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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 42**

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Certificate of Counsel	20987

TO

Johnny Bullard

FROM

242-4071

SAM J. CRAIN & CO., INC.

All Forms of Insurance

225 W. Stone Ave.

GREENVILLE, S.C. 29609

Page P.C.F.Z

SUBJECT:

Coril Corp - Cont.

DATE: 6-17-84

FOLD ↑

and other real property they own, no work done thru this Co.

Item #3 Drivers

#1: Carnell W. Steele is no longer with Co dismissed over a year ago.

#2: Johnny Presley Fowler, Mr Russell Johnson ^{Pres.} is looking into this case personally and most likely will be dismissed, as he agreed he did not want him driving any vehicle

#3 James P. Coril is a V.P. with Co. he had a P.D. claim only 2-17-83. NO other violations his, S.C. Driver # 4566886 D.O.B. 12-14-52

~~Auto~~ ^{SIGNED} we have his personal Auto Coverages with State Auto Ins Co. this is what is on his policy, I'll get Kim Whitlock Current Name & title, and D.O.B. and send to you. Should you have any add'l questions please let me know.

John
6/17/84

Forward

Best Regards
Sam J. Crain Sr.

DATE:

SIGNED

JOHN & FAYE WILCOX GROUP INC



22602
[Zip]

SUMMARY AND REMARKS

No. of Engrs	87	S.C.
	20	N.C.
	27	FLA.
	110	GA.

Signature of Insured or Authorized Representative

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

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

Plaintiffs,

v.

United States Fidelity & Guaranty
Company,

Defendant.

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS AND FINDINGS

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

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

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

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

RELIEF ORDERED

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

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

IT IS SO ORDERED.

Judge's Electronic Signature Page Follows



Richland Common Pleas

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

So Ordered

Jean H. Toal

Covil Trial Exhibit 63

Duplicative of 2021.11.05 Order

See R. pp. 1-4

Covil Trial Exhibit 64

Duplicative of Penn National Trial Exhibit 48

See R. pp. 12467-12473



December 28, 2021

VIA E-MAIL – (brad.nes@morganlewis.com)

W. Brad Nes

Morgan Lewis

brad.nes@morganlewis.com

RE: *Covil Corporation v. Pennsylvania National Mut. Cas. Ins. Co.*
Case No. 2020-CP-40-02098

Dear Brad:

This is in response to your letter of December 23, 2021. While we disagree with your position that there should be any concern with respect to Penn National's discovery responses in this matter, Penn National has taken an opportunity to consider your letter, including further consideration of the privileged nature of the requested litigation hold notice.

With respect to the request for Penn National's litigation hold notice, please find the attached notice. Given the holiday schedule, Penn National will formally supplement its responses to Covil's recent Second Set of Requests for Production in the next few days. However, Penn National preserves and reasserts the objections asserted in Penn National's responses to Covil's Second Set of Requests for Production.

As to Penn National's document retention policy, please see attached correspondence to Marghretta Shisko of Harrison | White PC in June 2021 discussing the fact Penn National was willing to produce certain confidential and proprietary information/documents, including Penn National's document retention policy, pursuant to a Confidentiality Agreement and Protective Order, which was provided to counsel on June 11, 2021 and is attached with this letter. There was no response from Covil's counsel with respect to the proposed Confidentiality Agreement and Protective Order. However, we are certainly willing to revisit this so that such policy can be produced. Also, Penn National refers counsel to the most recent Affidavit of Brent Reifsnyder, which provides further explanation as to Penn National's document retention procedures with respect to archived paper policy related documents.

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

PLAINTIFF'S
EXHIBIT

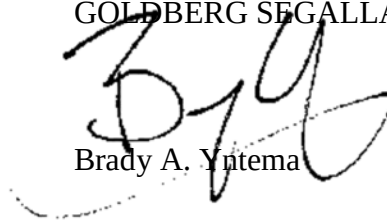
65

Page 2

We are certainly willing to discuss this matter further.

Sincerely,

GOLDBERG SEGALLA LLP

A handwritten signature in black ink, appearing to read "BYA", is written over the printed name "Brady A. Yntema". The signature is stylized with a large, sweeping "Y" and a trailing flourish.

Brady A. Yntema

Enclosures

From: Maier, Scott

Sent: Friday, December 17, 2021 1:08 PM

To: Reifsnyder, Brent <breifsnyder@pnat.com>

Subject: Litigation Hold Notice- Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas v. Pennsylvania National Mutual Casualty Insurance Company, et al., Civil Action No. 2020-CP-40-02098

Attorney Client Privileged Communication

Brent,

As you know, Penn National Insurance is involved in the above mentioned asbestos claims litigation made under two policies, 515 50 28 53 7 (03/31/1986 – 3/31/1987) and 515 50 28 53 8 (03/31/1987 – 3/31/1988) issued to Covil Corporation.

In another case, to which Penn National Insurance was not a party, Covil requested policies and policy related documents from Penn National Insurance that Covil believes may provide coverage for Covil with respect to underlying asbestos cases beyond the above-listed policies.

These documents may consist of policies and policy related documents that were generated prior to 1992, which may have been stored in paper form or on microfiche. The court in the litigation involving Penn National Insurance ordered Penn National Insurance to open its "repository of insurance policies and to facilitate a review supervised and performed by Covil's insurer-appointed defense counsel, Ellis & Winters, LLP".

As such, Penn National Insurance must now take immediate steps to preserve, and not purge, any and all paper policy or policy related documents and microfiche stored by Penn National Insurance, and computer data that may relate to any such documents or microfiche that may be in your possession, custody, or area of control, or that may be maintained under your direction and supervision, including any and all documents currently stored by Iron Mountain.

You are receiving this notice because you have been identified as a person who may have such documents in your possession, custody, or control. You must preserve, and not delete or alter, these documents or related electronic data until you receive written notice to the contrary. With respect to related electronic data, this broad definition includes, but is not limited to, word processing documents, spreadsheets, PDFs, and database entries. Such data must also be preserved if they are on any external media (including floppy disks, CDs, DVDs, "thumb drives"/"memory sticks," and/or external hard drives), or in any storage media.

Please also keep in mind that any documents that do not fall into the categories listed above may still need to be retained and/or preserved pursuant to Penn National Insurance's Record Retention Policy, as well as other preservation notices you may have received.

If you are not sure whether particular documents should be retained, please err on the side of caution and preserve them.

The Company is being represented in this matter by David L. Brown, Brady A. Yntema, and David G. Harris II of Goldberg Segalla, LLP.

Finally, in addition to taking the above preservation steps, please also:

1. Please let me know if you believe that any other Company employees may have any documents, policies or policy related documents that may provide coverage for Covil with respect to underlying asbestos cases.
2. Refrain from discussing this Litigation Hold Notice or underlying matter with anyone other than counsel, and direct any inquiries you receive to me.

PLEASE BE ADVISED THAT YOU DO NOT NEED TO PRODUCE ANY DOCUMENTS AT THIS TIME.

This Litigation Hold Notice is simply requesting that you preserve and not to purge records that could possibly be relevant this dispute.

Thank you in advance for your assistance in helping Penn National Insurance comply with this obligation. If you have any questions, you may contact me to discuss.

Scott E. Maier, CPCU, ARe
Senior Corporate Counsel
Direct Dial (717) 255-6805
smaier@pnat.com

Penn National Insurance
www.pennnationalinsurance.com

PERSONAL & CONFIDENTIAL. THE E-MAIL MESSAGE (INCLUDING ANY ATTACHMENTS) FROM THIS SENDER IS FOR THE SOLE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN CONFIDENTIAL AND PRIVILEGED INFORMATION. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, UNAUTHORIZED REVIEW, USE OR DISCLOSURE OF THIS E-MAIL IS PROHIBITED.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US, BY CONTACTING POSTMASTER@PNAT.COM, RETURNING THE ORIGINAL MESSAGE TO THE SENDER AND DELETING ANY COPIES FROM YOUR SYSTEM. THANK YOU.

Scanned by the Clearswift SECURE Email Gateway.



Brady A. Yntema | Partner
Direct 336.419.4904 | byntema@goldbergsegalla.com

June 3, 2021

VIA E-MAIL ONLY – mshisko@spartanlaw.com

Marghretta H. Shisko
Harrison | White PC
178 West Main Street
Spartanburg, South Carolina 29306

RE: *Covil Corp. v. Penn National Mut. Cas. Ins. Co.*,
Case No.: 2020-CP-40-02098

Dear Marghretta:

This is in response to your May 28, 2021 letter regarding Penn National's responses to the Receiver's First Set of Interrogatories and Requests for Production, which were served on May 10, 2021. We have had a chance to review your lengthy letter setting forth several of Penn National's objections and responses that you take issue with on behalf of the Receiver.

As requested in your letter, Penn National is revisiting its discovery responses to address the issues raised in your letter, and we appreciate the opportunity to supplement Penn National's responses to address many of your concerns. At this point, such supplementation will include further detail of Penn National's continued search for Covil policy documents (including additional insured coverage). We will further provide you with a proposed protective order with respect to certain confidential and proprietary information/documents that can be produced forthwith, including Penn National's document retention policy and policy information and documents relating to non-Covil insureds that were identified during Penn National's search of the "Contractors" and "Facilities" listed in the Receiver's document requests.

Your letter further requests a privilege log. To be clear, Penn National's objections based on the attorney-client privilege and work product doctrine were as to communications and documents generated between Penn National and its counsel with respect to matters relating to the information/documents requested by the Receiver's interrogatories and documents requests. Please advise if it the Receiver is indeed requesting such protected and privileged documents and would like a privilege log of such communications and documents?

Your letter sets a deadline of June 4, 2021, for Penn National's supplemental responses. However, your letter was received the Friday before the Memorial Day weekend. This only provides Penn National with less than four business days to respond. Based on this abbreviated period of time, we would request an extension of this unilateral deadline to June 11, 2021, for

Please send mail to our scanning center at: PO Box 17220, Los Angeles CA 90017

June 3, 2021

Page 2

Penn National to address your concerns. We certainly welcome further discussion with respect to this matter, and please confirm your agreement to allow Penn National until June 11, 2021, to supplement its responses.

Sincerely,

GOLDBERG SEGALLA LLP

/s/ Brady A. Yntema

/s/ David G. Harris

cc: G. Murrell Smith (murrell@smithrobinson.com)
Jonathan M. Robinson (jon@smithrobinson.com)
Shanon Peake (shanon@smithrobinson.com)
Jescelyn T. Spitz (jspitz@rplegal.com)



Dale R. Smith | Paralegal
Direct 336.419.4930 | dsmith@goldbergsegalla.com

June 11, 2021

Via Email

Marghretta H. Shisko
HARRISON WHITE, P.C.
178 W. Main Street
Spartanburg, SC 29306
mshisko@spartanlaw.com

Re: ***Covil Corporation, by and through its duly appointed Receiver Peter Protopapas v. Pennsylvania National Mutual Casualty Insurance Company; Sam P. Crain & Co., Inc.; and South Carolina Property and Casualty Insurance Guaranty Association – Richland County – 2020-CP-40-02098***

Dear Ms. Shisko:

I am enclosing the following documents in the above-referenced matter:

1. Penn National's Supplemental Answers to the Receiver of Covil Corporation's First Set of Interrogatories;
2. Penn National's Supplemental Responses to the Receiver of Covil Corporation's Request for Production;
3. Affidavit of Boyd Wright; and
4. Proposed Confidentiality Agreement and Protective Order.

The documents responsive have been Bates stamped PNI-0001 – PNI-0596 and can be accessed at the following electronic link:

<https://goldbergsegalla.sharefile.com/d-s932ae9cf87f74fa191c100bdf8b47d97>

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

With kindest regards, I am

Sincerely,

GOLDBERG SEGALLA LLP

Dale R. Smith

Dale R. Smith, NCCP
Paralegal to David G. Harris II

/drs

Enclosures (*via Email*)

cc: Erik T. Norton, Esq. (*w/encls via E-mail*)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

v.

