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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 6**

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INDEX

ORDERS

2021.11.05 Discovery ORDER Granting Covil's Motions to Compel Penn National	1
2022.02.11 Proposed ORDER on Covil's Motion for Protective ORDER.....	5
2022.05.05 ORDER on Discovery Motions	10
2022.05.26 ORDER on Motion for Reconsideration.....	26
2022.09.16 Proposed Scheduling ORDER	30
2022.11.16 ORDER on Discovery Motions	33
2022.12.06 ORDER on Penn Nationals Motion to Confirm Jury Trial Demand	37
2023.05.11 ORDER Granting Covil's Motion for Attorneys' Fees and Cost	40
2023.06.08 Form 4 Judgment in a Civil Case.....	54
2023.06.16 Scheduling ORDER	58
2023.09.06 ORDER Scheduling	61
2024.03.01 Final ORDER on Findings of Fact and Conclusions of Law.....	64
2024.04.05 ORDER Approving Covils Report on Attorney's Fees and Costs.....	167
2024.04.05 ORDER Denying PN Post-Trial Motions.....	170

PLEADINGS, MOTIONS, AND OTHER FILINGS

2020.04.27 Summons and Complaint	177
2020.06.01 Defendant Penn National's Answer to Complaint for Declaratory Judgment and Breach of Contract	193
2021.03.31 Penn National Answer to Complaint for Declaratory Judgment and Breach of Contract.....	203
2021.08.20 Covil's Notice of Motion and Motion to Compel w Exhibits	211
2021.09.08 Covil's Second Supplemental Motion to Compel and for Sanctions w Exhibits..	277
2021.09.08 Stipulation of Dismissal of SC Property	310

2021.10.05 Covil's Notice of Third Supplemental Motion to Compel w Exhibits	311
2021.10.25 Penn National Memorandum in Opposition to Motion to Compel w Exhibits	334
2021.12.07 Interim Report Regarding Progress of Document Sampling	409
2021.12.10 Covil's Notice of Motion and Motion for Protective ORDER w Exhibits.....	412
2021.12.15 Penn National's Response to Pl's Motion for Protective ORDER	429
2021.12.21 Covil's Supplemental Motion for Discovery ORDER on Costs of Policy Search w Exhibits	434
2021.12.22 Penn National's Motion to Quash Covil's Notice of 30(b)(6) Deposition	442
2021.12.28 Covil's Opposition to Penn Nationals Motion to Quash Rule 30(b)(6) Deposition w Exhibits	453
2021.12.29 Covil's Notice of Motion and Motion to Compel w Exhibits	548
2022.01.03 Receiver's Motion for Evidentiary Hearing on the Scope of Penn National's Spoliation of Evidence	709
2022.01.07 Penn National's Reply to Pl's Opposition to Motion to Quash and for Protective ORDER w Exhibits.....	715
2022.01.07 Second Interim Report	785
2022.02.07 Third Interim Report Regarding Progress of Document Sampling	788
2022.02.24 Covil's Notice of Motion and Motion to Compel w Exhibits	790
2022.03.07 Fourth Interim Report Regarding Progress of Document Sampling.....	845
2022.03.23 Notice of Filing of Ellis & Winters Report.....	847
2022.04.01 Covil's Supplemental Notice of Motion and Motion to Compel w Exhibits	854
2022.04.07 Notice of Filing of Documents in Support of Penn National's Response in Opposition to Third Motion to Compel w Exhibits	921
2022.04.07 Penn National's Response in Opposition to Plaintiff's Third Motion to Compel .	980
2022.05.12 Supplemental Notice of Filing w Exhibits.....	991
2022.05.16 Penn National's Motion for Reconsideration	997

2022.05.18 Covil's Opposition to Penn National's Motion for Reconsideration of Court's May 5, 2022 ORDER	1058
2022.05.19 Notice of filing of Documents in Support of Penn National's Motion for Reconsideration.....	1064
2022.05.31 Letter re Notice of Appeal	1084
2022.05.31 Notice of Appeal	1085
2022.07.19 Report on Receivership Covil Corporation w Exhibits	1109
2022.09.06 Receiver for Covil Status Report	1142
2022.11.04 Receiver for Covil Motion to Compel Discovery with exhibits	1147
2022.11.07 Jury Demand Letter to Judge Toal	1233
2022.11.08 Poswal email regarding preserving Penn National's position on its right to a jury trial	1234
2022.11.10 Penn National Response in Opp to Motion to Compel.....	1236
2022.11.10 Receiver for Covil Pre-Trial Hearing Status Report.....	1278
2022.11.11 Penn National Response to Pre-Trial Status Report	1328
2022.11.23 Penn National Pre-Marked Trial Exhibit and Witness List	1332
2022.11.23 Receiver for Covil Trial Exhibit List	1337
2022.11.23 Receiver for Covil Trial Witness List.....	1354
2022.11.30 Penn National Motion in Limine to Exclude Certain Opinions and Testimony of Sharla Frost	1356
2022.11.30 Penn National Motion in Limine to Exclude Testimony of Charles M. Miller and Related Evidence.....	1565
2022.11.30 Penn National's Objections to Receiver's Designation of Trial Exhibits.....	1758
2022.11.30 Receiver's Motion in Limine to Exclude Evidence of the Receiver's Compensation and Qualified Settlement Fund	1776
2022.11.30 Receiver for Covil Objections to Pre-Marked Trial Exhibits	1780

2022.12.02 Penn Nationals Motion to Confirm Jury Trial Demand.....	1785
2022.12.05 Receiver for Covil Amended Trial Exhibit List.....	1803
2022.12.05 Receiver for Covil Proposed Findings of Fact and Conclusions of Law.....	1821
2022.12.05 Penn National's Deposition Designations.....	1893
2022.12.05 Penn National Proposed Conclusions of Fact and Law	2411
2022.12.06 Notice of Dismissal of Sam J. Crain & Co	2434
2022.12.06 Plaintiff Notice That It Seeks Only Declarations Concerning Its Policies with Penn National	2435
2022.12.07 Notice of Appeal of 12.6.22 ORDER	2437
2022.12.08 Letter from Retired Chief Justice Toal	2446
2023.01.17 Motion to Enforce May 5, 2022 Discovery ORDER and Establish Schedule for Compliance	2447
2023.02.17 Motion for Attorney's Fees and Cost	2476
2023.04.18 Defendants Memorandum in Response to Motion for Attorney's Fees and Cost.....	2573
2023.04.26 Supplemental Declaration of Jonathan M. Robinson in Support of Motion for Attorney's Fees and Costs with Exhibits	2589
2023.04.26 Supplemental Declaration of Marghretta H. Shisko in Support of Receiver's Motion for Attorney's Fees and Cost	2656
2023.05.22 Defendant's Motion to Reconsider with Exhibit 1	2680
2023.05.23 Report of the Receiver for Covil Corporation with Exhibits 1-2.....	2754
2023.05.25 Interim Status Report of Penn National	2835
2023.06.02 Receiver's Opposition to Penn National Motion for Reconsideration of the Court's May 12, 2023 Order with Exhibits 1-6	2838
2023.06.08 Second Interim Status Report of Penn National	2900
2023.06.23 Third Interim Status Report of Penn National	2902

2023.07.05 Letter from K. Shealy to J. Robinson Forwarding Attorney Fees	2905
2023.07.06 Fourth Interim Status Report of Penn National	2906
2023.07.20 Fifth Interim Status Report of Penn National	2909
2023.07.20 Receipt and Satisfaction of Judgment with Exhibit A	2912
2023.08.03 Final Report of Penn National re Status of Compliance	2928
2023.08.10 Report of the Receiver for Covil Corporation with Exhibits 1-4.....	2931
2023.08.11 Affidavit of Reifsnyder	3091
2023.09.11 Affidavit of Brent Reifsnyder	3093
2023.09.11 Ninth Interim Status Report of Penn National	3095
2023.09.25 Tenth Interim Status Report of Penn National	3099
2023.10.09 Eleventh Interim Status Report of Penn National	3102
2023.10.24 Receiver for Covil Pre-Trial Hearing Status Report.....	3107
2023.10.24 Twelfth Interim Status Report of Penn National	3113
2023.11.02 Receiver for Covil Amended Fact and Expert Disclosures	3117
2023.11.02 Receiver for Covil Amended Trial Exhibit List.....	3122
2023.11.03 Plaintiff's Opposition to Penn National's Motion in Limine to Exclude Testimony of Charles Miller and Related Evidence.....	3143
2023.11.03 Plaintiff's Response to Penn National's Motion in Limine to Exclude Testimony of Sharla Frost and Related Evidence	3167
2023.11.07 Thirteenth Interim Status Report.....	3196
2023.11.17 Penn National Amended Pre-Marked Trial Exhibit and Trial Witness List.....	3200
2023.11.17 Penn National Cross Deposition Designations and Objections	3205
2023.11.17 Penn National Motion for Summary Judgment	3217
2023.11.20 Covil Third Amended Trial Exhibit List.....	3238

2023.11.20 Covil’s Trial Witness List	3259
2023.11.21 Covil’s Status Report	3261
2023.11.21 Penn National’s Memorandum of Law in Support of Motion for Summary Judgment	3267
2023.11.22 Covil’s Opposition to Penn National’s Motion for Summary Judgment.....	3421
2023.11.22 Penn Nationals Second Amended Trial Exhibit List	3469
2023.12.05 Fifteenth Interim Status Report of Penn National.....	3474
2023.12.19 Sixteenth Interim Status Report	3479
2024.01.02 Seventeenth Interim Status Report.....	3484
2024.01.12 Receiver for Covil Corporation's Proposed Findings of Fact and Conclusions of Law.....	3489
2024.01.12 Penn National's Findings of Fact and Conclusions of Law Proposed	3592
2024.01.16 Eighteenth Interim Status Report.....	3628
2024.01.30 Nineteenth Interim Status Report.....	3633
2024.02.13 Twentieth Interim Status Report	3638
2024.02.27 Twenty-First Interim Status Report	3643
2024.03.08 Penn Nationals Final Status Report	3648
2024.03.11 Penn National's Post-Trial Motions	3653
2024.03.29 Receiver's Report on Attorney's Fees and Cost w Exhibits	3666
2024.04.25 COA - Notice of Appeal w Exhibit.....	3950
COURT OF APPEAL	
2022.06.06 Petition for Writ of Certiorari, Appellate Case No. 2022-000785.....	4125
2022.08.09 Appellate Case 2022-000761 Order Granting Motion to Dismiss Appeal	4156
2022.08.23 ORDER Denying Petition for Writ of Certiorari	4158
2022.08.24 Appellant's Petition for Rehearing and Suggestion for Rehearing En Banc.....	4160

2022.11.15 Appellate Case 2022-000761 Order Denying Petition for Rehearing	4194
2022.12.14 Motion to Dismiss & Expedite.....	4196
2022.12.16 Petition for Writ of Certiorari, Appellate Case No. 2022-001764.....	4404
2023.01.12 Appellate Case 2022-001764 ORDER Denying Petition for Writ of Certiorari	4434
2023.02.08 ORDER Granting Covil Motion to Dismiss	4436
2023.02.23 Appellant's Petition for Rehearing and Suggestion for Rehearing <i>En Banc</i>	4437
2023.06.06 ORDER Denying Petition for Rehearing.....	4458
2023.06.30 Remittitur from Court of Appeals to Lower court	4460
2023.07.06 Petition for Writ of Certiorari	4462
2023.11.07 SC Supreme Court Order Denying Petition for Writ	4484
2024.01.19 Remittitur from Court of Appeals.....	4486
TRANSCRIPTS - HEARING/TRIAL	
2022.01.11 Motions Hearing	4488
2022.04.11 Motions Hearing	4583
2022.09.08 Transcript of Record	4603
2022.11.14 Transcript of Record	4621
2023.10.25 Hearing Transcript	4732
2023.11.27 Trial Transcript - Day 1 AM	4743
Opening Statements	
By Mr. Nes.....	4789
By Mr. Shealy	4831
Testimony of Boyd Wright	
Direct Examination	4838
Cross-Examination.....	4856
Redirect Examination.....	4865
Testimony of Peter Protopapas	
Direct Examination	4869
Cross-Examination.....	4887

2023.11.27 Trial Transcript - Day 1 PM.....	4923
Continued Cross-Examination.....	4926
Testimony of Sharla Jo Frost	
Direct Examination.....	4953
Cross-Examination.....	5003
2023.11.28 Trial Transcript - Day 2 AM.....	5014
Testimony of Bernie Heinze	
Direct Examination.....	5020
Cross-Examination.....	5041
Examination by the Court.....	5067
Testimony of James Robertson, CPCU, ARM	
Direct Examination.....	5074
Cross-Examination.....	5108
Further Testimony of Boyd Wirght	
Examination by the Court.....	5120
Further Examination by Mr. Nes.....	5127
2023.11.28 Trial Transcript - Day 2 PM.....	5139
Closing Arguments	
By Mr. Nes.....	5142
By Mr. Brown.....	5181
By Mr. Shealy.....	5207
PENN NATIONAL TRIAL EXHIBITS	
Exhibit 1 - Complaint.....	5225
Exhibit 2 - Penn National's Answer to Complaint.....	5226
Exhibit 3 - Subpoena 5.29.2018 (Finch).....	5227
Exhibit 4 - Letter from Boyd Wright to Sabrina Stone with attached documents in Response to Subpoena 6.15.2018 (Finch).....	5242
Exhibit 5 - Penn National's Policy 1986-1987, Bates No. Penn National Policies 000001-43.....	5255
Exhibit 6 - Penn National's Policy 1987-1988, Bates No. Penn National Policies 000044-91.....	5298
Exhibit 7 - Covil's General Liability Underwriting Materials, Bates No. PNI-0304-392	5346
Exhibit 8 - Non-CGL Policy Documents Produced by Penn National, Bates No. PNI-0001-0303, PNI-0393-596, PNI-1162-1611	5435

Exhibit 9 - Covil's Policy Charts.....	6392
Exhibit 10 - Subpoena Duces Tecum to Penn National 2.8.2021	6394
Exhibit 11 - Brady Yntema's Letter to Marghretta Shisko 2.12.2021	6424
Exhibit 12 - Receiver's Responses to Penn National's First Set of Interrogatories.....	6426
Exhibit 13 - Receiver's Responses to Penn National's First Request for Production of Documents	6439
Exhibit 14 - Affidavit of Boyd Wright 6.3.2021.....	6452
Exhibit 15 - Affidavit of Boyd Wright 6.11.2021.....	6459
Exhibit 16 - Brent Reifsnyder Affidavit 7.9.2021	6466
Exhibit 17 - Brent Reifsnyder Affidavit 7.23.2021	6471
Exhibit 18 - Brent Reifsnyder Affidavit 12.22.2021	6475
Exhibit 18a - Brent Reifsnyder Affidavit 9.11.2023.....	6478
Exhibit 19 - Penn National's Document Retention Policy, Bates No. PNI-0598-1158	6480
Exhibit 20 - Penn National's Litigation Hold Policy, Bates No. PNI-1159-1161.....	7041
Exhibit 21 - Penn National's Litigation Hold Notice 12.17.2021	7044
Exhibit 22 - Ellis & Winters Report 3.22.2022	7046
Exhibit 23 - Y2K10 Database Spreadsheet - Microfiche Destruction Dates Spreadsheet (PNI-00597)	7051
Exhibit 24 - Impairment Letter from Penn National to Receiver 9.1.2022	9130
Exhibit 25 - Order Granting Joint Motions to Establish Covil QSF.....	9132
Exhibit 26 - QSF Operating Agreement	9162
Exhibit 27 - Motions to Compel/Sanctions by Receiver Against Other Insurers	9179
Exhibit 28 - Deposition Transcript and exhibits of Boyd Wright (Finch) 1.7.2021	9639
Direct Examination	9643
Exhibit 29 - Deposition Transcript and exhibits of Boyd Wright 8.26.2021.....	9789

Direct Examination	9793
Cross-Examination.....	9834
Exhibit 30 - Deposition Transcript and exhibits of Boyd Wright 11.30.2022.....	9901
Direct Examination	9905
Exhibit 31 - Deposition Transcript and exhibits of Brent Reifsnyder 8.3.2021	10051
Direct Examination	10055
Cross-Examination.....	10117
Re-Direct Examination	10121
Exhibit 32 - Deposition Transcript and exhibits of Brent Reifsnyder 11.10.2022	10166
Direct Examination	10172
Exhibit 33 - Deposition Transcript and exhibits of Bernd Heinze 12.7.2022.....	10341
Direct Examination	10347
Exhibit 34 - Deposition Transcript and exhibits of Charles Miller 11.28.2022.....	10899
Direct Examination	10903
Cross-Examination.....	11042
Exhibit 35 - Deposition Transcript and exhibits of Charles Miller 11.3.2023.....	11166
Direct Examination	11169
Exhibit 36 - Deposition Transcript and exhibits of James Robertson 12.06.2022.....	11342
Direct Examination	11345
Exhibit 37 - Deposition Transcript and exhibits of Peter Protopapas 11.17.2022.....	11525
Direct Examination	11528
Exhibit 38 - Deposition Transcript and exhibits of Scott Maier dated 11.21.2022	11805
Direct Examination	11809
Cross-Examination.....	11908
Exhibit 39 - Deposition Transcript and exhibits of Sharla Frost 11.9.2022	12071
Direct Examination	12074
Exhibit 40 - Bernd G. Heinze - CV.....	12319
Exhibit 41 - James A. Robertson - CV.....	12333
Exhibit 42 - Joint Stipulation Regarding Finch	12339
Exhibit 43 - Penn National's Responses to First Set of Interrogatories	12342
Exhibit 44 - Penn National's Responses to First Request for Production of Documents....	12369

Exhibit 45 - Penn National’s Supplemental Responses to First Set of Interrogatories.....	12393
Exhibit 46 - Penn National’s First Supplemental Responses to First Request for Production of Documents	12412
Exhibit 47 - Penn National’s Responses to Second Set of Interrogatories	12455
Exhibit 48 - Penn National’s Response to Plaintiff’s Second Set of Request for Production	12467
Exhibit 49 - Penn National’s Response to Third Set of Request for Production	12474
Exhibit 50 - Penn National’s Supplemental Response to Third Set of Requests for Production	12489
Exhibit 51 - Penn National’s Responses to Requests for Admission	12506
Exhibit 52 - Penn National's Objection to Subpoena (Finch) 2.22.2021	12515
Exhibit 53 - Penn National's Supplemental Objections to Subpoena (Finch) 3.9.2021	12524
Exhibit 54 - Penn National Interim Reports.....	12536
Exhibit 55 - Report of Receiver for Covil.....	12550
Exhibit 56 - Covil Corporation's Amended Expert Disclosures	12551
Exhibit 57 - Defendant's Fact and Expert Witness Disclosures.....	12556
Exhibit 58 - 2023-11-22 KDS Letter to Counsel re Supplemental Covil	12582
COVIL TRIAL EXHIBITS	
Exhibit 1 - GL Policy Number 515 50 28 53-7 (Penn National Policies 000001 – 000043)	12618
Exhibit 2 - GL Policy Number 515 50 28 53-8 (Penn National Policies 000044 – 000091)	12619
Exhibit 3 - Boyd Wright Affidavit in Opposition to Receiver’s Motion for Summary Judgment, dated October 22, 2021	12620
Exhibit 4 - Inland Marine Policy (PNI-1225 – 1324)	12751
Exhibit 5 - Auto Policy (PNI-1325 – 1611).....	12752
Exhibit 6 - Auto, Inland Marine, and Workers Compensation Policies (PNI-0393 – 0596)	12753

Exhibit 7 - Penn National-Covil Underwriting File (PNI-0304 – 0392)	12754
Exhibit 8 - Penn National Document Retention Policies (PNI-0598 – 1158)	12755
Exhibit 9 - Litigation Hold Procedure (PNI-1159 – 1161)	12756
Exhibit 10 - Dec. 17, 2021 Litigation Hold Email.....	12757
Exhibit 11 - Microfiche Destruction Dates Spreadsheet (PNI-0597)	12758
Exhibit 12 - Underlying subpoena served in <i>Finch</i> asbestos suit dated May 29, 2018	12759
Exhibit 13 - Penn National’s June 15, 2018 letter and documents served in response to subpoena in <i>Finch</i> asbestos suit.....	12760
Exhibit 14 - Sept. 1, 2022 Letter from Boyd Wright to Peter Protopapas - Covil v Penn 2098_000001 – 000002.....	12761
Exhibit 15a - Archer Complaint - Covil v. Penn 2098_000003-68	12763
Exhibit 15b - Archer Work Sites - Covil v Penn 2098_000069	12829
Exhibit 15c - Archer Plaintiff’s Responses to Interrogatories - Covil v Penn 2098_000070-81	12830
Exhibit 15d - Archer Plaintiff’s Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_000082-147.....	12842
Exhibit 15e - Archer Deposition transcript of B. Glenn – dated July 28, 2010 - Covil v Penn 2098_000148-66	12908
Exhibit 16a - Ashworth Complaint - Covil v Penn 2098_000167-215.....	12927
Exhibit 16b - Ashworth Work Sites - Covil v Penn 2098_000216-17	12976
Exhibit 16c - Ashworth Plaintiff’s Responses to Interrogatories - Covil v Penn 2098_000218-29	12978
Exhibit 16d - Ashworth Plaintiff’s Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_000230-85	12990
Exhibit 16e - Ashworth Covil Motion for Summary Judgment - Covil v Penn 2098_000286-90	13046
Exhibit 16f - Ashworth Deposition transcript excerpt of D. Rollins – dated June 7, 2019 - Covil v Penn 2098_000291-96	13051

Exhibit 16g - Ashworth Plaintiff's Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_000297-303	13057
Exhibit 16h - Ashworth Deposition transcript of D. Rollins – dated Feb. 18, 2019 - Covil v. Penn 2098_000304-441	13064
Exhibit 16i - Ashworth Deposition transcript of D. Rollins – dated Feb. 19, 2019 - Covil v. Penn 2098_000442-528	13202
Exhibit 16j - Ashworth Invoices - Covil v. Penn 2098_000529-36.....	13289
Exhibit 16k - Ashworth Project listings document - Covil v. Penn 2098_000537-42.....	13297
Exhibit 16l - Ashworth Deposition transcript of R. Ashworth – dated Aug. 2, 2017 (de bene esse) - Covil v Penn 2098_000543-588	13303
Exhibit 16m - Ashworth Deposition transcript of R. Ashworth – dated Aug. 2, 2017 (discovery) - Covil v Penn 2098_000589-638	13349
Exhibit 17a - Aspray Complaint - Covil v Penn 2098_000639-99.....	13399
Exhibit 17b - Aspray Work History - Covil v Penn 2098_000700-3	13460
Exhibit 17c - Aspray Second Amended Complaint - Covil v Penn 2098_000704-52	13464
Exhibit 17d - Aspray Plaintiff's Responses to Standard Interrogatories - Covil v Penn 2098_000753-66	13513
Exhibit 17e - Aspray Covil's Amended Motion for Summary Judgment - Covil v Penn 2098_000767-70	13527
Exhibit 17f - Aspray Plaintiff's Response in Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_000771-87.....	13531
Exhibit 17g - Aspray Deposition transcript of P. Haynes – dated June 30, 2020 - Covil v Penn 2098_000788-829	13548
Exhibit 18a - Campbell Complaint - Covil v Penn 2098_000830-912.....	13590
Exhibit 18b - Campbell First Amended Complaint - Covil v Penn 2098_000913-1002.....	13673
Exhibit 18c - Campbell Work Sites - Covil v Penn 2098_001003	13763
Exhibit 18d - Campbell Plaintiffs' Answers to Standard Interrogatories - Covil v Penn 2098_001004-1013	13764

Exhibit 18e - Campbell Plaintiffs' Responses to Master Interrogatories and Request for Production of Documents- Covil v Penn 2098_001014-1156	13774
Exhibit 18f - Campbell Plaintiffs' Supplemental Answers to Standard Interrogatories - Covil v Penn 2098_001157-58	13917
Exhibit 18g - Campbell Plaintiffs' Supplemental Responses to Master Interrogatories and Requests for Production - Covil v Penn 2098_001159-1210	13919
Exhibit 18h - Campbell Covil's Motion for Summary Judgment - Covil v Penn 2098_001211-16.....	13971
Exhibit 18i - Campbell Deposition transcript of M. Sanders – dated Feb. 1, 2022 - Covil v Penn 2098_001217-55	13977
Exhibit 18j - Campbell Deposition transcript of M. Sanders – dated Feb. 2, 2022 - Covil v Penn 2098_001256-1303	14016
Exhibit 18k - Campbell Deposition transcript of M. Sanders – dated Feb. 4, 2022 - Covil v Penn 2098_001304-51	14064
Exhibit 18l - Campbell Deposition transcript of J. Campbell – dated Oct. 21, 1999 - Covil v Penn 2098_001352-1402	14112
Exhibit 18m - Campbell Deposition transcript of J. Campbell – dated July 28, 2021 - Covil v Penn 2098_001403-41	14163
Exhibit 19a - D'Amico Complaint - Covil v Penn 2098_001442-1517	14202
Exhibit 19b - D'Amico Plaintiff's Responses to Standard Interrogatories - Covil v Penn 2098_001518-1531	14278
Exhibit 19c - D'Amico Plaintiff's Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_001532-1609	14292
Exhibit 19d - D'Amico Covil's Motion for Summary Judgment - Covil v Penn 2098_001610-13	14370
Exhibit 19e - D'Amico Plaintiff's Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_001614-24	14374
Exhibit 19f - D'Amico Deposition transcript of J. D'Amico – dated Oct. 11, 1999- Covil v Penn 2098_001625-43	14385
Exhibit 19g - D'Amico Deposition transcript of J. D'Amico – dated Oct. 26, 1994 - Covil v Penn 2098_001644-1881	14404

Exhibit 19h - D’Amico Deposition transcript of J. D’Amico – Jan. 30, 2001 - Covil v Penn 2098_001882-1918	14642
Exhibit 20a - Garren Complaint - Covil v Penn 2098_001919-84	14679
Exhibit 20b - Garren Plaintiff’s Responses to Standard Interrogatories - Covil v Penn 2098_001985-97	14745
Exhibit 20c - Garren Plaintiff’s Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_001998-2014.....	14758
Exhibit 20d - Garren Covil’s Motion for Summary Judgment - Covil v Penn 2098_002015-20	14775
Exhibit 20e - Garren Deposition transcript of G. Garren – dated Oct. 13, 2021 - Covil v Penn 2098_002021-2104	14781
Exhibit 20f - Garren Deposition transcript of G. Garren – dated Oct. 14, 2021 - Covil v Penn 2098_002105-29	14865
Exhibit 21a - Jolly Complaint - Covil v Penn 2098_002130-71.....	14890
Exhibit 21b - Jolly Second Amended Complaint - Covil v Penn 2098_002172-2213	14932
Exhibit 21c - Jolly Work Sites- Covil v Penn 2098_002214.....	14974
Exhibit 21d - Jolly Plaintiffs’ Responses to Standard Interrogatories - Covil v Penn 2098_002215-45	14975
Exhibit 21e - Jolly Covil’s Motion for Summary Judgment- Covil v Penn 2098_002246-55	15006
Exhibit 21f - Jolly Covil’s Amended Motion for Summary Judgment - Covil v Penn 2098_002256-66	15016
Exhibit 22a - Jonas Complaint - Covil v Penn 2098_002267-2341	15027
Exhibit 22b - Jonas Plaintiff’s Responses to Standard Interrogatories - Covil v Penn 2098_002342-55	15102
Exhibit 22c - Jonas Plaintiff’s Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_002356-2426.....	15116
Exhibit 22d - Jonas Covil’s Motion for Summary Judgment - Covil v Penn 2098_002427-31	15187

Exhibit 22e - Jonas Plaintiff's Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_002432-2442	15192
Exhibit 22f - Jonas Deposition transcript of George Fincher – dated Oct. 22, 2020 - Covil v Penn 2098_002443-2569	15203
Exhibit 22g - Jonas Deposition transcript of C. Bell – dated Nov. 20, 2020- Covil v Penn 2098_002570-2683	15330
Exhibit 23a - Knight Complaint - Covil v Penn 2098_002684-2748	15444
Exhibit 23b - Knight Work Sites - Covil v Penn 2098_002749-51	15509
Exhibit 23c - Knight Plaintiffs' Responses to Standard Interrogatories - Covil v Penn 2098_002752-63	15512
Exhibit 23d - Knight Plaintiffs' Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_002764-2842.....	15524
Exhibit 23e - Knight Covil's Amended Motion for Summary Judgment - Covil v Penn 2098_002843-48	15603
Exhibit 23f - Knight Plaintiffs' Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_002849-58	15609
Exhibit 23g - Knight Deposition transcript of R. Cassidy – dated March 19, 2020 - Covil v Penn 2098_002859-2950	15619
Exhibit 23h - Knight Deposition transcript of K. Knight – dated March 19, 2020 - Covil v Penn 2098_002951-3194	15711
Exhibit 24a - Morgan Complaint - Covil v Penn 2098_003195-3292.....	15955
Exhibit 24b - Morgan First Amended Complaint - Covil v Penn 2098_003293-3396.....	16053
Exhibit 24c - Morgan Plaintiffs' Responses to Standard Interrogatories - Covil v Penn 2098_003397-3460	16157
Exhibit 24d - Morgan Plaintiffs' Responses to Standard Interrogatories - Covil v Penn 2098_003461-72	16221
Exhibit 24e - Morgan Covil's Motion for Summary Judgment - Covil v Penn 2098_003473-79	16233
Exhibit 24f - Morgan Plaintiffs' Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_003480-93	16240

Exhibit 24g - Morgan Opposition exhibits excerpts - Covil v Penn 2098_003494-3772....	16254
Exhibit 24h - Morgan Deposition transcript of E. Morgan – dated Feb. 22, 2021 - Covil v Penn 2098_003773-3809	16533
Exhibit 24i - Morgan Deposition transcript of E. Morgan – dated Feb. 23, 2021 (preservation) - Covil v Penn 2098_003810-55	16570
Exhibit 24j - Morgan Deposition transcript of E. Morgan – dated Feb. 23, 2021 - Covil v Penn 2098_003856-3920	16616
Exhibit 24k - Morgan Deposition transcript of E. Morgan – dated Feb. 26, 2021 - Covil v Penn 2098_003921-4023	16681
Exhibit 24l - Morgan Deposition transcript of E. Morgan – dated March 1, 2021 - Covil v Penn 2098_004024-93	16784
Exhibit 24m - Morgan Deposition transcript of E. Morgan – dated March 2, 2021 (preservation) - Covil v Penn 2098_004094-4100	16854
Exhibit 24n - Morgan Deposition transcript of E. Morgan – dated March 2, 2021 - Covil v Penn 2098_004101-4118	16861
Exhibit 25a - Moss Complaint - Covil v Penn 2098_004119-4204.....	16879
Exhibit 25b - Moss Amended Complaint - Covil v Penn 2098_004205-89.....	16965
Exhibit 25c - Moss Plaintiff’s Responses to Standard Interrogatories - Covil v Penn 2098_004290-4303	17050
Exhibit 25d - Moss Plaintiff’s Responses to Master Interrogatories and Requests for Production of Documents - Covil v Penn 2098_004304-7.....	17064
Exhibit 25e - Moss Covil’s Motion for Summary Judgment - Covil v Penn 2098_004375-79	17135
Exhibit 25f - Moss Deposition transcript of G. Moss – dated April 6, 2010 - Covil v Penn 2098_004380-4459	17140
Exhibit 26a - Murphy Complaint - Covil v Penn 2098_004460-4537	17220
Exhibit 26b - Murphy First Amended Complaint - Covil v Penn 2098_004538-4620	17298
Exhibit 26c - Murphy Second Amended Complaint - Covil v Penn 2098_004621-4704 ...	17381

Exhibit 26d - Murphy Plaintiffs' Responses to Standard Interrogatories - Covil v Penn 2098_004705-79	17465
Exhibit 26e - Murphy Covil's Motion for Summary Judgment - Covil v Penn 2098_004792-96	17540
Exhibit 26f - Murphy Deposition transcript of N. Murphy – dated April 28, 2020 - Covil v Penn 2098_004797-4834	17545
Exhibit 26g - Murphy Deposition transcript of N. Murphy – dated April 29, 2020 - Covil v Penn 2098_004835-69	17583
Exhibit 26h - Murphy Deposition transcript of N. Murphy – dated April 30, 2020 - Covil v Penn 2098_004870-95	17618
Exhibit 26i - Murphy Deposition transcript of N. Murphy – dated May 1, 2020 - Covil v Penn 2098_004896-4927	17644
Exhibit 26j - Murphy Deposition transcript of N. Murphy – dated May 7, 2020 - Covil v Penn 2098_004928-69	17676
Exhibit 26k - Murphy Deposition transcript of N. Murphy – dated May 8, 2020 - Covil v Penn 2098_004970-5005	17718
Exhibit 27a - Sims Complaint - Covil v Penn 2098_005006-73	17754
Exhibit 27b - Sims Plaintiff's Responses to Standard Interrogatories - Covil v Penn 2098_005074-85	17822
Exhibit 27c - Sims Plaintiffs' Responses to Master Interrogatories and Request for Production of Documents - Covil v Penn 2098_005086-5156.....	17834
Exhibit 27d - Sims Covil's Motion for Summary Judgment - Covil v Penn 2098_005157-62	17905
Exhibit 27e - Sims Plaintiff's Opposition to Covil's Motion for Summary Judgment - Covil v Penn 2098_005163-81	17911
Exhibit 28a - Wannamaker Complaint - Covil v Penn 2098_005182-5265	17930
Exhibit 28b - Wannamaker Second Amended Complaint - Covil v Penn 2098_005266-5345	18014
Exhibit 28c - Wannamaker Third Amended Complaint - Covil v Penn 2098_005346-5418.....	18094

Exhibit 28d - Wannamaker Plaintiff's Responses to Standard Interrogatories - Covil v Penn 2098_005419-34	18167
Exhibit 28e - Wannamaker Plaintiff's Responses to Standard Interrogatories - Covil v Penn 2098_005435-45	18183
Exhibit 28f - Wannamaker Covil's Motion for Summary Judgment - Covil v Penn 2098_005446-50	18194
Exhibit 28g - Wannamaker Deposition transcript of T. Wannamaker – dated April 1, 2021 - Covil v Penn 2098_005451-97	18199
Exhibit 28h - Wannamaker Deposition of T. Wannamaker: Statement on the Record – dated April 2, 2021 - Covil v Penn 2098_005498-5508.....	18246
Exhibit 28i - Wannamaker Deposition transcript of T. Wannamaker – dated April 13, 2021 - Covil v Penn 2098_005509-5626	18257
Exhibit 28j - Wannamaker Deposition transcript of T. Wannamaker – dated April 14, 2021 - Covil v Penn 2098_005627-5730	18375
Exhibit 29 - Article: Assessing the Coverage Carnage: Asbestos Liability and Insurance After Three Decades of Dispute, 12 Conn. Ins. L. J. 349 (20052006) (MILLER 00841-916).....	18479
Exhibit 30 - Insurance Protection for Products Liability and Completed Operations – What Every Lawyer Should Know, Nebraska Law Review, Vol. 50, No. 3, Spring 1971 (MILLER 00211-43).....	18555
Exhibit 31 - Risk and Insurance: Sixth Edition, James L. Athearn and S. Travis Pritchett (University of South Carolina) (MILLER 00146-8).....	18588
Exhibit 32 - Introduction to Risk Management and Insurance: Seventh Edition, Mark Dorfman (University of North Carolina at Charlotte (MILLER 00196-8)	18591
Exhibit 33 - General Liability Coverage, 1986: 3rd Edition (1985) (MILLER 00203-9)...	18594
Exhibit 34 - Risk & Insurance (IRM – Insurance Glossary - definition of “premises-operations”) (MILLER 00210)	18601
Exhibit 35 - Comprehensive General Liability Insurance: FC&S Bulletins, National Underwriter Co. (1985 (MILLER 00199-202)	18602
Exhibit 36 - P. Protopapas email to F. Benedek, Penn National's VP of Claims, regarding tender of Timothy Howe v. Air & Liquid Systems Corporation, et al. (York County, SC, 2015-CP-46- 03456, dated August 5, 2019.	18606

Exhibit 37 - B. Wright letter to P. Protopapas in response to August 5, 2019 letter regarding tender of Timothy Howe v. Air & Liquid Systems Corporation, et al. (York County, SC, 2015-CP-46-03456, dated August 21, 2019.....	18607
Exhibit 38 - Hartford Accident and Indemnity Company's Third-Party Complaint (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated October 2, 2019.....	18618
Exhibit 39 - Summons on Penn National (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated October 3, 2019.	18626
Exhibit 40 - Covil's 30(b)(6) notice of deposition of Penn National, dated November 19, 2019	18628
Exhibit 41 - Penn National's Motion to Dismiss Hartford's Third-Party Complaint (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated November 21, 2019.....	18632
Exhibit 42 - Penn National's Answers to Covil's First Set of Interrogatories (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated December 18, 2019.....	18660
Exhibit 43 - Penn National's Responses to Covil's First Set of Requests for Admission (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated December 18, 2019.....	18684
Exhibit 44 - 30(b)(6) deposition notice served on Penn National (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated November 5, 2019.....	18706
Exhibit 45 - B. Yntema letter to B. Edwards objecting to 30(b)(6) deposition notice served on Penn National (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated November 12, 2019.	18711
Exhibit 46 - B. Edwards email to B. Yntema re Zurich v. Covil (North Carolina, dated November 15, 2019.....	18742
Exhibit 47 - Covil's subpoena duces tecum to Penn National, dated November 25, 2019 (Hopper v. Air & Liquid Systems Corporation, et al., No. 19-CP-40-00076.	18744
Exhibit 48 - South Carolina Department of Insurance's notification of acceptance of service of Covil's 11/25/2019 subpoena duces tecum to Penn National, dated November 26, 2019 (Hopper v. Air & Liquid Systems Corporation, et al., No. 19-CP-40-00076.	18750
Exhibit 49 - Penn National's responses to Covil's subpoena duces tecum, dated December 9, 2019 (Hopper v. Air & Liquid Systems Corporation, et al., No. 19-CP-40-00076.	18751

Exhibit 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 American Insurance Company v. Covil Corporation, et al., MDNC No. 1:18-cv-000932.	18785
Exhibit 51 - Penn National's Answers to Covil's First Set of Interrogatories, dated May 15, 2020 (Covil v. Penn National, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2020-CP-40-01226.	18832
Exhibit 52 - Penn National's Responses to Covil's First Set of Requests for Production, dated May 15, 2020 (Covil v. Penn National, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2020-CP-40-01226.	18833
Exhibit 53 - Covil's subpoena duces tecum to Penn National, dated February 8, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18860
Exhibit 54 - Letter from D. Harris to M. Shisko dated Feb. 12, 2021	18891
Exhibit 55 - Penn National's objections to Covil's subpoena duces tecum to Penn National, dated February 22, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18892
Exhibit 56 - Penn National's supplemental objections to Covil's subpoena duces tecum to Penn National, dated March 9, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18893
Exhibit 57 - Penn National's Answers to the Receiver of Covil Corporation's First Set of Interrogatories, dated May 10, 2021	18894
Exhibit 58 - Penn National's Responses to the Receiver of Covil Corporation's Request for Production, dated May 10, 2021	18916
Exhibit 59 - Penn National's Supplemental Answers to the Receiver of Covil Corporation's First Set of Interrogatories, dated June 11, 2021	18917
Exhibit 60 - Penn National's Supplemental Responses to the Receiver of Covil Corporation's Request for Production, dated June 11, 2021.	18918
Exhibit 61 - Receiver's Notice of Filing of Late-Produced Policies, dated June 15, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18919
Exhibit 62 - Order granting Covil's motions to compel, dated July 1, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	19273

Exhibit 63 - Order granting Covil's motions to compel and ordering Ellis & Winters' review of Penn National's documents, dated November 5, 2021.	19281
Exhibit 64 - Penn National's Responses to Plaintiff's Second Set of Requests for Production, dated December 20, 2021.....	19282
Exhibit 65 - B. Yntema letter to B. Nes regarding Penn National's litigation hold and document retention policy, dated December 28, 2021.	19283
Exhibit 66 - Order granting Receiver's Motion for Protective Order requiring Penn National to preserve all historic insurance policies, dated February 11, 2022	19302
Exhibit 67 - Penn National's Responses to the Receiver for Covil's Third Set of Requests for Production dated Feb. 17, 2022	19303
Exhibit 68 - Penn National's Responses to the Receiver of Covil Corporation's First Set of Requests for Admission, dated February 17, 2022	19304
Exhibit 69 - Penn National's Answers to the Receiver of Covil Corporation's Second Set of Interrogatories, dated February 17, 2022	19305
Exhibit 70 - Notice of Filing of Ellis & Winters, LLP Report Identifying Three Additional Covil Insurance Policies After One Day of Searching (attaching Ellis & Winters March 22, 2022 Letter Report to the Court	19306
Exhibit 71 - Order on Discovery Motions, dated May 5, 2022	19307
Exhibit 72 - 6/11/2021 Affidavit of B. Wright	19308
Exhibit 73 - 7/9/2021 Affidavit of B. Reifsnyder	19309
Exhibit 74 - 7/23/2021 Affidavit of B. Reifsnyder	19310
Exhibit 75 - 12/22/2021 Affidavit of B. Reifsnyder	19311
Exhibit 76 - 1/7/2021 Deposition Transcript of B. Wright	19314
Exhibit 77 - 8/3/2021 Deposition Transcript of B. Reifsnyder.....	19406
Exhibit 78 - 8/26/2021 Deposition Transcript of B. Wright	19499
Exhibit 79 - 7/13/1977 Deposition Transcript Excerpts of P. Covil.....	19577
Exhibit 80 - Covil Corporation Certificate of Incorporation - Covil v. Penn 2098_005893-4	19581

Exhibit 81 - Resume of Work Performed by Covil Corporation - Covil v. Penn 2098_005895-9	19583
Exhibit 82 - Order on Discovery Motions, dated November 16, 2022	19588
Exhibit 83 - Deposition Transcript of Edwin L. Rice, dated October 3, 1991 (MILLER 00766-824)	19589
Exhibit 84 - 11/10/2022 Deposition Transcript of B. Reifsnyder	19648
Exhibit 85 - Pretrial Report of Gary J. Moss dated 9/27/21 - Covil v. Penn 2098_005900-24	19811
Exhibit 86 - Pretrial Report of Jerry W. Archer dated 7/24/20 - Covil v. Penn 2098_005925-38	19836
Exhibit 87 - Initial Report of Nicholas L. Murphy dated 7/22/21 - Covil v. Penn 2098_005939-51	19850
Exhibit 88 - Initial Report of Tommy D. Wannamaker dated 5/5/22 - Covil v. Penn 2098_005952-70	19863
Exhibit 89 - Initial Report of Waymon F. Sims dated 2/9/22 - Covil v. Penn 2098_005971-9	19882
Exhibit 90 - Covil Certificate Revocation of Authority dated 7/30/93	19891
Exhibit 91 - Court Order (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated February 24, 2020.	19892
Exhibit 92 - Court Order (Zurich American Insurance Company v. Hartford Accident and Indemnity Company, MDNC, No. 1:18-cv-932, dated April 22, 2020.	19894
Exhibit 93 - Penn National's Interim Report Regarding Progress of Document Sampling/Review of Penn National's Insurance Policy Related Documents, Pursuant to the November 5, 2021 Order of the Court, dated December 7, 2021	19897
Exhibit 94 - Sharla J. Frost CV (FROST 0999-1008)	19898
Exhibit 95 - Charles M. Miller, Esq. CV (MILLER 01350-59)	19899
Exhibit 96 - Deposition Transcript of Sharla J. Frost, dated November 9, 2022	19909
Exhibit 97 - Deposition Transcript of Scott Maier, dated November 21, 2022	19910
Exhibit 98 - Deposition Transcript of Charles M. Miller, dated November 28, 2022	20129

Exhibit 99 - Deposition Transcript of Boyd Wright, dated November 30, 2022.....	20130
Exhibit 100 - Hearing Transcript, dated January 25, 2021	20214
Exhibit 101 - Covil Certificate of Administrative Dissolution.....	20421
Exhibit 102 - Article: A New Set of Hurdles for Manville (the New York Times, by Tamar Lewin: dated Feb. 17, 1986.....	20422
Exhibit 103 - Declaration of Sharla Frost, dated December 5, 2022	20426
Exhibit 104 - Policy Number AC 219 02 88 60.....	20450
Exhibit 105 - Opening Brief of Defendant in support of Its Motion to Dismiss Plaintiffs' Second Amended Complaint and Exhibit E Policy Number 307 0 35 14 73 (Tawa, PLC v. Pennsylvania National Mutual Casualty Insurance Company, D. Del., No. 1:13-cv-01427, dated March 10, 2014.....	20496
Exhibit 106 - Amended Complaint and Exhibit A Policy Number 307 0354912 (Pennsylvania National Mutual Casualty Insurance Company v. Perlberg, D. Md., No. 1:09-cv-01698, dated October 7, 2009.....	20588
Exhibit 107 - Policy Number AU9 00 01 85 16-9 (PNI-0281-87; COV_005912; COV_005914; COV_005925; COV_005929; COV_005931; COV_005943; PNI-0001-41; PNI-0050-75; PNI-0099; COV_005897-5911).....	20689
Exhibit 108 - Policy Number AU9 00 01 85 16-0 (PNI-0042-49; PNI-0076-98; PNI-0100-01; PNI-0108-09; PNI-0116-22; PNI-0144).....	20714
Exhibit 109 - Policy Number AU9 00 01 85 16-1 (COV_005821-33; PNI-0102-0107; PNI-0110-15; PNI-0123-43; PNI-0145-54).....	20720
Exhibit 110 - Policy Number 450 00 01 00 7 (PNI-1163-1244).....	20737
Exhibit 111 - Policy Number SU 219 001 85 16-9 (COV_005820; PNI-0273-80).....	20738
Exhibit 112 - Policy Number SU 219 001 85 16-00 (PNI-0272; PNI-0264-65)	20740
Exhibit 113 - Policy Number SU 219 001 85 16-01 (PNI-0266-71)	20742
Exhibit 114 - Policy Number IM9 001 85 16-9 (COV_005988-6009; PNI- 0247-63)	20743
Exhibit 115 - Policy Number IM9 001 85 16-0 (PNI-0242-46; PNI-0292-0303).....	20766
Exhibit 116 - Policy Number IM9 001 85 16-1 (PNI-0288-90).....	20768

Exhibit 117 - Policy Number CL 219 01 85 16 9 (COV_005834–96; PNI-0165–69; PNI-0173–74; PNI-0191–97)	20769
Exhibit 118 - Policy Number CL 219 01 85 16 0 (PNI-0162–67, PNI-0206–08; PNI-0211–14; PNI-0217–18; PNI-0221; PNI-0223).....	20835
Exhibit 119 - Policy Number 515 50 28 53 8 (PNI-0193; PNI-1190–92).....	20841
Exhibit 120 - Policy Number BC9 0018516 (COV_005973–87).....	20843
Exhibit 121 - Order granting Covil’s Motion for Attorneys’ Fees and Costs, dated May 12, 2023	20858
Exhibit 122 - Post-Trial Motions and Punitive Damages Order (Portrait Homes -South Carolina, LLC v. Penn. Nat’l Mut. Cas. Ins. Com., Court of Common Pleas for the Ninth Judicial Circuit, County of Berkeley, SC, No. 2014-CP- 08-2757, dated Mar. 23, 2020	20859
Exhibit 123 - Penn National’s First Interim Report regarding Status of Compliance, dated May 25, 2023.....	20939
Exhibit 124 - Penn National’s Second Interim Report regarding Status of Compliance, dated June 8, 2023	20940
Exhibit 125 - Penn National’s Third Interim Report regarding Status of Compliance, dated June 22, 2023.....	20941
Exhibit 126 - Penn National’s Fourth Interim Report regarding Status of Compliance, dated July 6, 2023	20942
Exhibit 127 - Penn National’s Fifth Interim Report regarding Status of Compliance, dated July 20, 2023.....	20943
Exhibit 128 - Penn National’s Sixth Interim Report regarding Status of Compliance, dated August 3, 2023	20944
Exhibit 129 - Penn National’s Ninth Interim Report regarding Status of Compliance, dated September 11, 2023.....	20945
Exhibit 130 - Penn National’s Tenth Interim Report regarding Status of Compliance, dated September 25, 2023.....	20946
Exhibit 131 - Penn National’s Eleventh Interim Report regarding Status of Compliance, dated October 9, 2023.....	20947
Exhibit 132 - Penn National’s Twelfth Interim Report regarding Status of Compliance, dated October 24, 2023.....	20948

Exhibit 133 - Sharla J. Frost Trial List from 1987 to 2020 (COVIL - FROST - 001041-48)	20949
Exhibit 134 - Charles Miller Outline of Opinions (Miller 01376-82)	20957
Exhibit 135 - Charles Miller Outline of Industry Standards regarding Lost Policies (Miller 01365-75)	20964
Exhibit 136 - Covil's 30(b)(6) notice of deposition of Penn National, dated November 3, 2022	20975
Exhibit 137 - Order Appointing a Receiver for Covil Corporation, dated November 2, 2018 (Taylor v. Air & Liquid Systems Corporation, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2018-CP-40- 04940	20981
Exhibit 138 - Order Granting the Receiver for Covil Corporation's Motion to Clarify the Receiver Order, dated March 4, 2019 (Taylor v. Air & Liquid Systems Corporation, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2018-CP-40-04940	20984
Certificate of Counsel	20987

18 the most part, the material to those pipes, the
19 insulation, that commonly does not invoke the
20 product hazard because it arises out of an
21 operations or a service and therefore it doesn't
22 invoke the products hazard. It's not like you
23 would put as products is commonly understood you
24 put an item in the stream of commerce for sale and
25 you give up possession of that item as is required.

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80

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1 This occurred while this injury occurred while you
2 still have possession so the products hazard cannot
3 apply.

4 Q. So the products hazard includes bodily
5 injury arising out of Covil's products but only if
6 that bodily injury occurs away from premises owned
7 by or rented by Covil and after physical possession
8 of such products has been relinquished from others
9 correct?

10 A. Yes.

11 Q. So from '86 to '88 in my hypothetical
12 where the individual stops working alongside Covil
13 in 1980 from '86 to '88 what physical possession of
14 products was Covil maintaining that was causing
15 injury to the Plaintiff.

16 MR. NES: Object to the form.

17 THE WITNESS: Well, there wasn't any
18 physical possession of products at that
19 point because the products hazard doesn't
20 apply here to begin with because this
21 clearly arises out of an operations hazard
22 not a product because, as I said, this isn't
23 a situation in which the insured has put an
24 item that commonly is understood and applied
25 in the stream of commerce for sale.

81

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1 BY MR. BROWN:

2 Q. So in your opinion, then, because Covil
3 is putting its products into a plant as opposed to
4 in the market for sale, it could never be a
5 products hazard loss, correct?

6 MR. NES: Objection to form.

7 THE WITNESS: That's right, unless it
8 decided to sell the insulation and it was
9 installed by someone else, maybe that would
10 be the case. But otherwise, if it's doing
11 the service, you have to evaluate the
12 coverage based on the activity of the
13 policyholder. That activity is a service.

14 And what kind of a service is it, it's the
15 operations service. And that's what kicks
16 in the coverage.

17 Q. Okay. I'm going to mark Exhibit 10 and
18 let me share my screen with you. Mr. Miller do you
19 see this document I have now marked as Exhibit 10,
20 at least the first page?

21 A. Yes.

22 Q. Okay.

23 A. I had forgotten about this, thank you.

24 Q. So I earlier showed you the impairment
25 letter from Penn National that identified 14 cases

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82

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1 and we talked about those being the underlying
2 matters upon which you have given your opinions
3 correct?

4 A. Yes.

5 Q. And you told me you had some
6 information about those underlying claimants?

7 A. Yes.

8 Q. Okay, this is a chart --

9 A. Yes.

10 Q. I will roll through this with you.

11 But I believe you will find that this

12 chart describes each of those individuals that were
13 described on the Penn National impairment letter,
14 correct?

15 A. Yes.

16 Q. All right.

17 A. And just to add to my testimony
18 earlier, this chart had slipped my mind when I was
19 talking about what I had reviewed about what I
20 called the underlying cases and it would have
21 included this chart as well.

22 Q. So my question is did you review
23 anything at all about the underlying cases other
24 than this chart?

25 A. Oh, yeah, I had some of the complaints

83

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1 I had some of the -- I might have had a deposition
2 or two. I had some other pleadings in some of the
3 cases. You know, a little package on each one of
4 maybe four or five or six cases, something like
5 that. I think it was maybe 6.

6 MR. BROWN: Brad was this packet
7 included in what you provided to us in his
8 file?

9 MR. NES: Yes, so I sent him a cover

↑

10 e-mail from our paralegal we referenced the
11 Bates rage because it's thousands of pages
12 but it was produced.

13 BY MR. BROWN:

14 Q. And are each of these did you -- do you
15 recall any facts of those cases or make any notes
16 about the facts of those cases other than what
17 you've seen in this chart?

18 A. Well, I didn't make any notes, I do
19 recall reading in the complaints the allegations
20 that would suffice in my opinion to invoke the
21 operations coverage the worker the individual
22 talking about where he worked, Covil being there at
23 the time, things of this nature, but I don't
24 have -- you know, I don't have that specifically in
25 front of me.

↑

84

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1 Q. Okay. And based upon your
2 understanding of the evidence and exposure, is it
3 your testimony that each of these would constitute
4 ongoing operations, losses under the '86 to '88
5 Penn National policies?

6 THE WITNESS: I'm not sure of that. I
7 have been told that possibly a couple of

8 them -- and I don't know which ones -- may
9 not. Otherwise, I have -- it's my
10 understanding, based on what I have
11 reviewed, that they all fall within the
12 operations coverage.

13 BY MR. BROWN:

14 Q. Without -- leaving aside whether it
15 would be you know this claim or that claim which
16 one it was, conceptually what would make the
17 distinction between which one of those would be
18 ongoing operations versus completed operations as
19 you understand it?

20 A. Well, somehow the individual wasn't
21 injured until after Covil had ceased work on all or
22 part of its work and turned that work over to the
23 owner and then somehow later the individual was
24 exposed to asbestos from the insulation that was
25 applied. There may be numerous factual ways that

85

CHARLES MILLER - ROUGH DRAFT - CONFIDENTIAL - 11/28/22

1 that could happen, but nonetheless that would
2 generally be my assumption.

3 Q. So, again, hypothetically if a John Doe
4 Plaintiff first worked in a plant in 1983, and was
5 first exposed to any asbestos in 1983 going

↑

6 forward, but Covil's work at that plant had stopped
7 in 1980, then that would be a completed operations
8 hazard loss for that given Plaintiff? Is that what
9 you're saying?

10 A. It could be. As you said earlier,
11 sometimes you have to take a look at the facts but
12 and in that case, I think it would be appropriate
13 to do so to verify that the individual did not
14 suffer an injury until 1983 after -- at the plant
15 that Covil had previously worked at and had turned
16 the product over to the owner, as is required in
17 one or more of those criteria for completed
18 operations in the policy provision.

19 Q. Okay. So your testimony then would be
20 it doesn't matter when the Penn National policies
21 were in effect. It matters when Covil did its work
22 in relation to when again the Plaintiff was
23 exposed?

24 A. No, as I said, there are two things you
25 look at. The first thing you look at is the

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86

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1 source. Was it the original source of the injury
2 operations or was it completed operations products
3 or premises. Those are the four basic hazards that

4 are covered. Some people say contractual liability
5 is another one, but be that as it may. So those
6 are the four. So you have to take a look at the
7 source of the injury initially. And then you look
8 at subsequent policies that are triggered by virtue
9 of the bodily injury. That's a different question.
10 And that will tell you what in the line policy are
11 triggered as a result of the source. The source
12 doesn't change.

13 Q. You told me a few minutes ago that you
14 weren't tasked to find case law?

15 A. No.

16 Q. Or something along those lines?

17 A. No.

18 Q. So you weren't aware of any such cases
19 but you were relying upon industry standards that
20 that's how claims were paid?

21 A. Yes.

22 Q. Are there any written industry
23 standards you can point me to that effect or is it
24 just your experience?

25 A. Well, to some extent they're discussed

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1 in a couple of sources that I have referred you to

2 on Page 4 in the CGL policy handbook, for example,
3 but -- which I didn't quote, but I think we've
4 produced that so you can take a look at that.

5 Other than that, thusfar I haven't
6 found a specific source but it surely has been my
7 experience in handling injury cases whether they be
8 long tail or not so I'm relying on my experience in
9 that regard as well.

10 Q. So you mentioned in reference to Page
11 4. Let me bring that up. Is this reference to
12 what you're referring?

13 A. Yeah.

14 Q. Do you see CGL policy handbook, et al.?

15 A. Yes.

16 Q. So this says the CGL policy definition
17 of bodily injury makes clear that a death sustained
18 at a later time caused by an injury occurring at an
19 earlier period would be covered by the policy in
20 effect at the time the injury was sustained.

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. That strikes me as relating to whether
24 a policy is triggered and hence whether coverage
25 exists not whether any such coverage is a completed

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1 operations hazard loss or an ongoing operations
2 loss?

3 A. Well, this also underlies the point
4 that the policy in effect at the time the injury
5 occurs at the time the bodily injury occurs; is the
6 one that remains in effect even for continuous
7 injuries after the expiration of the policy such as
8 a subsequent death arising from the original cause.

9 It's the -- it offers insight into that
10 basic proposition, I believe.

11 Q. And you earlier referenced this IRMI
12 quote that I think starts maybe at the bottom of
13 Page 3 and runs into the top of Page 4. Let me
14 just pull that up.

15 A. Yes.

16 Q. Do you see that?

17 So in looking at that, there's a quote
18 from the Connecticut Insurance law journal article,
19 from 2006, correct?

20 A. Yes.

21 Q. Okay. And that was -- that stip pen
22 article was in one of the -- was part of the
23 documents you reviewed, correct?

24 A. Yes.

25 Q. And stiple according to that article is

89

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1 a law professor and indicated that he wrote that
2 article based on work he had done as an expert for
3 policyholders in asbestos coverage litigation,
4 correct?

5 A. I don't know about that.

6 Q. And this says that although the type of
7 injury to the third party claimant is critical to
8 the question of trigger, the time of injury does
9 not have any bearing on the classification of the
10 coverage. The source of the injury determines
11 whether the losses within coverage is appropriately
12 regarded as general premises operations liability
13 matter or a products completed operation matter or
14 subject to an exclusion, correct?

15 A. Yes, absolutely.

16 Q. I will tell you what at the last break
17 I also got your more complete CV. Do you see this,
18 Mr. Miller?

19 A. Oh, I see, there, there we go. That's
20 the more recent one it looks like it's seven pages.

21 Q. Yeah and I will scroll through here so
22 you can see it all but is this up to date as far as

23 you --

24 A. Go down to publications and

25 presentations, you know, I haven't been to -- just

90

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1 go back up to presentations. Yeah, I

2 haven't -- oh, I have put that in there. I have

3 put the guides, okay, I did put those in, okay, I

4 had forgotten I had put those in. There's also

5 three additional presentations I did during 2021

6 for trial guides webinars on selection of bad faith

7 cases, discovery in bad faith cases and litigating

8 bad faith cases. I did that with somebody else.

9 But they're not on there yet and I've been dilatory

10 and I must do that.

11 Now, in terms of publications could you

12 go down the list?

13 Yes, in 2020.

14 And since then I have also done another

15 article with two other authors that's just coming

16 out now, although it's been available for several

17 months on the history of general liability coverage

18 and what that history tells us about what loss or

19 damage means and some other subjects related to

20 that. So I've got to put that on there. So those

21 are the only updates.

22 Q. Okay. I'll tell you what, let's take a
23 short break.

24 THE WITNESS: Ten minutes.

25 MR. BROWN: Yeah, sounds good.

91

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1 THE WITNESS: Okay, good.

2 THE VIDEOGRAPHER: The time on the
3 monitor is 3:53 p.m. and we're going off the
4 record.

5 THE VIDEOGRAPHER: The time on the
6 monitor is 4:55 p.m. and we're back on the
7 record.

8 BY MR. BROWN:

9 Q. Mr. Miller, in connection with the
10 opinions we were just discussing about the dividing
11 line between ongoing operations and completed
12 operations, does the fact that some of the
13 underlying claimants were complaining about so
14 called take home exposure make any difference in
15 your mind?

16 A. Take home exposure.

17 Q. You had mentioned take home exposure.

18 A. Sure, like the guy gets it all over his

19 clothes and he takes it home and the wife washes
20 them and gets covered with asbestos dust itself.

21 Q. Correct.

22 A. Those would be derivative of the
23 original exposure, so I don't think it would change
24 things. I can't see how it would.

25 Q. So the -- as to whether or not

92

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1 something would be for example a products hazard
2 loss or a completed operations loss, the fact that
3 the bodily injury to the Plaintiff at home when he
4 or she was first exposed, that in your view
5 wouldn't matter because their claims derivative of
6 however the family member was exposed?

7 A. Sure. And the products completed
8 operations definitions would clearly provide that
9 they wouldn't apply because products and completed
10 operations and both as you know, require that the
11 operation either be turned over to the owner in
12 some way or that the product be released by
13 whomever has the product. And going home with it,
14 neither one of those have happened.

15 Q. Because when you go home with it it's
16 no longer in the possession of Covil correct?

17 A. Well now you've confused me. Oh, I
18 see. The asbestos material itself as you're saying
19 I just want to make sure I'm understanding this.
20 The asbestos material itself is no longer in
21 possession of Covil because the man who was exposed
22 to it has walked out of the plant with it all over
23 him. But there has been no intention to give up
24 possession of it which is a requirement if you look
25 at the three criteria for completed operations in

93

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1 one way or another. So it would still be
2 derivative and not a completed operations.

3 Q. And what's the basis for that comment
4 that it's derivative. Are you referring to
5 specific case laws specific industry standard?
6 What's the basis for that?

7 A. Oh, well, just reviewing the policy
8 terms themselves, applying it as we're supposed to
9 apply it based on the policy terms applied in the
10 industry to the facts that you have just provided
11 to us. And frankly that was the way we handled it,
12 because we had some derivative -- what I call
13 derivative claims.

14 Q. When you say we, you mean when you were

15 working for Fireman's Fund and Fireman's Fund was
16 assessing take-home exposure claimants Fireman's
17 Fund would treat it as derivative of the claim of
18 the individual who worked there?

19 A. Oh, yeah, absolutely.

20 Q. Okay. And other than that's the way
21 Fireman's Fund handled it, is there a -- is there a
22 case treatise any sort of document that you can
23 point me to suggest that that's an industry
24 standard?

25 A. Not that I'm currently aware of in

94

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1 terms of case law actually the answer should be two
2 things.

3 First of all in terms of case law, I
4 haven't looked at anything there. In terms of
5 treatises or other textbooks and materials in the
6 industry, not that I'm currently aware of.

7 Q. When you say you haven't looked at
8 cases you mean you haven't done any research
9 specifically related to this matter, correct?

10 A. Legal research, no, I have done none.

11 Q. But you're certainly familiar with the
12 case law, I mean you've been in business for 50

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13 years?

14 A. Yeah.

15 Q. And have been practicing law for thirty
16 years?

17 A. Come on now, we don't have to go over
18 that now, do we? The length of time is what I'm
19 talking about.

20 Q. You have alluded to and cited multiple
21 cases for various propositions this afternoon and I
22 just want to make sure that those -- I assume those
23 are your general base of knowledge, not something
24 that you have done specific research for this case,
25 correct?

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95

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1 A. General base of knowledge, I think so.
2 Like I was cited to just a moment the Frost
3 deposition testimony with regard to the Johns
4 Mansfield matters and how they keyed or should have
5 keyed knowledge to the industry as to when policies
6 should -- the insurance industry as to when
7 policies should start to be saved, at least then.
8 So, you know, my reference was to her in that
9 regard.

10 Q. So you're relying upon another expert

11 for the receiver for that opinion?

12 A. Yeah, and then I have also referred to
13 Borrell as I said in the 70s I read it when it came
14 out because we were working on long tail stuff and
15 the Groul decision and I read it or I was answering
16 your question in the context of how Fireman's Fund
17 was treating these kinds of cases. I was trying to
18 give you some history there.

19 Q. What did Fireman's Fund set it up
20 differently in light of the Johns Mansfield case?

21 A. I'm not sure what you mean.

22 Q. You've mentioned Ms. Frost's opinion
23 several times this afternoon and you're relying
24 upon when she had to say --

25 A. Yes, yes.

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96

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1 Q. -- and you've alluded to the Johns
2 Mansfield litigation and the trust that was set up
3 et cetera and you recall her testifying about that
4 in your deposition, correct?

5 A. Oh, yes yes.

6 Q. So I guess my question is what kind of
7 different programs were set up by Fireman's Fund in
8 response to the John Mansfield decision?

9 A. You know, I don't know if you can trace
10 it to a specific case like that because so much
11 else was going on at the time and had started in
12 the late 70s. So it was just something else to
13 throw in the hopper because I was never aware of
14 any specific action taken with regard to that.

15 Q. And were you aware of any specific
16 action that was taken by the insurance industry as
17 a whole that became an industry standard in
18 response to the Johns Mansfield decision?

19 A. That's far too broad. I don't think I
20 can get a handle on that.

21 Q. Okay. So I'm not sure what the -- is
22 the answer no or is the answer that you --

23 A. It's just look any action the industry
24 took in response to Johns Mansfield. Maybe I
25 misheard the question. But that could be an

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97

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1 infinite number of things and I can't get my hands
2 around that. I don't now who to deal with that.

3 Q. I apologize. Can you point to any
4 industry standard that was established as a result
5 of the Johns Mansfield case that related to
6 document retention policies?

