A. That is correct.

13 Q. And is that referencing -- that
14 paragraph and your email back to him, is that kind
15 of referencing the binder that you finally received
16 from Morgan Lewis that you've already testified to
17 as far as the topics?

18 A. Yes, that is correct. The notebook
19 that I received on October 7th was the -- what I
20 assume was the complete hard copy of the zip file
21 that did not come through.

22 As I previously testified to, I have
23 sometimes internet issues here at the ranch, and we
24 could not get any of those materials to come
25 through electronically. So it is my understanding

1 that the notebook we have been discussing is the
2 printed-out version of the documents that he wanted
3 me to review.

4 Q. Sure.

5 A. And I wasn't able to get to them
6 electronically.

7 Q. Certainly. Thank you for that. And
8 the next part to this email that I see is -- says:

9 We have also requested certain
10 additional files from underlying defense counsel,
11 Ellis & Winters. As soon as we receive those, I
12 will forward them to you for review as well.

13 Do you recall getting certain
14 additional files from underlying defense counsel,
15 Ellis & Winters?

16 A. The eight notebooks that I described
17 earlier that were sent to me concerning the 14
18 cases in which Penn National agreed to make
19 settlements included some materials from Ellis &
20 Winters.

21 And as I understand it, the reference
22 in this email is to those materials that were then
23 later included in that next set of notebooks. I
24 have not received Ellis & Winters' file materials
25 other than those that are included in the eight

1 notebooks.

2 Q. Okay. I appreciate that. And you just
3 answered my next question. So that -- they were
4 received, meaning Ellis & Winters' documents were
5 received in eight notebooks by you; correct?

6 A. They were among the materials contained
7 in the eight notebooks. Whether the totality of
8 the materials in those files came from Ellis &
9 Winters I can't testify to. I'm not sure the
10 source of all of them, but they are underlying case
11 files and they have Ellis & Winters' materials
12 amongst the materials in the files.

13 Q. All right. And did the -- just in
14 general form, did those files contain -- I'll
15 reword this. I apologize.

16 Were those -- did those appear to be --
17 did those -- I've got to get this straight. Sorry.

18 Did those files appear to be asbestos
19 defense files only?

20 A. They are the underlying litigation
21 files for the 14 cases to which Penn National
22 contributed settlement funds.

23 Q. Okay. And those -- okay. I --
24 we'll -- thank you for that.

25 MR. YNTEMA: Okay. Moving on to

1 Exhibit 8.

2 (EXHIBIT 8, Email to Mr. Nes from
3 Ms. Frost dated 11-7-22, with Attached Court
4 Opinion, marked for identification.)

5 BY MR. YNTEMA:

6 Q. Okay. Just to -- briefly on this
7 exhibit, it says:

8 As we discussed, my Covil/Penn
9 National -- I'm sorry. This is an email dated
10 November 7th, 2022 from you to Mr. Nes, and it
11 reads:

12 As we discussed, my Covil/Penn National
13 file consists of the emails we had exchanged, along
14 with attachments.

15 I think your testimony is -- and if you
16 could confirm that now. Have you -- did you
17 provide Morgan & Lewis with all of your emails with
18 them to be produced in this case?

19 A. Morgan Lewis has the originals of all
20 of those emails along with my responses, and it's
21 my understanding that all of those were produced.

22 Q. Thank you. And then it references, if
23 you see there, the nine notebooks that you sent.
24 Are those nine notebooks referencing, one, the
25 eight notebooks that were the Ellis & Winters files

1 and then the ninth notebook meaning -- being the
2 notebook that you've testified to earlier today?

3 A. That is correct.

4 MR. YNTEMA: Okay. We can move off
5 that exhibit. Well, I apologize. Is that
6 exhibit -- has the Johns-Manville case to it?

7 MS. BOUPLON: No. Hold on. I'll pull
8 it back up. I believe it does. I'll share it
9 again.

10 MR. YNTEMA: Sure. I apologize. I
11 didn't realize that this exhibit had the
12 Johns-Manville case attached.

13 MS. BOUPLON: Yes.

14 BY MR. YNTEMA:

15 Q. Okay, ma'am. I know that you have
16 referenced this -- the Johns-Manville case in
17 your -- previously in your deposition testimony,
18 and I had read through it as well. I'm not going
19 to summarize what my reading of the case is, but
20 the first question is: Are you going to rely on
21 the Johns-Manville case in providing expert
22 testimony in this case?

23 MS. PATTERSON: Objection; form.

24 THE WITNESS: Not in terms of the legal
25 holding. I use this case as a refresher on the

1 dates involved and I made sure that I had the
2 proper sequence.

3 So you know, my very first asbestos
4 client was the Johns-Manville Settlement Trust, and
5 so in 19 -- late 1989 I began to do litigation work
6 for the Johns-Manville Personal Injury Settlement
7 Trust which had to be referred to as the
8 Johns-Manville Personal Injury Settlement Fund in
9 trial, which made it very popular with the
10 plaintiffs' lawyers and not so much with the
11 defendants.

12 But there had been a -- enough time had
13 passed between when I dealt with those on a
14 day-to-day basis and now that I wanted to refresh
15 myself on some of the finer details of the trust
16 and the organizational structure.

17 I found this particular opinion, and it
18 contains a very good historical overview of the
19 proceeding itself and points out that 30 years
20 later the Manville bankruptcy is still an ongoing
21 piece of litigation.

22 But in terms of the court's holding,
23 the standing issues and those types of legal
24 conclusions, I do not anticipate that they will
25 play a part in the opinions that I express in this

1 case. Did that answer your question? You look a
2 little puzzled.

3 BY MR. YNTEMA:

4 Q. No. It did answer my question to a
5 degree. Thank you for that.

6 Are you aware that in this case that
7 there is a qualified settlement fund already
8 established by the receiver in this matter?

9 A. When you say in this matter are you
10 referring to the Penn -- Covil versus Penn National
11 matter?

12 Q. I'm sorry. For --

13 MS. PATTERSON: And you beat me to my
14 objection to the form.

15 BY MR. YNTEMA:

16 Q. For Covil. The receiver has been
17 appointed the receiver for Covil. So I would ask
18 that -- do you have any knowledge that there is a
19 QSF that has been established for Covil
20 liabilities?

21 MS. PATTERSON: Objection; form.

22 THE WITNESS: I saw reference -- I'm
23 sorry. Were you objecting, Nancy?

24 MS. PATTERSON: Yeah. Objection; form,
25 but you can certainly go ahead and answer.

1 THE WITNESS: I saw reference to that
2 in one of the documents contained in the original
3 notebook, but beyond that I do not have any further
4 information and I certainly do not have any
5 opinions related to the qualified settlement fund
6 as may be related to Covil and have not been asked
7 to express any.

8 BY MR. YNTEMA:

9 Q. I appreciate that, and you anticipated
10 my next question. Thank you.

11 A. And is this Exhibit 9 or 8? 8. Okay.

12 Q. This is Exhibit 8.

13 MR. YNTEMA: Okay. We'll move forward
14 to Exhibit 9, ma'am.

15 (EXHIBIT 9, Email to Mr. Nes from
16 Ms. Frost dated 11-7-22, with Attached Spreadsheet,
17 marked for identification.)

18 BY MR. YNTEMA:

19 Q. And this, while it's being called up,
20 is the spreadsheet, I believe, that you've been
21 testifying to. Okay. Ma'am, do you see that cover
22 email?

23 A. I do.

24 Q. And you see it's dated -- it's an email
25 exchange dated Monday, November 7th from you to

1 Mr. Nes?

2 A. Right.

3 Q. And it's providing an annotated case
4 chart that is attached, and we'll scroll down to
5 that. So, ma'am, there are several case names on
6 this annotated chart, case names that you will see
7 a column there, and I assume that case name is
8 referring to the plaintiff in each case; correct?

9 A. That is correct.

10 Q. And I count 15 cases that are contained
11 on this chart. Would that be accurate?

12 A. I thought there were 14, but let me
13 recount.

14 Q. On my recount, you're correct. 14
15 cases.

16 A. 14 cases.

17 Q. And these are all underlying asbestos
18 cases in which Ellis & Winters is involved in the
19 defense.

20 A. That is my understanding. I would
21 characterize them slightly differently. I would
22 say that these 14 cases are underlying
23 asbestos-related personal injury cases in which
24 Covil has been named as a defendant and which were
25 listed by Penn National as cases in which the

1 company was contributing to settlement.

2 Q. To your understanding, are each of
3 these 14 cases -- have each of these 14 cases been
4 settled?

5 A. That is my understanding.

6 Q. And those 14 cases have been settled
7 with a contribution to the settlement by Penn
8 National under its policies of insurance for Covil;
9 correct?

10 A. That is what is reflected on the
11 September 1, 2022 letter from -- let's see who this
12 is from -- from Boyd Wright at Penn National at tab
13 31 of the original notebook that we discussed. And
14 it lists each of these cases with an amount that
15 was contributed by Penn National for a total of
16 payments of an amount of \$613,672.50.

17 Q. Thank you. Do you have any knowledge
18 of when Penn National first -- was first tendered a
19 Covil asbestos case for defense and indemnity?

20 A. No. I believe I saw some reference to
21 that in one of the 30(b)(6) depositions, but I
22 don't have any independent recollection of that as
23 I sit here, and I don't recall having been given
24 any specific information on that in the context of
25 my analysis of these cases.

1 Q. So is it fair to say that the first
2 tender date of any asbestos claim against Covil to
3 Penn National is of no consequence to your expert
4 opinions in this case?

5 MS. PATTERSON: Objection; form.

6 THE WITNESS: I have not been asked to
7 form any opinions that relate to the timeliness or
8 dating of tendering of cases. So to the extent
9 that that's your question, no, that doesn't form
10 part of my opinions.

11 BY MR. YNTEMA:

12 Q. Are you aware that Penn National has
13 defended Covil for all asbestos defense matters
14 tendered to Covil -- tendered to Penn National
15 after the first tendered case -- after the first
16 case that was tendered to Penn National, if you
17 understand the question.

18 MS. PATTERSON: Object to the form.
19 Object to the form.

20 THE WITNESS: I have no information
21 concerning that. And to the extent that that
22 implicates a question of applicability of coverage
23 and what might be characterized as a coverage
24 opinion, that's outside the area of my expertise.

25 BY MR. YNTEMA:

1 Q. Outside of the 14 cases listed on this
2 spreadsheet, are there any other asbestos
3 Covil-related cases that you have analyzed?

4 A. As relates to Penn National, not that
5 I'm aware of. I was retained as an expert in
6 Covil's litigation against USF&G roughly a year,
7 maybe a little bit longer than that ago.

8 In the context of that litigation I did
9 review some cases that related to Covil and
10 allegations underlying exposure. I did not review
11 those cases again in the context of my preparation
12 for this matter.

13 Q. Thank you. Now turning to this
14 spreadsheet, mainly the -- namely the Archer case
15 at the very top.

16 A. Yes, sir.

17 Q. And I'm just using this because this is
18 your annotated spreadsheet, so I thought that would
19 be the best for you to testify from.

20 A. Yes.

21 Q. So with respect to Jerry Archer you'll
22 see there you have annotated M dash W death. If
23 you could explain that annotation to me.

24 A. Of course. That means mesothelioma.
25 That is the type of disease that was being alleged,

1 and this is a wrongful death case. So Mr. Archer
2 was no longer living at the time the case was
3 filed.

4 Q. And on my copy there's some faint
5 highlighting there. Do you see any faint
6 highlighting there in the evidence of exposure
7 column?

8 A. I do.

9 Q. And you see where it's highlighted, it
10 says:

11 These exposures did not coincide with
12 Mr. Archer's alleged exposures.

13 A. Yes.

14 Q. If you could explain why you
15 highlighted that. I assume that's your
16 highlighting; correct?

17 A. It is my highlighting, and I
18 highlighted that because it didn't make sense to me
19 in light of the preceding language in that box.

20 Mr. Archer was a pipefitter, as it's
21 noted here, and the records show that Covil had
22 installed insulation at Kimberly-Clark Beech
23 facility while Mr. -- while Daniel was a
24 construction contractor, and then that Mr. Archer
25 was performing work at that location later.

1 So those two things just didn't make
2 sense to me in connection with analyzing whether
3 Mr. Archer potentially had exposure to either
4 products or workers that were related to Covil. It
5 appeared that the explanatory information above
6 indicated that in fact he did. So I highlighted
7 that not because it was significant to me but
8 because it didn't make any sense to me.

9 Q. Are you aware of the effective dates of
10 Penn National's policies for Covil?

11 A. I have seen that in the materials.
12 Because I am not a coverage expert, I don't know
13 the significance of the coverage types during that
14 time period.

15 So other than being aware that
16 apparently there are policies that date, I believe,
17 '86 through '88, I don't know the significance of
18 that and have no opinions concerning that.

19 Q. Okay. When you say you don't know the
20 significance of the dates '86 through '88, are you
21 analyzing evidence of exposure in relation to Penn
22 National's coverage for Covil during '86 through
23 '88?

24 MS. PATTERSON: Objection; form.

25 THE WITNESS: I was analyzing these

1 cases to determine whether the allegations
2 regarding exposure to Covil in either Covil
3 employees' installation or Covil products was
4 supported by the information in the files.

5 I did not make a determination whether
6 that would have implicated a particular coverage
7 year because that's not what I was asked to do.

8 BY MR. YNTEMA:

9 Q. Thank you. And so correct me if I'm
10 wrong -- and I hope you do -- is that your analysis
11 of the evidence of the exposure as to each of these
12 cases on the spreadsheet is as to whether the -- as
13 to whether there was exposure to asbestos products
14 to the plaintiff.

15 MS. PATTERSON: Objection; form.

16 THE WITNESS: That's not entirely
17 correct. It -- my analysis was to determine
18 whether there was a verdict risk to Covil related
19 to the described work conditions, exposures and
20 work conditions for the individual plaintiffs in
21 these cases.

22 BY MR. YNTEMA:

23 Q. So if I could put that short, whether
24 Covil had any exposure with respect to -- liability
25 exposure with respect to these particular cases;

1 correct?

2 MS. PATTERSON: Objection; form.

3 THE WITNESS: A little bit broader than
4 that, but that, in its essence, is correct. I was
5 looking to see whether there was any potential
6 verdict risk, whether that was an ultimate
7 liability or not. Because my experience is that
8 there is some overlap to verdict risk and actual
9 liability, but they are not necessarily the same
10 issue.

11 BY MR. YNTEMA:

12 Q. Okay.

13 A. You can take a bad verdict where you
14 don't actually end up having liability. So I was
15 looking at verdict risk on these cases that for
16 many of these is subsumed into liability, but in
17 terms of whether there was actual liability or not
18 at the end of the day, that is a little bit further
19 than my analysis.

20 Q. Thank you. And based on verdict risk
21 with each of these cases, do you -- did you assess
22 a particular settlement value for each case?

23 A. No, because I was not provided with
24 information about damages, potential lost wages,
25 any sort of the household services, medical cost

1 expenses or any of the hard damages that would go
2 into calculating the potential verdict number.

3 Q. So is it fair to say that your analysis
4 of the evidence of exposure in these cases was only
5 as to the verdict risk?

6 MS. PATTERSON: Objection; form.

7 THE WITNESS: The verdict risk, and
8 implicit in that is the propriety of resolving
9 them. So if you've got a verdict risk, does it
10 make sense to go ahead and settle it. So yes as to
11 verdict risk, but it's not just verdict risk, which
12 we can talk about a little bit on the individual
13 cases if you'd like. But it's verdict risk plus
14 the question of propriety of resolving the cases.

15 BY MR. YNTEMA:

16 Q. Okay. All right. Well, let's look at,
17 for example, Mr. Archer's case.

18 A. Yes.

19 Q. I know you've explained that the
20 highlighted portion there, these exposures did not
21 coincide with Mr. Archer's later exposures as being
22 conflicting of the prior narrative within that
23 evidence of exposure description; correct?

24 A. That is correct. It appears -- if you
25 look up a couple of sentences before, Covil's

1 defense counsel in its pretrial report lists a
2 series of Bates documents to establish that Covil
3 was at the site in 1968 and again in 1971 and that
4 that included pipe insulation and asbestos cement.

5 Mr. Archer was working as a pipefitter
6 at that facility. So if the materials were in
7 place when he arrived at the facility, pipefitters,
8 based on my experience in litigation, would have
9 needed to access the pipes -- consequently, the
10 name -- and that ordinarily required them to
11 infiltrate in-place product.

12 So if Covil had in fact installed
13 asbestos-containing thermal insulation and he was
14 required to intrude on that as part of his work as
15 a pipefitter, then that would have been an exposure
16 that I think would have coincided with his work at
17 the facility.

18 Given that the records show that Covil
19 was there in 1968 and again in 1971, if they were
20 providing insulation materials, those would have,
21 by definition, been asbestos containing because it
22 was prior to the elimination of asbestos in thermal
23 insulation products.

24 Q. Okay. And that would have been
25 important to your verdict risk analysis?

1 A. Yes, because I think that the case
2 would not have been -- would not have qualified for
3 a successful motion for summary judgment on that
4 basis.

5 As a result, since it would not have
6 been dismissed on motion for summary judgment under
7 South Carolina law, it, by definition, presents a
8 verdict risk.

9 His description of what was being done,
10 working as a pipefitter, and the Covil documents
11 combined indicate an exposure that is more than a
12 scintilla of evidence for purposes of a verdict.

13 So I would anticipate that this is a
14 case that presents a verdict risk for the company
15 and, consequently, was one that was appropriate for
16 resolution.

17 Q. And company, you mean Covil.

18 A. Correct.

19 Q. I'm sorry. Correct?

20 A. Correct.

21 Q. Yeah. I'm sorry. You're --

22 A. Am I cutting out? Yes. Sorry about
23 that. (Witness moves head up and down.)

24 Q. And so your testimony is not as to any
25 specific obligation any insurer should have with

1 respect to any verdict risk that you've assessed in
2 this case; correct?

3 A. I was --

4 MS. PATTERSON: Objection; form.

5 THE WITNESS: I was not asked to form
6 or express an opinion on that issue.

7 BY MR. YNTEMA:

8 Q. All right. Let's move to Mr. Robert
9 Ashworth --

10 A. Yes, sir.

11 Q. -- who's the next case name. As you've
12 noted there underneath it says LC dash WD. I can
13 assume what that might mean, but I'd like you to
14 testify if you can tell us what that means.