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

Defendants.

**CONFIDENTIALITY AGREEMENT
AND PROTECTIVE ORDER**

Plaintiff Covil Corporation, by and through its duly appointed receiver Peter D. Protopapas ("Receiver of Covil"), and Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National") (collectively, the "Parties;" singly, a "Party") hereby stipulate and agree that this Confidentiality Agreement and Protective Order ("Order") is being entered in the above-captioned matter pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure.

1. Scope of Order: This Order governs the handling and disclosure of all materials produced, given, exchanged, or filed hereby by any Party and non-party in this matter designated as "Confidential Information."

2. Purpose of Order: The Order is being entered, by consent of the Parties, for the purpose of facilitating the exchange and handling of documents and information deemed by any Party or non-party to be confidential, proprietary, or sensitive material.

3. Agreement on Use of "Confidential Information": All "Confidential Information", as defined and designated in accordance with this Order, shall be used solely in furtherance of the prosecution or defense of this action and shall not be used or disclosed by any person for any other purpose. The fact that any "Confidential Information" is disclosed or produced in discovery or trial herein shall not be construed as a waiver in any other context or proceeding before any court, agency, or tribunal as evidence of whether such document or the contents thereof is or is not confidential or proprietary.

4. Definitions:

- A. "Document": the term "document" means all writings, drawings, graphs, charts, recordings, computer disks and tapes, audiotapes, videotapes, and any other documents as defined in Rule 34 of the South Carolina Rules of Civil Procedure.
- B. "Material": the term "material" means any document, any answer to any interrogatory or other discovery request in this action, any portion of any deposition testimony (including deposition exhibits) in this action, and any other information produced, given, or filed in this action.
- C. "Confidential Information": the term "Confidential Information" means:
 - i. Documents and Materials obtained by the Parties to this action by virtue of their status as a party to this action, including but not limited to information gathered during the discovery phase of this action, that have been designated confidential pursuant to this Order. A Party or non-party may designate as "Confidential Information" any Documents or Materials that it reasonably and in good faith

believes to contain non-public proprietary or confidential commercial, business, financial, or personal information, including, but not limited to, claim-file materials, or any testimony or discovery responses containing information exchanged within the attorney-client privilege or the work product protection;

- ii. Exclusion: "Confidential Information" shall not include:
 - (a) Any information that is properly in the public domain at the time of disclosure or thereafter comes into the public domain (other than by breach of this Order or any other confidentiality agreement or obligation), including but not limited to public filings in the underlying actions;
 - (b) Any information which is disclosed to any party in good faith by a third party not affiliated with or employed by any party who has the legal right to make such disclosure; and
 - (c) Any information for which any party by written agreement authorizes its unrestricted use. If any portion of the information provided by any party falls within any one of the above exclusions (a) through (d), the remainder shall continue to be "Confidential Information" subject to the restrictions of this Order.

5. Party Designation of "Confidential Information": Any Party producing or providing Documents or Material in response to discovery or any other formal or informal request for information or documents, may mark or designate as "Confidential Information" all or any part thereof. Further, any Party may mark or designate as "Confidential Information" all or any part thereof of Documents or Material produced by any witness. The production or disclosure pursuant

to the terms of this Order of "Confidential Information" by a person shall not waive or prejudice the right of that person to object to the production or admissibility of Documents or Material in this or any other action. Any Party who produced "Confidential Information" as defined in this Order or who designates material as "Confidential Information" as set forth in Paragraph 7 shall be referred to as the "Designating Party." Any Party who seeks to disclose to another party any material deemed to be "Confidential Information" pursuant to this Order shall be referred to as the "Disclosing Party."

6. Non-Party Designation of "Confidential Information": Any non-party to this Order producing information (whether by document, by testimony, by interrogatory answer, or otherwise) in the course of discovery herein may, by executing a copy of this Order, thereby agree to be bound by, and thereby become entitled to designate such information as "Confidential Information" pursuant to the terms and conditions of this Order.

7. How to Designate "Confidential Information": Designation of material as "Confidential Information" shall be made as follows:

- A. In the case of Documents or Material furnished by the "Designating Party," by writing, typing, or stamping "Confidential Information" on the face of the document.
- B. In the case of Documents or Material furnished by another Party to this action or a non-party, a Party may give notice in writing to counsel of record for all Parties within fourteen days of receipt of the information and designate specific Documents or Material as "Confidential Information," in which event all counsel shall appropriately mark their copies of the Documents and Material.

- C. In the case of Documents or Material furnished by a witness, a Party or a non-party may give notice in writing to the court reporter and counsel of record for all Parties within fourteen days of receipt of the information and designate specific documents as "Confidential Information," in which event all counsel shall appropriately mark their copies of the Documents and Material.
- D. In the case of questions at a deposition containing information believed to contain "Confidential Information," either by (1) designating the question asked or the testimony given, at the time asked and/or given, as "Confidential Information," in which event the "Designating Party" should instruct the court reporter to bind the designated material in a separate volume marked with the appropriate designation (if the confidential portion of a transcript cannot be conveniently segregated, then the entire transcript or pleading shall be deemed confidential), or (2) by giving notice in writing to the court reporter and counsel of record for all Parties within thirty (30) days after receipt of the transcript of the portions containing "Confidential Information," in which event all counsel shall appropriately mark their copies of the transcript.

8. Scope of Permitted Disclosure: Except upon further order of the Court, "Confidential Information" shall be disclosed only to the following persons ("Qualified Persons"):

- A. Parties to this action and the officers, directors, in-house counsel and their staff, and employees of the Parties who are directly participating in the prosecution or defense of this action (including but not limited to any mediation, arbitration, or any other settlement process and appeals) or otherwise have a need to know of the "Confidential Information" for purposes of this lawsuit, as well as reinsurers and reinsurance intermediaries for the Parties; federal, state, local governmental agencies and regulators; and copy and web hosting services utilized by Parties;
 - B. Law firms of record of the Parties to this action and such firms' attorneys and office staff;
 - C. Consulting and testifying experts or other consultants retained to assist outside counsel of record for the purpose of assisting in the preparation for trial of this action;
 - D. Witnesses at deposition or trial, to the extent necessary for preparation and prosecution of this litigation; and
 - E. Judges, court personnel and mediators who are involved in this litigation.
- Paragraph 15 describes how "Confidential Information" shall be disclosed to the Court.

9. Conditions of Disclosure to Experts or Witnesses: Prior to disclosure of "Confidential Information" to any person set forth in Paragraph 8 of this Order, the "Disclosing Party" shall inform such person that "Confidential Information" shall be used for the purposes of the furtherance of the prosecution or defense of this action only.

When requested by any Party to this action, and for good cause shown, the "Disclosing Party" shall disclose the identity of all persons to whom "Confidential Information" has been disclosed.

10. Execution of "Statement of Confidentiality": Each person (other than those "Qualified Persons" identified in subparagraphs 8A, 8B, and 8E, as well as persons employed or retained solely in clerical, stenographic or other ministerial functions) to whom any disclosure or exhibition of any "Confidential Information" is made shall be provided with a copy of this Order and shall execute a copy of the attached "Statement of Confidentiality" binding them to the terms of this Order. Each such executed "Statement of Confidentiality" shall be maintained by the counsel who has obtained it.

11. Exclusion for Author: Nothing in this Order shall prohibit the disclosure of a Document that has been designated "Confidential Information" to the author of such Document or any person(s) who received such Document in its normal usage external to this action.

12. Reservation of Rights to Object and Challenge Designation: This Order is entered without prejudice to the right of any Party to oppose production of any information on any grounds other than confidentiality, or to bring before the Court at any time the question of whether any particular information is or is not the proper subject of protection under the provisions of Rule 26(c) of the South Carolina Rules of Civil Procedure because the "Confidential Information" designation does not constitute a finding or determination that such Document or Material is confidential, proprietary, or a trade secret, and nothing in this Order constitutes such a finding or determination.

13. Procedure on Challenge: Any Party may request the "Designating Party" to cancel the "Confidential Information" designation with respect to all or part of any Document or

Material so designated and, if the Parties are unable to resolve a dispute over a designation, may move the Court for entry of an order declassifying any such Document or Material designated "Confidential Information." Unless and until such dispute is resolved by agreement or the Court, the "Confidential Information" designation shall remain in force and effect. On such motion, the "Designating Party," which is seeking to preserve the "Confidential Information" designation, shall have the burden of establishing that the Document or Material so designated is properly subject to protection under Rule 26(c).

14. Procedural Reach of Restrictions: Restrictions in this Order on the disclosure and use of "Confidential Information" shall continue during any trial or hearing of this action until completion of the action and disposition in accordance with Paragraph 16 of this Order; provided, however, that the disclosure and use of such "Confidential Information" during any such trial or during any hearing shall be subject to such protection as the Court shall determine is warranted and appropriate at the time of trial or hearing.

15. Filing "Confidential Information" with the Court:

- A. Subject to the applicable rules of evidence, Documents or Material designated as "Confidential Information" may be filed in support of a motion, or offered into evidence at trial or at any hearing or oral argument, provided that the proponent Party of the evidence containing "Confidential Information" obtains the written consent of the Designating Party prior to the filing date or use of the Documents or Materials designated as "Confidential Information."
- B. Unless the prior written consent of the Designating Party is obtained, any Document or Material filed with the Court containing or making

reference to "Confidential Information" or the contents of any "Confidential Information" shall be filed under seal.

- C. This Protective Order shall not preclude any Party from using in the course of any hearing, trial or other proceeding before the Court any "Confidential Information" or contents of any "Confidential Information" provided that the confidentiality of the "Confidential Information" is noted to the Court and that any "Confidential Information" provided to the Court contains the "Confidential Information" designation, unless the Court determines otherwise pursuant to Paragraph 13 or 14.
- D. When any "Confidential Information" is incorporated in a transcript of a hearing, or other proceeding, arrangements shall be made with the reporter(s) attending such proceeding to bind the portions of such transcript separately and label such portions as "CONFIDENTIAL – NOT FOR PUBLIC FILING."

16. Disposition of "Confidential Information": Within thirty (30) days of the completion of this action (which shall be the earlier of the date upon which judgment becomes final after all appeals have been exhausted or the date on which the action is terminated by stipulation of dismissal), all Parties shall destroy all "Confidential Information" and copies thereof obtained through discovery, and counsel for each Party shall prepare and serve on counsel for all other Parties a written certification of compliance with this provision; provided, however, that nothing in this provision or Paragraph 13 shall require the destruction of attorney work product. Furthermore, any party can permanently keep all confidential documents so long as they are maintained in accordance with the order as the insurers to the extent that retention of

such documents is required to comply with certain regulatory requirements and/or current corporate document retention policies.

17. Other Obligations: This Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any Party with respect to the "Confidential Information." If at any time Documents or Materials designated as "Confidential Information" are subpoenaed by any court, arbitral, administrative or legislative body, the person to whom the subpoena or other request is directed shall immediately give written notice thereof to the Designating Party and its counsel and shall provide such Party with an opportunity to object to the production of such documents or information. If the Designating Party does not take steps to prevent disclosure of such documents within ten (10) days of the date written notice is given, or the date set forth in the subpoena for production, whichever is sooner, the Party to whom the referenced subpoena is directed may produce such documents in response thereto.

18. Modification of Order: This Order may only be modified by written agreement of the Parties, by order of this Court upon written motion of any Party to this action for good cause shown, or by the Court upon its own motion modify this Order in the interests of justice.

19. Enforcement: Each person who received "Confidential Information" in this action submits himself or herself to the personal jurisdiction of the Court, wherever he or she shall be found, solely for the purposes of the enforcement of this Order.

SO ORDERED, this the ____ day of _____ 2021.