7 A. No.

8 Q. Okay.

9 A. No, I can't do that because, as I said,
10 it's part of the mix of a dynamic that was going on
11 at the time of a lot of different things that were
12 giving rise to the awareness about policy retention
13 and it was one of those things. There were others
14 as well.

15 Q. Okay.

16 Are there any -- I want to talk about
17 your opinions 1 and 2 that is the operations versus
18 completed operations divide, as I will call it.

19 And my question now is simply this, are
20 there any basis for your opinion on opinions 1 and
21 2 other than what we've now talked about and/or
22 contained in Exhibit 6? And I will share my screen
23 again, just to confirm Exhibit 6 is the record
24 report you prepared.

25 A. Well, the report in terms of 1 and 2,

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98

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1 the report I prepared the documents that I have
2 reviewed and produced to the extent that they
3 provide additional support for the opinions I'm
4 making and weren't cited in my outline because I

5 didn't cite everything in my outline and then based
6 on my own experience and knowledge, those would be
7 the bases, the present bases for my opinions as to
8 1 and 2 in the outline.

9 Q. And so I guess my question is, what
10 bases are there in the documents or otherwise for 1
11 and 2 that we haven't talked about today?

12 A. I think we've pretty much covered
13 everything, just to be sure about it, the documents
14 and the policies, yeah, I these we've pretty much
15 covered it all.

16 Q. All right, I want to talk about your
17 third opinion, the Penn National search for issues
18 that column did not accord with insurance industry
19 standards okay?

20 A. Uh-huh.

21 Q. And I'm going to go back up in this
22 exhibit Exhibit 6 to the initial document you
23 prepared that begins: Insurance industry standards
24 regarding located old or lost policies.

25 A. Yes.

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99

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1 Q. Do you have that in front of you. I
2 can share my screen but do you have a copy of that

3 in front of you?

4 A. I certainly do.

5 Q. Okay, let's just look at that if we
6 can.

7 A. Sure.

8 Q. What is your understanding of when Penn
9 National first received notice that Covil was
10 making a claim under -- against Penn National for
11 coverage in relationship to bodily injury, asbestos
12 bodily injury exposures?

13 A. I don't recall the date.

14 Q. Okay. Do you recall the year?

15 A. No, not off hand.

16 Q. Okay. Do you recall how that first
17 notification came to Penn National?

18 A. No. I know it's in the stuff that I
19 read but it doesn't come to mind right away. It's
20 in a document some place if we can see that that
21 would be helpful but I try to keep this stuff in
22 mind but that's a lot of stuff here.

23 Q. Is there a -- would how Penn National
24 was first made aware that Covil was seeking
25 coverage and when that awareness was gained be

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1 point factors in your opinion?

2 A. To what. I don't know.

3 Q. To your opinion that Penn National
4 different comply with industry standards in its
5 search for policies?

6 A. Well, that's a very broad hypothetical.
7 I suppose theoretically it possibly could but how,
8 I'm not exact Liz sure what that would be.

9 Q. Okay, let me threw to flush that out?

10 A. Please.

11 Q. Your opinion that Penn National
12 searched for policies in issued to Covil did not
13 accord can industry standards?

14 A. Correct.

15 Q. Did Penn National have an obligation to
16 search for policies at issue to Covil before Covil
17 made a demand for coverage to Penn National?

18 A. Oh, well, yes, because thank you,
19 because in 2018, there was a Request for Production
20 in the Finch case for Covil documents and that
21 would have invoked Penn National's obligation to
22 conduct a serve at that time, and as I point out
23 also impose litigation hold.

24 To answer further to your question, I
25 understand that Covil wasn't named -- well, no, I

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101

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1 don't remember when they were named as a defendant.
2 But nonetheless, the Finch Subpoena would have done
3 that. And that may have been before the actual
4 tender. I don't remember the tender date but to
5 the extent that it is before the actual tender,
6 that would certainly invoke the obligation to
7 search for that.

8 Q. So you said that was in 2018. Do you
9 know in Covil had ever made a demand on promissory
10 note for coverage related to bodily injury asbestos
11 exposures prior to 2018?

12 A. No. As I said, I don't recall the
13 date, whether it was before or after.

14 Q. So would it be fair to say that
15 whenever Covil first made a demand for coverage
16 from Penn National saying we've been sued for
17 asbestos related bodily injury claims, we think you
18 provided coverage for us, and we want you to come
19 in and defend and indemnify us, okay?

20 Whenever that was, that would have been
21 the beginning of Penn Nationals' obligation to
22 search for coverage documents is that fair.

23 MR. NES: Objection, form.

24 THE WITNESS: If that occurred before
25 the Subpoena that we're talking about in the

102

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1 Finch case that would have been then, rather
2 than at the time of the Subpoena in the
3 Finch case.

4 BY MR. BROWN:

5 Q. Assuming that that did not happen prior
6 to the Subpoena in the Finch case would the
7 Subpoena in the Finch case be the first time that
8 Penn National had an obligation to conduct a search
9 in your opinion?

10 A. Yes, based on what I can see and what I
11 can remember, yes, that would be the first time.

12 Q. And I'm not -- I apologize I'm not
13 trying to be difficult in this case, I'm just
14 trying to establish that before anybody came to
15 Penn National and said hey we think you have
16 coverage for Covil there would be no reason for
17 Penn National to search for policies for Covil,
18 correct?

19 A. I don't think so.

20 Q. That's all I'm trying to get at.

21 A. Okay, I see we're on the same page

22 there.

23 Q. So when Covil came to Penn National
24 seeking coverage by way of a Subpoena or a tender,
25 what in your opinion should Penn National have done

103

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1 at that time?

2 A. Well, Penn National should have
3 initiated an investigation into the coverages, the
4 policies that have been issued to Covil and that
5 usually starts with an interview with the
6 policyholder regarding that history and a review
7 with the policyholder as I point out in this
8 document we've been looking at, a review with the
9 policyholder as to where older documents concerning
10 insurance coverage may be at and whether those
11 sources have been reviewed or not, along with a
12 number of other questions that would lead to other
13 possible sources for policy information.

14 It's a broad-based investigation as the
15 outlines that I've put together here in this
16 document we've been looking at point 2.

17 Q. What is your understanding of what Penn
18 National in fact did?

19 A. Penn National looked -- said it

20 couldn't find anything in its policies because in
21 its -- in its archived policies, paper and
22 microfiche because it didn't index by policy by
23 policyholder name, it could only index by policy
24 number.

25 Q. So didn't Penn National actually look

104

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1 for the two policies based on the policy numbers
2 that had been given?

3 A. Yes, I believe there was a search for
4 that, of course, yes.

5 Q. And they found those policies, correct?

6 A. Surprisingly, yes, it was amazing.

7 They found those two policies because the -- Covil
8 somehow had those policy numbers.

9 Q. And they responded to the Subpoena with
10 that information, correct?

11 A. I don't recall the specific response to
12 the Subpoena but I would resume so.

13 Q. I mean, they turned the policies over?

14 A. Yes yes.

15 Q. We've been talking about them all day.

16 A. Yeah, sure, they turned them over to
17 the best I can -- yeah.

18 Q. And what is based on the industry
19 standards, what more should Penn National have done
20 at that point to look for policies?

21 A. Okay, so again it meets with the
22 insured, goes over a number of possible sources for
23 where policy information may still be stored or
24 available. And then it looks at many of the types
25 of sources that I have outlined in -- that are in

105

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1 my outline here and there's a number of them, of
2 places internally in the insurance company and
3 externally with the policyholder or elsewhere, such
4 as with the broker or the agent. It's a broad
5 based investigation into looking for other
6 information. Of course in this case -- Well, I
7 will get to that in a minute.

8 Q. What is your understanding of what Penn
9 National actually did?

10 A. It looked at its own database for
11 policies and then said couldn't find any others
12 besides the two that it had that it find because it
13 indexed only by policy number and not insureds
14 name.

15 Q. Did Penn National, as far as you know

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16 talk to the insured or the insured's counsel?

17 A. If they -- to the extent that they did,
18 I found no substantive record to that effect as to
19 what they did there. And specifically no
20 substantive record as to how they explored the
21 various possible sources that the insured may have
22 for such records. It's really quite surprising to
23 me and I have had this happen I don't know how many
24 times when you sit down with a policyholder and you
25 start going over things that you need, at some

106

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1 point the policyholder says, oh, now I remember.

2 You know, it happens all the time.

3 Q. Do you know what if Covil was still in
4 business in 2018?

5 A. No, it was not, there was a receiver
6 appointed by that point.

7 Q. Do you know what ability Penn National
8 had to sit down with Covil as you described it and
9 gather that information?

10 A. No, I don't no know, because I didn't
11 see any substantive indication that Covil I mean
12 that Penn National tried to locate prior employees,
13 owners, whatever you have, brokers, agents

14 accountants, all of these potential sources to see
15 if they might still be available and might still
16 have records that's the kind of search that I have
17 seen done.

18 Q. The agent is a defendant in this
19 lawsuit, correct.

20 A. Well, yeah. Now you refresh me of
21 that. That's not an issue I paid a whole lot of
22 attention to but you're right.

23 Q. Do you know if the agency is still in
24 business?

25 A. I have no idea.

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107

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1 Q. Let me ask you to look at Exhibit 6
2 which is your report that we looked at today?

3 A. Yeah.

4 Q. Specifically the first page of the
5 insurance industry standards regarding locating
6 older or lost policies.

7 A. Sure.

8 Q. And down on the first page you said,
9 Reconstruction of older policies becomes an
10 important if not critical objective where an
11 insured faces claims arising from asbestos exposure

12 over several years --

13 A. Yes.

14 Q. -- often this reconstruction is done
15 through the use of secondary evidence.

16 Correct?

17 A. Yes.

18 Q. If you don't have the policy itself, it
19 has to be done through secondary evidence, correct?

20 A. If you don't have the policy itself,
21 yes. If you can pull together the necessary
22 secondary evidence, that is true.

23 Q. Right. And that's the definition of
24 secondary evidence, is evidence that tends to prove
25 up the terms and conditions of the policy that are

108

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1 not the policy itself, correct?

2 A. Yes, and another aspect of that,
3 however, is that you may have portions of the
4 policy; and that may also help you. I have seen
5 that happen.

6 Q. "So you say that indeed one insurance
7 industry source offers that greater weight might be
8 accorded to secondary documents in the following
9 order..."

↑

10 And then you you list them.

11 A. Yes.

12 Q. Insurer documents. We've talked about
13 that.

14 Two, broker document or third-party.

15 Do you know what if any worker or
16 third-party documents there were here?

17 A. No, I don't. I saw nothing substantive
18 concerning Penn National's investigation of those
19 policy documents.

20 Q. And policyholder documents, do you know
21 what policyholder documents there were here other
22 than the policies themselves?

23 A. No, because again I saw no substantive
24 evidence of Penn National's search for the broad
25 range of potential documents that Covil may have

109

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1 had.

2 Q. So then you come down to say, Other
3 types of recognized secondary evidence that an
4 insured can seek include records produced by
5 insurance brokers, premium invoices, loss
6 prevention surveys, et cetera.

7 Correct?

8 A. Oh, I see you skipped a couple
9 paragraphs. I just lost you for a moment.

10 Q. My apologies. I was just trying to
11 talk about the kinds of secondary evidence that
12 were quoted?

13 A. Yes, the kinds of things that you can
14 look for, yes.

15 Q. And are you aware in this case of any
16 of those things being available to try to establish
17 the terms and existence of the policy other than
18 the two for which we actually have the policies
19 themselves?

20 A. No, I haven't seen any substantive
21 evidence that any of this was sought or that Penn
22 National sought to obtain these, so I can't talk
23 about availability for something that Penn National
24 didn't do.

25 Q. Well isn't it true that an industry

110

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1 standard is that when an insured is trying to prove
2 up a lost policy, that the burden is on the insured
3 to come up with some secondary evidence to as to
4 why they think a policy exists?

5 A. They're supposed to assist in that

6 regard. I don't doubt that. And that's why the
7 named insured is in that first list; they're
8 supposed to assist.

9 But with the assistance of the
10 Insurance Company who has or should have much more
11 experience and knowledge about how to go about
12 doing this sort of thing.

13 Q. And are you aware of any secondary
14 evidence that Covil or anyone on its behalf
15 produced that tended to prove the existence of any
16 policy other than the '86 to '88 policies?

17 A. No.

18 Q. Okay.

19 A. There's no substantive indication of
20 any of that, so --

21 Q. Do you --

22 A. -- that I have seen.

23 Q. Is part of your opinion, Mr. Miller,
24 that Penn National had policies for years other
25 than '86 to '88?

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111

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1 A. I don't know, because they couldn't
2 find them. Well, yes, now, they did find, after
3 the law firm -- oh, man, I'm going to have to

4 resurrect this -- the law firm that was ordered by
5 the court to do the search.

6 Q. Bryson waters.^ c

7 A. Yeah, thank you. They went in and did
8 a search and they found four additional policies
9 marine, auto, maybe Workers' Comp. I don't
10 remember if there was a fourth one or what it was.
11 During the same period as the general liability
12 policies, however, those four policies also covered
13 an additional year, like '86, '87 or 88/89. I
14 don't remember.

15 But combined together, those four
16 policies covered three years. So additional
17 policies were discovered in that informal search
18 that the law firm did.

19 Q. Do you know where they found those
20 policy numbers?

21 A. Where they found the policies or the
22 policy numbers?

23 Q. How did they have the policy numbers to
24 look for those policies, do you know?

25 A. No, I don't know. They just went in,

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112

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1 as I read it, and did a search on their own

2 -- which I thought was a manual search, but maybe
3 not -- and they came up with four policies.

4 Q. So let me just follow-up to make sure
5 I'm clear. Is it -- is it your opinion that Penn
6 National issued a general liability policy to Covil
7 for any period of time other than '86 to '88?

8 A. That's the only one we have, so I don't
9 have an opinion as to the rest because Penn
10 National says it can't search for anything else.

11 Q. Okay.

12 A. And the only one that has found
13 anything is the Ellis search and maybe that was a
14 manual search, I don't know, but somehow they were
15 able to find, despite Penn National's statement,
16 but that's as far as we can go at this point.

17 Q. Do you know if there were any periods
18 of missing GL coverage for Covil surrounding the
19 '86 to '88 Penn National policies?

20 A. Not off hand, no.

21 MR. NES: Object to form.

22 BY MR. BROWN:

23 Q. Would that be a relevant factor in your
24 mind?

25 A. It would be something that would be

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1 looked at in the context of the search, yes.

2 Q. And if there were other GL coverage in
3 effect, say, from '84 to '85 and '86 and then '88
4 to '89 and '89 to '90 with other carriers with Penn
5 National having those two years that we've
6 identified from '86 to '88, wouldn't that make it
7 more likely than not in your mind that Penn
8 National did not have coverage other than for those
9 two years?

10 MR. NES: Objection, form.

11 THE WITNESS: No, not at all, not at
12 all.

13 BY MR. BROWN:

14 Q. Why not?

15 A. Because policyholders go back and forth
16 with their insurance companies. They may be with I
17 and A for three years and then go to Cigna for two
18 years and then maybe another big commercial
19 carrier, Fireman's Fund, for another year, and then
20 come all the way back to whatever the original one
21 was I said, to their -- to that original carrier.
22 They may bounce around depending on what kind of
23 rates their broker can get. And I've seen that
24 happen. So it doesn't preclude them writing other

25 policies at all.

114

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1 Q. But you would not expect one insurer in
2 that situation to have multiple primary GL policies
3 with different carriers for the same year, correct?

4 MR. NES: Objection, form.

5 THE WITNESS: Well, you know, I have
6 actually seen that happen.

7 BY MR. BROWN:

8 Q. How often have you seen that happen?

9 A. It's not very -- I haven't seen it
10 happen very much in my own personal experience, so
11 I can't say how often it happens in the rest of the
12 world, but I have seen that happen.

13 Q. Isn't it true, Mr. Miller, that the
14 expectation is that GL carriers -- I mean that
15 policyholders buy one primary GL coverage per year?
16 Hasn't that been your experience, every year? They
17 might not have excess layers but one primary GL
18 policy per year?

19 A. Generally speaking I would agree with
20 you but it doesn't preclude the possibility that
21 they have additional ones.

22 Q. All right. And they do that because

23 it's -- it's cheaper to go out and get excess
24 coverage up the tour than it is to get another
25 dollar one primary GL policy, correct?

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115

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1 A. It can be, yeah it depends on the scope
2 of coverage of the other CGL policy the primary and
3 so it may have a narrow scope of coverage like
4 limited to a specific site or something like that
5 or a specific type of operation, something like
6 that.

7 Q. And certainly insureds do that but
8 you've been in this business a long time.

9 I mean, isn't it fair to say that most
10 commercial policies in your experience if they buy
11 a basic garden variety GL policy first dollar
12 coverage duty to defend defense costs outside
13 limits, that they buy that policy, that while they
14 might buy excess coverage to get higher liability
15 or indemnity limits, they're not going to go buy
16 another first dollar GL policy for that same year
17 with the same scope of coverage. That would be
18 very unusual, correct?

19 A. That would be uncommon, I agree. It
20 would be uncommon.

21 Q. And so this --

22 A. But let me ask this, though.

23 Does your scenario assume that the
24 primary care -- that the insured, rather than get a
25 separate policy, has a primary policy and then has

116

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1 excess layers above that?

2 Q. Correct.

3 A. Oh, okay, I just wanted to make sure.

4 Q. And getting back to Covil, my question
5 is, we know that Penn National had coverage from
6 '86 to '88 because we had those two policies,
7 correct?

8 A. Yeah.

9 Q. Okay. And if Covil could not identify
10 any GL policy from, say, 84 to 86, that might raise
11 the question as to whether Penn National had the
12 policy during those years as well, in addition to
13 the '86 to '88 timeframe, correct?

14 A. It could, yeah.

15 Q. But if other carriers had coverage
16 right up until '86 when the first Penn National
17 policy incepted and after '88 when the second Penn
18 National policy ended, then wouldn't that be some

19 evidence that Penn National only issued policies
20 for those two years, meaning that there was no
21 missing policy, so to speak, in that window of
22 time?

23 A. In that limited window of time?

24 MR. NES: Objection.

25 BY MR. BROWN:

117

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1 Q. Yes.

2 A. So that gets around the problem that
3 I -- the scenario that I offered a while ago that
4 they wait a couple three years and then they go
5 back to the original carrier again.

6 So within that limited period of time,
7 would that indicate that there wasn't any other
8 Penn National policy '84 to '89, let's say.
9 Because there's some evidence of -- I'm doing this
10 to make sure I get this right -- because there's
11 evidence of the issuance of liability policies for
12 a couple of years before our period, the Penn
13 National policy, and maybe for a couple of years
14 after the Penn National policy. That could be the
15 case. But what we would want to do is we would
16 want to look at those policies that were issued

17 before and after our ^ c Penn National period of
18 time to determine exactly what they covered and
19 whether they're limited to certain types of
20 exposures for this insured. Thereby possibly
21 requiring Covil to get additional liability
22 coverage. I don't know, I haven't seen them, so I
23 can't offer any further opinion on that.

24 Q. You've not reviewed any policies other
25 than the two Penn National policies, correct?

118

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1 A. That's true.

2 Q. So whether the scope of coverage
3 afforded by other insurers either before or after
4 Penn National is the same, more broad, more narrow,
5 you don't have an opinion on; true?

6 A. No, I don't. I haven't seen them.

7 Q. Going back to your outline --

8 A. Yes.

9 Q. -- Exhibit 6, on the bottom of Page 3,
10 top of Page 4 you say, Insured can also investigate
11 various business records which can be used as a
12 source of secondary evidence.

13 And then you identify various
14 documents, accounting ledger sheets, canceled

15 premium checks, et cetera; correct?

16 A. Yes.

17 Q. Are you aware of any evidence of any of
18 those things here that would tend to establish any
19 coverage for Penn National other than '86 to '88?

20 A. No, I am not. I didn't see any
21 substantive evidence of an investigation by Penn
22 National into these areas.

23 Q. And you also talk about umbrella or
24 excess policies?

25 A. Yes.

119

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1 Q. And typically it would be common would
2 it not for an umbrella or excess policy to list a
3 primary policy in the schedule of underlying
4 insurance, true?

5 A. The immediate excess carrier would.
6 Whether the subsequent excess or umbrella is is
7 another thing.

8 Q. Have you seen any evidence that there
9 was any umbrella or excess policy that listed a
10 purported Penn National policy a primary GL policy
11 for Covil other than the '86 to '88 timeframe?

12 A. No, I haven't seen any evidence of

13 that, so I don't know if it exists or not.

14 Q. Similarly, you talk about claim files.

15 Are you aware of any claim files that would tend to
16 show that there is a Penn National policy in effect
17 other than '86 to '88.

18 A. No, I'm not aware of any claim files.

19 Q. We talked about facultative and treaty
20 reinsurance obligations. Are you aware of any
21 reinsurance treaties or information to suggest that
22 Penn National ever sought reinsurance for a GL
23 policy for Covil other than in the '86 to '88
24 timeframe?

25 A. Or even during that timeframe,

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120

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1 actually. No, I saw no indication that Penn
2 National conducted any investigation of
3 reinsurance.

4 Q. Okay. So I understand your point and
5 you mentioned earlier that Penn National in your
6 opinion should have had a way to search for policy
7 documents other than through policy number?

8 A. Yes.

9 Q. Other than that, isn't it true that
10 Penn National did all it could have done to

11 investigate potential for coverage in this matter?

12 In other words, given the limitations
13 that it had, which was to only search by policy
14 number, and given the lack of secondary evidence of
15 any other policies that we've just discussed, isn't
16 it true there was nothing more Penn National could
17 have done to look for policies other than the two
18 it found?

19 A. Well, your question assumes that
20 there's a complete lack of secondary evidence. And
21 I have seen no indication of that, because I have
22 seen no indication of Penn National looking at
23 that, looking for that or even primary evidence at
24 all of these other sources that Penn National
25 should have considered and looked into.

121

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1 Rather, Penn National just looked at
2 its own limited record base, and, you know, that's
3 all it did. And that clearly doesn't comply with
4 industry standards.

5 Q. So your opinion is that Penn National
6 didn't review documents if there's no evidence of
7 it ever existing?

8 A. I'm not sure I followed that question,

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9 could you --

10 Q. Your opinion is that Penn National did
11 something wrong by not looking for secondary
12 evidence but yet there's no secondary evidence at
13 which they could have looked.

14 MR. NES: Object to form.

15 THE WITNESS: I don't know if there's
16 no secondary evidence because I saw no
17 evidence that Penn National looked for it.

18 If Penn National looked for it and then
19 reported in their file, which is illusive, I
20 guess, their file, while we have done this
21 this this and there's no secondary evidence,
22 that would be significant. But we don't see
23 that. We don't see any effort to even look
24 for secondary evidence.

25 BY MR. BROWN:

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122

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1 Q. Okay. So let me come back to the
2 question of storing documents in a terminal digit
3 system. You're aware that's how Penn National did
4 it?

5 A. Yeah, right, yeah.

6 Q. Are you aware of other insurers storing

7 historical policy documents on a terminal digits
8 system?

9 A. I don't know if it was terminal digit
10 or not, but I am aware that one of the features of
11 other insurers that I have seen is to store it by
12 policy number, whether it was terminal digit or
13 some other aspect of policy number, off hand I
14 couldn't tell you.

15 Q. And what other insurers have you seen
16 that have done that?

17 A. Okay. Well, Fireman's Fund, Travelers,
18 and I have been involved in three or four of these
19 other cases like this and I can't remember the
20 insurers right off hand. I would have to go back
21 and look.

22 Q. Would you agree it was an industry
23 standard to store and maintain documents based on a
24 policy number?

25 A. As one of the criteria. I have never

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123

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1 seen anybody do it just based on policy number
2 because one of the important things to think about
3 here is that when policy holders come to you for
4 coverage they don't often have -- we're lucky to

5 get them here, the policy numbers for historic
6 policies, and the industry recognizes that.

7 Q. And that was going to be my next
8 question. You don't have an issue with Penn
9 National storing documents and tracking them by
10 policy number. Your contention is they should have
11 done it some other way as well?

12 A. Some other way as well as they did do
13 it in the years before and now the years after,
14 evidencing that it can be done by Penn National.

15 Q. You talked earlier about about the
16 destruction of policies. If one assumes that Penn
17 National's first notice of Covil seeking coverage
18 or someone seeking coverage on Covil's behalf was
19 in 2018 and if Penn National's document retention
20 policy for GL policies was 25 years, given that
21 Covil went out of business in '91, '92, is it fair
22 to say that Penn National would not have had any
23 policies for Covil in 2018 given it's 25-year
24 document retention policy?

25 A. You would certainly think so, but they

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124

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1 did.

2 Q. And found those two policies?

3 A. They found those -- they found those
4 two policies which theoretically should have
5 been -- theoretically should have been subject to
6 their 25 year destruction program which I think is
7 a bit short and I think they recognize that, but
8 they weren't. And I can't recall the fellow's
9 name, he was deposed here twice, said he couldn't
10 explain why that's the case. Obviously the
11 destruction program has some holes in it.

12 Q. Well, it has some holes in the sense
13 that those policies in the '80s shouldn't have been
14 destroyed 25 years later but in fact it's to
15 Covil's benefit here that they weren't because we
16 have the policies, right?

17 A. Well, you know, I don't think that Penn
18 National did it -- held onto them for Covil's
19 benefit, I think Penn National made a mistake in
20 not destroying them early pursuant to its premature
21 policy destruction. So that's a very odd way of
22 putting it, I would tend to think.

23 Q. Why is that an odd way of putting it?
24 The reality is that had the policies been destroyed
25 then we would be here potentially arguing about

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1 whether or not the policies existed but we don't
2 have to do that because we have the policies?

3 A. We have the policies and the
4 destruction policy didn't work so what does that
5 tell us. Well, are there other policies where it
6 didn't work? Because it doesn't seem to be that
7 effective, the deconstruction policy.

8 Did anybody take that into account?
9 No, because they can't search beyond the policy
10 number, so -- and they didn't conduct at least
11 substantively that I can see any other type of
12 search.

13 Q. You mentioned that you thought the
14 25-year timeframe was too short. I thought we
15 discussed that earlier.

16 A. No.

17 Q. Do you contend that's outside industry
18 standards to have a 25-year document destruction
19 policy?

20 A. Given what happened in the late 70s and
21 early 80s and I think that -- why do I keep
22 forgetting her name. Frost. I think Frost
23 testifies to this. But what's significant there,
24 is that the destruction policy for the Workers'
25 Comp policies was 50 years.

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126

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1 Now, if they can do that for Workers'
2 Compensation, where there's no long tail kind of
3 injury exposure, they certainly can do it for their
4 CGLs and similar policies where there is a long
5 term exposure and where they should or did know
6 about it, and, in fact, did search -- did create
7 searches for policyholder name at one point. They
8 certainly could have done it, the 50 years, given
9 what happened in the late seventies and early 80s
10 and after that, 25 years is nothing.

11 Q. Whether they could have done it and
12 whether it was outside industry standards to do it
13 for 25 years are two different questions, right?

14 A. Say that again.

15 Q. Whether they could have held documents
16 longer forever, or whether it was outside of
17 industry standard to have a 25-year destruction
18 policy is two different questions, right?

19 A. I suppose so.

20 Q. Okay. And where do you gain the
21 industry standard that the 25-year policy for GL
22 policies was too short?

23 A. Oh, well, from my own experience of

24 what they are and from the fact that they had a 50
25 year one on the Workers' Compensation one here and

127

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1 from Frost's deposition, I believe she discusses it
2 in there about length of time that these policies
3 should be kept.

4 Q. Other than the testimony of the
5 receiver and other expert in this case, can you
6 point me to any other document or anything that
7 would say that that was outside of industry
8 standard?

9 A. No, not off hand, however, what I did
10 note -- excuse me, I need to turn this off. What I
11 did note was that the head of administrative
12 services was in charge of all of this and he's the
13 guy who was deposed. Sorry, I can't think of his
14 name.

15 Q. Reifschneider?

16 A. Reifschneider, thank you. He's the one
17 who designed this program and going back several
18 years. And presumably was the one who did the 25
19 years. But there's no evidence at all that -- and
20 he doesn't have a claims background. Most of his
21 work is paying the rent and seeing that the rental

22 cars -- the company cars are taken care of and so
23 on and so forth. He doesn't have any real
24 background in this area, nor does he -- there's no
25 evidence of this -- confer with underwriting people

128

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1 and claims people who are facing these kinds of
2 long tail claims as to how long this should be. Or
3 anyone else to develop an appropriate destruction
4 and I think I thought that was a significant
5 failure on the part of Mr. Reifschneider and Penn
6 National to make an effort to accurately determine
7 what they should be.

8 Q. I've marked as Exhibit 12, Penn
9 National document retention policy. We've talked
10 about it quite a bit and I want to make sure that
11 we're -- looking at the same document let me share
12 my screen with you, Mr. Miller Exhibit 12 and I
13 note similar to Mr. Nes's comment, this is
14 confidential materials and it has been marked as
15 such but is this records retention policy that
16 you've -- it's a lengthy document.

17 A. Yes, it is.

18 Q. Is this policy? I can scroll through
19 the whole thing?

20 A. No, it's the '96 records retention
21 policy.

22 Q. Yes, sir.

23 A. Yeah, that's the one I saw.

24 Q. May 28th, 1996. So this is the records
25 retention policy that you've described?

129

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1 A. Yes.

2 Q. Do you believe this policy is at odds
3 with industry standards because it allows for the
4 destruction of GL policies after 25 years?

5 A. That was my understanding?

6 Q. Okay. Well, I guess my question is, Is
7 that your opinion?

8 A. Well that's from what I've read, that
9 they had a 25-year destruction policy on CGL and
10 they had a 50-year destruction policy on Workers'
11 Comp.

12 Q. And I guess my question is, is it your
13 opinion that that is at odds with an industry
14 standard?

15 A. I am not aware of a specific industry
16 standard on the length of time. It is at odds with
17 my own experience in this regard and what I think

18 an insurance company should do given what the
19 insurance industry faced and learned in the late
20 seventies, early 80s.

21 Q. Have you ever testified in any case to
22 that -that view that you just described that is the
23 view that in light of risks being confronted by the
24 insurance industry in the '70s and '80s, that the
25 insurer should have not destroyed any GL policies,

130

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1 have you ever been an expert in a case where you
2 gave that opinion before?

3 A. I don't specifically recall one way or
4 another off hand unfortunately.

5 Q. You said you have testified in some
6 lost policy cases, thought right?

7 A. Yes that's true.

8 Q. How many lost policy cases have you
9 testified in?

10 A. Maybe 3 to 6 cases like that over the
11 years. I've been doing this a long time so that's
12 just kind of a stab in the dark.

13 Q. And were those cases for insurers or
14 for policyholders?

15 A. They would have been for policyholders,

↑

16 yes.

17 Q. And was the nature of the testimony in
18 those cases about whether or not supposed secondary
19 evidence was sufficient to establish the terms and
20 conditions of the policy?

21 A. That issue came up in those cases. In
22 some of those cases, at least.

23 Q. Okay. With regard to your third
24 opinion, that Penn National searched for policies
25 it issued to covil did not accord with insurance

131

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1 industry standards. Do you have any basis for that
2 opinion other than what you've now testified to or
3 what's contained in -- I believe it was Exhibit 6.

4 A. And what may be contained in the other
5 documents that I heave produced that I haven't
6 summarized here, because it would be just too much,
7 that pertain to this issue as well as my own
8 experience and knowledge, which we may have
9 previously covered, but I just want to make sure.

10 Q. So let me be more clear in my question.

11 Other than what you've discussed here
12 this afternoon, what has been in the documents that
13 you've produced, including Exhibit 6 --

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14 A. Yes.

15 Q. -- which I will show to you to make
16 sure we're talking about the same thing.

17 A. Yes, we're all on the same page.

18 Q. And of course your own experience and
19 beliefs are there any other basis for that --

20 A. I would prefer to characterize it as my
21 own experience and knowledge. I have a lot of
22 beliefs, but they don't pertain here.

23 Q. In any other basis for that third
24 opinion other than what we just discussed?

25 A. No, I think that's it.

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132

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1 Q. And just so I'm clear, you're not
2 offering the opinion that Penn National had
3 coverage for any specific period of time, rather
4 than you're offering the opinion that Penn
5 National's search for policies that might have
6 existed for other periods of time was inadequate?

7 A. Yes, but I am offering opinions that
8 there was coverage during certain periods of time,
9 maybe I misunderstood the question.

10 Q. Are you of the opinion that there was

11 GL coverage for Covil issued by Penn National for

12 any periods of time other than '86 to '88?

13 A. No, no, we don't have any policies, so
14 I can't offer that opinion.

15 Q. And no secondary evidence of GL
16 policies for any other periods of time, is that
17 true?

18 MR. Nes: Objection to form.

19 THE WITNESS: That's right, not that
20 I'm aware of, anyway.

21 MR. BROWN: Okay, I think that's all I
22 have, Mr. Miller I appreciate your patience
23 as we all work through our technology issues
24 here today. I don't know if counsel has any
25 questions but I appreciate your time.

133

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1 THE WITNESS: Thank you sir.

2 EXAMINATION

3 BY MR. NES:

4 Q. Mr. Miller this is Brad Nes for the
5 receiver for Covil corporation.

6 You were asked several questions by
7 Mr. Brown about secondary evidence of coverage
8 prior to the 1986/87 policy period.

9 A. Yes.

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10 Q. Do you remember that testimony
11 generally?

12 A. Yes, generally.

13 Q. Were you asked to opine on whether or
14 not there was secondary evidence of GL coverage
15 prior to 1986, 87?

16 A. No I was not.

17 Q. Did you review the documents that you
18 were produced to you with an eye forwards looking
19 for secondary evidence of coverage prior to 1986?

20 A. No, I did not.

21 Q. No further questions.

22 A. Okay, do I can by the way I will read
23 and sign just to have their.

24 THE VIDEOGRAPHER: The time on the
25 monitor is 4:59 p.m. and this concludes the

134

CHARLES MILLER - ROUGH DRAFT - CONFIDENTIAL - 11/28/22

1 deposition

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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 PENNSYLVANIA
NATIONAL MUTUAL CASUALTY
INSURANCE CO.'S PROPOSED
CONCLUSIONS OF FACT AND
LAW**

v.

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

Defendants.

Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through undersigned counsel, respectfully submits that, after considering all evidence and legal argument submitted by Plaintiff and Penn National in connection with the trial of this matter, the jury should make the following findings of fact and the Court should make the following conclusions of law.

At the outset, Penn National objects to the requirement that it present the Court with its proposed findings of fact, as such findings are within the exclusive province of the jury which is to receive evidence from the parties at the forthcoming trial of this action and reach its own conclusions of fact based thereon. Penn National duly demanded a trial by jury in its March 31, 2021, Answer to the Complaint for Declaratory Judgment and Breach of Contract, and by submitting the following proposed findings of fact and conclusions of law does not in any manner waive its right to a trial by jury on all issues so triable.

I. FINDINGS OF FACT

A. The Parties

1. Covil Corporation (“Covil”), a South Carolina corporation formed in 1954, was in the business of selling, distributing, and installing insulation products, some of which allegedly contained asbestos.¹

2. Covil effectively ceased operations in 1991, and its charter was thereafter administratively revoked.²

3. Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, that maintains a principal place of business in the Commonwealth of Pennsylvania, and is licensed and authorized to engage in the business of insurance in the State of South Carolina.³

4. By order dated November 2, 2018, Peter D. Protopapas was appointed as Receiver of Covil, and pursuant to the authority vested in him, commenced this action on or about April 27, 2020.⁴

B. The Complaint

5. On or about April 27, 2020, the instant action was commenced with the filing of a Complaint. With regard to Penn National, the Complaint sets forth the following causes of action, seeking the following specific relief:

Count I: Declaratory judgment asking that the Court declare that Penn National must fairly compensate Plaintiff for the substantial time, effort, and expenses Plaintiff expended in connection with the defense of asbestos suits potentially covered under the Penn National policies and further declare that this

¹ **Exhibit 1** - Complaint, ¶ 7.

² *Id.*

³ **Exhibit 2** - Penn National Answer, at ¶ 2.

⁴ **Exhibit 1** - Complaint, at ¶ 13.

obligation is unlimited and shall continue as long as here are Covil Asbestos Suits pending.⁵

Count II: Declaratory judgment asking the Court to declare that all policies, evidence of policies and documents relating to their placement, purchase and underwriting, including but not limited to such documents in the possession of Penn National are the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession.⁶

Count III: Declaratory judgment asking the Court to declare and order that Penn National issued primary general liability coverage (policy nos. 515 50 28 53 7 and 515 50 28 53 8) to Covil for the policy periods March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988; that each policy has a \$1,000,000 annual limit; that each policy has a combined \$1,000,000 single limit per occurrence for covered claims, with no limit to the number of occurrences; and that Penn National has an unlimited supplemental duty to defend and to pay or reimburse defense costs.

Plaintiff further seeks a declaration as to the interpretation of the Penn National policies, as follows:⁷

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

⁵ **Exhibit 1** - Complaint at ¶¶ 14-19.

⁶ *Id.* at ¶¶ 20-22.

⁷ *Id.* at ¶¶ 23-26.

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

6. The Complaint does not address any specific underlying claim, or any specific facts of any specific claims that allegedly give rise to a duty on the part of Penn National to defend and/or indemnify Covil in connection with any particular legal action.

7. In its Answer to the Complaint, Penn National demanded a trial by jury on all issues so triable.⁸

C. The Penn National Insurance Policies

8. In connection with a prior litigation, *Finch v. BASF Catalysts LLC, et al.*, 16-CV-01077-CCE-JEP (M.D.N.C.), and in response to a motion to compel by the plaintiff therein, Covil produced a document dated May 25, 2018, listing the insurance companies that had issued policies to Covil, on a year by year basis, from 1967 through 1991 (“Covil Insurance History”). The Covil Insurance History further identifies the type of policy issued by each of Covil’s historical insurers and identifies the policies by number.⁹

9. Based upon Covil’s own document, Covil maintained commercial general liability insurance at all times from March 31, 1969 to March 31, 1992.¹⁰ There are no gaps in commercial general liability coverage shown in the Covil Insurance History.

10. Penn National appears on the Covil Insurance History list only twice, having issued commercial general liability policies to Covil with effective dates of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.¹¹

11. The policy effective from March 31, 1986 to March 31, 1987 bears policy number 515502853-7. The policy effective from March 31, 1987 to March 31, 1988 bears policy number 515502853-8.¹²

12. The Penn National Policies each provide for a \$1,000,000 each occurrence limit of liability, with a \$1,000,000 aggregate limit of liability.¹³

⁸ **Exhibit 2** - Penn National Answer, Wherefore Clause 4 at page 8.

⁹ **Exhibit 3** - Subpoena to Penn National, dated May 29, 2018, Exhibits B at p. 2; Exhibit C.

¹⁰ *Id.*, Exhibit C.

¹¹ *Id.*, Exhibit C at p. 4

¹² **Exhibit 3** - Penn National Subpoena Response, dated June 15, 2018.

¹³ *Id.*

13. In its Complaint filed in this action, Covil alleged that Penn National issued the two Penn National Policies. Covil does not allege that it purchased commercial general liability insurance from Penn National for any policy period other than for the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.¹⁴

14. Covil further alleged that the Penn National Policies provided for a \$1,000,000 each occurrence limit of liability, and a \$1,000,000 aggregate limit of liability.¹⁵

15. Section **III** of the Penn National Policies, entitled **Limits of Liability**, provides as follows:¹⁶

Coverage A—The total liability of the company for all damages, including damages for care and loss of services, because of **bodily injury** sustained by one or more persons as the result of any one **occurrence** shall not exceed the limit of **bodily injury** liability stated in the declarations as applicable to “each **occurrence**.”

Subject to the above provision respecting “each **occurrence**”, the total liability of the company for all damages because of (1) **bodily injury** included within the **completed operations hazard** and (2) all **bodily injury** included within the **products hazard** shall not exceed the limit of **bodily injury** liability stated in the declarations as “aggregate”.

16. Under the **Limits of Liability** provisions, the Penn National Policies direct that “[f]or the purposes of determining the limit of the company’s liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered arising out of one **occurrence**.”¹⁷ Therefore, the occurrence limit in the Penn National Policies operates in the same manner as an aggregate limit.

¹⁴ **Exhibit 1** - Complaint, ¶ 8.

¹⁵ *Id.*

¹⁶ **Exhibit 5** - Penn National Policies, Bates 000004 and 000047.

¹⁷ **Exhibit 5** - Penn National Policies, Bates 000004 and 000047.

17. The Penn National Policies each contain a provision entitled **EXCLUSION (Completed Operations Hazard and Products Hazard)**, which provides as follows in clear and unambiguous terms:¹⁸

It is agreed that such insurance as is afforded by the Bodily Injury Liability Coverage and the Property Damage Liability Coverage does not apply to **bodily injury** or **property damage** included within the **Completed Operations Hazard** or the **Products Hazard**.

18. The Penn National Policies respectively define the “Completed Operations Hazard” and the “Products Hazard” as follows:¹⁹

“**completed operations hazard**” includes **bodily injury** and **property damage** arising out of the operations or reliance upon a representation or warrant made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured. “**Operations**” include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the **named insured** under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of

¹⁸ **Exhibit 5** - Penn National Policies 000001 and 000044.

¹⁹ *Id.* at 000036 and 000081.

- (a) operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

* * * *

"**products hazard**" includes **bodily injury** and **property damage** arising out of the **named insured's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others;

19. From Covil's very first tender of an asbestos claim under the Penn National Policies, Penn National has defended Covil against each and every claim and has made indemnity payments on behalf of Covil in fourteen (14) suits. Covil does not claim that Penn National has wrongfully refused to defend it against any specific claim.

20. The Section II commercial general liability coverage contains rating classifications that only apply to its installation operations. This means that Penn National only collected premium for Covil's operations exposures.²⁰

21. There were no product liability classifications codes or premium charges on the Penn National Policies. None were listed at the inception of the policy in the declarations schedules, and the Premium audits for the policies completed after expiration confirm that none were added during the policy period.²¹

²⁰ **Exhibit 5** - Penn National Policies, Bates 000002-000003, 000005 and 000045-000046, 000048

²¹ **Exhibit 6** - *Id.*; Penn National Underwriting File, Bates PNI-0350-351, and PNI-0390-391.

22. Covil maintained Products & Completed Operations insurance through insurers other than Penn National – namely, Imperial Casualty & Indemnity Co., under policy number 15GP04346.²²

D. Penn National's Document Retention and Production

23. At all relevant times, Penn National maintained a written document retention protocol that was in compliance with Pennsylvania corporate document retention laws, and Pennsylvania insurance regulations.

24. Penn National's written document retention protocol called for the company to retain non-workers compensation insurance policy documents for twenty-five (25) years from cancellation or non-renewal of the policy.²³

25. From the inception of its document retention protocol, decades prior to being involved in any asbestos coverage litigation, Penn National stored its historical insurance policies by policy number.²⁴ Policy numbers have been used to identify, organize, file and retrieve policies since the first liability policy issued in the United States in 1886. Policy numbers are an efficient method of identifying policies by line of business and by policyholder, whereas the names of companies often are similar and are easily confused. However, a policy number only identifies coverage the coverage in the policy for a specific policyholder, regardless of the similarity of the policyholder's name to any other company or business.

26. Penn National's system allows it to readily search for, identify, and obtain a copy of a policy of insurance once it is provided with a policy number.²⁵

²² **Exhibit 3** - Subpoena dated May 29, 2018, Exhibit C.

²³ **Exhibit 7** - Affidavit of Brent Reifsnyder, sworn to July 9, 2021, at ¶ 19.

²⁴ *Id.* at ¶ 8.

²⁵ *Id.*

27. The Penn National Policies at issue in this matter were originally located by Penn National approximately four years ago in response to a subpoena issued to Penn National on or about May 29, 2018. Attached to the subpoena was the Covil Insurance History, identifying Penn National as its insurer for the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.²⁶

28. Pursuant to that subpoena, and on or about June 15, 2018, Penn National located and produced copies of the Penn National Policies using the policy numbers provided. Penn National also conducted an electronic search of its records to determine whether any other commercial general liability policies were issued to Covil, and there were none.²⁷

29. Penn National further searched its databases for, amongst other things, insurance policies issued to 240 “Contractors” identified by the Plaintiff herein, “certificates of insurance or other documents evidencing insurance coverage” for any of 650 “Facilities” listed by the Plaintiff herein.²⁸

30. In addition to the 240 “Contractors” and 650 “Facilities”, Penn National further searched its databases for policy documents that related to any of the named defendants in the *Finch* matter, in connection with which the subpoena was served. The scope of Penn National’s search was for documents from 1954 to 1993.²⁹

31. As of June 11, 2021, Penn National’s Senior Home Office Claim Examiner, Boyd Wright, personally spent sixty-four (64) hours searching Penn Nationals’ records for additional policies of insurance related to the “Contractors,” “Facilities,” and *Finch* Defendants.³⁰

²⁶ **Exhibit 3** - Subpoena dated May 29, 2018, Exhibit C.

²⁷ **Exhibit 3** - Subpoena Response dated June 15, 2018; Affidavit of Boyd Wright

²⁸ **Exhibit 8** - Affidavit of Boyd Wright, sworn to June 11, 2021, at ¶ 11.

²⁹ **Exhibit 8** - Affidavit of Boyd Wright, sworn to June 11, 2021, at ¶ 11.

³⁰ *Id.* at ¶ 19.

32. As a result of his exhaustive search, only four (4) policies of insurance were identified as providing insurance coverage to “Contractors” within the date range of 1954 to 1993.³¹ One was an inland marine policy that does not apply to an asbestos exposure claim. The other three were commercial general liability policies issued to entities other than Covil for the policy periods of 3/16/1992 to 11/01/1994, 04/01/1992 to 04/01/1998, and 04/01/1991 to 04/01/1992.³²

33. In addition to Boyd Wright’s search, Penn National employee Brent Reifsnyder conducted a policy search for each of the above-referenced general liability policies that were issued to entities other than Covil. Mr. Reifsnyder’s search confirmed that pursuant to Penn National’s written document retention policy, the paper documents relating to the policy with a policy period of 03/16/1992 to 11/01/1994 were purged. However, Mr. Reifsnyder was able to locate paper policy documents relating to the policies with policy periods of 04/01/1992 to 04/01/1998 and 04/01/1991 to 04/01/1992.³³

34. The paper documents identified for the 04/01/1992 to 04/01/1998 and 04/01/1991 to 04/01/1992 general liability policies did not contain any information or documentation to indicate that these policies provided any type of coverage for Covil as an additional insured or otherwise, nor was there any indication that Covil had any relationship to the policies or to the respective named insureds under such policies.³⁴

35. As a result of his exhaustive search, no policies of insurance were located in relation to the 650 “Facilities” identified by the Plaintiff herein.³⁵

³¹ *Id.* at ¶ 13.

³² *Id.*

³³ *Id.* at ¶ 17.

³⁴ *Id.* at ¶ 18.

³⁵ *Id.* at ¶ 14.

36. As a result of his exhaustive search, no policies of insurance were located in relation to the *Finch* Defendants.³⁶

37. Covil's proffered expert, Charles Miller, agreed that prior to receiving a subpoena to produce the Penn National Policies, there would have been no reason for Penn National to either search for Covil-related policies, or initiate a litigation hold on any documents or materials related to Covil.³⁷

38. The subpoena that triggered Penn National's search was dated May 29, 2018, and called for a response on or before June 20, 2018.³⁸

39. Penn National's document retention policy required it to maintain documents for 25 years after the cancellation or non-renewal of a policy.³⁹

40. The final commercial general liability policy issued to Covil expired on March 31, 1988.⁴⁰

41. Twenty-five years from March 31, 1988 was March 31, 2013.

42. March 31, 2013 was five years, one month, and 30 days before the subject subpoena was issued.⁴¹

43. There is no insurance regulation, industry standard, or jurisprudential rule that suggests Penn National's method of cataloguing its historical insurance policies is ineffective or inappropriate.

³⁶ *Id.* at ¶ 16.

³⁷ **Exhibit 9** - Transcript of the deposition of Charles Miller ("Miller Deposition"), dated November 28, 2022, pg. 111, lines 1-8.

³⁸ **Exhibit 3** - Subpoena dated May 29, 2018.

³⁹ **Exhibit 10** - Penn National Document Retention Policy, PNI-0637-0639.

⁴⁰ **Exhibit 5** - Penn National Policy 515502853-8, Declaration Page.

⁴¹ **Exhibit 11** -

<https://www.timeanddate.com/date/durationresult.html?m1=03&d1=31&y1=2013&m2=05&d2=29&y2=2018&ti=on>, last visited December 3, 2022.

44. Covil's proffered expert witness on the issue of document retention, Charles Miller, agreed that there is no industry standard requiring insurance companies to maintain historical insurance policies in any particular manner or for any particular length of time.⁴²

45. Covil has never produced a single document to indicate that it purchased a commercial general liability policy from Penn National for any policy period other than from March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.

46. Covil has not produced any business records, board meeting minutes, ledgers, premium invoices, receipts for paid premium, or cancelled checks for paid premium, indicating it purchased other commercial general liability policies from Penn National.⁴³

47. Covil has not produced or identified any excess or umbrella insurance policies indicating the existence of a Penn National commercial general liability policy issued to Covil, other than those identified for the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.⁴⁴

48. Covil has not produced any records from its insurance broker(s), such as quotes, binders, declaration pages, premium invoices, or certificates of insurance, indicating that any other commercial general liability policies were procured from Penn National.

49. No witnesses produced on behalf of Covil have testified that they possess personal knowledge of any other commercial general liability policies that were purchased from Penn National by Covil, or issued by Penn National to Covil.

50. Covil's proffered expert on policy reconstruction, Charles Miller, agreed that he is not aware of any secondary evidence to suggest the existence of any commercial general liability

⁴² **Exhibit 12** - Miller Deposition, page 140, lines 5-9.

⁴³ **Exhibit 13** - Miller Deposition, page 128, lines 6-18; page 143, lines 15-17.

⁴⁴ **Exhibit 14** - Miller Deposition, page 129, lines 6-12; page 143, lines 15-17.

policies it purchased from Penn National other than the two policies identified by Penn National covering the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.⁴⁵

51. In addition to the absence of any evidence suggesting other commercial general liability policies were purchased from Penn National by Covil, for the seventeen (17) consecutive policy years prior to March 31, 1986, and for the four (4) consecutive policy periods following March 31, 1988, Covil was insured under commercial general liability policies issued by insurers other than Penn National.⁴⁶

52. Since the commencement of this action, Penn National has not destroyed or purged any policy related documents.⁴⁷

E. Penn National's Search Efforts

53. Penn National has undertaken substantial efforts to identify any additional commercial general liability policies that it may have issued to Covil.

54. In total, Penn National has responded to at least forty-eight (48) interrogatories, seventy-eight (78) requests for production of documents, and twenty-six (26) requests for admission, has produced for deposition Brent Reifsnyder, Penn National Director of Administrative Services, and has also produced three separate witnesses for Rule 30(b)(6) depositions of Penn National

55. As of June 11, 2021, Boyd Wright, Penn National's Senior Home Office Claims Examiner, personally spent sixty-four (64) hours searching Penn National's electronic and physical document repositories in search of material tending to suggest that Penn National issued

⁴⁵ **Exhibit 15** - Miller Deposition, page 120, lines 1-5; page 143, lines 15-17.

⁴⁶ **Exhibit 3** - Subpoena dated May 29, 2018, Exhibit C.

⁴⁷ **Exhibit 16** - Affidavit of Brent Reifsnyder, sworn to December 22, 2021, at ¶ 9.

any commercial general liability policies to Covil other than those covering the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988. He found none.⁴⁸

56. Pursuant to the Court's November 5, 2021 Order, Penn National provided unfettered access to personnel from Ellis & Winters LLP, to search Penn National records. Penn National further made its employees available for extensive interviews. Despite all of the efforts by Ellis & Winters LLP, it did not uncover any evidence of any commercial general liability policies issued by Penn National to Covil other than those covering the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988.⁴⁹

57. No evidence exists to suggest that Penn National either issued any additional commercial general liability policies to Covil, or that Penn National destroyed any such policies in connection with its routine document retention protocols.

58. Penn National has engaged in each and every search effort directed by this Court, has responded to each and every discovery order of this Court, and has complied with each and every discovery order issued by this Court with the exception of the November 5, 2021 Order from which it has taken and perfected a lawful appeal, which remains pending before the South Carolina Court of Appeals.

II. CONCLUSIONS OF LAW

A. Interpretation of an Insurance Policy

1. In South Carolina, "[a]n insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts." *Canal Ins. Co. v. Nat'l House Movers, LLC*, 414 S.C. 255, 260, 777 S.E.2d 418, 421 (Ct. App. 2015) (citing *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 663 S.E.2d 484 (2008)). "Courts

⁴⁸ **Exhibit 8** - Affidavit of Boyd Wright, sworn to June 11, 2021, at ¶¶ 4, 11, 14, 15, 18, and 19.

⁴⁹ **Exhibit 17** - March 22, 2022 letter to The Hon. Jean H. Toal, at pages 1-3.

must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning.” *Id.* at 594, 762 S.E.2d at 709-10 (quoting *Sloan Constr. Co. v. Cent. Nat’l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)). “The court cannot torture the meaning of policy language to extend coverage not intended by the parties.” *Precision Walls, Inc. v. Liberty Mut. Fire Ins. Co.*, 410 S.C. 175, 183-84, 763 S.E.2d 598, 602 (Ct. App. 2014) (quoting *S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 356, 638 S.E.2d 103, 105 (Ct. App. 2006) [internal quotation marks omitted]).

2. “Where the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.” *Canal Ins. Co.*, 414 S.C. at 260, 777 S.E.2d at 421. “It is a question of law for the court whether the language of a contract is ambiguous.” *Id.* (quoting *S.C. Dep’t of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001)). “The construction of a clear and unambiguous contract is a question of law for the court to determine.” *Id.* (citing *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997)). “Ambiguity may not be created in an insurance policy by singling out a sentence or a clause . . . [and] courts may not torture the ordinary meaning of language to extend coverage expressly excluded by the terms of a policy.” *Laidlaw Envtl. Servs. (TOC), Inc. v. Aetna Cas. & Sur. Co.*, 338 S.C. 43, 48, 524 S.E.2d 847, 850 (Ct. App. 1999) (quoting *Falkosky v. Allstate Ins. Co.*, 311 S.C. 369, 371, 429 S.E.2d 194, 196 (Ct. App.), *modified*, 312 S.C. 210, 439 S.E.2d 836 (1993) (internal citations omitted).

3. The language of the Completed Operations Hazard and Products Hazard definitions and exclusion is unambiguous, valid, and enforceable. *See Laidlaw Envtl. Servs. (TOC), Inc. v. Aetna Cas. & Sur. Co.*, 338 S.C. 43, 48-49, 524 S.E.2d 847 (Ct. App. 1999); *Auto-Owners Ins. Co. v. Gordon & Assocs.*, Civil Action No. 9:15-4063-RMG, 2005 U.S. Dist. LEXIS 63588 at *7

(D.S.C. Aug. 22, 2016). Therefore, Penn National has no obligation to defend or indemnify Covil for any asbestos claims falling within the **Exclusion (Completed Operations Hazard and Products Hazard)**.

4. Each individual asbestos exposure case must be evaluated for coverage on a case by case basis, applying the specific facts involved in each individual claim to the terms, conditions, definitions, limitations, and exclusions of coverage under the Penn National Policies. *See Collins Holding Corp. v. Wausau Underwriters Ins. Co.*, 379 S.C. 573, 666 S.E.2d 897 (2008) (“In an action for a declaratory judgment, the obligation of a liability insurance company to defend and indemnify is determined by the allegations in the complaint. If the facts alleged in the complaint fail to bring a claim within the policy’s coverage, the insurer has no duty to defend.” [internal citations omitted]); *see also Auto-Owners Ins. Co. v. Madison at Park W. Prop. Owners Ass’n*, 495 F. App’x 383 (4th Cir. 2012) (“To qualify [as an Article III dispute], [i]t must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” [internal quotation marks omitted]); and *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 n.7, 127 S. Ct. 764, 166 L. Ed. 2d. 604 (2007) (“[A] litigant may not use a declaratory judgment action to obtain piecemeal adjudication of defenses that would not finally and conclusively resolve the underlying controversy.”).

B. Proving the Existence of “Lost Policies”

5. “[T]he proponent of a lost insurance policy must establish the fact of loss and the terms and conditions of the policies by clear and positive evidence.” *Klopman v. Zurich Am. Ins. Co.*, 233 F. App’x 256, 258 (4th Cir. 2007) (citing *In re Wallace & Gale Co.*, 275 B.R. 223, 230

(D. Md. 2002), *vacated in part on other grounds*, 284 B.R. 557 (D. Md. 2002), *aff'd*, 385 F.3d 820 (4th Cir. 2004) [internal quotation marks omitted]).

6. Courts evaluate lost policy claims “understanding that [a plaintiff’s] evidence must at least ‘leave no reasonable doubt’ as to the existence and the terms and conditions of the insurance policy he insists [the insurer] issued to him. *Klopman* at 259 (citing *Barranco v. Kostens*, 189 Md. 94, 54 A.2d 326, 328 (Md. 1947)).

7. In *Klopman*, the plaintiff produced a copy of the declarations page associated with the alleged policy and business ledgers showing two checks issued to his insurance agent for the exact amount of the premium provided on the declarations page. *Id.* at 259. He further produced evidence that the insurer defended and paid a claim under the alleged policy, including a settlement document reflecting the policy number, claim number, claimant, date of accident, and the amount of indemnity paid on the claim. *Id.* Based upon this secondary evidence, the Fourth Circuit held that the Plaintiff “produced sufficiently clear evidence for a reasonable fact-finder to conclude that [the insurer] issued [the] policy.” *Id.* at 260.

8. In contrast to the significant secondary evidence produced in *Klopman*, in *Pa. Nat'l Mut. Cas. Ins. Co. v. Tate Andale, Inc.*, Civil Action No. ADC-17-0670, 2019 U.S. Dist. LEXIS 3064 (D. Md. Jan. 7, 2019), a nearly identical situation to that at bar involving the same insurer and claims for coverage in relation to decades-old asbestos exposures, the District Court of Maryland held that the production of a check bearing a claim number, a policy number, the claimant, the insured and the date of the alleged accident, coupled with expert testimony on the subject of policy reconstruction, was *insufficient* to grant judgment to the alleged policyholder as a matter of law. In so holding, the District Court concluded that the evidence produced was “not sufficiently clear evidence for a reasonable fact-finder to conclude that [Plaintiff] issued [the]

polic[ies].” *Tate Andale* at *19. Notably, the District Court reached its conclusion despite the putative insured proffering a historical “schedule of insurance” reflecting six consecutive years of coverage from Penn National, which the District Court determined was admissible. *Id.* at 15-16.

9. In stark contrast to the evidentiary showings in *Klopman* and *Tate Andale*, Covil has not produced a single document to suggest that Penn National issued any commercial general liability policies to it beyond the two recognized and identified policies for the policy periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988. Accordingly, Covil cannot satisfy its evidentiary burden to provide the existence of a lost policy with “sufficiently clear evidence.”

C. Spoliation of Evidence

10. As a corollary, because Covil cannot demonstrate the existence of a policy with “sufficiently clear evidence,” there is no factual basis for the Court to conclude that Penn National lost or destroyed any evidence relating to such a policy, or to issue any sanctions for spoliation predicated upon such a finding.

11. “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.” *Hopper v. Air & Liquid Sys. Corp.*, 2019 S.C. C.P. LEXIS 5488, *10-11 (citing Black’s Law Dictionary (8th Ed. 2004)).

12. 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.

Hopper v. Air & Liquid Sys. Corp., 2019 S.C. C.P. LEXIS 5488, *11 (citing *Hawkins v. College of Charleston*, 2013 WL 6050324 (4th Cir. 2013)).

13. As a threshold matter, Covil cannot be entitled to any sanctions for spoliation because it cannot establish with any degree of specificity that another policy of commercial general liability insurance was issued to it by Penn National in the first place, let alone that evidence of such a policy was destroyed.

14. Because Covil cannot demonstrate that any policy materials were destroyed by Penn National, Covil cannot demonstrate that Penn National "intentionally, recklessly, or negligently" destroyed evidence.

D. There is No Factual or Legal Basis for the Imposition of Discovery Sanctions.

15. SCRCP 37(b)(2) authorizes a Court to issue discovery sanctions "[i]f a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f)[.]" SCRCP 37(f) further instructs that "[a]bsent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system."

16. Penn National has not failed to obey any order to provide or permit discovery, nor has it failed to obey an order entered under Rule 26(f). To the contrary, Penn National has adhered to and complied with each and every directive issued by this Court, with the exception of the November 5, 2021 Order requiring the digitalization of all Penn National policy data stored on microfiche, which is the subject of a pending appeal before the South Carolina Court of Appeals.

17. Because Penn National has complied with each and every court order, save the one presently contested on appeal, there is no factual or legal basis for the Court to impose any discovery sanctions against Penn National. This is particularly true with respect to any order directing that coverage exists for asbestos claims for each and every policy year of Covil's operations.

18. As previously noted, Covil has produced no evidence that it ever purchased a commercial general liability policy from Penn National for any policy period other than March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988. In the absence of any such secondary evidence to even merely suggest the existence of another commercial general liability policy, Penn National has engaged in thorough, diligent searches of its paper and electronically stored records, and has similarly not uncovered any evidence to suggest that any other policy of commercial general liability insurance was ever issued to Covil.

19. In view of Penn National's compliance with the Court's directives and diligent searches of its historical records in the only manner by which such records can be effectively searched, there is no factual or legal basis for the imposition of any sanction under SCRCP 37(b).

III. CONCLUSION

Penn National respectfully submits that the jury should reach findings of fact in accordance with the foregoing, and based upon those findings of fact, the Court should reach the foregoing conclusions of law, and accordingly dismiss Plaintiff's Complaint in its entirety.

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

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

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Attorneys for Defendant Penn National

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

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

Plaintiff,

NOTICE OF DISMISSAL OF
DEFENDANT
SAM J. CRAIN & CO., INC. WITHOUT
PREJUDICE

v.

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

Defendants.

Pursuant to SCRCP Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, Plaintiff Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, ("Covil"), hereby dismisses, without prejudice, all claims against Sam J. Crain & Co., Inc. (hereinafter "Crain") in the above referenced matter. Sam J. Crain & Co., Inc. has not served a responsive pleading in the above referenced matter.

Respectfully submitted,

This 6th day of November 2022

s./ Peter D. Protopapas

Peter D. Protopapas, SC Bar 68304

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Columbia, SC 29204

803.978.6111

pdp@rplegalgroup.com

Receiver

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

Plaintiff,

v.

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

Defendants.

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

PLAINTIFF'S NOTICE THAT IT SEEKS
ONLY DECLARATIONS CONCERNING
ITS POLICIES WITH PENNSYLVANIA
NATIONAL MUTUAL CASUALTY
INSURANCE COMPANY

Plaintiff Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, ("Covil"), hereby provides Notice to this Honorable Court and all interested parties that it seeks only declarations concerning its policies with Defendant Pennsylvania National Mutual Casualty Insurance Company (hereinafter "Penn National") in the above captioned matter. The Receiver has only pled causes of actions for declaratory relief as to Defendant Penn National. The Receiver's Complaint does not seek monetary damages from Defendant Penn National. The only legal cause of action was for breach of contract against Defendant Sam J. Crain & Co., Inc. who is a defunct entity and is being dismissed without prejudice simultaneously with this filing.

This 6th day of November 2022

s./ Peter D. Protopapas

Peter D. Protopapas, Esquire SC Bar 68304

Rikard & Protopapas, LLC

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Columbia, SC 29204

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- 2436 -

Receiver

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

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

v.

Pennsylvania National Mutual Casualty Insurance Co. is the Defendant/Appellant.

NOTICE OF APPEAL

Pennsylvania National Mutual Casualty Insurance Co. (“Appellant”) appeals the order dated December 6, 2022 of the Honorable Jean H. Toal denying Appellant’s Motion to Confirm Jury Trial Demand, filed December 7, 2022. *See Exhibit 1.* Appellant received written notice of the lower court’s order denying its motion on December 6, 2022.

(signatures on following page)

Respectfully submitted,

s/Kirby D. Shealy III

Kirby D. Shealy III

SC Bar No. 11556

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Attorneys for Plaintiff/Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

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

v.

Pennsylvania National Mutual Casualty Insurance Co. is the Defendant/Appellant.

PROOF OF SERVICE

I certify that I caused to have served the **Notice of Appeal** by depositing a copy of it in the United States Mail, postage prepaid, on December 7, 2022, addressed to all parties of record, as follows:

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PO Box 580
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Peter Demos Protopapas, Esq.
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Washington, DC 20004

s/ Kirby D. Shealy III
Kirby D. Shealy III
Counsel for Appellant

- 2442 -

Exhibit 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	CASE NO.: 2020-CP-40-02098
Covil Corporation, by and through its duly	)	
appointed Receiver Peter D. Protopapas	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Pennsylvania National Mutual Casualty Insurance	)	
Co.; Sam J. Crain & Co., Inc.; and South Carolina	)	
Property and Casualty Insurance Guaranty	)	
Association,	)	
	)	
Defendants.		

This matter comes before me upon Defendant Penn National's Motion to Confirm Jury Trial Demand, filed December 2, 2022 at 4:42 pm. This matter is scheduled for a nonjury trial in the Richland County Judicial Center at 9:30 am on December 12, 2022.