15 A. Yes. That is a wrongful death lung
16 cancer case. Mr. Ashworth was a laborer,
17 pipefitter, welder and carpenter from '68 to 2006,
18 including the Bowater paper mill, which we know
19 from looking at this whole collection of cases, is
20 a location where Covil was providing services. And
21 it appears that they were also providing thermal
22 insulation products, depending on the time period.
23 So that he was working at places that Covil was
24 located.

25 Mr. Ashworth had already passed away,

1 so his stepson, I believe it is -- yes, stepson,
2 Mr. Rollins, was the primary product identification
3 witness, and he provided testimony that -- connect
4 between Mr. Ashworth and Covil at various work
5 sites.

6 THE REPORTER: I'm sorry. You cut out
7 a little bit in that.

8 THE WITNESS: Okay.

9 THE REPORTER: He provided testimony
10 that?

11 THE WITNESS: That connects
12 Mr. Ashworth and Covil at work sites. And if you
13 look in the second column on that particular one
14 you'll note that I have some additional notes that
15 says Rollins deposition, quote, Corval, closed
16 quote.

17 When you read the Rollins deposition he
18 talks about the identity of the insulation
19 companies that were on site and doing work. And
20 when you pair that with the materials that are
21 referenced in the Cornwell deposition, which is
22 another coworker, then it is clear that one can
23 make the connection between Mr. Ashworth and Covil.

24 So this is a case, again, that I do not
25 believe would be successful in obtaining a motion

1 for summary judgment under South Carolina law.

2 Mr. Ashworth was working from 1968
3 onward on a variety of work assignments that would
4 have involved asbestos exposure. I particularly
5 noted that he was a carpenter. And in my
6 experience from prior cases I know that carpenters
7 in these sorts of industrial work sites often were
8 the ones who constructed the -- you know, what do
9 they call it? The scaffolding that was used by the
10 other types of job classifications, particularly
11 the insulators.

12 So it -- his exposure is of a type that
13 would be consistent with exposure to thermal
14 insulation products. And the other materials
15 provide a connection between Covil and its work on
16 site and production presentation of
17 asbestos-containing products.

18 So when you combine the two of those
19 sorts of categories, this obviously presents a
20 verdict risk for Covil and was appropriate for
21 resolution.

22 BY MR. YNTEMA:

23 Q. And indeed, both with Mr. Archer and
24 Mr. Ashworth's cases, those were both settled, to
25 your knowledge.

1 A. They were settled, and the amount
2 contributed by Penn National is reflected on that
3 September 1, 2022 letter to Mr. Protopapas.

4 Q. Thank you. And we'll get to that
5 letter. On to Mr. Aspray, Robert Aspray, it just
6 has M on it. If you could explain to me what you
7 mean by M dash.

8 A. That's a living mesothelioma plaintiff.
9 So at the time that his case was filed he was still
10 living. He was an electrician between 1953 and
11 1997. And as you see here, he had a variety of
12 jobsites, including the DuPont site where he
13 testified that he was in contact with DuPont and
14 that his coworker said that the electricians did
15 work that included overlap with the maintenance
16 team.

17 But more importantly on that one,
18 Mr. Robert Glenn, who is the corporate
19 representative for Covil, testified that there was
20 an overlap of work being done on the jobsite for at
21 least one of Mr. Aspray's confirmed places of work.
22 So that, again, couldn't have qualified for motion
23 for summary judgment, or at least not successful
24 motion for summary judgment.

25 The product identification and work

1 description is sufficient to be plausible in light
2 of the type of work he was doing.

3 And since he was working prior to 1972,
4 he would have been anticipated to have had exposure
5 to asbestos-containing thermal insulation products
6 as opposed to anything that was asbestos-free since
7 those didn't come on the market until after OSHA at
8 the end of '72.

9 Q. Okay. Thank you. The fact that
10 Mr. Aspray -- Aspray was a living meso, is that of
11 any consequence to you compared to a potential --
12 like a wrongful death plaintiff?

13 A. Well, it's significant in that you get
14 the description of the work directly from the
15 plaintiff in a deposition.

16 From a verdict size standpoint, living
17 mesothelioma cases at trial ordinarily command
18 larger verdicts than do wrongful death cases.
19 That's my experience in litigation.

20 So that's a consideration in
21 determining whether it's appropriate to resolve the
22 case or not. But those are always more complicated
23 cases simply by the nature of the exposure, and
24 they are ordinarily very compelling plaintiffs.

25 Q. I appreciate that. This is more a

1 general question as to all of these cases.

2 A. Yes.

3 Q. Do you know if all these cases were
4 South Carolina state court trial court cases, or
5 were any of them federal court cases?

6 A. I'd have to go back and look. I didn't
7 notate that in my spreadsheet here. That makes
8 some difference. It doesn't make a tremendous
9 amount of difference because the application of
10 South Carolina state law would still be appropriate
11 even if it were in a federal court venue.

12 I've tried cases in both state and
13 federal court, not in South Carolina, but state and
14 federal court. And while there is some difference
15 in the outcome of those verdicts for asbestos cases
16 I do not find that it is typically significant.

17 Q. And to your knowledge, out of these --
18 I believe there are 14 cases that are listed on the
19 spreadsheet, to your knowledge, are all of these
20 South Carolina cases?

21 A. I believe so, but I would have to go
22 back and double-check. Like I said, I don't have
23 that annotated on my spreadsheet. There may be a
24 couple that are not.

25 Q. Would that be a factor in your analysis

1 of any of these cases if one may be a North
2 Carolina case?

3 A. Not really, because the quality of the
4 descriptions of the work being done and the types
5 of exposures that are presented don't make a
6 significant difference one as to the other.

7 There are slight differences in local
8 procedure, but I didn't find that any of these
9 cases would be likely to obtain a motion for
10 summary judgment really anywhere unless plaintiff
11 had filed them in the state of Texas, and the Texas
12 standard is a little bit more stringent than
13 everywhere else. But none of these would have
14 qualified for filing there, so that really is not a
15 consideration.

16 Q. Do you know if Covil has ever obtained
17 a favorable summary -- had it ever obtained summary
18 judgment in its favor on an asbestos liability case
19 in South Carolina?

20 A. I suspect that would depend on the time
21 period, but as I sit here today, I do not have any
22 particular information regarding that issue.

23 Q. And when you say time period, why would
24 time period be important to you?

25 A. The law has changed somewhat, and

1 Justice Toal is the master asbestos judge and has
2 been a little bit more exacting in her analysis to
3 the factual situations than was the case when the
4 underlying cases were scattered amongst different
5 courts. So there is more consistency in the
6 rulings.

7 And so the time period of when a motion
8 for summary judgment was filed would make a
9 difference. If it was filed in, let's say, 1995
10 versus today, I don't think that that's informative
11 of whether there is a verdict risk for one of these
12 cases currently pending in South Carolina.

13 Q. Do you know if Covil has ever -- has
14 received a summary judgment order in its favor
15 since Judge Toal has taken the -- has presided over
16 the asbestos docket in South Carolina?

17 A. I don't know the answer to that one way
18 or the other. I do know that as it relates to the
19 14 cases that we're looking at which were settled
20 that there were motions for summary judgment filed
21 in some of those, but the files that I reviewed do
22 not reflect that there was a ruling in favor of
23 Covil in any of those.

24 Q. Okay. Thank you for that, ma'am. I'll
25 go back to these case-specific analyses. We

1 stopped with Mr. Aspray. I think we can move on to
2 Mr. Campbell.

3 A. Yes.

4 Q. It appears to me that you've annotated
5 Mr. Campbell was a living meso at the time that
6 this spreadsheet was generated; is that correct?

7 A. That is what my note says.

8 Q. And is there anything about the -- I
9 don't see any highlighting there in the evidence of
10 exposure, but is there anything in the evidence of
11 exposure that is meaningful to you in analysis of
12 his case?

13 A. Yeah. Actually, basically everything
14 that's in that box. He was working for Duke Power
15 as a carpenter between '69 and '79, and as a civil
16 maintenance technician between '79 and '91. That,
17 according to this, comes from his interrogatories
18 and is consistent with materials that I reviewed.

19 While he was working in maintenance he
20 was around Covil insulators, quote, the entire time
21 that he was there. And why that is important to me
22 is that it is my experience that the maintenance
23 workers who did cleanup cleaned up behind the
24 insulators.

25 So if Covil insulators were there the

1 entire time between '69 and '79, that time period
2 between '69 and late '72 would, by definition, have
3 included asbestos-containing thermal insulation
4 products. And as a maintenance worker I would have
5 anticipated that he would have been doing cleanup
6 of that. So that gives the validation to the tie
7 between Mr. Campbell and his claims against Covil.

8 Q. Thank you. And to be clear -- I'll
9 routinely ask you this. To be clear, to your
10 knowledge, the Jerry Campbell case was eventually
11 settled with a contribution to the settlement by
12 Penn National; correct?

13 A. That is what is reflected on the
14 September 1, 2022 correspondence, yes.

15 Q. Thank you. Moving on to Mr. D'Amico,
16 it appears that you do have a M slash wrongful
17 death notated below his name. Again, remind me of
18 what you mean by M slash wrong -- WD.

19 A. Mesothelioma wrongful death. And you
20 will note in the second column I have -- to the
21 extent you can read my scribbly handwriting, it
22 says prior Baron & Budd pleural.

23 Mr. D'Amico is interesting for a
24 variety of reasons. He was an engineer, supervisor
25 and manager for Duke Power between '51 and '89,

1 according to these materials. He was a frequent
2 testifier as a product identification witness.

3 He had his own early case as a Baron &
4 Budd plaintiff. Baron & Budd, as you know, was
5 the -- one of the original asbestos plaintiff firms
6 out of Dallas. And in his original case which I
7 believe was in the 1990s -- I'd have to go back and
8 pull the deposition -- he presented as having
9 pleural plaques which -- for which he received a
10 very minimal settlement.

11 Pleural plaques are a marker of
12 asbestos exposure. They are not ordinarily
13 debilitating. The problem with them is that what
14 we have learned through both the litigation and my
15 understanding from medical experts is that given
16 enough time, pleural cases very often develop into
17 mesothelioma, which is what happened here.

18 So we have an extensive amount of
19 information on Mr. D'Amico, and his description of
20 all of the work that was being done is very
21 consistent. He was around the insulators, he was
22 around the various products. And given the time
23 periods, they would have been asbestos-containing.

24 But the -- probably the most
25 significant thing here if you look at the bracketed

1 part, additionally the notes made by Covil during
2 the deposition reflect its presence at a number of
3 the Duke Power facilities while Mr. D'Amico worked
4 at the same site.

5 So that is a case that I think would
6 present significant verdict risk for the company
7 and, in fact, is one of the cases that's indicated
8 on the September 1, 2022 letter as having been one
9 where Penn contributed to the resolution, which, by
10 the way, I think was a really good idea. That
11 would have been a very difficult case to have tried
12 successfully.

13 Q. And going back in more general to all
14 of these 14 cases just to get this question out of
15 the way, are you aware of any other insurer that
16 would have contributed with Penn National to any of
17 these cases?

18 A. I do not have any information
19 concerning that.

20 Q. So if there was an insurer group,
21 quote/unquote, contributing to these cases, you do
22 not know that?

23 A. I was not provided with information
24 from which I could derive that and have not been
25 asked to express any opinions on it.

1 Q. Thank you. Just stepping forward on to
2 Mr. Garren's case.

3 A. Yes, sir.

4 Q. If you could explain that in the same
5 nature that you've explained the other cases.

6 A. Of course. Mr. Garren was a living
7 lung cancer at the time that he filed his case. He
8 showed that -- in his interrogatory shows employed
9 as a welder between '77 and 2008 at the Duke Power
10 generating facilities in North and South Carolina.

11 He testified that he generally recalled
12 Covil insulators who worked at the Duke Power
13 plant. He, more importantly, testified he was also
14 at Catawba, which is significant to me, because
15 when you look at these cases as a group sort of
16 holistically, Catawba comes up over and over. It's
17 what in my prior life I would have called a
18 historic worksite because there does not seem to be
19 any real dispute that Covil was there and providing
20 products there.

21 But Mr. Garren testified that Covil
22 removed old installation -- insulation and
23 installed new insulation. So he was seeing them do
24 both sides of that.

25 And old insulation, by definition,

1 considering the time period here, would most likely
2 have been asbestos-containing. The new insulation
3 may or may not have been, depending on the time.
4 But -- looking down here to see if there's anything
5 else.

6 Sort of at the very end, kind of like
7 the Aspray description, I noted that it says that
8 he didn't have a specific recollection of a
9 specific time that he worked around a Covil
10 insulator, but considering the totality of his
11 testimony about having seen them on the job and
12 observing what they were doing and working around
13 them, I think that that was sufficient
14 identification. It is certainly unlikely that they
15 would have been able to have obtained a motion for
16 summary judgment on that.

17 And he did have lung cancer which the
18 medical experts associate with asbestos exposure if
19 there is asbestos exposure in the work history.

20 Q. Certainly. Thank you. Okay. Moving
21 on to the next one, is Jolly, Mr. Beverly Jolly.

22 A. Yes, sir.

23 Q. I'll go ahead and let you go forward
24 and explain your annotations and then what was
25 important to you. I --

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1 MR. YNTEMA: Strike all that. I
2 apologize.

3 BY MR. YNTEMA:

4 Q. So with respect to Mr. Garren's case,
5 you thought that that was a case that should be
6 resolved.

7 A. I did. The fact that he was working
8 around Covil as they removed old insulation, and it
9 appears that Covil had possibly installed that
10 insulation prior to the elimination of asbestos,
11 that is certainly a case that would be appropriate
12 for resolution rather than for trial.

13 Q. Okay. Thank you. Now we can move on
14 to Mr. Jolly, and again, I'll let you describe your
15 annotations there and your analysis of Mr. Jolly's
16 case.

17 A. Sure. Mr. Jolly was a mesothelioma
18 wrongful death case. His case is particularly
19 complicated because his father worked as an
20 insulator for Duke from '46 to '84. So Mr. Jolly,
21 the plaintiff, had household exposure from a very
22 young age.

23 And Jolly testified that he remembered
24 his father working in the Duke plants, including
25 Duke Catawba. And Catawba is significant for me

1 because you see it again and again in this list of
2 14 cases and is a facility where Covil had an
3 extensive presence, and it appears that their
4 presence was both selling insulation and then
5 installing the insulation.

6 But in terms of the exposure for
7 Mr. Jolly, the plaintiff, he was a pipefitter for
8 Duke between '79 and 2003. And the Ellis &
9 Winters' analysis says that Covil performed
10 contract insulation work at Belew in the '70s and
11 '80s and that Covil contracted with Duke for both
12 labor and materials for all insulation needs on
13 units 1 and 2 for an extended period of time.

14 That being said, this case presents
15 household exposure, personal work exposure. They
16 are able to provide some tie to Covil and its work
17 practices and products both before and after
18 installation of asbestos-containing thermal
19 insulation products.

20 I would have not thought this case was
21 appropriate for granting of a motion for summary
22 judgment and was certainly appropriate for
23 resolution.

24 Q. Okay. And indeed, Mr. Jolly's case was
25 resolved and settled; correct?

1 A. It was. It too is noted on the
2 September 1, 2022 letter from Penn National to
3 Mr. Protopapas as one of the cases in which Penn
4 National, quote, was called to participate in the
5 settlement.

6 Q. Thank you. Moving forward to Mr. -- I
7 believe his last name is pronounced Jonas, his case
8 and evaluation bridges into page 1030.

9 A. Yes.

10 Q. And again, he was a living meso; is
11 that correct?

12 A. That is correct. He was a welder and
13 welder's pipefitter at the Catawba nuclear plant
14 between '77 and '84.

15 Q. Right.

16 A. He --

17 Q. I'm sorry to interrupt you, ma'am.

18 A. That's okay.

19 Q. I'm trying to follow you. He was a
20 pipefitter -- let me see. Yes, I see that now. I
21 apologize.

22 A. That's okay. The type is very small.
23 So yes.

24 Q. Thank you. I'll let you continue,
25 ma'am.

1 A. Okay. If you flip over to the next
2 page it says that he continued to work at Duke
3 Power in various capacities through 2003.

4 There was testimony from a coworker
5 about the Duke Power Catawba plant, and you will
6 see at the top I had annotated Garren, comma, too.
7 Because this testimony is consistent with the
8 testimony from the Garren case about Covil's
9 presence at the facility and that Duke hired Covil
10 to both insulate equipment and provide products
11 during the construction of Catawba.

12 So even though the potential exposure
13 for Mr. Jonas was after the cessation of use of
14 asbestos in thermal insulation products, the
15 materials that were in place from having been
16 constructed would still have been
17 asbestos-containing.

18 And the fact that they were called --
19 going down further, that Covil was the only
20 insulation contractor at Duke Power's nuclear
21 plants, it makes the connection between Covil and
22 the claimed exposures for the plaintiff viable.

23 And again, this is a case that I
24 wouldn't anticipate would qualify for a successful
25 motion for summary judgment, which in turn means

1 that it is a verdict risk and, therefore,
2 appropriate for resolution and is -- not to
3 anticipate, but that case is listed on the
4 September 1, 2022 letter from Penn National to
5 Mr. Protopapas.

6 Q. Thank you. Feel free to anticipate my
7 next question. It doesn't -- I take no offense to
8 that. Thank you.

9 A. Okay.

10 Q. So let's go ahead and start --
11 continuing to move on through these cases. And I
12 appreciate your analysis for each one, and I think
13 it's necessary for you to describe your annotations
14 and any of your thoughts as to the evidence of
15 exposure. We'll move to the -- Mr. Teddy Knight
16 and I'll let you explain your annotations, your
17 highlights and then your analysis.

18 A. Okay. Mr. Knight was a meso wrongful
19 death case. He had worked as a pipefitter and
20 welder between 1966 and 1973.

21 Pipefitters and welders were not
22 necessarily interchangeable, but people doing work
23 on pipes often did in fact do the welding, and that
24 required them to access pipes that were probably
25 previously insulated.

1 And I say probably, because unless it
2 was a new construction, it is my experience and
3 understanding from the testimony in the long
4 litigation that those pipes would have been
5 insulated. Therefore, in order for the pipefitter
6 or welder to access the item that they're working
7 on they have to do an incursion into the
8 insulation, which is the way that those individuals
9 received exposure.