Judge Presiding

CONSENTED TO:

*For Plaintiff Covil Corporation, by and
through its duly appointed receiver Peter D.
Protopapas:*

*For Defendant Pennsylvania National
Mutual Casualty Insurance Company:*

John B. White, Jr.
Marghretta H. Shisko
Griffin L. Lynch
HARRISON WHITE, P.C.
178 W. Main Street
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byntema@goldbergsegalla.com

EXHIBIT A

STATEMENT OF CONFIDENTIALITY

This is to certify that I have read and am fully familiar with the provisions of the Confidentiality Agreement and Protective Order entered in the above-captioned matter.

As a condition to my review or handling of any of the documents or other materials containing "Confidential Information" produced pursuant to the Confidentiality Agreement and Protective Order or my obtaining any "Confidential Information" contained in said documents or other materials, I hereby agree that the Confidentiality Agreement and Protective Order shall be deemed to be directed to and shall include me, and I shall observe and comply with all of the provisions of the Confidentiality Agreement and Protective Order and I submit to the jurisdiction of the Court entering this Order for purposes of enforcement of the Confidentiality Agreement and Protective Order against me.

I shall disclose such "Confidential Information" and the contents thereof only as permitted by terms of the Confidentiality Agreement and Protective Order and understand and agree that it shall be used only for the preparation and prosecution of this action.

This the ____ day of _____ 2021.

Signature

Printed Name

Home Address

Occupation

Employer

Job Title

Covil Trial Exhibit 66

Duplicative of 2022.02.11 Order

See R. pp. 5-9

Covil Trial Exhibit 67

Duplicative of Penn National Trial Exhibit 49

See R. pp. 12474-12488

Covil Trial Exhibit 68

Duplicative of Penn National Trial Exhibit 51

See R. pp. 12506-12514

Covil Trial Exhibit 69

Duplicative of Penn National Trial Exhibit 47

See R. pp. 12455-12466

Covil Trial Exhibit 70

Duplicative of 2022.03.23 Notice of Filing

See R. pp. 847-853

Covil Trial Exhibit 71

Duplicative of 2022.05.05 Order

See R. pp. 10-25

Covil Trial Exhibit 72

Duplicative of Penn National Trial Exhibit 15

See R. pp. 6459-6465

Covil Trial Exhibit 73

Duplicative of Penn National Trial Exhibit 16

See R. pp. 6466-6470

Covil Trial Exhibit 74

Duplicative of Penn National Trial Exhibit 17

See R. pp. 6471-6474

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF BRENT REIFSNYDER

Brent Reifsnyder, being first duly sworn, deposes and says:

1. I am over 18 years of age, of sound mind, and under no mental disability, and
I am fully competent to make this declaration.

2. I am currently, and was at all times relevant herein, employed by
Pennsylvania National Mutual Casualty Insurance Company ("Penn National") as Director –
Administrative Services, in which capacity I am the person in charge of and responsible for
the paper and microfiche-policy related documents that are archived or otherwise stored for
Penn National.

3. As part of my responsibility for the paper and microfiche policy-related documents, I am in charge of the process of purging and ordering the eventual disposal of such documents, pursuant to Penn National's document retention policy.

4. This process involves an initial stage in which Penn National identifies certain policy-related documents by policy number that are beyond the scope of its retention timeframe.

5. After the policy-related documents have been identified by policy number, Penn National begins a process during which the documents are pulled from storage and consolidated in preparation for disposal. This process occurs over the course of the year given that Penn National cannot dedicate a staff to conduct such task on a full time basis. Also, disposal of the documents pulled from storage does not occur on an ongoing basis over the course of the year. Rather, disposal of the documents occurs at the conclusion of the year in which they were identified or, more typically, at the very beginning of the following year.

6. For example, based on this standard procedure, any insurance policy-related documents identified for possible disposal in 2021 would be collected and disposed of at the conclusion of 2021 or, more likely, early 2022.

7. I am aware of the Court's Order for Penn National to open its repository of insurance policies and to facilitate a review supervised and performed by Covil's defense counsel, Ellis & Winters, LLP.

8. With respect to the policy-related documents identified to be purged in 2021, no such documents have been disposed of in 2021. Further, Penn National has halted its standard record purge policy and practice, and it is not disposing of any policy-related documents while the Ellis & Winters, LLP review is ongoing.

9. No policy-related documents have been disposed of since at least January 2021.

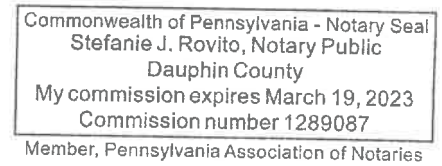
10. The information and assertions contained in this Affidavit are based and made upon my own personal knowledge.

Further, the affiant sayeth not.


Brent Reifsnyder
Director – Administrative Services
Pennsylvania National Mutual Insurance Company

Sworn to and subscribed before me,
this the 22nd day of December, 2021.

22, December, 2021. Stefanie J. Rovito
Notary Public



My commission expires: March 19, 2023



Deposition of:
Boyd Wright - Penn National 30(b)(6)

January 7, 2021

In the Matter of:
**Finch, Ann v. Sentry Casualty
Company, et al.**

[A. William Roberts, Jr & Assoc.](#)

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PLAINTIFF'S
EXHIBIT

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND THE FIFTH JUDICIAL CIRCUIT
3 ANN FINCH, Individually and
4 as Executor of the Estate of
Franklin Finch,
Plaintiff,
5 vs. CASE NO.: 2019-CP-40-03003
6 SENTRY CASUALTY COMPANY;
7 UNITED STATES FIDELITY AND
GUARANTY COMPANY; ZURICH
8 AMERICAN INSURANCE COMPANY;
PETER PROTOPAPAS, as COURT
9 APPOINTED RECEIVER for COVIL
CORPORATION; and WALL TEMPLETON
& HALDRUP, P.A.,
10
11 Defendants.

12 TELEPHONIC 30(b)(6) (Appearance via Telephone Conf.)
DEPOSITION OF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY
13 INSURANCE COMPANY BY BOYD WRIGHT

14 DATE: January 7, 2021

15 TIME: 10:02 a.m.

16 LOCATION: Goldberg Segalla
701 Green Valley Road, Suite 310
Greensboro, North Carolina

17 TAKEN BY: Counsel for Receiver of Covil
18 Corporation

19 REPORTED BY: Mary K. Stepp, Court Reporter
(Appearance via Telephone Conference)

1
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(INDEX AT REAR OF TRANSCRIPT)

1 BOYD WRIGHT,
2 having been duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. NES:

5 Q. Good morning. Could you state your name
6 for the record?

7 A. Boyd Wright.

8 Q. Mr. Wright --

9 MR. YNTEMA: Mr. Nes, this is Brady again.
10 If we could, before we get started, I didn't know if
11 we could just state the topics in which Mr. Wright
12 is -- is appearing for. I know that counsel had an
13 agreement prior to today's deposition that we were
14 able to come to an agreement on essentially three
15 topics.

16 So first was Penn National's search for its
17 insurance policies which cover or provide -- make,
18 provide coverage to Covil. The second topic was Penn
19 National's involvement, if any, with Covil from 1991
20 through the appointment of Peter Protopapas as
21 receiver in November 2018. And then the third one,
22 which Penn National reserves the right to object
23 during the deposition, is a topic of Penn National's
24 testimony regarding how it would or would not have
25 handled Covil's litigation during the time between

1 Covil's dissolution and the appointment of the
2 receiver in 2018. That's our understanding.

3 And Mr. Boyd -- Mr. Wright is being -- is
4 presented today in the Finch case. So I just want to
5 get that clarified as a housekeeping matter, before
6 we start getting into the questions. Thank you.

7 MR. NES: So you jumped the gun. That's
8 exactly where I was going to go next.

9 BY MR. NES:

10 Q. So, Mr. Wright, given your counsel's
11 representation, are those the three topics that you
12 understand that you've been designated as a witness
13 on behalf of Penn National today?

14 A. Yes.

15 MS. CLARK: This is Chelsea Clark and I
16 hate to break in, but I also have a housekeeping
17 matter to attend to. I just wanted to put on the
18 record that we're -- we're foregoing objections and
19 questions today upon an agreement with the receiver.

20 MR. NES: Before we continue, anyone else
21 who has any housekeeping matters?

22 ALL COUNSEL: (No response.)

23 BY MR. NES:

24 Q. All right. Mr. Wright, could you identify
25 who your current employer is?

1 A. Penn National Insurance.

2 Q. Okay. I assume that your attorneys have
3 gone over with you how this deposition will work
4 today, but just so that we're clear I'm going to be
5 asking you questions, and my questions and your
6 answers will be taken down by the court reporter.

7 As the court reporter indicated at the
8 beginning of the deposition, because this is
9 telephonic, it will be extremely important for us to
10 try to provide each other with some time between my
11 finishing my question and you beginning your answers,
12 so that the court reporter can take down everything
13 cleanly.

14 Do you understand that?

15 A. Yes.

16 Q. And is there anything preventing you from
17 giving full and accurate testimony today?

18 A. No.

19 Q. What did you do to prepare for today's
20 deposition?

21 A. I was provided a copy of the -- I guess
22 exhibits that were pertaining to the deposition.
23 Talked to some other people in the company about the
24 potential questions that were going to be asked to
25 see if there was anything that I needed to

1 be -- needed to refresh on or didn't know about.

2 Q. Did you do anything else?

3 A. No.

4 Q. How long did you spend preparing for
5 today's deposition?

6 A. Hmm. You know, I don't know. It took me
7 two or three hours to look through and read all the
8 documents that were provided. And I -- you know,
9 phone calls back and forth. I don't know how much
10 time. No more than four or five hours, probably.

11 Q. You mentioned that you looked at the
12 documents that were provided as exhibits. Do you
13 recall how many documents you reviewed?

14 A. You mean, like how many pages? No. I
15 mean, I've got a stack of them here.

16 Q. Other than those documents, were you
17 provided any other documents to review in preparation
18 for your deposition?

19 A. No.

20 Q. You mention that you spoke with some
21 individuals to prepare for your deposition. Who did
22 you speak with, specifically?

23 A. I talked to my boss, Adam Parsons. I
24 spoke to our document custodian, Brent Reifsnyder.
25 And I talked to an individual in underwriting. The

1 name escapes me now. Basically, looking to see if
2 there was somebody around with the company who was in
3 underwriting 30-some years ago, when the policies
4 were written. And there isn't anybody.

5 Q. Other than those three individuals that
6 you mentioned, did you speak with anyone else?

7 A. No.

8 Q. Well, let's start with the first person.
9 I believe you mentioned that that was your boss, Adam
10 Parsons; is that correct?

11 A. Yes.

12 Q. What is Mr. Parsons' title?

13 A. Director of technical operations.

14 Q. What are his job responsibilities?

15 A. He has oversight over the liability lines
16 of business that are written by Penn National.

17 Q. How long did you speak with Mr. Parsons in
18 preparation for your deposition?

19 A. Oh, I don't know. We talked about a
20 number of different things. This was part of what we
21 talked about. I wouldn't think it would have been
22 more than ten minutes.

23 Q. And specifically what did you talk about?

24 A. That I was going to be deposed and what
25 the subject matter was.

1 Q. Did you learn any facts that you did not
2 know before that you believe are relevant to your
3 deposition preparation?

4 A. No.

5 Q. You also spoke with a document custodian;
6 is that right?

7 A. Yes.

8 Q. And who is the document custodian?

9 A. His name is Brent Reifsnyder.

10 Q. And how long did you speak with this
11 document custodian?

12 A. Uhm, I don't know. Five or ten minutes.

13 Q. And what was the purpose of speaking with
14 the document custodian?

15 A. Just to determine -- refresh my memory on
16 how long Penn National retains documents.

17 Q. What did you learn by speaking with the
18 document custodian?

19 A. How long it takes -- how long Penn
20 National typically saves documents.

21 Q. Did you learn anything else?

22 A. No.

23 Q. And I believe you mentioned that you spoke
24 with someone in underwriting, but you can't recall
25 their name; is that correct?