On April 27, 2020, Covil Corporation, through its Receiver Peter D. Protopapas, filed its Complaint against Pennsylvania National Mutual Casualty Insurance Co.; Sam J. Crain & Co., Inc.; and South Carolina Property and Casualty Insurance Guaranty Association. The Complaint recites the following causes of action:

First, Second, and Third Causes of Action are for Declaratory Judgments against Penn National, regarding the coverage and meaning of its policies of insurance for Covil. None of these matters are triable to a jury. The Fourth Cause of Action is for negligence for failure to procure insurance against the Crain Agency, Covil's insurance broker. Crain has never appeared or answered. The Fifth Cause of Action is for breach of contract against Crain. It has not answered or appeared. The Sixth Cause of Action is for a declaratory judgment against the

Guaranty Association for any amounts due Covil from Mission, a liquidated insurer which had excess coverage for Penn National.

The Prayers for Relief against Penn National ask the Court to declare the meaning of its insurance policies insuring Covil. None of the Causes of Action or Prayers for Relief as to Penn National raise issues which entitle Penn National to a jury trial. Plaintiff Covil has today filed a Notice that it seeks only declarations concerning its policies with Penn National. It has further dismissed Defendant Crain without prejudice. Crain was the only defendant against whom the at law causes of action for negligence and for breach of contract were brought.

Therefore, as previously scheduled, this nonjury matter will proceed to trial as to Penn National on Monday, December 12, 2022 at 9:30 am.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE TO FOLLOW]



Richland Common Pleas

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

So Ordered

Jean H. Toal



The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE, RETIRED
SENIOR ACTIVE JUDGE

1220 SENATE STREET (ZIP CODE 29201)
P.O. BOX 12456
COLUMBIA, S.C. 29211
TELEPHONE (803) 734-1584
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RE: Covil v. Penn National; C.A. No.: 2020-CP-40-02098

December 8, 2022

Dear Counsel:

I have received from Kirby Shealy as counsel for Defendant Penn National its Notice of Appeal to the South Carolina Court of Appeals of my Order regarding Penn National's Motion to Confirm Jury Trial. My Order was electronically signed, emailed to all counsel and transmitted to Richland County's Electronic Filing System on December 6, 2022. It was marked electronically filed by Richland County on December 7, 2022 at 8:43 am.

My Order repeated my long-stated rulings that this matter is a nonjury declaratory judgment matter. It has been set for a nonjury trial in Richland County on December 12, 2022, beginning at 9:30 am. Defendant Penn National's Answer requested "a trial by jury on all issues so triable." The three Causes of Action pled by Plaintiff Covil against Penn National are all actions for Declaratory Judgements. These actions are not triable to a jury; they are requests for Judicial Declaration of complex questions of insurance coverage law. These declarations are also affected by ongoing disputes regarding discovery of Penn National insurance policies and alleged spoliation of insurance policies and records. These are not jury questions. Several times after the conduct by me of hearings in this case, Penn National has attempted to appeal my discovery rulings. Those appeals have been dismissed by the Court of Appeals and the Supreme Court as non-appealable.

Although I firmly believe that this Order is not appealable, this appeal operates as a temporary stay of the nonjury trial in this matter. Accordingly, I will postpone this trial until such time as this Court receives a Remittitur of this matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Jean Hofer Toal', with a long horizontal flourish extending to the right.

Jean Hofer Toal
Acting Circuit Court Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO.: 2020-CP-40-02098
	)	
Covil Corporation, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Plaintiff,	)	
	)	MOTION TO ENFORCE MAY 5, 2022
vs.	)	DISCOVERY ORDER AND ESTABLISH
	)	SCHEDULE FOR COMPLIANCE
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	
	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Covil Corporation (“Covil”), by and through its duly appointed Receiver Peter D. Protopapas, intends to move and does hereby move before the Court on the tenth day after service of this Motion, or at such other time as established by the Court, for an order to enforce this Court’s May 5, 2022 Order and establishing a schedule for Pennsylvania National Mutual Casualty Insurance Company’s (“Penn National”) compliance with the May 5, 2022 Order.

This Court previously ordered Penn National to open its repository of insurance policies and facilitate a review performed by Covil’s insurer-appointed defense counsel, Ellis & Winters. The Court directed Ellis & Winters to report back to the Court with suggestions for meeting Covil’s needs to identify responsive coverage while not wasting Penn National’s resources. This process occurred over a period of several months, and Ellis & Winters submitted their recommendations to the Court on March 22, 2022. After considering Ellis & Winters’ recommendations, the Court issued the May 5, 2022 Order, ordering Penn National to (1) digitize certain microfiche records and produce the digitized records to the Receiver, (2) produce code keys for its policy prefixes to

the Receiver, (3) produce all information disclosed to Ellis & Winters used as a basis for identifying policy numbers for three newly discovered Covil insurance policies, and (4) produce all underwriting documentation in its possession, custody, or control for various receiverships. Exhibit A. Penn National filed a motion requesting the Court reconsider the May 5 order, and the Court denied this motion on May 26, 2022.

On May 31, 2022, Penn National filed a Notice of Appeal of the Court's May 5 Order. *See* Appellate Case No. 2022-000761. Penn National also filed a Petition for Writ of Certiorari in the original jurisdiction of the South Carolina Supreme Court on June 6, 2022, seeking contemporaneous appellate review of the same order. *See* Appellate Case No. 2022-000785. The Court of Appeals dismissed Penn National's appeal on August 9, 2022, finding the order was not immediately appealable. Exhibit B. The Supreme Court unanimously denied the Petition for Writ of Certiorari on August 23, 2022. Exhibit C. Penn National filed a Petition for Rehearing with the Court of Appeals on August 24, 2022, and the Court of Appeals denied the petition on November 15, 2022. Following the Court of Appeals' denial of the Petition for Rehearing, Penn National filed another Petition for Writ of Certiorari with the Supreme Court requesting appellate review of the May 5 discovery order. *See* Appellate Case No. 2022-01764. The Supreme Court denied the second petition on January 12, 2023. Exhibit D.

The Court of Appeals and the Supreme Court have both declined to review the May 5, 2022 discovery order. Accordingly, the Receiver moves for an order of this Court enforcing the May 5, 2022 Order and establishing a schedule for Penn National's compliance.

Counsel for Receiver certifies that he has reached out to opposing counsel and will continue to work with opposing counsel in resolving these issues prior to hearing.

(Signature page follows)

Respectfully submitted,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

s/Jonathan M. Robinson

Jonathan M. Robinson (SC Bar #68285)

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Attorneys for Covil Corporation

January 17, 2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

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

ORDER ON DISCOVERY MOTIONS

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

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RULINGS AND ORDERS

1. Ellis & Winters' Report and Recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Ellis & Winters Fees – Work to Date

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

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

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

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

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

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

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

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

D. Confidentiality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

[ELECTRONIC SIGNATURE ON FOLLOWING PAGE]



Richland Common Pleas

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

So Ordered

Jean H. Toal

The South Carolina Court of Appeals

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

v.

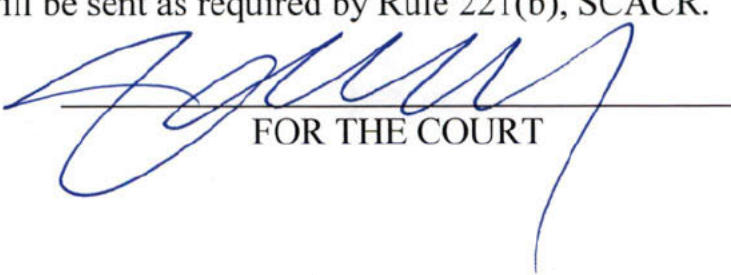
Pennsylvania National Mutual Casualty Insurance, Co.;
Sam J. Crain & Co., Inc.; and South Carolina Property
and Casualty Insurance Guaranty Association,
Defendants,

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

Appellate Case No. 2022-000761

ORDER

After careful consideration, Respondent's motion to dismiss is granted. The orders on appeal are not immediately appealable. *See See Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."); *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992) (an order compelling a party to submit to discovery is interlocutory and not directly appealable). The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

FILED
Aug 09 2022

David Grant Harris, II, Esquire
Brady Allen Yntema, Esq, Esquire
David L. Brown, Esquire
Jescelyn Tillman Spitz, Esquire
G. Murrell Smith, Jr., Esquire
Jonathan M. Robinson, Esquire
William Bradley Nes, Esquire
Shanon N. Peake, Esquire

The Supreme Court of South Carolina

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

v.

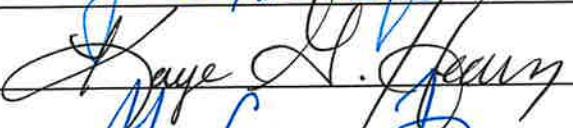
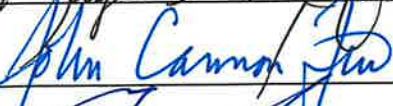
Pennsylvania National Mutual Casualty Insurance, Co.;
Sam J. Crain & Co., Inc.; and South Carolina Property
and Casualty Insurance Guaranty Association,
Defendants,

Of whom Pennsylvania National Mutual Casualty
Insurance Company is the Petitioner.

Appellate Case No. 2022-000785

ORDER

Pennsylvania National Mutual Casualty Insurance Company has filed a petition for a writ of certiorari in the Court's original jurisdiction and a motion to file a portion of the appendix to the petition under seal. The motion to file under seal is granted. The petition for a writ of certiorari is denied.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
August 23, 2022

cc:

Jescelyn Tillman Spitz, Esquire
G. Murrell Smith, Jr., Esquire
Jonathan M. Robinson, Esquire
William Bradley Nes, Esquire
David Grant Harris, II, Esquire
Brady Allen Yntema, Esq, Esquire
Shanon N. Peake, Esquire
Austin Tyler Reed, Esquire

The Supreme Court of South Carolina

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

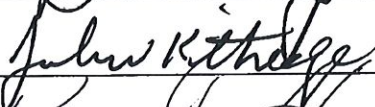
v.

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

Appellate Case No. 2022-001764

ORDER

Pennsylvania National Mutual Casualty Insurance Company (Penn National) has filed a petition for a writ of certiorari in the Court's original jurisdiction seeking review of the circuit court's discovery order and the court of appeals' dismissal of Penn National's notice of appeal of the same circuit court order. The petition is denied.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
January 12, 2023

cc:

David Grant Harris, II, Esquire
Brady Allen Yntema, Esq, Esquire
David L. Brown, Esquire
Jescelyn Tillman Spitz, Esquire
G. Murrell Smith, Jr., Esquire
Jonathan M. Robinson, Esquire
Shanon N. Peake, Esquire
William Bradley Nes, Esquire
The Honorable Jenny Abbott Kitchings

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,	)	
	)	
vs.	)	MOTION FOR ATTORNEY'S FEES
	)	AND COSTS
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	
	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Covil Corporation (“Covil”), by and through its duly appointed Receiver Peter D. Protopapas, intends to move and does hereby move before the Court on the tenth day after service of this Motion, or at such other time as established by the Court, for an order requiring Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) to pay attorney’s fees and costs associated with the ongoing multi-year discovery dispute and numerous motions to compel and appeals filed in this case.

SUMMARY

This motion (hopefully) marks the end of a four-year saga of defendant Penn National’s wilful defiance of its discovery obligations and this Court’s lawful orders. In an effort to locate Covil’s legacy insurance policies, the most fundamental documents in an insurance coverage case, Covil’s Receiver was required to issue two subpoenas and four sets of written discovery to Penn National, take six depositions of Penn National witnesses, file seven motions to compel against Penn National, attend four discovery hearings, and brief three frivolous appeals. Only now, after Penn National required the Receiver’s counsel to spend years mired in a wide array of unnecessary

litigation activity while Penn National exhausted every meritless appeal and specious argument, is Penn National turning to the business of producing the insurance policies this Court has repeatedly ordered it to produce. Now that Penn National's vexatious litigation pattern has been exposed and defeated, the Receiver files this motion to require Penn National to compensate the Receiver's counsel for all of the time and money that Penn National forced them to waste in pursuit of the most basic and germane discovery materials.

BACKGROUND

This Court appointed Peter D. Protopapas as the Receiver for Covil Corporation on November 2, 2018, and it tasked the Receiver with "the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers." Exhibit A. To fulfill his obligations to this Court, the Receiver has attempted to obtain information and documents from Penn National via subpoena, written discovery requests, and deposition testimony regarding any insurance policies that Penn National issued providing coverage to Covil. As recognized by this Court in its May 5, 2022 Order, Covil has "diligently pursued discovery of all insurance policies issued by Penn National that cover Covil, in any way, through written requests for information as well as multiple depositions," but Penn National has continuously refused to produce the information under the guise that it is unable to locate historic policy documents without a policy number and the material is too voluminous to manually search. *See* May 5 Order at 5.

It is important to note that the Receiver has been attempting to obtain these materials from Penn National in this and other proceedings involving Covil *since 2018*. The Receiver and Penn National have been before this Court on these discovery issues numerous times, necessitating the

filing of seven motions to compel against Penn National.¹ The requested discovery includes documents naming Covil not only as a primary insured, but also as an additional insured. This Court has ordered Penn National to meaningfully participate in discovery on multiple occasions and to search its records for policies that list Covil as an additional insured. But Penn National has continuously and brazenly ignored this Court's orders by refusing to search its records. Penn National claimed that it could not search its documents unless the Receiver provided the policy numbers where Covil was designated as an additional insured. Penn National further refused to perform a manual search or to scan the documents so they could be searched electronically.

This Court issued orders compelling Penn National in the instant case on July 1, 2021, November 5, 2021, and May 5, 2022. In the July 2021 Order, the Court found: "Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver." *See* May 5 Order at 5–6. The Court specifically directed Penn National to "thoroughly search its paper records using the list of contractors and facilities provided by the Receiver in connection with [Covil's] February 8, 2021 subpoena to Penn National." *See* May 5 Order at 6.

Penn National did not comply with the July 2021 Order, leading this Court to issue another order compelling Penn National on November 5, 2021. *See* May 5 Order at 6. Because of Penn National's continued refusal to search its records on its own accord, the Court "ordered Penn National to open its repository of insurance policies and to facilitate a review performed by Covil's insurer-appointed defense counsel, Ellis & Winters" and directed Ellis & Winters to "report back

¹ The Receiver filed motions to compel related to its attempts to obtain historic policy documents from Penn National on August 20, 2021, September 8, 2021, October 5, 2021, December 29, 2021, February 24, 2022, April 1, 2022, and November 4, 2022. Most recently, the Receiver filed a motion to enforce the Court's May 5, 2022 discovery order on January 17, 2023.

to the Court with suggestions for meeting Covil's needs to identify responsive coverage while not wasting Penn National's resources." *See* May 5 Order at 7.

This process occurred over a period of several months, and Ellis & Winters submitted their recommendations to the Court on March 22, 2022. Exhibit B. After Ellis & Winters reviewed and sampled Penn National's document management systems, it recommended that the Court order "additional collection of records focus[ing] on Penn National's microfiche records." *Id.* at 3. The Ellis & Winters report noted that "commercial policies evidencing Covil coverage stored by Penn National are most likely stored in microfiche form," and the report "provided an array of options for imaging and review of Penn National's policies, even in the absence of a policy number." *See* May 5 Order at 7; Exhibit B. Specifically, the Ellis & Winters report provided four options for the Court to consider ordering: (1) image a sample of commercial line policy microfiche card boxes, (2) image only commercial line policy microfiche cards with cancel-non-renew date prior to 1993 and relevant policy prefixes, (3) image commercial line policy microfiche cards, eliminating cards solely by policy prefix, or (4) image all commercial line policy microfiche cards. Exhibit B.

On April 11, 2022, the Court held a hearing on the ongoing discovery issues related to the Ellis & Winters report and Covil's motions to compel. Ellis & Winters explained it developed an "intelligent way[] to reduce the universe" of Penn National documents that was both "reasonable and intentional." *See* Exhibit C, April 11, 2022 Hearing Transcript at 23. Ellis & Winters informed the Court that Penn National's policy numbers have a prefix that indicates the type of policy, such as AU for automobile or WC for workers' compensation. *Id.* at 24–25. Ellis & Winters suggested the Court order the digitization of only the microfiche cards that contained policies with policy prefixes for commercial general liability and general liability policies. *Id.* at 24–35. Ellis &

Winters indicated this would reduce the amount of microfiche cards that needed to be digitized by at least one-third, but likely one-half. *Id.* at 28.

This Court stated: “The Report also explained that, after one day of in-person searching within the microfiche cards at Penn National’s headquarters, Ellis & Winters located three newly discovered policies covering Covil that Penn National had not produced to Covil.” May 5 Order at 7. At no point in Penn National’s prior representations to the Court did it inform the Court that it was able to determine the type of policy by looking at the policy prefix and could automatically cull the universe of Penn National records to make them more manageable for searching or digitizing. These new revelations disclosed by the Ellis & Winters report revealed Penn National’s abject failure to participate in the discovery process without this Court’s intervention and oversight. As aptly stated by this Court, the ongoing discovery disputes have caused the Court to lose “all confidence in Penn National’s willingness and ability to independently participate in discovery” and Penn National’s conduct “amounts to a total and complete refusal to comply with its discovery obligations.” *See* May 5 Order at 8. Therefore, the Court found it had no choice but to intervene and direct Penn National on exactly how to comply with its duties to meaningfully participate in discovery.

Specifically, on May 5, 2022, the Court ordered Penn National to (1) digitize certain microfiche records under option 3 of the Ellis & Winters report and produce the digitized records to the Receiver, (2) produce code keys for its policy prefixes to the Receiver, (3) produce all information disclosed to Ellis & Winters and used as a basis for identifying the policy numbers for the newly discovered Covil insurance policies, and (4) produce all underwriting documentation in its possession, custody, or control for various receiverships. *See* May 5 Order at 9–10. Penn National filed a motion requesting the Court to reconsider the May 5 order, and the Court declined.

On May 31, 2022, Penn National filed a Notice of Appeal of the Court's May 5 Order. *See* Appellate Case No. 2022-000761. Oddly, Penn National also filed a Petition for Writ of Certiorari in the original jurisdiction of the South Carolina Supreme Court on June 6, 2022, seeking contemporaneous appellate review of the same order. *See* Appellate Case No. 2022-000785. The Court of Appeals dismissed Penn National's appeal on August 9, 2022, finding the order was not immediately appealable. *See* Appellate Case No. 2022-000761. The Supreme Court unanimously denied the Petition for Writ of Certiorari on August 23, 2022. *See* Appellate Case No. 2022-000785. Undaunted that the South Carolina Supreme Court has already visited this exact issue, Penn National filed a Petition for Rehearing with the Court of Appeals on August 24, 2022, and the Court of Appeals denied the petition on November 15, 2022. Following the Court of Appeals' denial of the Petition for Rehearing, Penn National filed another Petition for Writ of Certiorari with the Supreme Court requesting appellate review of the May 5 discovery order (for the second time). *See* Appellate Case No. 2022-001764. The Supreme Court denied the second petition on January 12, 2023. *Id.*

Covil filed a Motion to Enforce May 5, 2022 Discovery Order and Establish Schedule for Compliance on January 17, 2023, and the Court held a hearing on January 27, 2023. Covil now moves for costs associated with the various unnecessary discovery, motions to compel, hearings, and appeals filed by Penn National in its many years spent trying to thwart the Receiver's court-appointed responsibilities in this matter.

APPLICABLE LAW AND AUTHORITIES

"The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (quoting *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 (Tex. 1999)).

In South Carolina,

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1), SCRPC. When a trial court grants a motion to compel,

the court shall, after opportunity for hearing, require the party . . . whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

Rule 37(a)(4), SCRPC; *see also* Rule 37(b)(2), SCRPC (“[T]he court in which the action is pending may make such orders in regard to the failure [to provide discovery] as are just . . .”).

“The award of attorney fees and costs is a matter within the sound discretion of the trial judge.” *Taylor v. Taylor*, 333 S.C. 209, 215, 508 S.E.2d 50, 54 (Ct. App. 1998). “In determining whether to award attorney’s fees as a sanction for discovery abuse, the court should weigh the nature of the abuse, the discovery posture of the case, willfulness, and the degree of prejudice.” *Est. of Watson v. Babb*, No. 2007-UP-329, 2007 WL 8327913, at *3 (S.C. Ct. App. June 25, 2007). In determining the amount of attorney’s fee to award, the Court should consider: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

DISCUSSION

Covil has diligently sought discovery of its own insurance policies from Penn National since 2018, but Penn National has wilfully refused to comply with legitimate discovery requests and this Court's orders. Covil needs its insurance policies to respond to routine discovery in numerous asbestos liability suits, and it has been forced to incur substantial costs to litigate the same discovery dispute multiple times before this Court due to Penn National's obstructionist tactics. Penn National's defense throughout this years-long discovery dispute has been that it is unable to search its documents without a policy number, but this has proven to be utterly meritless. Penn National could have manually searched its documents, hired someone to search its documents, or digitized its documents to make them easily searchable.

It was not until this Court held the hearing on the Receiver's motions to compel that the Court learned—not from Penn National but from Ellis & Winters—that Penn National could easily cull its records to eliminate irrelevant documents and make its search more manageable. Importantly, “after one day of in-person searching within the microfiche cards at Penn National's headquarters, Ellis & Winters located three newly discovered policies covering Covil that Penn National had not produced to Covil.” *See* May 5 Order at 7. It is these types of deliberate and misleading actions and the outright refusal to participate in the discovery process that forced the Receiver to file seven motions to compel and caused this Court to lose “all confidence in Penn National's willingness and ability to independently participate in discovery.” *See* May 5 Order at 8.

This Court first ordered Penn National to search its documents for policies where Covil might be listed as an additional insured in the July 1, 2021 Order. This search has yet to occur, over a year and a half later. *See Lewin v. Lewin*, 388 S.C. 349, 356, 721 S.E.2d 1, 4 (Ct. App.

2011) (explaining that a party may be responsible for attorney’s fees when they “fail to cooperate and their behavior prolongs proceedings”). Penn National’s wilful misconduct has necessitated numerous motions to compel, hearings, and specious appeals, and it has caused this Court to become involved in every step of the discovery process. Initially, the Court took small and incremental steps to compel Penn National to produce the documents. However, in the face of Penn National’s continued refusal to produce the documents, the Receiver has had to incur immense expense to file additional motions to compel.

First, the Court ordered the Receiver to give Penn National a list of potential job sites and contractors that might have been involved in procuring coverage from Penn National. The Court did this to help facilitate Penn National’s search. Penn National refused to search. The Receiver then took depositions of Penn National’s corporate representatives to help better understand Penn National’s document management system in order to determine a better way for Penn National to search for the information requested. Penn National refused to adequately prepare its corporate representatives. The Court then ordered Penn National to cooperate with Ellis & Winters to review Penn National’s document management systems. Penn National still maintained it was unable to perform the searches. Therefore, the Court finally ordered Penn National to digitize certain microfiche cards as recommended by Ellis & Winters and give the Receiver access to the database to search the records since Penn National has been unwilling to do so. Penn National improperly appealed this interlocutory discovery order—once to the South Carolina Court of Appeals and twice to the South Carolina Supreme Court—requiring the Receiver to incur additional costs to file a motion to enforce the May 5 Order after both appellate courts declined to review it.

Accordingly, the Receiver requests that the Court order Penn National to pay the attorney’s fees and costs the Receiver’s team was required to expend in filing the various motions to compel,

conducting hearings, and briefing numerous appeals necessitated by Penn National's outright refusal to participate in discovery by searching its records as previously ordered by this Court. *See* Rule 37(a)(4), SCRCP. As shown in the attached affidavits/declarations, the Receiver has incurred \$638,976.50 in attorney's fees and costs related to this discovery dispute. Exhibit D. Penn National's conduct in this case has been willful and unjustified, and Covil has been prejudiced by its inability to receive these documents.

CONCLUSION

"The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) (quoting *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)). Here, Penn National has shown gross indifference to its discovery obligations, having ignored the orders and directives of this Court, despite having numerous opportunities to comply. Accordingly, the Receiver respectfully submits that the Court should exercise its sound discretion and award the Receiver's attorney's fees and costs as an appropriate, reasonable sanction under the circumstances.

Based on the history of this discovery dispute, Counsel for the Receiver certifies that consultation would serve no useful purpose in resolving this issue.

Respectfully submitted,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

s/Jonathan M. Robinson

Jonathan M. Robinson (SC Bar #68285)

G. Murrell Smith, Jr. (SC Bar #66263)

Shanon N. Peake (SC Bar #102723)

2530 Devine Street, 3rd Floor

Columbia, SC 29205

(803) 254-5445

Attorneys for Covil Corporation

February 17, 2023

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

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

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

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

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

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2018.

JEAN TOAL, CHIEF JUSTICE (Ret.)



Richland Common Pleas

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

IT IS SO ORDERED.

s/ Jean H. Toal #2758



Writer's E-mail Address:
Ashley.Braithwaite@elliswinters.com

Writer's Direct Dial Number:
919.573.1297

March 22, 2022

VIA EMAIL: JToal@sccourts.org

The Hon. Jean H. Toal
Richland County Courthouse
1701 Main Street
Columbia, SC 29201

RE: *Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas v. Pennsylvania National Mutual Casualty Co., et al.*,
Court of Common Pleas, County of Richland,
Case No. 2020-CP-40-02098

Dear Chief Justice Toal:

This letter reports on the inquiry into the existence and storage of certain Penn National policy documents and provides options for additional document review pursuant to the Discovery Order in this case dated November 5, 2021 ("Order"). In the Order, this Court requested that Ellis & Winters use its professional judgment to develop and implement an effective scope of document review to identify any additional Penn National policies that may provide coverage for Covil Corporation as either a primary or additional insured. Specifically, the Order requested that Ellis & Winters 1) make "suggestions for meeting Covil's needs to identify responsive coverage" while 2) "not wasting Penn National's resources."

Pursuant to these instructions, Ellis & Winters's e-discovery team has conducted the following:

- Analyzed the record referenced in the Order. The record includes relevant hearing transcripts, affidavits by Penn National representatives, and depositions regarding record identification and retention from this case. At the request of Ellis & Winters, Penn National supplemented certain record materials on November 12, 2021 to facilitate this review.
- Requested index data related to storage of policy documents. On November 12, 2021, Ellis & Winters requested access to any Penn National index applicable to its storage of paper materials located at an Iron Mountain facility in Pennsylvania and any similar

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index for microfiche stored at Penn National's headquarters.¹ Following an interview with Penn National's records custodian on November 19, 2021, Ellis & Winters then requested: 1) a list from Penn National's IT department of all policy numbers and associated dates used for retention purposes; and 2) documentation associating three-digit prefixes with policy lines of business. Penn National provided a spreadsheet of hard-copy inventory stored at Iron Mountain on December 8, 2021.

- Conducted a sampling of hard-copy documents. Ellis & Winters performed an intelligent sampling² of documents pulled from Penn National's records stored at Iron Mountain. Penn National made approximately 136 boxes available on December 20 and December 21, 2021, at its headquarters in Harrisburg, Pennsylvania. The sample boxes were selected from a review of historical descriptions within the hard-copy inventory spreadsheet provided on December 8, 2021. Ellis & Winters sampled a subset of approximately 100 of the 136 boxes on December 20-21, 2021. The sampling identified commercial policy-related documents issued in 1995 or later.³
- Interviewed Penn National's Director, Administrative Services, and records custodian Brent Reifsnyder on November 19, 2021, with follow-up questions during the December 20-21, 2021 visit.
- Evaluated Penn National's organization of microfiche policies. During the December 20-21, 2021 visit, Penn National demonstrated the storage and organization of microfiche cards believed to contain archived commercial line policy documents. During this visit, it was observed that there was only one operable machine to review microfiche cards. It could take up to 45 minutes to print all of the images on a single microfiche card, which itself can contain up to 60 images.
- Interviewed Penn National's Senior Home Office Claim Examiner Boyd Wright on February 15, February 25, and March 2, 2022, in response to the requests made in the second bullet above regarding historical use of policy prefixes.
- Assessed a Penn National risk-tracking data sheet of policy claims received on February 15, 2022. Data synthesized in this sheet provide distinct examples of policy prefixes and how they correspond to specific policy types.
- Reviewed inventory data received on February 25, 2022, specific to microfiche records connecting policy numbers to cancel/non-renew dates. Penn National subsequently

¹ Although the record refers to storage within "microfilm," Ellis & Winters has observed that Penn National stores these documents in microfiche form. Microfiche is a storage form identified by flat sheets or cards of images as opposed to reels of film.

² "Intelligent sampling" in this context refers to selecting a sample based on factual criteria, increasing probability that the sample contains relevant or responsive data, as opposed to a random sampling.

³ Brent Reifsnyder attested that Penn National maintains its commercial line policy documents dated 1995 to 2003 in hard copy form and before 1992 within microfiche cards stored at Penn National's headquarters. Def. Pa. Nat'l's Mem. Opp'n Pl.'s Mot. Compel, Ex. 5 ¶ 18(b), Oct. 25, 2021. Mr. Reifsnyder's affidavit also indicates that commercial line policies dated 1992 to 1995 are saved electronically. *Id.*

provided two additional data sheets that Ellis & Winters also utilized for purposes of narrowing the universe of documents.

- Utilized inventory data provided on February 25, 2022, to request preliminary investigation of microfiche cards by Penn National. Ellis & Winters provided 51 policy numbers for Penn National to investigate, which were randomly selected from a data subset of cancel/non-renew dates before 1993 and policy prefixes associated with specific lines of business (15,910 in total). Penn National determined that only one policy document was still available within this subset of 51 policy numbers. This policy document did not reference Covil as a primary or additional insured; however, it illustrated the existence of commercial policy documents within the subset parameters.
- Searched in-person within microfiche cards corresponding to commercial line policies. On March 16-17, 2022, Penn National made available for review at its headquarters its 148 boxes of microfiche cards related to commercial line policies. On those dates, Ellis & Winters conducted a search for an additional subset of 346 policy numbers within these microfiche cards, finding records corresponding to 19 of the 346 numbers. The e-discovery team also found several related policies retained for the same insureds where the cancel/non-renewed policies originally searched by the team were no longer available.
- Sampled microfiche cards identified by cross-reference to known Covil insurance policies. On March 17, 2022, Ellis & Winters also cross-referenced microfiche policy documents within microfiche at Penn National headquarters utilizing previously known Covil policy numbers. This process retrieved Covil policy documents previously produced by Penn National in the coverage litigation as well as documents corresponding to three additional Covil policies. The newly identified policies include one inland marine policy, one boiler machinery policy, and one auto policy—all spanning 1984 to 1986. Penn National is currently preparing these policy documents for production.

Options for Imaging and Review

Based on the foregoing efforts, Ellis & Winters can now provide an array of options to the Court for further collection, imaging, and review of Penn National's policy documents. As a preliminary matter, Ellis & Winters recommends that additional collection of records in this case focus on Penn National's archived microfiche records.

The litigation record suggests that because Covil ceased all business operations in 1991, responsive policies are not likely to have been issued later than the early 1990s. Mr. Reifsnyder provided an explanation of Penn National's practices in storing archival commercial line policies issued before 1992 in his affidavit. *Id.* Analysis of inventory information provided by Penn National during the December 2021 visit and on February 25, 2022, further indicated that commercial policies evidencing Covil coverage stored by Penn National are most likely stored in microfiche form.

With this backdrop, the following are options for imaging of Penn National's policy documents, which would facilitate subsequent electronic searches of those materials:

1. Image a sample of commercial line policy microfiche card boxes.

A first option is to select a preliminary number, approximately 2,500 to 10,000 cards within commercial line microfiche boxes to sample, the sample limited to \$10,000 in cost for imaging. The cost to scan each card would determine the number of cards in the sample. This process would also limit imaging to cards corresponding to policies associated with specific lines of business.

Additional samples (each costing \$10,000) may be taken on a rolling basis depending on the rate of responsiveness found from search and review within prior sample(s).

2. Image only commercial line policy microfiche cards with cancel/non-renew date prior to 1993 and relevant policy prefixes.

A second option is to image only those cards within Penn National's commercial line microfiche collection that correspond to a cancel or non-renew date prior to 1993 and reflect a policy prefix for potentially relevant business lines.

Ellis & Winters anticipates this option to be more labor intensive and is not able to accurately estimate the number of policies or microfiche cards to image via this option. However, the subsets searched in March 2022 narrowed microfiche records by policy type and cancel/non-renew date prior to 1993. This sampling was based on the microfiche inventory data provided by Penn National on February 25, 2022.

Of the 397 policy numbers searched within microfiche, Ellis & Winters and Penn National identified 20 total policies as available on microfiche. In addition, the team noted finding a substantive number of related policy documents. These related policy documents corresponded to policies with the same insured as the original policy number searched by the team (even when documents associated with the original number searched were no longer available). These related policy documents often corresponded to lines of business such as inland marine or auto policies but did also include commercial line policy documents that are the focus of this project.

3. Image commercial line policy microfiche cards, eliminating certain cards solely by policy prefix.

A third option is to select a subset of commercial line microfiche cards to image solely by eliminating certain cards bearing prefixes that correspond to non-responsive policy types, such as commercial auto, inland marine, business owner, fidelity bond, surety bond, commercial fire, worker's compensation, and personal umbrella. This option does not narrow the search by imposing cancel/non renew date limitations.

Ellis & Winters anticipates this option to be more labor intensive and is not able to accurately estimate the number of policies or microfiche cards to image via this option.

4. Image all commercial line policy microfiche cards.

A fourth option is to image all commercial line policy documents stored via microfiche. Ellis & Winters estimates that Penn National stores more than 300,000 microfiche cards corresponding to commercial line policy numbers. This method could involve over-inclusive imaging of certain documents known to correspond to policy types that may not be responsive within the commercial line policies. Based on preliminary estimates from two vendors with experience imaging microfiche, image scanning of all these cards could cost in the range of \$240,000 to \$960,000. The process would take approximately three to six months to complete. These amounts do not include costs for hosting and storage of the scanned records in a searchable database, nor costs related to the review of the records. Records would be available on a rolling basis for term searches and review.

Next Steps

Once there has been a decision on the universe of records to image, the imaging process will then allow the images to be searchable. The party conducting the document review can then use the terms they identify in order to search for responsive information.

Thank you for this opportunity and please let us know if our team may be of further assistance.

Respectfully submitted,

ELLIS & WINTERS LLP



Ashley Brathwaite

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

COVIL CORPORATION, BY AND
THROUGH ITS DULY APPOINTED
RECEIVER PETER D. PROTOPAPAS,

Plaintiff,

vs.

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

PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE CO.;
SAM J. CRAIN & CO., INC;
AND SOUTH CAROLINA PROPERTY
AND CASUALTY INSURANCE GUARANTY
ASSOCIATION,

Defendants.

MOTIONS HEARING
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, April 11, 2022

TIME START: 2:57 p.m.

TIME END: 4:14 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

APPEARANCES:

ATTORNEYS FOR THE PLAINTIFF:

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Washington, DC 20004
202.739.5779
brad.nes@morganlewis.com

ATTORNEYS FOR THE DEFENDANT
PENNSYLVANIA NATIONAL MUTUAL CASUALTY
INSURANCE CO.:

GOLDBERG SEGALLA, LLP
BY: BRADY A. YNTEMA, ESQUIRE
-and- DAVID G. HARRIS, ESQUIRE
701 Green Valley Road, Suite 310
Greensboro, North Carolina 27408
336.419.4900
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1 MR. FLATLEY: Your Honor, the way I would
2 describe it is we treat this as any discovery
3 exercise. When we have a universe of records,
4 we look for intelligent ways to reduce that
5 universe that are reasonable and intentional.

6 So we try to understand the policy numbers
7 and the way they're constructed to see if there
8 are ways that would tell us about the types of
9 policies so that if certain types of policies
10 were not relevant, that they could be excluded
11 from the scanning.

12 THE COURT: Like marine or automobile or
13 something of that nature and rather focus on
14 commercial -- commercial general liability,
15 excess and matters of that type.

16 MR. FLATLEY: That's right, Your Honor,
17 exactly.

18 We noticed in one of the hearings when we
19 reviewed the record that one of your suggestions
20 was to try to bracket dates around the Covil
21 policy to try to hone in. And so we tried very
22 hard to try to find ways to identify dates to
23 policies that were in the microfiche.

24 There wasn't a lot of great, reliable
25 information about that, but we did find some

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO.: 2020-CP-40-02098
	)	
Covil Corporation, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	
	)	
	)	

**DECLARATION OF W. BRAD NES IN SUPPORT OF THE RECEIVER'S
MOTION FOR ATTORNEYS' FEES AND COSTS**

I, W. Brad Nes, declare on personal knowledge as follows:

1. My name is W. Brad Nes, and I am an adult over the age of eighteen and am competent to testify to the matters herein. I am admitted to practice before this Court pro hac vice, and I am a partner at the law firm of Morgan, Lewis & Bockius LLP, counsel of record for the Receiver for Covil Corporation in this action. I base this declaration on personal knowledge of the facts contained herein.

2. I am familiar with the customary billing practices of Morgan Lewis and the time entries submitted in this matter. The time entries submitted were prepared from detailed, contemporaneously recorded time records of the kind customarily used by Morgan Lewis in billing clients.

3. The Receiver seeks the following attorneys' fees incurred on behalf of Morgan Lewis in connection with the Motion for Attorneys' Fees and Costs. Attached as **Exhibit A** is a true and correct listing of contemporaneous and detailed records of time billed and services

rendered by Morgan Lewis sought in connection with the Receiver's Motion for Attorneys' Fees and Costs. These records show for each attorney the date, hours expended, and nature of the work performed. Because this action remains pending, Morgan Lewis has only submitted the time entries for which the Receiver seeks to recover attorney's fees in connection with the Motion for Attorneys' Fees and Costs.

I declare under penalty of perjury under the laws of the United States of America and the State of Texas that the foregoing statements are true and correct.

Executed on February 13, 2023 in Dallas, Texas

A handwritten signature in blue ink, appearing to read "W. Brad Nes", is written above a horizontal line.

W. Brad Nes

EXHIBIT A

Morgan Lewis

Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
Tel: +1.713.890.5000
Fax: +1.713.890.5001
www.morganlewis.com

Summary of Services ended January 30, 2023:

Re: Pennsylvania National Mutual Casualty Insurance Company

Fees

Total charges

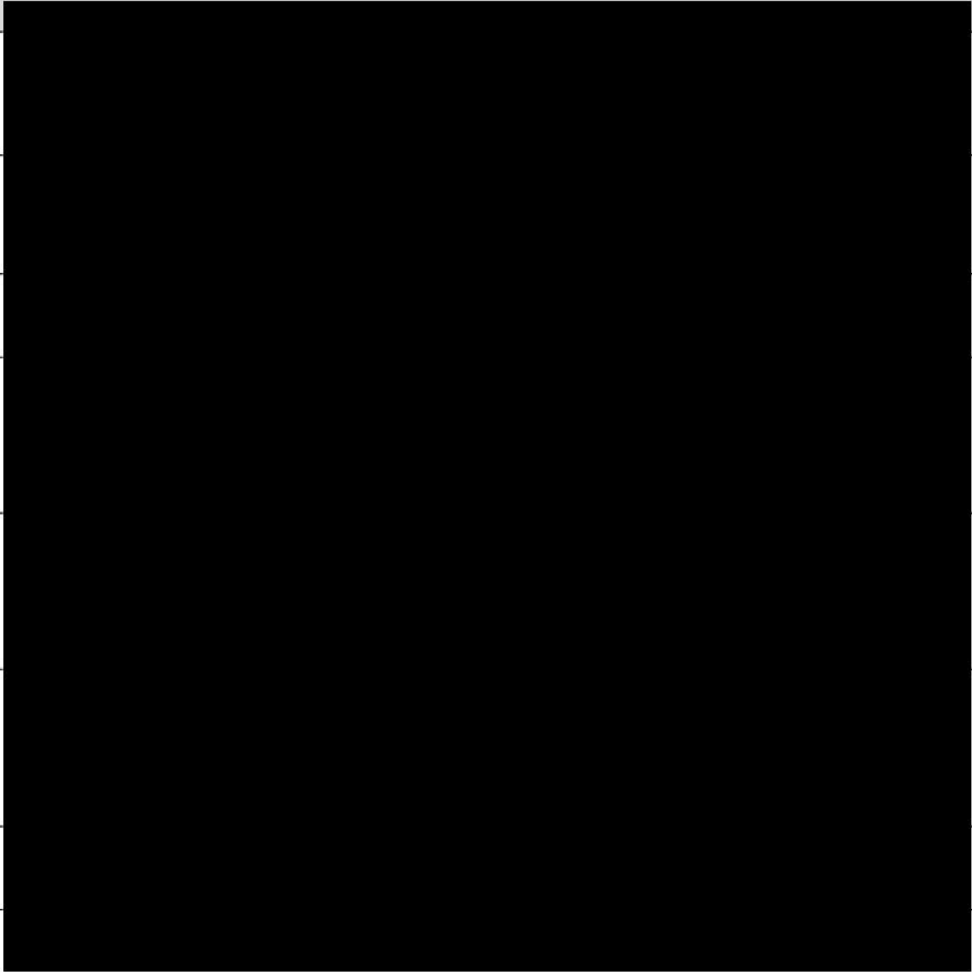
\$469,841.50

Detail for Fee Services Rendered

Work Date	Timekeeper	Hours	Rate	Amount	Description
12/30/2020	Edwards, Brady	0.3	900	270.00	
12/31/2020	Edwards, Brady	1.0	900	900.00	
1/4/2021	Edwards, Brady	0.3	900	270.00	
1/6/2021	Nes, W. Brad	1.4	760	1,064.00	
1/7/2021	Nes, W. Brad	3.3	760	2,508.00	

Morgan Lewis

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Houston, TX 77002
Tel: +1.713.890.5000
Fax: +1.713.890.5001
www.morganlewis.com

Work Date	Timekeeper	Hours	Rate	Amount	Description
1/12/2021	Pick, Cullen	1.3	615	799.50	
1/21/2021	McCulloch Semlinger, Lauren A.	1.3	665	864.50	
1/25/2021	Nes, W. Brad	1.5	760	1,140.00	
1/26/2021	McCulloch Semlinger, Lauren A.	1.7	665	1,130.50	
1/27/2021	McCulloch Semlinger, Lauren A.	3.9	665	2,593.50	
1/28/2021	McCulloch Semlinger, Lauren A.	3.4	665	2,261.00	
2/12/2021	Nes, W. Brad	1.1	760	912.00	
2/15/2021	Nes, W. Brad	1.3	760	912.00	

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Fax: +1.713.890.5001
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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/2/2021	Edwards, Brady	1.3	900	1,170.00	
3/8/2021	Nes, W. Brad	0.2	760	152.00	
3/10/2021	Patterson, Nancy L.	0.2	835	167.00	
3/10/2021	Nes, W. Brad	0.5	760	380.00	
3/12/2021	Nes, W. Brad	0.3	760	228.00	
3/19/2021	Edwards, Brady	1.9	900	1,710.00	
3/22/2021	Nes, W. Brad	0.3	760	228.00	
3/23/2021	Nes, W. Brad	1.4	760	1,064.00	
4/8/2021	Patterson, Nancy L.	1.0	835	835.00	
4/25/2021	McCulloch Semlinger, Lauren A.	1.7	665	1,130.50	

Morgan Lewis

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Fax: +1.713.890.5001
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Work Date	Timekeeper	Hours	Rate	Amount	Description
4/26/2021	McCulloch Semlinger, Lauren A.	2.5	665	1,662.50	
4/27/2021	McCulloch Semlinger, Lauren A.	4.0	665	2,660.00	
5/4/2021	Edwards, Brady	1.0	900	900.00	
5/4/2021	Patterson, Nancy L.	0.3	835	250.50	
5/10/2021	Patterson, Nancy L.	0.4	835	334.00	
6/21/2021	Edwards, Brady	0.5	900	450.00	
7/29/2021	Nes, W. Brad	1.2	760	912.00	
7/30/2021	Nes, W. Brad	1.0	760	760.00	
8/2/2021	Nes, W. Brad	3.0	760	2,280.00	
8/3/2021	Nes, W. Brad	4.0	760	3,040.00	

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Fax: +1.713.890.5001
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Work Date	Timekeeper	Hours	Rate	Amount	Description
8/5/2021	Nes, W. Brad	5.0	760	3,800.00	
8/7/2021	Nes, W. Brad	0.5	760	380.00	
8/9/2021	Edwards, Brady	0.7	900	630.00	
8/10/2021	Nes, W. Brad	2.4	760	1,824.00	
8/11/2021	Moriarty, Peter	1.2	470	564.00	
8/12/2021	Nes, W. Brad	0.9	760	684.00	
8/12/2021	Moriarty, Peter	3.7	470	1,739.00	
8/16/2021	Moriarty, Peter	2.5	470	1,175.00	
8/17/2021	Moriarty, Peter	1.0	470	470.00	
8/17/2021	Hu, Lingzi	3.1	430	1,333.00	
8/18/2021	Nes, W. Brad	1.5	760	1,140.00	
8/19/2021	Nes, W. Brad	3.0	760	2,280.00	

Date of Printing: 02/13/23
Time & Disbursements through 01/30/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page 5 of 32
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Work Date	Timekeeper	Hours	Rate	Amount	Description
8/19/2021	Hu, Lingzi	3.4	430	1,462.00	
8/20/2021	Nes, W. Brad	1.0	760	760.00	
8/20/2021	Kugler, Claire S.	1.7	670	1,139.00	
8/20/2021	Hu, Lingzi	0.5	430	215.00	
8/25/2021	Nes, W. Brad	0.3	760	228.00	
8/25/2021	Nes, W. Brad	3.3	760	2,508.00	
8/26/2021	Nes, W. Brad	5.0	760	3,800.00	
8/29/2021	Edwards, Brady	0.3	900	270.00	
8/30/2021	Edwards, Brady	0.5	900	450.00	
8/31/2021	Nes, W. Brad	1.3	760	988.00	
9/2/2021	Nes, W. Brad	3.5	760	2,660.00	

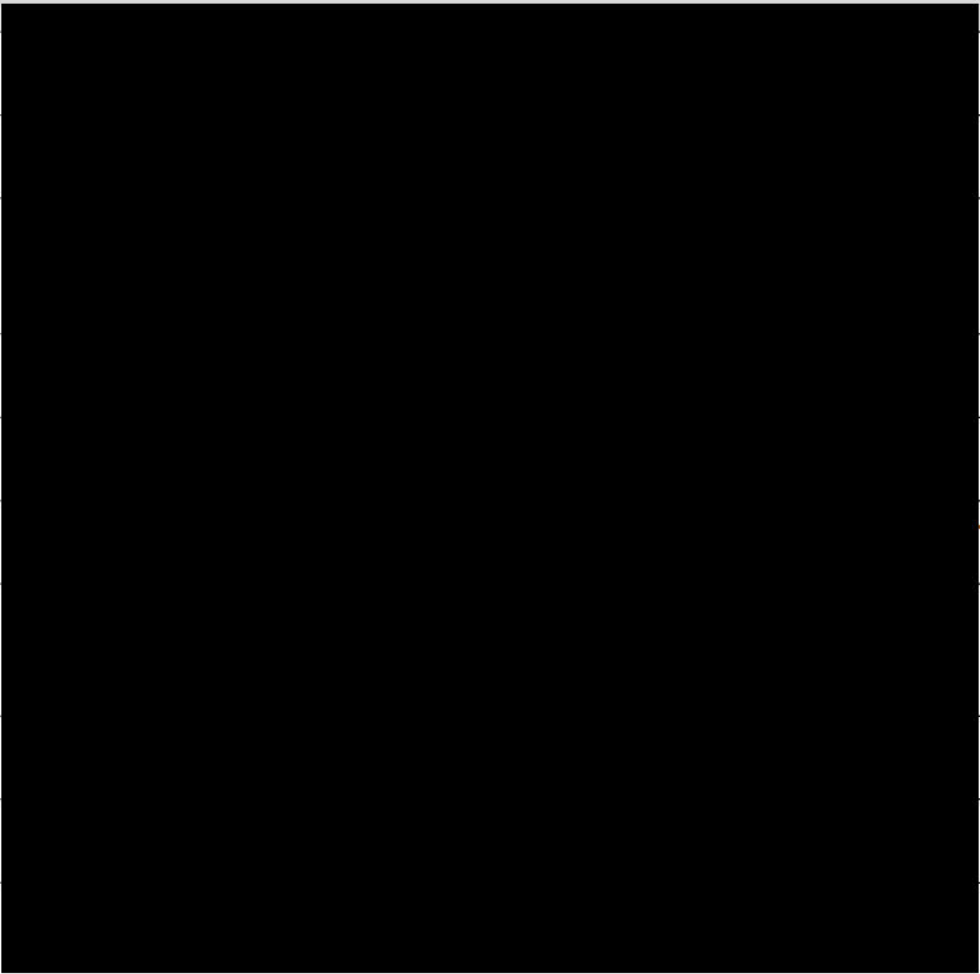
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Work Date	Timekeeper	Hours	Rate	Amount	Description
9/2/2021	Kugler, Claire S.	4.7	670	3,149.00	
9/3/2021	Kugler, Claire S.	0.5	670	335.00	
9/3/2021	Nes, W. Brad	0.5	760	380.00	
9/3/2021	Hu, Lingzi	1.7	430	731.00	
9/4/2021	Kugler, Claire S.	0.5	670	335.00	
9/7/2021	Edwards, Brady	1.0	900	900.00	
9/7/2021	Kugler, Claire S.	0.4	670	268.00	
9/8/2021	Kugler, Claire S.	1.1	670	737.00	
9/8/2021	Nes, W. Brad	1.8	760	1,368.00	
9/17/2021	Hu, Lingzi	2.7	430	1,161.00	
9/20/2021	McCulloch Semlinger, Lauren A.	0.5	665	332.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
9/20/2021	Hu, Lingzi	2.4	430	1,032.00	
9/21/2021	Hu, Lingzi	0.5	430	215.00	
9/27/2021	McCulloch Semlinger, Lauren A.	1.5	665	997.50	
10/1/2021	Nes, W. Brad	0.2	760	152.00	
10/4/2021	Hu, Lingzi	0.4	430	172.00	
10/5/2021	Hu, Lingzi	0.6	430	258.00	
10/22/2021	McCulloch Semlinger, Lauren A.	1.0	665	665.00	
10/22/2021	Singh, Jaswant	3.5	600	2,100.00	
10/26/2021	Nes, W. Brad	4.0	760	3,040.00	
10/26/2021	McCulloch Semlinger, Lauren A.	1.3	665	864.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
10/26/2021	Singh, Jaswant	3.1	600	1,860.00	
10/27/2021	Kugler, Claire S.	2.0	670	1,340.00	
10/27/2021	Nes, W. Brad	1.0	760	760.00	
10/27/2021	Singh, Jaswant	2.3	600	1,380.00	
10/28/2021	Edwards, Brady	4.0	900	3,600.00	
10/28/2021	Nes, W. Brad	4.0	760	3,040.00	
10/28/2021	Hu, Lingzi	2.2	430	946.00	
10/29/2021	Edwards, Brady	1.5	900	1,350.00	
10/29/2021	Nes, W. Brad	0.5	760	380.00	
11/2/2021	Edwards, Brady	1.0	900	900.00	
11/3/2021	Nes, W. Brad	1.0	760	760.00	
11/3/2021	Edwards, Brady	1.5	900	1,350.00	

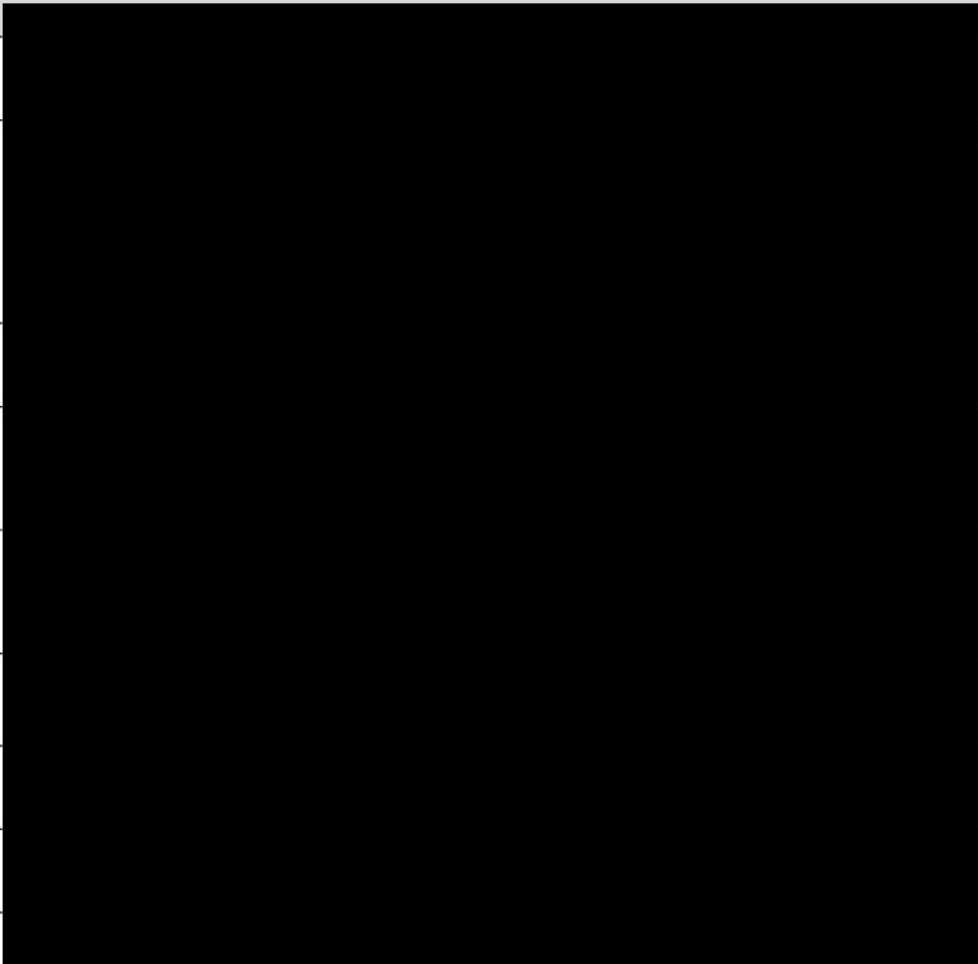
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Time & Disbursements through 01/30/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page 9 of 32
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Work Date	Timekeeper	Hours	Rate	Amount	Description
11/4/2021	Nes, W. Brad	1.2	760	912.00	
11/19/2021	Nes, W. Brad	4.2	760	3,192.00	
11/29/2021	Nes, W. Brad	0.2	760	152.00	
11/30/2021	Nes, W. Brad	2.3	760	1,748.00	
12/1/2021	Nes, W. Brad	1.2	760	912.00	
12/2/2021	Nes, W. Brad	2.4	760	1,824.00	
12/3/2021	Edwards, Brady	1.4	900	1,260.00	
12/3/2021	Nes, W. Brad	0.3	760	228.00	
12/7/2021	Edwards, Brady	0.5	900	450.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/7/2021	Nes, W. Brad	1.8	760	1,368.00	
12/8/2021	Nes, W. Brad	2.2	760	1,672.00	
12/9/2021	Nes, W. Brad	3.9	760	2,964.00	
12/9/2021	Moriarty, Peter	4.3	470	2,021.00	
12/10/2021	Kugler, Claire S.	0.3	670	201.00	
12/10/2021	Nes, W. Brad	2.5	760	1,900.00	
12/13/2021	Nes, W. Brad	1.5	760	1,140.00	
12/14/2021	Nes, W. Brad	0.4	760	304.00	
12/15/2021	Nes, W. Brad	1.8	760	1,368.00	

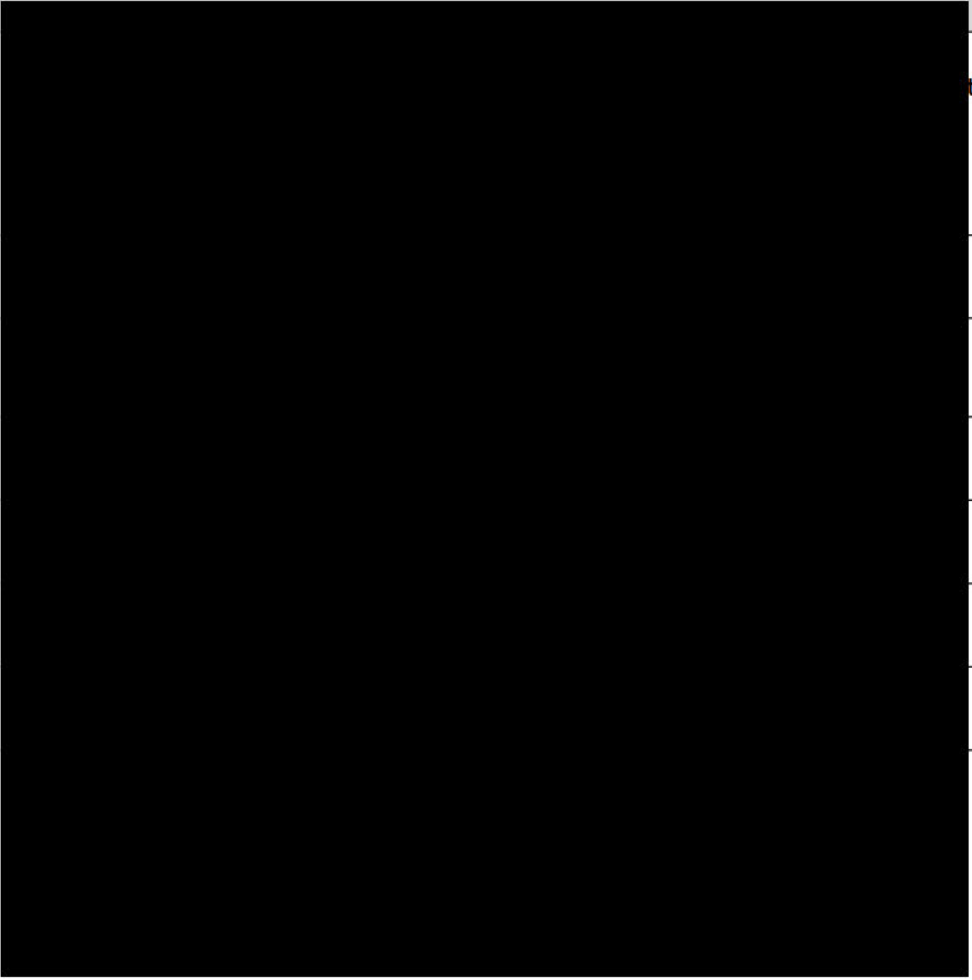
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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/17/2021	Edwards, Brady	0.3	900	270.00	
12/17/2021	Nes, W. Brad	0.2	760	152.00	
12/20/2021	Kugler, Claire S.	0.5	670	335.00	
12/20/2021	Nes, W. Brad	1.5	760	1,140.00	
12/20/2021	Moriarty, Peter	3.6	470	1,692.00	
12/21/2021	Nes, W. Brad	1.9	760	1,444.00	
12/21/2021	Moriarty, Peter	3.1	470	1,457.00	
12/22/2021	Nes, W. Brad	1.8	760	1,368.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/23/2021	Nes, W. Brad	3.3	760	2,508.00	
12/23/2021	Moriarty, Peter	4.4	470	2,068.00	
12/24/2021	Nes, W. Brad	2.4	760	1,824.00	
12/27/2021	Edwards, Brady	0.5	900	450.00	
12/27/2021	Nes, W. Brad	3.0	760	2,280.00	
12/27/2021	Moriarty, Peter	2.1	470	987.00	
12/28/2021	Edwards, Brady	0.6	900	540.00	
12/28/2021	Nes, W. Brad	4.2	760	3,192.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/29/2021	Moriarty, Peter	3.3	470	1,551.00	
12/29/2021	Kugler, Claire S.	0.6	670	402.00	
12/29/2021	Nes, W. Brad	3.3	760	2,508.00	
12/30/2021	Nes, W. Brad	3.5	760	2,660.00	
1/5/2022	Moriarty, Peter	0.4	470	188.00	
1/7/2022	Nes, W. Brad	3.6	760	2,736.00	
1/8/2022	Edwards, Brady	0.3	900	270.00	
1/11/2022	Nes, W. Brad	8.0	760	6,080.00	
1/11/2022	Edwards, Brady	2.0	900	1,800.00	
1/12/2022	Kugler, Claire S.	2.1	670	1,407.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
1/12/2022	Nes, W. Brad	3.8	760	2,888.00	
1/13/2022	Kugler, Claire S.	1.2	670	804.00	
1/13/2022	Moriarty, Peter	0.8	470	376.00	
1/14/2022	Edwards, Brady	0.6	900	540.00	
1/14/2022	Hu, Lingzi	2.4	430	1,032.00	
1/14/2022	Moriarty, Peter	5.8	470	2,726.00	
1/17/2022	Nes, W. Brad	2.5	760	1,900.00	
1/19/2022	Nes, W. Brad	4.3	760	3,268.00	
1/20/2022	Nes, W. Brad	3.8	760	2,888.00	
1/25/2022	Nes, W. Brad	2.4	760	1,824.00	

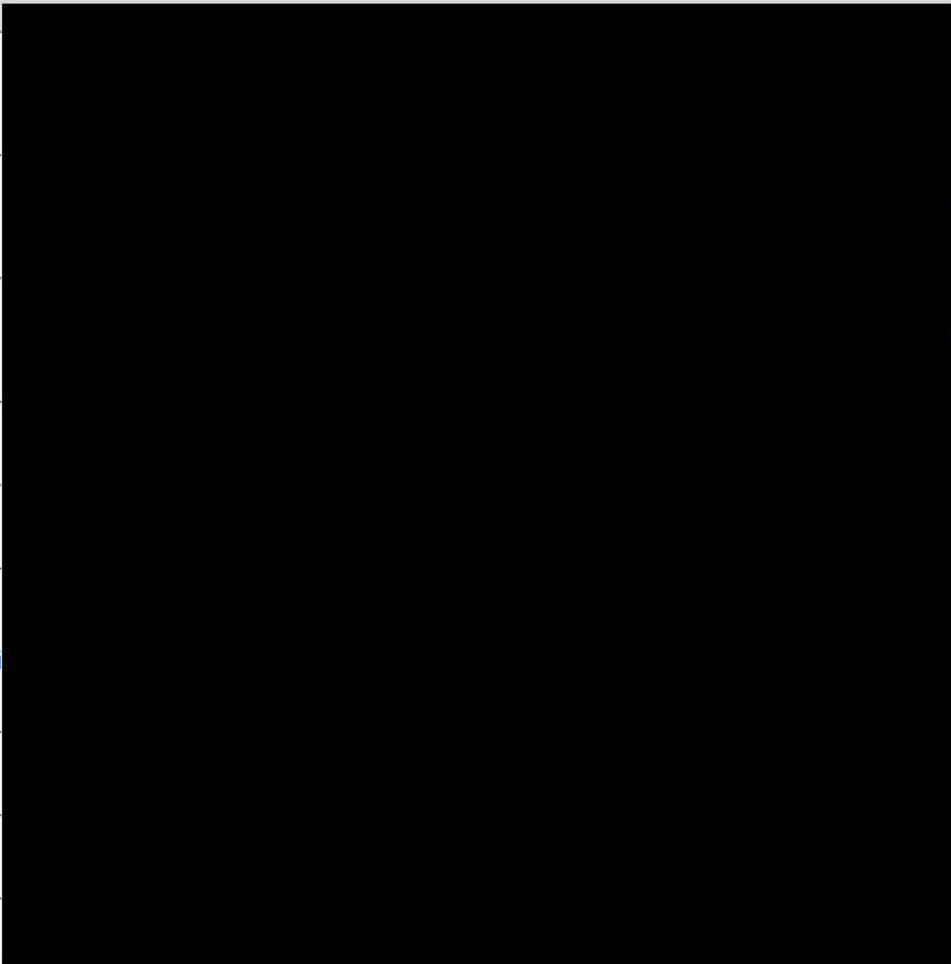
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Work Date	Timekeeper	Hours	Rate	Amount	Description
1/26/2022	Nes, W. Brad	2.0	760	1,520.00	
1/27/2022	Nes, W. Brad	2.6	760	1,976.00	
1/31/2022	Nes, W. Brad	2.4	760	1,824.00	
2/1/2022	Nes, W. Brad	3.0	760	2,280.00	
2/2/2022	Edwards, Brady	1.8	900	1,620.00	
2/2/2022	Nes, W. Brad	4.5	760	3,420.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
2/4/2022	Nes, W. Brad	3.6	760	2,736.00	
2/8/2022	Nes, W. Brad	2.8	760	2,128.00	
2/10/2022	Nes, W. Brad	1.2	760	912.00	
2/21/2022	Kugler, Claire S.	3.2	670	2,144.00	
2/22/2022	Kugler, Claire S.	4.5	670	3,015.00	
2/22/2022	Nes, W. Brad	3.5	760	2,660.00	
2/23/2022	Kugler, Claire S.	4.6	670	3,082.00	
2/23/2022	Nes, W. Brad	3.2	760	2,432.00	
2/24/2022	Edwards, Brady	2.8	900	2,520.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
2/24/2022	Nes, W. Brad	4.0	760	3,040.00	
2/25/2022	Nes, W. Brad	3.3	760	2,508.00	
2/26/2022	Edwards, Brady	0.2	900	180.00	
2/28/2022	Hu, Lingzi	6.5	430	2,795.00	
2/28/2022	Hu, Lingzi	2.0	430	860.00	
3/1/2022	Nes, W. Brad	1.8	760	1,368.00	
3/1/2022	Edwards, Brady	1.0	900	900.00	
3/1/2022	Kugler, Claire S.	3.6	670	2,412.00	
3/2/2022	Nes, W. Brad	2.4	760	1,824.00	
3/3/2022	Nes, W. Brad	2.2	760	1,672.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/3/2022	Hu, Lingzi	1.5	430	645.00	
3/4/2022	Nes, W. Brad	1.5	760	1,140.00	
3/7/2022	Nes, W. Brad	1.2	760	912.00	
3/8/2022	Nes, W. Brad	1.7	760	1,292.00	
3/9/2022	Nes, W. Brad	6.7	760	5,092.00	
3/10/2022	Nes, W. Brad	1.0	760	760.00	
3/10/2022	Kugler, Claire S.	0.5	670	335.00	
3/10/2022	Pick, Cullen	0.3	615	184.50	
3/10/2022	Hu, Lingzi	2.9	430	1,247.00	
3/11/2022	Nes, W. Brad	4.2	760	3,192.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/11/2022	Hu, Lingzi	0.7	430	301.00	
3/13/2022	Kugler, Claire S.	1.5	670	1,005.00	
3/14/2022	Kugler, Claire S.	0.9	670	603.00	
3/14/2022	Nes, W. Brad	3.3	760	2,508.00	
3/14/2022	Pick, Cullen	1.7	615	1,045.50	
3/14/2022	Hu, Lingzi	0.8	430	344.00	
3/15/2022	Edwards, Brady	0.3	900	270.00	
3/15/2022	Nes, W. Brad	3.7	760	2,812.00	
3/15/2022	Pick, Cullen	2.3	615	1,414.50	
3/15/2022	Hu, Lingzi	0.6	430	258.00	
3/16/2022	Pick, Cullen	1.7	615	1,045.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/21/2022	Kugler, Claire S.	2.5	670	1,675.00	
3/22/2022	Nes, W. Brad	2.7	760	2,052.00	
3/22/2022	Pick, Cullen	0.5	615	307.50	
3/22/2022	Edwards, Brady	2.0	900	1,800.00	
3/22/2022	Kugler, Claire S.	3.9	670	2,613.00	
3/22/2022	Nes, W. Brad	0.5	760	380.00	
3/23/2022	Kugler, Claire S.	3.9	670	2,613.00	
3/23/2022	Nes, W. Brad	0.3	760	228.00	
3/25/2022	Nes, W. Brad	1.5	760	1,140.00	
3/25/2022	Pick, Cullen	2.6	615	1,599.00	
3/28/2022	Kugler, Claire S.	0.5	670	335.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/28/2022	Nes, W. Brad	1.8	760	1,368.00	
3/29/2022	Kugler, Claire S.	0.8	670	536.00	
3/30/2022	Kugler, Claire S.	1.1	670	737.00	
3/30/2022	Nes, W. Brad	2.3	760	1,748.00	
3/31/2022	Kugler, Claire S.	0.9	670	603.00	
3/31/2022	Nes, W. Brad	1.4	760	1,064.00	
4/1/2022	Nes, W. Brad	3.4	760	2,584.00	
4/5/2022	Nes, W. Brad	3.0	760	2,280.00	
4/6/2022	Nes, W. Brad	5.5	760	4,180.00	
4/8/2022	Nes, W. Brad	7.5	760	5,700.00	
4/10/2022	Edwards, Brady	4.5	900	4,050.00	