10 There was testimony from a Mr. Robert
11 Cassidy that he had testified -- testified. Let me
12 start that again.

13 There was testimony from Mr. Robert
14 Cassidy, who's a coworker, that he recalled
15 Mr. Knight being on locations where there were
16 Covil insulation workers on sites.

17 And the plaintiff's younger brother,
18 Randy, had worked with him in Ethyl -- at Ethyl in
19 the mid to late '70s and remembers working at the
20 plant. And he testified that Covil supplied the
21 insulation and he recalled the trucks unloading the
22 insulation.

23 The type of exposure that is described
24 for Mr. Knight is the type that you typically see
25 in this litigation where there is exposure to

1 insulation products. Here they have identified not
2 just insulation but also workers on site. So that
3 is significant in that it corroborates the
4 potential of exposure.

5 This is a case that I would not
6 anticipate being appropriate for a successful
7 motion for summary judgment, and I would say that
8 was true whether we're talking about South Carolina
9 or really just about anywhere else other than I'll
10 except Texas because of BorgWarner opinion.

11 It would certainly be appropriate to
12 resolve this case. And in fact, this case was
13 resolved and is listed as one of the cases on the
14 September 1, 2022 letter from Penn National to
15 Peter Protopapas regarding cases in which Penn
16 National has been called upon to participate in the
17 settlement. Do you have any other questions about
18 Mr. Knight?

19 Q. No. We can move on to Mr. Morgan. I'm
20 starting to get the sense that you anticipate my
21 questions, which are appreciated, and it's making
22 this deposition much more efficient as to this. So
23 I'll let you go ahead and explain Mr. Morgan and
24 your annotations and highlights and your analysis.

25 A. Mr. Morgan was a living lung cancer

1 case, and his wife was an asbestosis plaintiff.
2 The allegation here was that he had developed lung
3 cancer from exposure to asbestos-containing
4 products in the course of his work, and he had
5 brought fibers home on his clothing to which his
6 wife was exposed, and as a result, she developed
7 asbestosis.

8 He worked as an electrician alongside
9 Daniel Construction from '64 to '67. That time
10 period is prior to the elimination of asbestos from
11 thermal insulation products. Among his work sites
12 was the Champion paper mill in Clinton, North
13 Carolina. He was the top helper for the electrical
14 work at that site and worked next to the insulators
15 who were using both insulation and
16 asbestos-containing cement.

17 We haven't really talked about
18 asbestos-containing cement today, but
19 asbestos-containing cement was a highly friable
20 product and had to be mixed and then applied over
21 the thermal installation [sic]. So that typically
22 involved, from an industrial hygiene perspective, a
23 significant exposure, depending on what the work
24 practices were. We don't know that here. We don't
25 know what those work practices were. But given the

1 description, one can assume that there was some
2 exposure there.

3 The Covil plant records indicate that
4 the Champion paper mill in Canton, North Carolina
5 was among Covil's largest early industrial
6 insulation jobs which Covil completed in 1965.

7 The Covil records certainly corroborate
8 the concept that there would have been
9 asbestos-containing insulation provided by Covil
10 either directly or as a supplier, a third party,
11 given the time period, because it's prior to 1972.
12 And the records indicate an overlap with Mr. Morgan
13 at that facility in North Carolina.

14 There were also other sites where he
15 worked, and Mr. Cornwell talks about the Rock Hill
16 and Celanese plants and says that Covil was on
17 those facilities, which I understand to be South
18 Carolina facilities, during the entire time that he
19 was there from the '70s through 1985.

20 Again, this is a case I would not
21 expect to be appropriate for a successful motion
22 for summary judgment. Consequently, it would be
23 one that was appropriate to settle because of the
24 verdict risk when you combine the fact that this
25 gentleman had lung cancer and his wife had

1 asbestosis would be significant.

2 Q. Okay. Stepping back just generally if
3 you don't mind me interrupting the flow, but it's
4 your understanding that Ellis & Winters prepared
5 these spreadsheets that you eventually redacted and
6 highlighted.

7 A. I don't know if these came from Ellis &
8 Winter or if they came from Morgan Lewis.

9 Q. Okay. So you don't know which firm
10 they -- that would have -- would have generated
11 these spreadsheets.

12 A. No. I can tell you that after I got
13 the spreadsheet I did coordinate the spreadsheet
14 with the eight notebooks to confirm that the
15 information reflected in the spreadsheet was in
16 fact consistent with what is in the underlying
17 materials.

18 As to who prepared those, I don't know,
19 but I'm confident of the information in them based
20 on my separate review of the underlying documents.
21 It saved me a whole lot of work.

22 Q. I understand. And do you have any
23 knowledge as to whether these spreadsheets were
24 ever provided to Penn National?

25 A. I do not know the answer to that.

1 Q. Okay. Thank you. And you may have
2 answered this question, but I just want to make
3 sure it is answered. With respect to Mr. Morgan,
4 that case was resolved with a contribution by Penn
5 National?

6 A. The Morgan case is reflected on the
7 list of cases to which Penn National was called
8 upon to participate in resolution according to the
9 September 1st, 2022 correspondence from Penn
10 National to Peter Protopapas.

11 Q. Okay. Moving on to Mr. Moss's case, I
12 will let you provide us with the same analysis of
13 the annotations, the highlighting and your analysis
14 of the exposure.

15 A. Okay. Mr. Moss was a mesothelioma
16 wrongful death case. He had worked as a welding
17 inspector at the Catawba nuclear plant from 1981 to
18 1985.

19 And he testified that he was around a
20 lot of grinding and that sort of work that was
21 dusty. Significant documentary and deposition
22 evidence shows that Covil supplied the insulation
23 and materials for the construction of that plant
24 and was there at least in the 1980s.

25 The Catawba plant, as we have

1 previously discussed, is one that is referenced in
2 a number of the cases. And if you look at the
3 materials holistically as opposed to just
4 singularly, it is a reasonable conclusion that
5 those materials at Catawba came from a time period
6 when there was asbestos-containing thermal
7 insulation. And it's clear that Duke -- those Duke
8 plants involved a significant amount of Covil work.

9 There are invoices and purchase orders
10 that show that Covil was on the facility until at
11 least 1983. So they certainly were there and
12 continuing to work.

13 Because this is a mesothelioma case and
14 there are links in the invoices and purchase
15 orders, I would not expect that this would be a
16 case that was appropriate for a successful motion
17 for summary judgment. Therefore, it presents a
18 verdict risk. Because it presents a verdict risk,
19 it was appropriate to resolve the case. It is one
20 that resolved, and in fact, the Moss case is listed
21 in the letter from Penn National to Mr. Protopapas
22 in September of 2022.

23 Q. Let me step you back just in general.
24 As far as verdict risk, you've kind of attributed a
25 verdict risk to each of the cases we've evaluated

1 thus far, and I think if there's a -- and I think
2 you had a verdict risk as to each of the cases that
3 we'll talk about, the remaining three, I think.

4 Is there a -- is there a graduation to
5 your verdict risk? Meaning, is there a -- I mean,
6 if you can rank a verdict risk from 1 to 10, 10
7 being the worst, I mean, do you have a range of
8 verdict risk that you would attribute to any case,
9 or when you say there's a verdict risk, is that it?

10 A. If you mean by that do I have a
11 numerical verdict in mind for each of the
12 individual cases, I would have to see the
13 underlying damage model to understand what the
14 specific losses were for an individual case. So I
15 would need to know what the medical expenses were
16 to the extent there were lost wages, household
17 service predictions and so on.

18 But for many of these cases,
19 particularly for the mesothelioma cases, it is not
20 uncommon that it is what I would call the soft
21 damages that are the most significant component of
22 verdicts. And the plaintiffs that we have been
23 talking about are all long-term, solid citizens.
24 They -- particularly the cases like Mr. Morgan
25 where you've got both him and his wife, those

1 present significant dollar damage verdicts.

2 So in my analysis I am looking both at
3 the risk of a jury finding a liability which then
4 predicates a damage award, but I haven't seen any
5 of these that I think would be an insignificant
6 dollar amount.

7 The verdict numbers for asbestos cases
8 around the country has tended upwards fairly
9 significantly over the last 20 years, and that's
10 publicly available information. I did not compile
11 that as part of my preparation for opinions in this
12 case.

13 I think probably all the participants
14 are familiar with how those numbers have tended
15 upwards over time, and they are multimillion-dollar
16 verdicts. So even a small verdict in an asbestos
17 case with the types of exposures we're talking
18 about is probably multiple millions of dollars.

19 Q. Thank you for that. I was thinking
20 about -- I'll let you -- we can move on to the next
21 case which is, I believe, the -- I may have lost my
22 way here -- Murphy case, Nicholas Murphy. I'll let
23 you provide the same type testimony with respect to
24 Mr. Murphy's case.

25 A. Mr. Murphy was a living mesothelioma

1 case. He worked for Daniel Construction as a
2 welder at the Bowater plant in Catawba, getting
3 back to the Catawba connection.

4 This particular box starts with a
5 description of him as Mr. Moss, but when you look
6 at the underlying documents and the remainder of
7 the box here, it is in fact Mr. Murphy that we're
8 talking about.

9 He worked at the Catawba plant as a
10 welder between '74 and '78. And Ellis & Winters'
11 review of the Covil documents and the testimony
12 shows that Covil supplied both insulation and
13 contracting services to the mill prior to
14 Mr. Murphy's arrival.

15 So he -- they were providing services
16 and materials prior to 1974 we know from Dwaine
17 Waters' testimony, which is actually referred to
18 down in the Sims discussion. But Mr. Waters gave
19 stipulated testimony in one of the prior Covil
20 trials that Covil was providing asbestos-containing
21 thermal insulation products through to at least
22 '73, possibly '74.

23 So the information in this case would
24 indicate to me that this is a case that would be
25 unlikely to obtain a motion for summary judgment.

1 There is sufficient product identification and
2 company identification to support a verdict
3 finding. That means there is a verdict risk to
4 this case, which makes it appropriate for
5 resolution. And it is, in fact, one of the cases
6 listed as a resolved case for which Penn was asked
7 to participate in the September 1, 2022 letter from
8 Penn National to Mr. Protopapas.

9 Q. Okay. Thank you for that. Let's
10 continue on to Mr. Sims's case which follows, if
11 you don't mind.

12 A. Yes. Mr. Sims is a lung cancer
13 wrongful death case. And you'll notice in the
14 second column that I annotated that he is a
15 lifelong nonsmoker and that Dr. Roggli found no
16 plaques.

17 That is significant on the medical
18 side, because as a lifelong nonsmoker but with
19 asbestos exposure, many, if not most -- certainly
20 all of the plaintiff experts would reach the
21 opinion that his lung cancer was associated with
22 asbestos exposure. There's no alternative cause
23 here because he was a nonsmoker.

24 Dr. Roggli would not have attributed it
25 because he didn't find pleural plaques, but those

1 aren't necessarily determinative. They're
2 certainly not determinative to a jury.

3 Mr. Sims worked as a coal handler and
4 helper. That's actually a job classification I am
5 not as familiar with. You don't typically see
6 that.

7 However, his coworker testified that
8 the coal yard workers were in fact required to work
9 in maintenance in plant during shutdown. So that
10 would explain why he was in the plant and having
11 asbestos exposure.

12 And the coworker also testified that he
13 remembered him and Mr. Sims, the other coworkers,
14 working around those who were removing insulation
15 from equipment. That was corroborated by an
16 additional coworker named Leslie Holiday.

17 The information from the documents --
18 and this is material and labor invoices. So I
19 assume these are documents that came from the
20 worksite itself -- show that Covil was there during
21 the '70s, '80s and '90s.

22 Mr. Sims also worked as a thread
23 machine operator in Anderson, South Carolina
24 between '73 and '78. And the Covil records show
25 that their employees were on site doing maintenance

1 and other projects from '67 to '82. Because that
2 straddles the time period when they would have been
3 providing asbestos-containing thermal insulation
4 products, that certainly makes the testimony
5 concerning exposure corroborated.

6 And further, Mr. Waters, in his
7 stipulated testimony, said that they didn't provide
8 asbestos-free boxes until 1974, but the implication
9 is that prior to 1974 those were -- would not have
10 been asbestos-free, and that would be consistent
11 with his stipulated testimony in the prior trial.

12 So I would consider this to be a case
13 that would not get a successful grant of motion for
14 summary judgment, presenting, therefore, a risk of
15 an adverse verdict, making it appropriate to reach
16 resolution. And in fact, it was resolved, and the
17 Sims case is listed as one of the cases to which
18 Penn National participated in the September 1, 2022
19 letter from Penn National to Peter Protopapas.

20 Q. Okay. I appreciate that. And on
21 Mr. -- on the next cases, Mr. Wannamaker's --
22 you'll get to this, but I don't want to interrupt
23 you when you do. So before you start to give us
24 your analysis you do have circled here 1964 and
25 2014. When you get to that, if you could give me

1 an explanation as to why you circled those years.

2 A. Sure. That's an exceptionally long
3 time period. Mr. Wannamaker, if I remember from
4 his deposition and discovery answers, went to work
5 as a very, very young man. So he had a very
6 lengthy exposure.

7 But from 1964 through late 1972,
8 whatever he would have been doing as a pipefitter,
9 steamfitter, insulator, or welder would have
10 exposed him to asbestos-containing thermal
11 insulation products. But that's the reason I
12 circled that. 1964 is a particularly early time
13 for one of the plaintiffs in this particular group
14 to have begun to have exposure.

15 He was a living mesothelioma plaintiff.
16 And based on his job descriptions, he certainly
17 would have had job duties that exposed him to
18 insulation products.

19 He worked as a welder between '77 and
20 '79. The Ellis & Winters initial report which is
21 included in those eight notebooks provided
22 material -- said that Covil provided materials and
23 performed insulation work at the Winyah, if I'm
24 pronouncing that correct, power plants during the
25 late '70s and early '80s.

1 This, again, is a case that there is
2 sufficient connection to Covil to make it unlikely
3 to be successful in obtaining a motion for summary
4 judgment. Given that it couldn't get a motion for
5 summary judgment, a mesothelioma case of this type
6 for someone with that length of exposures presents
7 a significant verdict risk, making it appropriate
8 for resolution and, in fact, is one of the cases --
9 in fact, it's the final case listed on the list of
10 cases to which Penn was asked to participate and
11 reflected in the letter dated September 1, 2022
12 from Penn National to Peter Protopapas.

13 Q. Thank you, Ms. Frost. We have a couple
14 ancillary-type questions with respect to Covil. To
15 your knowledge, was Covil an insulator of
16 insulation products?

17 A. It is my understanding --

18 Q. I'm sorry. Installer of insulation
19 products. I apologize.

20 A. It is my understanding, based on the
21 description, that they were an insulation company.
22 So they sold insulation products, they installed
23 insulation products, and they maintained insulation
24 products.

25 Q. Yes, and I appreciate that. I was

1 going to go through each step individually, but
2 you've answered the question. They were an
3 installer, they manufactured insulation products,
4 and they maintained insulation products. What is
5 your interpretation -- what is your -- what is the
6 meaning of --

7 A. Hold on a second. Hold on a second. I
8 don't know that they manufactured insulation
9 products. I know that they sold insulation
10 products that were manufactured by others, because
11 I have seen reference in various of the deposition
12 testimony that they provided Kaylo and some other
13 products. Kaylo was a name brand -- and it's
14 K-A-Y-L-O for the court reporter.

15 That was a name-brand thermal
16 insulation product that was manufactured first by
17 Owens-Illinois in the '50s and then later by Owens
18 Corning fiberglass.

19 I don't know whether Covil itself
20 manufactured thermal insulation materials. They
21 may have, but they certainly provided thermal
22 insulation products manufactured by other companies
23 as part of the services that they provided to their
24 clients in providing insulation and maintenance
25 services.

1 Q. Thank you. And when you say that Covil
2 maintained insulation, what do you mean? What do
3 you mean by maintaining it?

4 A. Well, it's clear from the description
5 of some of the plaintiffs and from some of the
6 descriptions you've seen above here, Covil had not
7 just contracts to come in and install insulation.
8 They did routine maintenance and other services for
9 their clients on an ongoing basis.

10 Duke, in fact -- let me see if I can
11 find it here. They were hired by Duke to do their
12 labor and materials. So they did -- that's
13 installation and materials.

14 But I was looking here. One of
15 these -- if you look at the box on the chart that
16 describes Mr. Murphy, it says that the Covil
17 documents and testimony establish that Covil
18 supplied both insulation and contracting services
19 to the mill.

20 And there was at least one other that
21 described that Covil had workers in and out of the
22 plants on an ongoing basis. So it does not appear
23 to me that they only did initial installation.
24 They were also doing ongoing work on those
25 facilities.

1 And I would describe -- I would
2 characterize that as maintenance. Not in terms of
3 doing sweeping and that sort of thing, but they
4 clearly had an ongoing requirement related to the
5 insulation products and materials that they were
6 providing.

7 Q. Okay. And the products and materials
8 that Covil was either providing or installing, how
9 long would those products or materials contained
10 asbestos? Meaning when in the approximate year
11 would those products have ceased containing
12 asbestos?

13 MS. PATTERSON: Objection; form.

14 THE WITNESS: Typically those products
15 stopped containing asbestos sometime in the early
16 '70s. It really depends on the manufacturer
17 involved.

18 And as you will note from that
19 reference to the Waters testimony, sometime in 1974
20 they started providing boxes that said
21 asbestos-free.

22 There is a significant history in the
23 asbestos litigation of the plaintiffs' bar taking
24 the position that manufacturers continued to
25 provide asbestos-containing thermal insulation

1 products after the institution of the OSHA
2 regulations in late 1972.

3 Some of the companies apparently had
4 inventory, and there has always been an ongoing
5 argument that that inventory was used rather than
6 destroyed. That would be a
7 manufacturer-by-manufacturer analysis to determine
8 the exact dates on which they stopped providing
9 third parties with asbestos-containing thermal
10 insulation and converted to asbestos-free.

11 That's a long way of saying sometime in
12 the '70s, but I cannot give you a specific date
13 because that does vary from manufacturer to
14 manufacturer.

15 THE VIDEOGRAPHER: Counsel, I've got
16 about five minutes until I need to go off the
17 video.

18 MR. YNTEMA: Okay. Thank you. Do you
19 want to go off video now and then come back on? I
20 probably have maybe 15 to 30 more minutes.