1 A. Yes.

2 Q. And how long did you speak with this
3 person in underwriting?

4 A. Oh, we exchanged messages, I think. So
5 actually I never really got to speak to them, per se.
6 It was solely just if there was anybody in
7 the -- with Penn National that would have been in
8 underwriting as an underwriter 30 years ago, when
9 these policies were written.

10 Q. And what did you learn speaking with the
11 underwriter?

12 A. That there wasn't anybody who was employed
13 back then who was still with the company.

14 Q. Did you learn anything else that you did
15 not know before, in preparation for your deposition
16 from this underwriter?

17 A. No.

18 Q. Have you ever been deposed before,
19 Mr. Wright?

20 A. Yes.

21 Q. How many times have you been deposed?

22 A. Hmm. I don't know. I don't really keep
23 count. It's probably more than 10, less than 20.

24 Q. When was the last time you were deposed?

25 A. Uhm, I don't -- let's see. I guess it

1 would have been early December last year.

2 Q. Have you ever been deposed in a case where
3 you were testifying about the document collection or
4 search for policies?

5 A. No.

6 Q. Have you ever testified in a deposition
7 where there were questions about proper claims
8 handling?

9 A. Yeah, I guess so.

10 Q. How often would you say you've testified
11 about the claims handling at Penn National of your
12 deposition testimony?

13 A. Uhm, I don't know. Two times, maybe
14 three.

15 Q. Do you recall the parties in any of those
16 cases?

17 A. Uhm, the last deposition I gave involved
18 Penn National claims handling, but the other cases I
19 don't recall off the top of my head.

20 Q. Do you recall who the plaintiff was in any
21 of those cases?

22 A. I think the -- I'm trying to remember. I
23 think the plaintiff in the case I was deposed in
24 December was Darren Ortiz.

25 Q. Can you spell that last name?

1 A. I'm trying to remember if it was Ortezt or
2 Estes. Ortez was O-r-t-e-z and Estes is E-s-t-e-s.

3 Q. And I believe that you mentioned that you
4 might remember another one as well; is that right?

5 A. Well, I mean, I may have been deposed in
6 another one, but I don't remember who the parties
7 were.

8 Q. I see. The Ortezt matter, do you recall
9 whether that was in state or federal court?

10 A. That was state court.

11 Q. And which state court was that pending?

12 A. North Carolina.

13 Q. The other matter where you believe you
14 testified about claims handling, was that state or
15 federal court?

16 A. You know, I don't remember.

17 Q. Do you remember what state it was?

18 A. No, I don't.

19 Q. Have you ever testified in a trial before?

20 A. Yes.

21 Q. And was that related to your employment at
22 Penn National?

23 A. No.

24 Q. What was the subject of that testimony,
25 generally?

1 A. It was a district attorney in Oregon that
2 was trying to convict someone of auto theft and I
3 handled the theft claim.

4 Q. Were you working for an insurance company,
5 at the time?

6 A. Yes.

7 Q. Which insurance company were you working
8 for?

9 A. Grange Insurance.

10 Q. And when was that trial?

11 A. Oh, it would have been in the '80s, I
12 guess. That's when I was working for Grange.

13 Q. I'm sorry, you said in the 1980s?

14 A. Yes.

15 Q. Have you ever testified in an arbitration?

16 A. No, I don't -- I've attended a number. I
17 don't remember if I've testified in any arbitrations.

18 Q. Let's take a step back and talk a bit
19 about your background. Do you have a college degree?

20 A. Yes.

21 Q. Where did you go to college?

22 A. I have an associate degree at Lane
23 Community College in Eugene, Oregon.

24 Q. What was your first job working in the
25 insurance industry?

1 A. Well, I -- my father was an independent
2 adjuster. I started working with him when I was 16.
3 Basically, he was kind of teaching me. But I wasn't
4 formally hired by anyone until May of 1981, and that
5 was with Grange Insurance.

6 Q. When did you start working for Penn
7 National?

8 A. Uhm, I believe that was June of 2002.

9 Q. Between -- strike that.
10 What year did you get your associate's
11 degree? I'm sorry.

12 A. I think I started at Grange before I
13 completed that degree. So I think it was in 1983 or
14 '82. I don't remember, but around there.

15 Q. Between the time you were working with
16 Grange in the early '80s and you started working with
17 Penn National in the early 2000s, did you have any
18 full-time positions that were not in the insurance
19 industry?

20 A. No.

21 Q. And during that time between the early
22 '80s and starting with Penn National in the early
23 2000s, were all of your -- was all of your work in
24 the insurance industry related to claims handling or
25 adjusting?

1 A. Yes.

2 Q. Let's talk about your first position with
3 Penn National. What was your first position?

4 A. As a Claims Specialist.

5 Q. And where were you located?

6 A. Greensboro, North Carolina.

7 Q. What were your general job
8 responsibilities as a claims specialist?

9 A. Principally, the claims specialists handle
10 all of the higher end or higher exposure or complex
11 cases that emanate from the North Carolina
12 underwriting office.

13 Q. Did you deal with toxic torts,
14 specifically?

15 A. No.

16 Q. Did you deal with environmental exposure?

17 A. Occasionally.

18 Q. How long were you a claims specialist for
19 Penn National?

20 A. Uhm, about two-and-a-half years, maybe.

21 Q. What was your next position?

22 A. Home office, Senior Claims Examiner.

23 Q. What were your job responsibilities as a
24 claims examiner?

25 A. Well, we provide technical direction to

1 the offices on certain cases involving handling or
2 supervising all the environmental and asbestos cases,
3 as well as some specialty program claims that would
4 arise. Also, would directly handle certain cases
5 that either were too complex or over a certain
6 threshold of exposure that would be assigned from
7 various offices.

8 Q. During that -- scratch -- strike that.

9 How long were you a claims examiner?

10 A. I still am.

11 Q. So, between 2000 -- roughly 2005 and
12 today, you've essentially held the same position with
13 Penn National; is that accurate?

14 A. Yes.

15 Q. Other than what you've described, would
16 you say that you have any additional job
17 responsibilities as a claims examiner for Penn
18 National?

19 A. No. And, generally, that's -- that's what
20 my responsibilities are.

21 Q. Earlier, I believe that you mentioned that
22 you have a boss that you consulted in preparation for
23 today's deposition.

24 Do you have any subordinates?

25 A. No.

1 Q. As part of your job responsibilities as a
2 claims examiner, have you conducted searches for
3 insurance policies?

4 A. Yes.

5 Q. How often have you conducted searches for
6 insurance policies, since you joined Penn National in
7 2005?

8 A. It really depends on the claim that's
9 presented. Sometimes you need to, sometimes you
10 don't. I don't keep track of how many times I've
11 done it, but I've done it a lot.

12 Q. Have you been the person that physically
13 searches for the policies or have you supervised
14 someone else searching for the policies?

15 A. I typically am the one that instigates the
16 search for the policies, and then I follow through
17 with whomever is necessary to try to locate them.

18 Q. So when you testified a minute ago that
19 you search for policies, would it be more accurate to
20 say you requested searches for policies?

21 A. It depends. It depends on which office
22 the -- the policies are written out of. It depends
23 on how old the policy is. It's very circumstantial,
24 case by case.

25 Q. Do you have any professional

1 certifications?

2 A. Yes.

3 Q. How many professional certifications do
4 you have?

5 A. Uhm, I don't know. I've never counted the
6 number. Five or six, maybe.

7 Q. To the best of your recollection, what
8 professional certifications do you hold?

9 A. I have a CPCU. I have an AMIM. I have --
10 what's it called? ARM and ARM-P. An SCLA. AIC.
11 And there may be a couple others that I can't
12 remember.

13 Q. Let's start with the first one, APCU
14 (sic). I believe I heard that right. What does that
15 stand for?

16 A. CPCU. It's Chartered Property Casualty
17 Underwriter.

18 Q. And when did you receive a certification
19 from that organization?

20 A. Uhm, I don't know. Early 2000s, maybe.
21 2003, 2004.

22 Q. Is that an organization that requires any
23 type of continuing education to maintain
24 certification?

25 A. They encourage you to, what they call,

1 remain in good standing. But, no, they don't take
2 the designation away from you, if you don't have
3 continuing ed.

4 Q. The next organization I believe you
5 mentioned was AMIM; is that right?

6 A. Yes, that's Associate in Marine Insurance
7 Management.

8 Q. And what certification do you have from
9 that organization?

10 A. Associate in Marine Insurance Management.

11 Q. What -- what organization issues that
12 certification?

13 A. AICPCU.

14 Q. And how long have you been certified by
15 that organization?

16 A. I don't know. I think I got that around
17 2006, maybe.

18 Q. Does that organization require any type of
19 continuing education to maintain the certification?

20 A. All the certifications I have are with
21 AICPCU, with the exception of the SCLA designation.
22 They do not require ongoing, continuing education to
23 maintain the designations.

24 Q. Okay. I apologize. Your -- maybe other
25 people aren't hearing it, but your voice sometimes

1 crackles on the audio for me, so I'm having a bit of
2 a hard time hearing you. So if I repeat a question,
3 I apologize. It's not -- I'm not trying to be
4 difficult, I'm just having a hard time hearing a
5 little bit of what you're saying.

6 If we could then talk a little bit about
7 your licenses. Do you have any professional
8 licenses?

9 A. Yes.

10 Q. What licenses do you hold?

11 A. I have a North Carolina adjuster's
12 license.

13 Q. When did you obtain your adjuster's
14 license in North Carolina?

15 A. 1999.

16 Q. And does that license require any
17 continuing education?

18 A. Yes, it does.

19 Q. Are you current with your license in North
20 Carolina?

21 A. Yes, I am.

22 Q. Do you have any additional licenses?

23 A. Professional licenses, no.

24 Q. In your time at Penn National, have you
25 done work in any other division, other than a claims

1 examiner or claims handling position?

2 A. No.

3 Q. Have you ever worked as an underwriter in
4 your group?

5 A. No.

6 Q. In your experience as a claims examiner,
7 would Penn National ever make settlement decisions
8 without communicating with its policyholder?

9 A. Yes.

10 Q. In what situations would Penn National
11 make a settlement decision without communicating with
12 its policyholder?

13 A. On virtually every claim unless the
14 company believes that there is -- the insured needs
15 to contribute to the settlement.

16 Q. So it's your testimony that the insurer
17 would not inform the policyholder that it was making
18 a settlement decision?

19 A. There's nothing I'm aware of in the
20 stereotypical liability policies that require the
21 insurer to do so. It's their money, not the
22 insured's. The insured --

23 Q. As a claims handler, how many cases -- how
24 many claims have you handled in your career?

25 A. Oh, it would include thousands, tens of

1 thousands.

2 Q. Can you think of a single specific example
3 where Penn National made a settlement and didn't
4 communicate that it was making a settlement to its
5 policyholder?

6 A. That's the -- that's stereotypical.

7 Q. So who would it give that information to?
8 Directly to defense counsel? I mean, directly to --

9 MR. YNTEMA: Object.

10 BY MR. NES:

11 Q. To plaintiff's counsel?

12 MR. YNTEMA: Objection, Mr. Nes. I'm not
13 sure the topic I think that you're trying to ask
14 about may be that third topic, you know, Penn
15 National's testimony regarding how it would or would
16 not have handled Covil's litigation during the time
17 between Covil's dissolution and the appointment of
18 the receiver in 2018. And, I think, in some degree
19 your questions are getting a little far afield from
20 the three topics that counsel has agreed to address
21 today.

22 MR. NES: I think they're perfectly within
23 that. If you want to object, you've objected. I'd
24 like an answer to my question.

25 THE WITNESS: You're going to have to

1 repeat it for me.

2 BY MR. NES:

3 Q. Sure. Can you think of a single example
4 in your career where Penn National made a settlement
5 payment without communicating that it did so to its
6 policyholder?