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4/10/2022	Nes, W. Brad	5.2	760	3,952.00	
4/11/2022	Nes, W. Brad	4.0	760	3,040.00	
4/11/2022	Pick, Cullen	0.5	615	307.50	
4/12/2022	Nes, W. Brad	3.0	760	2,280.00	
4/13/2022	Edwards, Brady	0.9	900	810.00	
4/13/2022	Nes, W. Brad	2.8	760	2,128.00	
4/14/2022	Nes, W. Brad	3.5	760	2,660.00	
4/16/2022	Kugler, Claire S.	0.8	670	536.00	
4/16/2022	Nes, W. Brad	3.0	760	2,280.00	
4/18/2022	Edwards, Brady	1.0	900	900.00	
4/18/2022	Nes, W. Brad	4.5	760	3,420.00	
4/27/2022	Nes, W. Brad	2.8	760	2,128.00	

Date of Printing: 02/13/23
Time & Disbursements through 01/30/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page **23** of **32**
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Work Date	Timekeeper	Hours	Rate	Amount	Description
4/28/2022	Edwards, Brady	0.5	900	450.00	
4/28/2022	Nes, W. Brad	5.2	760	3,952.00	
4/29/2022	Edwards, Brady	0.3	900	270.00	
4/29/2022	Kugler, Claire S.	0.8	670	536.00	
4/29/2022	Nes, W. Brad	1.5	760	1,140.00	
5/2/2022	Edwards, Brady	0.3	900	270.00	
5/2/2022	Nes, W. Brad	3.0	760	2,280.00	
5/3/2022	Nes, W. Brad	0.5	760	380.00	
5/5/2022	Nes, W. Brad	0.7	760	532.00	
5/6/2022	Nes, W. Brad	2.0	760	1,520.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
5/9/2022	Edwards, Brady	0.5	900	450.00	
5/11/2022	Kugler, Claire S.	0.5	670	335.00	
5/11/2022	Nes, W. Brad	4.2	760	3,192.00	
5/12/2022	Edwards, Brady	0.5	900	450.00	
5/12/2022	Nes, W. Brad	4.4	760	3,344.00	
5/13/2022	Edwards, Brady	0.8	900	720.00	
5/13/2022	Nes, W. Brad	1.6	760	1,216.00	
5/16/2022	Nes, W. Brad	2.8	760	2,128.00	
5/17/2022	Edwards, Brady	2.5	900	2,250.00	
5/17/2022	Kugler, Claire S.	0.9	670	603.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
5/17/2022	Nes, W. Brad	4.6	760	2,736.00	
5/17/2022	Hu, Lingzi	4.3	430	1,849.00	
5/18/2022	Nes, W. Brad	4.6	760	3,496.00	
5/18/2022	Edwards, Brady	2.5	900	2,250.00	
5/18/2022	Kugler, Claire S.	1.9	670	1,273.00	
5/19/2022	Nes, W. Brad	0.8	760	608.00	
5/19/2022	Edwards, Brady	1.0	900	900.00	
5/20/2022	Nes, W. Brad	2.0	760	1,520.00	
5/23/2022	Edwards, Brady	0.5	900	450.00	

Date of Printing: 02/13/23
Time & Disbursements through 01/30/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page **26** of **32**
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Work Date	Timekeeper	Hours	Rate	Amount	Description
5/24/2022	Nes, W. Brad	5.5	760	4,180.00	
5/26/2022	Edwards, Brady	1.5	900	1,350.00	
5/26/2022	Nes, W. Brad	5.0	760	3,800.00	
5/31/2022	Edwards, Brady	1.0	900	900.00	
5/31/2022	Nes, W. Brad	1.4	760	1,064.00	
6/5/2022	Edwards, Brady	1.6	900	1,440.00	
6/5/2022	Nes, W. Brad	1.0	760	760.00	
6/7/2022	Edwards, Brady	1.0	900	900.00	
6/7/2022	Nes, W. Brad	3.0	760	2,280.00	

Morgan Lewis

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Work Date	Timekeeper	Hours	Rate	Amount	Description
6/8/2022	Edwards, Brady	0.5	900	450.00	
6/9/2022	Nes, W. Brad	3.0	760	2,280.00	
6/15/2022	Pick, Cullen	2.6	615	1599.00	
6/16/2022	Nes, W. Brad	4.0	760	3,040.00	
6/16/2022	McCulloch Semlinger, Lauren A.	1.3	665	598.50	
6/21/2022	Kugler, Claire S.	0.7	670	469.00	
6/21/2022	Nes, W. Brad	0.9	760	684.00	
6/27/2022	Kugler, Claire S.	0.3	670	201.00	
6/27/2022	Nes, W. Brad	1.0	760	760.00	
6/28/2022	Kugler, Claire S.	0.2	670	134.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
8/9/2022	Nes, W. Brad	3.2	760	2,432.00	
8/15/2022	Nes, W. Brad	1.0	760	760.00	
8/18/2022	Edwards, Brady	1.0	900	900.00	
8/23/2022	Nes, W. Brad	5.7	760	4,332.00	
8/24/2022	Nes, W. Brad	5.5	760	4,180.00	
8/24/2022	Pick, Cullen	0.3	615	184.50	
8/31/2022	Nes, W. Brad	4.0	760	3,040.00	
9/2/2022	Nes, W. Brad	3.0	760	2,280.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
9/2/2022	Patterson, Nancy L.	0.7	835	584.50	
9/7/2022	Nes, W. Brad	4.0	760	3,040.00	
10/9/2022	Nes, W. Brad	3.2	760	2,432.00	
10/9/2022	Patterson, Nancy L.	0.3	835	250.50	
10/25/2022	Nes, W. Brad	7.5	760	5,700.00	
10/28/2022	Nes, W. Brad	9.0	760	6,840.00	
10/31/2022	Nes, W. Brad	5.5	760	4,180.00	
10/31/2022	Pick, Cullen	1.5	615	922.50	
11/1/2022	Pick, Cullen	2.0	615	1,230.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
11/4/2022	McCulloch Semlinger, Lauren A.	0.4	665	266.00	
11/4/2022	Pick, Cullen	2.0	615	1,230.00	
11/9/2022	Pick, Cullen	2.8	615	1,722.00	
11/9/2022	Horwitz, Noah M.	1.5	615	922.50	
11/10/2022	Nes, W. Brad	9.0	760	6,840.00	
11/10/2022	Pick, Cullen	1.5	615	922.50	
11/14/2022	Edwards, Brady	5.0	900	4,500.00	
11/14/2022	Nes, W. Brad	9.5	760	7,220.00	
12/15/2022	Nes, W. Brad	1.0	760	760.00	

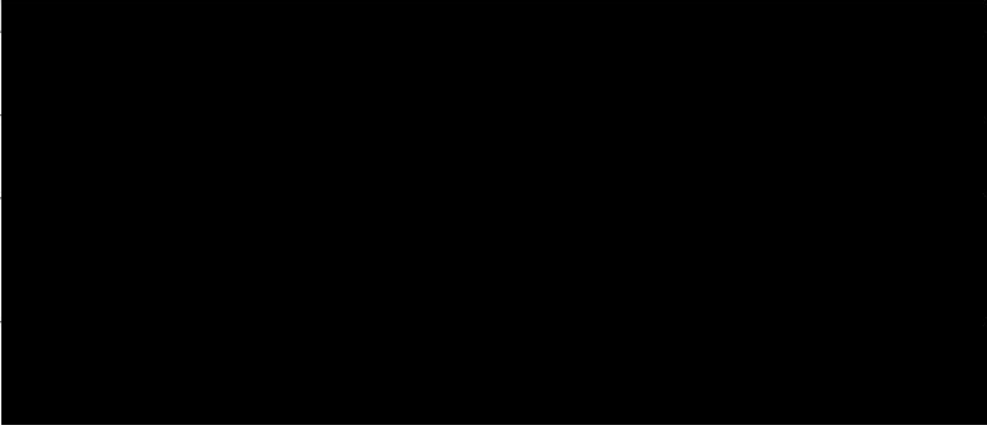
Date of Printing: 02/13/23
Time & Disbursements through 01/30/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page **31** of **32**
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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/21/2022	Edwards, Brady	1.0	900	900.00	
12/21/2022	Nes, W. Brad	1.0	760	760.00	
1/17/2023	Edwards, Brady	1.8	900	1,620.00	
1/17/2023	Nes, W. Brad	1.5	760	1,140.00	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO.: 2020-CP-40-02098
	)	
Covil Corporation, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	
	)	
	)	

**DECLARATION OF JONATHAN M. ROBINSON IN SUPPORT OF THE RECEIVER'S
MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Jonathan M. Robinson, declare on personal knowledge as follows:

1. My name is Jonathan M. Robinson, and I am an adult over the age of eighteen and am competent to testify to the matters herein. I am admitted to practice in the State of South Carolina, and I am the Managing Partner at the law firm of Smith Robinson Holler DuBose and Morgan, LLC ("SMITH | ROBINSON"), counsel of record for the Receiver for Covil Corporation in this action. I base this declaration on personal knowledge of the facts contained herein.

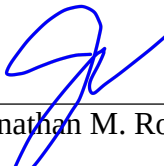
2. I am familiar with the customary billing practices of SMITH | ROBINSON and the time entries submitted in this matter. The time entries submitted were prepared from detailed, contemporaneously recorded time records of the kind customarily used by SMITH | ROBINSON in billing clients.

3. The Receiver seeks the following attorneys' fees incurred on behalf of SMITH | ROBINSON in connection with the Motion for Attorneys' Fees and Costs. Attached as **Exhibit A** is a true and correct summary of contemporaneous and detailed records of time billed and

services rendered by SMITH | ROBINSON sought in connection with the Receiver's Motion for Attorneys' Fees and Costs. These records show for each attorney the date range, hours expended, and billable rate for the work performed. Because this action remains pending, SMITH | ROBINSON has only submitted the time summaries for which the Receiver seeks to recover attorney's fees in connection with the Motion for Attorneys' Fees and Costs. Detailed billing invoices shall be made available for in camera review upon request of the Court.

I declare under penalty of perjury under the laws of the United States of America and the State of South Carolina that the foregoing statements are true and correct.

Executed on February 13, 2023 in Columbia, South Carolina.



Jonathan M. Robinson

EXHIBIT A



Post Office Drawer 39 Camden, SC 29021-0039
United States
Phone: 803.432.1992
Fax: 803.432.0784

Invoice

Covil Corporation

19-075A

19-075A Covil v Pennsylvania National Mutual Casualty Insurance Co. Discovery Dispute

Time Keeper	Position	Quantity	Rate	Total
Fred Hanna	Associate	1.9	\$450.00	\$855.00
Benjamin Limbaugh	Associate	6.2	\$450.00	\$2,790.00
Shanon Peake	Associate	115.9	\$450.00	\$52,155.00
Austin Reed	Associate	3.5	\$450.00	\$1,575.00
Jon Robinson	Partner	28.1	\$750.00	\$21,075.00
Murrell Smith	Partner	3.5	\$750.00	\$2,625.00
Libby Campbell	Paralegal	0.2	\$225.00	\$45.00
Dot Faulkenberry	Paralegal	15.6	\$225.00	\$3,510.00
			Subtotal	\$84,630.00
			Total	\$84,630.00



Post Office Drawer 39
Camden, SC 29021-0039
United States
Phone: 803.432.1992
Fax: 803.432.0784

Invoice

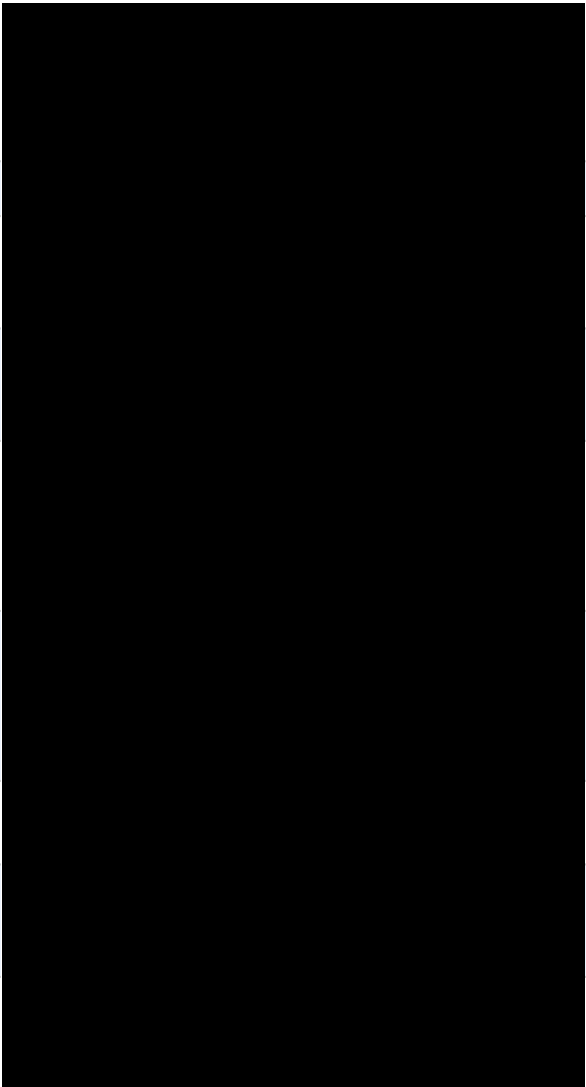
Invoice # 26524
Date: 02/17/2023

Covil Corporation

19-075A

19-075A Covil v Pennsylvania National Mutual Casualty Insurance Co. Discovery Dispute

Client Reference Number: N/A

Date	Timekeeper	Notes	Quantity	Rate	Total
01/15/2021	SNP		1.80	\$450.00	\$810.00
01/26/2021	JMR		2.50	\$750.00	\$1,875.00
02/08/2021	SNP		0.20	\$450.00	\$90.00
02/08/2021	SNP		0.10	\$450.00	\$45.00
02/15/2021	SNP		0.30	\$450.00	\$135.00
02/16/2021	SNP		0.20	\$450.00	\$90.00
02/22/2021	SNP		0.10	\$450.00	\$45.00
03/10/2021	SNP		0.10	\$450.00	\$45.00

03/23/2021	SNP		0.10	\$450.00	\$45.00
04/01/2021	SNP		0.30	\$450.00	\$135.00
04/05/2021	SNP		0.10	\$450.00	\$45.00
04/07/2021	SNP		0.10	\$450.00	\$45.00
04/07/2021	SNP		0.10	\$450.00	\$45.00
04/08/2021	SNP		0.40	\$450.00	\$180.00
04/09/2021	SNP		0.10	\$450.00	\$45.00
04/09/2021	SNP		0.10	\$450.00	\$45.00
04/13/2021	SNP		0.20	\$450.00	\$90.00
04/14/2021	SNP		0.10	\$450.00	\$45.00
04/14/2021	SNP		0.10	\$450.00	\$45.00
04/14/2021	SNP		0.80	\$450.00	\$360.00
04/14/2021	SNP		0.10	\$450.00	\$45.00
04/15/2021	SNP		0.30	\$450.00	\$135.00
04/15/2021	SNP		0.10	\$450.00	\$45.00
04/16/2021	SNP		0.10	\$450.00	\$45.00

04/21/2021	SNP		0.30	\$450.00	\$135.00
04/22/2021	SNP		0.10	\$450.00	\$45.00
04/24/2021	SNP		0.10	\$450.00	\$45.00
04/26/2021	SNP		0.20	\$450.00	\$90.00
04/28/2021	SNP		0.10	\$450.00	\$45.00
05/03/2021	SNP		0.10	\$450.00	\$45.00
05/04/2021	SNP		0.10	\$450.00	\$45.00
05/04/2021	SNP		0.30	\$450.00	\$135.00
05/11/2021	SNP		0.10	\$450.00	\$45.00
05/28/2021	SNP		0.10	\$450.00	\$45.00
06/14/2021	SNP		0.10	\$450.00	\$45.00
06/16/2021	SNP		0.20	\$450.00	\$90.00
06/17/2021	SNP		0.10	\$450.00	\$45.00
06/18/2021	SNP		0.20	\$450.00	\$90.00
06/18/2021	SNP		0.10	\$450.00	\$45.00

06/21/2021	SNP		0.10	\$450.00	\$45.00
06/22/2021	SNP		0.10	\$450.00	\$45.00
06/25/2021	SNP		0.10	\$450.00	\$45.00
06/29/2021	SNP		0.10	\$450.00	\$45.00
06/30/2021	SNP		0.10	\$450.00	\$45.00
07/01/2021	AR		0.10	\$450.00	\$45.00
07/01/2021	SNP		0.10	\$450.00	\$45.00
07/09/2021	SNP		0.20	\$450.00	\$90.00
07/12/2021	SNP		0.20	\$450.00	\$90.00
07/16/2021	SNP		0.10	\$450.00	\$45.00
07/22/2021	SNP		0.10	\$450.00	\$45.00
07/23/2021	SNP		0.10	\$450.00	\$45.00
07/26/2021	SNP		0.10	\$450.00	\$45.00
07/28/2021	SNP		0.10	\$450.00	\$45.00
07/29/2021	SNP		0.10	\$450.00	\$45.00

08/02/2021	SNP		0.10	\$450.00	\$45.00
08/07/2021	SNP		0.10	\$450.00	\$45.00
08/19/2021	SNP		0.10	\$450.00	\$45.00
08/20/2021	SNP		0.10	\$450.00	\$45.00
08/20/2021	SNP		0.60	\$450.00	\$270.00
08/20/2021	DF		2.10	\$225.00	\$472.50
08/20/2021	SNP		0.20	\$450.00	\$90.00
08/24/2021	SNP		0.10	\$450.00	\$45.00
08/24/2021	SNP		0.10	\$450.00	\$45.00
08/25/2021	SNP		0.10	\$450.00	\$45.00
08/27/2021	SNP		0.10	\$450.00	\$45.00
09/08/2021	SNP		0.10	\$450.00	\$45.00
09/08/2021	SNP		0.50	\$450.00	\$225.00
10/05/2021	BL		0.30	\$450.00	\$135.00
10/05/2021	LC		0.20	\$225.00	\$45.00
10/05/2021	GMS		0.50	\$750.00	\$375.00

10/05/2021	GMS	0.50	\$750.00 \$375.00
10/21/2021	SNP	0.10	\$450.00 \$45.00
10/21/2021	JMR	0.50	\$750.00 \$375.00
10/22/2021	JMR	1.00	\$750.00 \$750.00
10/23/2021	SNP	0.20	\$450.00 \$90.00
10/25/2021	SNP	4.90	\$450.00 \$2,205.00
10/25/2021	SNP	0.10	\$450.00 \$45.00
10/25/2021	GMS	2.00	\$750.00 \$1,500.00
10/26/2021	SNP	0.90	\$450.00 \$405.00
10/26/2021	SNP	0.20	\$450.00 \$90.00
10/26/2021	SNP	0.60	\$450.00 \$270.00
10/26/2021	JMR	1.00	\$750.00 \$750.00
10/26/2021	GMS	0.50	\$750.00 \$375.00
10/28/2021	BL	2.90	\$450.00 \$1,305.00
10/28/2021	JMR	2.90	\$750.00 \$2,175.00
11/05/2021	SNP	0.10	\$450.00 \$45.00
11/08/2021	DF	0.30	\$225.00 \$67.50
11/12/2021	SNP	0.10	\$450.00 \$45.00
11/12/2021	SNP	0.10	\$450.00 \$45.00
11/12/2021	SNP	0.30	\$450.00 \$135.00

11/12/2021	SNP		0.10	\$450.00	\$45.00
11/16/2021	JMR		0.50	\$750.00	\$375.00
12/08/2021	SNP		0.20	\$450.00	\$90.00
12/09/2021	SNP		0.10	\$450.00	\$45.00
12/09/2021	SNP		0.30	\$450.00	\$135.00
12/16/2021	SNP		0.20	\$450.00	\$90.00
12/20/2021	SNP		0.20	\$450.00	\$90.00
12/21/2021	SNP		0.10	\$450.00	\$45.00
12/22/2021	SNP		0.20	\$450.00	\$90.00
12/23/2021	SNP		0.10	\$450.00	\$45.00
12/29/2021	SNP		0.20	\$450.00	\$90.00
12/29/2021	SNP		0.10	\$450.00	\$45.00
12/29/2021	SNP		0.10	\$450.00	\$45.00
12/29/2021	SNP		0.10	\$450.00	\$45.00
12/29/2021	SNP		0.40	\$450.00	\$180.00
01/07/2022	SNP		0.10	\$450.00	\$45.00
01/10/2022	SNP		0.30	\$450.00	\$135.00

01/10/2022	SNP		0.10	\$450.00	\$45.00
01/11/2022	SNP		3.20	\$450.00	\$1,440.00
01/11/2022	JMR		3.00	\$750.00	\$2,250.00
01/11/2022	SNP		0.10	\$450.00	\$45.00
01/11/2022	BL		3.00	\$450.00	\$1,350.00
01/18/2022	SNP		0.10	\$450.00	\$45.00
01/20/2022	JMR		0.40	\$750.00	\$300.00
01/24/2022	SNP		0.10	\$450.00	\$45.00
01/25/2022	SNP		0.10	\$450.00	\$45.00
02/08/2022	SNP		0.20	\$450.00	\$90.00
02/18/2022	SNP		0.10	\$450.00	\$45.00
02/25/2022	SNP		0.10	\$450.00	\$45.00
03/07/2022	SNP		0.20	\$450.00	\$90.00
04/06/2022	SNP		0.10	\$450.00	\$45.00
04/11/2022	DF		0.70	\$225.00	\$157.50
04/11/2022	SNP		3.20	\$450.00	\$1,440.00
04/25/2022	DF		0.30	\$225.00	\$67.50
05/02/2022	DF		0.40	\$225.00	\$90.00
05/02/2022	SNP		0.20	\$450.00	\$90.00
05/03/2022	SNP		0.10	\$450.00	\$45.00

05/05/2022	AR		0.10	\$450.00	\$45.00
05/09/2022	SNP		0.10	\$450.00	\$45.00
05/09/2022	SNP		0.10	\$450.00	\$45.00
05/17/2022	SNP		0.10	\$450.00	\$45.00
05/17/2022	SNP		1.50	\$450.00	\$675.00
05/18/2022	SNP		2.80	\$450.00	\$1,260.00
05/18/2022	AR		0.40	\$450.00	\$180.00
05/18/2022	JMR		1.00	\$750.00	\$750.00
05/19/2022	SNP		0.10	\$450.00	\$45.00
05/26/2022	SNP		0.20	\$450.00	\$90.00
05/26/2022	DF		0.60	\$225.00	\$135.00
05/31/2022	SNP		0.10	\$450.00	\$45.00
05/31/2022	SNP		0.20	\$450.00	\$90.00
05/31/2022	SNP		0.10	\$450.00	\$45.00
06/01/2022	SNP		1.50	\$450.00	\$675.00
06/02/2022	SNP		1.00	\$450.00	\$450.00
06/03/2022	SNP		0.10	\$450.00	\$45.00
06/03/2022	SNP		2.30	\$450.00	\$1,035.00
06/03/2022	SNP		0.10	\$450.00	\$45.00
06/03/2022	AR		0.10	\$450.00	\$45.00

06/05/2022	AR		0.40	\$450.00	\$180.00
06/05/2022	AR		0.70	\$450.00	\$315.00
06/06/2022	SNP		0.10	\$450.00	\$45.00
06/06/2022	SNP		2.20	\$450.00	\$990.00
06/06/2022	DF		1.90	\$225.00	\$427.50
06/06/2022	SNP		0.10	\$450.00	\$45.00
06/06/2022	SNP		0.10	\$450.00	\$45.00
06/06/2022	SNP		0.10	\$450.00	\$45.00
06/07/2022	SNP		0.10	\$450.00	\$45.00
06/07/2022	SNP		2.10	\$450.00	\$945.00
06/07/2022	SNP		0.10	\$450.00	\$45.00
06/07/2022	SNP		0.80	\$450.00	\$360.00
06/07/2022	AR		0.20	\$450.00	\$90.00
06/07/2022	SNP		0.20	\$450.00	\$90.00
06/07/2022	SNP		0.10	\$450.00	\$45.00
06/07/2022	AR		0.20	\$450.00	\$90.00
06/09/2022	SNP		1.40	\$450.00	\$630.00
06/09/2022	SNP		0.10	\$450.00	\$45.00

06/10/2022	SNP	0.60	\$450.00 \$270.00
06/14/2022	SNP	7.30	\$450.00 \$3,285.00
06/15/2022	SNP	11.60	\$450.00 \$5,220.00
06/16/2022	SNP	4.20	\$450.00 \$1,890.00
06/16/2022	AR	0.10	\$450.00 \$45.00
06/16/2022	SNP	0.50	\$450.00 \$225.00
06/17/2022	AR	0.10	\$450.00 \$45.00
06/17/2022	SNP	0.10	\$450.00 \$45.00
06/17/2022	SNP	0.60	\$450.00 \$270.00
06/17/2022	SNP	0.10	\$450.00 \$45.00
06/20/2022	AR	0.80	\$450.00 \$360.00
06/21/2022	SNP	3.30	\$450.00 \$1,485.00
06/21/2022	SNP	0.10	\$450.00 \$45.00
06/21/2022	SNP	0.10	\$450.00 \$45.00
06/22/2022	SNP	0.10	\$450.00 \$45.00
06/22/2022	SNP	0.10	\$450.00 \$45.00
06/27/2022	SNP	0.10	\$450.00 \$45.00
06/27/2022	SNP	0.10	\$450.00 \$45.00

06/28/2022	SNP		0.60	\$450.00	\$270.00
06/28/2022	SNP		0.10	\$450.00	\$45.00
06/28/2022	SNP		0.10	\$450.00	\$45.00
06/29/2022	SNP		0.30	\$450.00	\$135.00
06/29/2022	SNP		0.10	\$450.00	\$45.00
08/09/2022	SNP		0.10	\$450.00	\$45.00
08/09/2022	SNP		0.20	\$450.00	\$90.00
08/10/2022	SNP		0.10	\$450.00	\$45.00
08/10/2022	DF		0.30	\$225.00	\$67.50
08/10/2022	SNP		0.30	\$450.00	\$135.00
08/10/2022	SNP		0.10	\$450.00	\$45.00
08/23/2022	SNP		0.10	\$450.00	\$45.00
08/24/2022	SNP		0.10	\$450.00	\$45.00
08/24/2022	SNP		0.30	\$450.00	\$135.00
08/24/2022	SNP		0.10	\$450.00	\$45.00
08/24/2022	SNP		0.10	\$450.00	\$45.00
08/24/2022	SNP		0.10	\$450.00	\$45.00
08/25/2022	SNP		0.10	\$450.00	\$45.00

08/25/2022	SNP		0.10	\$450.00	\$45.00
08/25/2022	SNP		0.10	\$450.00	\$45.00
08/25/2022	SNP		0.10	\$450.00	\$45.00
08/29/2022	SNP		0.10	\$450.00	\$45.00
08/30/2022	SNP		0.10	\$450.00	\$45.00
08/30/2022	SNP		0.30	\$450.00	\$135.00
08/31/2022	SNP		0.20	\$450.00	\$90.00
08/31/2022	SNP		0.10	\$450.00	\$45.00
08/31/2022	SNP		0.30	\$450.00	\$135.00
09/08/2022	SNP		4.00	\$450.00	\$1,800.00
09/21/2022	SNP		0.10	\$450.00	\$45.00
09/27/2022	SNP		0.10	\$450.00	\$45.00
10/14/2022	SNP		0.10	\$450.00	\$45.00
10/14/2022	SNP		0.10	\$450.00	\$45.00
10/17/2022	SNP		0.10	\$450.00	\$45.00
10/17/2022	SNP		0.30	\$450.00	\$135.00
10/21/2022	SNP		0.20	\$450.00	\$90.00
10/24/2022	SNP		0.80	\$450.00	\$360.00

10/24/2022	SNP		1.60	\$450.00	\$720.00
10/25/2022	JMR		1.00	\$750.00	\$750.00
11/03/2022	SNP		0.50	\$450.00	\$225.00
11/04/2022	SNP		0.50	\$450.00	\$225.00
11/10/2022	SNP		0.30	\$450.00	\$135.00
11/15/2022	DF		0.70	\$225.00	\$157.50
11/15/2022	SNP		0.10	\$450.00	\$45.00
11/15/2022	SNP		0.10	\$450.00	\$45.00
11/16/2022	DF		4.60	\$225.00	\$1,035.00
11/27/2022	SNP		0.10	\$450.00	\$45.00
11/29/2022	SNP		0.20	\$450.00	\$90.00
12/14/2022	SNP		0.10	\$450.00	\$45.00
12/15/2022	SNP		0.60	\$450.00	\$270.00
12/16/2022	SNP		1.00	\$450.00	\$450.00
12/16/2022	DF		0.30	\$225.00	\$67.50
12/16/2022	SNP		0.10	\$450.00	\$45.00

12/16/2022	SNP		0.10	\$450.00	\$45.00
12/18/2022	SNP		2.90	\$450.00	\$1,305.00
12/19/2022	SNP		4.60	\$450.00	\$2,070.00
12/19/2022	SNP		0.10	\$450.00	\$45.00
12/19/2022	JMR		0.30	\$750.00	\$225.00
12/20/2022	SNP		1.50	\$450.00	\$675.00
12/20/2022	SNP		0.10	\$450.00	\$45.00
12/21/2022	SNP		0.10	\$450.00	\$45.00
12/22/2022	SNP		2.20	\$450.00	\$990.00
12/22/2022	SNP		0.10	\$450.00	\$45.00
12/22/2022	SNP		0.10	\$450.00	\$45.00
12/28/2022	SNP		0.20	\$450.00	\$90.00
01/03/2023	SNP		0.10	\$450.00	\$45.00
01/03/2023	SNP		0.10	\$450.00	\$45.00
01/04/2023	SNP		0.70	\$450.00	\$315.00
01/12/2023	DF		0.20	\$225.00	\$45.00
01/17/2023	SNP		0.10	\$450.00	\$45.00
01/17/2023	DF		0.30	\$225.00	\$67.50
01/17/2023	SNP		0.10	\$450.00	\$45.00

01/17/2023	SNP		0.20	\$450.00	\$90.00
01/17/2023	SNP		1.60	\$450.00	\$720.00
01/17/2023	SNP		0.10	\$450.00	\$45.00
01/17/2023	SNP		0.10	\$450.00	\$45.00
01/17/2023	DF		0.40	\$225.00	\$90.00
01/17/2023	SNP		0.10	\$450.00	\$45.00
01/17/2023	SNP		0.10	\$450.00	\$45.00
01/17/2023	JMR		0.50	\$750.00	\$375.00
01/18/2023	AR		0.20	\$450.00	\$90.00
01/18/2023	SNP		0.10	\$450.00	\$45.00
01/18/2023	SNP		0.20	\$450.00	\$90.00
01/18/2023	SNP		0.10	\$450.00	\$45.00
01/18/2023	AR		0.10	\$450.00	\$45.00
01/18/2023	DF		0.20	\$225.00	\$45.00
01/18/2023	SNP		0.10	\$450.00	\$45.00
01/25/2023	DF		1.60	\$225.00	\$360.00
01/25/2023	SNP		0.10	\$450.00	\$45.00

01/25/2023	SNP		0.90	\$450.00	\$405.00
01/25/2023	FH		0.60	\$450.00	\$270.00
01/25/2023	JMR		2.00	\$750.00	\$1,500.00
01/26/2023	FH		0.30	\$450.00	\$135.00
01/26/2023	JMR		5.00	\$750.00	\$3,750.00
01/27/2023	FH		0.80	\$450.00	\$360.00
01/27/2023	FH		0.20	\$450.00	\$90.00
01/27/2023	JMR		6.50	\$750.00	\$4,875.00
01/29/2023	SNP		0.10	\$450.00	\$45.00
02/01/2023	SNP		3.10	\$450.00	\$1,395.00
02/01/2023	SNP		0.10	\$450.00	\$45.00
02/02/2023	SNP		1.20	\$450.00	\$540.00
02/06/2023	SNP		0.10	\$450.00	\$45.00
02/06/2023	SNP		0.10	\$450.00	\$45.00
02/08/2023	SNP		0.10	\$450.00	\$45.00
02/09/2023	SNP		0.10	\$450.00	\$45.00
02/10/2023	SNP		0.80	\$450.00	\$360.00
02/10/2023	SNP		0.10	\$450.00	\$45.00

02/10/2023	SNP		0.20	\$450.00	\$90.00
02/13/2023	SNP		0.80	\$450.00	\$360.00
02/13/2023	DF		0.50	\$225.00	\$112.50
02/14/2023	DF		0.20	\$225.00	\$45.00

Time Keeper	Position	Quantity	Rate	Total
Fred Hanna	Associate	1.9	\$450.00	\$855.00
Benjamin Limbaugh	Associate	6.2	\$450.00	\$2,790.00
Shanon Peake	Associate	115.9	\$450.00	\$52,155.00
Austin Reed	Associate	3.5	\$450.00	\$1,575.00
Jon Robinson	Partner	28.1	\$750.00	\$21,075.00
Murrell Smith	Partner	3.5	\$750.00	\$2,625.00
Libby Campbell	Paralegal	0.2	\$225.00	\$45.00
Dot Faulkenberry	Paralegal	15.6	\$225.00	\$3,510.00
			Subtotal	\$84,630.00
			Total	\$84,630.00

Please make all amounts payable to: Smith Robinson Holler DuBose and Morgan, LLC
Tax Id: 83-4467070

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

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

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.,

Defendant.

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

**DECLARATION OF MARGHRETTA H. SHISKO IN SUPPORT OF
THE RECEIVER'S MOTION FOR ATTORNEY'S FEES AND COSTS**

1. My name is Marghretta H. Shisko. I am an adult over the age of 18 and am competent to testify as to the matters herein. I am an attorney licensed to practice law in the State of South Carolina, and I am a partner at the law firm of John B. White, Jr. P.A. I represent the Receiver for Covil Corporation, and the matters stated in this declaration are based on my own personal knowledge.

2. I have reviewed the Receiver's Motion for Attorney's Fees and Costs, and I concur with the Motion's characterization and description of the facts and procedural history of this matter as set forth therein. Additionally, I am familiar with the billing practices of John B. White, Jr. P.A. and the time records of individuals with my firm who worked on this matter.

3. Since January 15, 2021, my lawyers and support staff with my firm have spent at least 219.7 hours litigating the issues described in the Receiver's Motion for Attorneys' Fees and Costs. These efforts included, for example, reviewing and responding to written correspondence

and discovery requests, issuing subpoenas and deposition notices, conferring with co-counsel and with opposing counsel, and attending hearings and depositions.

4. Attached hereto and incorporated herein as **Exhibit A** is a true and correct copy of the contemporaneously-recorded and detailed time records for individuals with my firm who worked on this matter. Because this matter remains pending, only time records relating to the Receiver's instant motion are being provided. Likewise, I am not providing the detail for those records because litigation against Penn National is ongoing, but the detail will be made available for in camera review upon request of the Court.

5. The rates shown in **Exhibit A** are the normal and customary hourly rates charged for work performed by the timekeepers for complex litigation cases. Additionally, the time records identified in **Exhibit A** were well-documented. The lawyers and complex litigation paralegals in my firm regularly maintain contemporaneous records of their time, whether they are working on a contingency fee case or an hourly billing matter.

6. I declare under penalty of perjury that the foregoing statements are true and correct.

Signature Page Follows

FURTHER AFFIANT SAYETH NAUGHT.

M Shisko

Marghretta H. Shisko

2/17/23

SWORN TO before me

this 17th day of February, 2023

Nicole White (SEAL)

Notary Public for the State of South Carolina

My Commission Expires: 4/28/2032

EXHIBIT A



Invoice

February 17, 2023

Re: Covil v. Penn National Mutual Casualty Insurance Co.

Time Keeper	Position	Quantity (Hrs.)	Rate	Total
Marghretta Shisko	Partner	139.3	\$450.00	\$62,685
Christopher Jones	Associate	48.8	\$350.00	\$17,080
Nicole Rice	Paralegal	7.0	\$150.00	\$1,050
Lorrie Large	Paralegal	21.6	\$150.00	\$3,240
Shoshannah Criswell	Paralegal	3.0	\$150.00	\$450
Total:		219.7		\$84,505

JOHN B. WHITE, JR.
jwhite@johnbwhitelaw.com

GRIFFIN LITTLEJOHN LYNCH
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MARGHRETTA SHISKO
mshisko@johnbwhitelaw.com

291 SOUTH PINE STREET
P.O. BOX 2465
SPARTANBURG S.C. 29304
(864) 594-5988



JOHN B. WHITE JR. P.A.
Law Firm

Invoice

February 17, 2023

Re: Covil v. Penn National Mutual Casualty Insurance Co.

Total charges: \$84,505

Date	Att'y Initials	Att'y Hours	PL Initials	PL Hours	Rate	Amt.
1/15/2021	MHS	0.20			\$450.00	\$90.00
1/18/2021	CRJ	0.60			\$350.00	\$210.00
1/20/2021	MHS	4.50			\$450.00	\$2,025.00
1/20/2021	CRJ	0.20			\$350.00	\$70.00
1/22/2021	MHS	2.50			\$450.00	\$1,125.00
1/23/2021	MHS	5.00			\$450.00	\$2,250.00
1/24/2021	MHS	4.00			\$450.00	\$1,800.00
1/24/2021	MHS	0.50			\$450.00	\$225.00
1/24/2021	CRJ	3.70			\$350.00	\$1,295.00
1/24/2021	CRJ	0.50			\$350.00	\$175.00
1/25/2021	MHS	1.50			\$450.00	\$675.00
1/25/2021	MHS	0.50			\$450.00	\$225.00
1/25/2021	MHS	1.00			\$450.00	\$450.00
2/2/2021	MHS	0.50			\$450.00	\$225.00
2/2/2021	CRJ	0.50			\$350.00	\$175.00
2/3/2021	MHS	1.00			\$450.00	\$450.00

JOHN B. WHITE, JR.

jwhite@johnbwhitelaw.com

GRIFFIN LITTLEJOHN LYNCH

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MARGHRETTA SHISKO

mshisko@johnbwhitelaw.com

291 SOUTH PINE STREET
P.O. BOX 2465
SPARTANBURG S.C. 29304
(864) 594-5988

2/4/2021	MHS	0.20			\$450.00	\$90.00
2/4/2021	CRJ	0.50			\$350.00	\$175.00
2/5/2021	MHS	0.10			\$450.00	\$45.00
2/8/2021	MHS	0.10			\$450.00	\$45.00
2/8/2021			NMR	0.30	\$150.00	\$45.00
2/12/2021	MHS	0.20			\$450.00	\$90.00
2/22/2021	MHS	0.50			\$450.00	\$225.00
2/22/2021	MHS	1.00			\$450.00	\$450.00
2/22/2021	MHS	0.50			\$450.00	\$225.00
2/22/2021	CRJ	0.20			\$350.00	\$70.00
3/1/2021	MHS	0.20			\$450.00	\$90.00
3/10/2021	MHS	0.30			\$450.00	\$135.00
3/10/2021	MHS	1.00			\$450.00	\$450.00
3/11/2021	CRJ	1.30			\$350.00	\$455.00
3/12/2021	MHS	0.90			\$450.00	\$405.00
3/12/2021	CRJ	1.00			\$350.00	\$350.00
3/19/2021	CRJ	0.90			\$350.00	\$315.00
3/22/2021	CRJ	0.80			\$350.00	\$280.00
3/23/2021	CRJ	0.10			\$350.00	\$35.00
3/23/2021	MHS	0.50			\$450.00	\$225.00
3/23/2021			LEL	2.00	\$150.00	\$300.00
4/5/2021	MHS	2.50			\$450.00	\$1,125.00
4/6/2021	MHS	1.00			\$450.00	\$450.00

4/6/2021	MHS	0.50			\$450.00	\$225.00
4/6/2021	MHS	0.80			\$450.00	\$360.00
4/6/2021	CRJ	2.60			\$350.00	\$910.00
4/6/2021			LEL	0.50	\$150.00	\$75.00
4/6/2021			NMR	1.00	\$150.00	\$150.00
4/7/2021	MHS	0.10			\$450.00	\$45.00
4/7/2021	CRJ	2.20			\$350.00	\$770.00
4/8/2021	MHS	0.50			\$450.00	\$225.00
4/8/2021	CRJ	0.50			\$350.00	\$175.00
4/9/2021	CRJ	0.20			\$350.00	\$70.00
4/9/2021	MHS	0.50			\$450.00	\$225.00
4/9/2021			LEL	1.50	\$150.00	\$225.00
4/9/2021	MHS	2.00			\$450.00	\$900.00
4/13/2021	MHS	0.10			\$450.00	\$45.00
4/13/2021	MHS	1.00			\$450.00	\$450.00
4/13/2021	CRJ	0.30			\$350.00	\$105.00
4/14/2021	MHS	1.50			\$450.00	\$675.00
4/14/2021	MHS	0.50			\$450.00	\$225.00
4/14/2021	CRJ	0.90			\$350.00	\$315.00
4/15/2021	MHS	0.50			\$450.00	\$225.00
4/15/2021	MHS	0.20			\$450.00	\$90.00
4/15/2021	CRJ	0.20			\$350.00	\$70.00
4/16/2021	MHS	0.30			\$450.00	\$135.00
4/16/2021	CRJ	0.40			\$350.00	\$140.00
4/17/2021	MHS	0.80			\$450.00	\$360.00
4/19/2021	MHS	1.00			\$450.00	\$450.00
4/19/2021	CRJ	0.30			\$350.00	\$105.00

4/19/2021	CRJ	3.80			\$350.00	\$1,330.00
4/20/2021	CRJ	4.50			\$350.00	\$1,575.00
4/21/2021	MHS	0.20			\$450.00	\$90.00
4/21/2021	CRJ	0.20			\$350.00	\$70.00
4/21/2021			LEL	0.20	\$150.00	\$30.00
4/22/2021	CRJ	0.50			\$350.00	\$175.00
4/22/2021	MHS	1.00			\$450.00	\$450.00
4/22/2021			LEL	1.50	\$150.00	\$225.00
4/26/2021	MHS	0.10			\$450.00	\$45.00
4/27/2021			LEL	0.30	\$150.00	\$45.00
4/28/2021	MHS	0.20			\$450.00	\$90.00
4/28/2021			LEL	0.10	\$150.00	\$15.00
5/3/2021	MHS	3.50			\$450.00	\$1,575.00
5/3/2021	MHS	0.50			\$450.00	\$225.00
5/3/2021	CRJ	0.40			\$350.00	\$140.00
5/3/2021			LEL	0.50	\$150.00	\$75.00
5/4/2021	MHS	5.00			\$450.00	\$2,250.00
5/4/2021	CRJ	0.60			\$350.00	\$210.00
5/4/2021			LEL	1.00	\$150.00	\$150.00
5/5/2021	MHS	0.10			\$450.00	\$45.00
5/10/2021	MHS	1.00			\$450.00	\$450.00
5/10/2021			LEL	0.20	\$150.00	\$30.00
5/12/2021	MHS	1.10			\$450.00	\$495.00

5/26/2021	MHS	2.00			\$450.00	\$900.00
5/27/2021	MHS	0.50			\$450.00	\$225.00
5/27/2021	MHS	1.50			\$450.00	\$675.00
5/28/2021	MHS	1.50			\$450.00	\$675.00
5/28/2021	MHS	2.50			\$450.00	\$1,125.00
5/28/2021	MHS	0.30			\$450.00	\$135.00
5/28/2021	CRJ	0.30			\$350.00	\$105.00
5/28/2021			LEL	1.50	\$150.00	\$225.00
5/28/2021			LEL	0.50	\$150.00	\$75.00
5/28/2021			LEL	0.20	\$150.00	\$30.00
6/3/2021	MHS	0.50			\$450.00	\$225.00
6/3/2021			LEL	0.60	\$150.00	\$90.00
6/3/2021	MHS	0.50			\$450.00	\$225.00
6/11/2021	MHS	2.00			\$450.00	\$900.00
6/14/2021	MHS	0.50			\$450.00	\$225.00
6/14/2021	CRJ	0.30			\$350.00	\$105.00
6/14/2021			LEL	0.50	\$150.00	\$75.00
6/14/2021			NMR	0.50	\$150.00	\$75.00
6/15/2021	MHS	1.50			\$450.00	\$675.00
6/15/2021	MHS	0.50			\$450.00	\$225.00
6/15/2021	MHS	1.00			\$450.00	\$450.00
6/15/2021	MHS	0.50			\$450.00	\$225.00
6/15/2021	MHS	0.40			\$450.00	\$180.00
6/15/2021	MHS	0.30			\$450.00	\$135.00
6/15/2021	MHS	1.20			\$450.00	\$540.00
6/15/2021	CRJ	0.30			\$350.00	\$105.00

6/15/2021			NMR	1.00	\$150.00	\$150.00
6/16/2021	MHS	0.50			\$450.00	\$225.00
6/16/2021			SC	2.00	\$150.00	\$300.00
6/16/2021			NMR	1.00	\$150.00	\$150.00
6/16/2021			NMR	0.50	\$150.00	\$75.00
6/16/2021	MHS	4.00			\$450.00	\$1,800.00
6/16/2021			NMR	1.00	\$150.00	\$150.00
6/16/2021			SC	1.00	\$150.00	\$150.00
6/16/2021	MHS	0.50			\$450.00	\$225.00
6/16/2021	CRJ	0.10			\$350.00	\$35.00
6/17/2021	MHS	0.50			\$450.00	\$225.00
6/17/2021	MHS	3.70			\$450.00	\$1,665.00
6/17/2021	CRJ	0.60			\$350.00	\$210.00
6/17/2021			NMR	1.00	\$150.00	\$150.00
6/17/2021	MHS	0.20			\$450.00	\$90.00
6/18/2021	MHS	1.00			\$450.00	\$450.00
6/18/2021	MHS	1.50			\$450.00	\$675.00
6/21/2021	MHS	0.50			\$450.00	\$225.00
6/21/2021	MHS	1.00			\$450.00	\$450.00
6/21/2021	MHS	1.50			\$450.00	\$675.00
6/21/2021	MHS	0.50			\$450.00	\$225.00
6/21/2021	CRJ	0.30			\$350.00	\$105.00
6/22/2021	MHS	2.80			\$450.00	\$1,260.00

6/23/2021	MHS	1.00			\$450.00	\$450.00
6/23/2021	CRJ	1.40			\$350.00	\$490.00
6/24/2021	MHS	9.00			\$450.00	\$4,050.00
6/24/2021	CRJ	2.30			\$350.00	\$805.00
6/25/2021	MHS	7.00			\$450.00	\$3,150.00
6/25/2021	CRJ	3.10			\$350.00	\$1,085.00
6/28/2021	MHS	1.00			\$450.00	\$450.00
6/28/2021	MHS	1.50			\$450.00	\$675.00
6/29/2021	CRJ	0.90			\$350.00	\$315.00
6/29/2021	MHS	2.00			\$450.00	\$900.00
6/30/2021	MHS	0.80			\$450.00	\$360.00
7/1/2021	MHS	0.30			\$450.00	\$135.00
7/2/2021	MHS	1.80			\$450.00	\$810.00
7/2/2021	MHS	0.30			\$450.00	\$135.00
7/2/2021			LEL	1.00	\$150.00	\$150.00
7/9/2021	MHS	0.50			\$450.00	\$225.00
7/16/2021	MHS	1.00			\$450.00	\$450.00
7/16/2021	CRJ	1.80			\$350.00	\$630.00
7/16/2021			LEL	0.50	\$150.00	\$75.00
7/19/2021	CRJ	0.30			\$350.00	\$105.00
7/20/2021	MHS	0.40			\$450.00	\$180.00
7/21/2021	MHS	1.00			\$450.00	\$450.00
7/23/2021	MHS	1.00			\$450.00	\$450.00

7/23/2021	CRJ	0.40			\$350.00	\$140.00
7/23/2021			NMR	0.70	\$150.00	\$105.00
7/23/2021	MHS	0.60			\$450.00	\$270.00
7/26/2021			LEL	1.50	\$150.00	\$225.00
7/27/2021	MHS	1.00			\$450.00	\$450.00
7/27/2021			LEL	2.00	\$150.00	\$300.00
7/28/2021	MHS	0.10			\$450.00	\$45.00
7/29/2021	MHS	1.00			\$450.00	\$450.00
7/29/2021			LEL	0.50	\$150.00	\$75.00
7/30/2021	MHS	0.50			\$450.00	\$225.00
7/30/2021			LEL	1.00	\$150.00	\$150.00
8/2/2021	MHS	2.50			\$450.00	\$1,125.00
8/2/2021	CRJ	0.20			\$350.00	\$70.00
8/2/2021	MHS	0.50			\$450.00	\$225.00
8/2/2021			LEL	0.60	\$150.00	\$90.00
8/3/2021	MHS	0.20			\$450.00	\$90.00
8/3/2021	CRJ	2.10			\$350.00	\$735.00
8/5/2021	MHS	0.50			\$450.00	\$225.00
8/5/2021			LEL	0.10	\$150.00	\$15.00
8/7/2021	MHS	2.00			\$450.00	\$900.00
8/19/2021	MHS	1.50			\$450.00	\$675.00
8/19/2021			LEL	0.10	\$150.00	\$15.00

8/19/2021			LEL	0.70	\$150.00	\$105.00
8/19/2021	CRJ	0.70			\$350.00	\$245.00
8/20/2021	MHS	0.50			\$450.00	\$225.00
8/20/2021	MHS	0.20			\$450.00	\$90.00
8/20/2021	MHS	1.00			\$450.00	\$450.00
8/20/2021			LEL	1.50	\$150.00	\$225.00
8/24/2021	MHS	0.10			\$450.00	\$45.00
8/24/2021			LEL	0.50	\$150.00	\$75.00
8/26/2021	CRJ	2.30			\$350.00	\$805.00
8/26/2021	MHS	0.20			\$450.00	\$90.00
8/30/2021	MHS	1.50			\$450.00	\$675.00
10/5/2021	MHS	0.80			\$450.00	\$360.00
10/6/2021	MHS	0.50			\$450.00	\$225.00
10/25/2021	MHS	1.00			\$450.00	\$450.00
10/28/2021	CRJ	2.30			\$350.00	\$805.00
10/28/2021	MHS	0.50			\$450.00	\$225.00
11/9/2021	MHS	0.50			\$450.00	\$225.00
11/19/2021	MHS	0.60			\$450.00	\$270.00
12/8/2021	MHS	0.20			\$450.00	\$90.00
12/20/2021	MHS	0.80			\$450.00	\$360.00
12/21/2021	CRJ	0.50			\$350.00	\$175.00
12/22/2021	MHS	0.70			\$450.00	\$315.00
12/28/2021	MHS	0.30			\$450.00	\$135.00
12/29/2021	MHS	0.20			\$450.00	\$90.00
12/29/2021			LEL	0.50	\$150.00	\$75.00
1/3/2022	MHS	0.10			\$450.00	\$45.00
1/7/2022	MHS	0.50			\$450.00	\$225.00
2/21/2022	MHS	0.50			\$450.00	\$225.00

2/24/2022	MHS	0.50			\$450.00	\$225.00
4/8/2022	CRJ	0.40			\$350.00	\$140.00
5/5/2022	CRJ	0.30			\$350.00	\$105.00
5/13/2022	MHS	0.50			\$450.00	\$225.00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Covil Corporation, by and through its duly	)	
appointed Receiver, Peter D. Protopapas,	)	Case No. 2020-CP-40-02098
	)	
Plaintiff,	)	
	)	DEFENDANT'S MEMORANDUM IN
v.	)	RESPONSE TO PLAINTIFF'S
	)	MOTION FOR ATTORNEY'S FEES
Pennsylvania National Mutual Casualty	)	AND COSTS
Insurance Co.,	)	
	)	
Defendant.	)	
	)	

Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through its undersigned counsel, hereby submits this memorandum in response to Plaintiff Covil Corporation's ("Covil") Motion for Attorney's Fees and Costs.

SUMMARY

On February 17, 2023, Covil filed a Motion for Attorney's Fees and Costs pursuant to Rule 37(b)(2), SCRCRCP, seeking to impose sanctions against Penn National for its alleged failure to comply with a discovery order. Specifically, Covil characterizes Penn National's concurrent appeals of the Trial Court's May 5, 2022 Order commanding Penn National to image and digitize its entire repository of approximately 18 million pages of historic commercial line policies at its own expense and giving opposing counsel unrestricted access to the same as a gross dereliction of its discovery obligations. However, contrary to Covil's assertion that Penn National has demonstrated an "abject failure to participate in the discovery process," Covil's current motion is the end product of its own making.

For nearly two years, Covil has engaged in a discovery motions practice that is clinically designed to manufacture the narrative that Penn National has failed to meaningfully participate in

discovery. In reality, what Covil has pursued has been a moving target from the very beginning, requiring Penn National to play a constant game of Whack-A-Mole in responding to the flow of motions filed by Covil. Throughout this litigation, Penn National has hardly had a meaningful opportunity to respond to, much less comply with, a previous motion to compel before another is filed. Now, despite the fact that Penn National has and is continuing to comply with the May 5, 2022 Order, Covil seeks to reap the fruits of its years' long investment in rapid-fire motions to portray Penn National as a discovery derelict. It is taking the unprecedented step of seeking a court-sanctioned punishment simply because Penn National exercised its legal right of appellate review. Simple fairness should dictate otherwise.

BACKGROUND

In light of Covil's numerous and baseless accusations that Penn National has failed to participate meaningfully in any discovery in this case, it is worth reviewing the lengths to which Penn National has gone to respond to Covil's discovery requests.

Prior to May 2018, Covil had never requested insurance coverage from Penn National and had never tendered any lawsuit to Penn National for coverage. In May 2018, only after Covil had suffered an adverse verdict in an action tried in federal court in North Carolina, Covil first issued a subpoena to Penn National requesting copies of insurance policies issued by Penn National to Covil in connection with Covil's involvement in the case of *Ann Finch, Individually and as Executrix of the Estate of Franklin Delenor Finch v. BASF Catalysts, LLC, et al.* in the United States District Court for the Middle District of North Carolina (Case No. 1:16CV1077) ("*Finch* Litigation"). Attached to the subpoena was a list of all policies, identified by policy number, issued to Covil from March 31, 1969 to March 31, 1992 by various insurers, including the two policies issued by Penn National at issue in this case. Penn National located and produced copies of the

two policies on June 15, 2018 after conducting a search of the policy numbers that Covil identified. Penn National then conducted an electronic search of any commercial liability policies it issued to Covil both before and after its 1986-1987 and 1987-1988 Policies, but it found none.

Thereafter, between June 15, 2018 and December 17, 2020, when Covil served Penn National with notice of a 30(b)(6) deposition in this action, neither Covil nor the Receiver made Penn National aware of any issues it had with Penn National's response to the May 2018 subpoena in the *Finch* Litigation, including whether Penn National conducted any searches for policies that may have provided "additional insured" coverage to Covil. This is despite the fact that, starting in February 2020, Penn National worked closely with the Receiver for Covil on Covil-related cases and contributed to the defense of all asbestos lawsuits filed against Covil that have been tendered to Penn National. During that time, Penn National attended the mediations conducted in these lawsuits, and it has also participated and collaborated in countless pre-mediation and pre-trial conferences with Covil's Receiver, Covil's asbestos defense counsel, and other participating insurers with respect to strategy, valuation, and contribution to settlements based upon the applicable insurance coverage and the known evidence in each underlying Covil asbestos case.

Notwithstanding Penn National's cooperation with Covil in the defense and settlement of numerous cases, Covil filed this action in April 2020 seeking an undefined "declaration" of coverage, but without reference to any specific underlying claim where coverage was in dispute. Ever since the Complaint in this action was filed, Penn National has been engaged in extensive discovery concerning its insurance policy repository and searches for Covil-related policy documents. Specifically, Covil has served the following written discovery on Penn National:

- Covil Corporation's First Interrogatories and First Requests for Production to Defendant Penn National (served on April 9, 2021): The twenty-six (26)

interrogatories and thirty-three (33) requests for production of documents sought information regarding all insurance policies issued to Covil or on which Covil was insured, all underwriting files, total amounts of premium paid by Covil, all claims submitted by Covil for insurance coverage under any insurance policy, all reserves on any such claims, loss runs on each policy of insurance, a detailed description of what Penn National did to search for policies issued to Covil, all locations where such searches were conducted, all steps taken by Penn National to determine the terms and conditions of any policies issued to Covil, communications with reinsurers, reinsurance documents, retention policies, storage policies, all electronic systems used by Penn National to store its policies, the process of how policy numbers are assigned, how liability payments are saved and stored, any documents in which the word “Covil” is used, communications with defense counsel for Covil, membership in Insurance Services Office, participation in an April 1977 meeting held by the American Insurance Association, claims handling policies, all policies of insurance issued to 240 listed contractors, and certificates of insurance or other coverage issued to 650 listed facilities.

- Penn National served its responses to Covil’s first set of discovery requests on May 10, 2021 and supplemental responses on June 11, 2021. In conjunction with its responses, Penn National produced troves of Covil-related policy documents and offered to produce additional documents upon agreement on a Confidentiality Agreement and Protective Order.

- Covil's Second Set of Requests for Production of Documents (served on November 19, 2021): Covil sought documents regarding litigation holds placed by Penn National.
 - Penn National served its responses to Covil's second requests for production of documents on December 20, 2021. Penn National thereafter supplemented its responses on December 28, 2021.
- Covil's Second Set of Interrogatories, Third Requests for Production of Documents, and First Requests for Admissions (served on January 18, 2022): The twenty-two (22) additional interrogatories, twenty-four (24) additional requests for production of documents, and twenty-six (26) requests for admission requested information regarding why certain historic insurance policies were not destroyed pursuant to Penn National's retention policy, additional information regarding Penn National's retention policy, information regarding all historic insurance policies that were destroyed pursuant to Penn National's retention policies after June 2018, including identification of named insureds and additional insureds on those policies, notices provided to insureds regarding the destruction of historic insurance policies, all historic insurance policies that were not destroyed pursuant to Penn National's retention policy, Penn National's destruction/purge practices, how historic insurance policies are identified to be destroyed, all communications between Penn National and any other insurer for Covil, all communications with Iron Mountain, all training relating to Penn National's retention policy, Penn National's litigation hold policy, all litigation holds placed after June 2018, all sanctions issued to Penn National and its

counsel, all spoliation orders received by Penn National policyholders, policies written to Louisiana and Wisconsin insureds prior to 1990, and all litigation where Penn National was sued in a direct action in Louisiana and Wisconsin.

- Penn National responded to Covil's second set of interrogatories, third requests for production of documents and requests for admission on February 17, 2022. On March 9, 2022, Penn National served its supplemental response to Covil's third set of requests for production of documents and, upon execution of a Confidentiality Agreement and Protective Order, Penn National also produced over 2,500 pages of additional documents.
- Covil's Fourth Set of Requests for Production of Documents (served on May 13, 2022): Covil served nineteen (19) additional requests for production of documents, including requesting documents regarding reviews by Penn National of documents it destroyed after 2010 pursuant to its retention policy, all self-audits generated in connection with Penn National's record retention policy, additional documents regarding Penn National's litigation hold regarding Covil cases, copies of Penn National's Standards of Conduct policy, copies of Penn National's legal review guidelines, a spreadsheet of all historic insurance policies stored at Iron Mountain, all documents contained in the boxes from Iron Mountain reviewed by Ellis & Winters, Penn National's organization of historic insurance policies contained on microfiche, inventory data sheets for historic insurance policies stored by Penn National, all communications regarding orders

entered by Ret. Justice Toal, and all communications with Covil's asbestos defense attorneys.

In addition to the forty-eight (48) interrogatories, seventy-eight (78) requests for production of documents, and twenty-six (26) requests for admission, Covil has, on its own accord, taken the deposition of Brent Reifsnnyder, Penn National Director of Administrative Services, and has also conducted two separate Rule 30(b)(6) depositions of Penn National, for which Boyd Wright, Penn National's Senior Home Office Claims Examiner, and Scott Maier, Associate General Counsel, served as Penn National's corporate designees.

At no point during any of the discovery that Penn National has engaged in did Covil produce a policy number or even any "secondary evidence" of any additional commercial general liability policies issued by Penn National to Covil other than the 1986-87 Policy and the 1987-88 Policy, both of which were produced by Penn National to Covil. Covil instead demanded that Penn National manually search its entire repository of historic policies to determine if any additional policies of insurance issued to Covil exist and if there are any policies of insurance on which Covil is covered as an additional insured. Penn National objected to performing a manual search on the grounds that it would be unduly burdensome without being provided with a policy number to perform the search. Specifically, Penn National stores its historic policies on microfiche contained in 148 boxes—which include approximately 300,000 microfiche cards containing commercial lines policies, each of which is comprised of up to 60 images, meaning that there are roughly 18 million pages of commercial lines policies stored on microfiche—and in paper documents contained in 5,800 boxes stored at an Iron Mountain facility.

Covil further demanded that Penn National search its millions of policy-related documents to find any policies that Penn National may or may not have issued for 240 different "contractors"

and 650 separate “facilities” on which Covil is not a named insured, but rather may theoretically qualify as an additional insured. Covil made this request without any evidence indicating that Penn National issued policies to any of these 240 “contractors” or 650 “facilities” or that Covil indeed had any substantive relationship with any of the “contractors” or “facilities.”

Even without any evidence indicating that Penn National may have issued a policy for any of the 890 entities listed by Covil, or that Covil had any relationship with any of the entities, Penn National searched its electronic system for any information regarding the entities. After dedicating many hours to this project, Penn National’s search generated a result of four policies: an inland marine policy which did not provide general liability insurance coverage, a policy issued to an entity after Covil was no longer in existence and that had been purged pursuant to Penn National’s Document Retention Policy, and two additional general liability policies issued to unrelated entities which did not provide coverage to Covil as an insured or additional insured. Internal Penn National communications concerning these policy-related documents were produced with Penn National’s responses to Covil’s discovery requests, and Penn National confirmed that it would produce the policy documents subject to a protective order, as such documents were confidential in that they related to non-Covil entities.

Still not satisfied with the results of Penn National’s search for policies, Covil moved to compel Penn National to perform a manual search of its historic files. After a hearing on November 11, 5, 2021, this Court directed Ellis & Winters, LLP to conduct a review of Penn National’s repository of historic policy-related documents to confirm whether there is a way to search Penn National’s archived records for policy documents for a specific insured without a policy number. Three Ellis & Winters employees spent two days and 32 hours sampling approximately 100 boxes of paper documents. Subsequently, two Ellis & Winters employees spent another two days and

21.7 hours reviewing microfiche cards. The Ellis & Winters employees, using a list of policy numbers that Covil apparently provided to them (but not to Penn National), were able to locate three additional policies of insurance. However, these policies were only located by Ellis & Winters because it had access to policy numbers for the policies. Furthermore, it is undisputed by the parties that these policies of insurance are not applicable to respond to Covil's asbestos liability because the policies were an inland marine policy, a boiler machine policy, and a commercial automobile policy, and therefore, provide no general liability coverage to Covil.