21 THE VIDEOGRAPHER: That works for me if
22 it works for you.

23 MR. YNTEMA: Okay. Let's take a break
24 and we'll go off the record.

25 THE VIDEOGRAPHER: We're off the record

1 at 12:57 PM.

2 (A recess transpired from 12:57 until
3 1:06.)

4 THE VIDEOGRAPHER: We are back on the
5 record at 1:06 PM.

6 BY MR. YNTEMA:

7 Q. Thank you, Ms. Frost, for your
8 testimony as to Exhibit 9. Thank you for going
9 through each one of those cases with me. I do
10 appreciate that. We probably have maybe 15, maybe
11 20 minutes left of our deposition. I've only got
12 mainly two more exhibits to ask you about, and one
13 of them is your CV, so you kind of see me tapering
14 down here.

15 The next exhibit I'm going to ask you
16 about is Exhibit -- what we marked as Frost Exhibit
17 10.

18 (EXHIBIT 10, Letter to Mr. Protopapas
19 from Mr. Wright dated 9-1-22, marked for
20 identification.)

21 BY MR. YNTEMA:

22 Q. That is the -- what I term the
23 impairment letter sent from Boyd Wright of Penn
24 National to Mr. Protopapas that you've recently
25 testified to that's dated September 1st, 2022.

1 We're going to bring that up for you to look at.
2 So is this indeed the letter -- oops. I'm trying
3 to navigate through it.

4 MR. YNTEMA: I'll let you scroll
5 through it slowly and show that to Ms. Frost. I
6 think we can stop there.

7 BY MR. YNTEMA:

8 Q. I know there's a second page there, but
9 is that indeed the impairment letter that you
10 recall referencing when -- while looking at the
11 spreadsheet to form your analysis in this case?

12 A. That is the correspondence from Penn
13 National to Peter Protopapas dated September 1,
14 2022, to which I have referred in connection with
15 my analysis of the cases on the spreadsheet that is
16 Exhibit 9.

17 Q. Okay. And all the cases that are
18 listed there are cases that were listed on the
19 spreadsheet; correct?

20 A. That is correct.

21 Q. And the amounts there that are listed
22 beside each of the cases, those are amounts that
23 were contributed to [sic] Penn National. Is that
24 your understanding?

25 A. That is my understanding based on the

1 context of the letter. I don't have any
2 independent knowledge one way or the other.

3 Q. Okay. And again, just to shore
4 everything up there, all the cases that are listed
5 in this letter and all the cases that are listed on
6 your spreadsheet, to your knowledge, have been
7 resolved and settled.

8 A. That is my understanding, yes.

9 Q. Okay. Now in that paragraph under the
10 case list, and it says:

11 As a result of the above-referenced
12 settlement payments, this letter serves to advise
13 you as Covil's court appointed receiver that the
14 global aggregate policy limits applicable under the
15 two policies issued to Covil are impaired by
16 \$613,672.50.

17 Do you see that?

18 A. I do see that.

19 Q. Do you take issue with that calculation
20 at all?

21 MS. PATTERSON: Objection; form.

22 THE WITNESS: I have no opinion. I
23 would have to take out a calculator. I assume that
24 that amount corresponds to the total of the numbers
25 associated with the 14 cases above, particularly

1 given that the paragraph above says that the
2 settlements are made with payments totaling that
3 same total number. But again, I have no
4 independent information but from what is reflected
5 here on the letter.

6 BY MR. YNTEMA:

7 Q. Thank you. And with respect to the
8 amounts contributed to a settlement by Penn
9 National, do you take issue with the amounts that
10 Penn National contributed to each one of those
11 settlements?

12 MS. PATTERSON: Objection; form.

13 THE WITNESS: I have no opinion one --
14 I'm sorry.

15 MS. PATTERSON: Go ahead.

16 THE WITNESS: I have no opinion.

17 BY MR. YNTEMA:

18 Q. You have no opinion as to whether those
19 amounts were too little or too much or in between.

20 A. Correct.

21 MS. PATTERSON: Objection; form.

22 THE WITNESS: I have no opinion on the
23 propriety of the settlement contribution.

24 BY MR. YNTEMA:

25 Q. And also, sitting here today, you don't

1 have any reason to dispute the amounts --

2 MR. YNTEMA: If we could go to the
3 second page.

4 BY MR. YNTEMA:

5 Q. I apologize, Ms. Frost. I thought we
6 had that second page pulled up. On the second page
7 it shows the policy periods with the amount that
8 Penn National has stated as being the limits of
9 those policies. You have no reason to dispute that
10 statement, do you?

11 MS. PATTERSON: Objection; form.

12 THE WITNESS: I do not have any
13 coverage opinions. So I would have no opinion
14 whether that is correct or incorrect and have not
15 been asked to develop any opinions on that.

16 BY MR. YNTEMA:

17 Q. Okay. That would be the same for the
18 impairment amount of \$1,386,327.50 that's listed in
19 that same sentence; correct?

20 A. I consider that to be a coverage issue,
21 and that is outside the area of my expertise and
22 outside the area of my designation.

23 Q. All right. Thank you, ma'am. And as a
24 lawyer I'm sure you understand that sometimes
25 there's just a need to ask the question even though

1 you know the answer.

2 A. I do.

3 Q. Ma'am, I think I know the answer to
4 this question, but I just needed your answer. Have
5 you reviewed any of Penn National's document
6 retention policies?

7 A. To the extent that the 30(b)(6)
8 depositions constitute part of the document
9 retention policies, yes, I have reviewed those. If
10 by that question you mean the specific written
11 document, unless it is contained within the
12 exhibits for the 30(b)(6) witness, then I have not.
13 But -- and I don't remember as I sit here if those
14 are attached to the deposition transcripts or not.
15 There certainly was discussion of them in the
16 context of those depositions.

17 Q. Do you intend to rely on Penn
18 National's document retention policy in providing
19 expert testimony in this case?

20 A. Let me think about that one for a
21 second. To the extent that it is my opinion that
22 from a historical perspective the defendants and
23 their associated insureds knew or should have known
24 that they should retain materials at least as early
25 as 1982 when Manville filed for bankruptcy, yes,

1 that would, in part, form a basis for my opinion
2 because I believe that there was an obligation to
3 maintain those policies.

4 To the extent that you're asking about
5 the phraseology of the particular retention policy,
6 that's something I haven't specifically been asked
7 to opine on.

8 Q. Do you have an opinion as to whether an
9 insurer should retain insurance policy-related
10 documents for an insured that it has no knowledge
11 has -- that it has no knowledge -- either has --
12 that the insured has exposure to liability asbestos
13 claims or lawsuits?

14 MS. PATTERSON: Objection; form.

15 THE WITNESS: It has no knowledge. If
16 they knew or should have known that the insured had
17 such liability -- and Covil is a perfect example.
18 Covil was an insulation company.

19 To the extent that a company was in the
20 business of writing coverage for a company that was
21 in that business, it is my opinion that at least as
22 of 1982 they either knew or should have known that
23 there was a potential for liability against those
24 types of insureds, and it would certainly have been
25 wise policy to make sure that those materials were

1 collected and protected.

2 BY MR. YNTEMA:

3 Q. Do you mean it would have been Covil's
4 obligation to collect and protect insurance
5 records?

6 MS. PATTERSON: Objection; form.

7 THE WITNESS: It is my opinion that it
8 was a joint obligation of anyone who had those
9 policies. If one was an insurer -- for example,
10 Penn National -- of companies that it knew to be in
11 the insulation business, considering the lay press
12 information, setting aside all of the legal
13 information about Manville and others, it would
14 certainly have been appropriate and I think
15 something that was reasonable for them to expect
16 that the companies that they were insuring in that
17 industry could be subject to liability and,
18 therefore, those materials should have been
19 maintained.

20 BY MR. YNTEMA:

21 Q. And do you have opinion as to how long
22 those materials should have been maintained by
23 insurers that may have insured companies like Covil
24 that installed or distributed asbestos-containing
25 insulation?

1 A. Well, according to the breakout panel I
2 heard at the DRI asbestos seminar last week which
3 was on alternatives to bankruptcy and how both
4 insureds and insurers were evaluating long-tail
5 exposures in asbestos litigation, that panel
6 predicted that there would be litigation through
7 2062 and runoff liabilities through 2072. So I
8 think that the obligation to maintain those
9 materials probably exceeds the life expectancy of
10 any of those of us who are still on this
11 deposition.

12 Q. I'm knocking on wood, but I will move
13 forward.

14 A. It was a scintillating panel, by the
15 way.

16 Q. So sitting here today, you have no idea
17 as to how long Penn National's document retention
18 policy was with respect to commercial general
19 liability policies.

20 MS. PATTERSON: Objection; form.

21 THE WITNESS: I believe that was
22 discussed in at least one of the 30(b)(6)
23 depositions. As I sit here today, I don't recall.
24 I do -- it is my general understanding that it was
25 not nearly as long as referenced by that panel at

1 DRI.

2 BY MR. YNTEMA:

3 Q. Prior to that panel at DRI had you
4 heard any other opinions as to how long an
5 insurance carrier should keep their insurance
6 policies as they may relate to an insured such as
7 Covil?

8 MS. PATTERSON: Objection; form.

9 THE WITNESS: The RAND analyses over
10 the last several years have posited that asbestos
11 litigation will continue through at least 2049,
12 which was, frankly, consistent with some of the
13 medical discussion in San Diego last week, but that
14 was not a new number to me.

15 The predictions about the length of the
16 asbestos litigation have been quite long. And in
17 fact, if you look back in that Manville opinion
18 that we talked about early in the deposition, if I
19 recall correctly they point out that in 1982, when
20 the bankruptcy was filed, the expectation was that
21 the litigation would last for at least 20 to 30
22 years from that point which would have brought us
23 roughly to now.

24 So it is certainly reasonable to expect
25 that a company or an insurer would have maintained

1 such records at least through current time. But if
2 you look at the current analyses of the long tail
3 of this litigation, whether it's correct that it
4 goes through 2049 or 2072, that still would be a
5 significant hold time that would be remaining for
6 those types of documents.

7 BY MR. YNTEMA:

8 Q. And that significant hold time would be
9 kind of a best practice for retaining insurance
10 documents with respect to companies like Covil;
11 correct?

12 MS. PATTERSON: Objection; form.

13 BY MR. YNTEMA:

14 Q. Is that your opinion?

15 MS. PATTERSON: Objection; form.

16 THE WITNESS: That comes awfully close
17 to a coverage opinion. I would say in a more
18 general sense that whether you're talking about an
19 insurer or an underlying insured that it would be
20 prudent to maintain those materials until such time
21 that there is either a bankruptcy, an alternative
22 to bankruptcy or some other conclusion of this
23 ongoing litigation.

24 BY MR. YNTEMA:

25 Q. Okay. And when you say underlying

1 insured with respect to Covil, would Covil be an
2 underlying insured in this case?

3 A. Yes, they would. They are the insured
4 in this case, as I understand it.

5 Q. The answer's yes?

6 A. Yes.

7 Q. Thank you. Okay, ma'am. In this case
8 have you reviewed any of Penn National's litigation
9 hold policies?

10 A. Unless they were discussed as part of
11 the 30(b)(6) materials, I don't remember anything
12 that was specifically described as a litigation
13 hold policy. If it is part of the discussion in
14 the 30(b)(6) deposition testimony, then I reviewed
15 the materials that were associated with those.

16 Q. Do you intend to provide any testimony
17 as an expert in this case as to Penn National's
18 litigation hold as to any of Covil -- Covil's
19 insurance policy-related documents?

20 A. My opinion would be the same that I
21 just described as it relates to general documents.
22 To the extent that there is litigation or a
23 reasonable expectation of litigation, then it would
24 be appropriate to collect and protect those
25 documents until such time as they are no longer

1 necessary.

2 Q. Is it your opinion that all insurers
3 should have had a reasonable expectation since at
4 least 1982 that if they insured a insulation
5 installer or distributor of such products that they
6 should have kept the insurance policy-related
7 materials?

8 A. I believe they were on notice as of the
9 time of the Manville filing. The Manville
10 confirmation in 1986 engendered a significant
11 discussion, both broadly and in litigation circles
12 and in insurance circles, of the implications for
13 insurers related to asbestos litigation.

14 So whether you put that obligation and
15 knowledge starting in '82 at the filing or '86 with
16 the confirmation, there was significant discussion
17 in the public press about the insurance
18 implications of asbestos and asbestos bankruptcies.

19 Q. Okay. And that obligation is also as
20 to underlying insureds as well; correct?

21 A. If they were at risk for asbestos
22 litigation, I think that companies should have kept
23 their documents. And that's not always possible.
24 I've had clients who had fires, I had clients who
25 had floods. There have been a lot of moving parts

1 depending on the particular circumstances of
2 particular companies. But as a general rule, it is
3 important to collect and protect those documents,
4 and companies began to do that fairly early on.

5 Q. And in this case are you aware that
6 Penn National actually has produced two insurance
7 policies for Covil?

8 A. That, I think, is a reasonable
9 conclusion based on the materials that I have read.
10 I have not seen those policies, nor have I been
11 asked to review them or derive any opinions because
12 that's outside the area of my designation.

13 Q. I understand. And you're not at this
14 point intending to testify as to the propriety of
15 Penn National's document retention program;
16 correct?

17 MS. PATTERSON: Objection; form.

18 THE WITNESS: I believe I've already
19 answered that. I think that they were under an
20 obligation to either -- they either knew or should
21 have known that they were in a position where those
22 policies were going to be called upon at some point
23 given that they were insuring a company that was in
24 the insulation business.

25 BY MR. YNTEMA:

1 Q. And that opinion is based on the
2 Johns-Manville case, bankruptcy case and the
3 confirmation in that case and also --

4 A. No, no, no.

5 MS. PATTERSON: Objection; form.

6 THE WITNESS: Yeah. That's just a good
7 illustration. That opinion is based on my more
8 than 30 years of experience in dealing with
9 asbestos litigation, my review of documents here,
10 my review of the relevant case law and what I know
11 about the ongoing litigation. So that opinion is
12 just one of many examples of the history that
13 relates to this litigation.

14 BY MR. YNTEMA:

15 Q. Okay. The RAND analysis that you
16 previously testified to, could you tell me the date
17 of that analysis?

18 A. RAND has done a series of reports over
19 probably the last 20 years. And I have always made
20 a practice of reviewing those when they came out.
21 I did not go back to those and review them in
22 preparation for either my opinions in this case or
23 my deposition testimony today.

24 It is something that I am generally
25 familiar with, and I am aware that they have done

1 projections for quite some time about the
2 anticipated length of the litigation. Those should
3 be available in the public domain.

4 Q. Okay. I'm going to try to be brief on
5 this. I think it is my final topic. I've gone
6 through your CV, but I'm not going to walk you
7 through that today. I just want to know, have you
8 ever been admitted to testify as an expert in
9 court?

10 A. I was present and ready to testify in
11 Judge Toal's court in connection with the USF&G
12 case. I do not recall whether I had been tendered
13 as an expert in advance or not, but I have not yet
14 given trial testimony as an expert in either the
15 Covil-related cases or any other case.

16 Q. So is it correct in saying that you
17 haven't been admitted in court as an expert on any
18 topic?

19 A. What I'm saying is I don't know,
20 because I don't know what the procedure was on that
21 prior case in Judge Toal's court. If I was not
22 admitted in that case in advance, then the answer
23 to your question would be you are correct, I have
24 not been previously admitted as an expert to give
25 opinions in trial.

1 Q. I appreciate that, ma'am.

2 MR. YNTEMA: I think that is all the
3 questions I have. There may be -- Ms. Patterson
4 may have questions on her end, but I appreciate
5 your time today. If I don't have any more
6 questions after Ms. Patterson, thank you for your
7 time and I appreciate your testimony today.

8 MS. PATTERSON: And we have nothing for
9 today. The receiver will reserve all questions for
10 this witness until the time of trial.

11 THE VIDEOGRAPHER: All right. This
12 concludes the deposition. We are off the record at
13 1:28 PM.

14 (Off the record.)

15 THE REPORTER: And, Ms. Patterson, did
16 you want to order a copy of the transcript with
17 exhibits?

18 MS. PATTERSON: Yes, ma'am, I would.
19 And what is your normal turnaround time?

20 THE REPORTER: We have been asked to
21 expedite this in five days, delivered on the 16th,
22 I believe.

23 MS. PATTERSON: Perfect. I would like
24 it that day. That would be perfect.

25 (EXHIBIT 11, Email to Ms. McCulloch

1 from Ms. Frost, with Attached Curriculum Vitae,
2 marked for identification.)

3 (The right to read and sign this
4 transcript was not waived.)

5 (The deposition was concluded at
6 1:28 PM.)
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CERTIFICATE OF REPORTER

I, Sandra K. Bjerke, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript was transcribed to the best of my ability using the Zoom technology platform, including, but not limited to, its inherent shortcomings of garbled speech, overmodulation, and voice-overlap cancellation;

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of November, 2022 at Charleston, Charleston County, South Carolina.



Sandra K. Bjerke, RDR, CRR, CBC

My Commission Expires

May 6, 2030

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1 Nancy Patterson

2 nancy.patterson@morganlewis.com

3 November 14, 2022

4 RE: Covil Corporation v. Pennsylvania National Mutual Casualty
Insurance Co.

5 11/9/2022, Sharla J. Frost (#5564159)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-carolinas@veritext.com.

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Co.

Sharla J. Frost (#5564159)

E R R A T A S H E E T

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Sharla J. Frost

Date

Covil Corporation v. Pennsylvania National Mutual Casualty Insurance Co.

Sharla J. Frost (#5564159)

ACKNOWLEDGEMENT OF DEPONENT

I, Sharla J. Frost, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Sharla J. Frost

Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20____.

NOTARY PUBLIC

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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1

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1 REPORTER'S NOTE: Since this deposition
2 has been realtimed and you may be in
3 possession of a rough draft form, please be
4 aware that there may be a discrepancy
5 regarding page and line numbers when
6 comparing the real-time screen, the rough
7 draft, rough ASCII, and the final
8 transcript. Also please be aware that the
9 real-time screen and the unedited,
10 uncertified rough draft transcript may
11 contain untranslated steno, an occasional
12 REPORTER'S NOTE, a misspelled proper name,
13 and/or nonsensical English word
14 combinations. All such entries are
15 corrected on the final certified transcript.
16 If the deposition has been videotaped, the
17 real-time draft, if any, will be compared
18 against the audio of the videotape in order
19 to assure complete accuracy on the final
20 transcript.