7 A. Yes.

8 MR. YNTEMA: Again, I assert my objection.
9 Boyd, you can answer, if you can.

10 THE WITNESS: Yes.

11 BY MR. NES:

12 Q. In your experience as a claims handler,
13 would Penn National ever settle a case without
14 communicating with underlying defense counsel?

15 A. Yes.

16 Q. In your experience as a claims handler,
17 would Penn National ever try a case without notifying
18 its insured of the potential for an excess verdict?

19 A. No. Our --

20 MR. YNTEMA: Again -- again, it's way
21 outside the topics that were agreed to by counsel. I
22 will continue to allow these kind of questions for a
23 little bit longer, but we may need to reign it back
24 into the three topics. Thank you, Mr. Nes.

25 MR. NES: I believe this falls quite well

1 within the third topic. But you've lodged your
2 objection. I'd like an answer to my question.

3 BY MR. NES:

4 Q. Would Penn National ever try a case
5 without notifying its insured of the potential for an
6 excess verdict?

7 A. Our practice is to notify the insured any
8 time we're aware of an excess verdict potential.

9 Q. Why is that?

10 A. Because the insured now has potential
11 exposure for the verdict.

12 Q. In your experience as a claims handler,
13 when Penn National's responsible for the defense of
14 its insured, who is the client?

15 A. The insured. You mean the client
16 of -- you mean defense counsel's client?

17 Q. Yes. Who is defense counsel's client?

18 A. My understanding is it's -- it's the
19 insured.

20 Q. And why is that?

21 A. Well, I'm sure that defense counsel has
22 some sort of ethical obligation in which I'm not an
23 expert on.

24 Q. In your experience as a claims examiner
25 for Penn National, would you agree that deciding who

1 will serve as the corporate witness deponent for the
2 policyholder in the underlying litigation would
3 typically involve consulting with the policyholder?

4 MR. YNTEMA: Objection. Again, I'll let
5 the witness answer this question, but again it's
6 outside of the three topics that were agreed to by
7 counsel.

8 THE WITNESS: Would you mind repeating
9 it -- the question?

10 BY MR. NES:

11 Q. Yeah. Would you agree that deciding who
12 would serve as the corporate witness deponent for the
13 policyholder in the underlying litigation would
14 typically involve consultation with the insured?

15 A. Yes. Usually it would also involve
16 defense counsel, since he's the one that's going to
17 be working with that potential witness.

18 Do you mind if we take a quick break, so I
19 can use the restroom?

20 MR. NES: Yes, absolutely. Why don't we
21 take a five-minute break.

22 THE WITNESS: Yeah, five minutes would be
23 great. Thank you.

24 MR. NES: Thanks.

25 (Recess was taken from 10:35 a.m. to 10:39

1 a.m.)

2 BY MR. NES:

3 Q. Mr. Wright, while you were on break, did
4 you have any conversations with your counsel?

5 A. No. He's not in the office.

6 Q. Did Penn National have any involvement
7 with Covil Corporation from 1991 through the
8 appointment of Peter Protopapas as receiver in
9 November 2018?

10 A. Directly with Covil or with Covil's
11 counsel?

12 Q. Directly with Covil.

13 A. No.

14 Q. Did Penn National have any involvement in
15 defending or paying for the defense of Covil
16 Corporation between 1991 and 2018?

17 A. No.

18 Q. Did any insurance company provide any type
19 of notice to Penn National between 1991 and 2018 that
20 there were claims being submitted against Covil
21 Corporation?

22 A. No.

23 Q. Were there any correspondence or
24 conversations between any insurance company and Penn
25 National regarding claims against Covil between 1991

1 and the receiver's appointment in 2018?

2 A. No.

3 Q. As a claims examiner, you're familiar with
4 selecting underlying defense counsel; is that
5 correct?

6 A. Yes.

7 Q. And you're aware there's situations in
8 which defense counsel can't represent an insured
9 unless they obtain a conflict waiver in some
10 situations; is that right?

11 A. Yes.

12 MR. YNTEMA: Objection, to the extent he
13 knows.

14 BY MR. NES:

15 Q. Can an insurance company sign a conflict
16 waiver on behalf of a policyholder, in your
17 experience?

18 MR. YNTEMA: Objection. Again, outside
19 the scope of the topics agreed upon. He can answer,
20 if he knows.

21 THE WITNESS: He's going to -- please
22 repeat that for me.

23 BY MR. NES:

24 Q. Sure. You mentioned a minute ago there's
25 situations in which defense counsel can't represent a

1 policyholder unless it obtained a conflict waiver.
2 And my question is, in your experience as a claims
3 handler for Penn National, can an insurance company
4 sign that conflict waiver on behalf of its
5 policyholder?

6 MR. YNTEMA: Same objection.

7 THE WITNESS: I've never encountered that
8 situation. I don't know. It seems to me that would
9 be something that defense counsel would need to
10 evaluate for themselves.

11 BY MR. NES:

12 Q. As a claims examiner, have you ever signed
13 a conflict waiver on behalf of a policyholder?

14 A. No.

15 Q. Can an insured put a policyholder into
16 bankruptcy, in your experience?

17 MR. YNTEMA: Objection, again. Way
18 outside the scope of the three topics that were
19 agreed upon. If you can bring it back within topic
20 number 3 or articulate how that relates to topic
21 number 3, I'd appreciate it.

22 BY MR. NES:

23 Q. You can answer the question.

24 MR. YNTEMA: Well, I -- I would like you
25 to articulate how that question relates to topic

1 number 3. I mean --

2 MR. NES: I've given you -- Counsel, I've
3 given you a lot of leeway. I think the question
4 easily fits within the findings of fact we've already
5 submitted to the Court, which is part of topic 3.
6 South Carolina has very specific guidelines about
7 what counsel can do when they are objecting to
8 questions. You put your objection on the record that
9 you think it's outside the scope. I don't think it
10 is. I don't have to justify every question I ask.
11 If you want to instruct the witness not to answer,
12 that's fine. But I'm asking questions, I'd like an
13 answer.

14 MR. YNTEMA: Well, I would reserve the
15 right to instruct him not to answer. And I'll do so,
16 if I need to. I appreciate that.

17 Penn National is not a party to the Finch
18 case. He's being presented here by agreement with
19 counsel on the three topics that actually were
20 drafted up by the receiver's counsel.

21 So I'll allow him to answer your last
22 question and the court reporter can read it.

23 MR. NES: I'll rephrase it.

24 BY MR. NES:

25 Q. Under the topic number 3 that was agreed

1 to it says, Penn National would or wouldn't -- how
2 Penn National would or would not have handled the
3 Covil litigation.

4 Assume for me, for the sake of argument,
5 that an insurer considered putting Covil into
6 bankruptcy as its policyholder. Would Penn National
7 have also considered putting Covil into bankruptcy?

8 A. I'm not -- I'm not sure I understand the
9 question. If -- yeah, I'm just not sure I understand
10 the question.

11 Q. Well, let me break it down. In your
12 experience as a claims handler, can an insurer put a
13 policyholder into bankruptcy under any circumstance?

14 A. It's possible that an insured may find
15 themselves in bankruptcy in certain circumstances,
16 when a claim is -- is handled.

17 Q. But in your experience, does an insurer
18 have any authority to make a decision to put a
19 policyholder into bankruptcy?

20 MR. YNTEMA: Objection.

21 THE WITNESS: Yeah, I'm not sure I
22 understand the question. You're saying put them in
23 bankruptcy? I don't -- I believe the insured has to
24 make that decision themselves. Like I said, I just
25 don't understand -- I don't understand the question.

1 BY MR. NES:

2 Q. I'd like you to assume for me that
3 underlying defense counsel failed to answer a claim
4 on behalf of Covil and a default judgment was
5 entered. Are you following me so far?

6 A. Sure.

7 Q. And let's further assume that the insurer
8 of Covil knows that a default judgment has been
9 entered against its policyholder. Does the insurer
10 have a responsibility to make sure that the
11 policyholder is notified that a default judgment has
12 been entered against it?

13 A. Again, I don't know, because I've never
14 encountered that before.

15 (Exhibit No. 1 was marked for
16 identification.)

17 BY MR. NES:

18 Q. I'd like to turn to what will be Exhibit
19 1. This is a letter from Penn National's counsel to
20 counsel for the Receiver, Covil Corporation, dated
21 November 12, 2019. And it has several attachments,
22 including a subpoena response. I believe your
23 counsel provided this document to you in preparation
24 for your deposition today. Do you have that
25 document?

1 A. Yeah, I'm looking for it. It wasn't -- it
2 wasn't on the top.

3 Oh, here we go. November 12, 2019 letter?

4 Q. Yes. From the Goldberg firm.

5 A. Yes. I have it.

6 Q. This document is a letter which contains
7 Penn National's response to a subpoena by Covil
8 Corporation in the Finch action; is that correct?

9 A. Yes. You're talking about -- you're
10 talking about the U.S. District Court Finch action,
11 correct?

12 Q. That's correct.

13 A. Yes.

14 Q. If you could look about halfway through
15 this document, there's a letter dated June 15th,
16 2018. And I believe your name is the signatory. Let
17 me know when you find that.

18 A. (Witness peruses document.) I don't
19 remember seeing that in the attachments, but I'll
20 look here through this stuff and see.

21 Yeah, I don't have that. Was it --

22 MR. NES: Brady, did you provide him with
23 all the documents?

24 MR. YNTEMA: Yeah, I did. I'm not sure,
25 Boyd. We -- it would be -- I'm not there to help you

1 flip through the documents, but if you would, I
2 guess, go back to the policy chart they were attached
3 to --

4 THE WITNESS: No, no. I found it. I
5 found it.

6 BY MR. NES:

7 Q. Okay.

8 A. The June 15 letter? The June 15 letter?

9 Q. That's correct.

10 A. Yeah, okay. I've got it right here.

11 MR. YNTEMA: Okay. Thank you, Mr. Nes.

12 MR. NES: Sure.

13 MR. YNTEMA: Thanks.

14 BY MR. NES:

15 Q. Okay. For clarity of the record, we're on
16 Exhibit 1. About halfway through there is a letter
17 dated June 15, 2018.

18 Do you see that?

19 A. Yes.

20 Q. And this is a letter from you to Ms. Stone
21 at the Dean Omar firm; is that correct?

22 A. Yes.

23 Q. And it states, quote, "Dear Ms. Stone,
24 pursuant to your firm's subpoena, attached is the
25 policy information Penn National located on Covil

1 Corporation, et al."

2 Do you see that?

3 A. Yes.

4 Q. And then there's some additional
5 documentation regarding Penn National attached to the
6 subpoena response.

7 Do you see that?

8 A. You mean copies of the -- the policy
9 information?

10 Q. Yes.

11 A. Yes.

12 Q. Were you involved in this search for
13 documents?

14 A. Yes. The subpoena came to my attention.
15 (Exhibit No. 2 was marked for
16 identification.)

17 BY MR. NES:

18 Q. I'll turn back to this exhibit in a
19 moment, but I'd like you now to turn to what will be
20 Exhibit 2. And this will be Defendant's Responses to
21 Plaintiff's First Set of Request for Production.

22 A. Uhm, okay. I think I found it. Let me
23 look here. 26 pages in total, dated May 15, 2020?

24 Q. That's correct.

25 A. Okay.

1 Q. Exhibit 2 is Penn National's Response to
2 Plaintiff Covil Corporation's First Set of Request
3 for Production, correct?

4 A. Defendant's Responses to Plaintiff's
5 First -- yeah, okay.

6 Q. I'd like you to turn to page 6.

7 A. (Witness complies.) All right.

8 Q. On page 6, number 2 it says, "All
9 insurance policies," comma, "of any type," comma,
10 "that you issued to Covil or which otherwise include
11 Covil as an insured."