After its search, Ellis & Winters submitted a report to this Court, which confirmed that Penn National actually stored its historic policy documents by policy numbers; as Penn National had repeatedly represented in this litigation. Despite having unfettered access to Penn National's historic policy documents and spending approximately 50 hours over four days searching, Ellis & Winters still was unable to find any additional commercial general liability policies that were issued to Covil or under which Covil was an additional insured.

On April 11, 2022, this Court held a hearing to address Ellis & Winters' report and other pending motions. As a result of the hearing, on May 5, 2022, the Court entered an Order – which can only be described as a sanctions order – which required Penn National to (1) image and digitize its microfiche repository of historic commercial lines insurance policies, and (2) allow Covil and its attorneys unfettered access to this repository. Penn National filed a motion to reconsider the May 5, 2022 Order, which this Court denied on May 26, 2022. Following the Court's denial of Penn National's motion to reconsider, Penn National exercised its legal right to seek appellate review of what it viewed as an onerous and overly burdensome sanctions order. After these appeals were unsuccessful, Penn National immediately began the process of complying with the Court's Order.

STANDARD

Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may “make such orders in regard to the failure as are just,” including an order awarding attorney’s fees and costs. *In re Anonymous Member of the S.C. Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001)) (“Judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.”). Generally, “the sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 719 (Ct. App. 1999). The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990). Furthermore, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure. *Downey*, 294 S.C. at 45, 362 S.E.2d at 318; *Kershaw Co. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990).

“In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice.” *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). Sanctions are not appropriate if the Court “finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” Rule 37, SCRCP.

DISCUSSION

- 1. Penn National's objections to Covil's demand that it manually search its entire repository of historic policies and its subsequent appeal of the Trial Court's May 5, 2022 Order commanding it to do so were asserted in good faith and do not constitute an abuse of the discovery process.**

Penn National asserted legitimate, well-founded objections to Covil's discovery requests, which were based on an unsubstantiated assumption that there *could* be other insurance policies applicable to Covil, under the name of an unknown company, from an unknown time, with an unknown policy number. Similarly, Penn National's concurrent appeals of the May 5, 2022 Order were based on a reasonable, good faith belief that an order requiring Penn National to image and digitize its entire historic microfiche repository of commercial line insurance policies and allow opposing counsel full and unrestricted access to this created database was overly burdensome and beyond the scope of Rule 26, SCRCp.

As Ellis & Winters found during its investigation, Penn National's archived microfiche records contain more than 300,000 microfiche cards corresponding to commercial line policies alone (with each card containing up to 60 images), meaning that there are roughly 18 million pages of commercial line policy-related documents stored on Penn National's microfiche cards. Ellis & Winters found that it could take up to 45 minutes to print the images on a single microfiche card, meaning that it could take roughly 5,625 workweeks to just print the images stored on microfiche for commercial line policies. Furthermore, Ellis & Winters found that the cost to image and digitize Penn National's microfiche repository of commercial lines policies would be between \$240,000 to \$960,000. This, in conjunction with the fact that Covil never provided any information or secondary evidence that there may be other general liability insurance policies that may have been issued to it, formed the basis for Penn National's appeal.

Applying the framework articulated by the South Carolina Supreme Court, Penn National argued in its petition that Covil had failed to meet its burden of showing that a manual search of Penn National's historic insurance policies was relevant and necessary to Covil's case. See *Hollman v. Woolfson*, 384 S.C. 571, 580, 683 S.E.2d 495, 500 (2009) ("In determining whether information is necessary, the party seeking information must 'demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.' The trial court must determine whether there are reasonable alternatives available to discover the information.") (quoting *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 476, 674 S.E.2d 154, 163 (2009)). Penn National also relied on applicable precedent in which appellate courts vacated overbroad and burdensome discovery orders. See *Oncology & Heatology Assocs. of S.C., LLC v. South Carolina Dep't of Health & Envtl. Control*, 387 S.C. 380, 388-89, 692 S.E.2d 920, 924-25 (2010); *Royster v. Unity Life Insurance Company*, 193 S.C. 468, 8 S.E.2d 875 (1940); *Boykin v. Hermitage Cotton Mills*, 180 S.C. 364, 185 S.E. 863 (1936).¹

Here, Penn National's objections to Covil's demand that it manually search its entire repository of historic policies and its subsequent appeals of the May 5, 2022 Order requiring it to do so and more were clearly based on the applicable law. The fact that Penn National's appeals

¹ When facing similarly-overbroad discovery requests in asbestos cases, courts have been clear that discovery must be limited to the actual products and time periods at issue in the case. See, e.g., *Stevens v. CBS Corp.*, Case No. 3:11-cv-6073-RBL, 2012 U.S. Dist. LEXIS 123305, at *5-6 (W.D. Wash. Aug. 29, 2012) (denying a motion to compel defendants to produce "each and every asbestos-containing component manufactured, sold, or supplied by Defendants to all customers of a thirty year period," and describing the argument that such overly-broad information could be relevant to a specific plaintiff as "perplexing"); *In re Sears, Roebuck & Co.*, 123 S.W.3d 573, 574-79 (Tex. Ct. App. 2003) (reversing a trial court's order compelling production of documents related to Sears products to which the plaintiff had never been exposed, while also observing that the Texas Supreme Court has regularly "intervened in asbestos litigation when the trial court compelled discovery relating to products the plaintiffs never used for time periods they were not employed" (citing *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998), and *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995))).

of the May 5, 2022 Order were dismissed as interlocutory is immaterial to the immediate motion. The dismissal of an appeal as interlocutory is not tantamount to a decision on the merits of the appeal, nor does it mean the arguments in the appeal lack merit. On the other hand, the imposition of sanctions against Penn National for appealing the Order would be akin to punishing Penn National simply for exercising its legal right to seek appellate review. This would undoubtedly have a chilling effect on other litigants who may decide to abandon an otherwise meritorious appeal rather than face the risk of sanctions if the case is remanded back to the trial court.

In deciding whether and/or what sanction to impose for failure to disclose evidence during the discovery process, the trial court “should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice” to the discovering party. *Samples*, 329 S.C. at 112, 495 S.E.2d at 216. In this case, Penn National has responded to dozens of interrogatories, requests for production of documents, and requests to admit propounded by Covil. Penn National’s responses to these requests are presumably satisfactory, as Covil’s present motion is based solely on the parties’ dispute over whether and how to conduct the search for potentially non-existent historic commercial general liability policies applicable to Covil. (Motion, p. 2). With respect to whether the failure to produce any historic general liability policies applicable to Covil was willful, Penn National submits that it was not. As set forth above, Penn National had a reasonable and good faith belief that the appeal was justified based on applicable precedent. Finally, Covil has not shown it was prejudiced by Penn National’s appeal of the May 5, 2022 Order given that Covil has not identified any applicable commercial general liability policies that Penn National has not already produced.

In short, Penn National’s decision to not immediately and voluntarily agree to either spend an unreasonable amount of time and resources manually searching its repository of historic policies

or incur hundreds of thousands of dollars to image and digitize its repository in response to Covil's requests when there was no evidence to suggest that Penn National had issued any responsive policies in addition to the ones already produced is not a sanctionable offense. Nor is Penn National's appeal of the May 5, 2022 Order a willful and unjustified refusal to comply with the Order. Both actions were based on a reasonable and good faith reliance on applicable law. Accordingly, this Court should deny Covil's motion for attorney's fees and costs.

2. Penn National is complying with the Court's May 5, 2022 Discovery Order

Sanctions are also not appropriate in this case because Penn National is and has been complying with the Court's May 5, 2022 Discovery Order. Notwithstanding the apoplectic language in Covil's motion accusing Penn National of abusing the discovery process, Penn National has in fact engaged in extensive discovery both before and after the entry of the May 5, 2022 Order and, since January 2023, has been actively working with counsel at Ellis & Winters to review and digitize the thousands of microfiches containing Penn National's historic policy documents. Not surprisingly, this process has taken time, but the notion that Penn National has failed to participate in discovery is simply incorrect.

The nature of the adversarial process means that discovery disputes happen in nearly every case. However, the existence of a discovery dispute is not itself grounds for sanctions – regardless of how many consecutive motions to compel an opposing party may file. Although Rule 26, SCRCR undoubtedly provides for a broad scope of discovery, it is not limitless. Nothing in the South Carolina Rules of Civil Procedure requires one party to blindly follow the dictates of the other in regard to the scope or breadth of discovery. To the contrary, Rule 26(a) allows a party to seek to limit the use of discovery methods for a number of reasons, including if the discovery sought “is unreasonably burdensome or expensive taking into account the needs of the case, the

amount of the parties' resources, and the importance of the issues at stake in the litigation." Rule 26(a), SCRCF.

Here, all Penn National has done is assert objections that are grounded in the rules while continuing to fulfil its other discovery obligations. When the Court disagreed with Penn National's application of those objections, Penn National followed the procedure outlined in the rules for obtaining appellate review. When Penn National's appellate avenues were exhausted, it immediately began complying with the May 5, 2022 Order. At no point in this case has Penn National intentionally and without proper justification withheld documents or failed to comply with a court order. Importantly, because Penn National is in compliance with the Court's May 5, 2022 Order, the sanctions requested by Covil would serve no purpose other than to punish Penn National for exercising its legal rights and would "go beyond the necessities of the situation to foreclose a decision on the merits of a case." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 719 (Ct. App. 1999). Accordingly, Covil's Motion for Attorney's Fees and Costs should be denied.

CONCLUSION

For the reasons set forth above, Penn National requests that this Court deny Covil's Motion for Attorney's Fees and Costs. A party should not be punished for attempting to narrow the scope of discovery or for seeking appellate review of an order with which it disagrees, both of which Penn National clearly has a right to do. To hold otherwise would render Rule 26(a), SCRCF essentially meaningless.

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National Mutual Casualty Insurance
Company*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Covil Corporation, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Plaintiff,	)	C/A NO.: 2020-CP-40-02098
	)	
vs.	)	
	)	
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	

**SUPPLEMENTAL DECLARATION OF JONATHAN M. ROBINSON IN SUPPORT OF
THE RECEIVER'S MOTION FOR ATTORNEY'S FEES AND COSTS**

I, Jonathan M. Robinson, declare on personal knowledge as follows:

1. My name is Jonathan M. Robinson, and I am an adult over the age of eighteen and am competent to testify to the matters herein. I am admitted to practice in the State of South Carolina, and I am the Managing Partner at the law firm of Smith Robinson Holler DuBose and Morgan, LLC ("SMITH | ROBINSON"), counsel of record for the Receiver for Covil Corporation in this action. I base this declaration on personal knowledge of the facts contained herein.

2. I am familiar with the customary billing practices of SMITH | ROBINSON and the time entries submitted in this matter. The time entries submitted were prepared from detailed, contemporaneously recorded time records of the kind customarily used by SMITH | ROBINSON in billing clients.

3. The Receiver seeks the following attorney's fees incurred on behalf of SMITH | ROBINSON in connection with the Motion for Attorney's Fees and Costs. Attached as **Exhibit A** is a true and correct summary of contemporaneous and detailed records of time billed and services rendered by SMITH | ROBINSON sought in connection with the Receiver's Motion for Attorney's Fees and Costs. These records show for each attorney the date range, hours expended, and billable

rate for the work performed. Because this action remains pending, SMITH | ROBINSON has only submitted the time summaries for which the Receiver seeks to recover attorney's fees in connection with the Motion for Attorneys' Fees and Costs. Detailed billing invoices are being made available for in camera review upon request of the Court.

4. As set forth in *Buist vs. Buist*, 410 SC 569, 766 S.E.2d 381 (2014); *E.D.M. v. T.A.M.*, 307 SC 471, 415 S.E.2d 812 (1992); and *Glasscock v. Glasscock*, 304 SC 158, 403 S.E.2d 313 (1991), the Court must first determine whether a party is entitled to an attorney's fee award using the factors in *E.D.M.* and footnote #1 in *Glasscock*. As to *Glasscock*, the factors are (a) the ability of the parties to pay; (b) their respective financial conditions; (c) the contingency of the attorney's compensation; (d) the effect of an attorney's fee award on each party's standard of living; and (e) the beneficial results obtained in the litigation. As to *E.D.M.*, the factors and standards for measuring the amount of attorney's fees are as follows: (1) the nature, extent and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel, and (4) the customary fees for similar serves.

5. I graduated from the University of South Carolina in 1997 and graduated from the University of South Carolina School of Law in 2000 with a juris doctor degree. I am a member of the South Carolina Bar, the Kershaw County Bar Association, South Carolina Defense Trial Attorneys Association and the American Board of Trial Advocates. I have previously served as President of the Kershaw County Bar Association. I was recognized in the 2023, 2022, and 2021 editions of *Best Lawyers in America* for commercial litigation and insurance litigation and in the 2022 and 2021 "Midlands Legal Elite" in *Columbia Business Monthly* for business litigation. I am admitted to practice in South Carolina, the U.S. District Court for the District of South Carolina, and the U.S. Court of Appeals for the Fourth Circuit.

6. SMITH | ROBINSON has been providing legal representation to the Receiver for Covil Corporation since 2019. Through April 24, 2023, SMITH | ROBINSON has spent 195.4 hours on the issues that are the subject of the Receiver's Motion for Attorney's Fees for a total of \$93,840.00.

7. The preparation of this matter has required SMITH | ROBINSON to have numerous conferences with its client and co-counsel in this matter, prepare and file numerous motions to compel and other pleadings, and attend numerous hearings, as more specifically outlined in the Motion for Attorney's Fees and Costs.

8. This matter has involved complex and aggressive litigation that has demanded the expenditure of extraordinary time and resources.

9. SMITH | ROBINSON has expended considerable time on behalf of the Receiver as noted in billing statements attached as **Exhibit A** hereto.

10. Additionally, I have reviewed the declaration of W. Brad Nes and billing statements of Morgan, Lewis & Bockius LLP ("Morgan Lewis"), attached as **Exhibit B** hereto, and the declaration of Marghretta H. Shisko and billing statements of John B. White, Jr., P.A., attached as **Exhibit C** hereto.

11. This insurance coverage action and the discovery disputes involved highly complex and detailed issues of law and necessitated the association of outside counsel with Morgan Lewis. Additionally, the difficulty of this case also necessitated the association of local co-counsel, John B. White, Jr. P.A. The extent of the work performed by SMITH | ROBINSON, Morgan Lewis, and John B. White, Jr., P.A. was necessary to properly litigate this matter and obtain the materials sought through discovery.

12. Throughout the years, I have litigated numerous cases necessitating the association of outside counsel. Morgan Lewis and John B. White, Jr., P.A. and their attorneys are highly qualified and experienced in the area of complex litigation and insurance coverage law and their participation in this matter was instrumental. They have a high professional standing both generally and in this area of practice.

13. I believe, based on discussions with my client, other attorneys familiar with this difficult area of law, and my general familiarity with the legal profession, that the fees charged for services similar to those in this case are consistent with the hourly rates charged by SMITH | ROBINSON, Morgan Lewis, and John B. White, Jr., P.A. Accordingly, the hourly rate is within the range customarily charged in this locality for similar services by local counsel and outside counsel.

14. Given Covil's lack of financial resources, the law firms representing the Receiver agreed to assume the risk of undertaking this representation on the basis of contingent fee contracts as permitted by this Court. However, the fees sought in the present Motion are fees directly associated with the pursuit of discovery as permitted by Rule 26 and Rule 37(a) of the South Carolina Rules of Procedure.

15. Counsel in this matter obtained beneficial results for the Receiver by obtaining several orders from the Court compelling Pennsylvania National Mutual Casualty Insurance Co. to search its document repository and produce applicable historic insurance policies and policy-related documents.

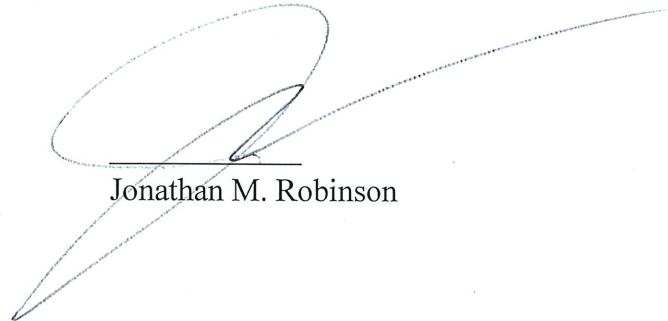
16. The total fees sought in the Motion for Attorney's Fees and Costs are as follows:

a. MORGAN LEWIS	\$493,348.00

- b. SMITH ROBINSON \$93,840.00
- c. JOHN B. WHITE, P.A. \$84,505.00

I declare under penalty of perjury under the laws of the United States of America and the State of South Carolina that the foregoing statements are true and correct.

Executed on April 25, 2023 in Columbia, South Carolina.

A handwritten signature in blue ink, appearing to read 'Jonathan M. Robinson', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

Jonathan M. Robinson

EXHIBIT A



Post Office Drawer 39
Camden, SC 29021-0039
United States
Phone: 803.432.1992
Fax: 803.432.0784

Invoice

Invoice # 27691
Date: 04/21/2023

Covil Corporation

19-075A

19-075A Covil v Pennsylvania National Mutual Casualty Insurance Co.

Client Reference Number: unknown

Date	Timekeeper	Notes	Quantity	Rate	Total
01/15/2021	SNP	[REDACTED]	1.80	\$450.00	\$810.00
01/26/2021	JMR	[REDACTED]	2.50	\$750.00	\$1,875.00
02/08/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/08/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/15/2021	SNP	[REDACTED]	0.30	\$450.00	\$135.00
02/16/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/22/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
03/10/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00

03/23/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/01/2021	SNP	[REDACTED]	0.30	\$450.00	\$135.00
04/05/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/07/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/07/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/08/2021	SNP	[REDACTED]	0.40	\$450.00	\$180.00
04/09/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/09/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/13/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
04/14/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/14/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/14/2021	SNP	[REDACTED]	0.80	\$450.00	\$360.00
04/14/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/15/2021	SNP	[REDACTED]	0.30	\$450.00	\$135.00
04/15/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/16/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00

04/21/2021	SNP	[REDACTED]	0.30	\$450.00	\$135.00
04/22/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/24/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/26/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
04/28/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/03/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/04/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/04/2021	SNP	[REDACTED]	0.30	\$450.00	\$135.00
05/11/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/28/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/14/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/16/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
06/17/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/18/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
06/18/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00

06/21/2021	SNP		0.10	\$450.00	\$45.00	
06/22/2021	SNP		0.10	\$450.00	\$45.00	
06/25/2021	SNP		0.10	\$450.00	\$45.00	
06/29/2021	SNP		0.10	\$450.00	\$45.00	
06/30/2021	SNP		0.10	\$450.00	\$45.00	
07/01/2021	AR		0.10	\$450.00	\$45.00	
07/01/2021	SNP		0.10	\$450.00	\$45.00	
07/09/2021	SNP		0.20	\$450.00	\$90.00	
07/12/2021	SNP		0.20	\$450.00	\$90.00	
07/16/2021	SNP		0.10	\$450.00	\$45.00	
07/22/2021	SNP		0.10	\$450.00	\$45.00	
07/23/2021	SNP		0.10	\$450.00	\$45.00	
07/26/2021	SNP		0.10	\$450.00	\$45.00	
07/28/2021	SNP		0.10	\$450.00	\$45.00	
07/29/2021	SNP		0.10	\$450.00	\$45.00	

08/02/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/07/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/19/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/20/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/20/2021	SNP	[REDACTED]	0.60	\$450.00	\$270.00
08/20/2021	DF	[REDACTED]	2.10	\$225.00	\$472.50
08/20/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
08/24/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/24/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/25/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/27/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
09/08/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
09/08/2021	SNP	[REDACTED]	0.50	\$450.00	\$225.00
10/05/2021	BL	[REDACTED]	0.30	\$450.00	\$135.00
10/05/2021	LC	[REDACTED]	0.20	\$225.00	\$45.00
10/05/2021	GMS	[REDACTED]	0.50	\$750.00	\$375.00

10/05/2021	GMS		0.50	\$750.00	\$375.00	
10/21/2021	SNP		0.10	\$450.00	\$45.00	
10/21/2021	JMR		0.50	\$750.00	\$375.00	
10/22/2021	JMR		1.00	\$750.00	\$750.00	
10/23/2021	SNP		0.20	\$450.00	\$90.00	
10/25/2021	SNP		4.90	\$450.00	\$2,205.00	
10/25/2021	SNP		0.10	\$450.00	\$45.00	
10/25/2021	GMS		2.00	\$750.00	\$1,500.00	
10/26/2021	SNP		0.90	\$450.00	\$405.00	
10/26/2021	SNP		0.20	\$450.00	\$90.00	
10/26/2021	SNP		0.60	\$450.00	\$270.00	
10/26/2021	JMR		1.00	\$750.00	\$750.00	
10/26/2021	GMS		0.50	\$750.00	\$375.00	
10/28/2021	BL		2.90	\$450.00	\$1,305.00	
10/28/2021	JMR		2.90	\$750.00	\$2,175.00	
11/05/2021	SNP		0.10	\$450.00	\$45.00	
11/08/2021	DF		0.30	\$225.00	\$67.50	
11/12/2021	SNP		0.10	\$450.00	\$45.00	
11/12/2021	SNP		0.10	\$450.00	\$45.00	
11/12/2021	SNP		0.30	\$450.00	\$135.00	

11/12/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
11/16/2021	JMR	[REDACTED]	0.50	\$750.00	\$375.00
12/08/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
12/09/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/09/2021	SNP	[REDACTED]	0.30	\$450.00	\$135.00
12/16/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
12/20/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
12/21/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/22/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
12/23/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/29/2021	SNP	[REDACTED]	0.20	\$450.00	\$90.00
12/29/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/29/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/29/2021	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/29/2021	SNP	[REDACTED]	0.40	\$450.00	\$180.00
01/07/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/10/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00

01/10/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/11/2022	SNP	[REDACTED]	3.20	\$450.00	\$1,440.00
01/11/2022	JMR	[REDACTED]	3.00	\$750.00	\$2,250.00
01/11/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/11/2022	BL	[REDACTED]	3.00	\$450.00	\$1,350.00
01/18/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/20/2022	JMR	[REDACTED]	0.40	\$750.00	\$300.00
01/24/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/25/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/08/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/18/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/25/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
03/07/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
04/06/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
04/11/2022	DF	[REDACTED]	0.70	\$225.00	\$157.50
04/11/2022	SNP	[REDACTED]	3.20	\$450.00	\$1,440.00
04/25/2022	DF	[REDACTED]	0.30	\$225.00	\$67.50
05/02/2022	DF	[REDACTED]	0.40	\$225.00	\$90.00
05/02/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
05/03/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00

05/05/2022	AR	[REDACTED]	0.10	\$450.00	\$45.00
05/09/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/09/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/17/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/17/2022	SNP	[REDACTED]	1.50	\$450.00	\$675.00
05/18/2022	SNP	[REDACTED]	2.80	\$450.00	\$1,260.00
05/18/2022	AR	[REDACTED]	0.40	\$450.00	\$180.00
05/18/2022	JMR	[REDACTED]	1.00	\$750.00	\$750.00
05/19/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/26/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
05/26/2022	DF	[REDACTED]	0.60	\$225.00	\$135.00
05/31/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
05/31/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
05/31/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/01/2022	SNP	[REDACTED]	1.50	\$450.00	\$675.00
06/02/2022	SNP	[REDACTED]	1.00	\$450.00	\$450.00
06/03/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/03/2022	SNP	[REDACTED]	2.30	\$450.00	\$1,035.00
06/03/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/03/2022	AR	[REDACTED]	0.10	\$450.00	\$45.00

06/05/2022	AR	[REDACTED]	0.40	\$450.00	\$180.00
06/05/2022	AR	[REDACTED]	0.70	\$450.00	\$315.00
06/06/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/06/2022	SNP	[REDACTED]	2.20	\$450.00	\$990.00
06/06/2022	DF	[REDACTED]	1.90	\$225.00	\$427.50
06/06/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/06/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/06/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/07/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/07/2022	SNP	[REDACTED]	2.10	\$450.00	\$945.00
06/07/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/07/2022	SNP	[REDACTED]	0.80	\$450.00	\$360.00
06/07/2022	AR	[REDACTED]	0.20	\$450.00	\$90.00
06/07/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
06/07/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/07/2022	AR	[REDACTED]	0.20	\$450.00	\$90.00
06/09/2022	SNP	[REDACTED]	1.40	\$450.00	\$630.00
06/09/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00

06/10/2022	SNP		0.60	\$450.00	\$270.00
06/14/2022	SNP		7.30	\$450.00	\$3,285.00
06/15/2022	SNP		11.60	\$450.00	\$5,220.00
06/16/2022	SNP		4.20	\$450.00	\$1,890.00
06/16/2022	AR		0.10	\$450.00	\$45.00
06/16/2022	SNP		0.50	\$450.00	\$225.00
06/17/2022	AR		0.10	\$450.00	\$45.00
06/17/2022	SNP		0.10	\$450.00	\$45.00
06/17/2022	SNP		0.60	\$450.00	\$270.00
06/17/2022	SNP		0.10	\$450.00	\$45.00
06/20/2022	AR		0.80	\$450.00	\$360.00
06/21/2022	SNP		3.30	\$450.00	\$1,485.00
06/21/2022	SNP		0.10	\$450.00	\$45.00
06/21/2022	SNP		0.10	\$450.00	\$45.00
06/22/2022	SNP		0.10	\$450.00	\$45.00
06/22/2022	SNP		0.10	\$450.00	\$45.00
06/27/2022	SNP		0.10	\$450.00	\$45.00
06/27/2022	SNP		0.10	\$450.00	\$45.00

06/28/2022	SNP	[REDACTED]	0.60	\$450.00	\$270.00
06/28/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/28/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
06/29/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
06/29/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/09/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/09/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
08/10/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/10/2022	DF	[REDACTED]	0.30	\$225.00	\$67.50
08/10/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
08/10/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/23/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/24/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/24/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
08/24/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/24/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/24/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/25/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00

08/25/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/25/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/25/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/29/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/30/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/30/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
08/31/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
08/31/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
08/31/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
09/08/2022	SNP	[REDACTED]	4.00	\$450.00	\$1,800.00
09/21/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
09/27/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
10/14/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
10/14/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
10/17/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
10/17/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
10/21/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
10/24/2022	SNP	[REDACTED]	0.80	\$450.00	\$360.00

10/24/2022	SNP	[REDACTED]	1.60	\$450.00	\$720.00
10/25/2022	JMR	[REDACTED]	1.00	\$750.00	\$750.00
11/03/2022	SNP	[REDACTED]	0.50	\$450.00	\$225.00
11/04/2022	SNP	[REDACTED]	0.50	\$450.00	\$225.00
11/10/2022	SNP	[REDACTED]	0.30	\$450.00	\$135.00
11/15/2022	DF	[REDACTED]	0.70	\$225.00	\$157.50
11/15/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
11/15/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
11/16/2022	DF	[REDACTED]	4.60	\$225.00	\$1,035.00
11/27/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
11/29/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
12/14/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/15/2022	SNP	[REDACTED]	0.60	\$450.00	\$270.00
12/16/2022	SNP	[REDACTED]	1.00	\$450.00	\$450.00
12/16/2022	DF	[REDACTED]	0.30	\$225.00	\$67.50
12/16/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00

12/16/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/18/2022	SNP	[REDACTED]	2.90	\$450.00	\$1,305.00
12/19/2022	SNP	[REDACTED]	4.60	\$450.00	\$2,070.00
12/19/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/19/2022	JMR	[REDACTED]	0.30	\$750.00	\$225.00
12/20/2022	SNP	[REDACTED]	1.50	\$450.00	\$675.00
12/20/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/21/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/22/2022	SNP	[REDACTED]	2.20	\$450.00	\$990.00
12/22/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/22/2022	SNP	[REDACTED]	0.10	\$450.00	\$45.00
12/28/2022	SNP	[REDACTED]	0.20	\$450.00	\$90.00
01/03/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/03/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/04/2023	SNP	[REDACTED]	0.70	\$450.00	\$315.00
01/12/2023	DF	[REDACTED]	0.20	\$225.00	\$45.00
01/17/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/17/2023	DF	[REDACTED]	0.30	\$225.00	\$67.50
01/17/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00

01/17/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
01/17/2023	SNP	[REDACTED]	1.60	\$450.00	\$720.00
01/17/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/17/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/17/2023	DF	[REDACTED]	0.40	\$225.00	\$90.00
01/17/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/17/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/17/2023	JMR	[REDACTED]	0.50	\$750.00	\$375.00
01/18/2023	AR	[REDACTED]	0.20	\$450.00	\$90.00
01/18/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/18/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
01/18/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/18/2023	AR	[REDACTED]	0.10	\$450.00	\$45.00
01/18/2023	DF	[REDACTED]	0.20	\$225.00	\$45.00
01/18/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
01/25/2023	DF	[REDACTED]	1.60	\$225.00	\$360.00
01/25/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00

01/25/2023	SNP	[REDACTED]	0.90	\$450.00	\$405.00
01/25/2023	FH	[REDACTED]	0.60	\$450.00	\$270.00
01/25/2023	JMR	[REDACTED]	2.00	\$750.00	\$1,500.00
01/26/2023	FH	[REDACTED]	0.30	\$450.00	\$135.00
01/26/2023	JMR	[REDACTED]	5.00	\$750.00	\$3,750.00
01/27/2023	FH	[REDACTED]	0.80	\$450.00	\$360.00
01/27/2023	FH	[REDACTED]	0.20	\$450.00	\$90.00
01/27/2023	JMR	[REDACTED]	6.50	\$750.00	\$4,875.00
01/29/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/01/2023	SNP	[REDACTED]	3.10	\$450.00	\$1,395.00
02/01/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/02/2023	SNP	[REDACTED]	1.20	\$450.00	\$540.00
02/06/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/06/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/08/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/09/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/10/2023	SNP	[REDACTED]	0.80	\$450.00	\$360.00
02/10/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00

02/10/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/13/2023	SNP	[REDACTED]	0.80	\$450.00	\$360.00
02/13/2023	DF	[REDACTED]	0.50	\$225.00	\$112.50
02/14/2023	DF	[REDACTED]	0.20	\$225.00	\$45.00

Time Keeper	Position	Quantity	Rate	Total
Fred Hanna	Associate	1.9	\$450.00	\$855.00
Benjamin Limbaugh	Associate	6.2	\$450.00	\$2,790.00
Shanon Peake	Associate	115.9	\$450.00	\$52,155.00
Austin Reed	Associate	3.5	\$450.00	\$1,575.00
Jon Robinson	Partner	28.1	\$750.00	\$21,075.00
Murrell Smith	Partner	3.5	\$750.00	\$2,625.00
Libby Campbell	Paralegal	0.2	\$225.00	\$45.00
Dot Faulkenberry	Paralegal	15.6	\$225.00	\$3,510.00
			Subtotal	\$84,630.00
			Total	\$84,630.00

Please make all amounts payable to: Smith Robinson Holler DuBose and Morgan, LLC
Tax Id: 83-4467070



Post Office Drawer 39
Camden, SC 29021-0039
United States
Phone: 803.432.1992
Fax: 803.432.0784

Invoice

Invoice # 27695
Date: 04/21/2023

Covil Corporation

19-075A

19-075A Covil v Pennsylvania National Mutual Casualty Insurance Co.

Client Reference Number: unknown

Date	Timekeeper	Notes	Quantity	Rate	Total
02/14/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/15/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/15/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/16/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/16/2023	DF	[REDACTED]	1.90	\$225.00	\$427.50
02/16/2023	SNP	[REDACTED]	1.10	\$450.00	\$495.00
02/16/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00
02/16/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
02/17/2023	SNP	[REDACTED]	2.30	\$450.00	\$1,035.00
02/17/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00

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02/17/2023	SNP		0.10	\$450.00	\$45.00
02/17/2023	LC		0.40	\$225.00	\$90.00
02/17/2023	SNP		0.10	\$450.00	\$45.00
02/17/2023	LC		0.10	\$225.00	\$22.50
04/11/2023	SNP		0.10	\$450.00	\$45.00
04/13/2023	SNP		0.10	\$450.00	\$45.00
04/17/2023	SNP		1.80	\$450.00	\$810.00
04/17/2023	SNP		0.10	\$450.00	\$45.00
04/18/2023	SNP		0.20	\$450.00	\$90.00
04/18/2023	SNP		0.20	\$450.00	\$90.00
04/18/2023	SNP		0.10	\$450.00	\$45.00
04/18/2023	SNP		0.10	\$450.00	\$45.00
04/18/2023	LHB		1.60	\$225.00	\$360.00
04/18/2023	LHB		1.20	\$225.00	\$270.00
04/18/2023	SNP		0.10	\$450.00	\$45.00

04/18/2023	GMS	[REDACTED]	2.50	\$750.00	\$1,875.00
04/19/2023	SNP	[REDACTED]	0.20	\$450.00	\$90.00
04/19/2023	TR	[REDACTED]	0.10	\$225.00	\$22.50
04/19/2023	SNP	[REDACTED]	1.20	\$450.00	\$540.00
04/19/2023	GMS	[REDACTED]	1.20	\$750.00	\$900.00
04/19/2023	JMR	[REDACTED]	1.20	\$750.00	\$900.00
04/19/2023	TR	[REDACTED]	0.30	\$225.00	\$67.50
04/19/2023	TR	[REDACTED]	1.00	\$225.00	\$225.00
04/20/2023	SNP	[REDACTED]	0.10	\$450.00	\$45.00

Time Keeper	Position	Quantity	Rate	Total
Shanon Peake	Associate	9.0	\$450.00	\$4,050.00
Jon Robinson	Partner	1.2	\$750.00	\$900.00
Murrell Smith	Partner	3.7	\$750.00	\$2,775.00
Lucius Bullock	Law Clerk	2.8	\$225.00	\$630.00
Libby Campbell	Paralegal	0.5	\$225.00	\$112.50
Dot Faulkenberry	Paralegal	1.9	\$225.00	\$427.50
Tia Reed	Law Clerk	1.4	\$225.00	\$315.00
			Subtotal	\$9,210.00
			Total	\$9,210.00

Please make all amounts payable to: Smith Robinson Holler DuBose and Morgan, LLC
Tax Id: 83-4467070

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO.: 2020-CP-40-02098
	)	
Covil Corporation, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	
	)	
	)	

**SUPPLEMENTAL DECLARATION OF W. BRAD NES IN SUPPORT OF THE
RECEIVER'S MOTION FOR ATTORNEYS' FEES**

I, W. Brad Nes, declare on personal knowledge as follows:

1. My name is W. Brad Nes, and I am an adult over the age of eighteen and am competent to testify to the matters herein. I am admitted to practice before this Court pro hac vice, and I am a partner at the law firm of Morgan, Lewis & Bockius LLP, counsel of record for the Receiver for Covil Corporation in this action. I base this declaration on personal knowledge of the facts contained herein.

2. I am familiar with the customary billing practices of Morgan Lewis and the time entries submitted in this matter. The time entries submitted were prepared from detailed, contemporaneously recorded time records of the kind customarily used by Morgan Lewis in billing clients.

3. The Receiver seeks the following attorneys' fees incurred on behalf of Morgan Lewis in connection with the Motion for Attorneys' Fees. Attached as **Exhibit 1** is a true and correct listing of contemporaneous and detailed records of time billed and services rendered by

Morgan Lewis sought in connection with the Receiver's Motion for Attorneys' Fees through April 24, 2023.¹ These records show for each attorney the date, hours expended, and nature of the work performed. Because this action remains pending, Morgan Lewis has only submitted the time entries for which the Receiver seeks to recover attorney's fees in connection with the Motion for Attorneys' Fees.

I declare under penalty of perjury under the laws of the United States of America and the State of Texas that the foregoing statements are true and correct.

Executed on April 25, 2023, in Dallas, Texas.



W. Brad Nes

¹ This declaration and supporting exhibit supplements my prior declaration submitted in support of the Receiver's Motion for Attorneys' Fees, dated February 13, 2023.

EXHIBIT 1

Morgan Lewis

Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
Tel: +1.713.890.5000
Fax: +1.713.890.5001
www.morganlewis.com

Summary of Services ended April 24, 2023:

Re: Pennsylvania National Mutual Casualty Insurance Company

Fees

Total charges

\$493,348.00

Detail for Fee Services Rendered

Work Date	Timekeeper	Hours	Rate	Amount	Description
12/30/2020	Edwards, Brady	0.3	900	270.00	
12/31/2020	Edwards, Brady	1.0	900	900.00	
1/4/2021	Edwards, Brady	0.3	900	270.00	
1/6/2021	Nes, W. Brad	1.4	760	1,064.00	
1/7/2021	Nes, W. Brad	3.3	760	2,508.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
1/12/2021	Pick, Cullen	1.3	615	799.50	
1/21/2021	McCulloch Semlinger, Lauren A.	1.3	665	864.50	
1/25/2021	Nes, W. Brad	1.5	760	1,140.00	
1/26/2021	McCulloch Semlinger, Lauren A.	1.7	665	1,130.50	
1/27/2021	McCulloch Semlinger, Lauren A.	3.9	665	2,593.50	
1/28/2021	McCulloch Semlinger, Lauren A.	3.4	665	2,261.00	
2/12/2021	Nes, W. Brad	1.1	760	912.00	
2/15/2021	Nes, W. Brad	1.3	760	912.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/2/2021	Edwards, Brady	1.3	900	1,170.00	
3/8/2021	Nes, W. Brad	0.2	760	152.00	
3/10/2021	Patterson, Nancy L.	0.2	835	167.00	
3/10/2021	Nes, W. Brad	0.5	760	380.00	
3/12/2021	Nes, W. Brad	0.3	760	228.00	
3/19/2021	Edwards, Brady	1.9	900	1,710.00	
3/22/2021	Nes, W. Brad	0.3	760	228.00	
3/23/2021	Nes, W. Brad	1.4	760	1,064.00	
4/8/2021	Patterson, Nancy L.	1.0	835	835.00	
4/25/2021	McCulloch Semlinger, Lauren A.	1.7	665	1,130.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
4/26/2021	McCulloch Semlinger, Lauren A.	2.5	665	1,662.50	
4/27/2021	McCulloch Semlinger, Lauren A.	4.0	665	2,660.00	
5/4/2021	Edwards, Brady	1.0	900	900.00	
5/4/2021	Patterson, Nancy L.	0.3	835	250.50	
5/10/2021	Patterson, Nancy L.	0.4	835	334.00	
6/21/2021	Edwards, Brady	0.5	900	450.00	
7/29/2021	Nes, W. Brad	1.2	760	912.00	
7/30/2021	Nes, W. Brad	1.0	760	760.00	
8/2/2021	Nes, W. Brad	3.0	760	2,280.00	
8/3/2021	Nes, W. Brad	4.0	760	3,040.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
8/5/2021	Nes, W. Brad	5.0	760	3,800.00	
8/7/2021	Nes, W. Brad	0.5	760	380.00	
8/9/2021	Edwards, Brady	0.7	900	630.00	
8/10/2021	Nes, W. Brad	2.4	760	1,824.00	
8/11/2021	Moriarty, Peter	1.2	470	564.00	
8/12/2021	Nes, W. Brad	0.9	760	684.00	
8/12/2021	Moriarty, Peter	3.7	470	1,739.00	
8/16/2021	Moriarty, Peter	2.5	470	1,175.00	
8/17/2021	Moriarty, Peter	1.0	470	470.00	
8/17/2021	Hu, Lingzi	3.1	430	1,333.00	
8/18/2021	Nes, W. Brad	1.5	760	1,140.00	
8/19/2021	Nes, W. Brad	3.0	760	2,280.00	

Date of Printing: 04/24/23

Time & Disbursements through 04/24/23

Matter Currency: US Dollar

Responsible Attorney: Edwards, Brady

Page 5 of 36

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Work Date	Timekeeper	Hours	Rate	Amount	Description
8/19/2021	Hu, Lingzi	3.4	430	1,462.00	
8/20/2021	Nes, W. Brad	1.0	760	760.00	
8/20/2021	Kugler, Claire S.	1.7	670	1,139.00	
8/20/2021	Hu, Lingzi	0.5	430	215.00	
8/25/2021	Nes, W. Brad	0.3	760	228.00	
8/25/2021	Nes, W. Brad	3.3	760	2,508.00	
8/26/2021	Nes, W. Brad	5.0	760	3,800.00	
8/29/2021	Edwards, Brady	0.3	900	270.00	
8/30/2021	Edwards, Brady	0.5	900	450.00	
8/31/2021	Nes, W. Brad	1.3	760	988.00	
9/2/2021	Nes, W. Brad	3.5	760	2,660.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
9/2/2021	Kugler, Claire S.	4.7	670	3,149.00	
9/3/2021	Kugler, Claire S.	0.5	670	335.00	
9/3/2021	Nes, W. Brad	0.5	760	380.00	
9/3/2021	Hu, Lingzi	1.7	430	731.00	
9/4/2021	Kugler, Claire S.	0.5	670	335.00	
9/7/2021	Edwards, Brady	1.0	900	900.00	
9/7/2021	Kugler, Claire S.	0.4	670	268.00	
9/8/2021	Kugler, Claire S.	1.1	670	737.00	
9/8/2021	Nes, W. Brad	1.8	760	1,368.00	
9/17/2021	Hu, Lingzi	2.7	430	1,161.00	
9/20/2021	McCulloch Semlinger, Lauren A.	0.5	665	332.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
9/20/2021	Hu, Lingzi	2.4	430	1,032.00	
9/21/2021	Hu, Lingzi	0.5	430	215.00	
9/27/2021	McCulloch Semlinger, Lauren A.	1.5	665	997.50	
10/1/2021	Nes, W. Brad	0.2	760	152.00	
10/4/2021	Hu, Lingzi	0.4	430	172.00	
10/5/2021	Hu, Lingzi	0.6	430	258.00	
10/22/2021	McCulloch Semlinger, Lauren A.	1.0	665	665.00	
10/22/2021	Singh, Jaswant	3.5	600	2,100.00	
10/26/2021	Nes, W. Brad	4.0	760	3,040.00	
10/26/2021	McCulloch Semlinger, Lauren A.	1.3	665	864.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
10/26/2021	Singh, Jaswant	3.1	600	1,860.00	
10/27/2021	Kugler, Claire S.	2.0	670	1,340.00	
10/27/2021	Nes, W. Brad	1.0	760	760.00	
10/27/2021	Singh, Jaswant	2.3	600	1,380.00	
10/28/2021	Edwards, Brady	4.0	900	3,600.00	
10/28/2021	Nes, W. Brad	4.0	760	3,040.00	
10/28/2021	Hu, Lingzi	2.2	430	946.00	
10/29/2021	Edwards, Brady	1.5	900	1,350.00	
10/29/2021	Nes, W. Brad	0.5	760	380.00	
11/2/2021	Edwards, Brady	1.0	900	900.00	
11/3/2021	Nes, W. Brad	1.0	760	760.00	
11/3/2021	Edwards, Brady	1.5	900	1,350.00	

Date of Printing: 04/24/23
Time & Disbursements through 04/24/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page 9 of 36
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Work Date	Timekeeper	Hours	Rate	Amount	Description
11/4/2021	Nes, W. Brad	1.2	760	912.00	
11/19/2021	Nes, W. Brad	4.2	760	3,192.00	
11/29/2021	Nes, W. Brad	0.2	760	152.00	
11/30/2021	Nes, W. Brad	2.3	760	1,748.00	
12/1/2021	Nes, W. Brad	1.2	760	912.00	
12/2/2021	Nes, W. Brad	2.4	760	1,824.00	
12/3/2021	Edwards, Brady	1.4	900	1,260.00	
12/3/2021	Nes, W. Brad	0.3	760	228.00	
12/7/2021	Edwards, Brady	0.5	900	450.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/7/2021	Nes, W. Brad	1.8	760	1,368.00	
12/8/2021	Nes, W. Brad	2.2	760	1,672.00	
12/9/2021	Nes, W. Brad	3.9	760	2,964.00	
12/9/2021	Moriarty, Peter	4.3	470	2,021.00	
12/10/2021	Kugler, Claire S.	0.3	670	201.00	
12/10/2021	Nes, W. Brad	2.5	760	1,900.00	
12/13/2021	Nes, W. Brad	1.5	760	1,140.00	
12/14/2021	Nes, W. Brad	0.4	760	304.00	
12/15/2021	Nes, W. Brad	1.8	760	1,368.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/17/2021	Edwards, Brady	0.3	900	270.00	
12/17/2021	Nes, W. Brad	0.2	760	152.00	
12/20/2021	Kugler, Claire S.	0.5	670	335.00	
12/20/2021	Nes, W. Brad	1.5	760	1,140.00	
12/20/2021	Moriarty, Peter	3.6	470	1,692.00	
12/21/2021	Nes, W. Brad	1.9	760	1,444.00	
12/21/2021	Moriarty, Peter	3.1	470	1,457.00	
12/22/2021	Nes, W. Brad	1.8	760	1,368.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/23/2021	Nes, W. Brad	3.3	760	2,508.00	
12/23/2021	Moriarty, Peter	4.4	470	2,068.00	
12/24/2021	Nes, W. Brad	2.4	760	1,824.00	
12/27/2021	Edwards, Brady	0.5	900	450.00	
12/27/2021	Nes, W. Brad	3.0	760	2,280.00	
12/27/2021	Moriarty, Peter	2.1	470	987.00	
12/28/2021	Edwards, Brady	0.6	900	540.00	
12/28/2021	Nes, W. Brad	4.2	760	3,192.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/29/2021	Moriarty, Peter	3.3	470	1,551.00	
12/29/2021	Kugler, Claire S.	0.6	670	402.00	
12/29/2021	Nes, W. Brad	3.3	760	2,508.00	
12/30/2021	Nes, W. Brad	3.5	760	2,660.00	
1/5/2022	Moriarty, Peter	0.4	470	188.00	
1/7/2022	Nes, W. Brad	3.6	760	2,736.00	
1/8/2022	Edwards, Brady	0.3	900	270.00	
1/11/2022	Nes, W. Brad	8.0	760	6,080.00	
1/11/2022	Edwards, Brady	2.0	900	1,800.00	
1/12/2022	Kugler, Claire S.	2.1	670	1,407.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
1/12/2022	Nes, W. Brad	3.8	760	2,888.00	
1/13/2022	Kugler, Claire S.	1.2	670	804.00	
1/13/2022	Moriarty, Peter	0.8	470	376.00	
1/14/2022	Edwards, Brady	0.6	900	540.00	
1/14/2022	Hu, Lingzi	2.4	430	1,032.00	
1/14/2022	Moriarty, Peter	5.8	470	2,726.00	
1/17/2022	Nes, W. Brad	2.5	760	1,900.00	
1/19/2022	Nes, W. Brad	4.3	760	3,268.00	
1/20/2022	Nes, W. Brad	3.8	760	2,888.00	
1/25/2022	Nes, W. Brad	2.4	760	1,824.00	

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Time & Disbursements through 04/24/23

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Responsible Attorney: Edwards, Brady

Page **15** of **36**
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Work Date	Timekeeper	Hours	Rate	Amount	Description
1/26/2022	Nes, W. Brad	2.0	760	1,520.00	
1/27/2022	Nes, W. Brad	2.6	760	1,976.00	
1/31/2022	Nes, W. Brad	2.4	760	1,824.00	
2/1/2022	Nes, W. Brad	3.0	760	2,280.00	
2/2/2022	Edwards, Brady	1.8	900	1,620.00	
2/2/2022	Nes, W. Brad	4.5	760	3,420.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
2/4/2022	Nes, W. Brad	3.6	760	2,736.00	
2/8/2022	Nes, W. Brad	2.8	760	2,128.00	
2/10/2022	Nes, W. Brad	1.2	760	912.00	
2/21/2022	Kugler, Claire S.	3.2	670	2,144.00	
2/22/2022	Kugler, Claire S.	4.5	670	3,015.00	
2/22/2022	Nes, W. Brad	3.5	760	2,660.00	
2/23/2022	Kugler, Claire S.	4.6	670	3,082.00	
2/23/2022	Nes, W. Brad	3.2	760	2,432.00	
2/24/2022	Edwards, Brady	2.8	900	2,520.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
2/24/2022	Nes, W. Brad	4.0	760	3,040.00	
2/25/2022	Nes, W. Brad	3.3	760	2,508.00	
2/26/2022	Edwards, Brady	0.2	900	180.00	
2/28/2022	Hu, Lingzi	6.5	430	2,795.00	
2/28/2022	Hu, Lingzi	2.0	430	860.00	
3/1/2022	Nes, W. Brad	1.8	760	1,368.00	
3/1/2022	Edwards, Brady	1.0	900	900.00	
3/1/2022	Kugler, Claire S.	3.6	670	2,412.00	
3/2/2022	Nes, W. Brad	2.4	760	1,824.00	
3/3/2022	Nes, W. Brad	2.2	760	1,672.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/3/2022	Hu, Lingzi	1.5	430	645.00	
3/4/2022	Nes, W. Brad	1.5	760	1,140.00	
3/7/2022	Nes, W. Brad	1.2	760	912.00	
3/8/2022	Nes, W. Brad	1.7	760	1,292.00	
3/9/2022	Nes, W. Brad	6.7	760	5,092.00	
3/10/2022	Nes, W. Brad	1.0	760	760.00	
3/10/2022	Kugler, Claire S.	0.5	670	335.00	
3/10/2022	Pick, Cullen	0.3	615	184.50	
3/10/2022	Hu, Lingzi	2.9	430	1,247.00	
3/11/2022	Nes, W. Brad	4.2	760	3,192.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/11/2022	Hu, Lingzi	0.7	430	301.00	
3/13/2022	Kugler, Claire S.	1.5	670	1,005.00	
3/14/2022	Kugler, Claire S.	0.9	670	603.00	
3/14/2022	Nes, W. Brad	3.3	760	2,508.00	
3/14/2022	Pick, Cullen	1.7	615	1,045.50	
3/14/2022	Hu, Lingzi	0.8	430	344.00	
3/15/2022	Edwards, Brady	0.3	900	270.00	
3/15/2022	Nes, W. Brad	3.7	760	2,812.00	
3/15/2022	Pick, Cullen	2.3	615	1,414.50	
3/15/2022	Hu, Lingzi	0.6	430	258.00	
3/16/2022	Pick, Cullen	1.7	615	1,045.50	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/21/2022	Kugler, Claire S.	2.5	670	1,675.00	
3/22/2022	Nes, W. Brad	2.7	760	2,052.00	
3/22/2022	Pick, Cullen	0.5	615	307.50	
3/22/2022	Edwards, Brady	2.0	900	1,800.00	
3/22/2022	Kugler, Claire S.	3.9	670	2,613.00	
3/22/2022	Nes, W. Brad	0.5	760	380.00	
3/23/2022	Kugler, Claire S.	3.9	670	2,613.00	
3/23/2022	Nes, W. Brad	0.3	760	228.00	
3/25/2022	Nes, W. Brad	1.5	760	1,140.00	
3/25/2022	Pick, Cullen	2.6	615	1,599.00	
3/28/2022	Kugler, Claire S.	0.5	670	335.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
3/28/2022	Nes, W. Brad	1.8	760	1,368.00	
3/29/2022	Kugler, Claire S.	0.8	670	536.00	
3/30/2022	Kugler, Claire S.	1.1	670	737.00	
3/30/2022	Nes, W. Brad	2.3	760	1,748.00	
3/31/2022	Kugler, Claire S.	0.9	670	603.00	
3/31/2022	Nes, W. Brad	1.4	760	1,064.00	
4/1/2022	Nes, W. Brad	3.4	760	2,584.00	
4/5/2022	Nes, W. Brad	3.0	760	2,280.00	
4/6/2022	Nes, W. Brad	5.5	760	4,180.00	
4/8/2022	Nes, W. Brad	7.5	760	5,700.00	
4/10/2022	Edwards, Brady	4.5	900	4,050.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
4/10/2022	Nes, W. Brad	5.2	760	3,952.00	
4/11/2022	Nes, W. Brad	4.0	760	3,040.00	
4/11/2022	Pick, Cullen	0.5	615	307.50	
4/12/2022	Nes, W. Brad	3.0	760	2,280.00	
4/13/2022	Edwards, Brady	0.9	900	810.00	
4/13/2022	Nes, W. Brad	2.8	760	2,128.00	
4/14/2022	Nes, W. Brad	3.5	760	2,660.00	
4/16/2022	Kugler, Claire S.	0.8	670	536.00	
4/16/2022	Nes, W. Brad	3.0	760	2,280.00	
4/18/2022	Edwards, Brady	1.0	900	900.00	
4/18/2022	Nes, W. Brad	4.5	760	3,420.00	
4/27/2022	Nes, W. Brad	2.8	760	2,128.00	

Date of Printing: 04/24/23
Time & Disbursements through 04/24/23

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Page **23** of **36**
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Work Date	Timekeeper	Hours	Rate	Amount	Description
4/28/2022	Edwards, Brady	0.5	900	450.00	
4/28/2022	Nes, W. Brad	5.2	760	3,952.00	
4/29/2022	Edwards, Brady	0.3	900	270.00	
4/29/2022	Kugler, Claire S.	0.8	670	536.00	
4/29/2022	Nes, W. Brad	1.5	760	1,140.00	
5/2/2022	Edwards, Brady	0.3	900	270.00	
5/2/2022	Nes, W. Brad	3.0	760	2,280.00	
5/3/2022	Nes, W. Brad	0.5	760	380.00	
5/5/2022	Nes, W. Brad	0.7	760	532.00	
5/6/2022	Nes, W. Brad	2.0	760	1,520.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
5/9/2022	Edwards, Brady	0.5	900	450.00	
5/11/2022	Kugler, Claire S.	0.5	670	335.00	
5/11/2022	Nes, W. Brad	4.2	760	3,192.00	
5/12/2022	Edwards, Brady	0.5	900	450.00	
5/12/2022	Nes, W. Brad	4.4	760	3,344.00	
5/13/2022	Edwards, Brady	0.8	900	720.00	
5/13/2022	Nes, W. Brad	1.6	760	1,216.00	
5/16/2022	Nes, W. Brad	2.8	760	2,128.00	
5/17/2022	Edwards, Brady	2.5	900	2,250.00	
5/17/2022	Kugler, Claire S.	0.9	670	603.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
5/17/2022	Nes, W. Brad	4.6	760	2,736.00	
5/17/2022	Hu, Lingzi	4.3	430	1,849.00	
5/18/2022	Nes, W. Brad	4.6	760	3,496.00	
5/18/2022	Edwards, Brady	2.5	900	2,250.00	
5/18/2022	Kugler, Claire S.	1.9	670	1,273.00	
5/19/2022	Nes, W. Brad	0.8	760	608.00	
5/19/2022	Edwards, Brady	1.0	900	900.00	
5/20/2022	Nes, W. Brad	2.0	760	1,520.00	
5/23/2022	Edwards, Brady	0.5	900	450.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
5/24/2022	Nes, W. Brad	5.5	760	4,180.00	
5/26/2022	Edwards, Brady	1.5	900	1,350.00	
5/26/2022	Nes, W. Brad	5.0	760	3,800.00	
5/31/2022	Edwards, Brady	1.0	900	900.00	
5/31/2022	Nes, W. Brad	1.4	760	1,064.00	
6/5/2022	Edwards, Brady	1.6	900	1,440.00	
6/5/2022	Nes, W. Brad	1.0	760	760.00	
6/7/2022	Edwards, Brady	1.0	900	900.00	
6/7/2022	Nes, W. Brad	3.0	760	2,280.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
6/8/2022	Edwards, Brady	0.5	900	450.00	
6/9/2022	Nes, W. Brad	3.0	760	2,280.00	
6/15/2022	Pick, Cullen	2.6	615	1599.00	
6/16/2022	Nes, W. Brad	4.0	760	3,040.00	
6/16/2022	McCulloch Semlinger, Lauren A.	1.3	665	598.50	
6/21/2022	Kugler, Claire S.	0.7	670	469.00	
6/21/2022	Nes, W. Brad	0.9	760	684.00	
6/27/2022	Kugler, Claire S.	0.3	670	201.00	
6/27/2022	Nes, W. Brad	1.0	760	760.00	
6/28/2022	Kugler, Claire S.	0.2	670	134.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
8/9/2022	Nes, W. Brad	3.2	760	2,432.00	
8/15/2022	Nes, W. Brad	1.0	760	760.00	
8/18/2022	Edwards, Brady	1.0	900	900.00	
8/23/2022	Nes, W. Brad	5.7	760	4,332.00	
8/24/2022	Nes, W. Brad	5.5	760	4,180.00	
8/24/2022	Pick, Cullen	0.3	615	184.50	
8/31/2022	Nes, W. Brad	4.0	760	3,040.00	
9/2/2022	Nes, W. Brad	3.0	760	2,280.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
9/2/2022	Patterson, Nancy L.	0.7	835	584.50	
9/7/2022	Nes, W. Brad	4.0	760	3,040.00	
10/9/2022	Nes, W. Brad	3.2	760	2,432.00	
10/9/2022	Patterson, Nancy L.	0.3	835	250.50	
10/25/2022	Nes, W. Brad	7.5	760	5,700.00	
10/28/2022	Nes, W. Brad	9.0	760	6,840.00	
10/31/2022	Nes, W. Brad	5.5	760	4,180.00	
10/31/2022	Pick, Cullen	1.5	615	922.50	
11/1/2022	Pick, Cullen	2.0	615	1,230.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
11/4/2022	McCulloch Semlinger, Lauren A.	0.4	665	266.00	
11/4/2022	Pick, Cullen	2.0	615	1,230.00	
11/9/2022	Pick, Cullen	2.8	615	1,722.00	
11/9/2022	Horwitz, Noah M.	1.5	615	922.50	
11/10/2022	Nes, W. Brad	9.0	760	6,840.00	
11/10/2022	Pick, Cullen	1.5	615	922.50	
11/14/2022	Edwards, Brady	5.0	900	4,500.00	
11/14/2022	Nes, W. Brad	9.5	760	7,220.00	
12/15/2022	Nes, W. Brad	1.0	760	760.00	

Date of Printing: 04/24/23
Time & Disbursements through 04/24/23

Matter Currency: US Dollar
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Page **31** of **36**
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Work Date	Timekeeper	Hours	Rate	Amount	Description
12/21/2022	Edwards, Brady	1.0	900	900.00	
12/21/2022	Nes, W. Brad	1.0	760	760.00	
1/17/2023	Edwards, Brady	1.8	900	1,620.00	
1/17/2023	Nes, W. Brad	1.5	760	1,140.00	
2/1/2023	Nes, W. Brad	1.5	760	1,140.00	
2/1/2023	Hu, Lingzi	2.4	430	1,032.00	
2/5/2023	Edwards, Brady	0.8	900	720.00	
2/6/2023	Nes, W. Brad	1.0	760	760.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
2/8/2023	Edwards, Brad	1.0	900	900.00	
2/9/2023	Hu, Lingzi	1.6	430	688.00	
2/10/2023	Nes, W. Brad	0.5	760	380.00	
2/13/2023	Nes, W. Brad	1.5	760	1,140.00	
2/13/2023	Hu, Lingzi	2.2	430	946.00	
2/14/2023	Edwards, Brady	0.6	900	540.00	
2/16/2023	Nes, W. Brad	0.5	760	380.00	
2/17/2023	Edwards, Brady	1.0	900	900.00	

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Work Date	Timekeeper	Hours	Rate	Amount	Description
2/17/2023	Nes, W. Brad	0.2	760	152.00	
2/28/2023	Edwards, Brady	0.5	900	450.00	
3/6/2023	Nes, W. Brad	0.2	760	152.00	
3/9/2023	Nes, W. Brad	0.5	760	380.00	
3/13/2023	Edwards, Brady	0.3	900	270.00	
3/13/2023	Nes, W. Brad	1.2	760	912.00	
3/15/2023	Edwards, Brady	1.0	900	900.00	
3/22/2023	Nes, W. Brad	0.5	760	380.00	

Date of Printing: 04/24/23
Time & Disbursements through 04/24/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page **34** of **36**
www.morganlewis.com

Morgan Lewis

Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
Tel: +1.713.890.5000
Fax: +1.713.890.5001
www.morganlewis.com

Work Date	Timekeeper	Hours	Rate	Amount	Description
4/17/2023	Nes, W. Brad	0.5	760	380.00	
4/18/2023	Edwards, Brady	1.5	900	1,350.00	
4/18/2023	Nes, W. Brad	2.6	760	1,976.00	
4/19/2023	Nes, W. Brad	2.5	760	1,900.00	
4/20/2023	Nes, W. Brad	0.2	760	152.00	
4/21/2023	Nes, W. Brad	2.2	760	1,672.00	

Date of Printing: 04/24/23
Time & Disbursements through 04/24/23

Matter Currency: US Dollar
Responsible Attorney: Edwards, Brady

Page **35** of **36**
www.morganlewis.com

Morgan Lewis

Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
Tel: +1.713.890.5000
Fax: +1.713.890.5001
www.morganlewis.com

Work Date	Timekeeper	Hours	Rate	Amount	Description
4/21/2023	McCulloch Semlinger, Lauren A.	1.7	665	1,130.50	
4/24/2023	Nes, W. Brad	2.4	760	1,824.00	

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

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

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.,

Defendant.

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

**SUPPLEMENTAL DECLARATION OF MARGHRETTA H. SHISKO IN SUPPORT OF
THE RECEIVER'S MOTION FOR ATTORNEY'S FEES AND COSTS**

1. My name is Marghretta H. Shisko. I am an adult over the age of 18, and I am competent to testify to the matters herein. I represent the Receiver for Covil Corporation, and the matters stated in this declaration are based on my own personal knowledge.

2. I have been licensed to practice law since 2011, and I am an attorney and partner with the law firm of John B. White, Jr. P.A. I am admitted to practice in South Carolina state court, the District of South Carolina, and the Fourth Circuit Court of Appeals. I graduated *cum laude* from the University of South Carolina School of Law, and I have focused my practice on complex litigation, having represented both plaintiffs and defendants in a variety of matters. I have litigated numerous complex cases, including class actions and two cases that were appealed to the U.S. Supreme Court.

3. I am submitting this supplemental declaration in support of the Receiver's Motion for Attorney's Fees and Costs, which arises out of the Receiver's multi-year attempts to have Penn National comply with its discovery obligations and the orders of the Receivership Court.

4. I have reviewed the Receiver's Motion for Attorney's Fees and Costs, and I concur with the Motion's characterization and description of the facts and procedural history of this matter as set forth therein. I have also reviewed the Supplemental Declaration of Jonathan M. Robinson in support of the Receiver's Motion, and I agree with his description of this case and the efforts that have been required by the firms representing the Receiver in this matter.

5. As set forth in my prior declaration in support of the Receiver's Motion, since at least January 15, 2021, my firm (lawyers and support staff) have spent a considerable amount of time and effort litigating the issues described in the Receiver's Motion for Attorney's Fees and Costs. These efforts included reviewing and responding to written correspondence and discovery requests, issuing subpoenas and deposition notices, conferring with co-counsel and with opposing counsel, and attending hearings and depositions. I personally spent over 100 hours on efforts related to Penn National's discovery failures, and I supervised the work performed by and reviewed the time records of the other timekeepers.

6. My prior declaration included a true and correct copy of contemporaneously-recorded and detailed time records for individual timekeepers on this matter as Exhibit A, but the detail for those records was not provided. In connection with this supplemental declaration, I am providing unredacted time records directly to the Court for in camera review.

7. The rates shown in my firm's time records are the normal and customary hourly rates billed for work performed by timekeepers for complex litigation cases such as this. Additionally, the time records were well-documented and descriptive. The lawyers and paralegals in my firm regularly maintain contemporaneous, detailed records of their time, whether they are working on a contingency fee case or an hourly billing matter.

MHS

8. I am informed and believe that the hourly rates shown in my firm's time records are reasonable and comparable to rates charged by other South Carolina firms for timekeepers with similar experience who are performing similarly complex work.

9. It is my opinion that the time spent is reasonable under the circumstances because the time was well-documented and reasonably budgeted. The hours worked were necessary to the furtherance of the Receiver's efforts to obtain full and complete policy information and discovery from Penn National, and the timekeepers worked efficiently. Additionally, the hours set forth in this declaration and my prior declaration do not include time spent by attorneys John B. White, Jr. and Griffin L. Lynch, who practice with me and who also reviewed correspondence and materials related to these issues.

10. I declare under penalty of perjury that the foregoing statements are true and correct.

Signature Page Follows

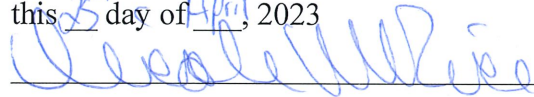
MHS



Marghretta H. Shisko

SWORN TO before me

this 25th day of April, 2023

 (SEAL)

Notary Public for the State of South Carolina

My Commission Expires: 2/28/2032



Invoice

February 17, 2023

Re: Covil v. Penn National Mutual Casualty Insurance Co.

Time Keeper	Position	Quantity (Hrs.)	Rate	Total
Marghretta Shisko	Partner	139.3	\$450.00	\$62,685
Christopher Jones	Associate	48.8	\$350.00	\$17,080
Nicole Rice	Paralegal	7.0	\$150.00	\$1,050
Lorrie Large	Paralegal	21.6	\$150.00	\$3,240
Shoshannah Criswell	Paralegal	3.0	\$150.00	\$450
Total:		219.7		\$84,505

JOHN B. WHITE, JR.
jwhite@johnbwhitelaw.com

GRIFFIN LITTLEJOHN LYNCH
glynch@johnbwhitelaw.com

MARGHRETTA SHISKO
mshisko@johnbwhitelaw.com

291 SOUTH PINE STREET
P.O. BOX 2465
SPARTANBURG S.C. 29304
(864) 594-5988



JOHN B. WHITE JR. P.A.
Law Firm

Invoice

February 17, 2023

Re: Covil v. Penn National Mutual Casualty Insurance Co.