21 *****

22 I, the party working with realtime,
23 understand that if I choose to use the real-time

24 rough draft screen or printout that I am doing so
25 with the understanding that the rough draft is an

2

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1 uncertified copy. The real-time rough draft may be
2 used in place of or in addition to my notes taken
3 during testimony. Specifically, if I choose to
4 cross-examine or prepare a witness by using a rough
5 draft, I am doing so with full knowledge that the
6 rough draft is uncertified and that I am doing so
7 at my own risk. I further agree not to share,
8 give, copy, scan, fax, or in way any distribute the
9 real-time rough draft in any form (written or
10 computerized) to any party. However, my own
11 experts, co-counsel, and staff may have limited
12 internal use of same with the understanding that I
13 agree to destroy all real-time rough draft and/or
14 computerized forms, if any, and replace same with
15 the final transcript and/or final computerized form
16 upon its completion.

17 By accepting a rough draft transcript
18 or a rough ASCII diskette, I am hereby agreeing to
19 the above-mentioned terms, and I further agree to
20 pay for these reporting services that have been
21 provided.

22

23

24

25



3

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1 THE VIDEOGRAPHER: Good afternoon,
2 we're now on the record. The time on the
3 monitor is 1:26 p.m. Eastern Standard time
4 today's date is November 28th, 2022. This
5 is the video recorded deposition of
6 Mr. Charles M. Miller in the matter of Covil
7 Corporation versus Pennsylvania National
8 Mutual Insurance, et al. This deposition is
9 being held remotely via Zoom.

10 Counsel, please introduce yourselves
11 after which our court reporter Susan will
12 swear in Mr. Miller.

13 MR. BROWN: Good morning, this is David
14 Brown for Defendant Pennsylvania National
15 mutual casualty company and I'll be at least
16 initially taking the deposition.

17 MR. NES: Brad Nes of Morgan Lewis for
18 the receiver for Covil Corporation.

19 MS. PEAKE: And Shanon Peake from Smith

20 Robinson also for the receiver for Covil
21 Corporation.

22 THE COURT REPORTER: The attorneys
23 participating in this deposition acknowledge
24 that I am not physically present in the
25 deposition room and that I will be reporting

4

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1 this deposition remotely.

2 They further acknowledge that in
3 lieu of an oath administered in person, I
4 will administer the oath remotely.

5 The parties further agree that if
6 the witness is testifying from a state where
7 I am not a Notary that the witness may be
8 sworn in by an out-of-state Notary.

9 If any party has an objection to
10 this manner of reporting, please state it
11 now.

12 [NO RESPONSE]

13 THE COURT REPORTER: Hearing none,
14 I will proceed.

15 WITNESS

16 being first duly sworn, testified as follows:

17 EXAMINATION

18 BY MR. BROWN:

19 Q. Good morning Mr. Miller, good
20 afternoon, here on the East Coast but good morning
21 to you on the West Coast. Could you please state
22 your full name for the record?

23 A. Charles Murray Miller, the middle name
24 is M-u-r-r-a-y.

25 Q. Mr. Miller, my name is David Brown. We

5

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1 met just briefly off the record before we started
2 to day. I represent Pennsylvania National Mutual
3 Casualty Insurance Company in a matter pending in
4 Richland County, South Carolina in which you've
5 been designated as a potential expert witness for
6 the Plaintiff.

7 Do you understand that's what brings us
8 here today?

9 A. Yes.

10 Q. Okay. I understand that you have given
11 deposition testimony previously is that a fair
12 assumption?

13 A. Yes.

14 Q. On how many occasions have you given
15 deposition testimony approximately?

↑

16 A. Probably north of something like 200,
17 but what it is beyond that I couldn't tell you.

18 Q. And have all of those depositions been
19 as an expert witness or have some of them also been
20 as a fact witness?

21 A. I think a couple of them have been with
22 regard to my handling claims at Fireman's Fund
23 Insurance Company but other than that they've all
24 been as an expert witness.

25 Q. Okay. So you're well familiar with the

6

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1 process but let me just say a couple of brief
2 things up front.

3 If at any time you don't understand my
4 question or would like me to repeat it or clarify
5 something, just let me know and I'll be happy to do
6 that. I may also from time to time ask you to
7 repeat or clarify an answer I do that similarly to
8 make sure that we are understanding one another and
9 the record will be clear as to the questions and
10 the answers is that fair enough?

11 A. Sure.

12 Q. If you where are to take a break at any
13 time, that's fine, just let me know. If there's a

↑

14 question pending I would like you to answer the
15 question, but otherwise we can take as many breaks
16 as you or counsel want to take this afternoon. I
17 don't think we'll be a long time, but to the extent
18 we need to take some breaks, just let me know and
19 we'll do that.

20 A. Thank you.

21 Q. Have you forwarded opinions in
22 connection with the Covil Corporation through its
23 receiver versus Penn National case in Richland
24 County South Carolina about what you expect to give
25 testimony in the trial in this matter?

↑

7

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1 A. Yes.

2 Q. And what are those opinions?

3 A. Well, they're set forth in my outline.

4 Q. I don't have a copy of an outline?

5 A. Oh? Well, I don't know quite what to
6 tell you, then.

7 MR. NES: David, we produced some
8 supplemental documents this morning.

9 Mr. Miller transmitted his outline to me
10 over the weekend and we sent that to you.

11 MR. BROWN: Okay. Do you know if that

12 was sent to Brady or to me as well and do
13 you know what time.

14 MR. NES: Yes, that would have been
15 sent to Brady and David and whomever. My
16 paralegal usually just takes who is on the
17 docket.

18 MR. BROWN: Sure that's fine.

19 MR. NES: Hold on one second I can pull
20 it up. This was sent at 7:25 a.m. I guess
21 my time, 8:25 East Coast. Yeah, it looks
22 like Brady and David and maybe one of the
23 secretary or paralegals. I ask forward this
24 through secure file transfer to you.

25 MR. BROWN: Yeah, if you can forward

↑

8

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1 that to me, that would be great.

2 MR. NES: What's your e-mail address
3 David.

4 MR. BROWN: It's D brown at.com.^ C

5 BY MR. BROWN:

6 Q. So Mr. Miller when did you reach these
7 conclusions?

8 A. Oh, over the last week and a half as
9 I've been working on this project. I think it's

10 been about a week and a half, actually.

11 MR. BROWN: Okay, let's go off the
12 record.

13 (A brief recess was held.)

14 THE VIDEOGRAPHER: The time on the
15 monitor is 1:33 p.m. We're going off the
16 record.

17 (A brief recess was held.)

18 THE VIDEOGRAPHER: The time on the
19 monitor is 1:38 p.m. and we're back on the
20 record.

21 BY MR. BROWN:

22 Q. Okay, Mr. Miller I understand that you
23 prepared a document that was circulated this
24 morning. I don't have access to it yet. Hopefully
25 I will get access during the course of this

↑

9

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1 deposition but what opinions have you reached in
2 this matter? If you need to read the document to
3 me, you can?

4 A. Sure. My opinions are the following.

5 Number 1, the 1 million dollar
6 aggregate on the Declarations pages of the Covil
7 policies issued by Penn National does not apply to

8 premises operations coverage for bodily injury.

9 Number 2, coverage for operations slash
10 premises claims do not convert to completed
11 operations claims following expiration of policy
12 during which operations claim arose.

13 Number 3, Penn National's search for
14 policies it issued to Covil did not accord with
15 insurance industry standards.

16 And that would be the last one. Now,
17 within these in some cases are sub opinions. But
18 those are the -- those are the -- are there three?
19 I think there are three principal ones, yes.

20 Q. Okay. Can you give me the second one
21 again?

22 A. Yeah, sure.

23 Coverage for operations premises claims
24 do not convert completed operations claims
25 following expiration of policy during which

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1 operations claim arose.

2 Q. I appreciate there will be, as you put
3 it, sub issues and issues that form the bases of
4 those opinions, but in broad terms are those the
5 three opinions that you've reached in connection

6 with this matter?

7 A. Yes.

8 Q. Are there any other issues that you
9 intend to address between now and the time of trial
10 about which you are trying to reach an opinion?

11 A. I do not know. Sorry.

12 Q. As you sit here today are you aware of
13 any issues that you're still investigating to see
14 if you can reach an opinion?

15 A. No.

16 Q. And are those three issues issues that
17 you were asked to opine on or how did you come to
18 opine on those three issues?

19 A. Well that's a good question. I know
20 that initially the client asked me to explore some
21 areas and then there was dialogue about the areas,
22 so I think it ended up the issues being defined
23 kind of jointly in some ways. So I don't think it
24 was clear, you know, they did it all or I did it
25 all situation.

↑

11

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1 Q. So you've got access to the Exhibit
2 Share, let me just make, for thoroughness here,
3 make sure you see Exhibit 1. Notice of Deposition

4 of Charles Miller?

5 A. Yeah, I'll open that up?

6 Q. Sure.

7 A. Yes, I have Exhibit 1 in front of me.

8 Q. And that is the notice you received for
9 today's deposition?

10 A. Yes.

11 Q. Okay. And let me ask you to refresh
12 and I will now introduce Exhibit 2?

13 A. Okay. I'm opening up Exhibit 2.

14 Q. Okay. It's receiver for Covil
15 Corporation's amended fact and expert disclosures.

16 Do you see that?

17 A. Well, no, my Exhibit 2 is -- wow that's
18 weird. There's a document from an entirely
19 different case.

20 How did -- oh, so I do apologize the
21 exhibits that I am looking at were the same program
22 but for a different case.

23 I see what happened. Somehow I was
24 able to open up this but I do not have -- I'm
25 sorry, I misunderstood what I was looking at. When

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12

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1 I did end up in Veritext they gave me a list of

2 exhibits and I just thought it was the exhibits in
3 this case, and now upon further review it's the
4 exhibits in a case I was deposed in probably a year
5 ago that are still on the system here for Veritext.
6 So I do not yet have the exhibits in this matter on
7 that program that we're talking about adds I said
8 before, I apologize.

9 Q. Do you now see on your screen a
10 document Receiver For Covil Corporations amended
11 fact and expert disclosures?

12 A. Yes, I do.

13 Q. Okay. And if I scroll down to the I
14 guess the fourth page of that document it has your
15 name and then a paragraph and issues describing
16 your proposed testimony.

17 Do you see that?

18 A. Yes.

19 Q. Okay. And just to further illustrate
20 this for you, and this is dated November 7, 2022.

21 And just take a moment, if you would,
22 you don't have to read it out loud but just read
23 that paragraph about your anticipated testimony to
24 yourself and let me know when you're finished.

25 A. Yes.

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1 Q. Okay. And had you already as of
2 November 7, 2022 discussed with counsel for the
3 receiver these areas on which you were going to be
4 providing testimony?

5 A. Possibly, probably, yes, I would have
6 seen this before it went out if that's what you
7 mean.

8 Q. When did you -- when were you first
9 contacted about the possibility of providing expert
10 testimony in connection with this matter?

11 A. Bear with me for a moment. Let's see
12 if I can tell you that.

13 My retainer agreement is dated August
14 22nd, 2022, so the actual retention would have been
15 just, you know, a few days before that at most.

16 Q. And how were you first contacted?

17 A. I was first contacted by Mr. Nes, as I
18 recall.

19 Q. Okay. Had you worked with Mr. Nes
20 prior to this matter?

21 A. No.

22 Q. Had you worked with his firm prior to
23 this matter?

24 A. No.

25 Q. Do you know how it is that you came to

14

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1 be contacted by Mr. Nes?

2 A. Not -- I don't remember.

3 Q. And what do you remember about the

4 initial communication in terms of what was

5 described to you about the case and what you were

6 asked to look at?

7 A. Well, it's all been, you know, subsumed

8 in everything else that's happened since then, so I

9 can only assume that what we talked about were the

10 basics of the case and what his current status at

11 that time was and what they were looking for in

12 terms of somebody who could testify about certain

13 issues.

14 Just a moment.

15 So we talked about the court appointed

16 receiver, the background of the case, the

17 reconstruction of the insurance policies, who the

18 insurers were, then Penn National's two policies.

19 He mentioned something about the discovery order,

20 he mentioned that there were at that time I believe

21 two issues, one involving spoliation and one

22 involving the scope of the aggregate limit in the

23 Penn National policies and wanting to have someone
24 testify with regard to that and I think that that
25 was generally what we talked about.

↑

15

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1 Q. Okay. I have marked now as Exhibit 3 a
2 document and I will share my screen so you
3 can -- do you now see Exhibit 3, Mr. Miller?

4 A. Okay. I'm looking at it.

5 Q. Yeah, and so it's a few page document I
6 just want to show you the beginning. It's an
7 e-mail chain. It looks like it appears a November
8 10, 2022 letter enclosing your retainer payment.

9 Do you see that?

10 A. Yes.

11 Q. And then this is the -- you mentioned a
12 moment ago an August 22, 2022 letter. Is this the
13 letter to which you're referring from you to Mr.
14 Nes confirming your retention?

15 A. Yes.

16 Q. Were you told when you were first
17 retained when the matter might come on for a
18 hearing before the court?

19 A. You know, I don't remember if I was.
20 It's usually a question I ask but I don't recall.

21 Q. And did you take notes from your
22 conversations with the receiver or the receiver's
23 counsel?

24 A. Yes, I did.

25 Q. Okay. And do you still have those

16

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1 notes?

2 A. Yes, I do.

3 Q. And were you just looking at some of
4 those notes to refresh your recollection as to what
5 you and Mr. Nes discussed?

6 A. Yes, I was.

7 Q. So once you were retained tell me what
8 you did to go about reaching your opinions in the
9 matter?

10 A. Well, over the period of time that I
11 worked on the case, I conducted research into the
12 insurance industry and related interpretation of
13 the aggregate limits provision in general liability
14 policies going back to at least the 1950s and then
15 I did that research either on my own through
16 sources I have or through the Boston Insurance
17 Library and obtained a good deal of materials as a
18 result of both research efforts and reviewed all of

19 those research materials. I then received a
20 substantial amount of documents from the client.
21 And it included other materials regarding the
22 interpretation in the insurance industry of
23 aggregate limits. Some of those materials I
24 already had from the results of my own research,
25 some I did not. I couldn't tell you which is which

17

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1 now.

2 And there were a number of -- and then
3 over time I received other documents from the
4 client regarding some of the underlying cases. I
5 received depositions from the client of people who
6 had been deposed in this case, as well as
7 depositions of people that have been deposed in the
8 underlying asbestos litigation, and I reviewed
9 those materials as well. So there was a process
10 over a period of time of obtaining and reviewing
11 these kinds of materials.

12 Q. Prior to this case, have you ever been
13 retained as an expert in a matter where an issue in
14 this case was whether or not an aggregate limit in
15 a commercial general liability policy applied to
16 premises operations in connection with bodily

17 injury claims?

18 A. Oh, that's a mouthful. So, no, I don't
19 recall if I have or not.

20 Q. If it was a mouthful I was just doing
21 my best to repeat the first opinion you gave me.

22 A. No, that's okay, I've got it.

23 Q. So let me make the question more
24 simple. The first issue, the first opinion that
25 you gave me earlier, related to the aggregate limit

18

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1 and whether or not it does or does not apply to
2 ongoing operations, premises claims for bodily
3 injury. Have you ever been retained to opine on
4 that issue before?

5 A. Not that I can recall off hand, no.

6 Q. Have you ever written anything, any
7 scholarly piece yourself on that issue before, a
8 law review article, an article for a magazine,
9 anything of that sort?

10 A. I don't believe so. It doesn't come to
11 mind. I don't believe so.

12 Q. Had you ever in your legal practice as
13 a lawyer ever litigated that issue before a court?

14 A. I have no recollection of doing that.

15 Q. In your work in the insurance industry,
16 had you ever addressed that issue as part of your
17 professional responsibilities on behalf of the
18 insurance company?

19 A. That specific issue, I don't recall.

20 We addressed aggregate and currents
21 limits issues frequently, but whether it was that
22 specific issue, I don't recall.

23 Q. And the issue that I understand you're
24 going to opine about in this matter is the specific
25 issue related to whether or not an aggregate limit

19

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1 does or does not apply to ongoing operations,
2 premises liability bodily injury claims correct?

3 A. Yes.

4 Q. And you don't recall whether you have
5 ever addressed that issue before in your work for
6 insurance company, in your legal practice as an
7 expert or as an scholar is that fair?

8 A. In the context of addressing it and in
9 the context of a specific case, I don't recall
10 that.

11 Q. Right.

12 A. You also asked in the context of

↑

13 writing. I don't recall any writings that I've
14 done that have addressed that issue.

15 Q. Well, let me ask the question very
16 broadly, then prior to August of 2022 had you ever
17 addressed that issue? That is the issue of whether
18 or not an aggregate limit stated in a Declarations
19 page in a GL policy does or does not apply to
20 ongoing operations bodily injury claims arising
21 from premises operations?

22 A. Oh, I certainly -- I see now. I
23 certainly have addressed that issue as I recall in
24 my handling of claims because during the time that
25 I was handling claims from 1973 to 1986, it was

20

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1 understood that that aggregate did not apply to
2 bodily injury claims. I have some recollection of
3 that coming up. Whether -- in what specific cases
4 it came up, I don't recall, but it was a general
5 understanding that we had in our claims handling.

6 Q. And I was going to get into your CV and
7 background in a moment. But in your claims
8 handling for Fireman's Fund insurance company?

9 A. Yes.

10 Q. Have you ever worked for any other

↑

11 insurance company?

12 A. No.

13 Q. Okay. The second opinion that you gave
14 me a few moments ago, the coverage for operations
15 slash premise claims do not convert to completed
16 operations following -- well, following the
17 exploration of the policy during which the
18 operations claim arose.

19 Did I state that correctly?

20 A. Yes.

21 Q. Can you elaborate for me a bit more
22 what you mean by that?

23 A. Okay, as I understand it, there is some
24 position taken that if this -- if these claims that
25 we're talking about, these asbestos claims

21

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1 originally arose out of Covil's operations, that as
2 the asbestos injury progressed in these individuals
3 and as the Covil Penn National policies expired,
4 that after that point, somehow these claims would
5 become then completed operations claims and I
6 really emphatically disagree that that's what
7 happens, but that's a summary of it.