12 Do you see that?

13 A. Yes.

14 Q. And if you look at page 7, the first full
15 paragraph states, quote, "Subject to and without
16 waiving the foregoing objections, Penn National's
17 search has yielded the following liability policies.
18 Pennsylvania National Mutual Casualty Insurance
19 Company issued a comprehensive general liability
20 insurance policy," comma, "Policy No. 515502853 to
21 Covil for the periods of March 31, 1986 to March
22 31 -- sorry, March 31, 1987. And March 31, 1987 to
23 March 31, 1988 PGL policy," period.

24 Do you see that?

25 A. Yes.

1 Q. Were you involved in the search for
2 documents responsive to request number 2?

3 A. Yes.

4 Q. Did you conduct a different search for
5 documents responsive to request number 2 from Covil
6 that you conducted that was responsive to the Exhibit
7 1 subpoena response that we looked at in 2018 or was
8 this all part of the same search for documents?

9 A. The search for the documents occurred on
10 the subpoena. Obviously, we provided the documents
11 we located. When this request came in, we searched
12 again just to ensure that we hadn't missed anything,
13 and we hadn't.

14 Q. Okay. I'd like then to talk about the
15 first search that you conducted for documents
16 responsive to the Dean Omar subpoena. What steps did
17 Penn National take to search for policies responsive
18 to the subpoena?

19 A. The subpoena came in and I requested
20 clerical personnel to perform an immediate search to
21 see if there was any active policy on the system that
22 could be accessed. The answer was no, due to the
23 age.

24 We forwarded the request to underwriting,
25 who also said they had no records due to the age of

1 the policies, being roughly 30-plus years old.

2 So then I contacted our -- our -- Brent
3 Reifsnyder, document custodian, and asked him to
4 perform a search. And he was -- he was able to
5 produce the material to answer the subpoena.

6 Q. Let's talk about the first step that Penn
7 National undertook, which was that -- or that you
8 undertook, and that was to contact a clerical person;
9 is that correct?

10 A. Yes.

11 Q. Who specifically did you contact to
12 conduct the initial search for documents responsive
13 to the request for Covil policies?

14 A. I don't remember. There's a number of
15 clerical people. It kind of goes into a queue and
16 they -- one of them handles it and then responds
17 whether or not they were able to locate something.

18 Q. With the initial search for Covil
19 insurance policies, what specific steps did the
20 clerical person take to locate responsive policies?

21 A. Well, the clerical person would need the
22 name and the policy number. In this particular
23 instance, the subpoena contained both. And having a
24 policy number makes it much easier to search. It was
25 clear that there was no active policy number on the

1 system, along those lines. So she stopped her search
2 and notified me.

3 Q. What steps, specifically, though, did this
4 clerical person do --

5 A. She typed --

6 Q. -- to -- go ahead.

7 A. She types in the policy number into the
8 system and it tells her if there's a policy
9 available. Simple enough.

10 Q. If you only -- if Penn National only has
11 the name of the insured, but not the policy number,
12 can it locate policies on this system for the
13 insured?

14 A. If there is a name located, we have to
15 determine is there name similarity between different
16 accounts. We write insurance in a number of states
17 and it's not uncommon that you find the name
18 similarities or the name presented is -- is not the
19 name that we have on the policy.

20 We typically file things by policy number.
21 But if we locate a name, we'll -- they would provide
22 me a list of the names and then I'd have to take the
23 next step in working with underwriting, and then
24 ultimately the document custodian, to determine which
25 one of those names would be associated with the

1 policy issued and applicable to the subpoena
2 that were served.

3 Q. Is this system that you're referring to an
4 electronic system?

5 A. Everything is an electronic system
6 anymore.

7 Q. The electronic system that the clerical
8 person used to search for the Covil policies, does
9 that system have a name?

10 A. I only know it as the version. I forget
11 if it is version 6 or version 7, but it only goes
12 back a certain period of time. It doesn't go back
13 indefinitely.

14 Q. Does the system have a name?

15 A. As I said, I've only heard it called
16 version 6 or version 7.

17 Q. So you're not aware of whether this system
18 actually has a formal name or not; is that correct?

19 A. No, I'm not. Because it's not a system
20 that we actively use any longer.

21 Q. Have you ever physically used this system
22 before or have you only asked others to use it for
23 you?

24 A. I've tried to use it, but it requires
25 coding that I can't ever get straight. So I go to

1 people that I know that know how to run it.

2 Q. This system, does it code named insurers
3 in the policy?

4 A. I'm sorry, I don't understand that
5 question.

6 Q. You mention that you can put the name of a
7 policyholder into the system, correct?

8 A. Yes, that's my understanding.

9 Q. And when you say the name of a
10 policyholder, do you mean that the policyholder is
11 the named insured in the policy?

12 A. Yes.

13 Q. If a policy is -- if a corporation is
14 covered as an additional insured under the policy, do
15 you know whether they would also be identified in
16 this system?

17 A. No, they would not. It's only the first
18 named insured.

19 Q. Why is that?

20 A. Well --

21 MR. YNTEMA: Objection, if he knows.

22 THE WITNESS: -- in Covil's case, there's
23 an endorsement that lists a number of entities that
24 are additional insureds or additional named insureds
25 on the policy, but any billing or other references

1 that are made in our system are -- only list the
2 first named insured as the principal named insured.
3 Likely, it's the company that took the policy out and
4 then they requested a number of other subentities be
5 named or insured as well.

6 Q. So if Covil Corporation was named as an
7 additional insured on any Penn National policy, it
8 would not be able to be located by using this version
9 6, version 7 system based on the way it's designed,
10 correct?

11 A. No, it would not.

12 Q. What steps did Penn National take to try
13 to locate Covil insurance policies, where Covil would
14 be named as an additional insured?

15 A. There -- well, we did a name search.
16 The -- the only names that we came up with
17 corresponded with the two policy numbers that we were
18 provided. Policy numbers continue from year to year.
19 And if there was any other Covil policies out there
20 where Covil was named as a -- as an insured, those
21 policies -- or I should say named as an additional
22 insured, there would be no reference. It would be to
23 whatever name was appropriate for the -- for the
24 account. We typically file things by policy numbers.
25 Policy numbers are critical to locating coverage.

1 Q. Well, I appreciate that, but my question
2 was slightly different. And that is, what did Penn
3 National do to search for those policies where Covil
4 Corporation may have been named as an additional
5 insured?

6 A. I kind of already stated that unless they
7 are listed first as the principal insured on the
8 policy, there is no way to locate them.

9 Q. Penn National has copies of the insurance
10 policies in the version 6, version 7 system, correct?

11 A. No.

12 Q. What is contained in the version 6,
13 version 7 system?

14 A. It would tell us if we have an insured by
15 that name, the name -- principally named insured. It
16 would give us a policy number. And it would tell us
17 if there were any claims submitted in the last -- I
18 think it's either seven or ten years under that
19 policy.

20 Q. So the search for the version 6, version 7
21 system is not actually a search for the actual
22 insurance policy; is that correct?

23 A. It's the first step in searching for an
24 insurance policy. If there is a claim presented in
25 the last few years, we would have a cross reference

1 and be able to go to that claim file and look and see
2 if there was policy information in it. Since there
3 was no claim, it comes up empty. So we take the next
4 step.

5 Q. In searching for Covil insurance policies,
6 the next step in addition to this version 6, version
7 7 system, I believe you mentioned that you also spoke
8 with a document custodian; is that correct?

9 A. The next step is we go to underwriting to
10 see if they have any records.

11 Q. And did you do that in this case?

12 A. Yes. And they told us they didn't have
13 any records due to the age of the policies.

14 Q. Whom specifically did you speak to in
15 underwriting in the initial search for Covil
16 Corporation documents?

17 A. I don't recall. It -- it's -- it kind of
18 goes into a queue and the underwriting clerical
19 perform that search for us.

20 Q. What specific steps did the underwriting
21 clerical person take to search for Covil-responsive
22 documents?

23 A. She would also check the version 6, 7 to
24 see if there were any records, and then she would
25 look at any paper records that underwriting may still

1 retain to confirm if they had any records at all.

2 But due to the age of the policies, they had

3 none -- no records at all.

4 Q. And how -- what specific records did the
5 underwriting custodian search?

6 A. The -- she looked at version 6, 7, just
7 like the first person did. Nothing comes up. She
8 then looks at paper archived records that
9 underwriting retains. And because the policies were
10 so old, they don't have any records. She then tells
11 me, "We don't have any records because these policies
12 are too old."

13 Q. What specifically -- what specific
14 records, though, did the underwriting clerical
15 employee search to make the determination that there
16 just are no paper records?

17 A. She looks by name and policy number. If
18 it's not there, it's not there.

19 Q. Were these written records a -- an index
20 of documents maintained by Penn National?

21 A. I'm not even sure what that means. They
22 have access to some paper records. There are
23 underwriting files specific to a named insured and an
24 appropriate policy number. She would -- she would
25 search -- they catalog them by policy number. She

1 did not have the records that were listed in the
2 subpoena.

3 I need to go to the restroom --

4 Q. Do you --

5 A. -- before you get started there. I take a
6 diuretic and, unfortunately, it kind of catches up
7 kind of quickly. Can I use the restroom again? I
8 need about five minutes.

9 MR NES: Sure. We can take a five-minute
10 break.

11 (Recess was taken from 11:12 a.m. to 11:16
12 a.m.)

13 BY MR. NES:

14 Q. Okay. Mr. Wright, I believe we were
15 speaking a moment ago about the written records
16 for -- the written records search. And -- so putting
17 aside the electronic search, what I'm trying to
18 understand is specifically how the written record
19 search is conducted. What specific written files are
20 consulted to determine whether there is a file that
21 relates to Covil Corporation.

22 So, is there an index that the
23 documents -- the underwriter consulted to determine
24 whether Covil was in any of the files?

25 A. No.

1 Q. If there's no index to consult,
2 how -- what steps did the underwriting clerical
3 employee take to determine whether there are written
4 records?

5 A. The subpoena contained a coverage chart
6 which provided us with policy numbers. She was
7 provided the policy numbers, which is how they would
8 file paper records. She searched the records that
9 were there, came back and told me she could not find
10 that policy. And their paper records do not go back
11 30 years. They only go back a couple of years. And
12 so her answer is, she doesn't -- underwriting doesn't
13 have those records.

14 So my next step is to go to the document
15 custodian.

16 Q. And what specific request did you make of
17 the document custodian?

18 A. I provided the document custodian with
19 Covil's name, the policy numbers, and asked him to
20 search paper records in the warehouse for the time
21 period specified in the subpoena from 1969 to 1995.

22 Q. What specific steps did the document
23 custodian take to search for policies?

24 A. He goes to the warehouse and he looks for
25 the name and policy number to see if it can be

1 located. And then if he locates something, he sends
2 me what he's located. If he cannot locate anything,
3 he then tells me that he can't locate anything.
4 There are some records that are retained in paper and
5 there are some on microfiche, and he looks in both
6 areas.

7 Q. Does the document custodian consult any
8 indexes to search for documents in hard copy?

9 A. No.

10 Q. So, manually how does the document
11 custodian find any documents potentially relevant to
12 Covil, if there's no index of what documents are
13 available?

14 A. He searches by name and policy number.
15 Policy numbers --

16 Q. And that --

17 A. -- they are helpful for him locating
18 anything. And in this particular instance, Penn
19 National's document retention policy is 25 years. He
20 was surprised he found something at all, given the
21 age of these. But it seemed to line up with the
22 chart -- coverage chart that was provided with the
23 subpoena as well.

24 Q. In terms of the paper records search by
25 name, how is that record search conducted?

1 A. He has a name and he looks through his --
2 his -- through the paper records that are there or
3 are available.

4 Q. In terms of looking through the paper
5 records, is he inserting names in some type of
6 computer system or is he literally going through
7 every single paper record one by one that Penn
8 National has? I'm trying to understand how the
9 search is conducted.