Total charges: \$84,505

Date	Att'y Initials	Att'y Hours	PL Initials	PL Hours	Rate	Amt.	Description
1/15/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
1/18/2021	CRJ	0.60			\$350.00	\$210.00	[REDACTED]
1/20/2021	MHS	4.50			\$450.00	\$2,025.00	[REDACTED]
1/20/2021	CRJ	0.20			\$350.00	\$70.00	[REDACTED]
1/22/2021	MHS	2.50			\$450.00	\$1,125.00	[REDACTED]
1/23/2021	MHS	5.00			\$450.00	\$2,250.00	[REDACTED]
1/24/2021	MHS	4.00			\$450.00	\$1,800.00	[REDACTED]

JOHN B. WHITE, JR.

jwhite@johnbwhitelaw.com

GRIFFIN LITTLEJOHN LYNCH

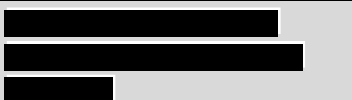
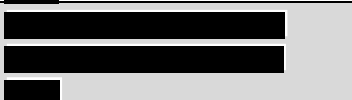
glynch@johnbwhitelaw.com

MARGHRETTA SHISKO

mshisko@johnbwhitelaw.com

291 SOUTH PINE STREET
P.O. BOX 2465
SPARTANBURG S.C. 29304
(864) 594-5988

							[REDACTED]
1/24/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
1/24/2021	CRJ	3.70			\$350.00	\$1,295.00	[REDACTED]
1/24/2021	CRJ	0.50			\$350.00	\$175.00	[REDACTED]
1/25/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
1/25/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
1/25/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
2/2/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
2/2/2021	CRJ	0.50			\$350.00	\$175.00	[REDACTED]
2/3/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
2/4/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
2/4/2021	CRJ	0.50			\$350.00	\$175.00	[REDACTED]
2/5/2021	MHS	0.10			\$450.00	\$45.00	[REDACTED]
2/8/2021	MHS	0.10			\$450.00	\$45.00	[REDACTED]

2/8/2021			NMR	0.30	\$150.00	\$45.00	
2/12/2021	MHS	0.20			\$450.00	\$90.00	
2/22/2021	MHS	0.50			\$450.00	\$225.00	
2/22/2021	MHS	1.00			\$450.00	\$450.00	
2/22/2021	MHS	0.50			\$450.00	\$225.00	
2/22/2021	CRJ	0.20			\$350.00	\$70.00	
3/1/2021	MHS	0.20			\$450.00	\$90.00	
3/10/2021	MHS	0.30			\$450.00	\$135.00	
3/10/2021	MHS	1.00			\$450.00	\$450.00	
3/11/2021	CRJ	1.30			\$350.00	\$455.00	
3/12/2021	MHS	0.90			\$450.00	\$405.00	
3/12/2021	CRJ	1.00			\$350.00	\$350.00	

3/19/2021	CRJ	0.90			\$350.00	\$315.00	[REDACTED]
3/22/2021	CRJ	0.80			\$350.00	\$280.00	[REDACTED]
3/23/2021	CRJ	0.10			\$350.00	\$35.00	[REDACTED]
3/23/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
3/23/2021			LEL	2.00	\$150.00	\$300.00	[REDACTED]
4/5/2021	MHS	2.50			\$450.00	\$1,125.00	[REDACTED]
4/6/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
4/6/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
4/6/2021	MHS	0.80			\$450.00	\$360.00	[REDACTED]
4/6/2021	CRJ	2.60			\$350.00	\$910.00	[REDACTED]
4/6/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
4/6/2021			NMR	1.00	\$150.00	\$150.00	[REDACTED]

4/7/2021	MHS	0.10			\$450.00	\$45.00	[REDACTED]
4/7/2021	CRJ	2.20			\$350.00	\$770.00	[REDACTED]
4/8/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
4/8/2021	CRJ	0.50			\$350.00	\$175.00	[REDACTED]
4/9/2021	CRJ	0.20			\$350.00	\$70.00	[REDACTED]
4/9/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
4/9/2021			LEL	1.50	\$150.00	\$225.00	[REDACTED]
4/9/2021	MHS	2.00			\$450.00	\$900.00	[REDACTED]
4/13/2021	MHS	0.10			\$450.00	\$45.00	[REDACTED]
4/13/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
4/13/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]
4/14/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
4/14/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
4/14/2021	CRJ	0.90			\$350.00	\$315.00	[REDACTED]

4/15/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
4/15/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
4/15/2021	CRJ	0.20			\$350.00	\$70.00	[REDACTED]
4/16/2021	MHS	0.30			\$450.00	\$135.00	[REDACTED]
4/16/2021	CRJ	0.40			\$350.00	\$140.00	[REDACTED]
4/17/2021	MHS	0.80			\$450.00	\$360.00	[REDACTED]
4/19/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
4/19/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]
4/19/2021	CRJ	3.80			\$350.00	\$1,330.00	[REDACTED]
4/20/2021	CRJ	4.50			\$350.00	\$1,575.00	[REDACTED]
4/21/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
4/21/2021	CRJ	0.20			\$350.00	\$70.00	[REDACTED]

							REDACTED
4/21/2021			LEL	0.20	\$150.00	\$30.00	REDACTED
4/22/2021	CRJ	0.50			\$350.00	\$175.00	REDACTED
4/22/2021	MHS	1.00			\$450.00	\$450.00	REDACTED
4/22/2021			LEL	1.50	\$150.00	\$225.00	REDACTED
4/26/2021	MHS	0.10			\$450.00	\$45.00	REDACTED
4/27/2021			LEL	0.30	\$150.00	\$45.00	REDACTED
4/28/2021	MHS	0.20			\$450.00	\$90.00	REDACTED
4/28/2021			LEL	0.10	\$150.00	\$15.00	REDACTED
5/3/2021	MHS	3.50			\$450.00	\$1,575.00	REDACTED
5/3/2021	MHS	0.50			\$450.00	\$225.00	REDACTED

5/3/2021	CRJ	0.40			\$350.00	\$140.00	
5/3/2021			LEL	0.50	\$150.00	\$75.00	
5/4/2021	MHS	5.00			\$450.00	\$2,250.00	
5/4/2021	CRJ	0.60			\$350.00	\$210.00	
5/4/2021			LEL	1.00	\$150.00	\$150.00	
5/5/2021	MHS	0.10			\$450.00	\$45.00	
5/10/2021	MHS	1.00			\$450.00	\$450.00	
5/10/2021			LEL	0.20	\$150.00	\$30.00	
5/12/2021	MHS	1.10			\$450.00	\$495.00	
5/26/2021	MHS	2.00			\$450.00	\$900.00	
5/27/2021	MHS	0.50			\$450.00	\$225.00	
5/27/2021	MHS	1.50			\$450.00	\$675.00	
5/28/2021	MHS	1.50			\$450.00	\$675.00	

							[REDACTED]
5/28/2021	MHS	2.50			\$450.00	\$1,125.00	[REDACTED]
5/28/2021	MHS	0.30			\$450.00	\$135.00	[REDACTED]
5/28/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]
5/28/2021			LEL	1.50	\$150.00	\$225.00	[REDACTED]
5/28/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
5/28/2021			LEL	0.20	\$150.00	\$30.00	[REDACTED]
6/3/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/3/2021			LEL	0.60	\$150.00	\$90.00	[REDACTED]
6/3/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/11/2021	MHS	2.00			\$450.00	\$900.00	[REDACTED]
6/14/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/14/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]

6/14/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
6/14/2021			NMR	0.50	\$150.00	\$75.00	[REDACTED]
6/15/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
6/15/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/15/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
6/15/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/15/2021	MHS	0.40			\$450.00	\$180.00	[REDACTED]
6/15/2021	MHS	0.30			\$450.00	\$135.00	[REDACTED]
6/15/2021	MHS	1.20			\$450.00	\$540.00	[REDACTED]
6/15/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]
6/15/2021			NMR	1.00	\$150.00	\$150.00	[REDACTED]
6/16/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/16/2021			SC	2.00	\$150.00	\$300.00	[REDACTED]

6/16/2021			NMR	1.00	\$150.00	\$150.00	[REDACTED]
6/16/2021			NMR	0.50	\$150.00	\$75.00	[REDACTED]
6/16/2021	MHS	4.00			\$450.00	\$1,800.00	[REDACTED]
6/16/2021			NMR	1.00	\$150.00	\$150.00	[REDACTED]
6/16/2021			SC	1.00	\$150.00	\$150.00	[REDACTED]
6/16/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/16/2021	CRJ	0.10			\$350.00	\$35.00	[REDACTED]
6/17/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/17/2021	MHS	3.70			\$450.00	\$1,665.00	[REDACTED]
6/17/2021	CRJ	0.60			\$350.00	\$210.00	[REDACTED]
6/17/2021			NMR	1.00	\$150.00	\$150.00	[REDACTED]
6/17/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]

6/18/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
6/18/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
6/21/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/21/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
6/21/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
6/21/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
6/21/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]
6/22/2021	MHS	2.80			\$450.00	\$1,260.00	[REDACTED]
6/23/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
6/23/2021	CRJ	1.40			\$350.00	\$490.00	[REDACTED]
6/24/2021	MHS	9.00			\$450.00	\$4,050.00	[REDACTED]

6/24/2021	CRJ	2.30			\$350.00	\$805.00	[REDACTED]
6/25/2021	MHS	7.00			\$450.00	\$3,150.00	[REDACTED]
6/25/2021	CRJ	3.10			\$350.00	\$1,085.00	[REDACTED]
6/28/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
6/28/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
6/29/2021	CRJ	0.90			\$350.00	\$315.00	[REDACTED]
6/29/2021	MHS	2.00			\$450.00	\$900.00	[REDACTED]
6/30/2021	MHS	0.80			\$450.00	\$360.00	[REDACTED]
7/1/2021	MHS	0.30			\$450.00	\$135.00	[REDACTED]
7/2/2021	MHS	1.80			\$450.00	\$810.00	[REDACTED]
7/2/2021	MHS	0.30			\$450.00	\$135.00	[REDACTED]
7/2/2021			LEL	1.00	\$150.00	\$150.00	[REDACTED]

							[REDACTED]
7/9/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
7/16/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
7/16/2021	CRJ	1.80			\$350.00	\$630.00	[REDACTED]
7/16/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
7/19/2021	CRJ	0.30			\$350.00	\$105.00	[REDACTED]
7/20/2021	MHS	0.40			\$450.00	\$180.00	[REDACTED]
7/21/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
7/23/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
7/23/2021	CRJ	0.40			\$350.00	\$140.00	[REDACTED]
7/23/2021			NMR	0.70	\$150.00	\$105.00	[REDACTED]
7/23/2021	MHS	0.60			\$450.00	\$270.00	[REDACTED]

7/26/2021			LEL	1.50	\$150.00	\$225.00	[REDACTED]
7/27/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
7/27/2021			LEL	2.00	\$150.00	\$300.00	[REDACTED]
7/28/2021	MHS	0.10			\$450.00	\$45.00	[REDACTED]
7/29/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
7/29/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
7/30/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
7/30/2021			LEL	1.00	\$150.00	\$150.00	[REDACTED]
8/2/2021	MHS	2.50			\$450.00	\$1,125.00	[REDACTED]

8/2/2021	CRJ	0.20			\$350.00	\$70.00	
8/2/2021	MHS	0.50			\$450.00	\$225.00	
8/2/2021			LEL	0.60	\$150.00	\$90.00	
8/3/2021	MHS	0.20			\$450.00	\$90.00	
8/3/2021	CRJ	2.10			\$350.00	\$735.00	
8/5/2021	MHS	0.50			\$450.00	\$225.00	
8/5/2021			LEL	0.10	\$150.00	\$15.00	
8/7/2021	MHS	2.00			\$450.00	\$900.00	
8/19/2021	MHS	1.50			\$450.00	\$675.00	
8/19/2021			LEL	0.10	\$150.00	\$15.00	
8/19/2021			LEL	0.70	\$150.00	\$105.00	

8/19/2021	CRJ	0.70			\$350.00	\$245.00	[REDACTED]
8/20/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
8/20/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
8/20/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
8/20/2021			LEL	1.50	\$150.00	\$225.00	[REDACTED]
8/24/2021	MHS	0.10			\$450.00	\$45.00	[REDACTED]
8/24/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
8/26/2021	CRJ	2.30			\$350.00	\$805.00	[REDACTED]
8/26/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
8/30/2021	MHS	1.50			\$450.00	\$675.00	[REDACTED]
10/5/2021	MHS	0.80			\$450.00	\$360.00	[REDACTED]
10/6/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
10/25/2021	MHS	1.00			\$450.00	\$450.00	[REDACTED]
10/28/2021	CRJ	2.30			\$350.00	\$805.00	[REDACTED]
10/28/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]

							[REDACTED]
11/9/2021	MHS	0.50			\$450.00	\$225.00	[REDACTED]
11/19/2021	MHS	0.60			\$450.00	\$270.00	[REDACTED]
12/8/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
12/20/2021	MHS	0.80			\$450.00	\$360.00	[REDACTED]
12/21/2021	CRJ	0.50			\$350.00	\$175.00	[REDACTED]
12/22/2021	MHS	0.70			\$450.00	\$315.00	[REDACTED]
12/28/2021	MHS	0.30			\$450.00	\$135.00	[REDACTED]
12/29/2021	MHS	0.20			\$450.00	\$90.00	[REDACTED]
12/29/2021			LEL	0.50	\$150.00	\$75.00	[REDACTED]
1/3/2022	MHS	0.10			\$450.00	\$45.00	[REDACTED]
1/7/2022	MHS	0.50			\$450.00	\$225.00	[REDACTED]
2/21/2022	MHS	0.50			\$450.00	\$225.00	[REDACTED]
2/24/2022	MHS	0.50			\$450.00	\$225.00	[REDACTED]
4/8/2022	CRJ	0.40			\$350.00	\$140.00	[REDACTED]

5/5/2022	CRJ	0.30			\$350.00	\$105.00	
5/13/2022	MHS	0.50			\$450.00	\$225.00	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Covil Corporation, by and through its duly	)	
appointed Receiver, Peter D. Protopapas,	)	Case No. 2020-CP-40-02098
	)	
Plaintiff,	)	
	)	DEFENDANT’S MOTION TO
v.	)	RECONSIDER
	)	
Pennsylvania National Mutual Casualty	)	
Insurance Co.,	)	
	)	
Defendant.	)	
	)	

COMES NOW Defendant Pennsylvania National Mutual Casualty Insurance Company (“Penn National”), by and through its undersigned counsel, moves this Court pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure* to reconsider its Order entered on May 12, 2023 granting Plaintiff Covil Corporation’s (“Covil”) Motion for Attorney’s Fees and Costs.

BACKGROUND

On February 17, 2023, Covil filed a Motion for Attorney’s Fees and Costs pursuant to Rule 37(b)(2), SCRCF, seeking to impose additional sanctions against Penn National for its alleged failure to comply with a discovery and sanctions order. Penn National submitted a memorandum in opposition to the Motion, arguing, among other things, that it should not be punished for attempting to narrow the scope of overly burdensome discovery requests or exercising its right to appellate review. This Court held a hearing on Covil’s Motion on April 19, 2023, at the conclusion of which the Court indicated it would grant Covil’s request for \$671,693 in attorney’s fees and directed Covil to submit unredacted bills and attorney affidavits. On May 12, 2023, this Court issued an Order granting Covil’s Motion. Penn National now files the present motion under Rule 59(e), SCRCF to seek reconsideration of the Order.

STANDARD

A motion under Rule 59(e) has long been viewed as a “motion for reconsideration.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). The Supreme Court has clarified that a party may file a motion to reconsider “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780.

“The imposition of sanctions [under Rule 37] is generally entrusted to the sound discretion of the Circuit Court.” *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). Orders imposing sanctions should generally not be overturned absent an abuse of such discretion. *Id.* The burden is on the party appealing from the order to demonstrate the trial court abused its discretion. *Id.* An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). An abuse of discretion may also occur “when the trial court’s ruling is based on an error of law or where the factual conclusions on which it is based lacks evidentiary support.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

A failure to consider required factors showing that a trial court failed to exercise discretion also amounts to an abuse of discretion. *Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 216 (1997). In other words, the failure to exercise proper discretion is an abuse of discretion. *Id.* “In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice.” *Id.* at 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (citations omitted).

(1) The Court Should Reconsider and Reverse the Finding that Penn National has Failed to Meet Its Discovery Obligations or Comply with Prior Court Orders.

The Order states that discovery sanctions are appropriate under Rule 37(a)(4) due to Penn National's purported failure to meet its discovery obligations. (Order p. 9). The Order, however, fails to take into account any of the considerable discovery efforts that Penn National has undertaken in this litigation and its efforts to comply with prior Court orders.

Penn National's participation in discovery is evidenced by (1) Penn National's responses to Covil's interrogatories and document requests in this case, (2) Penn National's responses to Covil's subpoenas issued to Penn National for hundreds of non-Covil entities, (3) the testimony of Penn National's representatives in multiple depositions regarding topics related to Penn National's search for policy-related records pertaining to the manner in which Penn National stores and retains its archived policy-related documents, (4) the affidavits of Penn National representatives that set forth the manner in which Penn National searches its policy-related materials, (5) the testimony of multiple Penn National representatives setting forth the manner in which Penn National has searched for potential policies relating to Covil or other non-Covil entities based on the limited to no supporting information provided by the Receiver, and (6) the affidavits and deposition testimony of Penn National representatives regarding the manner in which Penn National stores and retains its archived policy-related documents – all of which are part of the record in this case.

Penn National has not been evasive in its participation in discovery, or its compliance with prior Court orders. This is demonstrated by Penn National's cooperation and participation in Ellis & Winters' search of Penn National's insurance repository. As shown by Penn National's multiple interim reports to the Court detailing its cooperation with Ellis & Winters, and as detailed by Ellis & Winters' itemized invoice, which shows the lengthy work and cooperation between Penn National and Ellis & Winters, Penn National has conducted itself in a manner that is in compliance with its

discovery obligations and prior orders of this Court. To that end, the Order also fails to acknowledge the fact that Penn National is already incurring the burden and significant expense of imaging its microfiche cards by a vendor selected by Ellis & Winters for the creation of a searchable database that Covil and its counsel will have complete and unfettered access to on a rolling basis.

Rather than acknowledge any of Penn National's well-established efforts to comply with its discovery obligations or with the Court's prior orders, the Order faults Penn National for the manner in which it decided to store its records decades ago and punishes Penn National for exercising its right to appeal an order requiring them to change it. Regardless, the record in this case shows that Penn National has not refused to search its insurance repository unless and until it is provided with a specific policy number. Penn National has been forthcoming in deposition testimony and by way of affidavits that it can search (and has searched) for policy numbers by entering the name of an entity in Penn National's electronic system to see if there is indeed an electronic record of the company, which may reveal a policy number that would then allow Penn National to search for the company's policy-related documents on microfiche. This is the system Penn National has had in place for well over a decade. Indeed, this is the search Penn National has repeatedly conducted with respect to Covil related policy documents and for the hundreds of other non-Covil related entities that the Receiver has submitted to Penn National by way of multiple subpoenas. None of these factors were considered in the Court's Order.

(2) The Court Should Reconsider its Finding that Penn National's Opposition to Covil's Discovery Requests were not Substantially Justified.

Contrary to the "recalcitrance" described in the Order, Penn National has been forthcoming as to the existence of commercial line policies for Covil that may provide coverage for asbestos claims, and it has been fully transparent as to the manner in which it has stored and retained its archived policy-related documents from the beginning. Such is also the case with respect to

hundreds of other non-Covil entities for which the Receiver has requested Penn National to search its archived policy-related records for potential insurance coverage. The Order acknowledged as much in the following excerpt:

Penn National knew from the beginning of the Receiver's years-long discovery investigation that it had created a system of historical policy maintenance that would require a manual search of records should a policyholder be unable to provide a policy number. Rather than attempt a meaningful response to any of the Receiver's discovery, or otherwise offer and implement suggestions to make its system searchable, Penn National forced the Receiver and his lawyers to spend hundreds of hours over three years to reach the same conclusion.

(Order, p. 7).

In other words, the Order is based, at least in part, on the fact that Covil spent three years, allegedly incurred hundreds of thousands of dollars, and filed numerous motions to compel, confirming what Penn National had told it from the very beginning: The only way it could search its historic commercial line policy repository was through a manual search for the policy number.

The Order further fails to take into account the fact that Rule 26(a) allows a party to seek to limit the use of discovery methods for a number of reasons, including if the discovery sought "is unreasonably burdensome or expensive taking into account the needs of the case, the amount of the parties' resources, and the importance of the issues at stake in the litigation." Rule 26(a), SCRCP. Here, all Penn National did was assert objections that are grounded in the rules while continuing to fulfil its other discovery obligations. When the Court disagreed with Penn National's application of those objections, Penn National sought appellate review. When Penn National's appellate avenues were exhausted, it immediately began complying with the May 5, 2022 Order. At no point in this case has Penn National intentionally and without proper justification withheld documents or failed to comply with a court order.

In deciding whether and/or what sanction to impose for failure to disclose evidence during the discovery process, the trial court “should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice” to the discovering party. *Samples*, 329 S.C. at 112, 495 S.E.2d at 216. Penn National asserted legitimate, well-founded objections to Covil’s discovery requests, which were based on the (still) unsubstantiated assumption that there *could* be other commercial insurance policies applicable to Covil, under the name of an unknown company, from an unknown time, with an unknown policy number. Similarly, Penn National’s concurrent appeals of the May 5, 2022 Order – with which both the Court and Covil took fault during the April 19, 2023 hearing – were based on a reasonable, good faith belief that a sanctions order requiring Penn National to image and digitize its entire historic microfiche repository of commercial line insurance policies at its own expense and allow opposing counsel full and unrestricted access to this created database was overly burdensome and beyond the scope of Rule 26, SCRPC.¹ Accordingly, Penn National respectfully requests that the Court reconsider its Order finding Penn National’s opposition to Covil’s discovery requests was not substantially justified.

(3) The Court should Reconsider its Order Granting Sanctions Related to the November 2022 Discovery Dispute.

During oral arguments on Covil’s Motion, and in the briefing submitted to the Court prior to the hearing, the parties focused solely on the dispute over the search for the historic commercial line policies that was the subject of the May 5, 2022 Order. However, as an additional basis for holding that Penn National’s opposition to Covil’s discovery requests warrants sanctions, the

¹ Penn National notes that the Court of Appeals issued an order the same day as the hearing on April 19, 2023, in which it acknowledged that while some federal courts have addressed the issue, “no cases in South Carolina’s jurisprudence address the specific issue of the appealability of monetary sanctions under Rule 37(b)[.]” Tammy Richardson v. Halcyon Real Estate Services, LLP, Op No. 5981 (S.C. Ct. App. Filed April 19, 2023) (Patrick Adv. Sh. No. 15 at 88 n.3). Clearly then, the appealability of an unprecedented sanctions order was not a settled issue as of the time Penn National filed its appeal of the May 5, 2022 Order.

Order inexplicably includes a discussion on a November 2022 discovery dispute over Covil's claims files and Penn National's document retention policy. Specifically, the Order states as follows:

In addition to the discovery disputes related to the historical insurance policies, in November 2022, Penn National refused to timely respond to relevant discovery in advance of a December 2022 trial date. The discovery at issue, Covil's claim files and Penn National's document retention policies, was directly related to a declaratory judgment action. Despite Covil's attempts to engage in routine discovery on these topics, and to meet and confer on this issue, Penn National refused to produce these relevant documents. The Court finds that given the relevance of the documents and clarity of the requests, Penn National's failure to participate in this discovery was not justified.

(Order pp. 10-11).

Penn National submits that the inclusion of this as a justification for the award of sanctions against Penn National was improper. Covil's Motion for Attorney's Fees and Costs focused only on the dispute over the search for historic commercial line policies, as did the arguments at the hearing on Covil's Motion. Accordingly, because the November 2022 discovery dispute was not the subject of the sanctions hearing held on April 19, 2022, the Court should reconsider its finding that the November 2022 discovery dispute was a sanctionable office and reduce any award of attorney's fees accordingly.

(4) The Court Should Reconsider its Award of Attorney's Fees Because it Failed to Consider the *Glasscock* Factors Prior to Awarding Covil Attorney's Fees.

At the conclusion of the hearing on April 19, 2023, the Court made it evident that it intended to grant Covil the relief granted in their motion and ordered Covil to submit a proposed order to the Court. In doing so, the Court failed to consider the six factors outlined in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991) prior to granting the attorney fee award. Rather, counsel for Covil remarked: "You understand the *Glasscock* factors and what to do here; and, you

know, I don't need to recite them for you." (Transcript 14:24 – 15:1). Shortly after granting the fee award, the Court noted, "I will want the Plaintiff to supply me within a week's time the unredacted bills and affidavits of counsel for covering the Glasscock factors." (Transcript 48:13-16). Then, upon asking Covil's counsel to confirm the total amount of the fees requested, the Court responded, "[t]hat's how much will be awarded," but not before inviting Covil to include "anything else that may occur that needs to be added to it when you bring it up to date when you send it to me." (Transcript 51:11-14). Given that Covil's fee request was granted in its entirety without any modification whatsoever – apart from an upward adjustment of approximately \$32,000 – Penn National submits that the decision to grant attorney's fees, as well as the exact amount of the award, was a forgone conclusion well before the *Glasscock* factors were even considered.

CONCLUSION

For the reasons set forth above, Penn National requests that this Court Reconsider its Order granting Covil's Motion for Attorney's Fees and Costs and requiring Penn National to pay \$671,693 as a sanction for exercising its rights under Rule 26(a), SCRPC.

/s/Luke M. Allen

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

Covil Corporation by and)
through its duly appointed)
Receiver, Peter D. Protopapas,)
)
 Plaintiff,)
)
 vs.)
)
Penn National,)
)
)
 Defendant.)

CIVIL ACTION #
2020-CP-40-02098

MOTION FOR ATTORNEY'S FEES AND COSTS

DATE TAKEN: April 19, 2023

TIME BEGUN: 11:00 a.m.

TIME ENDED: 11:55 a.m.

LOCATION: RICHLAND COUNTY JUDICIAL CENTER
 1701 Main Street, Courtroom 3B
 Columbia, South Carolina 29201

REPORTED BY: Jennifer H. Williams, RPR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
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P R O C E E D I N G S

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(Proceedings begin at 11:00 a.m.)

- - -

THE COURT: All right. Court will come to order.

The next matter is Covil against Penn National, 2020-CP-40-02098. This is Covil's motion for attorney's fees and costs.

Covil Corporation is managed by a court-appointed Receiver, Mr. Peter Protopapas. And representing Covil Corporation in this matter are Mr. Murrell Smith and his colleagues.

Mr. Smith, will you be speaking to the motion?

MR. SMITH: Yes, ma'am.

THE COURT: All right. You may be heard.

MR. SMITH: Thank you, Your Honor. May it please the Court.

For the record, Murrell Smith representing Covil, along with Brad Nes over here and Jon Robinson who are participating in this hearing.

Judge, obviously we're here today for a

1 motion for attorney's fees and costs. I'm
2 sure -- this case has a tortured history, and
3 I'm sure you're very familiar with it. But I
4 do believe I need to place a lot of this
5 information on the record for purposes of this
6 hearing. So, if you'll bear with me a little
7 bit.

8 THE COURT: You may proceed.

9 MR. SMITH: Judge, early on in this
10 process, I'm sitting in, I think, the courtroom
11 nextdoor, and we were arguing your issue, our
12 Motion to Compel. And at that time you made a
13 comment. And it was basically, "This is
14 becoming a foot-dragging operation."

15 And so, Judge, I think there could not be
16 a better term to explain what's occurred in
17 this process from the inception of this case.
18 And I want to just let you know a couple of
19 things that we've had.

20 This discovery dispute has been going on
21 about four years now. And finally they've run
22 out of all avenues for appeals and motions and
23 ignoring. And so, to the credit of Penn
24 National right now, they are doing what you
25 ordered them to do a year ago. But it's taken

1 us a year and numbers of hearings to get there.

2 And I just want to point out there have
3 been two -- and, first and foremost, as you
4 know, Mr. Protopapas was appointed as the
5 Receiver. And the Court ordered him to marshal
6 the assets. And the assets that he is to
7 marshal are insurance policies.

8 And so, that's the first thing he did when
9 he got appointed to Receiver in this court,
10 which he did. And, as you know, he's Receiver
11 for Covil. We've been in litigation with a
12 number of insurance companies. And only Penn
13 National has put up the resistance in producing
14 policies that we've had so far.

15 We sent two subpoenas to them, four sets
16 of written discoveries requests, six
17 depositions of their witnesses about their
18 policies and their search processes and their
19 ability to obtain those policies, seven Motions
20 to Compel on one issue. And that is issue is
21 the production of the policies and whether any
22 other policies had Covil as a named insured.

23 Those Motions to Compel were August 20th,
24 2021, September 8th, 2021, October 5th of 2021,
25 December 9th of 2021, February 4th of 2022,

1 April 1st of 2022, and then November 4th of
2 2022.

3 So we had all those hearings just on the
4 one issue: Search and produce the policies in
5 which Covil is a named insured. And then we
6 had to make a Motion to Enforce the Court's
7 Order on May 5th, and that Order was filed on
8 January 17th of 2023.

9 And at that hearing, after you said you
10 have got to go and search these policies, you
11 have to digitize them and you told them these
12 Orders are not appealable; despite that
13 admonition, they exercised their right to
14 appeal. And they filed not one, but they filed
15 three appeals to this case. And so, that
16 dragged on, and which we had to defend those.

17 So, you know, finally, all that's been
18 disposed of through the courts and it's been
19 summarily dismissed by the courts, by the
20 appellate courts. They had had one appeal to
21 the Court of Appeals and two appeals to the
22 Supreme Court, one peremptory on the original
23 jurisdiction. Then when the Court of Appeals
24 dismissed it for being unappealable, and it was
25 not ripe, it was interlocutory, then they went

1 to the Supreme Court. The Supreme Court has
2 finally taken care of that.

3 Judge, just for the record -- and this is
4 part of their arguments in their brief -- but
5 Mr. Protopapas was appointed on November 2nd of
6 2018. And then on February 8th of 2021 was the
7 first subpoena that went out to Penn National
8 asking them for their policies not only for
9 Covil as a primary insured but also an
10 additional insured.

11 I think it's important to note, because
12 part of their process is, look, we found other
13 policies, we found general commercial -- I mean
14 not general commercial -- fire, marine or
15 automobile, but we haven't found that.
16 Although they haven't looked.

17 And then they say it's too burdensome for
18 us to look for these additional insureds. A
19 couple of these policies that they've
20 identified, Your Honor, Covil was a named
21 additional insured in the endorsement.

22 So they told us through this whole process
23 that they're unable to locate the historical
24 policies without policy numbers. Judge, we
25 learned through discovery and we learned

1 through Ellis & Winters that that was not true,
2 that they had other processes that they could
3 get in place of that. Then they said their
4 paper records were too voluminous to search
5 manually. And so, the Court went through a
6 series of Orders with them.

7 And just to recite these quickly; is on
8 July 1st, 2021, you directed Penn to search its
9 paper records using a list of the contractors
10 and facilities by the Receiver in connection
11 with the subpoena. They didn't do it. So we
12 had to come back again.

13 And so, on the second go-around, at that
14 point, you ordered Penn National to open its
15 repository and to review Covil's with their
16 appointed defense counsel, Ellis & Winters.
17 And so, that process took several months.

18 And Ellis & Winters recommended to the
19 Court additional collection of records focusing
20 on their microfiche records and then provided a
21 number of options for the Court to consider.

22 And those options included a sample of
23 commercial line policies on the microfiche card
24 boxes, to image those, to image only the
25 commercial line policies of microfiche cards

1 with the cancel, renew dates prior to 1993 and
2 the relevant policy prefixes.

3 And if the Court remembers, despite them
4 saying they only could search by policies,
5 there were prefixes on the policies to which
6 Ellis & Winters discovered we could find the
7 commercial general policies with the
8 appropriate prefix, which was never told to us
9 until Ellis & Winters got involved in that. Or
10 they could image the commercial line policies
11 or image all commercial line policies in cards.

12 So the Court held a hearing and you
13 ordered them to digitize the microfiche cards
14 that pertained to policies with prefixes for
15 commercial general liability and general
16 liability policies.

17 And, Judge, the same arguments that are in
18 their Motion of Opposition were the arguments
19 they continued to give to the Court. And they
20 did not do it again. So they did not follow
21 that Order at that point. So we had to come
22 back again and do this all over again.

23 At this time, you know, that you have
24 chose the option, and then you ordered them to
25 produce digitized records in the database. And

1 you noted that Ellis & Winters located three
2 newly-discovery policies, although they were
3 not produced by Penn and those were not general
4 commercial properties. But despite them saying
5 we have no policies, there were policies that
6 Ellis & Winters did in their limited search of
7 this.

8 THE COURT: And that was a one-day search.

9 MR. SMITH: Yes, ma'am.

10 THE COURT: One-day search. And they
11 found three Covil policies just in sampling.

12 MR. SMITH: In sampling. And it was not a
13 one-day search. And it was not an exhaustive
14 search. It was just a pure sampling of how
15 they decided to look through this.

16 And so, you know, again, as I mentioned,
17 Penn National never informed the Court or us
18 that they could cull the universe through these
19 prefixes. They just kept saying, can't do it,
20 can't do it.

21 And then you noted Penn's abject failure
22 to participate in the discovery process without
23 court intervention. And I believe that's what
24 you termed as the foot-dragging operation that
25 was going on with Penn National.

1 So, not to be deterred, after you told
2 them this, they go and they file these appeals,
3 as I mentioned. And, Judge, they said they
4 followed the law that was available to them.
5 And, you know, they got the right to appeal,
6 but obviously they understand that discovery
7 Orders are interlocutory. And only under --

8 THE COURT: I advised them on the record
9 that these Interlocutory Orders and that the
10 rulings of the court had been quite clear for
11 many years, the strict preservation state. So,
12 interlocutory appeals are not available for
13 Discovery Orders.

14 MR. SMITH: Absolutely. And you told them
15 that. And, you know, and, as you know, the
16 court has --

17 THE COURT: They don't have a right to
18 appeal those. The court has ruled many times
19 you do not have the right to appeal discovery
20 issues.

21 MR. SMITH: Well, not only did they appeal
22 to the Court of Appeals; then they petitioned
23 the Supreme Court, concurrently, for them to
24 have take the case in its original
25 jurisdiction. Both of those were denied. Then

1 they go to the Court of Appeals and file a
2 Motion to Reconsider, which again delays
3 delays, delays. Inevitable. And then, when
4 that gets denied, then they again petition the
5 Supreme Court for cert and then that gets
6 denied.

7 So we have been through a year, a year
8 plus process with them on trying to get this
9 matter in a position where we can do what we
10 attempted to do in February of 2021, and that
11 is to find out if you have any other policies
12 with Covil. So, you know, that's where we find
13 ourselves here.

14 And, Judge, you know, when you look at
15 this, you look at 26(b)(1), and that's what
16 we're asking the Court to award our attorney's
17 fees under. And if you look, it says that "The
18 Court shall require from parties whose conduct
19 necessitated the Motion to Compel to pay the
20 Movant party's reasonable expenses incurred and
21 attained under the Order."

22 There is no doubt, Judge, that you issued
23 a Motion to Compel, and there is no doubt that
24 they did not comply and that it is their
25 conduct that caused us to file these. Despite

1 them trying to say we're playing whack-a-mole
2 and moving targets over here, it was one simple
3 question: Produce the policies and produce
4 them through your process.

5 And so, you know, it further says in
6 26(b)(1), it says: "Unless the Court finds
7 that opposition to the motion was substantially
8 justified or that other circumstances make an
9 award expense just."

10 So, it says you shall unless that. And,
11 Judge, I don't see any prima facia showing that
12 they have produced thus far that their
13 motion -- that they were substantially
14 justified in what they did or any other
15 circumstances that would make this award
16 unjust.

17 This was a litigation policy that they
18 embarked upon. And it's keep away. We're
19 going to keep you away from searching this as
20 long as we can and hope we can get some court
21 to agree with us that this is too burdensome.

22 So, obviously, Judge, the award of
23 attorney's fees is within the discretion of the
24 Court. You understand the Glasscock factors
25 and what to do in there; and, you know, I don't

1 need to recite those to you.

2 But, you know, I would just tell the Court
3 that we diligently sought our insurance
4 policies since the Court has appointed us, we
5 embarked upon this journey with Penn National
6 back in 2021, and every step of the way they
7 have refused to comply until they exhausted
8 their appeals with the Supreme Court.

9 And so, that's -- you know, Judge, we
10 would submit that their conduct is willful and
11 deliberate. I mean, there is no other way to
12 determine that conduct other than that. They
13 could have manually searched. They decided
14 that they didn't want to. In fact, the records
15 custodian said that they could manually search
16 if they wanted to, but they told us they
17 couldn't when we first started this request.

18 It was not until the hearing that we
19 learned that Penn could cull its records to
20 eliminate irrelevant documents and make the
21 search more meaningful. In fact, that's what
22 Ellis & Winters recommended. And then, also,
23 after a day of searching, as you mentioned,
24 three policies were located. So, Lord knows, I
25 would imagine we're going to find more policies

1 through this process.

2 So, Judge, you appointed the Receiver.
3 You asked the Receiver to marshal the assets
4 and to get the insurance policies. And he is
5 only doing what the Court has ordered him to
6 do. And they have prejudiced us by waiting all
7 these years to get these documents.

8 So, Judge, you know, two years ago, we're
9 still sitting here and still waiting for these
10 documents. It's my understanding they're being
11 digitized, but there's really no reason that it
12 should have taken this long to get where we
13 are, and that's where I would ask the Court to
14 look at this.

15 Judge, I'll go through this thing. And
16 it's probably more appropriate for rebuttal.
17 But I just want to point out some of the
18 allegations of their memorandum. I got it last
19 night and started reading it this morning and
20 am interested in some of these concepts that
21 they say.

22 With Covil --

23 THE COURT: I got it on my doorstep last
24 night as well.

25 MR. SMITH: Well, yes, ma'am.

1 And so, they put in there, clinically
2 designed, that Covil clinically designed to
3 manufacture the narrative that Penn National
4 failed to immediately participate in discovery.
5 And then they accused us of having a moving
6 target in discovery requests and that they're
7 playing whack-a-mole, that every time we had
8 asked for something and they produce it, then
9 something else comes up.

10 Judge, there is nothing further from the
11 truth than that. That is -- we asked for one
12 thing, and we asked for the insurance policies.
13 And they are the ones that had the ever-moving
14 target of why they couldn't produce it. And
15 then they accuse us of this for that.

16 This is all a setup to get fees from them
17 to, quote, reap -- I'll read -- "to reap the
18 fruits of years-long investment in rapid-fire
19 motions to portray them as discovery derelict."

20 I mean, Judge, I've really looked at this,
21 as the Court every hearing ordered them to do
22 this. So I think the Court found that they
23 were discovery derelict and they are just
24 trying to attempt to re-litigate this.

25 And they say also, part of their defense

1 is, prior to May of 2018 nobody ever asked them
2 for any policies. They were just -- you know,
3 nobody asked for policies. Well, the Receiver
4 wasn't appointed until November of 2018. So
5 the Receiver wasn't even in this process. At
6 that point Covil was a defunct corporation,
7 which we alleged. And the Court went through
8 years of whether the insurance companies were
9 actually running Covil as alter-egos.

10 And then they say they complied because
11 they've been defending this case since the
12 inception. This isn't about whether they are
13 defending the case and paying indemnity. This
14 is about whether they're producing policies in
15 all these years that we've gone through this
16 process. And then they're basically also
17 rehashing all their arguments that the Court
18 has heard and rejected.

19 So, Judge, at the end of the day, we've
20 submitted to the Court attorneys fee
21 affidavits. And obviously, Morgan Lewis has
22 done the bulk of the work. But the affidavits
23 are submitted to the Court. They've been
24 provided to Penn National.

25 And we're asking for attorney's fees in

1 the amount of \$469,841.50 for Morgan Lewis for
2 their fees for the years-long disputes; \$84,630
3 for our law firm, Smith Robinson, for these
4 disputes; and \$84,505 for John B. White Law
5 Firm for the disputes that they had in there.

6 Judge, the computation, you know, there's
7 no reason that the Receiver should have to
8 incur these attorney's fees to do what the
9 Court ordered and go through these year-long
10 battles and stall tactics and foot-dragging
11 operations in order to do this. So, Judge, I
12 would respectfully ask that the Court find that
13 we're entitled to attorney's fees and award the
14 same.

15 We have not sought costs. We've obviously
16 got a declaratory judgment before the Court.
17 We'd like to just reserve our costs for that
18 time and at the declaratory judgment just give
19 us our rights to receive those costs without
20 prejudice today.

21 Thank you, Your Honor.

22 THE COURT: All right. Mr. Shealy.

23 MR. SHEALY: May it please the Court, Your
24 Honor.

25 THE COURT: This is Mr. Kirby D. Shealy,

1 III for Penn National Mutual Casualty Company.
2 And appearing with him today is Mr. Brady
3 Yntema.

4 MR. YNTEMA: Yes, Your Honor.

5 THE COURT: Welcome, Mr. Yntema.

6 MR. YNTEMA: Thank you, Your Honor.

7 THE COURT: So you may proceed.

8 MR. SHEALY: Thank you, Your Honor. May
9 it please the Court. I know you're used to
10 hearing from Mr. Yntema throughout the life of
11 this case. Mr. Yntema was out of town last
12 week, and I volunteered to prepare and argue
13 for today's motion.

14 I've been involved in this case since
15 December, don't have the history, the command
16 of the history that Mr. Yntema does; but,
17 nonetheless, I want to make a couple of points
18 for Your Honor.

19 My friend, Mr. Smith, mentioned a couple
20 of things, and I just want to clarify. The
21 first time that Penn National received a
22 subpoena was outside of the context of this
23 case and it was to produce two known policies
24 that Penn National had issued in the eighties
25 to Covil. Those were produced and there wasn't

1 any issue after that.

2 Penn -- or Covil's --

3 THE COURT: That was in the Finch case,
4 right?

5 MR. SHEALY: In connection with the Finch
6 case; yes, Your Honor.

7 Covil's --

8 THE COURT: And I may say to you, Mr.
9 Shealy, that that subpoena had been preceded by
10 a disastrous defense of Covil in a North
11 Carolina asbestos case which was tried to
12 verdict in the North Carolina District Court
13 and resulted in a \$34 million verdict. That
14 verdict was then attempted to be enforced here.

15 And the history of reply to repeated
16 requests by the Court and by the Plaintiffs in
17 the Finch case was a complete failure to reveal
18 anything about accurate information with
19 respect to insurance and assets. The only
20 asset of Covil was insurance. And its
21 attorneys were a moving target about how much
22 insurance they had.

23 But the case had a -- discovery and all
24 the activity had been done, including the trial
25 of the case, with many subpoenas for

1 information from Covil about all of its
2 insurance records. And then, these three
3 policies, kind of irrelevant policies, surfaced
4 from Penn National.

5 MR. SHEALY: Well, the two relevant
6 policies, two CGL policies, were produced in
7 response to the subpoena. They were known to
8 Covil at that time and they were produced in
9 response.

10 THE COURT: Right. And Covil is the one
11 that in that case asked for specific CGL
12 policies. No other search was made for any
13 other pertinent policies to this at all. They
14 produced only what Covil already had records
15 of.

16 MR. SHEALY: Your Honor, right. I don't
17 know that I've seen the subpoenas themselves,
18 but my understanding was that the subpoenas
19 asked for the two known policies.

20 THE COURT: That's correct. That's
21 correct. And rather than do anything about
22 looking, even at that point in the face of a
23 \$34 million judgment against its insured,
24 looking for any other coverage it might have,
25 it simply produced those policies. That was

1 it. That's what started the ball rolling.

2 MR. SHEALY: Your Honor, I just -- I don't
3 want to misrepresent something that I don't
4 know, but my understanding is that Penn
5 National produced the two policies it was asked
6 to produce in response to those subpoenas.

7 THE COURT: That is correct.

8 MR. SHEALY: And just a couple of other
9 things that I think are important. It has been
10 represented to the Court multiple times in
11 hearings that these three irrelevant policies
12 were found on a one-day search by Ellis &
13 Winters. But if you look at their report,
14 which is attached as an exhibit to the
15 Receiver's motion, they had those policy
16 numbers already themselves. And so --

17 THE COURT: That's correct. That's what's
18 so frustrating about this thing. That's not a
19 fact in your favor at all, Mr. Shealy. They
20 did already have those policies. But what Penn
21 National represented in all the hearings I have
22 held on this is that they had no ability to
23 examine their records unless they had a
24 specific policy number. That's what they said.

25 MR. SHEALY: And, well, that's what Ellis

1 & Winters had, specific policy numbers, and
2 were able to pull those policy numbers,
3 policies --

4 THE COURT: Exactly. That's not what was
5 being asked of them. They were being asked to
6 supply all of their records to determine
7 whether there are other policies.

8 MR. SHEALY: And that's --

9 THE COURT: And they misrepresented to the
10 Court that they were not able to do that unless
11 they were given policy numbers, that they had
12 no other search mechanism for searching.
13 That's what they represented to the Court many,
14 many, many times.

15 And we went through all kinds of gyrations
16 about where the records were and Iron Mountain.
17 And finally we found out, no, there are also
18 microfiches of a lot of this stuff.

19 And still they represented through all of
20 that, we can't find anything unless we have a
21 policy number and it's terribly burdensome for
22 us to have to go through what it would take to
23 just go record-by-record, or microfiche page
24 which has what? Ten or twelve things on it,
25 policies on it; or four or whatever it is has;

1 that's burdensome.

2 And it turns out that is a complete
3 misrepresentation. It turns out that they have
4 a prefix look of identifying the policies that
5 we want to look at. And the policies that they
6 want to look at are CGL policies, commercial
7 general liability policies or general liability
8 policies or commercial lines policies.

9 And it turns out that Penn National has
10 prefixes on the front of their policy numbers
11 that do that, or sometimes on the boxes of
12 where these things are stored. But there is
13 another way to narrow the search down so you
14 don't get irrelevant inland marine policies and
15 automobile policies but you get the asset that
16 I'm trying to marshal for Covil.

17 MR. SHEALY: Your Honor, and I'm --

18 THE COURT: And so explain that to me
19 under the rubric of how abused Penn National
20 has been by this process of trying to get
21 records that Covil is entitled to.

22 MR. SHEALY: Well, and, Your Honor, I
23 certainly don't want to re-litigate --

24 THE COURT: Well, you've continued to
25 re-litigate with the reply you've made right

1 now. That's why I want to know, like I have
2 all along, why you deliberately failed to
3 disclose that there was another way to get the
4 universal policies that we wanted to look at
5 narrowed down from all the hundreds of
6 thousands of policies they have to some
7 manageable number that would be several hundred
8 thousand perhaps.

9 But that, shoot, I've been through 100,000
10 pages of material or sometimes 100,000
11 documents many times in discovery from my
12 lawyer days forward, and I certainly have since
13 I've been trying these asbestos cases.

14 MR. SHEALY: Your Honor.

15 THE COURT: And why this company can't do
16 that is what I really want to know right now.

17 MR. SHEALY: Your Honor, well, the company
18 is doing -- is complying with your --

19 THE COURT: It doesn't sound like they're
20 doing anything except at a snail's pace. And
21 they're not giving regular reports on what
22 they're doing. Tell me about why they never
23 told us that you could find all the CGL
24 policies.

25 MR. SHEALY: Your Honor, I'm not here to

1 tell you that they made a -- didn't make a
2 misrepresentation or did. What I do know is
3 that those policy prefixes will result in some
4 narrowing of the universe but not down to
5 something where we could find all of the
6 policies in a matter of a few days. That's
7 just -- it's just --

8 THE COURT: If you digitized them, you
9 could find them very immediately. And Mr.
10 Yntema knows that. We've talked about that for
11 months. But Mr. Ynema never told us the whole
12 time that there was a way of narrowing down
13 this huge bulk of all the policies they ever
14 wrote.

15 The suggestion was it's all together, all
16 the policies we ever wrote. The only way you
17 can find it is to have a specific policy
18 number. That was asserted in this court by the
19 attorneys on their oath as lawyers. It was
20 asserted by the client time and time again.

21 And I just -- I am wanting to understand
22 just exactly what's happening now. And I hope
23 it's something more than just them hand going
24 through things. I hope it is digitizing these
25 records, like people do all the time.

1 Attorneys do that all the time in getting bulks
2 of material and trying to make it searchable so
3 that they can try these cases.

4 Why is it taking them a huge, any length
5 of time at all now that they've got the boxes
6 identified that are the real ones?

7 MR. SHEALY: Well, and, Your Honor, again,
8 the prefixes are -- a particular box may have
9 policies in it with different prefixes within
10 it. So --

11 THE COURT: Well, that's fine. You're
12 going to have to go through and pull them out.

13 MR. SHEALY: That's right. That's right.
14 So, Your Honor, where we are right now is,
15 all of the boxes of microfiche had been shipped
16 to the west coast to the vendor that Ellis &
17 Winters identified to do this.

18 THE COURT: When was that done?

19 MR. YNTEMA: Your Honor, if I could.
20 Brady Yntema for Penn National, just working
21 with Mr. Kirby and presenting it to streamline
22 it for Your Honor.

23 So, several weeks ago, I guess at the
24 January timeframe, the vendor identified that
25 it needed a sampling of the microfiche of Penn

1 National that it could run to do a milestone
2 project.

3 The milestone project, which was unknown
4 to me at the time, is a process by which the
5 vendor would use to create a platform, a sample
6 digitized platform that a vendor wanted to show
7 to Ellis & Winters and to show to counsel for
8 the Receiver and show to counsel for Penn
9 National as to what it could do with respect to
10 the sampling of microfiche that it had received
11 in its milestone project.

12 That milestone project took three to four
13 weeks to complete. Penn National provided
14 hundreds of microfiche -- I forget the exact
15 number -- to the vendor when it was requested.

16 That milestone project has now been
17 completed. The vendor has made several
18 presentations to Ellis & Winters, to Receiver's
19 counsel. And I think it consulted, that the
20 Receiver's counsel has, and also to Penn
21 National with respect to the platform it can
22 set up.

23 And then, at that point, once all the
24 parties approved, especially Ellis & Winters
25 approved that platform and how it could be

1 searched, then Penn National said, well, how do
2 you want us to ship out our microfiche? Do you
3 want it on a rolling basis? We can do it in
4 one lump sum, whatever the vendor wants. Penn
5 National has now shipped all of its microfiche
6 to the vendor in California.

7 THE COURT: Not just a sample. All of it?

8 MR. YNTEMA: All of it's out there in
9 California.

10 THE COURT: That's all of their policies?

11 MR. YNTEMA: That's all of the microfiche
12 policies. Those are all the focus of the Ellis
13 & Winters report.

14 THE COURT: What percentage of -- I don't
15 want any doubts to be in this thing now. I
16 want to understand exactly what we're talking
17 about. What is the universe of microfiche
18 policies?

19 MR. YNTEMA: So, Penn National has sent
20 all of its commercial line microfiche records
21 to the vendor.

22 THE COURT: All right.

23 MR. YNTEMA: Its personal lines, you know,
24 as Your Honor knows, is not an issue.

25 THE COURT: That's correct. But the

1 commercial lines are.

2 How much of the policies they wrote have
3 been microfiched?

4 MR. YNTEMA: At this point, again, I was
5 completing what stage we're in. So, it was
6 sent out, I guess it was Good Friday or the day
7 before Good Friday. The vendor said, I've
8 received -- or that week the vendor told me
9 that they had received all the microfiche by
10 ground shipment. And that's what they prefer,
11 FedEx ground shipment.

12 The vendor had received it. There were
13 some damaged boxes. They needed to determine
14 whether the microfiche in those damaged boxes
15 had been impacted.

16 They reported to me and to Ellis & Winters
17 prior to, I guess it was about Good Friday --
18 that's kind of my bookmark there -- that the
19 microfiche in the damaged boxes had not been
20 impacted and that they could begin scanning.

21 I was out last week on vacation. And
22 Ellis & Winters and I have -- Ellis & Winters
23 sent an invite for a conference call tomorrow
24 morning to begin the scanning process and how
25 that will proceed of all the microfiche that

1 have now been received by the vendor.

2 THE COURT: Okay. And my question is,
3 when all that microfiche is scanned of every
4 commercial lines policy that is on microfiche,
5 what time period does that encompass? In other
6 words, are there more commercial lines policies
7 that have not been put on microfiche?

8 MR. YNTEMA: Not to my understanding that
9 is relevant. The Ellis & Winters report was
10 very specific that the relevant policies that
11 would concern Covil were 1992 and before were
12 beyond microfiche. And that should be the
13 focus of any digitization of any of Penn
14 National's records. And so that's why the
15 focus has been on the microfiche.

16 THE COURT: So, specifically, the
17 microfiche from '92 to what? To what?

18 MR. YNTEMA: Everything pre-1992 would
19 have been on microfiche. Then Penn National
20 went to a case where they tried to create its
21 own computer database post-1992. That didn't
22 work out. So then they went to paper storage.
23 That's what's contained in Iron Mountain.
24 That's why Ellis & Winters is not concerned
25 about the Iron Mountain policy-related

1 documents, is because they post date Covil.

2 And that's why Ellis & Winters' report was
3 the recommendation that the focus of this
4 complete search should be on the microfiche.
5 And that's what's been sent. The commercial
6 lines policies on microfiche have been sent to
7 the vendor in California.

8 THE COURT: All right. And so, how long
9 is it going to take to scan them all?

10 MR. YNTEMA: I submitted the question.
11 That is a question I hope is going to be
12 answered tomorrow during our conference call.
13 It's going to be several months though. I
14 mean, I think that the initial estimate from
15 the vendor was maybe three months or more. It
16 took them -- it took the vendor approximately
17 three weeks to go through maybe a few hundred
18 microfiche for the milestone project.

19 THE COURT: Well, as you know, the thing
20 that's been so maddening about this and the way
21 it all came to a head when you all began the
22 last foot-dragging operation was this case was
23 scheduled for trial, and I had specifically
24 scheduled it for trial around the schedules of
25 counsel for Plaintiff.

1 Then you all start this nonsense of
2 appealing the thing, and that is going to mean
3 we have to reschedule this thing for trial.
4 And we're currently talking about trial in
5 June.

6 I want to know when this stuff is going to
7 be scanned and when we can expect to have it in
8 the hands of Plaintiff.

9 MR. YNTEMA: Now, I think, Your Honor,
10 this is a discussion point. I think Your Honor
11 made a good point just a moment ago; there
12 hasn't been any interim reports as to what's
13 going on with the scanning.

14 And if you remember when Ellis & Winters
15 was first involved, I submitted interim reports
16 as to what Ellis & Winters' searches were and
17 what they were doing.

18 I'm happy to report -- or Ellis & Winters
19 can. I hate to put more burden on them. I'm
20 happy to report --

21 THE COURT: I'm going to be ordering the
22 interim reports beginning today. That's the
23 very least I'm going to be ordering. But we're
24 going to need some interim reports -- and I
25 would suggest every two weeks -- to find out

1 exactly what is going on with the scanning
2 process.

3 MR. YNTEMA: Certainly.

4 THE COURT: Because I've got to set a
5 trial date again. And I am going to set a
6 trial date.

7 MR. YNTEMA: Certainly. As far as the --
8 I have to rely on the vendor and their
9 estimate. And as far as I know, it is a
10 several months long project. But as far as the
11 specific number of months --

12 THE COURT: I want a description in the
13 first status report that says exactly what the
14 work plan is and why it's going to take so
15 long.

16 This makes no sense to me. The Supreme
17 Court of South Carolina had all of its
18 Transcripts of Record and all of its briefs and
19 a lot of the other motion-type material on
20 microfiche for many years. And we migrated
21 that to a more technologically up-to-date
22 platform, just like you're doing with these
23 records; and it didn't take this length of time
24 to convert these things.

25 And that microfiche conversion was not the

1 easiest thing in the world. And it really
2 matters who you get as a vendor to do it. I
3 don't know anything about who you all have got.
4 I want to know that.

5 MR. YNTEMA: You want to know the identity
6 of the vendor?

7 THE COURT: Oh, yes, sir. Certainly.

8 MR. YNTEMA: I think that might have been
9 -- I'm certainly willing to incorporate that
10 into an interim report.

11 THE COURT: Yeah. But we're not going to
12 have something where we just have an interim
13 report that says, well, it's taking a little
14 longer. I want to know much more, specifically
15 exactly what is being done. I am very familiar
16 with the process of converting microfiche
17 records.

18 MR. YNTEMA: I appreciate that, Your
19 Honor. As far as -- and I don't want to speak
20 out of turn. I've had a long history in this
21 case with this Court, and I've worked hard to
22 maintain the Court's respect. And at no point
23 have I intentionally misrepresented anything to
24 this Court. I have always taken the
25 position -- and it was my client's position and

1 still is the client's position -- that the
2 policies could only be searched by policy
3 number.

4 THE COURT: But that turns out to be
5 untrue. And I'm not going to take any
6 representation to the contrary. There are more
7 ways to get in there and identify commercial
8 lines policies than just that policy number and
9 narrow the -- and you've now done that because
10 all you've shipped out by way of microfiche was
11 commercial lines to the vendor. You did not
12 ship out to them personal lines.

13 MR. YNTEMA: It's the only way to search
14 the commercial lines. I don't mean to
15 interrupt Your Honor. The only way to search
16 the commercial lines policies is by policy
17 number. Now, there are prefixes to those lines
18 policies, but you still would have to go
19 through and manually search hundreds and
20 hundreds and hundreds of them.

21 THE COURT: Yeah. But you can eliminate a
22 lot of personal lines and everything else. The
23 way it was explained in court before, it was
24 the whole of every policy you ever wrote.
25 Personalized, inland marine, automobile

1 casualty, all was lumped in together with
2 commercial. And the only way you could get to
3 it was to have that specific policy number.
4 That was it. There was no other way to look at
5 it.

6 It turns out now that you can cull a lot
7 of policies out without having to take any
8 detailed look at them to find Covil, which is
9 the end of what we are trying to do. And it
10 turns out you can establish a much smaller
11 universe of things to look at because you've
12 got that prefix.

13 And that was not the way it was
14 represented to us for a year worth of
15 unproductive hearings, even after Ellis &
16 Winters was appointed to get into this process.

17 I am not trying to blame you personally,
18 but I am blaming the firm, Penn National, very
19 much. It's -- and you have assisted them in
20 that. But I -- their approach to this thing
21 has been reprehensible in my view.

22 MR. YNTEMA: I appreciate that, Your
23 Honor. And again, I appreciate your Court's
24 time in allowing me to explain it. I have
25 never personally tried to misrepresent anything

1 in court.

2 THE COURT: It's not anything about you.
3 Its about your client.

4 MR. YNTEMA: Thank you, Judge.

5 And as far as complying with various
6 sundry Motions to Compel leading up to the
7 appeal of the Court's Order for Penn National
8 digitizing the documents, I am certainly happy
9 to let Mr. Kirby [sic] continue to argue that.
10 I certainly didn't want to take the steam out
11 of his argument.

12 But that was a long process that Penn
13 National complied with. You requested -- the
14 Court requested in a two-stage process that
15 they submit affidavits to the Court explaining
16 how they store documents. Then we proceeded on
17 from August into, I guess, the fall of that
18 year, when then the Court recommended Ellis &
19 Winters be involved.

20 Penn National then cooperated with Ellis &
21 Winters, opened its insurance repository,
22 provided them with any documents they wanted to
23 see, review; anything that would assist them.

24 THE COURT: Well, I hear all that, but
25 that's plowing some ground we've plowed again

1 and again.

2 MR. YNTEMA: Certainly. And I will --

3 THE COURT: We are now at this point with
4 a trial that was imminent having been delayed
5 because of the continued foot dragging of Penn
6 National such that it wasn't until recently
7 that you finally selected a vendor and began
8 the process of shipping those things out to
9 them. I don't see why that took so long at
10 all.

11 I just don't think there is any feeling of
12 urgency within this company at all for a very
13 serious attempt to marshal assets. Covil is
14 being brought into court all around. It's a
15 major thermal insulator. And other companies
16 have been able to get into their records and
17 find Covil policies and cooperate with the
18 Receiver. And Penn National has been abject in
19 its failure to cooperate, unless I order them,
20 which I have done now about three or four
21 times, more specifically each time.

22 And that's the foundation of why we're
23 here today, Mr. Shealy, is to decide attorney's
24 fees awards because of the intransigence of
25 this client. And I understand the explanations

1 are being given here because I've heard them
2 many times before. And we still don't have
3 them. We are inching somewhat closer, but we
4 are not there yet.

5 MR. YNTEMA: I understand, Your Honor.
6 And I will every two weeks have an interim
7 report to the Court and have it be a subsequent
8 report. I do understand that. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 Now, Mr. Shealy, Mr. Ynema got right in
12 the middle of your arguments.

13 MR. SHEALY: Well, Your Honor, I'll
14 just -- I'll be brief. I mean, I understand
15 the Court's' position. I did -- Mr. Smith
16 indicated they were moving under Rule 26(b),
17 but I think they're moving -- I know that they
18 have moved under Rule 37(b).

19 And again, and I understand the Court's
20 position. Our position is we have not failed
21 to comply with any of the Court's Orders. We
22 have complied with the Court's Orders. The
23 only one that we didn't comply with initially
24 was the May discovery Order that was the Order
25 that said you've got to digitize your records.

1 That Order was appealed. When that appeal ran
2 its course and was ultimately dismissed, now
3 Penn National is complying with that Order.
4 And so, there hasn't been the failure to comply
5 with an Order that it would justify the award
6 of attorney's fees under Rule 37(b).

7 And the only other item that I would point
8 out to Your Honor is that the Receiver has only
9 cursorily addressed the Glasscock factors.
10 They provided time sheets that have either been
11 redacted or don't show any substantive work
12 description at all.

13 The identifications of those time sheets
14 certainly we have no argument with; but in
15 terms of the other Glasscock factors, they just
16 haven't provided this Court with the sort of
17 background that it needs to award attorney's
18 fees based on the rates that have been
19 indicated.

20 My assumption is that Your Honor would
21 look in camera, as they've invited the Court to
22 do, at their time sheets to make sure that the
23 -- that if you're inclined to award attorney's
24 fees that the time does deal with dealing with
25 discovery matters.

1 But based on the record before the Court
2 right now, I don't believe that the Court has
3 the basis it needs to render an award of
4 attorney's fees that would satisfy the
5 Glasscock factors.

6 THE COURT: All right. Thank you, sir.

7 MR. SHEALY: Thank you, Your Honor.

8 THE COURT: All right, Mr. Smith. Reply?

9 MR. SMITH: Judge, just briefly. And let
10 me mention that 26(b)(1) is dealing with
11 Motions to Compel. And that's what says "the
12 court shall." So we moved under both of those.

13 And these are Motions to Compel that have
14 been granted that we have not taken up the
15 issues of attorney's fees from these multitude
16 of hearings because we had to get to the place
17 today where we are, where they're finally
18 complying with the Orders.

19 And I take great challenge of their
20 interpretation that they've complied with
21 Orders, because if they complied with the Order
22 to Produce every time the Court has told them,
23 we would never have been to these multiple
24 hearings. So, regardless of that, I think -- I
25 just think that that's a non-issue.

1 Your Honor, the one thing I wanted to
2 clarify that we talked about here, you've
3 talked about the trial and the reason why the
4 delay in this. We are still -- we are on the
5 delay as a result of the mode of trial that the
6 court determined. We were going to have a
7 non-jury hearing before the jury hearing. But
8 the Court is correct in that if they would have
9 produced the policies or looked through the
10 policies, then we would have not gone through
11 these series of appeals and, you know,
12 hide-the-ball situations that they've done.
13 Then we would not -- we would have been in a
14 position to try both of those together. We
15 were just trying to bifurcate to get there
16 early.

17 But as soon as we -- obviously, they
18 appealed your Order to have a non-jury trial
19 the eve of that trial. And so, that's the
20 reason why we had to get the hearing continued
21 last time.

22 And I'm a little confused about what Mr.
23 Shealy is talking about with the subpoena,
24 where he started off the case. But I do want
25 to point out the subpoena, Judge.

1 The first subpoena I looked at -- we
2 looked this up -- that the Receiver issued, as
3 he pointed out earlier, was November of 2019.
4 Or 2018. We issued a subpoena on 11-25 of '19
5 to Penn National. And it was 21 -- attachment
6 Schedule 21 -- number one was on there -- was:
7 "Produce all policies of insurance."

8 So I don't know if that's the one he's
9 referencing or if he's referencing something
10 else. And that might have been a subpoena that
11 came from either the Plaintiffs or someone when
12 they were trying to collect the judgment. But
13 our first subpoena that was sent to them asked
14 for those policies. And not the specific
15 policies; all policies.

16 THE COURT: All right. How about the
17 Glasscock factors?

18 MR. SMITH: Judge, from my days of doing
19 family court, which I despised tremendously, I
20 would say that, you know, Mr. Shealy -- as the
21 family court judges told me when they make
22 these arguments: Do you want to cross examine
23 the attorneys to figure it out or we could
24 supplement an affidavit, Judge, to comply with
25 the Glasscock factors?

1 THE COURT: And I think that would be
2 fine.

3 MR. SMITH: Okay.

4 THE COURT: All right. Do you have
5 anything further?

6 MR. SMITH: No, ma'am.

7 THE COURT: Good. All right. The history
8 of this matter is not a history, as has been
9 represented by defense counsel, of continuing
10 attempts to comply. The history of this matter
11 has been to say, no, we cannot search and find
12 these policies.

13 A very simple subpoena was sent to these
14 people now in 2018. That's almost five years
15 ago; a simple subpoena that asked for all Penn
16 National policies of commercial general
17 liability that covered Covil.