8 Q. So let me make sure I understand. So

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9 your understanding of Penn National's position is
10 that if a -- if Covil was engaged in ongoing
11 operations from 1986 to 1988 when Penn National had
12 GL coverage in effect for Covil and if a given
13 Plaintiff was exposed during those ongoing
14 operations to an asbestos-containing product sold
15 or installed by Covil, that that would be an
16 ongoing operations loss and even if the diagnosis
17 of the disease occurred later, that would not all
18 of the sudden convert that into a completed
19 operations ^ c loss.

20 MR. NES: Object to the form.

21 THE WITNESS: Yes, I assuming that the
22 Covil policies with Penn National expired in
23 1988 that would be correct.

24 BY MR. BROWN:

25 Q. Just assuming that arguendo for that

22

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1 question?

2 A. Yes.

3 Q. Have you ever written any articles, any
4 scholarly papers on that issue?

5 A. No, no.

6 Q. Have you ever litigated that issue

↑

7 before the court before?

8 A. No.

9 Q. Have you ever encountered that issue in
10 connection with your work with Fireman's Fund
11 before?

12 A. Never heard of it until recently and I
13 have handled lots of asbestos claims and lots of
14 other similar types of cases and this is frankly, I
15 have to say the first time that I have gotten
16 involved in this issue and heard it. I have never
17 seen it raised before.

18 Q. So you have never dealt with it as an
19 expert witness before?

20 A. No, uh-uh, nor in my handling of
21 claims. It was never an issue.

22 Q. What's the source of your understanding
23 that that's Penn National's position?

24 A. The specific source?

25 Q. Yes.

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23

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1 A. You know, I probably couldn't tell you
2 right off hand without looking back through the
3 documents that I have. I have also had
4 conversations with counsel. I might have picked

5 that up there. But I don't recall specifically.

6 Q. And I guess my question is did you
7 either read in a deposition that that was for a
8 Penn National employee that that was Penn
9 National's position?

10 A. I don't recall.

11 Q. Did you read in a court filing that
12 Penn National had made that that was Penn
13 National's position?

14 A. Again, I have read lots of court
15 filings. I don't recall specifically.

16 Q. So those are -- are the two what I will
17 call policy construction issues those are the two
18 policy related issues that you intend to opine on
19 in this matter, correct?

20 A. Yes.

21 Q. You do not for example intend to give
22 opinions on trigger or allocation, correct?

23 A. That's true.

24 Q. And then the third opinion you referred
25 was that Penn National's search for policies did

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1 not proceed in accordance with insurance industry
2 standards.

3 Did I understand that correctly?

4 A. Yes.

5 Q. And have you ever testified as an
6 expert witness on that issue before?

7 A. On insurance industry standards for
8 searching for lost policies?

9 Q. Yes, sir.

10 A. Yes, I have.

11 Q. And have you ever written any articles
12 on that topic before?

13 A. No, not yet.

14 Q. Did you ever litigate that issue as a
15 practicing attorney?

16 A. Oh, yeah, you know, I don't recall if
17 that came up in some cases or not. I don't recall.

18 Q. Did you ever address that issue in your
19 professional work with Fireman's Fund Insurance
20 Company?

21 A. I may have there, yes.

22 Q. What do you mean by that, you may have?

23 A. Well, in my work in handling asbestos
24 claims or in construction defect litigation, I know
25 that we made searches for policies and for going

↑

1 back periods of time. And therefore it wouldn't be
2 surprising to me that we were searching for
3 policies that we couldn't readily find. It was
4 something that I was aware of that kind of an issue
5 that kind of a problem, how you would go about
6 doing it, but if I -- but I can't pinpoint a
7 specific case in which it happened.

8 Q. Do you intend to offer any opinion in
9 this matter related to Penn National's document
10 retention policy?

11 A. In the context of my third opinion, I
12 do.

13 Q. Okay. And what is that opinion?

14 A. Well, that opinion is in terms of its
15 document retention policy and that opinion was that
16 Penn National's search for lost Covil policies was
17 seriously hampered if not prevented by Penn
18 National's policy of only being able to search for
19 policies by policy number between approximately
20 1974 and the early to mid 1990s.

21 Q. Do you have any other opinions about
22 Penn National's document retention policy other
23 than what you just gave me?

24 A. Sure, I have some sub opinions here, I
25 will read those to you.

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1 Q. Sure.

2 A. In my experience, insurance companies
3 begun to create databases for insurance policy
4 retention in the late 1970s and early 1980s. With
5 regard to that, in my experience, this practice was
6 initiated because of the appearance of asbestos and
7 other long tail claims in the 1970s and early
8 1980s.

9 Next, in my experience these databases
10 provided for policy searches by at least policy
11 number and named insured.

12 And finally Penn National provided for
13 searches for prior policies by name for policies
14 stored in 1991 and 1995 and for prior periods --
15 prior to 1974, as I understand it -- but stopped
16 that practice in between, evidencing the fact that
17 that practice could have been done at Penn National
18 as it has been done in my own experience.

19 Finally, I don't know if this fits into
20 that or not, but under the same third opinion, Penn
21 National failed to timely issue a policy, a policy
22 hold in this case.

23 Q. And are you now reading to me from the

24 document that Mr. Nes recently e-mailed me to get
25 access to. When I get that document will I be able

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1 to read what you just said?

2 A. Yeah, exactly.

3 Q. Okay. And what are the source or
4 sources of the industry standards related to
5 document searches and document retention that you
6 just described?

7 A. Bear with me for just a moment. I want
8 to grab a document. I'm just going to print a
9 couple of things off for me here that were also
10 included in my outline but which I neglected to
11 print off prior to the beginning of this.

12 Q. Just let me know when you're ready?

13 A. Yeah, it's just printing right now.
14 Sorry for the delay. So the sources for my opinion
15 in this area are in three sub areas.

16 And the first is you have to look at
17 general investigation standards that apply to
18 insurance operations and particularly claims
19 operations and it's more specifically to coverage
20 issues.

21 And there's a great deal of literature

22 in claims handling textbooks that are used and have
23 been used to train people nationwide on claims
24 handling and that are very familiar in the
25 insurance industry.

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1 And these include texts like Markham's
2 M-a-r-k-h-a-m, the claims environment, Jones
3 Liability Claim Practices Rokes, Rokes, aggressive
4 good faith and successful claims handling and an
5 American Educational Institute Publication they
6 provide a lot of training materials to insurance
7 industry personnel, Loss adjustment and subrogation
8 is some of them that I have cited for this purpose.

9 Now, understand the ones that I'm cited
10 in support for this broad duty to investigate, in
11 other words a thorough and timely investigation are
12 a sampling of the written documentation in the
13 insurance industry for that standard. So I
14 couldn't site them all, it would take too long.
15 But this is a recognized standard in the insurance
16 industry that there must be a thorough and timely
17 investigation generally, particularly when it comes
18 to coverage matters such as we have here.

19 Secondly, in the course of that

20 investigation, the insurance company must look for
21 coverage. It must aggressively look for coverage
22 on the part of the insured. Again, you find this
23 in Markham's text as well as elsewhere. And these
24 materials -- these references are attached to my
25 outline. So in that context, we have to then ask

29

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1 what are the insurance industry standards for
2 looking for old and lost policies that confirm with
3 those broad requirements.

4 And you find those standards in a
5 variety of sources. First of all, the
6 International Risk Management Institute, or IRMI,
7 which is a robust resource online for insurance
8 claims handling, risk analysis, risk prevention,
9 underwriting, large -- a wide range of issues
10 involving insurance, including the interpretation
11 of policies, the handling of claims and indeed the
12 search for lost policies and what kind of conduct
13 needs to be engaged in order to fulfill those
14 general requirements that I was talking about.

15 There are -- besides IRMI's own
16 publication, there are publications within the IRMI
17 database, including insurance archeology and

18 judicial reconstruction of missing insurance
19 policies, and coverage for pollution claims under
20 lost policies. These are articles authored by
21 others that IRMI publishes and makes available to
22 the insurance industry to provide further guidance
23 to claims handlers Nationwide on what should be
24 done when they are looking for lost policies.

25 And in addition, I believe that there

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1 are publications within FC and S, as well, Fire
2 Casualty and Surety Bulletins, on this -- on these
3 responsibilities as well.

4 In addition, we also need to take a
5 look at matters involving reinsurance for example
6 and we can do that by looking at Harrison's text on
7 Reinsurance Principles and Practices which provides
8 us with guidance on the scope of reinsurance, its
9 purpose and the need for obtaining reinsurance
10 documents in a claims handling situation and in
11 particular in a situation, in my view, as we have
12 here. Again, there's some more materials in the
13 fire casualty and surety bulletin on this issue as
14 well as IRMI again.

15 So there is a robust amount of

16 materials in the insurance industry providing
17 guidance to insurers on one, conducting a thorough
18 and timely investigation, two, during which look
19 for coverage and three what needs to be
20 specifically done when you're searching for lost
21 policies.

22 So those are the sources that I rely on
23 for my initial opinions regarding the kind of
24 investigation that in my view should have been
25 conducted here and was not.

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1 Q. And just --

2 A. Oh, wait a second. And to be clear
3 about this, when I'm talking about these sources
4 I'm also talking about my own experience and
5 knowledge. And which in which I've been engaged in
6 this kind of work and have knowledge of so it all
7 comes together.

8 Q. No, I appreciate that and let me flesh
9 that out a little bit. On this third opinion that
10 is the issue of your opinion that Penn National
11 search for policies did not proceed in accordance
12 with industry standards, if I understood you a few
13 minutes ago, you have testified as an expert in

14 court unquote lost policies cases before, correct?

15 A. Yes.

16 Q. Okay. But you have not written any
17 articles yourself on that topic, correct?

18 A. Correct.

19 Q. And you don't recall ever litigating an
20 issue to that effect in the court in connection
21 with your private practice as an attorney, correct?

22 A. Yeah, I don't recall off hand. I do
23 recall oddly enough researching the issue, proof of
24 lost policies. There's a couple of what we would
25 call here in California seminal cases on the issue

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1 but I can't recall on what context that was right
2 off hand.

3 Q. During your days with Fireman's Fund,
4 the policy -- the company would be called upon to
5 conduct policy searches from time to time and you
6 would have played a role in that, correct?

7 A. Yes, absolutely.

8 Q. So it's that combination of things that
9 leads you to the opinion that you've discussed here
10 today, correct?

11 A. Actually, it's that combination of

↑

12 things plus my review of the literature and the
13 insurance industry regarding the responsibilities
14 for looking for lost policies and the kind of
15 investigation that needs to be conducted, so it's a
16 combination of all of that.

17 Q. Did you say that one of your sub
18 opinions dealt with the retention policy of Penn
19 National?

20 A. Yes.

21 Q. I'm introducing Exhibit 4. But I will
22 share my screen with you, Mr. Miller.

23 A. Thank you.

24 Q. Do you see the document I have now
25 marked as Exhibit 4. Do you see it?

33

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1 A. Yeah.

2 Q. Okay. And it's a two-page document.
3 I'm really interested in the e-mail on the first
4 page. Just take a moment and read that if you
5 would.

6 A. Yeah, I have, yeah.

7 Q. So this is an e-mail dated November
8 8th, 2022 from you to Mr. Nes, correct?

9 A. Yes.

↑

10 Q. And you state I would be interested in
11 knowing what your document retention expert thinks
12 of this organization and its standards and then
13 referencing the information on Page 2 of the
14 exhibit, correct?

15 A. I guess, yes. I don't -- I don't have
16 Page 2 of the exhibit in front of me so I'm not
17 sure what the --

18 Q. I'm showing it to you right now.

19 A. Oh, could you lower it a little bit.
20 Oh, ARMA, yeah, uh-huh.

21 Q. Okay. So as of November 8th, 2022, was
22 it your understanding that you would not be the
23 document retention expert for the receiver in this
24 matter?

25 A. Well, I had no understanding one way or

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1 another. I should say the only understanding I had
2 was that there was somebody else who had been
3 retained to do that, to do some of that work, but I
4 was also doing some. So how that was going to wash
5 out, I didn't know.

6 Q. And when did you find out that you
7 would be the only individual opining for the

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8 receiver on that topic?

9 A. Most recently, like within the last
10 month or so, maybe.

11 Q. Okay. Did you ever speak with the
12 other individual who was perhaps going to be
13 providing testimony on document -- on retention
14 issues?

15 A. No.

16 Q. Okay. Other than counsel for receiver
17 have you spoken with anyone in reaching your
18 opinions in this matter?

19 A. No.

20 Q. Okay.

21 A. Oh, wait a second. I have spoken to
22 one or two people at the Boston Insurance Library
23 regarding the scope of their research, but that's
24 been it.

25 Q. And is that an organization upon which

35

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1 you rely from time to time in your work to help you
2 research information?

3 A. It's one of them, yes.

4 Q. So I will next introduce Exhibit 5.

5 (WIT-LAST-NAME EXH. #, DESCRIPTION, was

6 marked for identification.)

7 BY MR. BROWN:

8 Q. Counsel and Mr. Miller, do you see now
9 the first page of Exhibit 5?

10 A. Yes.

11 Q. Is this your CV?

12 A. Yes.

13 Q. Okay. And I will give you a minute to
14 look through it and I will scroll down as you need
15 me to. My question is, is this an up-to-date copy
16 of your CV?

17 A. Let's take a look at the list of
18 publications.

19 Q. I didn't see a list of publications.

20 A. Well there are several pages to this
21 CV.

22 Q. These are the only two I was able to
23 obtain online and no CV was produced so this is all
24 I had. Do you have a --.

25 MR. NES: We did produce his CV on our

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1 exhibit list. I believe it's in the 80s.

2 So it was produced.

3 MR. BROWN: Okay. In the exhibits

4 exchanged last night?

5 MR. NES: Right. I don't know where
6 this is from, but I transmitted to y'all
7 what he sent us.

8 BY MR. BROWN:

9 Q. Mr. Miller, do you have a for lack of a
10 better phrase, a CV that you keep up to date to
11 comply with federal court standards for things that
12 are required in terms of publications and testimony
13 and the like?

14 A. Yeah, I have a CV which I endeavor to
15 do the best I can to keep up to date.

16 Q. Is that the document that you supplied
17 to counsel for the receiver?

18 A. Yes.

19 Q. Let me just share this with you just so
20 we can talk about your work background. And
21 I -- we can talk about publications as well. But
22 the -- to make sure I'm understanding so it looks
23 like you graduated from western Washington
24 University in 1970, correct?

25 A. Yes.

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1 Q. And did you work for Fireman's Fund

2 beginning in '72 through '86 -- I'm sorry -- 90?

3 A. 1990, yes, 18 years.

4 Q. Okay. And then you were in private
5 practice from 19 -- you graduated from law school
6 in 1990 and were in your own private practice until
7 2004 and you've been at the insurance law center
8 since that time, correct?

9 A. I've done private practice at the
10 insurance law center as well.

11 Q. Do you still actively represent clients
12 in court?

13 A. Occasionally.

14 Q. So I'm going to ask you about your work
15 at Firemans Fund from 72 to 80 it says you held
16 several positions including senior and branch
17 office general adjustor.

18 Did any of that work from 72 to 80
19 involve dealing with long term exposure claims?

20 A. It started to more so in the late
21 seventies. We started to get involved in long
22 table claims in a few different ways.

23 Q. And in what ways were those?

24 A. Well, there was an appellate -- an
25 early appellate court decision out of the state of

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1 Washington and I think it was out of Spokane called
2 Groul. And it dealt with the liability of two
3 insurers who had successive -- you know one policy
4 and then the other one right after for some sort of
5 long term property damage that was happening
6 progressively.

7 And the court there, as I recall it,
8 held that both insurers were on the hook for the
9 property damage that occurred during their
10 respective policies. It was something along those
11 lines. And so it was an exposure kind of theory in
12 the context of property damage. But this was one
13 of the first cases we had seen like that.

14 And we did have working then with the
15 early formation of the environmental claims
16 facility at Firemans Fund and then in San Francisco
17 at the home office, we explored that issue further
18 as it might impact claims handling in the state of
19 Washington and elsewhere, letting them know about
20 the Groul decision and talking with them about
21 other decisions that may have come down by that
22 point. And I know that there was a good deal of
23 discussion on that.

24 We then got involved -- I then got

25 involved, as I recall it, in managing what we

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1 called the asbestos claims facility in Seattle.

2 That was around 1980, '82 for a couple of years I

3 think. What that involved was claims coming out of

4 the Bremerton shipyard, most of them from the

5 1940s, primary and secondary, by that I mean

6 secondary the man carrying the asbestos home in his

7 clothes, that had led to cancer asbestosis,

8 mesothelioma, and there were in the neighborhood of

9 600 claims.

10 We insured, Firemans Fund insured a

11 major manufacturer at that time of asbestos

12 materials and insulation materials who had been

13 identified at the Bremerton shipyards and so it was

14 a key defendant in all of that litigation.

15 And I managed that facility the

16 asbestos claims facility for whatever reasons that

17 needed to be taken care of during that period of

18 time and became also aware of the various coverage

19 positions that were being advanced as to which

20 insurance policies would need to be applicable and

21 also the need to find those policies because of

22 particularly, the changes in them prior to 1972,

23 let's say.

24 I mean after 1972. So I was somewhat

25 involved and engaged in that work as well. You

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1 know, I've been talking about this and now I'm
2 trying to remember your question. I'm not sure if
3 that's entirely responsive.

4 Q. No, that's very well helpful and I was
5 going to you actually anticipated my next question
6 which was going to be when did you get involved in
7 handling asbestos related bodily injury claims and
8 I think you said in the early 80s is that fair?

9 A. Yeah, 1980 sounds about right.

10 Q. Okay, at that time that is the early
11 80s when you first got involved in handling
12 asbestos related bodily injury claims, what sort of
13 documentation retention policy did Fireman's Fund
14 have?

15 A. Well, I don't recall the specific
16 policy, but I do recall that we could access prior
17 policies, a number of different ways, as I recall.

18 Q. Do you know whether Fireman's Fund, you
19 know, how long at that time in the early 80s, how
20 long Firemans Fund was maintaining historical GL

21 policies?