10 A. Well, the -- first of all, we know the
11 risk is written out of the North Carolina area. So
12 he doesn't need to look at records that are
13 underwriting records for the rest of the country. So
14 he can narrow his search accordingly. Then
15 understanding where the underwriting office was --
16 and there may have been a South Carolina office
17 during this time, but those and the North Carolina
18 offices were combined at some point.

19 He's going to go through the records that
20 are available. And the first thing he's going to
21 search is the policy number. If he has a policy
22 number, he runs with that because that's the quickest
23 and most efficient way to find if there's a policy
24 there.

25 So he finds a policy number based on the

1 chart that provides him the policy number and years
2 from the chart. He finds those and then he starts to
3 look forward and backward from that point for that
4 policy number. It doesn't show up anywhere.

5 Then what he does is, during that period
6 of time when he starts to look at prior and following
7 years, and he sees that there is no policy number
8 outside the two years provided for Covil, he now
9 starts to look to see if there are any policies
10 available that name Covil as an insured based on the
11 paper material that he's reviewing.

12 He -- he knows there's no policy numbers
13 out there. He's found the two years. Now he's
14 looking to see by name only, and he didn't find
15 anything. But the records don't go back to 1969.

16 Q. In terms of the paper material that he
17 reviewed, what specific document did he review to
18 make a determination about whether or not there were
19 Covil documents?

20 A. He would pull the paper document out and
21 look to see if the policy number and name
22 corresponded to the information that he was provided.

23 Q. How long did the search take?

24 A. I don't know specifically this case, but
25 traditionally it -- depending on the circumstances,

1 it could take two to three weeks to a month.

2 Q. How much time did the underwriting
3 clerical employee spend trying to locate
4 Covil-specific policies in response to the subpoena
5 that was originally sent?

6 A. I don't know how long she spent. I didn't
7 stand there and watch her. I asked her to check.
8 She responded.

9 Q. Did she spend more than five minutes?

10 A. I told you, I don't know how long she
11 spent. I do know she told me that because of the age
12 of the policies, underwriting did not have any
13 records.

14 Q. In terms of the document custodian that
15 was searching for written materials, how long did the
16 document custodian search for Covil-specific
17 underwriting documents?

18 A. I don't know. He's -- he's in Harrisburg
19 Pennsylvania, I'm in Greensboro. I gave him the
20 request. I waited for the response. When I got a
21 response, I provided the material that he was able to
22 locate.

23 Q. Do you know if the individual who was
24 searching hard copy documents, the document
25 custodian, spent more than 30 minutes looking for

1 responsive documents?

2 A. Well, I don't know how long they spent.

3 Q. In preparing for your deposition today,
4 did you ask anyone in the document custodian
5 department how long Penn National actually spent
6 reviewing hard copy documents?

7 A. No.

8 Q. Do you know if the hard copy documents
9 stored and in Penn National's custody and control are
10 indexed on a computer system in some way that can be
11 searched?

12 A. Specifically, I don't know. I -- I am
13 aware that there is a list. I have been told there
14 is a list of not paper files, but some of the
15 microfiche from the mid to late '90s, but I don't
16 know about anything older than that.

17 Q. Do you know if the document custodian who
18 was doing the search for Covil policies searched to
19 see if Covil was an additional insured under any
20 policy?

21 A. He would not have done so, because there
22 is no method in place to do so. As I mentioned
23 earlier, the only way that we file this material is
24 by the principal-named insured and policy number. If
25 there -- if the entity is named as a

1 supplemental-named insured, additional-named insured,
2 however you want to categorize it, there is nothing
3 in our system to search in that fashion.

4 Q. So that applies to both the version 6, 7
5 electronic system that we talked about earlier, as
6 well as the hard copy files maintained by the
7 document custodian; is that right?

8 A. As I mentioned, our systems only capture
9 the principal-named insured and the policy number.
10 Other entities named in the policy are not included.

11 Q. So to identify Covil as a named insured on
12 a Penn National policy, one would have to do a
13 physical review of Penn National policies to locate
14 that; is that correct?

15 A. No. I'm not sure what you mean.

16 Q. Well, you're not -- let me be --
17 understand. You're not saying that there are no Penn
18 National policies that contain Covil as an additional
19 insured. You're saying that you didn't have any way
20 to search for that, correct?

21 A. Correct.

22 Q. And my question is, if you actually look
23 at a physical copy of an insurance policy, an
24 additional insured is named in the declarations page,
25 correct?

1 A. No.

2 Q. Where is the additional insured listed?

3 A. Just like on this policy, it's an
4 endorsement that lists a number of other companies.

5 Q. All right. Let's assume that it's an
6 endorsement then. It's contained in the insurance
7 policy, correct?

8 A. It's a piece of the insurance policy, yes.

9 Q. So by reviewing a complete copy of an
10 insurance policy, Penn National could determine
11 whether there was an additional insured or not on any
12 policy that Penn National actually had a copy of,
13 correct?

14 A. You'd have to physically --

15 MR. YNTEMA: Object. Go ahead.

16 THE WITNESS: You'd have to physically
17 search thousands of policies to look to see. And
18 there's no guaranty that the records retained on the
19 archived material would even contain the endorsement.

20 BY MR. NES:

21 Q. Penn National did not do any such physical
22 search for policies that named Covil as an additional
23 insured in these searches, though, correct?

24 MR. YNTEMA: Objection to form.

25 THE WITNESS: We searched for Covil's

1 records or any records of Covil, based on the limited
2 information we had or were able to find.

3 BY MR. NES:

4 Q. Objection, nonresponsive.

5 My question, Mr. Wright, is that you
6 mentioned that Penn National would have to do a
7 physical search of all of the endorsements of the
8 policies to find Covil as an additional insured. And
9 my question was that Penn National didn't actually do
10 that search; isn't that correct?

11 MR. YNTEMA: Objection to the extent the
12 statement misstates his testimony. And objection to
13 form.

14 THE WITNESS: It's our position --

15 BY MR. NES:

16 Q. You can --

17 A. What's that?

18 Q. I said, you can answer.

19 A. Oh, okay. It's our position that we
20 responded to the subpoena based on the information
21 that we were able to locate.

22 Q. I'd like you to turn back to Exhibit 2,
23 which is the Defendant's Responses to Plaintiff's
24 First Request for Production.

25 A. Okay.

1 Q. We were talking about Request for
2 Production number 2 on page 6 earlier. If you can
3 turn back to that.

4 A. Yes.

5 Q. Request for Production No. 2 says, "All
6 insurance policies," comma, "of any type," comma,
7 "that you issued to Covil or which otherwise include
8 Covil as an insured."

9 Do you see that?

10 A. Yes.

11 Q. Did Penn National conduct any search for
12 documents, where Covil was named an additional
13 insured?

14 A. This response --

15 MR. YNTEMA: Objection.

16 THE WITNESS: I'm sorry, Brady.

17 MR. YNTEMA: I just want to note the
18 objection, asked and answered. You can answer.

19 THE WITNESS: The response in the number 2
20 speaks for itself. And there were objections raised
21 by counsel in this particular response.

22 BY MR. NES:

23 Q. Objection, nonresponsive.

24 In preparing for your deposition today,
25 you mentioned that you spoke with a document

1 custodian; is that correct?

2 A. Yeah. I think that's the third or fourth
3 time you asked me that, and yes, I did.

4 Q. Okay. Was this the same document
5 custodian that you had conduct the search for
6 responsive documents?

7 A. Yes.

8 Q. And you still do not recall the name of
9 this document custodian; is that right?

10 A. No. I gave you the name three or four
11 times. It's Brent Reifsnyder.

12 Q. Where is Mr. Reifsnyder located?

13 A. Harrisburg, Pennsylvania.

14 Q. Where are the documents that Penn National
15 reviewed as part of its document review for
16 responsive documents?

17 A. The document custodian's material that he
18 searched is located in the Harrisburg, Pennsylvania
19 area.

20 Q. Did -- did he review any documents that
21 were not in the Harrisburg, Pennsylvania area?

22 A. No, not that I'm aware of. There
23 have -- my knowledge is ancient or archived documents
24 are kept in Harrisburg.

25 Q. I believe earlier you said that he did not

1 conduct a national search for documents; is that
2 right?

3 A. There would be no reason for him to. He'd
4 be looking at risks that were underwritten out of the
5 North Carolina office.

6 Q. What do you mean by national search for
7 documents?

8 A. We write business in a number of states.
9 This account was written out of an agency in South
10 Carolina under the control of the North Carolina
11 underwriting office. There would be no need for him
12 to look in every state outside -- or every area
13 outside the North Carolina underwriting office for
14 this material. It would not be there.

15 Q. Were documents that were underwritten in
16 South Carolina also archived in Harrisburg,
17 Pennsylvania?

18 A. Yes.

19 Q. If we can turn to Exhibit 2, page 11,
20 Request for Production number 8.

21 A. (Witness complies.) All right.

22 Q. States, "All documents that relate to the
23 steps taken by you to determine whether you issued
24 any insurance policy to Covil or which otherwise
25 includes Covil as an insured."

1 Do you see that?

2 A. Yes.

3 Q. Did you have any e-mail correspondence
4 with the document custodian with respect to the
5 searches that were conducted?

6 A. I don't know specifically, but that's
7 traditionally what he would do. He would want
8 something that he could print or take with him for
9 reference.

10 Q. Do you recall whether the document
11 custodian e-mailed you back to find any?

12 A. Yes, he did.

13 Q. I'd like you to turn to page 8 of Exhibit
14 2, document request number 4.

15 A. Okay.

16 Q. Document request number 4 says, "All
17 documents that relate to all claims submitted by or
18 on behalf of Covil for coverage under any insurance
19 policy issued to Covil by you."

20 Do you see that?

21 A. Yes.

22 Q. What steps, if any, did Penn National take
23 to search claim files to determine whether there were
24 any responsive insurance policies?

25 MR. YNTEMA: Mr. Nes, I need to interject

1 at this point. If you can look at request number 4.
2 This is in the Covil versus Penn National case. The
3 case number is 2020-CP-4001226, not the Finch case.
4 But if you go down in that response, we've objected
5 and said that we will only consider producing such
6 information or document -- responsive documents, if
7 any, only occur after a protective order is entered
8 in this action.

9 So that's our objection and that's our
10 objection to the question today.

11 MR. NES: That's fine. I'm -- I'm
12 actually asking if he searched any claim files as
13 part of his response to document requests. So if
14 you're saying that he did, you found it, and you're
15 not producing it, that's fine. I see the objection.
16 But I don't see how that has anything to do with the
17 question. It's just simply, did you search for
18 claim -- claim files to the policy? It seems pretty
19 straightforward, yes or no.

20 MR. YNTEMA: Okay. I'll let him answer
21 that question.

22 THE WITNESS: Yes, we searched for claim
23 files there. We could not locate any claim files.

24 MR. NES: Why don't we take a five-minute
25 break.

1 THE WITNESS: Good. Right on time. Thank
2 you.

3 (Recess was taken from 11:41 a.m. to 11:45
4 a.m.)

5 BY MR. NES:

6 Q. Mr. Wright, earlier we were talking about
7 policies where the policy was underwritten in North
8 Carolina or South Carolina and those documents are
9 archived in Harrisburg.

10 Do you recall that?

11 A. Yes. To the extent they still exist,
12 that's where they'd be.

13 Q. If an insurance policy was underwritten in
14 another state, but included Covil as an additional
15 insured -- strike that.

16 What other -- where are the other archives
17 that Penn National has for hard copy documents?

18 A. Harrisburg, Pennsylvania.

19 Q. Are there any other archives?

20 A. Not that I'm aware of.

21 Q. And within the hard copy archives at
22 Harrisburg, Pennsylvania, there is a division of the
23 hard copy documents for policies underwritten in
24 North Carolina or South Carolina, correct?