18 And for several years it was simply, we
19 can't search. First of all, they didn't know
20 where they were. Then they were at Iron
21 Mountain. No, they were there. It took a long
22 time to -- the corporate rep was examined. It
23 took a long time for them to finally come up
24 with the notion -- I think it was even after
25 Ellis & Winters was brought into the case -- to

1 reveal that a lot of the policies were not
2 stored in boxes at Iron Mountain, which is a
3 big national storage facility; but it also
4 digitizes and does a lot of other things to
5 store records.

6 Finally, it came out several years into
7 this dispute that these records were on
8 microfiche. Had that been known at the
9 beginning, that would have changed things.

10 The only time that activity has moved
11 forward by means of getting a law firm that
12 would supervise this activity, getting an
13 estimate of what kind of technology could be
14 used to make these records searchable, getting
15 a vendor who is now going to do that was when I
16 made specific Orders. Because they didn't do
17 anything that told them, well, try Ellis &
18 Winters; well, try getting a vendor.

19 This hasn't been some voluntary move
20 towards cooperation the whole time from Penn
21 National. Anything but. Anything but.

22 So, there is no question in my mind that
23 what has an aspect of my granting the motion,
24 repeated Motions to Compel which have not been
25 complied with, there's no question that even

1 under 26(b)(1) I am empowered to set attorney's
2 fees for attempting to compel cooperation.

3 But the routine discovery requests in this
4 coverage suit and routine subpoenas, 37(b),
5 simply adds to that. It's another way to have
6 of examining this thing. But there is not one
7 to the exclusion of the other.

8 The total amount of fees -- and I have
9 looked at the various submissions with the
10 redactions; not in the original, is \$469,841.50
11 for fees through January the 30th of 2023, as I
12 understand it.

13 I will want the Plaintiff to supply me
14 within a week's time the un-redacted bills and
15 affidavits of counsel for covering the
16 Glasscock factors.

17 I will not require that the un-redacted
18 material be sent to Penn National at this time,
19 but I will examine it and see. And the reason
20 that I won't give the un-redacted copies to
21 Penn National at this time is because it would
22 certainly reveal trial strategy both in the
23 current controversy by producing these policies
24 as well as the broader issues regarding
25 coverage. So I would like that to be done by

1 Plaintiff within the week.

2 I would like -- I also would direct that
3 reporting be done by Penn National every two
4 weeks as to exactly the status.

5 The first report should be in much more
6 detail and a description of exactly what's
7 being done and how it's being done, exactly
8 what microfiche was sent, exactly what the
9 volume of the materials is and so forth.

10 I'm sure that's material that's already
11 been covered in their bills to Penn National or
12 to Ellis & Winters. But if not, they need
13 to -- well, we need to have some information
14 about exactly what's being done and what kind
15 of materials they are working on.

16 And then I want a timeline of precisely
17 what the work plan is for completion of this
18 and exactly what's being done, how it's being
19 done, and what kind of time period it takes to
20 digitize these microfiche.

21 And what we're talking about is digitizing
22 all of them. We are not talking about making a
23 call yourself and defining the Covil policies
24 and then giving them. That rubicon was crossed
25 some time ago when I in an Order said, if

1 you're not willing to search yourself, then you
2 must digitize and allow the Plaintiff to
3 search. That's still the Order.

4 So let's be sure that we understand so we
5 don't get at the end and suddenly say, well,
6 here are the Covil files, some little small
7 group out of all the microfiche. No.

8 This thing needs to be put in searchable
9 form so that the Plaintiff can, instead of
10 going to the warehouse and searching, looking
11 at each microfiche themselves and have a
12 program to search itself and verify that it's
13 getting all of the material that would be
14 covered with Covil. So all that needs to be
15 covered in the Order that would be made.

16 Now, excuse me. I recited the Morgan and
17 Lewis figure. So, let's also -- yeah. All
18 right. Recite again the exact figures, Mr.
19 Smith.

20 MR. SMITH: Your Honor, I've got Morgan
21 Lewis; as you talked about, was \$469,841.50.

22 THE COURT: Right.

23 MR. SMITH: Our law firm of Smith Robinson
24 was \$84,630. And John B. White, Jr. P.A's Law
25 Office was \$84,505.

1 THE COURT: Great.

2 MR. SMITH: A total of 639,76.50.

3 THE COURT: That's right. And what's what
4 Ms. Poswell was pointing out to me, that total
5 figure. And that's what will be awarded. And
6 all of those are as of 1-30-23, as I understand
7 it.

8 MR. SMITH: Yes, ma'am.

9 THE COURT: There may be some slight
10 adjustments when you submit it back, when you
11 submit the records for this and anything else
12 that may occur that needs to be added to it
13 when you bring it up to date when you send it
14 to me.

15 MR. SMITH: We'll have a final date. Yes,
16 ma'am.

17 THE COURT: Very good.

18 MR. SMITH: Judge, one other thing. I
19 just wanted to make clear on the record, when
20 you talked about digitizing and searchable, the
21 one issue is, we found out during discovery
22 that Penn National categorized their search
23 engine of policies through just the named
24 insured, not additional insured. So I just
25 want to make --

1 THE COURT: Right. Exactly. I think that
2 my Orders have made it clear that we want named
3 insured or additional insured. And both those
4 things are on the microfiche, as I understand
5 it. Ellis & Winters have verified that.

6 MR. SMITH: Right. And that's why I just
7 wanted to make sure that the record is clear
8 that it's additional insured and named insured,
9 since they don't have that policy anymore.

10 THE COURT: But again, we want the
11 thing -- we want them to disclose what they say
12 those two things are by means of the Covil, and
13 then we want the whole database to be made
14 available to Plaintiffs so it can perform its
15 own search and compare it to what they say is
16 the policy --

17 MR. SMITH: Yes, ma'am. Exactly. That's
18 all we ask.

19 THE COURT: -- that mentions Covil. And
20 again, we may have more litigation about how
21 those policies cover, what do they cover. But
22 we simply want to know that's what the policies
23 indicate, is the coverage either in, you know,
24 a primary role or in an additional insured
25 role.

1 MR. SMITH: Right.

2 THE COURT: Exactly.

3 MR. SMITH: Thank you.

4 THE COURT: Anything further? Anything
5 further by way of any need for clarification,
6 Mr. Shealy?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: Very good. That completes the
9 Covil matter.

10 - - -

11 (Proceedings conclude at 11:55 a.m.)

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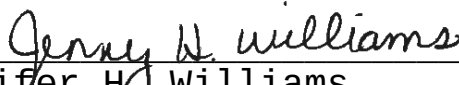
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CERTIFICATE OF REPORTER

I, Jennifer H. Williams, Registered Professional Reporter and Notary Public for the State of South Carolina, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time and location stated on page 1 of this transcript and that the foregoing as typed is a true, accurate and complete record of all motions made at the time of the proceedings to the best of my ability.

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 24th day of April 2023, at Lexington County, South Carolina.



Jennifer H. Williams
Registered Professional Reporter
Notary Public
State of South Carolina
My Commission expires:
February 7, 2033

WORD INDEX

< \$ >	43:10 48:1	Absolutely 12:14	appointed 1:1 6:4,
\$34 21:13 22:23	27408 3:1	abused 25:19	9 8:5 9:16 15:4
\$469,841.50 19:1	29151 2:1	accurate 21:18	16:2 18:4 38:16
48:10 50:21	29201 1:1 2:1	54:1	appreciate 36:18
\$84,505 19:4 50:25	29202 1:1	accuse 17:15	38:22, 23
\$84,630 19:2 50:24	29204 2:1	accused 17:5	approach 38:20
	2nd 8:5	ACTION 1:1	appropriate 10:8
		activity 21:24	16:16
	< 3 >	47:10, 12	approved 29:24, 25
< 1 >	30th 48:11	ADAMS 2:1	approximately
1 54:1	310 3:1	added 51:12	33:16
100,000 26:9, 10	336)419-4904 3:1	additional 8:10, 18,	April 1:1 7:1 54:1
1000 2:1	37(b) 41:18 42:6	21 9:19 51:24	argue 20:12 39:9
11:00 1:1 4:4	48:4	52:3, 8, 24	arguing 5:11
11:55 1:1 53:11	3B 1:1	addressed 42:9	argument 39:11
1111 2:1		adds 48:5	42:14
11-25 45:4	< 4 >	adjustments 51:10	arguments 8:4
1200 2:1	4000 2:1	admonition 7:13	10:17, 18 18:17
1221 2:1	4th 6:25 7:1	advised 12:8	41:12 45:22
126 2:1		affidavit 45:24	asbestos 21:11
1-30-23 51:6	< 5 >	affidavits 18:21, 22	26:13
1459 1:1	5th 6:24 7:7	39:15 48:15	asked 16:3 17:8,
1701 1:1		affixed 54:1	11, 12 18:1, 3
17th 7:8	< 6 >	ago 5:25 16:8	22:11, 19 23:5
19 1:1 45:4	639,76.50 51:2	28:23 34:11 46:15	24:5 45:13 46:15
1992 32:11		49:25	asking 8:8 13:16
1993 10:1	< 7 >	agree 14:21	18:25
1st 7:1 9:8	7 54:1	allegations 16:18	aspect 47:23
	701 3:1	alleged 18:7	asserted 27:18, 20
< 2 >	713)890-5110 2:1	allow 50:2	asset 21:20 25:15
20004 2:1	77002 2:1	allowing 38:24	assets 6:6 16:3
2018 8:6 18:1, 4		alter-egos 18:9	21:19 40:13
45:4 46:14	< 8 >	amount 19:1 48:8	assist 39:23
2019 45:3	803)212-4986 2:1	answered 33:12	assisted 38:19
202)739-5779 2:1	803)778-2471 2:1	anymore 52:9	assumption 42:20
2020-CP-40-02098	803)978-6111 2:1	appeal 7:14, 20	attached 23:14
1:1 4:9	803-212-0012 1:1	12:5, 18, 19, 21	attachment 45:5
2021 6:24, 25 8:6	8th 6:24 8:6	39:7 42:1	attained 13:21
9:8 13:10 15:6		appealable 7:12	attempt 17:24
2022 6:25 7:1, 2	< 9 >	appealed 42:1	40:13
2023 1:1 7:8	92 32:17	44:18	attempted 13:10
48:11 54:1	9th 6:25	appealing 34:2	21:14
2033 54:1	< A >	appeals 5:22 7:15,	attempting 48:2
20th 6:23	a.m 1:1 4:4 53:11	21, 23 12:2, 12, 22	attempts 46:10
21 45:5, 6	ability 6:19 23:22	13:1 15:8 44:11	attorneys 18:20
2110 2:1	54:1	APPEARANCES	21:21 27:19 28:1
24th 54:1	abject 11:21 40:18	2:1 3:1	45:23
26(b) 41:16	able 24:2, 10 40:16	appearing 20:2	ATTORNEY'S 1:1
26(b)(1) 13:15 14:6		appellate 7:20	4:10 5:1 13:16
			14:23 18:25 19:8,

13 40:23 42:6, 17,
23 43:4, 15 48:1
August 6:23 39:17
automobile 8:15
25:15 37:25
available 12:4, 12
52:14
Avenue 2:1
avenues 5:22
award 13:16 14:9,
15, 22 19:13 42:5,
17, 23 43:3
awarded 51:5
awards 40:24

< B >
back 9:12 10:22
15:6 51:10
background 42:17
ball 23:1
based 42:18 43:1
basically 5:13
18:16
basis 30:3 43:3
battles 19:10
bear 5:6
becoming 5:14
began 33:21 40:7
beginning 34:22
47:9
BEGUN 1:1
believe 5:4 11:23
43:2
Beltline 2:1
best 54:1
better 5:16
beyond 32:12
bifurcate 44:15
big 47:3
bills 48:14 49:11
bit 5:7
blame 38:17
blaming 38:18
bnas@morganlewis.c
om 2:1
BOCKIUS 2:1
bookmark 31:18
Boulevard 2:1
Box 1:1 28:8

boxes 9:24 25:11
28:5, 15 31:13, 14,
19 47:2
BRAD 2:1 4:23
BRADY 2:1 3:1
20:2 28:20
brady.edwards@mor
ganlewis.com 2:1
brief 8:4 41:14
briefly 43:9
briefs 35:18
bring 51:13
broad 48:24
brought 40:14
46:25
bulk 18:22 27:13
bulks 28:1
burden 34:19
burdensome 8:17
14:21 24:21 25:1

< C >
California 30:6, 9
33:7
call 31:23 33:12
49:23
camera 42:21
cancel 10:1
card 9:23
cards 9:25 10:11,
13
care 8:2
CAROLINA 1:1
2:1 3:1 21:11, 12
35:17 54:1
case 5:2, 17 7:15
12:24 18:11, 13
20:11, 14, 23 21:3,
6, 11, 17, 23, 25
22:11 32:20 33:22
36:21 44:24 46:25
cases 26:13 28:3
Casualty 20:1 38:1
categorized 51:22
cause 54:1
caused 13:25
CENTER 1:1
cert 13:5
certainly 25:23
26:12 35:3, 7 36:7,

9 39:8, 10 40:2
42:14 48:22
CERTIFICATE
54:1
certify 54:1
CGL 22:6, 11 25:6
26:23
challenge 43:19
changed 47:9
chose 10:24
CIRCUIT 1:1
circumstances 14:8,
15
CIVIL 1:1
clarification 53:5
clarify 20:20 44:2
clear 12:10 51:19
52:2, 7
client 27:20 39:3
40:25
client's 36:25 37:1
clinically 17:1, 2
closer 41:3
coast 28:16
colleagues 4:15
collect 45:12
collection 9:19
Columbia 1:1 2:1
come 4:6 9:12
10:21 46:23
comes 17:9
command 20:15
comment 5:13
commercial 8:13,
14 9:23, 25 10:7,
10, 11, 15 11:4
25:6, 8 30:20 31:1
32:4, 6 33:5 37:7,
11, 14, 16 38:2
46:16
Commission 54:1
COMMON 1:1
companies 6:12
18:8 40:15
Company 20:1
26:15, 17 40:12
compare 52:15
Compel 5:12 6:20,
23 13:19, 23 39:6

43:11, 13 47:24
48:2
complete 21:17
25:2 29:13 33:4
54:1
completed 29:17
completes 53:8
completing 31:5
completion 49:17
complied 18:10
39:13 41:22 43:20,
21 47:25
comply 13:24 15:7
41:21, 23 42:4
45:24 46:10
complying 26:18
39:5 42:3 43:18
computation 19:6
computer 32:21
concepts 16:20
concern 32:11
concerned 32:24
conclude 53:11
concurrently 12:23
conduct 13:18, 25
15:10, 12
conference 31:23
33:12
confused 44:22
connection 9:10
21:5
consider 9:21
consulted 29:19
contained 32:23
context 20:22
continue 39:9
Continued 3:1
10:19 25:24 40:5
44:20
continuing 46:9
contractors 9:9
contrary 37:6
controversy 48:23
conversion 35:25
convert 35:24
converting 36:16
cooperate 40:17, 19
cooperated 39:20
cooperation 47:20

48:2
copies 48:20
corporate 46:22
Corporation 1:1
4:11, 13 18:6
correct 22:20, 21
23:7, 17 30:25 44:8
COSTS 1:1 4:10
5:1 19:15, 17, 19
counsel 9:16 29:7,
8, 19, 20 33:25
46:9 48:15 54:1
COUNTY 1:1 54:1
couple 5:18 8:19
20:17, 19 23:8
course 42:2
COURT 1:1 4:6,
19, 21 5:8 6:5, 9
7:21, 22, 23 8:1
9:5, 19, 21 10:3, 12,
19 11:8, 10, 17, 23
12:8, 10, 16, 17, 18,
22, 23 13:1, 5, 16,
18 14:6, 20, 24
15:2, 4, 8 16:5, 13,
23 17:21, 22 18:7,
17, 20, 23 19:9, 12,
16, 22, 23, 25 20:5,
7, 9 21:3, 8, 12, 16
22:10, 20 23:7, 10,
17 24:4, 9, 10, 13
25:18, 24 26:15, 19
27:8, 18 28:11, 18
30:7, 10, 14, 22, 25
32:2, 16 33:8, 19
34:21 35:4, 12, 17
36:7, 11, 21, 24
37:4, 21, 23 39:1, 2,
14, 15, 18, 24 40:3,
14 41:7, 10 42:16,
21 43:1, 2, 6, 8, 12,
22 44:6, 8 45:16,
19, 21 46:1, 4, 7
50:22 51:1, 3, 9, 17
52:1, 10, 19 53:2, 4,
8
court-appointed
4:12
Courtroom 1:1

5:10
courts 7:18, 19, 20
Court's 7:6 36:22
38:23 39:7 41:15,
19, 21, 22
cover 52:21
coverage 22:24
48:4, 25 52:23
covered 46:17
49:11 50:14, 15
covering 48:15
Covil 1:1 4:8, 11,
13, 23 6:11, 22 7:5
8:9, 20 11:11
13:12 16:22 17:2
18:6, 9 20:25
21:10, 20 22:1, 8,
10, 14 25:16, 21
32:11 33:1 38:8
40:13, 17 46:17
49:23 50:6, 14
52:12, 19 53:9
Covil's 4:9 9:15
21:2, 7
create 29:5 32:20
credit 5:23
cross 45:22
crossed 49:24
cull 11:18 15:19
38:6
current 48:23
currently 34:4
cursorily 42:9
custodian 15:15

< D >
damaged 31:13, 14,
19
database 10:25
32:21 52:13
DATE 1:1 33:1
35:5, 6 51:13, 15
54:1
dates 10:1
day 15:23 18:19
31:6 54:1
days 26:12 27:6
45:18
DC 2:1
deal 42:24

dealing 42:24
43:10
December 6:25
20:15
decide 40:23
decided 11:15
15:13
declaratory 19:16,
18
defend 7:16
Defendant 1:1 2:1
defending 18:11, 13
defense 9:16 17:25
21:10 46:9
defining 49:23
defunct 18:6
delay 44:4, 5
delayed 40:4
delays 13:2, 3
deliberate 15:11
deliberately 26:2
DEMOS 2:1
denied 12:25 13:4,
6
depositions 6:17
derelict 17:19, 23
description 35:12
42:12 49:6
designed 17:2
despised 45:19
despite 7:12 10:3
11:4 13:25
detail 49:6
detailed 38:8
determine 15:12
24:6 31:13
determined 44:6
deterred 12:1
different 28:9
digitization 32:13
digitize 7:11 10:13
41:25 49:20 50:2
digitized 10:25
16:11 27:8 29:6
digitizes 47:4
digitizing 27:24
39:8 49:21 51:20
diligently 15:3
direct 49:2

directed 9:8
disastrous 21:10
disclose 26:3 52:11
discovered 10:6
discoveries 6:16
discovery 5:20
8:25 11:22 12:6,
13, 19 17:4, 6, 19,
23 21:23 26:11
41:24 42:25 48:3
51:21
discretion 14:23
discussion 34:10
dismissed 7:19, 24
42:2
disposed 7:18
dispute 5:20 47:7
disputes 19:2, 4, 5
District 21:12
documents 15:20
16:7, 10 26:11
33:1 39:8, 16, 22
doing 5:24 16:5
26:18, 20, 22 34:17
35:22 45:18
doorstep 16:23
doubt 13:22, 23
doubts 30:15
dragged 7:16
dragging 40:5
DUBOSE 2:1
duly 1:1

< E >
earlier 45:3
early 5:9 44:16
easiest 36:1
EDWARDS 2:1
eighties 20:24
either 42:10 45:11
52:23
eliminate 15:20
37:21
Ellis 9:1, 16, 18
10:6, 9 11:1, 6
15:22 23:12, 25
28:16 29:7, 18, 24
30:12 31:16, 22
32:9, 24 33:2
34:14, 16, 18 38:15

39:18, 20 46:25
47:17 49:12 52:5
embarked 14:18
15:5
empowered 48:1
encompass 32:5
ENDED 1:1
endorsement 8:21
Enforce 7:6
enforced 21:14
engine 51:23
entitled 19:13
25:21
especially 29:24
ESQUIRE 2:1 3:1
establish 38:10
estimate 33:14
35:9 47:13
eve 44:19
events 54:1
ever-moving 17:13
EveryWord 1:1
exact 29:14 50:18
Exactly 24:4 27:22
30:16 35:1, 13
36:15 49:4, 6, 7, 8,
14, 18 52:1, 17 53:2
examine 23:23
45:22 48:19
examined 46:22
examining 48:6
exclusion 48:7
excuse 50:16
exercised 7:13
exhausted 15:7
exhaustive 11:13
exhibit 23:14
expect 34:7
expense 14:9
expenses 13:20
expires 54:1
explain 5:16 25:18
38:24
explained 37:23
explaining 39:15
explanations 40:25

< F >
face 22:22

facia 14:11
facilities 9:10
facility 47:3
fact 15:14, 21 23:19
factors 14:24 42:9,
15 43:5 45:17, 25
48:16
failed 17:4 26:2
41:20
failure 11:21 21:17
40:19 42:4
fall 39:17
familiar 5:3 36:15
family 45:19, 21
far 6:14 14:12
35:7, 9, 10 36:19
39:5
favor 23:19
February 6:25 8:6
13:10 54:1
FedEx 31:11
fee 18:20
feeling 40:11
FEES 1:1 4:10
5:1 13:17 14:23
17:16 18:25 19:2,
8, 13 40:24 42:6,
18, 24 43:4, 15
48:2, 8, 11
FIFTH 1:1
figure 45:23 50:17
51:5
figures 50:18
file 12:2 13:1, 25
filed 7:7, 14
files 50:6
final 51:15
finally 5:21 7:17
8:2 24:17 40:7
43:17 46:23 47:6
Finch 21:3, 5, 17
find 10:6 13:11, 12
15:25 19:12 24:20
26:23 27:5, 9, 17
34:25 38:8 40:17
46:11
finds 14:6
fine 28:11 46:2
fire 8:14

firm 19:3, 5 38:18
47:11 50:23
first 6:3, 8 8:7
15:17 20:21 34:15
35:13 45:1, 13
46:19 49:5
five 46:14
focus 30:12 32:13,
15 33:3
focusing 9:19
follow 10:20
followed 12:4
foot 40:5
foot-dragging 5:14
11:24 19:10 33:22
foregoing 54:1
foremost 6:3
forget 29:14
form 50:9
forth 49:9
forward 26:12
47:11
found 8:12, 13, 15
11:11 17:22 23:12
24:17 51:21
foundation 40:22
four 5:21 6:15
24:25 29:12 40:20
Friday 31:6, 7, 17
friend 20:19
front 25:10
fruits 17:18
frustrating 23:18
further 14:5 17:10
46:5 53:4, 5 54:1

< G >
general 8:13, 14
10:7, 15 11:3 25:7
46:16
getting 28:1 47:11,
12, 14, 18 50:13
give 10:19 19:18
48:20
given 24:11 41:1
giving 26:21 49:24
Glasscock 14:24
42:9, 15 43:5
45:17, 25 48:16

go 7:10 12:2 13:1
16:15 19:9 24:22,
23 28:12 33:17
37:18
go-around 9:13
going 5:20 11:25
14:19 15:25 27:23
28:12 33:9, 11, 13
34:2, 6, 13, 21, 23,
24 35:1, 5, 14
36:11 37:5 44:6
47:15 50:10
GOLDBERG 3:1
Good 31:6, 7, 17
34:11 46:7 51:17
53:8
granted 43:14
granting 47:23
great 43:19 51:1
Green 3:1
Greensboro 3:1
ground 31:10, 11
39:25
group 50:7
guess 28:23 31:6,
17 39:17
gyrations 24:15

< H >
hand 27:23 54:1
hands 34:8
happening 27:22
happy 34:18, 20
39:8
hard 36:21
hate 34:19
head 33:21
hear 39:24
heard 4:19 18:18
41:1
hearing 4:24 5:6
7:9 10:12 15:18
17:21 20:10 44:7,
20
hearings 6:1 7:3
23:11, 21 38:15
43:16, 24
held 10:12 23:22
hereunto 54:1

hide-the-ball 44:12
historical 8:23
history 5:2 20:15,
16 21:15 36:20
46:7, 8, 10
HOLLER 2:1
Honor 4:20 8:20
19:21, 24 20:4, 6, 8,
18 21:6 22:16
23:2 25:17, 22
26:14, 17, 25 28:7,
14, 19, 22 30:24
34:9, 10 36:19
37:15 38:23 41:5,
9, 13 42:8, 20 43:7
44:1 50:20 53:7
hope 14:20 27:22,
24 33:11
Houston 2:1
huge 27:13 28:4
hundred 26:7
33:17
hundreds 26:5
29:14 37:19, 20

< I >
identifications 42:13
identified 8:20
28:6, 17, 24
identify 37:7
identifying 25:4
identity 36:5
ignoring 5:23
III 2:1 20:1
image 9:24 10:10,
11
imagine 15:25
immediately 17:4
27:9
imminent 40:4
impacted 31:15, 20
important 8:11
23:9
inception 5:17
18:12
inching 41:3
inclined 42:23
included 9:22
including 21:24

incorporate 36:9
incur 19:8
incurred 13:20
indemnity 18:13
indicate 52:23
indicated 41:16
42:19
Inevitable 13:3
information 5:5
21:18 22:1 49:13
informed 11:17
initial 33:14
initially 41:23
inland 25:14 37:25
insulator 40:15
insurance 6:7, 12
15:3 16:4 17:12
18:8 21:19, 20, 22
22:2 39:21 45:7
insured 6:22 7:5
8:9, 10, 21 22:23
51:24 52:3, 8, 24
insureds 8:18
intentionally 36:23
interested 16:20
54:1
interim 34:12, 15,
22, 24 36:10, 12
41:6
interlocutory 7:25
12:7, 9, 12
interpretation 43:20
interrupt 37:15
intervention 11:23
intransigence 40:24
investment 17:18
invite 31:23
invited 42:21
involved 10:9
20:14 34:15 39:19
Iron 24:16 32:23,
25 46:20 47:2
irrelevant 15:20
22:3 23:11 25:14
issue 5:11 6:20
7:4 21:1 30:24
51:21
issued 13:22 20:24
45:2, 4

issues 12:20 43:15
48:24
item 42:7
its 1:1 9:8, 14
12:24 15:19 21:20
22:1, 23 29:11
30:5, 20, 23 32:20
35:17, 18 39:3, 21
40:19 42:2 52:14

< J >
January 7:8 28:24
48:11
Jennifer 1:1 54:1
John 19:4 50:24
JON 2:1 4:23
jon@smithrobinsonl
aw.com 2:1
journey 15:5
JR 2:1 50:24
Judge 4:25 5:9, 15
8:3, 24 10:17 12:3
13:14, 22 14:11, 22
15:9 16:2, 8, 15
17:10, 20 18:19
19:6, 11 39:4 43:9
44:25 45:18, 24
51:18
judges 45:21
judgment 19:16, 18
22:23 45:12
JUDICIAL 1:1
July 9:8
June 34:5
jurisdiction 7:23
12:25
jury 44:7
justified 14:8, 14
justify 42:5

< K >
keep 14:18, 19
kept 11:19
kind 22:3 31:18
47:13 49:14, 19
kinds 24:15
KIRBY 2:1 19:25
28:21 39:9
kirby.shealy@arlaw.
com 2:1

know 5:18 6:4, 10
7:17 10:23 11:16
12:5, 15 13:12, 14
14:5, 25 15:2, 9
16:8 18:2 19:6
20:9 22:17 23:4
26:1, 16 27:2
30:23 33:19 34:6
35:9 36:3, 4, 5, 14
41:17 44:11 45:8,
20 46:19 52:22, 23
known 20:23 22:7,
19 47:8
knows 15:24 27:10
30:24

< L >
law 12:4 19:3, 4
47:11 50:23, 24
lawyer 26:12
lawyers 27:19
leading 39:6
learned 8:25 15:19
length 28:4 35:23
LEWIS 2:1 18:21
19:1 50:17, 21
Lexington 54:1
liability 10:15, 16
25:7 46:17
life 20:10
limited 11:6
line 9:23, 25 10:10,
11 30:20
lines 25:8 30:23
31:1 32:4, 6 33:6
37:8, 11, 12, 14, 16,
17, 22
list 9:9
litigation 6:11
14:17 52:20
little 5:6 36:13
44:22 50:6
LLC 2:1
LLP 2:1
locate 8:23
located 11:1 15:24
LOCATION 1:1
54:1
long 14:20 16:12
33:8 35:10, 15

36:20 39:12 40:9
46:21, 23
longer 36:14
look 8:12, 18 11:15
13:14, 15, 17 16:14
23:13 25:4, 5, 6
26:4 38:4, 8, 11
42:21
looked 8:16 17:20
44:9 45:1, 2 48:9
looking 22:22, 24
50:10
Lord 15:24
lot 5:4 24:18
35:19 37:22 38:6
47:1, 4
Louisiana 2:1
lump 30:4
lumped 38:1

< M >
ma'am 4:18 11:9
16:25 46:6 51:8,
16 52:17
maddening 33:20
Main 1:1 2:1
maintain 36:22
major 40:15
making 49:22
manageable 26:7
managed 4:11
manually 9:5
15:13, 15 37:19
manufacture 17:3
marine 8:14 25:14
37:25
marshal 6:5, 7
16:3 25:16 40:13
material 26:10
28:2 35:19 48:18
49:10 50:13
materials 49:9, 15
matter 4:8, 14
13:9 27:6 46:8, 10
53:9
matters 36:2 42:25
mean 8:13 15:11
17:20 33:14 34:2
37:14 41:14

meaningful 15:21
means 47:11 52:12
mechanism 24:12
memorandum 16:18
mention 43:10
mentioned 11:16
12:3 15:23 20:19
mentions 52:19
microfiche 9:20, 23,
25 10:13 24:23
28:15, 25 29:10, 14
30:2, 5, 11, 17, 20
31:9, 14, 19, 25
32:3, 4, 7, 12, 15, 17,
19 33:4, 6, 18
35:20, 25 36:16
37:10 47:8 49:8,
20 50:7, 11 52:4
microfiched 31:3
microfiches 24:18
middle 41:12
migrated 35:20
milestone 29:1, 3,
11, 12, 16 33:18
million 21:13 22:23
mind 47:22
misrepresent 23:3
38:25
misrepresentation
25:3 27:2
misrepresented
24:9 36:23
mode 44:5
moment 34:11
months 9:17 27:11
33:13, 15 35:10, 11
MORGAN 2:1
18:21 19:1 50:16,
20
morning 16:19
31:24
MOTION 1:1 4:10,
17 5:1, 12 7:6
10:18 13:2, 19, 23
14:7, 13 20:13
23:15 47:23
motions 5:22 6:19,
23 17:19 39:6
43:11, 13 47:24

54:1
motion-type 35:19
Mountain 24:16
32:23, 25 46:21
47:2
Movant 13:20
move 47:19
moved 41:18 43:12
47:10
moving 14:2 17:5
21:21 41:16, 17
multiple 23:10
43:23
multitude 43:15
MURRELL 2:1
4:14, 22
murrell@smithrobin
sonlaw.com 2:1
Mutual 20:1

< N >
named 6:22 7:5
8:20 51:23 52:2, 8
narrative 17:3
narrow 25:13 37:9
narrowed 26:5
narrowing 27:4, 12
National 1:1 4:9
5:24 6:13 8:7
9:14 11:17, 25
15:5 17:3 18:24
20:1, 21, 24 22:4
23:5, 21 25:9, 19
28:20 29:1, 9, 13,
21 30:1, 5, 19
32:19 38:18 39:7,
13, 20 40:6, 18
42:3 45:5 46:16
47:3, 21 48:18, 21
49:3, 11 51:22
National's 32:14
necessitated 13:19
need 5:4 15:1
34:24 49:12, 13
53:5
needed 28:25 31:13
needs 42:17 43:3
50:8, 14 51:12
neither 54:1
NES 2:1 4:23

never 10:8 11:17
26:22 27:11 38:25
43:23
newly-discovery
11:2
nextdoor 5:11
night 16:19, 24
non-issue 43:25
non-jury 44:7, 18
nonsense 34:1
North 2:1 3:1
21:10, 12
Notary 54:1
note 8:11
noted 11:1, 21
notion 46:24
November 7:1 8:5
18:4 45:3
number 6:12 9:21
23:24 24:21 26:7
27:18 29:15 35:11
37:3, 8, 17 38:3
45:6
numbers 6:1 8:24
23:16 24:1, 2, 11
25:10
NW 2:1

< O >
oath 27:19
obtain 6:19
obviously 4:25
12:6 14:22 18:21
19:15 44:17
occur 51:12
occurred 5:16
October 6:24
Office 50:25
official 54:1
Oh 36:7
once 29:23
one-day 11:8, 10,
13 23:12
ones 17:13 28:6
open 9:14
opened 39:21
operation 5:14
11:24 33:22
operations 19:11

Opposition 10:18
14:7
option 10:24
options 9:21, 22
order 4:7 7:7
10:21 13:21 19:11
39:7 40:19 41:24
42:1, 3, 5 43:21
44:18 49:25 50:3,
15
ordered 5:25 6:5
9:14 10:13, 24
16:5 17:21 19:9
ordering 34:21, 23
Orders 7:12 9:6
12:7, 9, 13 41:21,
22 43:18, 21 47:16
52:2
original 7:22 12:24
48:10
outside 20:22

< P >
P.A's 50:24
P.O 1:1
pace 26:20
page 24:23 54:1
pages 26:10
paper 9:4, 9 32:22
part 8:4, 12 17:25
participate 11:22
17:4
participating 4:24
particular 28:8
parties 13:18 29:24
party 54:1
party's 13:20
pay 13:19
paying 18:13
pdp@rplegalgroup.c
om 2:1
pending 54:1
Penn 1:1 4:8 5:23
6:12 8:7 9:8, 14
11:3, 17, 25 15:5,
19 17:3 18:24
20:1, 21, 24 21:2
22:4 23:4, 20 25:9,
19 28:20, 25 29:8,
13, 20 30:1, 4, 19

32:13, 19 38:18
39:7, 12, 20 40:5,
18 42:3 45:5
46:15 47:20 48:18,
21 49:3, 11 51:22
Penn's 11:21
Pennsylvania 2:1
people 27:25 46:14
percentage 30:14
peremptory 7:22
perform 52:14
period 32:5 49:19
personal 30:23
37:12, 22
Personalized 37:25
personally 38:17, 25
pertained 10:14
pertinent 22:13
Peter 1:1 2:1 4:12
petition 13:4
petitioned 12:22
place 5:4 9:3
43:16
Plaintiff 1:1 2:1
33:25 34:8 48:13
49:1 50:2, 9
Plaintiffs 21:16
45:11 52:14
plan 35:14 49:17
platform 29:5, 6, 21,
25 35:22
playing 14:1 17:7
PLEAS 1:1
please 4:21 19:23
20:9
plowed 39:25
plowing 39:25
plus 13:8
point 6:2 9:14
10:21 16:17 18:6
22:22 29:23 31:4
34:10, 11 36:22
40:3 42:7 44:25
pointed 45:3
pointing 51:4
points 20:17
policies 6:7, 14, 18,
19, 21, 22 7:4, 10
8:8, 13, 19, 24 9:23,
25 10:4, 5, 7, 10, 11,

14, 16 11:2, 5, 11
13:11 14:3 15:4,
24, 25 16:4 17:12
18:2, 3, 14 20:23
22:3, 6, 12, 13, 19,
25 23:5, 11, 20
24:3, 7, 25 25:4, 5,
6, 7, 8, 14, 15 26:4,
6, 24 27:6, 13, 16
28:9 30:10, 12, 18
31:2 32:6, 10 33:6
37:2, 8, 16, 18 38:7
40:17 44:9, 10
45:7, 14, 15 46:12,
16 47:1 48:23
49:23 51:23 52:21,
22
policy 8:24 10:2
14:17 23:15, 24
24:1, 2, 11, 21
25:10 27:3, 17
32:4 37:2, 8, 16, 24
38:3 52:9, 16
policy-related 32:25
portray 17:19
position 13:9
36:25 37:1 41:15,
20 44:14
post 33:1
post-1992 32:21
Poswell 51:4
pre-1992 32:18
preceded 21:9
precisely 49:16
prefer 31:10
prefix 10:8 25:4
38:12
prefixes 10:2, 5, 14
11:19 25:10 27:3
28:8, 9 37:17
prejudice 19:20
prejudiced 16:6
prepare 20:12
presentations 29:18
presenting 28:21
preservation 12:11
prima 14:11
primary 8:9 52:24
prior 10:1 18:1

31:17
probably 16:16
proceed 5:8 20:7
31:25
proceeded 39:16
Proceedings 4:4
53:11 54:1
process 5:10, 17
8:12, 22 9:17
11:22 13:8 14:4
16:1 18:5, 16
25:20 29:4 31:24
35:2 36:16 38:16
39:12, 14 40:8
processes 6:18 9:2
produce 7:4 10:25
14:3 17:8, 14
20:23 23:6 43:22
45:7
produced 11:3
14:12 20:25 22:6,
8, 14, 25 23:5 44:9
producing 6:13
18:14 48:23
production 6:21
Professional 54:1
program 50:12
project 29:2, 3, 11,
12, 16 33:18 35:10
properties 11:4
Protopapas 1:1
2:1 4:12 6:4 8:5
provided 9:20
18:24 29:13 39:22
42:10, 16
Public 54:1
pull 24:2 28:12
pure 11:14
purposes 5:5
put 6:13 17:1
32:7 34:19 50:8

< Q >
question 14:3 32:2
33:10, 11 47:22, 25
quickly 9:7
quite 12:10
quote 17:17

< R > ran 42:1 rapid-fire 17:18 rates 42:18 read 17:17 reading 16:19 real 28:6 really 16:11 17:20 26:16 36:1 reap 17:17 reason 16:11 19:7 44:3, 20 48:19 reasonable 13:20 rebuttal 16:16 receive 19:19 received 20:21 29:10 31:8, 9, 12 32:1 Receiver 1:1 2:1 4:12 6:5, 9, 10 9:10 16:2, 3 18:3, 5 19:7 29:8 40:18 42:8 45:2 Receiver's 23:15 29:18, 20 recite 9:7 15:1 50:18 recited 50:16 recommendation 33:3 recommended 9:18 15:22 39:18 Reconsider 13:2 record 4:22 5:5 8:3 12:8 35:18 43:1 51:19 52:7 54:1 record-by-record 24:23 records 9:4, 9, 19, 20 10:25 15:14, 19 22:2, 14 23:23 24:6, 16 25:21 27:25 30:20 32:14 35:23 36:17 40:16 41:25 47:5, 7, 14 51:11 redacted 42:11 redactions 48:10	REESE 2:1 referencing 45:9 refused 15:7 regarding 48:24 regardless 43:24 Registered 54:1 regular 26:21 rehashing 18:17 rejected 18:18 related 54:1 relevant 10:2 22:5 32:9, 10 re-litigate 17:24 25:23, 25 rely 35:8 remember 34:14 remembers 10:3 render 43:3 renew 10:1 rep 46:22 repeated 21:15 47:24 reply 21:15 25:25 43:8 report 23:13 30:13 32:9 33:2 34:18, 20 35:13 36:10, 13 41:7, 8 49:5 REPORTED 1:1 31:16 REPORTER 54:1 reporting 49:3 reports 26:21 34:12, 15, 22, 24 repository 9:15 39:21 reprehensible 38:21 representation 37:6 represented 23:10, 21 24:13, 19 38:14 46:9 representing 4:13, 22 request 15:17 requested 29:15 39:13, 14 requests 6:16 17:6 21:16 48:3 require 13:18	48:17 reschedule 34:3 reserve 19:17 resistance 6:13 respect 21:19 29:9, 21 36:22 respectfully 19:12 response 22:7, 9 23:6 result 27:3 44:5 resulted 21:13 reveal 21:17 47:1 48:22 review 9:15 39:23 RICHLAND 1:1 right 4:6, 19 5:24 7:13 12:5, 17, 19 19:22 21:4 22:10, 16 25:25 26:16 28:13, 14 30:22 33:8 41:10, 11 43:2, 6, 8 45:16 46:4, 7 50:18, 22 51:3 52:1, 6 53:1 rights 19:19 RIKARD 2:1 ripe 7:25 Road 3:1 ROBINSON 2:1 4:24 19:3 50:23 role 52:24, 25 rolling 23:1 30:3 routine 48:3, 4 RPR 1:1 rubicon 49:24 rubric 25:19 Rule 41:16, 18 42:6 ruled 12:18 rulings 12:10 run 5:21 29:1 running 18:9 < S > sample 9:22 29:5 30:7 sampling 11:11, 12, 14 28:25 29:10 satisfy 43:4 saying 10:4 11:4, 19	says 13:17 14:5, 6, 10 35:13 36:13 43:11 scan 33:9 scanned 32:3 34:7 scanning 31:20, 24 34:13 35:1 Schedule 45:6 scheduled 33:23, 24 schedules 33:24 seal 54:1 search 6:18 7:4, 10 9:4, 8 10:4 11:6, 8, 10, 13, 14 15:15, 21 22:12 23:12 24:12 25:13 33:4 37:13, 15, 19 46:11, 19 50:1, 3, 12 51:22 52:15 searchable 28:2 47:14 50:8 51:20 searched 15:13 30:1 37:2 searches 34:16 searching 14:19 15:23 24:12 50:10 second 9:13 see 14:11 39:23 40:9 48:19 seen 22:17 SEGALLA 3:1 selected 40:7 send 51:13 sense 35:16 sent 6:15 30:19 31:6, 23 33:5, 6 45:13 46:13 48:18 49:8 September 6:24 series 9:6 44:11 serious 40:13 set 29:22 35:4, 5 48:1 sets 6:15 setup 17:16 seven 6:19 SHEALY 2:1 19:22, 23, 25 20:8 21:5, 9 22:5, 16 23:2, 8, 19, 25 24:8

25:17, 22 26:14, 17,
25 28:7, 13 40:23
41:11, 13 43:7
44:23 45:20 53:6, 7
sheets 42:10, 13, 22
ship 30:2 37:12
shipment 31:10, 11
shipped 28:15 30:5
37:10
shipping 40:8
shoot 26:9
show 29:6, 7, 8
42:11
showing 14:11
sic 39:9
simple 14:2 46:13,
15
simply 22:25 46:18
48:5 52:22
sir 36:7 43:6
sitting 5:10 16:9
situations 44:12
six 6:16
slight 51:9
small 50:6
smaller 38:10
SMITH 2:1 4:14,
16, 18, 20, 22 5:9
11:9, 12 12:14, 21
16:25 19:3 20:19
41:15 43:8, 9
45:18 46:3, 6
50:19, 20, 23 51:2,
8, 15, 18 52:6, 17
53:1, 3
snail's 26:20
somewhat 41:3
soon 44:17
sort 42:16
sought 15:3 19:15
sound 26:19
SOUTH 1:1 2:1
35:17 54:1
speak 36:19
speaking 4:16
specific 22:11
23:24 24:1 27:17
32:10 35:11 38:3
45:14 47:16

specifically 32:16
33:23 36:14 40:21
stage 31:5
stall 19:10
start 34:1
started 15:17
16:19 23:1 44:24
STATE 1:1 12:11
54:1
stated 54:1
status 35:13 49:4
steam 39:10
step 15:6
storage 32:22 47:3
store 39:16 47:5
stored 25:12 47:2
strategy 48:22
streamline 28:21
Street 1:1 2:1
strict 12:11
stuff 24:18 34:6
submissions 48:9
submit 15:10
39:15 51:10, 11
submitted 18:20, 23
33:10 34:15
subpoena 8:7 9:11
20:22 21:9 22:7
44:23, 25 45:1, 4,
10, 13 46:13, 15
subpoenas 6:15
21:25 22:17, 18
23:6 48:4
subsequent 41:7
substantially 14:7,
13
substantive 42:11
suddenly 50:5
suggest 34:25
suggestion 27:15
suit 48:4
Suite 2:1 3:1
sum 30:4
summarily 7:19
Sumter 2:1
sundry 39:6
supervise 47:12
supplement 45:24
supply 24:6 48:13

Supreme 7:22 8:1
12:23 13:5 15:8
35:16
sure 5:2, 3 42:22
49:10 50:4 52:7
surfaced 22:3

< T >
tactics 19:10
take 12:24 24:22
33:9 35:14, 23
37:5 38:7 39:10
43:19
TAKEN 1:1 5:25
8:2 16:12 36:24
43:14 54:1
takes 49:19
talked 27:10 44:2,
3 50:21 51:20
talking 30:16 34:4
44:23 49:21, 22
target 17:6, 14
21:21
targets 14:2
technologically
35:21
technology 47:13
tell 15:2 26:22
27:1
Ten 24:24
term 5:16
termed 11:24
terms 42:15
terribly 24:21
Texas 2:1
Thank 4:20 19:21
20:6, 8 39:4 41:8
43:6, 7 53:3
thereof 54:1
thermal 40:15
thing 6:8 16:15
17:12 23:18 30:15
33:19 34:2, 3 36:1
38:20 44:1 48:6
50:8 51:18 52:11
things 5:19 20:20
23:9 24:24 25:12
27:24 35:24 38:11
40:8 47:4, 9 52:4,
12

think 5:10, 15 8:11
17:22 23:9 29:19
33:14 34:9, 10
36:8 40:11 41:17
43:24, 25 46:1, 24
52:1
thousand 26:8
thousands 26:6
three 7:15 11:1, 11
15:24 22:2 23:11
29:12 33:15, 17
40:20
TIME 1:1 5:12
10:23 17:7 19:18
20:21 22:8 27:12,
20, 25 28:1, 5 29:4
32:5 35:23 38:24
40:21 42:10, 13, 22,
24 43:22 44:21
46:22, 23 47:10, 20
48:14, 18, 21 49:19,
25 54:1
timeframe 28:24
timeline 49:16
times 12:18 23:10
24:14 26:11 40:21
41:2
today 4:25 19:20
20:2 34:22 40:23
43:17
today's 20:13
told 7:11 8:22
10:8 12:1, 14
15:16 26:23 27:11
31:8 43:22 45:21
47:17
tomorrow 31:23
33:12
tortured 5:2
total 48:8 51:2, 4
town 20:11
transcript 54:1
Transcripts 35:18
tremendously 45:19
trial 21:24 33:23,
24 34:3, 4 35:5, 6
40:4 44:3, 5, 18, 19
48:22
tried 21:11 32:20

38:25
true 9:1 54:1
truth 17:11
try 28:3 44:14
47:17, 18
trying 13:8 14:1
17:24 25:16, 20
26:13 28:2 38:9,
17 44:15 45:12
turn 36:20
turns 25:2, 3, 9
37:4 38:6, 10
twelve 24:24
two 6:3, 15 7:21
16:8 20:23 22:5, 6,
19 23:5 34:25
41:6 49:3 52:12
two-stage 39:14
typed 54:1

< U >
ultimately 42:2
unable 8:23
unappealable 7:24
understand 12:6
14:24 27:21 30:16
40:25 41:5, 8, 14,
19 48:12 50:4
51:6 52:4
understanding
16:10 22:18 23:4
32:8
universal 26:4
universe 11:18
27:4 30:17 38:11
unjust 14:16
unknown 29:3
unproductive 38:15
un-redacted 48:14,
17, 20
untrue 37:5
up-to-date 35:21
urgency 40:12
use 29:5

< V >
vacation 31:21
Valley 3:1
various 39:5 48:9

vendor 28:16, 24
29:5, 6, 15, 17 30:4,
6, 21 31:7, 8, 12
32:1 33:7, 15, 16
35:8 36:2, 6 37:11
40:7 47:15, 18
verdict 21:12, 13, 14
verified 52:5
verify 50:12
view 38:21
volume 49:9
voluminous 9:4
voluntary 47:19
volunteered 20:12
vs 1:1

< W >
waiting 16:6, 9
want 5:18 6:2
15:14 16:17 20:17,
20 23:3 25:5, 6, 23
26:1, 16 30:2, 3, 15,
16 34:6 35:12
36:4, 5, 14, 19
39:10 44:24 45:22
48:13 49:16 51:25
52:2, 10, 11, 13, 22
wanted 15:16 26:4
29:6 39:22 44:1
51:19 52:7
wanting 27:21
wants 30:4
warehouse 50:10
Washington 2:1
way 15:6, 11 25:13
26:3 27:12, 16
33:20 37:10, 13, 15,
23 38:2, 4, 13 48:5
53:5
ways 37:7
week 20:12 31:8,
21 49:1
weeks 28:23 29:13
33:17 34:25 41:6
49:4
week's 48:14
Welcome 20:5
Well 12:21 16:24,
25 18:3 22:5
23:25 25:22, 24

26:17 28:7, 11
30:1 33:19 36:13
39:24 41:13 47:17,
18 48:24 49:13
50:5
went 7:25 8:7 9:5
18:7 24:15 32:20,
22
we're 4:25 13:16
14:1, 18 15:25
16:8 18:25 19:13
30:16 31:5 34:4,
23 36:11 40:22
49:21
west 28:16
we've 5:19 6:11,
14 18:15, 19 19:15
27:10 39:25
whack-a-mole 14:1
17:7
White 19:4 50:24
willful 15:10
Williams 1:1 54:1
willing 36:9 50:1
Winters 9:1, 16, 18
10:6, 9 11:1, 6
15:22 23:13 24:1
28:17 29:7, 18, 24
30:13 31:16, 22
32:9, 24 33:2
34:14, 16, 18 38:16
39:19, 21 46:25
47:18 49:12 52:5
Witness 54:1
witnesses 6:17
words 32:6
work 18:22 32:22
35:14 42:11 49:17
worked 36:21
working 28:20
49:15
world 36:1
worth 38:14
written 6:16
wrote 27:14, 16
31:2 37:24

< Y >
Yeah 36:11 37:21
50:17

year 5:25 6:1
13:7 38:14 39:18
year-long 19:9
years 5:21 12:11
16:7, 8 18:8, 15
35:20 46:14, 18
47:6
years-long 17:18
19:2
Ynema 27:11 41:11
YNTEMA 3:1
20:3, 4, 5, 6, 10, 11,
16 27:10 28:19, 20
30:8, 11, 19, 23
31:4 32:8, 18
33:10 34:9 35:3, 7
36:5, 8, 18 37:13
38:22 39:4 40:2
41:5
yntema@goldbergse
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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	)	C.A. No. 2020-CP-40-02098
Appointed Receiver Peter D. Protopapas,	)	
	)	
Plaintiff,	)	
	)	REPORT OF THE RECEIVER FOR
v.	)	COVIL CORPORATION
	)	
Pennsylvania National Mutual Casualty	)	
Insurance Company, <i>et. al</i> ,	)	
	)	
Defendants.	)	
_____	)	

Peter D. Protopapas, as Receiver for Covil Corporation, submits this Interim Report on Penn National's compliance with the Court's May 5, 2022 Discovery Order:

1. On April 19, 2023, this Court held a hearing on Covil's Motion for Attorneys' Fees, which arose out of seven motions to compel filed between January 2021 and November 2022 on various discovery disputes between the Receiver and Penn National.

2. At the hearing, the Court noted the "snail's pace"¹ in which Penn National is moving to comply with the Court's May 5, 2022 Discovery Order, which required Penn National "to make all of its microfiche cards *immediately available* for review and imaging by Ellis & Winters and its selected vendor."²

3. Starting April 19, 2023, the Court ordered Penn National to start providing interim reports on its compliance progress every two weeks:

THE COURT: I'm going to be **ordering the interim reports beginning today**. That's the very least I'm going to be ordering. But we're going to need some interim reports and I would suggest **every two weeks** to find out exactly what is going on with the scanning process. . . .

¹ Ex. 1, April 19, 2023 Hearing Transcript at 26:19-22.

² May 5, 2022 Discovery Order at 10.

MR. YNTEMA. Certainly.

...

THE COURT: I want a description in the first status report that says exactly what the work plan is and why it's going to take so long.

...

MR. YNTEMA: I understand, Your Honor. ***And I will every two weeks have an interim report to the Court*** and have it be a subsequent report. I do understand that. Thank you, Your Honor.³

4. It has been over one month since the April 19 hearing and Penn National has failed to provide this Court with any interim reports on Penn National's compliance with the May 5, 2022 Discovery Order, which were supposed to be filed on May 3 and May 17, respectively. In light of Penn National's failure to make the requisite filings, and the urgency with which the Court requested status updates, the Receiver provides this brief interim report.

5. *First*, the Receiver now has serious concerns that Penn National's commercial line "policy prefixes" cannot be used to narrow the universe of potentially relevant documents.

6. As this Court will recall, in its March 2022 letter to this Court, Ellis & Winters reported on the existence and storage of certain Penn National policy documents and provided four options for additional document review. Ellis & Winters proposed an option in which an outside vendor would image **all** commercial line policy microfiche cards.⁴

7. Alternatively, Ellis & Winters proposed a narrower option for the Court in which an outside vendor would image commercial line policy microfiche cards, eliminating certain cards solely by policy prefix. Specifically, Ellis & Winters explained that "[a] third option is to **select a subset** of commercial line microfiche cards to image solely by **eliminating certain cards bearing**

³ Ex. 1, April 19, 2023 Hearing Tr. at 34:21-35:3, 35:12-15, 41:5-9.

⁴ Ellis & Winters Letter Report to the Court, filed March 22, 2022 at 5.

prefixes that correspond to non-responsive policy types, such as commercial auto, inland marine, business owner, fidelity bond, surety bond, commercial fire, worker’s compensation, and personal umbrella.”⁵

8. Ellis & Winters proposed this third option—eliminating entire cards from imaging based on policy prefix, thereby saving Penn National time and money—based in part on its e-discovery team’s interviews of Penn National employees Brent Reifsnyder and Boyd Wright and review of prior Penn National testimony.⁶

9. On May 5, 2022, based on representations regarding Penn National’s “policy prefixes,” this Court entered an Order setting forth the next steps in imaging and reviewing Penn National’s microfiche cards:

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

The Court therefore adopts the “third option” recommended by Ellis & Winters and DIRECTS Ellis & Winters to use its professional judgment to develop a methodology to **select a subset of commercial line microfiche cards to image by eliminating certain cards bearing prefixes that correspond to certain non-commercial liability policy types**.⁷

10. The May 5, 2022 Discovery Order further directed Penn National to “produce immediately to Covil all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters’ report.”⁸

⁵ Ellis & Winters Letter Report to the Court, filed March 22, 2022 at 4.

⁶ *Id.* at 1-3.

⁷ May 5, 2022 Discovery Order at 8-9 (emphasis added).

⁸ *Id.* at 10.

11. To date, Penn National has not provided the Receiver or Ellis & Winters with code keys or indexes identifying the policy prefixes for the policies contained on the microfiche cards.⁹

12. Despite its failure to provide this basic information, Penn National has continued its narrative that “policy prefixes” can be used to narrow the universe of microfiche cards needed for imaging in compliance with the Court’s May 5, 2022 Discovery Order.

13. As recently the Court’s April 19, 2023 hearing on the Receiver’s motion for attorneys’ fees, Penn National indicated that policy prefixes will result in the narrowing of the universe of Penn National documents.

14. On May 8, 2023, Ellis & Winters circulated a spreadsheet to the parties with Penn National coded policy prefixes.¹⁰ The spreadsheet, however, did not provide any identifying information whatsoever with respect to any particular policy prefix (e.g., identifying the prefix as corresponding to commercial auto, inland marine, business owner, fidelity bond, surety bond, commercial fire, worker’s compensation, umbrella, etc.).

15. The Receiver understands that the list of policy prefixes created by Ellis & Winters in the spreadsheet is not based on any key codes or written indexes provided by Penn National. Rather, the list of prefixes is based on Ellis & Winters’s own work product and a “sampling” of Penn National insurance policies.

16. Penn National never provided any written code keys to Ellis & Winters confirming the vast majority of the prefixes identified on the spreadsheet. Ellis & Winters was only able to confirm, at most, thirty (30) of the policy prefixes out of approximately three hundred and eighty

⁹ Penn National’s refusal to produce its policy prefix code keys to the Receiver is especially egregious given that Penn National specifically moved to reconsider this issue on May 16, 2022. See Motion to Reconsider at 10 (“The Order Should be Reconsidered and Reversed Inasmuch As It Requires Penn National to Immediately Produce Policy Prefix Code Keys. . .”). The Court rejected Penn National’s reconsideration motion on May 26, 2022.

¹⁰ Ex. 2, May 8, 2023 email from Brian Flatley, Ellis & Winters, to counsel for the Receiver and counsel for Penn National, attaching a spreadsheet of policy prefixes.

(380) total policy prefixes used by Penn National. Therefore, as it stands now, neither the Receiver nor Ellis & Winters have any idea which lines of coverage correspond to 350 of the 380 policy prefixes contained on Penn National's microfiche.

17. On May 10, 2023, the Receiver also learned from Ellis & Winters that the vendor selected to image the microfiche cards, BMI, cannot eliminate cards from imaging solely by policy prefix. Rather, the vendor will need to image ALL of the cards transported from Penn National, not just a subset, because there is no way for the vendor to image only a subset of commercial line microfiche cards.

18. Accordingly, the Receiver has been informed by Ellis & Winters that all commercial line policy documents will be imaged and uploaded to the database, not just a subset of the commercial line policies. The Receiver respectfully requests access to search all of the policy records imaged by the vendor to identify all potentially responsive documents related to Covil. This approach is consistent with the Court's May 5, 2022 directive that "[b]ecause of Penn National's intransigence, the Court will not limit the Receiver's access to any of the information in the microfiche database."¹¹

19. *Second*, Ellis & Winters has informed the Receiver that once the vendor, BMI, has completed the imaging of the microfiche cards, the data should be uploaded into a separate litigation support database because BMI does not have the requisite level of search capability. We are continuing to confer with Ellis & Winters and will provide the Court with a subsequent report when an appropriate searchable database is selected.

20. *Third*, on May 18, 2023, Ellis & Winters and BMI updated the parties on a conference call regarding the status of the microfiche card imaging. BMI reported that it would

¹¹ May 5, 2022 Discovery Order at 10.

start providing a weekly automated report that identifies the number of microfiche cards that have been scanned to date. BMI also revealed that, given anticipated capacity restrictions, the estimated timeframe for the completion of the project is approximately eight (8) months from now. The Receiver notes that this timeframe is significantly longer than previous estimates.

21. In light of the “snail’s pace” at which Penn National provided the requisite microfiche cards to the vendor, Penn National’s failure to provide interim reports to this Court, and Penn National’s refusal or inability to provide Ellis & Winters and the Receiver with documentation identifying “policy prefixes” with policy lines of business, the Receiver has serious concerns that Penn National is not in full compliance with the May 5, 2022 Discovery Order.

22. The Receiver therefore requests a follow up status conference at the Court’s earliest convenience and that a representative of Penn National with sufficient seniority within the company be compelled to attend the hearing in person.

Respectfully Submitted,

SMITH | ROBINSON

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s/ G. Murrell Smith, Jr.

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ATTORNEYS FOR RECEIVER

This 23 Day of May, 2023.

EXHIBIT 1

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

Covil Corporation by and)
through its duly appointed)
Receiver, Peter D. Protopapas,)
)
 Plaintiff,)
)
 vs.)
)
Penn National,)
)
)
 Defendant.)

CIVIL ACTION #
2020-CP-40-02098

MOTION FOR ATTORNEY'S FEES AND COSTS

DATE TAKEN: April 19, 2023

TIME BEGUN: 11:00 a.m.

TIME ENDED: 11:55 a.m.

LOCATION: RICHLAND COUNTY JUDICIAL CENTER
 1701 Main Street, Courtroom 3B
 Columbia, South Carolina 29201

REPORTED BY: Jennifer H. Williams, RPR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

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P R O C E E D I N G S

- - -

(Proceedings begin at 11:00 a.m.)

- - -

THE COURT: All right. Court will come to order.

The next matter is Covil against Penn National, 2020-CP-40-02098. This is Covil's motion for attorney's fees and costs.

Covil Corporation is managed by a court-appointed Receiver, Mr. Peter Protopapas. And representing Covil Corporation in this matter are Mr. Murrell Smith and his colleagues.

Mr. Smith, will you be speaking to the motion?

MR. SMITH: Yes, ma'am.

THE COURT: All right. You may be heard.

MR. SMITH: Thank you, Your Honor. May it please the Court.

For the record, Murrell Smith representing Covil, along with Brad Nes over here and Jon Robinson who are participating in this hearing.

Judge, obviously we're here today for a

1 motion for attorney's fees and costs. I'm
2 sure -- this case has a tortured history, and
3 I'm sure you're very familiar with it. But I
4 do believe I need to place a lot of this
5 information on the record for purposes of this
6 hearing. So, if you'll bear with me a little
7 bit.

8 THE COURT: You may proceed.

9 MR. SMITH: Judge, early on in this
10 process, I'm sitting in, I think, the courtroom
11 nextdoor, and we were arguing your issue, our
12 Motion to Compel. And at that time you made a
13 comment. And it was basically, "This is
14 becoming a foot-dragging operation."

15 And so, Judge, I think there could not be
16 a better term to explain what's occurred in
17 this process from the inception of this case.
18 And I want to just let you know a couple of
19 things that we've had.

20 This discovery dispute has been going on
21 about four years now. And finally they've run
22 out of all avenues for appeals and motions and
23 ignoring. And so, to the credit of Penn
24 National right now, they are doing what you
25 ordered them to do a year ago. But it's taken

1 us a year and numbers of hearings to get there.

2 And I just want to point out there have
3 been two -- and, first and foremost, as you
4 know, Mr. Protopapas was appointed as the
5 Receiver. And the Court ordered him to marshal
6 the assets. And the assets that he is to
7 marshal are insurance policies.

8 And so, that's the first thing he did when
9 he got appointed to Receiver in this court,
10 which he did. And, as you know, he's Receiver
11 for Covil. We've been in litigation with a
12 number of insurance companies. And only Penn
13 National has put up the resistance in producing
14 policies that we've had so far.

15 We sent two subpoenas to them, four sets
16 of written discoveries requests, six
17 depositions of their witnesses about their
18 policies and their search processes and their
19 ability to obtain those policies, seven Motions
20 to Compel on one issue. And that is issue is
21 the production of the policies and whether any
22 other policies had Covil as a named insured.

23 Those Motions to Compel were August 20th,
24 2021, September 8th, 2021, October 5th of 2021,
25 December 9th of 2021, February 4th of 2022,

1 April 1st of 2022, and then November 4th of
2 2022.

3 So we had all those hearings just on the
4 one issue: Search and produce the policies in
5 which Covil is a named insured. And then we
6 had to make a Motion to Enforce the Court's
7 Order on May 5th, and that Order was filed on
8 January 17th of 2023.

9 And at that hearing, after you said you
10 have got to go and search these policies, you
11 have to digitize them and you told them these
12 Orders are not appealable; despite that
13 admonition, they exercised their right to
14 appeal. And they filed not one, but they filed
15 three appeals to this case. And so, that
16 dragged on, and which we had to defend those.

17 So, you know, finally, all that's been
18 disposed of through the courts and it's been
19 summarily dismissed by the courts, by the
20 appellate courts. They had had one appeal to
21 the Court of Appeals and two appeals to the
22 Supreme Court, one peremptory on the original
23 jurisdiction. Then when the Court of Appeals
24 dismissed it for being unappealable, and it was
25 not ripe, it was interlocutory, then they went

1 to the Supreme Court. The Supreme Court has
2 finally taken care of that.

3 Judge, just for the record -- and this is
4 part of their arguments in their brief -- but
5 Mr. Protopapas was appointed on November 2nd of
6 2018. And then on February 8th of 2021 was the
7 first subpoena that went out to Penn National
8 asking them for their policies not only for
9 Covil as a primary insured but also an
10 additional insured.

11 I think it's important to note, because
12 part of their process is, look, we found other
13 policies, we found general commercial -- I mean
14 not general commercial -- fire, marine or
15 automobile, but we haven't found that.
16 Although they haven't looked.

17 And then they say it's too burdensome for
18 us to look for these additional insureds. A
19 couple of these policies that they've
20 identified, Your Honor, Covil was a named
21 additional insured in the endorsement.

22 So they told us through this whole process
23 that they're unable to locate the historical
24 policies without policy numbers. Judge, we
25 learned through discovery and we learned

1 through Ellis & Winters that that was not true,
2 that they had other processes that they could
3 get in place of that. Then they said their
4 paper records were too voluminous to search
5 manually. And so, the Court went through a
6 series of Orders with them.

7 And just to recite these quickly; is on
8 July 1st, 2021, you directed Penn to search its
9 paper records using a list of the contractors
10 and facilities by the Receiver in connection
11 with the subpoena. They didn't do it. So we
12 had to come back again.

13 And so, on the second go-around, at that
14 point, you ordered Penn National to open its
15 repository and to review Covil's with their
16 appointed defense counsel, Ellis & Winters.
17 And so, that process took several months.

18 And Ellis & Winters recommended to the
19 Court additional collection of records focusing
20 on their microfiche records and then provided a
21 number of options for the Court to consider.

22 And those options included a sample of
23 commercial line policies on the microfiche card
24 boxes, to image those, to image only the
25 commercial line policies of microfiche cards

1 with the cancel, renew dates prior to 1993 and
2 the relevant policy prefixes.

3 And if the Court remembers, despite them
4 saying they only could search by policies,
5 there were prefixes on the policies to which
6 Ellis & Winters discovered we could find the
7 commercial general policies with the
8 appropriate prefix, which was never told to us
9 until Ellis & Winters got involved in that. Or
10 they could image the commercial line policies
11 or image all commercial line policies in cards.

12 So the Court held a hearing and you
13 ordered them to digitize the microfiche cards
14 that pertained to policies with prefixes for
15 commercial general liability and general
16 liability policies.

17 And, Judge, the same arguments that are in
18 their Motion of Opposition were the arguments
19 they continued to give to the Court. And they
20 did not do it again. So they did not follow
21 that Order at that point. So we had to come
22 back again and do this all over again.

23 At this time, you know, that you have
24 chose the option, and then you ordered them to
25 produce digitized records in the database. And

1 you noted that Ellis & Winters located three
2 newly-discovery policies, although they were
3 not produced by Penn and those were not general
4 commercial properties. But despite them saying
5 we have no policies, there were policies that
6 Ellis & Winters did in their limited search of
7 this.