22 A. I don't recall that.

23 Q. Do you know if Firemans Fund had

24 a -- whatever the time that it was -- had some time

25 limit on how long it would maintain those

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1 historical GL policies?

2 A. I would assume so, given that that's

3 commonly done, but I do not know the specifics.

4 Q. When you say it's commonly done meaning

5 insurers have a common practice of retaining

6 documents for a certain period of time but no

7 longer?

8 A. Yes. That's been my experience.

9 Q. Okay. Did Firemans Fund change its

10 policy -- again, I know you don't remember how long

11 Firemans Fund kept policies in the early 80s, but

12 did Firemans Fund make any changes to its policy

13 while you were managing that unit in the 80s,

14 period?

15 A. Well, I know that there was expressed

16 concern about maintaining them and if that led to a

17 change, I don't really -- I don't specifically

18 recall it. And in terms of addressing what

19 concerns there were, I wouldn't have been surprised
20 but I don't recall the specifics.

21 Q. What were the concerns that were
22 expressed with regards to the policy?

23 A. Whether in fact we were keeping them as
24 far back as we possibly could and the media that we
25 were keeping them on, that kind of thing, I recall

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1 there being concerns about that.

2 Q. And what was the media that you were
3 keeping things on at that time?

4 A. Well, I think that early on it was
5 either hardcopy or microfiche. The Fireman's Fund
6 was one of the early national insurance companies
7 to computerise its operations and particularly in
8 claims and that happened in the late seventies when
9 we all got computers on our desks. And the -- that
10 also happened throughout the company in the
11 computerization of our operations. So I think that
12 that was probably the concern of transferring all
13 of that prior data over to computer databases in a
14 way that could be accessed.

15 Q. In the early 80s when you were managing
16 the asbestos claims facility for Firemans Fund, did

17 Firemans Fund stop the deconstruction of any
18 historical GL policies as a result of asbestos
19 claims now being made against its policyholders?

20 A. Well, stop...

21 Uh, I assume that at some point there
22 was destruction of policies, but after the
23 eighties, early eighties in particular, I don't
24 recall, now that I'm thinking about it -- and you
25 asked this question before about timeframes for

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1 destruction, after I'm thinking -- now that I'm
2 thinking about it, I don't think there were any. I
3 think they kept everything.

4 Q. Meaning that as opposed to keeping
5 documents for ten years thirty years 50 years
6 whatever, that they stopped getting rid of any
7 policies, is that what you're saying?

8 A. Policies and claim files.

9 Q. Okay. And what is your understanding
10 of the industry standards about which you've
11 testified in terms of how documents were -- and in
12 particularly policy-related documents -- were
13 maintained, say in the 1980s as --

14 A. Well, again, maybe I'm misunderstanding

15 your question. The early forms of maintaining
16 policies was either hardcopy and/or microfiche,
17 okay, remember, microfiche, it was awful but
18 nonetheless microfiche. And then it was changed
19 over to computer databases, computerized databases,
20 and that occurred in the 1980s. Maybe I'm not
21 understanding your question.

22 Q. Yeah, and I apologize let me try to be
23 more clear.

24 A. Sure.

25 Q. Let me stop this for a second.

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1 In -- if I understood your testimony
2 earlier, it was common for insurance companies to
3 destroy policy related documents after a period of
4 time and it might be ten years it might be 50 years
5 but whatever the period of time was it was common
6 for insurance companies to destroy policies after a
7 period of time; is that fair?

8 A. Yes, it had been so and my
9 understanding was that that was changed at least in
10 my experience to maintaining all policies.

11 Q. Okay.

12 A. Now, there may have been some

13 categories of policies that had really long
14 destruction dates such as 75 or 100 years, I seem
15 to recall that. What categories those were, I
16 can't tell you. But general liability policies
17 were all kept.

18 Q. Okay. And when did that change occur?

19 A. To the best of my recollection, it was
20 in the late seventies, early 80s.

21 Q. And why did that change occur?

22 A. Well, again, you had -- and I discussed
23 some of this in my outline. You had a number of
24 changes going on in terms of long tail claims. You
25 had the asbestos claims, which had really started

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1 before 1980.

2 And we opened the Seattle asbestos
3 claim facility in 1980 but there were several other
4 Fireman's Fund asbestos facilities already up and
5 running at other different parts of the country.

6 So we had -- the company had gotten
7 involved in this in the late seventies in a very
8 very big way.

9 And so that was a significant reason
10 for the change in and of itself but it also became

11 apparent that there was going to be possibilities
12 of long tail claims in other contexts, particularly
13 with the 1979 -- maybe it was 1980 that they signed
14 it well, I will say in 79 enactment of CERCLA,
15 which imposed liability on various parties for
16 property contamination that could go back a
17 considerable amount of time.

18 There was the Barrell decision out of
19 Texas in the seventies that imposed liability for
20 asbestos claims on manufacturers in a variety of
21 different ways. I remember reading it and being
22 actually quite surprised.

23 And there was the John Mansfield, the
24 John Mansfield bankruptcy proceeding and the
25 litigation up to that that Ms. Frost discusses in

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1 some detail pointing to the fact that this was
2 another sign post that we were going to be dealing
3 with long tail claims.

4 As a result of that Fireman's Fund and
5 in my experience, my personal experience, other
6 insurance companies, formed environmental claims
7 units and these were specialized claims units. And
8 this was done in the early 80s, if not late 70s,

9 specialized claims units that handled just
10 environmental claims, all of which -- almost all of
11 which involved some aspect of long tail and
12 required policy reconstruction.

13 The initial -- I suspect that the
14 initial impetus for that was asbestos but I also
15 was aware that they were handling other kinds of
16 cases early on as well.

17 Q. Are you aware of any insurer other than
18 Fireman's Fund that stopped all destruction of GL
19 policies in the eighties?

20 A. No, I'm not aware of that specifically
21 happening with any other carrier. I am aware that
22 in some cases that I've been involved with, the
23 carriers such as travelers maintain records of
24 their policies going back into the 1960s.

25 Q. Are you -- I'm sorry, go ahead.

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1 A. No, and I'm trying to think if they
2 even went back into the 50s, they may have. What
3 occurs to me now off hand was the 1960s, but at
4 least that.

5 Q. Okay. And have you read any articles
6 or seen any other insurance industry treatises that

7 describe actions of any insurers other than
8 Fireman's Fund related to the suspension of any
9 document destruction in the 1980s?
10 A. I have endeavored to search for that
11 thusfar I haven't found anything.

12 Would it be okay if we took an even the
13 anyone get break?

14 Q. No worries. I've got 2:56 my time so
15 about 2:45 or 11:45.

16 A. That's perfect.

17 THE VIDEOGRAPHER: The time on the
18 monitor is 2:36 p.m. We're going off the
19 record.

20 (A brief recess was held.)

21 THE VIDEOGRAPHER: The time on the
22 monitor is 2:54 p.m. and we're back on the
23 record.

24 BY MR. BROWN:

25 Q. Mr. Miller during the break I was able

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1 to get a copy of the document, the outline of your
2 opinions document that you were describing earlier.

3 A. Yes.

4 Q. And I have now marked that as Exhibit

5 6.

6 A. Okay.

7 Q. So do you see that document with
8 Exhibit 6 sticker on it?

9 A. Yes, I see the first page, yeah.

10 Q. So it looks to me -- and I'm just going
11 to come back to this in detail, not to worry, but
12 it looks to me like the next several pages, so
13 Miller 01365 through Miller 01375, relate to
14 standards concerning loss policies issues. Is that
15 fair to say?

16 A. Yes.

17 Q. And is that a document that has 1365
18 through 1375, is that a document that you prepared?

19 A. Those are three separate documents and
20 I prepared all three.

21 Q. So starting on 1365 here, what we're
22 looking at here, you drafted this, is that fair?

23 A. Yes, I did.

24 Q. Okay. And it looks to me like that
25 runs through 1373. Is that correct?

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1 A. Yes.

2 Q. And you drafted all of that?

3 A. Yes.

4 Q. And then 1374 and 1375 relate to some
5 standards that you have identified, correct?

6 A. Yes.

7 Q. And did you -- I know you have cited
8 things here but did you actually put these two
9 documents, 1374 and 1375 together?

10 A. Yes.

11 Q. And then after that is a document that
12 is captioned opinion outline, Covil v Penn National
13 and that goes from 1376 through 1382, correct?

14 A. Yes.

15 Q. And did you prepare that document?

16 A. Yes.

17 Q. Okay. And I want to start now talking
18 about this opinion outline document. So starting
19 on Page 1376, okay?

20 A. Certainly.

21 Q. Okay. And do you have a printed copy
22 of that in front of you?

23 A. I do.

24 Q. Okay. So let me -- let's talk about
25 what you earlier described as your first opinion,

↑

1 namely with the 1 million dollar aggregate limit on
2 the Declarations pages is the Covil policies issued
3 by Penn National does not apply to premises
4 operations coverage?

5 A. Yes.

6 Q. What is the basis for that opinion?

7 A. Well the initial point here is that
8 aggregate limits generally were not made applicable
9 to operations premises coverage in general
10 liability policies prior to 1986. There may be
11 some exceptions to that but within the standard
12 form of policies and particularly within the ISO or
13 insurance service offices policies those policy
14 aggregates were not made applicable to premises
15 operations bodily injury claims prior to 1986. And
16 what I do is cite here several sources that
17 document that fact.

18 So then we have to turn to the 1986 and
19 1987 policies -- well the 86 through 88 -- issued
20 by Penn National to Covil to determine whether or
21 not those two policies that we do have correspond
22 with or are consistent with what the practice was
23 in the industry through ISO's release of the 1986
24 version, and we find that they are entirely
25 consistent.

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1 For example, the 1973 ISO general
2 liability policy provided that aggregates applied
3 only to completed operations and products liability
4 and to general liability for property damage only.
5 This is consistent with the Penn National policy
6 which from my comparison used the 1973 ISO version
7 and so no aggregate limit in that policy applies to
8 bodily injury arising from premises and operations.
9 You will note I also in that regard note that
10 there's an amendment to the limits of liability.
11 There's limits of liability endorsement in these
12 policies which modifies the occurrence and
13 aggregate limits somewhat.

14 Actually what it does is it doesn't
15 really change anything substantively. It just
16 makes it easier to read what the aggregates apply
17 to because previously the scope of the aggregate
18 for general liability was all bunched in like one
19 or two paragraphs and a number of different things
20 were in it. And ISO went and separated those out
21 to individual categories when it did the 1986
22 version.

23 So it is evident to me that Penn

24 National used the 1973 ISO version which didn't
25 apply aggregates to bodily injury general liability

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1 claims.

2 And we note that although ISO did issue
3 a 1986 revision that applied aggregates to bodily
4 injury claims arising out of operations and
5 premises, that that wasn't used here by Penn
6 National.

7 And indeed we found further
8 confirmation of that fact in the fact that the
9 amendments to limits of liability endorsement has
10 an edition date of March 1981.

11 And so it would have been before the
12 1986 revision and that amendment is consistent with
13 the 1973 policy form itself in terms of the scope
14 of the premises operations bodily injury coverage.

15 It's evident that Penn National was
16 using pre-1986 policy forms in 1986 and thereafter,
17 because the same appears in 87, 88. Even though
18 ISO had issued in 1986 a new policy form, Penn
19 National continued to use the older policy forms.

20 So then I have to take a look at the
21 specific -- the specifics of this case in light of

22 that conclusion and it's evident to me that the
23 plaintiffs in this action are bringing claims
24 against Covil for injury arising out of Covil's
25 operations and therefore they should be covered

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1 under the general liability occurrence coverage
2 which has no aggregate and there's some citations
3 there again to the limitation of aggregates for
4 bodily injury general liability, but I also noted
5 the extensive discussion of Ms. Frost -- Frost in
6 his deposition -- as I noted it on the pages there,
7 regarding the bases for many of these claims, maybe
8 not all quite all of them but certainly most of
9 them and that they are arising out of exposure to
10 Covil's operations and that's specifically alleged
11 and discussed in this Frost deposition.

12 I have also had the opportunity to
13 review some of the original complaints filed as
14 well as some related documents in a few, some of
15 the cases underlying asbestos cases and it was
16 evident to me in reviewing those documents that the
17 claims against Covil are operations claims, in
18 other words, the exposures occurred during Covil's
19 operations and not as a result of completed

20 operations. That would certainly be consistent
21 with the kind of business that Covil did, the
22 removal and installation of asbestos lined
23 insulation and would generate asbestos fibers
24 in -- in the air and caused -- lead to the exposure
25 that these individuals suffered.

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1 Indeed, the stories are rife when I was
2 working on this that in the Bremerton shipyards
3 during the war, some of the workers stated that
4 they could not see the hands in front of their
5 faces because of the thickness of the asbestos
6 fibers that they were installing on the naval
7 ships. But anyway, I digress. So to the extent
8 that Penn National claims that the Covil completed
9 operations products claims are subject that these
10 are completed operations products claims that's
11 also inconsistent with the fact that Penn National
12 has contributed to the settlement of many of those
13 claims contending therein that there is only two 1
14 million dollar aggregates left which would be the
15 operations aggregates and in each policy and that
16 those two policies -- those two aggregates apply
17 and that their conduct there is first of all

18 inconsistent with taking the position that they
19 have that -- that are -- that they
20 shouldn't -- that they have limited coverage -- in
21 the sense that the policy itself is contrary to
22 that position so, you know, you take a look at all
23 of this overall and it's quite evident that Penn
24 National is facing operations claims for asbestos
25 exposure during its policy periods which do not

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1 have an aggregate for bodily injury premises
2 operations claims and therefore each of the claims
3 is a separate and distinct occurrence under the
4 occurrence limit.

5 Q. Okay. That was a lot. So let me just
6 ask you this. Any other bases for your opinions
7 other than what you've just shared with me?

8 A. No. Well, to the extent that I haven't
9 specifically referenced the references in my
10 outline to that effect, those would be included.
11 But this is, you know, representative of my
12 research in this field. I don't think it's a
13 summary of everything that I have looked at or
14 produced. So there's more to this. I just didn't
15 want to put it all in.

16 Q. No, I appreciate that. I guess what
17 I'm asking you is, this is my opportunity, as you
18 understand it, to ask you for the basis of your
19 opinion. I'm just simply asking do you have any
20 bases for your opinion, number one, other than what
21 you've now shared with me and that are in your
22 outline that we've marked as an exhibit?

23 A. Yes, I think so and that would be in
24 the documents I've produced.

25 Q. Okay.

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1 A. To the extent that they are other than
2 the ones that I have summarized in this outline.

3 Q. Okay, so given the testimony, the
4 answer you just gave me along with documents you
5 produced that includes the outline those would be
6 the sum total for the bases of your opinion is that
7 fair?

8 A. Yes, plus my own personal knowledge and
9 experience, you know.

10 Q. Okay. So you made several comments
11 there about the underlying cases?

12 A. Yes.

13 Q. Have you reviewed the complaint in this

14 matter?

15 A. Yes.

16 Q. What underlying cases are referenced in
17 that complaint?

18 A. I don't recall.

19 Q. Were there some?

20 A. I don't -- I don't recall. Without
21 looking at the document, counsel, I just don't
22 remember. I have looked at a lot of documents and
23 I would have to have the document in front of me to
24 refresh my recollection.

25 Q. That's very fair. Let me show you what

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1 I've marked as Exhibit 7.

2 I'm going to share my screen with you
3 Mr. Miller this is a copy of the summons and
4 complaint filed by Covil corporation through its
5 receiver against pen national among others. Do you
6 see that document?

7 A. Yes.

8 Q. And I realize I'm sharing my screen and
9 unless you've got access to Exhibit Share, I will
10 scroll through here and my question simply is if
11 you can identify for me the underlying tort claims

↑

12 and I guess let me back up. Ordinarily when you're
13 litigating a coverage case you're litigating
14 coverage for a specific underlying claim is that
15 correct?

16 A. Usually.

17 Q. So if you're litigating coverage for a
18 construction defect claim, you're referring to the
19 construction of the ABC condo building as a
20 hypothetical, correct?

21 A. Yes, I understand.

22 Q. And when you're litigating over
23 coverage in a general liability policy there could
24 be several questions so for example there could be
25 a duty to defend question and separately a duty to

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1 indemnify question, true?

2 A. Yes, of course.

3 Q. But all of those are in relationship to
4 what the facts and the underlying case are about
5 which we're talking about whether there's coverage,
6 true?

7 A. Whether there's coverage is one of
8 issues that's being addressed, yes.

9 Q. I guess what I mean is there a

↑

10 declaratory judgment action you're not just giving
11 an advisory opinion of coverage in a vacuum.
12 You're saying is there coverage for X claim,
13 correct?

14 A. Usually unless there are cross
15 complaints from the defendant with other causes of
16 action which would enlarge the scope of the
17 declaratory relief action and probably the facts
18 upon which -- the facts which the action must
19 address.

20 Q. Fair enough.

21 So looking at this Exhibit 7, my
22 question -- and if you -- I can just scroll through
23 here, as slow or fast as you want or if you have a
24 copy of the complaint there you can look at it.

25 My question was simply is when you were

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1 talking about your opinion about coverage for the
2 underlying actions, what underlying actions are you
3 referring to?

4 A. Well, generally speaking in paragraph
5 1, you just jumped past it -- no other Paragraph.
6 One down.

7 Paragraph 1 factual background, Covil's

↑

8 operations from 1954 through 1991 included
9 installation blah, blah, blah, disturbance of
10 Thermal insulation and other building materials.
11 Those operations allegedly exposed persons to
12 asbestos who thereby suffered bodily injury.

13 You know, and the alleged bodily injury
14 resulting from the asbestos allegations has
15 resulted in claims and lawsuits against Covil.
16 Those claims and lawsuits may not be specifically
17 referenced in here, but it's generally that is
18 generally acknowledged what you're dealing with.
19 And as a result -- and now we do know from other
20 facts extrinsic to this pleading what they are and
21 what position that Penn National was taking
22 regarding them. In addition I don't have the
23 answer and I thought there was a cross complaint
24 there may not be but to the extent there is, that
25 may have added additional facts regarding

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1 individual claims but we would have to see that as
2 well.