8 THE COURT: And that was a one-day search.

9 MR. SMITH: Yes, ma'am.

10 THE COURT: One-day search. And they
11 found three Covil policies just in sampling.

12 MR. SMITH: In sampling. And it was not a
13 one-day search. And it was not an exhaustive
14 search. It was just a pure sampling of how
15 they decided to look through this.

16 And so, you know, again, as I mentioned,
17 Penn National never informed the Court or us
18 that they could cull the universe through these
19 prefixes. They just kept saying, can't do it,
20 can't do it.

21 And then you noted Penn's abject failure
22 to participate in the discovery process without
23 court intervention. And I believe that's what
24 you termed as the foot-dragging operation that
25 was going on with Penn National.

1 So, not to be deterred, after you told
2 them this, they go and they file these appeals,
3 as I mentioned. And, Judge, they said they
4 followed the law that was available to them.
5 And, you know, they got the right to appeal,
6 but obviously they understand that discovery
7 Orders are interlocutory. And only under --

8 THE COURT: I advised them on the record
9 that these Interlocutory Orders and that the
10 rulings of the court had been quite clear for
11 many years, the strict preservation state. So,
12 interlocutory appeals are not available for
13 Discovery Orders.

14 MR. SMITH: Absolutely. And you told them
15 that. And, you know, and, as you know, the
16 court has --

17 THE COURT: They don't have a right to
18 appeal those. The court has ruled many times
19 you do not have the right to appeal discovery
20 issues.

21 MR. SMITH: Well, not only did they appeal
22 to the Court of Appeals; then they petitioned
23 the Supreme Court, concurrently, for them to
24 have take the case in its original
25 jurisdiction. Both of those were denied. Then

1 they go to the Court of Appeals and file a
2 Motion to Reconsider, which again delays
3 delays, delays. Inevitable. And then, when
4 that gets denied, then they again petition the
5 Supreme Court for cert and then that gets
6 denied.

7 So we have been through a year, a year
8 plus process with them on trying to get this
9 matter in a position where we can do what we
10 attempted to do in February of 2021, and that
11 is to find out if you have any other policies
12 with Covil. So, you know, that's where we find
13 ourselves here.

14 And, Judge, you know, when you look at
15 this, you look at 26(b)(1), and that's what
16 we're asking the Court to award our attorney's
17 fees under. And if you look, it says that "The
18 Court shall require from parties whose conduct
19 necessitated the Motion to Compel to pay the
20 Movant party's reasonable expenses incurred and
21 attained under the Order."

22 There is no doubt, Judge, that you issued
23 a Motion to Compel, and there is no doubt that
24 they did not comply and that it is their
25 conduct that caused us to file these. Despite

1 them trying to say we're playing whack-a-mole
2 and moving targets over here, it was one simple
3 question: Produce the policies and produce
4 them through your process.

5 And so, you know, it further says in
6 26(b)(1), it says: "Unless the Court finds
7 that opposition to the motion was substantially
8 justified or that other circumstances make an
9 award expense just."

10 So, it says you shall unless that. And,
11 Judge, I don't see any prima facia showing that
12 they have produced thus far that their
13 motion -- that they were substantially
14 justified in what they did or any other
15 circumstances that would make this award
16 unjust.

17 This was a litigation policy that they
18 embarked upon. And it's keep away. We're
19 going to keep you away from searching this as
20 long as we can and hope we can get some court
21 to agree with us that this is too burdensome.

22 So, obviously, Judge, the award of
23 attorney's fees is within the discretion of the
24 Court. You understand the Glasscock factors
25 and what to do in there; and, you know, I don't

1 need to recite those to you.

2 But, you know, I would just tell the Court
3 that we diligently sought our insurance
4 policies since the Court has appointed us, we
5 embarked upon this journey with Penn National
6 back in 2021, and every step of the way they
7 have refused to comply until they exhausted
8 their appeals with the Supreme Court.

9 And so, that's -- you know, Judge, we
10 would submit that their conduct is willful and
11 deliberate. I mean, there is no other way to
12 determine that conduct other than that. They
13 could have manually searched. They decided
14 that they didn't want to. In fact, the records
15 custodian said that they could manually search
16 if they wanted to, but they told us they
17 couldn't when we first started this request.

18 It was not until the hearing that we
19 learned that Penn could cull its records to
20 eliminate irrelevant documents and make the
21 search more meaningful. In fact, that's what
22 Ellis & Winters recommended. And then, also,
23 after a day of searching, as you mentioned,
24 three policies were located. So, Lord knows, I
25 would imagine we're going to find more policies

1 through this process.

2 So, Judge, you appointed the Receiver.
3 You asked the Receiver to marshal the assets
4 and to get the insurance policies. And he is
5 only doing what the Court has ordered him to
6 do. And they have prejudiced us by waiting all
7 these years to get these documents.

8 So, Judge, you know, two years ago, we're
9 still sitting here and still waiting for these
10 documents. It's my understanding they're being
11 digitized, but there's really no reason that it
12 should have taken this long to get where we
13 are, and that's where I would ask the Court to
14 look at this.

15 Judge, I'll go through this thing. And
16 it's probably more appropriate for rebuttal.
17 But I just want to point out some of the
18 allegations of their memorandum. I got it last
19 night and started reading it this morning and
20 am interested in some of these concepts that
21 they say.

22 With Covil --

23 THE COURT: I got it on my doorstep last
24 night as well.

25 MR. SMITH: Well, yes, ma'am.

1 And so, they put in there, clinically
2 designed, that Covil clinically designed to
3 manufacture the narrative that Penn National
4 failed to immediately participate in discovery.
5 And then they accused us of having a moving
6 target in discovery requests and that they're
7 playing whack-a-mole, that every time we had
8 asked for something and they produce it, then
9 something else comes up.

10 Judge, there is nothing further from the
11 truth than that. That is -- we asked for one
12 thing, and we asked for the insurance policies.
13 And they are the ones that had the ever-moving
14 target of why they couldn't produce it. And
15 then they accuse us of this for that.

16 This is all a setup to get fees from them
17 to, quote, reap -- I'll read -- "to reap the
18 fruits of years-long investment in rapid-fire
19 motions to portray them as discovery derelict."

20 I mean, Judge, I've really looked at this,
21 as the Court every hearing ordered them to do
22 this. So I think the Court found that they
23 were discovery derelict and they are just
24 trying to attempt to re-litigate this.

25 And they say also, part of their defense

1 is, prior to May of 2018 nobody ever asked them
2 for any policies. They were just -- you know,
3 nobody asked for policies. Well, the Receiver
4 wasn't appointed until November of 2018. So
5 the Receiver wasn't even in this process. At
6 that point Covil was a defunct corporation,
7 which we alleged. And the Court went through
8 years of whether the insurance companies were
9 actually running Covil as alter-egos.

10 And then they say they complied because
11 they've been defending this case since the
12 inception. This isn't about whether they are
13 defending the case and paying indemnity. This
14 is about whether they're producing policies in
15 all these years that we've gone through this
16 process. And then they're basically also
17 rehashing all their arguments that the Court
18 has heard and rejected.

19 So, Judge, at the end of the day, we've
20 submitted to the Court attorneys fee
21 affidavits. And obviously, Morgan Lewis has
22 done the bulk of the work. But the affidavits
23 are submitted to the Court. They've been
24 provided to Penn National.

25 And we're asking for attorney's fees in

1 the amount of \$469,841.50 for Morgan Lewis for
2 their fees for the years-long disputes; \$84,630
3 for our law firm, Smith Robinson, for these
4 disputes; and \$84,505 for John B. White Law
5 Firm for the disputes that they had in there.

6 Judge, the computation, you know, there's
7 no reason that the Receiver should have to
8 incur these attorney's fees to do what the
9 Court ordered and go through these year-long
10 battles and stall tactics and foot-dragging
11 operations in order to do this. So, Judge, I
12 would respectfully ask that the Court find that
13 we're entitled to attorney's fees and award the
14 same.

15 We have not sought costs. We've obviously
16 got a declaratory judgment before the Court.
17 We'd like to just reserve our costs for that
18 time and at the declaratory judgment just give
19 us our rights to receive those costs without
20 prejudice today.

21 Thank you, Your Honor.

22 THE COURT: All right. Mr. Shealy.

23 MR. SHEALY: May it please the Court, Your
24 Honor.

25 THE COURT: This is Mr. Kirby D. Shealy,

1 III for Penn National Mutual Casualty Company.
2 And appearing with him today is Mr. Brady
3 Yntema.

4 MR. YNTEMA: Yes, Your Honor.

5 THE COURT: Welcome, Mr. Yntema.

6 MR. YNTEMA: Thank you, Your Honor.

7 THE COURT: So you may proceed.

8 MR. SHEALY: Thank you, Your Honor. May
9 it please the Court. I know you're used to
10 hearing from Mr. Yntema throughout the life of
11 this case. Mr. Yntema was out of town last
12 week, and I volunteered to prepare and argue
13 for today's motion.

14 I've been involved in this case since
15 December, don't have the history, the command
16 of the history that Mr. Yntema does; but,
17 nonetheless, I want to make a couple of points
18 for Your Honor.

19 My friend, Mr. Smith, mentioned a couple
20 of things, and I just want to clarify. The
21 first time that Penn National received a
22 subpoena was outside of the context of this
23 case and it was to produce two known policies
24 that Penn National had issued in the eighties
25 to Covil. Those were produced and there wasn't

1 any issue after that.

2 Penn -- or Covil's --

3 THE COURT: That was in the Finch case,
4 right?

5 MR. SHEALY: In connection with the Finch
6 case; yes, Your Honor.

7 Covil's --

8 THE COURT: And I may say to you, Mr.
9 Shealy, that that subpoena had been preceded by
10 a disastrous defense of Covil in a North
11 Carolina asbestos case which was tried to
12 verdict in the North Carolina District Court
13 and resulted in a \$34 million verdict. That
14 verdict was then attempted to be enforced here.

15 And the history of reply to repeated
16 requests by the Court and by the Plaintiffs in
17 the Finch case was a complete failure to reveal
18 anything about accurate information with
19 respect to insurance and assets. The only
20 asset of Covil was insurance. And its
21 attorneys were a moving target about how much
22 insurance they had.

23 But the case had a -- discovery and all
24 the activity had been done, including the trial
25 of the case, with many subpoenas for

1 information from Covil about all of its
2 insurance records. And then, these three
3 policies, kind of irrelevant policies, surfaced
4 from Penn National.

5 MR. SHEALY: Well, the two relevant
6 policies, two CGL policies, were produced in
7 response to the subpoena. They were known to
8 Covil at that time and they were produced in
9 response.

10 THE COURT: Right. And Covil is the one
11 that in that case asked for specific CGL
12 policies. No other search was made for any
13 other pertinent policies to this at all. They
14 produced only what Covil already had records
15 of.

16 MR. SHEALY: Your Honor, right. I don't
17 know that I've seen the subpoenas themselves,
18 but my understanding was that the subpoenas
19 asked for the two known policies.

20 THE COURT: That's correct. That's
21 correct. And rather than do anything about
22 looking, even at that point in the face of a
23 \$34 million judgment against its insured,
24 looking for any other coverage it might have,
25 it simply produced those policies. That was

1 it. That's what started the ball rolling.

2 MR. SHEALY: Your Honor, I just -- I don't
3 want to misrepresent something that I don't
4 know, but my understanding is that Penn
5 National produced the two policies it was asked
6 to produce in response to those subpoenas.

7 THE COURT: That is correct.

8 MR. SHEALY: And just a couple of other
9 things that I think are important. It has been
10 represented to the Court multiple times in
11 hearings that these three irrelevant policies
12 were found on a one-day search by Ellis &
13 Winters. But if you look at their report,
14 which is attached as an exhibit to the
15 Receiver's motion, they had those policy
16 numbers already themselves. And so --

17 THE COURT: That's correct. That's what's
18 so frustrating about this thing. That's not a
19 fact in your favor at all, Mr. Shealy. They
20 did already have those policies. But what Penn
21 National represented in all the hearings I have
22 held on this is that they had no ability to
23 examine their records unless they had a
24 specific policy number. That's what they said.

25 MR. SHEALY: And, well, that's what Ellis

1 & Winters had, specific policy numbers, and
2 were able to pull those policy numbers,
3 policies --

4 THE COURT: Exactly. That's not what was
5 being asked of them. They were being asked to
6 supply all of their records to determine
7 whether there are other policies.

8 MR. SHEALY: And that's --

9 THE COURT: And they misrepresented to the
10 Court that they were not able to do that unless
11 they were given policy numbers, that they had
12 no other search mechanism for searching.
13 That's what they represented to the Court many,
14 many, many times.

15 And we went through all kinds of gyrations
16 about where the records were and Iron Mountain.
17 And finally we found out, no, there are also
18 microfiches of a lot of this stuff.

19 And still they represented through all of
20 that, we can't find anything unless we have a
21 policy number and it's terribly burdensome for
22 us to have to go through what it would take to
23 just go record-by-record, or microfiche page
24 which has what? Ten or twelve things on it,
25 policies on it; or four or whatever it is has;

1 that's burdensome.

2 And it turns out that is a complete
3 misrepresentation. It turns out that they have
4 a prefix look of identifying the policies that
5 we want to look at. And the policies that they
6 want to look at are CGL policies, commercial
7 general liability policies or general liability
8 policies or commercial lines policies.

9 And it turns out that Penn National has
10 prefixes on the front of their policy numbers
11 that do that, or sometimes on the boxes of
12 where these things are stored. But there is
13 another way to narrow the search down so you
14 don't get irrelevant inland marine policies and
15 automobile policies but you get the asset that
16 I'm trying to marshal for Covil.

17 MR. SHEALY: Your Honor, and I'm --

18 THE COURT: And so explain that to me
19 under the rubric of how abused Penn National
20 has been by this process of trying to get
21 records that Covil is entitled to.

22 MR. SHEALY: Well, and, Your Honor, I
23 certainly don't want to re-litigate --

24 THE COURT: Well, you've continued to
25 re-litigate with the reply you've made right

1 now. That's why I want to know, like I have
2 all along, why you deliberately failed to
3 disclose that there was another way to get the
4 universal policies that we wanted to look at
5 narrowed down from all the hundreds of
6 thousands of policies they have to some
7 manageable number that would be several hundred
8 thousand perhaps.

9 But that, shoot, I've been through 100,000
10 pages of material or sometimes 100,000
11 documents many times in discovery from my
12 lawyer days forward, and I certainly have since
13 I've been trying these asbestos cases.

14 MR. SHEALY: Your Honor.

15 THE COURT: And why this company can't do
16 that is what I really want to know right now.

17 MR. SHEALY: Your Honor, well, the company
18 is doing -- is complying with your --

19 THE COURT: It doesn't sound like they're
20 doing anything except at a snail's pace. And
21 they're not giving regular reports on what
22 they're doing. Tell me about why they never
23 told us that you could find all the CGL
24 policies.

25 MR. SHEALY: Your Honor, I'm not here to

1 tell you that they made a -- didn't make a
2 misrepresentation or did. What I do know is
3 that those policy prefixes will result in some
4 narrowing of the universe but not down to
5 something where we could find all of the
6 policies in a matter of a few days. That's
7 just -- it's just --

8 THE COURT: If you digitized them, you
9 could find them very immediately. And Mr.
10 Yntema knows that. We've talked about that for
11 months. But Mr. Ynema never told us the whole
12 time that there was a way of narrowing down
13 this huge bulk of all the policies they ever
14 wrote.

15 The suggestion was it's all together, all
16 the policies we ever wrote. The only way you
17 can find it is to have a specific policy
18 number. That was asserted in this court by the
19 attorneys on their oath as lawyers. It was
20 asserted by the client time and time again.

21 And I just -- I am wanting to understand
22 just exactly what's happening now. And I hope
23 it's something more than just them hand going
24 through things. I hope it is digitizing these
25 records, like people do all the time.

1 Attorneys do that all the time in getting bulks
2 of material and trying to make it searchable so
3 that they can try these cases.

4 Why is it taking them a huge, any length
5 of time at all now that they've got the boxes
6 identified that are the real ones?

7 MR. SHEALY: Well, and, Your Honor, again,
8 the prefixes are -- a particular box may have
9 policies in it with different prefixes within
10 it. So --

11 THE COURT: Well, that's fine. You're
12 going to have to go through and pull them out.

13 MR. SHEALY: That's right. That's right.

14 So, Your Honor, where we are right now is,
15 all of the boxes of microfiche had been shipped
16 to the west coast to the vendor that Ellis &
17 Winters identified to do this.

18 THE COURT: When was that done?

19 MR. YNTEMA: Your Honor, if I could.

20 Brady Yntema for Penn National, just working
21 with Mr. Kirby and presenting it to streamline
22 it for Your Honor.

23 So, several weeks ago, I guess at the
24 January timeframe, the vendor identified that
25 it needed a sampling of the microfiche of Penn

1 National that it could run to do a milestone
2 project.

3 The milestone project, which was unknown
4 to me at the time, is a process by which the
5 vendor would use to create a platform, a sample
6 digitized platform that a vendor wanted to show
7 to Ellis & Winters and to show to counsel for
8 the Receiver and show to counsel for Penn
9 National as to what it could do with respect to
10 the sampling of microfiche that it had received
11 in its milestone project.

12 That milestone project took three to four
13 weeks to complete. Penn National provided
14 hundreds of microfiche -- I forget the exact
15 number -- to the vendor when it was requested.

16 That milestone project has now been
17 completed. The vendor has made several
18 presentations to Ellis & Winters, to Receiver's
19 counsel. And I think it consulted, that the
20 Receiver's counsel has, and also to Penn
21 National with respect to the platform it can
22 set up.

23 And then, at that point, once all the
24 parties approved, especially Ellis & Winters
25 approved that platform and how it could be

1 searched, then Penn National said, well, how do
2 you want us to ship out our microfiche? Do you
3 want it on a rolling basis? We can do it in
4 one lump sum, whatever the vendor wants. Penn
5 National has now shipped all of its microfiche
6 to the vendor in California.

7 THE COURT: Not just a sample. All of it?

8 MR. YNTEMA: All of it's out there in
9 California.

10 THE COURT: That's all of their policies?

11 MR. YNTEMA: That's all of the microfiche
12 policies. Those are all the focus of the Ellis
13 & Winters report.

14 THE COURT: What percentage of -- I don't
15 want any doubts to be in this thing now. I
16 want to understand exactly what we're talking
17 about. What is the universe of microfiche
18 policies?

19 MR. YNTEMA: So, Penn National has sent
20 all of its commercial line microfiche records
21 to the vendor.

22 THE COURT: All right.

23 MR. YNTEMA: Its personal lines, you know,
24 as Your Honor knows, is not an issue.

25 THE COURT: That's correct. But the

1 commercial lines are.

2 How much of the policies they wrote have
3 been microfiched?

4 MR. YNTEMA: At this point, again, I was
5 completing what stage we're in. So, it was
6 sent out, I guess it was Good Friday or the day
7 before Good Friday. The vendor said, I've
8 received -- or that week the vendor told me
9 that they had received all the microfiche by
10 ground shipment. And that's what they prefer,
11 FedEx ground shipment.

12 The vendor had received it. There were
13 some damaged boxes. They needed to determine
14 whether the microfiche in those damaged boxes
15 had been impacted.

16 They reported to me and to Ellis & Winters
17 prior to, I guess it was about Good Friday --
18 that's kind of my bookmark there -- that the
19 microfiche in the damaged boxes had not been
20 impacted and that they could begin scanning.

21 I was out last week on vacation. And
22 Ellis & Winters and I have -- Ellis & Winters
23 sent an invite for a conference call tomorrow
24 morning to begin the scanning process and how
25 that will proceed of all the microfiche that

1 have now been received by the vendor.

2 THE COURT: Okay. And my question is,
3 when all that microfiche is scanned of every
4 commercial lines policy that is on microfiche,
5 what time period does that encompass? In other
6 words, are there more commercial lines policies
7 that have not been put on microfiche?

8 MR. YNTEMA: Not to my understanding that
9 is relevant. The Ellis & Winters report was
10 very specific that the relevant policies that
11 would concern Covil were 1992 and before were
12 beyond microfiche. And that should be the
13 focus of any digitization of any of Penn
14 National's records. And so that's why the
15 focus has been on the microfiche.

16 THE COURT: So, specifically, the
17 microfiche from '92 to what? To what?

18 MR. YNTEMA: Everything pre-1992 would
19 have been on microfiche. Then Penn National
20 went to a case where they tried to create its
21 own computer database post-1992. That didn't
22 work out. So then they went to paper storage.
23 That's what's contained in Iron Mountain.
24 That's why Ellis & Winters is not concerned
25 about the Iron Mountain policy-related

1 documents, is because they post date Covil.

2 And that's why Ellis & Winters' report was
3 the recommendation that the focus of this
4 complete search should be on the microfiche.
5 And that's what's been sent. The commercial
6 lines policies on microfiche have been sent to
7 the vendor in California.

8 THE COURT: All right. And so, how long
9 is it going to take to scan them all?

10 MR. YNTEMA: I submitted the question.
11 That is a question I hope is going to be
12 answered tomorrow during our conference call.
13 It's going to be several months though. I
14 mean, I think that the initial estimate from
15 the vendor was maybe three months or more. It
16 took them -- it took the vendor approximately
17 three weeks to go through maybe a few hundred
18 microfiche for the milestone project.

19 THE COURT: Well, as you know, the thing
20 that's been so maddening about this and the way
21 it all came to a head when you all began the
22 last foot-dragging operation was this case was
23 scheduled for trial, and I had specifically
24 scheduled it for trial around the schedules of
25 counsel for Plaintiff.

1 Then you all start this nonsense of
2 appealing the thing, and that is going to mean
3 we have to reschedule this thing for trial.
4 And we're currently talking about trial in
5 June.

6 I want to know when this stuff is going to
7 be scanned and when we can expect to have it in
8 the hands of Plaintiff.

9 MR. YNTEMA: Now, I think, Your Honor,
10 this is a discussion point. I think Your Honor
11 made a good point just a moment ago; there
12 hasn't been any interim reports as to what's
13 going on with the scanning.

14 And if you remember when Ellis & Winters
15 was first involved, I submitted interim reports
16 as to what Ellis & Winters' searches were and
17 what they were doing.

18 I'm happy to report -- or Ellis & Winters
19 can. I hate to put more burden on them. I'm
20 happy to report --

21 THE COURT: I'm going to be ordering the
22 interim reports beginning today. That's the
23 very least I'm going to be ordering. But we're
24 going to need some interim reports -- and I
25 would suggest every two weeks -- to find out

1 exactly what is going on with the scanning
2 process.

3 MR. YNTEMA: Certainly.

4 THE COURT: Because I've got to set a
5 trial date again. And I am going to set a
6 trial date.

7 MR. YNTEMA: Certainly. As far as the --
8 I have to rely on the vendor and their
9 estimate. And as far as I know, it is a
10 several months long project. But as far as the
11 specific number of months --

12 THE COURT: I want a description in the
13 first status report that says exactly what the
14 work plan is and why it's going to take so
15 long.

16 This makes no sense to me. The Supreme
17 Court of South Carolina had all of its
18 Transcripts of Record and all of its briefs and
19 a lot of the other motion-type material on
20 microfiche for many years. And we migrated
21 that to a more technologically up-to-date
22 platform, just like you're doing with these
23 records; and it didn't take this length of time
24 to convert these things.

25 And that microfiche conversion was not the

1 easiest thing in the world. And it really
2 matters who you get as a vendor to do it. I
3 don't know anything about who you all have got.
4 I want to know that.

5 MR. YNTEMA: You want to know the identity
6 of the vendor?

7 THE COURT: Oh, yes, sir. Certainly.

8 MR. YNTEMA: I think that might have been
9 -- I'm certainly willing to incorporate that
10 into an interim report.

11 THE COURT: Yeah. But we're not going to
12 have something where we just have an interim
13 report that says, well, it's taking a little
14 longer. I want to know much more, specifically
15 exactly what is being done. I am very familiar
16 with the process of converting microfiche
17 records.

18 MR. YNTEMA: I appreciate that, Your
19 Honor. As far as -- and I don't want to speak
20 out of turn. I've had a long history in this
21 case with this Court, and I've worked hard to
22 maintain the Court's respect. And at no point
23 have I intentionally misrepresented anything to
24 this Court. I have always taken the
25 position -- and it was my client's position and

1 still is the client's position -- that the
2 policies could only be searched by policy
3 number.

4 THE COURT: But that turns out to be
5 untrue. And I'm not going to take any
6 representation to the contrary. There are more
7 ways to get in there and identify commercial
8 lines policies than just that policy number and
9 narrow the -- and you've now done that because
10 all you've shipped out by way of microfiche was
11 commercial lines to the vendor. You did not
12 ship out to them personal lines.

13 MR. YNTEMA: It's the only way to search
14 the commercial lines. I don't mean to
15 interrupt Your Honor. The only way to search
16 the commercial lines policies is by policy
17 number. Now, there are prefixes to those lines
18 policies, but you still would have to go
19 through and manually search hundreds and
20 hundreds and hundreds of them.

21 THE COURT: Yeah. But you can eliminate a
22 lot of personal lines and everything else. The
23 way it was explained in court before, it was
24 the whole of every policy you ever wrote.
25 Personalized, inland marine, automobile

1 casualty, all was lumped in together with
2 commercial. And the only way you could get to
3 it was to have that specific policy number.
4 That was it. There was no other way to look at
5 it.

6 It turns out now that you can cull a lot
7 of policies out without having to take any
8 detailed look at them to find Covil, which is
9 the end of what we are trying to do. And it
10 turns out you can establish a much smaller
11 universe of things to look at because you've
12 got that prefix.

13 And that was not the way it was
14 represented to us for a year worth of
15 unproductive hearings, even after Ellis &
16 Winters was appointed to get into this process.

17 I am not trying to blame you personally,
18 but I am blaming the firm, Penn National, very
19 much. It's -- and you have assisted them in
20 that. But I -- their approach to this thing
21 has been reprehensible in my view.

22 MR. YNTEMA: I appreciate that, Your
23 Honor. And again, I appreciate your Court's
24 time in allowing me to explain it. I have
25 never personally tried to misrepresent anything

1 in court.

2 THE COURT: It's not anything about you.
3 Its about your client.

4 MR. YNTEMA: Thank you, Judge.

5 And as far as complying with various
6 sundry Motions to Compel leading up to the
7 appeal of the Court's Order for Penn National
8 digitizing the documents, I am certainly happy
9 to let Mr. Kirby [sic] continue to argue that.
10 I certainly didn't want to take the steam out
11 of his argument.

12 But that was a long process that Penn
13 National complied with. You requested -- the
14 Court requested in a two-stage process that
15 they submit affidavits to the Court explaining
16 how they store documents. Then we proceeded on
17 from August into, I guess, the fall of that
18 year, when then the Court recommended Ellis &
19 Winters be involved.

20 Penn National then cooperated with Ellis &
21 Winters, opened its insurance repository,
22 provided them with any documents they wanted to
23 see, review; anything that would assist them.

24 THE COURT: Well, I hear all that, but
25 that's plowing some ground we've plowed again

1 and again.

2 MR. YNTEMA: Certainly. And I will --

3 THE COURT: We are now at this point with
4 a trial that was imminent having been delayed
5 because of the continued foot dragging of Penn
6 National such that it wasn't until recently
7 that you finally selected a vendor and began
8 the process of shipping those things out to
9 them. I don't see why that took so long at
10 all.

11 I just don't think there is any feeling of
12 urgency within this company at all for a very
13 serious attempt to marshal assets. Covil is
14 being brought into court all around. It's a
15 major thermal insulator. And other companies
16 have been able to get into their records and
17 find Covil policies and cooperate with the
18 Receiver. And Penn National has been abject in
19 its failure to cooperate, unless I order them,
20 which I have done now about three or four
21 times, more specifically each time.

22 And that's the foundation of why we're
23 here today, Mr. Shealy, is to decide attorney's
24 fees awards because of the intransigence of
25 this client. And I understand the explanations

1 are being given here because I've heard them
2 many times before. And we still don't have
3 them. We are inching somewhat closer, but we
4 are not there yet.

5 MR. YNTEMA: I understand, Your Honor.
6 And I will every two weeks have an interim
7 report to the Court and have it be a subsequent
8 report. I do understand that. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 Now, Mr. Shealy, Mr. Ynema got right in
12 the middle of your arguments.

13 MR. SHEALY: Well, Your Honor, I'll
14 just -- I'll be brief. I mean, I understand
15 the Court's' position. I did -- Mr. Smith
16 indicated they were moving under Rule 26(b),
17 but I think they're moving -- I know that they
18 have moved under Rule 37(b).

19 And again, and I understand the Court's
20 position. Our position is we have not failed
21 to comply with any of the Court's Orders. We
22 have complied with the Court's Orders. The
23 only one that we didn't comply with initially
24 was the May discovery Order that was the Order
25 that said you've got to digitize your records.

1 That Order was appealed. When that appeal ran
2 its course and was ultimately dismissed, now
3 Penn National is complying with that Order.
4 And so, there hasn't been the failure to comply
5 with an Order that it would justify the award
6 of attorney's fees under Rule 37(b).

7 And the only other item that I would point
8 out to Your Honor is that the Receiver has only
9 cursorily addressed the Glasscock factors.
10 They provided time sheets that have either been
11 redacted or don't show any substantive work
12 description at all.

13 The identifications of those time sheets
14 certainly we have no argument with; but in
15 terms of the other Glasscock factors, they just
16 haven't provided this Court with the sort of
17 background that it needs to award attorney's
18 fees based on the rates that have been
19 indicated.

20 My assumption is that Your Honor would
21 look in camera, as they've invited the Court to
22 do, at their time sheets to make sure that the
23 -- that if you're inclined to award attorney's
24 fees that the time does deal with dealing with
25 discovery matters.

1 But based on the record before the Court
2 right now, I don't believe that the Court has
3 the basis it needs to render an award of
4 attorney's fees that would satisfy the
5 Glasscock factors.

6 THE COURT: All right. Thank you, sir.

7 MR. SHEALY: Thank you, Your Honor.

8 THE COURT: All right, Mr. Smith. Reply?

9 MR. SMITH: Judge, just briefly. And let
10 me mention that 26(b)(1) is dealing with
11 Motions to Compel. And that's what says "the
12 court shall." So we moved under both of those.

13 And these are Motions to Compel that have
14 been granted that we have not taken up the
15 issues of attorney's fees from these multitude
16 of hearings because we had to get to the place
17 today where we are, where they're finally
18 complying with the Orders.

19 And I take great challenge of their
20 interpretation that they've complied with
21 Orders, because if they complied with the Order
22 to Produce every time the Court has told them,
23 we would never have been to these multiple
24 hearings. So, regardless of that, I think -- I
25 just think that that's a non-issue.

1 Your Honor, the one thing I wanted to
2 clarify that we talked about here, you've
3 talked about the trial and the reason why the
4 delay in this. We are still -- we are on the
5 delay as a result of the mode of trial that the
6 court determined. We were going to have a
7 non-jury hearing before the jury hearing. But
8 the Court is correct in that if they would have
9 produced the policies or looked through the
10 policies, then we would have not gone through
11 these series of appeals and, you know,
12 hide-the-ball situations that they've done.
13 Then we would not -- we would have been in a
14 position to try both of those together. We
15 were just trying to bifurcate to get there
16 early.

17 But as soon as we -- obviously, they
18 appealed your Order to have a non-jury trial
19 the eve of that trial. And so, that's the
20 reason why we had to get the hearing continued
21 last time.

22 And I'm a little confused about what Mr.
23 Shealy is talking about with the subpoena,
24 where he started off the case. But I do want
25 to point out the subpoena, Judge.

1 The first subpoena I looked at -- we
2 looked this up -- that the Receiver issued, as
3 he pointed out earlier, was November of 2019.
4 Or 2018. We issued a subpoena on 11-25 of '19
5 to Penn National. And it was 21 -- attachment
6 Schedule 21 -- number one was on there -- was:
7 "Produce all policies of insurance."

8 So I don't know if that's the one he's
9 referencing or if he's referencing something
10 else. And that might have been a subpoena that
11 came from either the Plaintiffs or someone when
12 they were trying to collect the judgment. But
13 our first subpoena that was sent to them asked
14 for those policies. And not the specific
15 policies; all policies.

16 THE COURT: All right. How about the
17 Glasscock factors?

18 MR. SMITH: Judge, from my days of doing
19 family court, which I despised tremendously, I
20 would say that, you know, Mr. Shealy -- as the
21 family court judges told me when they make
22 these arguments: Do you want to cross examine
23 the attorneys to figure it out or we could
24 supplement an affidavit, Judge, to comply with
25 the Glasscock factors?

1 THE COURT: And I think that would be
2 fine.

3 MR. SMITH: Okay.

4 THE COURT: All right. Do you have
5 anything further?

6 MR. SMITH: No, ma'am.

7 THE COURT: Good. All right. The history
8 of this matter is not a history, as has been
9 represented by defense counsel, of continuing
10 attempts to comply. The history of this matter
11 has been to say, no, we cannot search and find
12 these policies.

13 A very simple subpoena was sent to these
14 people now in 2018. That's almost five years
15 ago; a simple subpoena that asked for all Penn
16 National policies of commercial general
17 liability that covered Covil.

18 And for several years it was simply, we
19 can't search. First of all, they didn't know
20 where they were. Then they were at Iron
21 Mountain. No, they were there. It took a long
22 time to -- the corporate rep was examined. It
23 took a long time for them to finally come up
24 with the notion -- I think it was even after
25 Ellis & Winters was brought into the case -- to

1 reveal that a lot of the policies were not
2 stored in boxes at Iron Mountain, which is a
3 big national storage facility; but it also
4 digitizes and does a lot of other things to
5 store records.

6 Finally, it came out several years into
7 this dispute that these records were on
8 microfiche. Had that been known at the
9 beginning, that would have changed things.

10 The only time that activity has moved
11 forward by means of getting a law firm that
12 would supervise this activity, getting an
13 estimate of what kind of technology could be
14 used to make these records searchable, getting
15 a vendor who is now going to do that was when I
16 made specific Orders. Because they didn't do
17 anything that told them, well, try Ellis &
18 Winters; well, try getting a vendor.

19 This hasn't been some voluntary move
20 towards cooperation the whole time from Penn
21 National. Anything but. Anything but.

22 So, there is no question in my mind that
23 what has an aspect of my granting the motion,
24 repeated Motions to Compel which have not been
25 complied with, there's no question that even

1 under 26(b)(1) I am empowered to set attorney's
2 fees for attempting to compel cooperation.

3 But the routine discovery requests in this
4 coverage suit and routine subpoenas, 37(b),
5 simply adds to that. It's another way to have
6 of examining this thing. But there is not one
7 to the exclusion of the other.

8 The total amount of fees -- and I have
9 looked at the various submissions with the
10 redactions; not in the original, is \$469,841.50
11 for fees through January the 30th of 2023, as I
12 understand it.

13 I will want the Plaintiff to supply me
14 within a week's time the un-redacted bills and
15 affidavits of counsel for covering the
16 Glasscock factors.

17 I will not require that the un-redacted
18 material be sent to Penn National at this time,
19 but I will examine it and see. And the reason
20 that I won't give the un-redacted copies to
21 Penn National at this time is because it would
22 certainly reveal trial strategy both in the
23 current controversy by producing these policies
24 as well as the broader issues regarding
25 coverage. So I would like that to be done by

1 Plaintiff within the week.

2 I would like -- I also would direct that
3 reporting be done by Penn National every two
4 weeks as to exactly the status.

5 The first report should be in much more
6 detail and a description of exactly what's
7 being done and how it's being done, exactly
8 what microfiche was sent, exactly what the
9 volume of the materials is and so forth.

10 I'm sure that's material that's already
11 been covered in their bills to Penn National or
12 to Ellis & Winters. But if not, they need
13 to -- well, we need to have some information
14 about exactly what's being done and what kind
15 of materials they are working on.

16 And then I want a timeline of precisely
17 what the work plan is for completion of this
18 and exactly what's being done, how it's being
19 done, and what kind of time period it takes to
20 digitize these microfiche.

21 And what we're talking about is digitizing
22 all of them. We are not talking about making a
23 call yourself and defining the Covil policies
24 and then giving them. That rubicon was crossed
25 some time ago when I in an Order said, if

1 you're not willing to search yourself, then you
2 must digitize and allow the Plaintiff to
3 search. That's still the Order.

4 So let's be sure that we understand so we
5 don't get at the end and suddenly say, well,
6 here are the Covil files, some little small
7 group out of all the microfiche. No.

8 This thing needs to be put in searchable
9 form so that the Plaintiff can, instead of
10 going to the warehouse and searching, looking
11 at each microfiche themselves and have a
12 program to search itself and verify that it's
13 getting all of the material that would be
14 covered with Covil. So all that needs to be
15 covered in the Order that would be made.

16 Now, excuse me. I recited the Morgan and
17 Lewis figure. So, let's also -- yeah. All
18 right. Recite again the exact figures, Mr.
19 Smith.

20 MR. SMITH: Your Honor, I've got Morgan
21 Lewis; as you talked about, was \$469,841.50.

22 THE COURT: Right.

23 MR. SMITH: Our law firm of Smith Robinson
24 was \$84,630. And John B. White, Jr. P.A's Law
25 Office was \$84,505.

1 THE COURT: Great.

2 MR. SMITH: A total of 639,76.50.

3 THE COURT: That's right. And what's what
4 Ms. Poswell was pointing out to me, that total
5 figure. And that's what will be awarded. And
6 all of those are as of 1-30-23, as I understand
7 it.

8 MR. SMITH: Yes, ma'am.

9 THE COURT: There may be some slight
10 adjustments when you submit it back, when you
11 submit the records for this and anything else
12 that may occur that needs to be added to it
13 when you bring it up to date when you send it
14 to me.

15 MR. SMITH: We'll have a final date. Yes,
16 ma'am.

17 THE COURT: Very good.

18 MR. SMITH: Judge, one other thing. I
19 just wanted to make clear on the record, when
20 you talked about digitizing and searchable, the
21 one issue is, we found out during discovery
22 that Penn National categorized their search
23 engine of policies through just the named
24 insured, not additional insured. So I just
25 want to make --

1 THE COURT: Right. Exactly. I think that
2 my Orders have made it clear that we want named
3 insured or additional insured. And both those
4 things are on the microfiche, as I understand
5 it. Ellis & Winters have verified that.

6 MR. SMITH: Right. And that's why I just
7 wanted to make sure that the record is clear
8 that it's additional insured and named insured,
9 since they don't have that policy anymore.

10 THE COURT: But again, we want the
11 thing -- we want them to disclose what they say
12 those two things are by means of the Covil, and
13 then we want the whole database to be made
14 available to Plaintiffs so it can perform its
15 own search and compare it to what they say is
16 the policy --

17 MR. SMITH: Yes, ma'am. Exactly. That's
18 all we ask.

19 THE COURT: -- that mentions Covil. And
20 again, we may have more litigation about how
21 those policies cover, what do they cover. But
22 we simply want to know that's what the policies
23 indicate, is the coverage either in, you know,
24 a primary role or in an additional insured
25 role.

1 MR. SMITH: Right.

2 THE COURT: Exactly.

3 MR. SMITH: Thank you.

4 THE COURT: Anything further? Anything
5 further by way of any need for clarification,
6 Mr. Shealy?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: Very good. That completes the
9 Covil matter.

10 - - -

11 (Proceedings conclude at 11:55 a.m.)

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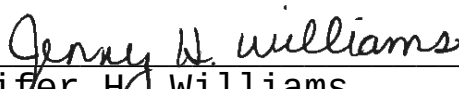
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CERTIFICATE OF REPORTER

I, Jennifer H. Williams, Registered Professional Reporter and Notary Public for the State of South Carolina, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time and location stated on page 1 of this transcript and that the foregoing as typed is a true, accurate and complete record of all motions made at the time of the proceedings to the best of my ability.

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 24th day of April 2023, at Lexington County, South Carolina.



Jennifer H. Williams
Registered Professional Reporter
Notary Public
State of South Carolina
My Commission expires:
February 7, 2033

WORD INDEX

< \$ >	43:10 48:1	Absolutely 12:14	appointed 1:1 6:4,
\$34 21:13 22:23	27408 3:1	abused 25:19	9 8:5 9:16 15:4
\$469,841.50 19:1	29151 2:1	accurate 21:18	16:2 18:4 38:16
48:10 50:21	29201 1:1 2:1	54:1	appreciate 36:18
\$84,505 19:4 50:25	29202 1:1	accuse 17:15	38:22, 23
\$84,630 19:2 50:24	29204 2:1	accused 17:5	approach 38:20
	2nd 8:5	ACTION 1:1	appropriate 10:8
		activity 21:24	16:16
	< 3 >	47:10, 12	approved 29:24, 25
< 1 >	30th 48:11	ADAMS 2:1	approximately
1 54:1	310 3:1	added 51:12	33:16
100,000 26:9, 10	336)419-4904 3:1	additional 8:10, 18,	April 1:1 7:1 54:1
1000 2:1	37(b) 41:18 42:6	21 9:19 51:24	argue 20:12 39:9
11:00 1:1 4:4	48:4	52:3, 8, 24	arguing 5:11
11:55 1:1 53:11	3B 1:1	addressed 42:9	argument 39:11
1111 2:1		adds 48:5	42:14
11-25 45:4	< 4 >	adjustments 51:10	arguments 8:4
1200 2:1	4000 2:1	admonition 7:13	10:17, 18 18:17
1221 2:1	4th 6:25 7:1	advised 12:8	41:12 45:22
126 2:1		affidavit 45:24	asbestos 21:11
1-30-23 51:6	< 5 >	affidavits 18:21, 22	26:13
1459 1:1	5th 6:24 7:7	39:15 48:15	asked 16:3 17:8,
1701 1:1		affixed 54:1	11, 12 18:1, 3
17th 7:8	< 6 >	ago 5:25 16:8	22:11, 19 23:5
19 1:1 45:4	639,76.50 51:2	28:23 34:11 46:15	24:5 45:13 46:15
1992 32:11		49:25	asking 8:8 13:16
1993 10:1	< 7 >	agree 14:21	18:25
1st 7:1 9:8	7 54:1	allegations 16:18	aspect 47:23
	701 3:1	alleged 18:7	asserted 27:18, 20
< 2 >	713)890-5110 2:1	allow 50:2	asset 21:20 25:15
20004 2:1	77002 2:1	allowing 38:24	assets 6:6 16:3
2018 8:6 18:1, 4		alter-egos 18:9	21:19 40:13
45:4 46:14	< 8 >	amount 19:1 48:8	assist 39:23
2019 45:3	803)212-4986 2:1	answered 33:12	assisted 38:19
202)739-5779 2:1	803)778-2471 2:1	anymore 52:9	assumption 42:20
2020-CP-40-02098	803)978-6111 2:1	appeal 7:14, 20	attached 23:14
1:1 4:9	803-212-0012 1:1	12:5, 18, 19, 21	attachment 45:5
2021 6:24, 25 8:6	8th 6:24 8:6	39:7 42:1	attained 13:21
9:8 13:10 15:6		appealable 7:12	attempt 17:24
2022 6:25 7:1, 2	< 9 >	appealed 42:1	40:13
2023 1:1 7:8	92 32:17	44:18	attempted 13:10
48:11 54:1	9th 6:25	appealing 34:2	21:14
2033 54:1	< A >	appeals 5:22 7:15,	attempting 48:2
20th 6:23	a.m 1:1 4:4 53:11	21, 23 12:2, 12, 22	attempts 46:10
21 45:5, 6	ability 6:19 23:22	13:1 15:8 44:11	attorneys 18:20
2110 2:1	54:1	APPEARANCES	21:21 27:19 28:1
24th 54:1	abject 11:21 40:18	2:1 3:1	45:23
26(b) 41:16	able 24:2, 10 40:16	appearing 20:2	ATTORNEY'S 1:1
26(b)(1) 13:15 14:6		appellate 7:20	4:10 5:1 13:16
			14:23 18:25 19:8,

13 40:23 42:6, 17,
23 43:4, 15 48:1
August 6:23 39:17
automobile 8:15
25:15 37:25
available 12:4, 12
52:14
Avenue 2:1
avenues 5:22
award 13:16 14:9,
15, 22 19:13 42:5,
17, 23 43:3
awarded 51:5
awards 40:24

< B >
back 9:12 10:22
15:6 51:10
background 42:17
ball 23:1
based 42:18 43:1
basically 5:13
18:16
basis 30:3 43:3
battles 19:10
bear 5:6
becoming 5:14
began 33:21 40:7
beginning 34:22
47:9
BEGUN 1:1
believe 5:4 11:23
43:2
Beltline 2:1
best 54:1
better 5:16
beyond 32:12
bifurcate 44:15
big 47:3
bills 48:14 49:11
bit 5:7
blame 38:17
blaming 38:18
bnas@morganlewis.c
om 2:1
BOCKIUS 2:1
bookmark 31:18
Boulevard 2:1
Box 1:1 28:8

boxes 9:24 25:11
28:5, 15 31:13, 14,
19 47:2
BRAD 2:1 4:23
BRADY 2:1 3:1
20:2 28:20
brady.edwards@mor
ganlewis.com 2:1
brief 8:4 41:14
briefly 43:9
briefs 35:18
bring 51:13
broad 48:24
brought 40:14
46:25
bulk 18:22 27:13
bulks 28:1
burden 34:19
burdensome 8:17
14:21 24:21 25:1

< C >
California 30:6, 9
33:7
call 31:23 33:12
49:23
camera 42:21
cancel 10:1
card 9:23
cards 9:25 10:11,
13
care 8:2
CAROLINA 1:1
2:1 3:1 21:11, 12
35:17 54:1
case 5:2, 17 7:15
12:24 18:11, 13
20:11, 14, 23 21:3,
6, 11, 17, 23, 25
22:11 32:20 33:22
36:21 44:24 46:25
cases 26:13 28:3
Casualty 20:1 38:1
categorized 51:22
cause 54:1
caused 13:25
CENTER 1:1
cert 13:5
certainly 25:23
26:12 35:3, 7 36:7,

9 39:8, 10 40:2
42:14 48:22
CERTIFICATE
54:1
certify 54:1
CGL 22:6, 11 25:6
26:23
challenge 43:19
changed 47:9
chose 10:24
CIRCUIT 1:1
circumstances 14:8,
15
CIVIL 1:1
clarification 53:5
clarify 20:20 44:2
clear 12:10 51:19
52:2, 7
client 27:20 39:3
40:25
client's 36:25 37:1
clinically 17:1, 2
closer 41:3
coast 28:16
colleagues 4:15
collect 45:12
collection 9:19
Columbia 1:1 2:1
come 4:6 9:12
10:21 46:23
comes 17:9
command 20:15
comment 5:13
commercial 8:13,
14 9:23, 25 10:7,
10, 11, 15 11:4
25:6, 8 30:20 31:1
32:4, 6 33:5 37:7,
11, 14, 16 38:2
46:16
Commission 54:1
COMMON 1:1
companies 6:12
18:8 40:15
Company 20:1
26:15, 17 40:12
compare 52:15
Compel 5:12 6:20,
23 13:19, 23 39:6

43:11, 13 47:24
48:2
complete 21:17
25:2 29:13 33:4
54:1
completed 29:17
completes 53:8
completing 31:5
completion 49:17
complied 18:10
39:13 41:22 43:20,
21 47:25
comply 13:24 15:7
41:21, 23 42:4
45:24 46:10
complying 26:18
39:5 42:3 43:18
computation 19:6
computer 32:21
concepts 16:20
concern 32:11
concerned 32:24
conclude 53:11
concurrently 12:23
conduct 13:18, 25
15:10, 12
conference 31:23
33:12
confused 44:22
connection 9:10
21:5
consider 9:21
consulted 29:19
contained 32:23
context 20:22
continue 39:9
Continued 3:1
10:19 25:24 40:5
44:20
continuing 46:9
contractors 9:9
contrary 37:6
controversy 48:23
conversion 35:25
convert 35:24
converting 36:16
cooperate 40:17, 19
cooperated 39:20
cooperation 47:20

48:2
copies 48:20
corporate 46:22
Corporation 1:1
4:11, 13 18:6
correct 22:20, 21
23:7, 17 30:25 44:8
COSTS 1:1 4:10
5:1 19:15, 17, 19
counsel 9:16 29:7,
8, 19, 20 33:25
46:9 48:15 54:1
COUNTY 1:1 54:1
couple 5:18 8:19
20:17, 19 23:8
course 42:2
COURT 1:1 4:6,
19, 21 5:8 6:5, 9
7:21, 22, 23 8:1
9:5, 19, 21 10:3, 12,
19 11:8, 10, 17, 23
12:8, 10, 16, 17, 18,
22, 23 13:1, 5, 16,
18 14:6, 20, 24
15:2, 4, 8 16:5, 13,
23 17:21, 22 18:7,
17, 20, 23 19:9, 12,
16, 22, 23, 25 20:5,
7, 9 21:3, 8, 12, 16
22:10, 20 23:7, 10,
17 24:4, 9, 10, 13
25:18, 24 26:15, 19
27:8, 18 28:11, 18
30:7, 10, 14, 22, 25
32:2, 16 33:8, 19
34:21 35:4, 12, 17
36:7, 11, 21, 24
37:4, 21, 23 39:1, 2,
14, 15, 18, 24 40:3,
14 41:7, 10 42:16,
21 43:1, 2, 6, 8, 12,
22 44:6, 8 45:16,
19, 21 46:1, 4, 7
50:22 51:1, 3, 9, 17
52:1, 10, 19 53:2, 4,
8
court-appointed
4:12
Courtroom 1:1

5:10
courts 7:18, 19, 20
Court's 7:6 36:22
38:23 39:7 41:15,
19, 21, 22
cover 52:21
coverage 22:24
48:4, 25 52:23
covered 46:17
49:11 50:14, 15
covering 48:15
Covil 1:1 4:8, 11,
13, 23 6:11, 22 7:5
8:9, 20 11:11
13:12 16:22 17:2
18:6, 9 20:25
21:10, 20 22:1, 8,
10, 14 25:16, 21
32:11 33:1 38:8
40:13, 17 46:17
49:23 50:6, 14
52:12, 19 53:9
Covil's 4:9 9:15
21:2, 7
create 29:5 32:20
credit 5:23
cross 45:22
crossed 49:24
cull 11:18 15:19
38:6
current 48:23
currently 34:4
cursorily 42:9
custodian 15:15

< D >
damaged 31:13, 14,
19
database 10:25
32:21 52:13
DATE 1:1 33:1
35:5, 6 51:13, 15
54:1
dates 10:1
day 15:23 18:19
31:6 54:1
days 26:12 27:6
45:18
DC 2:1
deal 42:24

dealing 42:24
43:10
December 6:25
20:15
decide 40:23
decided 11:15
15:13
declaratory 19:16,
18
defend 7:16
Defendant 1:1 2:1
defending 18:11, 13
defense 9:16 17:25
21:10 46:9
defining 49:23
defunct 18:6
delay 44:4, 5
delayed 40:4
delays 13:2, 3
deliberate 15:11
deliberately 26:2
DEMOS 2:1
denied 12:25 13:4,
6
depositions 6:17
derelict 17:19, 23
description 35:12
42:12 49:6
designed 17:2
despised 45:19
despite 7:12 10:3
11:4 13:25
detail 49:6
detailed 38:8
determine 15:12
24:6 31:13
determined 44:6
deterred 12:1
different 28:9
digitization 32:13
digitize 7:11 10:13
41:25 49:20 50:2
digitized 10:25
16:11 27:8 29:6
digitizes 47:4
digitizing 27:24
39:8 49:21 51:20
diligently 15:3
direct 49:2

directed 9:8
disastrous 21:10
disclose 26:3 52:11
discovered 10:6
discoveries 6:16
discovery 5:20
8:25 11:22 12:6,
13, 19 17:4, 6, 19,
23 21:23 26:11
41:24 42:25 48:3
51:21
discretion 14:23
discussion 34:10
dismissed 7:19, 24
42:2
disposed 7:18
dispute 5:20 47:7
disputes 19:2, 4, 5
District 21:12
documents 15:20
16:7, 10 26:11
33:1 39:8, 16, 22
doing 5:24 16:5
26:18, 20, 22 34:17
35:22 45:18
doorstep 16:23
doubt 13:22, 23
doubts 30:15
dragged 7:16
dragging 40:5
DUBOSE 2:1
duly 1:1

< E >
earlier 45:3
early 5:9 44:16
easiest 36:1
EDWARDS 2:1
eighties 20:24
either 42:10 45:11
52:23
eliminate 15:20
37:21
Ellis 9:1, 16, 18
10:6, 9 11:1, 6
15:22 23:12, 25
28:16 29:7, 18, 24
30:12 31:16, 22
32:9, 24 33:2
34:14, 16, 18 38:15

39:18, 20 46:25
47:17 49:12 52:5
embarked 14:18
15:5
empowered 48:1
encompass 32:5
ENDED 1:1
endorsement 8:21
Enforce 7:6
enforced 21:14
engine 51:23
entitled 19:13
25:21
especially 29:24
ESQUIRE 2:1 3:1
establish 38:10
estimate 33:14
35:9 47:13
eve 44:19
events 54:1
ever-moving 17:13
EveryWord 1:1
exact 29:14 50:18
Exactly 24:4 27:22
30:16 35:1, 13
36:15 49:4, 6, 7, 8,
14, 18 52:1, 17 53:2
examine 23:23
45:22 48:19
examined 46:22
examining 48:6
exclusion 48:7
excuse 50:16
exercised 7:13
exhausted 15:7
exhaustive 11:13
exhibit 23:14
expect 34:7
expense 14:9
expenses 13:20
expires 54:1
explain 5:16 25:18
38:24
explained 37:23
explaining 39:15
explanations 40:25

< F >
face 22:22

facia 14:11
facilities 9:10
facility 47:3
fact 15:14, 21 23:19
factors 14:24 42:9,
15 43:5 45:17, 25
48:16
failed 17:4 26:2
41:20
failure 11:21 21:17
40:19 42:4
fall 39:17
familiar 5:3 36:15
family 45:19, 21
far 6:14 14:12
35:7, 9, 10 36:19
39:5
favor 23:19
February 6:25 8:6
13:10 54:1
FedEx 31:11
fee 18:20
feeling 40:11
FEES 1:1 4:10
5:1 13:17 14:23
17:16 18:25 19:2,
8, 13 40:24 42:6,
18, 24 43:4, 15
48:2, 8, 11
FIFTH 1:1
figure 45:23 50:17
51:5
figures 50:18
file 12:2 13:1, 25
filed 7:7, 14
files 50:6
final 51:15
finally 5:21 7:17
8:2 24:17 40:7
43:17 46:23 47:6
Finch 21:3, 5, 17
find 10:6 13:11, 12
15:25 19:12 24:20
26:23 27:5, 9, 17
34:25 38:8 40:17
46:11
finds 14:6
fine 28:11 46:2
fire 8:14

firm 19:3, 5 38:18
47:11 50:23
first 6:3, 8 8:7
15:17 20:21 34:15
35:13 45:1, 13
46:19 49:5
five 46:14
focus 30:12 32:13,
15 33:3
focusing 9:19
follow 10:20
followed 12:4
foot 40:5
foot-dragging 5:14
11:24 19:10 33:22
foregoing 54:1
foremost 6:3
forget 29:14
form 50:9
forth 49:9
forward 26:12
47:11
found 8:12, 13, 15
11:11 17:22 23:12
24:17 51:21
foundation 40:22
four 5:21 6:15
24:25 29:12 40:20
Friday 31:6, 7, 17
friend 20:19
front 25:10
fruits 17:18
frustrating 23:18
further 14:5 17:10
46:5 53:4, 5 54:1

< G >
general 8:13, 14
10:7, 15 11:3 25:7
46:16
getting 28:1 47:11,
12, 14, 18 50:13
give 10:19 19:18
48:20
given 24:11 41:1
giving 26:21 49:24
Glasscock 14:24
42:9, 15 43:5
45:17, 25 48:16

go 7:10 12:2 13:1
16:15 19:9 24:22,
23 28:12 33:17
37:18
go-around 9:13
going 5:20 11:25
14:19 15:25 27:23
28:12 33:9, 11, 13
34:2, 6, 13, 21, 23,
24 35:1, 5, 14
36:11 37:5 44:6
47:15 50:10
GOLDBERG 3:1
Good 31:6, 7, 17
34:11 46:7 51:17
53:8
granted 43:14
granting 47:23
great 43:19 51:1
Green 3:1
Greensboro 3:1
ground 31:10, 11
39:25
group 50:7
guess 28:23 31:6,
17 39:17
gyrations 24:15

< H >
hand 27:23 54:1
hands 34:8
happening 27:22
happy 34:18, 20
39:8
hard 36:21
hate 34:19
head 33:21
hear 39:24
heard 4:19 18:18
41:1
hearing 4:24 5:6
7:9 10:12 15:18
17:21 20:10 44:7,
20
hearings 6:1 7:3
23:11, 21 38:15
43:16, 24
held 10:12 23:22
hereunto 54:1

hide-the-ball 44:12
historical 8:23
history 5:2 20:15,
16 21:15 36:20
46:7, 8, 10
HOLLER 2:1
Honor 4:20 8:20
19:21, 24 20:4, 6, 8,
18 21:6 22:16
23:2 25:17, 22
26:14, 17, 25 28:7,
14, 19, 22 30:24
34:9, 10 36:19
37:15 38:23 41:5,
9, 13 42:8, 20 43:7
44:1 50:20 53:7
hope 14:20 27:22,
24 33:11
Houston 2:1
huge 27:13 28:4
hundred 26:7
33:17
hundreds 26:5
29:14 37:19, 20

< I >

identifications 42:13
identified 8:20
28:6, 17, 24
identify 37:7
identifying 25:4
identity 36:5
ignoring 5:23
III 2:1 20:1
image 9:24 10:10,
11
imagine 15:25
immediately 17:4
27:9
imminent 40:4
impacted 31:15, 20
important 8:11
23:9
inception 5:17
18:12
inching 41:3
inclined 42:23
included 9:22
including 21:24

incorporate 36:9
incur 19:8
incurred 13:20
indemnity 18:13
indicate 52:23
indicated 41:16
42:19
Inevitable 13:3
information 5:5
21:18 22:1 49:13
informed 11:17
initial 33:14
initially 41:23
inland 25:14 37:25
insulator 40:15
insurance 6:7, 12
15:3 16:4 17:12
18:8 21:19, 20, 22
22:2 39:21 45:7
insured 6:22 7:5
8:9, 10, 21 22:23
51:24 52:3, 8, 24
insureds 8:18
intentionally 36:23
interested 16:20
54:1
interim 34:12, 15,
22, 24 36:10, 12
41:6
interlocutory 7:25
12:7, 9, 12
interpretation 43:20
interrupt 37:15
intervention 11:23
intransigence 40:24
investment 17:18
invite 31:23
invited 42:21
involved 10:9
20:14 34:15 39:19
Iron 24:16 32:23,
25 46:20 47:2
irrelevant 15:20
22:3 23:11 25:14
issue 5:11 6:20
7:4 21:1 30:24
51:21
issued 13:22 20:24
45:2, 4

issues 12:20 43:15
48:24
item 42:7
its 1:1 9:8, 14
12:24 15:19 21:20
22:1, 23 29:11
30:5, 20, 23 32:20
35:17, 18 39:3, 21
40:19 42:2 52:14

< J >

January 7:8 28:24
48:11
Jennifer 1:1 54:1
John 19:4 50:24
JON 2:1 4:23
jon@smithrobinsonl
aw.com 2:1
journey 15:5
JR 2:1 50:24
Judge 4:25 5:9, 15
8:3, 24 10:17 12:3
13:14, 22 14:11, 22
15:9 16:2, 8, 15
17:10, 20 18:19
19:6, 11 39:4 43:9
44:25 45:18, 24
51:18
judges 45:21
judgment 19:16, 18
22:23 45:12
JUDICIAL 1:1
July 9:8
June 34:5
jurisdiction 7:23
12:25
jury 44:7
justified 14:8, 14
justify 42:5

< K >

keep 14:18, 19
kept 11:19
kind 22:3 31:18
47:13 49:14, 19
kinds 24:15
KIRBY 2:1 19:25
28:21 39:9
kirby.shealy@arlaw.
com 2:1

know 5:18 6:4, 10
7:17 10:23 11:16
12:5, 15 13:12, 14
14:5, 25 15:2, 9
16:8 18:2 19:6
20:9 22:17 23:4
26:1, 16 27:2
30:23 33:19 34:6
35:9 36:3, 4, 5, 14
41:17 44:11 45:8,
20 46:19 52:22, 23
known 20:23 22:7,
19 47:8
knows 15:24 27:10
30:24

< L >

law 12:4 19:3, 4
47:11 50:23, 24
lawyer 26:12
lawyers 27:19
leading 39:6
learned 8:25 15:19
length 28:4 35:23
LEWIS 2:1 18:21
19:1 50:17, 21
Lexington 54:1
liability 10:15, 16
25:7 46:17
life 20:10
limited 11:6
line 9:23, 25 10:10,
11 30:20
lines 25:8 30:23
31:1 32:4, 6 33:6
37:8, 11, 12, 14, 16,
17, 22
list 9:9
litigation 6:11
14:17 52:20
little 5:6 36:13
44:22 50:6
LLC 2:1
LLP 2:1
locate 8:23
located 11:1 15:24
LOCATION 1:1
54:1
long 14:20 16:12
33:8 35:10, 15

36:20 39:12 40:9
46:21, 23
longer 36:14
look 8:12, 18 11:15
13:14, 15, 17 16:14
23:13 25:4, 5, 6
26:4 38:4, 8, 11
42:21
looked 8:16 17:20
44:9 45:1, 2 48:9
looking 22:22, 24
50:10
Lord 15:24
lot 5:4 24:18
35:19 37:22 38:6
47:1, 4
Louisiana 2:1
lump 30:4
lumped 38:1

< M >
ma'am 4:18 11:9
16:25 46:6 51:8,
16 52:17
maddening 33:20
Main 1:1 2:1
maintain 36:22
major 40:15
making 49:22
manageable 26:7
managed 4:11
manually 9:5
15:13, 15 37:19
manufacture 17:3
marine 8:14 25:14
37:25
marshal 6:5, 7
16:3 25:16 40:13
material 26:10
28:2 35:19 48:18
49:10 50:13
materials 49:9, 15
matter 4:8, 14
13:9 27:6 46:8, 10
53:9
matters 36:2 42:25
mean 8:13 15:11
17:20 33:14 34:2
37:14 41:14

meaningful 15:21
means 47:11 52:12
mechanism 24:12
memorandum 16:18
mention 43:10
mentioned 11:16
12:3 15:23 20:19
mentions 52:19
microfiche 9:20, 23,
25 10:13 24:23
28:15, 25 29:10, 14
30:2, 5, 11, 17, 20
31:9, 14, 19, 25
32:3, 4, 7, 12, 15, 17,
19 33:4, 6, 18
35:20, 25 36:16
37:10 47:8 49:8,
20 50:7, 11 52:4
microfiched 31:3
microfiches 24:18
middle 41:12
migrated 35:20
milestone 29:1, 3,
11, 12, 16 33:18
million 21:13 22:23
mind 47:22
misrepresent 23:3
38:25
misrepresentation
25:3 27:2
misrepresented
24:9 36:23
mode 44:5
moment 34:11
months 9:17 27:11
33:13, 15 35:10, 11
MORGAN 2:1
18:21 19:1 50:16,
20
morning 16:19
31:24
MOTION 1:1 4:10,
17 5:1, 12 7:6
10:18 13:2, 19, 23
14:7, 13 20:13
23:15 47:23
motions 5:22 6:19,
23 17:19 39:6
43:11, 13 47:24

54:1
motion-type 35:19
Mountain 24:16
32:23, 25 46:21
47:2
Movant 13:20
move 47:19
moved 41:18 43:12
47:10
moving 14:2 17:5
21:21 41:16, 17
multiple 23:10
43:23
multitude 43:15
MURRELL 2:1
4:14, 22
murrell@smithrobin
sonlaw.com 2:1
Mutual 20:1

< N >
named 6:22 7:5
8:20 51:23 52:2, 8
narrative 17:3
narrow 25:13 37:9
narrowed 26:5
narrowing 27:4, 12
National 1:1 4:9
5:24 6:13 8:7
9:14 11:17, 25
15:5 17:3 18:24
20:1, 21, 24 22:4
23:5, 21 25:9, 19
28:20 29:1, 9, 13,
21 30:1, 5, 19
32:19 38:18 39:7,
13, 20 40:6, 18
42:3 45:5 46:16
47:3, 21 48:18, 21
49:3, 11 51:22
National's 32:14
necessitated 13:19
need 5:4 15:1
34:24 49:12, 13
53:5
needed 28:25 31:13
needs 42:17 43:3
50:8, 14 51:12
neither 54:1
NES 2:1 4:23

never 10:8 11:17
26:22 27:11 38:25
43:23
newly-discovery
11:2
nextdoor 5:11
night 16:19, 24
non-issue 43:25
non-jury 44:7, 18
nonsense 34:1
North 2:1 3:1
21:10, 12
Notary 54:1
note 8:11
noted 11:1, 21
notion 46:24
November 7:1 8:5
18:4 45:3
number 6:12 9:21
23:24 24:21 26:7
27:18 29:15 35:11
37:3, 8, 17 38:3
45:6
numbers 6:1 8:24
23:16 24:1, 2, 11
25:10
NW 2:1

< O >
oath 27:19
obtain 6:19
obviously 4:25
12:6 14:22 18:21
19:15 44:17
occur 51:12
occurred 5:16
October 6:24
Office 50:25
official 54:1
Oh 36:7
once 29:23
one-day 11:8, 10,
13 23:12
ones 17:13 28:6
open 9:14
opened 39:21
operation 5:14
11:24 33:22
operations 19:11