3 Q. Okay. And I appreciate all of that.
4 My question is, when you testified a few minutes
5 ago that you had opinions about Penn National's

6 scope of coverage as it relates to underlying
7 suits --

8 A. Yes.

9 Q. -- what specific underlying suits were
10 you referring to? Is it the John Doe claim? Is it
11 the Jane Smith claim? I just want to make sure
12 we're talking about the same underlying bodily
13 injury claims and lawsuits.

14 A. Oh, okay, well there is correspondence
15 from Penn National outlining -- and I forgot, maybe
16 it was September of last year. I forgot the date.
17 Outlining all of Penn National's contributions to I
18 think 14 different cases. These are the cases that
19 are discussed in specifically -- just a moment,
20 bear with me for a moment. I want to make sure I
21 get this name right -- in Ms. Frost's deposition as
22 I understand. And they include some of the
23 complaints that I have actually looked at. So
24 those are some of the claims that we have concern
25 about because in the correspondence from Penn

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1 National regarding its settlement of those claims,
2 Penn National contends that only two aggregates
3 apply for the operations of Covil during those two

4 policy periods, which of course is clearly
5 incorrect.

6 And as I understand it, there are
7 numerous other claims being brought against Penn
8 National against Covil. I don't know what claims
9 they are and how large they are, but I understand
10 that there are other claims being brought against
11 Covil or that may be brought against Covil.

12 So we must then address the full
13 application of the aggregate as to not only the
14 claims that we know about as set forth for example
15 that letter, but also the ones that I don't
16 personally know about that are out there or that
17 may be out there. And that's what I'm trying to
18 do.

19 Q. But you would agree with me that in
20 order to assess coverage, we have to know what the
21 underlying facts are for the claim we're trying to
22 assess coverage for?

23 A. Underlying allegations initially will
24 invoke the duty to defend and then we have to look
25 at the facts.

2 14, maybe a couple of them, there might be a -- and
3 I don't know which ones -- there might be some
4 question as to whether they arise out of
5 operations.

6 But given Ms. Frost's testimony and
7 some of the complaints I have looked at out of
8 those 14, it's very clear they arise out of
9 operations. And so there's really no question
10 there.

11 Of course you would have to look at the
12 facts alleged in the other cases to determine
13 whether it's more likely than not that they arise
14 out of operations as well.

15 It seems likely that they would, given
16 the track record thusfar and the kind of work that
17 Covil did. But I don't disagree that before you
18 make a coverage decision you want to look at the
19 allegations. Nonetheless ahead of time it is
20 beneficial to know what the policy limits are. And
21 in this case, that can be resolved and dealt with
22 even before you know all of the allegations in any
23 other complaints.

24 Q. Let me show you what I've shared my
25 screen with you Mr. Miller and show you what I have

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1 marked as Exhibit 8?

2 A. Thank you. That's the letter. I knew
3 it was September. I couldn't recall the year.

4 Q. September 1, 2022 letter from Penn
5 National to receiver and it mentions 14 separate
6 claims and indemnity payments made by Penn National
7 on those claims; is that what you're referring to?

8 A. Yes.

9 Q. And when you talked about underlying
10 claims, is this -- is it these 14 claims that
11 you're referencing?

12 A. Those 14, it seems to me I've been told
13 somewhere along the line -- and I can stand to be
14 corrected on this -- that there are others as well,
15 either that have been filed or are anticipated to
16 be filed. To that extent, they would add to this.

17 Q. And I will try to be more clear in my
18 question. I'm not suggesting these 14 are the only
19 plaintiffs who have ever sued Covil or ever will.

20 A. Oh, okay.

21 Q. What I'm trying to understand is when
22 you testified few minutes ago that you believe Penn
23 National has certain coverage obligations with
24 regard to underlying suits and referenced facts in

25 the underlying suits to support your opinion, is it

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1 these 14 underlying suits that you're referring to

2 or are there other John Doe plaintiffs out there

3 that you're referring to?

4 A. I believe these are the 14.

5 Q. Okay. So did you review the underlying

6 complaints that each of those 14 people made

7 against Covil?

8 A. No, I didn't review them all, I

9 reviewed about half a dozen of them along with the

10 testimony of Ms. Frost who obviously reviewed

11 extensive amounts of documents in these 14 cases.

12 MR. NES: Counsel, before you move on I

13 just wanted to note for the record that the

14 document that you've put into evidence in

15 this deposition has been marked confidential

16 because of those settlement amounts so we'll

17 designate the deposition to confidential to

18 the extent that exhibit is being discussed

19 for the protection of both parties.

20 MR. BROWN: Agreed. Thank you,

21 counsel.

22 BY MR. BROWN:

23 Q. So Mr. Miller, in what policy -- I
24 understand your comments about -- I'm still talking
25 about your first opinion, okay, the one limited to

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1 the aggregate limits I understand your comments
2 about the industry standards; is there specific
3 language in the Penn National policy to which
4 you're referring that relates to the limits
5 of -- the aggregate limit of liability not
6 applying --

7 A. Yes, I can pull.

8 Q. I can pull up the policy if that will
9 help you.

10 A. Let's start with '86 '87 I think the
11 best thing to do there is to look at the
12 endorsement at Bates 310, amendment limits of
13 liability. And I think that pretty much sets it
14 forth.

15 Q. What I've got is a different version.
16 Any other language that you're referring to in the
17 policy as a basis of your opinion?

18 A. Well, it would be in the basic general
19 liability form as well but this is the amendment to
20 it which changes the format a bit but is the same

21 language, basically.

22 Q. Okay. So does the -- does it matter in
23 your opinion as to whether a particular loss under
24 the Penn National policies constitutes an
25 operations hazard loss versus a completed

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1 operations loss, does it matter when a given
2 Plaintiff was exposed to ongoing operations of
3 Covil?

4 MR. NES: Objection, form.

5 THE WITNESS: Yes, it does.

6 BY MR. BROWN:

7 Q. Let me try to clarify my question in
8 light of the objection.

9 Is your opinion influenced by when a
10 given Plaintiff was exposed to asbestos and Covil's
11 ongoing operations?

12 A. I -- I believe those were some key
13 facts that Ms. Frost testified to as to pinpointing
14 that -- the time of the exposure and when the claim
15 arose. So, yes, she may have -- as I recall it,
16 discussed other factors in that regard but those
17 are two that I recall.

18 Q. And I appreciate that. I'm asking for

19 your opinion and I'm still talking about opinion 1?

20 A. Oh, yeah.

21 Q. What difference does it make if any
22 when a given Plaintiff was exposed to Covil's
23 ongoing operations in relationship to whether
24 coverage in your mind under the Penn National
25 policy is an ongoing operations loss or completed

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1 operations loss?

2 MR. NES: Objection, form.

3 THE WITNESS: If I follow your question
4 correctly that's actually addressed in part
5 in my second opinion where I note that
6 there's a difference between trigger of
7 coverage for bodily injury as a trigger of
8 coverage and the time of injury, which is
9 the source of the injury. The source of the
10 injury, or the time of the injury,
11 determines what coverage applies and then
12 how many policies subsequent to that apply
13 or how many policies are then triggered is
14 determined by the bodily injury and when
15 that occurred.

16 So the first trigger is the first

17 exposure but the first trigger is also the
18 first source of injury and in here the first
19 source of injury, based on what I have seen,
20 are Covil's operations.

21 And so that becomes the policy during
22 that operation and the exposure becomes the
23 determining factor in what type of coverage
24 applies.

25 BY MR. BROWN:

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1 Q. Let me try this with a hypothetical?

2 A. Yeah.

3 Q. Let's say a John Doe Plaintiff who says
4 I was working at a facility and I worked there from
5 1970 until 2000.

6 A. Okay.

7 Q. So I worked there for thirty years.

8 And that obviously would include 1986
9 to 1988 during the two Penn National policy
10 periods, correct?

11 A. Sure, yeah.

12 Q. And if John Doe alleges in his
13 complaint and/or testified in his deposition, I was
14 exposed, and during each of those thirty years when

15 I was working at the plant, and Covil was working
16 alone alongside me for each of those years from
17 1970 up until Covil went out of business in the
18 early 90s. So from 86 to 88 I had actual exposure
19 and I was working alongside Covil during its
20 ongoing operations. Okay?

21 A. Okay.

22 Q. Are you with me?

23 A. Yeah.

24 Q. Assuming those are the facts, would you
25 say that that as it relates to the '86 to '88 Penn

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1 National policies for Covil, that that is an
2 ongoing operations loss under the Penn National
3 policies?

4 A. Clearly, so absolutely.

5 Q. Okay. Now, let's assume that the same
6 John Doe says, I began to work there in 1990, um,
7 and I prior to that had never worked anywhere where
8 there was an asbestos containing product and never
9 worked near any Covil employee since 1990 so by his
10 own allegations he puts the first date of exposure
11 after the two Penn National policies ended.

12 Would you agree with me that those two

13 Penn National policies would not be triggered in
14 that situation?

15 A. That is true.

16 Q. Okay. So now let's assume -- because I
17 think this kind of gets to the heart of what we
18 were discussing, let's assume that Jane/John Doe
19 Plaintiff says I worked there from 1970 to 2000.

20 A. Okay.

21 Q. No I'm sorry, John Doe Plaintiff says I
22 started working there in 1970 in the same way and I
23 worked alongside Covil employees during Covil's
24 ongoing operations from 1970 to 1980.

25 A. Right.

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1 Q. And in 1980, I stopped and I never
2 worked in a facility any longer --

3 A. Okay.

4 Q. -- but I then had asbestos containing
5 products in it to my knowledge. I did something
6 else other than work in that industrial setting at
7 that time but I was exposed to Covil's ongoing
8 operations from 70 to 80 and lo and behold four
9 years later I was diagnosed with an asbestos
10 related bodily injury disease. Okay?

11 A. Uh-huh.

12 Q. So you understand my hypothetical?

13 A. Yes, I do.

14 Q. Okay. So in that regarding would you
15 agree with me that the coverage was first triggered
16 under whatever coverage program Covil happened to
17 have in 1970 on John Doe's date of first exposure?

18 A. Yes.

19 Q. And that coverage at least in some
20 jurisdictions, would be triggered on a continuous
21 basis during -- even after 1980 when he was removed
22 from the environment under a so called exposure and
23 residence theory until diagnosis?

24 A. That goes a bit beyond my call in this
25 case but it's my understanding generally and I

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1 guess I will put my lawyer hat on, that would be
2 the case as I understand it.

3 Q. So in that example would any -- in your
4 opinion, would the -- bringing it back to this
5 case, would the 1986 to 1988 Penn National policies
6 be triggered that John Doe claim?

7 A. The bodily injury that occurred during
8 the 1986/88 policies if it did continue during

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9 those policies those policies would be triggered
10 however that would not answer the question as to
11 whether they were completed operations or premises
12 operations risks, or hazards as we call them.^ c

13 Q. I'm coming to that. They would be
14 triggered under what some court, some commentators
15 referred to as an exposure in residence theory,
16 meaning the Plaintiff was not actively exposed any
17 longer that the asbestos fibers are in his lungs
18 correct.

19 MR. NES: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. BROWN:

22 Q. So in that hypothetical do you have any
23 opinion whether any coverage triggered under the
24 '86 to '88 Penn National policies would constitute
25 an operations hazard or a completed operations

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1 hazard?

2 A. Given how you have described it it
3 would be clearly operations.

4 Q. Why is that true?

5 A. Because at the time he was exposed from
6 1970 initially, there-- we don't know first of all

7 whether there were completed operations coverage
8 but we're assuming that maybe there were, from 1970
9 it was during the times -- as I understand the
10 scenario, it was during the time that he was
11 exposed when Covil was working he was working
12 adjacent to Covil or whatever but he was exposed as
13 a result of their operations it's an
14 operations -- it's an operations coverage. And
15 that's the source. The source doesn't change. The
16 source continues throughout his injury period. It
17 doesn't convert. But what happens is that then the
18 trigger of coverage, the bodily injury, not the
19 source, the bodily injury then determines how many
20 subsequent policies are triggered.

21 The -- as you've explained it it sounds
22 like the '86 to '88 policies from Penn National
23 would be triggered because bodily injury occurs to
24 them. However the original source of the injury is
25 still operations. That does not change.

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1 Q. So your testimony is that in that
2 example where the given individual had not been
3 exposed to any ongoing operations of Covil for six
4 years prior to the inception of the Penn National

5 policy --

6 A. Yes.

7 Q. -- the Penn National policy was
8 triggered under a state court ruling and got the
9 ongoing operations loss even though the individual
10 was no longer exposed to Covil's ongoing operations
11 in '86 to '88?

12 A. Absolutely because it couldn't be a
13 completed operations because his injury didn't
14 arise after he left employment and after, as the
15 facts are, Covil handed over its -- oh, I don't
16 have the language in front of me -- you know,
17 handed over ownership or whatever it is -- you know
18 what I'm talking about -- of the -- of what it
19 installed to the owner. It didn't happen. It
20 happened before that. So there wasn't any other
21 continued -- any other source after 1980. There
22 wasn't a source, there wasn't -- he wasn't exposed
23 during -- after 1980 to any completed operations of
24 Covil. That's probably better said.

25 Q. So are you aware of any case in any

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1 jurisdiction that holds what you just said under

2 that fact pattern that holds that would be an

3 ongoing operations loss after a policy that
4 incepted many years after a plaintiff was no longer
5 exposed to the ongoing operations of the defendant?

6 A. No, I'm not, but I'm not here to talk
7 about the case law. I'm here to talk about how
8 things get handled within the insurance industry.
9 That's different. And so I haven't been asked to
10 do that kind of research and analysis and I don't
11 presume to know the answer to that question, but
12 I'm asked what is it in the industry. And once the
13 source of the injury is established, that remains
14 the source through all subsequent policies. And
15 this has been long the case in the insurance
16 industry in my own experience.

17 Q. And what industry -- can you point me
18 to a written industry standard that you're
19 referring to?

20 A. Well, there's some discussion about it
21 in CGL policy handbook that I cite on page 4, there
22 and then IRMI also notes something -- let me read
23 this and I cite this on page 4 -- the CGL policy
24 definition of bodily injury makes clear that a
25 death sustained at a later time caused by an injury

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1 occurring in an earlier period will be covered by
2 policy in effect at the time the injury was
3 sustained. So regardless of what happens to the
4 injury, how it morphs, if you will, changes, what
5 it results in after the policy period has expired
6 is still determined by what happened during the
7 original policy period. It doesn't change. And
8 that's always been the way that I have handled it
9 and other people that I know in the insurance
10 industry have handled it.

11 Q. The IRMI quote you just read talks
12 about whether there would be coverage, not whether
13 it be would be covered as a completed operations
14 hazard loss or a products completed operations
15 hazard loss correct?

16 A. Yes, but it does underscore the
17 principle that's involved in here that after the
18 policy is expired, any changes in the injury in any
19 way look back to the earlier period or the policy
20 in effect at the time of the injury as the policy
21 that provides coverage.

22 Now, we get into a little different
23 sort of thing here, I will admit because of the
24 trigger of coverage triggering subsequent policies,
25 but that doesn't change the basic premise that is

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1 discussed in this and elsewhere, in this IRMI
2 quotation and elsewhere that even though the
3 trigger the bodily injury continues, the source
4 does not. The source is the same.

5 Q. Do you have a copy of the Penn National
6 policies in front of you?

7 A. Yeah.

8 Q. Okay. I will mark just for
9 completeness as Exhibit 9 a copy of the 86/87 Penn
10 National policy and I can share my screen or it
11 might be easier if you had the document in front of
12 you just to read it but I want to talk about the
13 definition of the completed operations hazard. Are
14 you familiar with the policy?

15 A. Sure, oh, sure just a second. Could
16 you -- I know it's here.

17 Q. I will bring it up on the share screen
18 if you want.

19 A. Would you mind? It would be helpful.

20 Q. Okay, no worries. It's on page Penn
21 National policies 36 on the -- on the exhibit. Let
22 me see if I can enlarge it.

23 A. Oh, yeah, this is helpful. Thank you.

24 There we are.

25 Q. I will try to make it as large as I

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1 can. Can you see that definition, Mr. Miller?

2 A. Oh, yeah, uh-huh.

3 Q. Okay. So have you read this language
4 before in connection with your work in this case?

5 A. Oh, in this case and many others.

6 Q. Okay. So for a completed operations
7 hazard loss to occur, completed operations hazard
8 would include bodily injury arising out of
9 operations only if the bodily injury occurs after
10 such operations have been completed and occurs away
11 from premises owned by or rented to the named
12 insured. I didn't read every word but did I get
13 the main points there?

14 A. Sure.

15 MR. NES: Objection, form.

16 BY MR. BROWN:

17 Q. All right, I will read the whole thing
18 just to remedy the objection.

19 Completed operations hazard includes
20 bodily injury and property damage arising out of
21 operations or reliance upon a representation or

22 warranty made at any time with respect thereto but
23 only if the bodily injury or property damage occurs
24 after such operations have been completed or
25 abandoned and occurs away from premises owned by or

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1 rented to the named insured.

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. Okay. So in my -- the completed
5 operations hazard necessarily includes bodily
6 injury that arose out of the operations of the
7 insured at some time, correct?

8 A. Yes.

9 Q. And would you agree with me, as you
10 understand the facts of these underlying suits that
11 bodily injury occurred away from the premises owned
12 by or run by Covil?

13 A. That would seem to be the case, yes.

14 Q. So the issue is whether the bodily
15 injury occurred after Covil's operations had been
16 completed or abandoned, correct?

17 A. Yes.

18 Q. And how could bodily injury in my
19 hypothetical occur to that hypothetical Plaintiff

20 in '86 to '88 from ongoing operations if the John
21 Doe Plaintiff was no longer working there from '86
22 to '88?

23 A. Because the injury -- the bodily injury
24 did not occur after the operations had been
25 completed, it occurred during the operations. And

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1 this is a critically important distinction because
2 if you don't make that distinction, then you end up
3 with a tremendous amount of confusion as to when
4 the completed operations hazard applies let alone
5 the operations hazard. So he sustained his injury
6 as a result of operations. That doesn't change.
7 It doesn't morph into completed operations.

8 Q. Did you review the definition of
9 products hazard in the policy?

10 A. Yes, I did.

11 Q. Would any of the underlying claims as
12 you understand them invoke the products hazard
13 coverage under the Penn National policy?

14 A. No, not to my knowledge.

15 Q. Why not?

16 A. Well, in the first thing is that what
17 we're doing with a service here, an application for