25 MR. YNTEMA: Objection to form.

1 THE WITNESS: Again, historically there
2 was a North Carolina and South Carolina underwriting
3 office. They eliminated South Carolina somewhere in
4 the late '80s or early '90s, maybe even mid '80s. No
5 one's really clear on exactly when that occurred.
6 Those records were all moved to Greensboro. And for
7 a time, the Greensboro office maintained a certain
8 number of years of policy records in paper form.

9 Ultimately, as the documents aged, they
10 would send the most aged off to Harrisburg, because
11 they were outside the document retention criteria.
12 And they would then determine whether to destroy them
13 or preserve them, based on that criteria.

14 The -- ultimately, in the early 2000s we
15 went to a document imaging system. None of the old
16 records were imaged. They have just been retained in
17 paper form or microfiche. And slowly over time, as
18 they age out, they are then, according to the
19 document retention criteria, they are either
20 preserved or destroyed.

21 The records that went from North Carolina
22 with the combined South Carolina records are all now
23 and have been for a number of years retained in
24 Harrisburg.

25 BY MR. NES:

1 Q. Earlier, I believe you testified that a
2 national search for documents wasn't conducted, based
3 on the underwriting office not being North Carolina
4 or South Carolina; is that right?

5 A. The document --

6 MR. YNTEMA: Objection to the form.

7 BY MR. NES:

8 Q. Well, strike that. Let me reask it.
9 Earlier, I believe you testified that
10 you -- that Penn National did not conduct a national
11 search for its policies because that wouldn't be
12 necessary. Did I understand that correctly?

13 A. The Covil risk -- well, let me back up.

14 In searching for a name electronically, it
15 would determine if there is a Covil name out there
16 anywhere in the company. Because of the age of the
17 documents, the -- the name doesn't appear.

18 So we could have a Covil name here, and we
19 could have a Covil name in New Jersey, but we didn't
20 have any policy numbers that were provided that
21 corresponded with the coverage sheet that was
22 included in the subpoena.

23 The coverage documents we found were in
24 the North Carolina archived documents. We found no
25 record of Covil anywhere else or anything that would

1 lead us to look anywhere else, but we did search the
2 North Carolina underwriting, which includes South
3 Carolina records, to see if there were any other
4 policies issued to Covil, and there were not.

5 The -- since we only categorize by policy
6 number and by the principal named insured, the first
7 one named on the policy, there was -- we would
8 never -- an office -- another underwriting office
9 would not underwrite the South Carolina risk, they
10 would refer it to North Carolina. That's where the
11 risk needs to be underwritten from because of the
12 risk's location. So there was not a search in every
13 paper file for every underwriting office looking to
14 see if Covil was there.

15 Q. And when you say the risk to -- the risk
16 that was underwritten, you're referring to what
17 specifically?

18 A. Covil is the risk that was underwritten
19 and provided a policy.

20 Q. And because Covil was the name -- because
21 Covil was the insured, you are saying the risk was
22 South Carolina, correct?

23 A. Covil was located in South Carolina, so it
24 would be the responsibility of that appropriate
25 underwriting office to underwrite the risk, to

1 consider it for a policy, and they did.

2 Q. If there was a named insured from another
3 state that was the first name insured, if that named
4 insured was from a different state than Covil, it
5 would be the first named insured who determines where
6 the risk was for underwriting purposes, correct?

7 MR. YNTEMA: Objection to form. You can
8 answer, if you can.

9 THE WITNESS: Yeah, I'm trying to figure
10 out the question.

11 BY MR. NES:

12 Q. I'll state it a little differently. I
13 don't think -- I don't mean it to be a trick
14 question.

15 Let's assume that there's a corporation in
16 Florida that has Covil as an additional insured and
17 it has a Penn National policy underwritten by it.
18 The policy would be in the Florida underwriting
19 files, not the South Carolina files, right?

20 A. Yes, that's how it would work.

21 Q. So for purposes of searching for
22 responsive documents for Covil in response to Covil's
23 subpoena, you didn't check any underwriting files
24 other than North Carolina underwriting files; is that
25 right?

1 A. The subpoena on its face says any and all
2 documents related to topic in Exhibit A. Please see
3 Exhibit B and C for further instructions.

4 Q. I'm not -- I'm not talking about the
5 Exhibit 1 subpoena right now. I'm talking about --

6 A. You just asked about the subpoena.

7 Q. No, I'm asking about the document response
8 to Covil. Remember, we were looking at Exhibit 2,
9 for example.

10 A. All right.

11 Q. Exhibit 2, page 6. Request number 2
12 simply says, "All insurance policies of any type that
13 you issued to Covil or which otherwise include Covil
14 as an insured."

15 A. Right. And counsel provided objections to
16 the extent of that request and we provided the
17 requisite liability policy that would be responsive
18 to the claim that was presented in the issue of that
19 litigation, which is the coverage litigation between
20 Covil and Penn National.

21 Q. Mr. Wright, my question was simply, I'm
22 trying to understand what Penn National searched and
23 what they didn't.

24 My question is simply, Penn National did
25 not search for underwriting files, other than the

1 North Carolina underwriting file; is that correct?

2 MR. YNTEMA: Objection to the extent this
3 has been asked and answered on several occasions.
4 We -- we also preserve any objections that we stated.
5 And we also, to focus, one of the objections is the
6 only type of insurance policy relevant to the claims
7 defenses asserted in this action, would be liability
8 insurance policies. This is all just a totally
9 separate action outside of the Finch case, but
10 I'll -- I'll allow Boyd to answer that question to
11 the extent he can.

12 THE WITNESS: I know that the North
13 Carolina records were searched, because we were able
14 to turn up the policies that were listed on the
15 coverage chart.

16 BY MR. NES:

17 Q. Right. And you told me --

18 A. I did not --

19 Q. You mentioned --

20 A. Let me -- just let me finish my answer.

21 Q. I'm sorry.

22 A. Let me --

23 Q. Excuse me. One of the problems of having
24 a phone deposition -- which we didn't want to have,
25 but we are doing for you -- is that it's hard to know

1 when you've finished. So I apologize. I didn't
2 realize you weren't finished. Please continue.

3 A. Well, I'm certain that you've got a lot
4 more experience with a phone deposition than I. But
5 I am not aware that a search for -- through the
6 entire company records occurred. But I do know that
7 electronically there was no hit, as it were, on
8 Covil's name that would lead us anywhere else except
9 to the policies we were able to locate.

10 Q. How many searches for Covil policies has
11 Penn National been requested to conduct?

12 A. I know we've conducted two searches. One
13 was a subpoena received and one when we got involved
14 in the Covil versus Penn National coverage action.

15 Q. And were there any differences between
16 either of those two searches or was it an identical
17 search done twice?

18 A. The structure of the search would have
19 been the same. There was no alteration on my part.
20 And so I -- I'm of the mind that the search occurred
21 the same way both times.

22 Q. Are you aware of any documents or
23 categories of documents that were searched in one
24 search, but not the other?

25 A. No.

1 MR. YNTEMA: Objection, asked and
2 answered. Go ahead.

3 THE WITNESS: No.

4 MR. NES: Thank you for your time today,
5 Mr. Wright. I don't have any further questions, at
6 this time. I'll pass the witness.

7 MR. YNTEMA: This is Brady again. I
8 just -- for the record, if other folks have
9 questions, we would deem those questions to be
10 limited to the three topics that were agreed to by
11 receiver's counsel and Penn National's counsel prior
12 to today, which has been previously stated in this
13 deposition.

14 ALL COUNSEL: (No response.)

15 MR. NES: No further questions. Brady, do
16 you have any questions? You're next up.

17 MR. YNTEMA: I do not.

18 Does anyone else have any questions?

19 ALL COUNSEL: (No response.)

20 MR. YNTEMA: All right. Hearing none, I
21 think the deposition is concluded.

22 (The witness, after having been advised of
23 his right to read and sign the transcript, does not
24 waive that right.)

25 (Deposition was concluded at 12:01 p.m.)

CERTIFICATE OF REPORTER

I, MARY K. STEPP, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 10th day of January, 2021, at Campobello, Spartanburg County, South Carolina.



Mary K. Stepp, Notary Public
My Commission Expires:
March 1, 2028

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REQUESTED INFORMATION
(No information requested.)

E X H I B I T S

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1 Brady A. Yntema

2 byntema@goldbergsegalla.com

3 January 11, 2021

4 RE: Finch, Ann v. Sentry Casualty Company, Et Al.

5 1/7/2021, Boyd Wright - Penn National 30(b)(6) (#4393930)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15
16

17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,
23 Veritext Legal Solutions
24
25

Finch, Ann v. Sentry Casualty Company, Et Al.
Boyd Wright - Penn National 30(b)(6) (#4393930)

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Boyd Wright - Penn National 30(b)(6) Date

1 1 Finch, Ann v. Sentry Casualty Company, Et Al.

2 2 Boyd Wright - Penn National 30(b)(6) (#4393930)

3 3 ACKNOWLEDGEMENT OF DEPONENT

4 4 I, Boyd Wright - Penn National 30(b)(6), do hereby declare
that I

5 5 have read the foregoing transcript, I have made any
6 6 corrections, additions, or changes I deemed necessary as
7 7 noted above to be appended hereto, and that the same is
8 8 a true, correct and complete transcript of the testimony
9 9 given by me.

10 0

11 1 _____

12 2 Boyd Wright - Penn National 30(b)(6) Date

13 3 *If notary is required

14 4 SUBSCRIBED AND SWORN TO BEFORE ME THIS

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Deposition of:
Brent Reifsnyder

August 3, 2021

In the Matter of:
**Covil Corporation Vs. Pennsylvania
National Mutual Insurance Et Al**

PLAINTIFF'S
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

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

vs.

C/A NO. 2020-CP-40-02098

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

Defendants.

VIDEOTAPE

VIDEOCONFERENCE

DEPOSITION OF: BRENT REIFSNYDER

DATE: August 3, 2021

TIME: 10:05 a.m.

LOCATION: 2 North 2nd Street
Harrisburg, PA

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: ERIC S. GLAZIER, Court Reporter

APPEARANCES OF COUNSEL VIA VIDEOCONFERENCE:

ATTORNEYS FOR THE PLAINTIFF:

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ATTORNEYS FOR THE DEFENDANTS:

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BY: BRADY A. YNTEMA

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ALSO PRESENT VIA VIDEOCONFERENCE:

TIFFANY GUZZI, Paralegal

ALAN METTS, Legal Videographer

(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

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VIDEOGRAPHER: I, Alan Metts, hereby affirm that I am familiar with the provisions of Rule 30(h) of the South Carolina Rules of Civil Procedure pertaining to videotaped depositions and will ensure that the videotaping of this deposition is done in compliance with the provisions of Rule 30(h) and in an impartial manner.

Good morning. We're going on the record at 10:05 a.m. on August 3rd, 2021. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video-recorded deposition of Grant (sic) Reifsnyder, taken by counsel for the plaintiff in the matter of Covil Corporation, by and through its duly appointed receiver, Peter D. Protopapas, plaintiff, versus Pennsylvania National Mutual Casualty Insurance Company, et al, defendants, filed in the Court of Common Pleas for the Fifth Judicial Circuit, State of South Carolina, County of Richland, Civil Action Number 2020-CP-40-02098. This deposition is being held remotely and the witness is located at 2 North 2nd Street,

1 Harrisburg, Pennsylvania.

2 My name is Alan Metts, from the firm,
3 A. William Roberts, Jr. and Associates, a Veritext
4 company, and I am the videographer. The court
5 reporter is Eric Glazier, from the firm, A. William
6 Roberts, Jr. and Associates, a Veritext company.
7 I'm not related to any party in this action nor am
8 I financially interested in the outcome.

9 Will counsel now please state your
10 appearances and affiliations, after which the court
11 reporter may swear in the witness.

12 MR. NES: Brad Nes, for the receiver
13 for Covil Corporation.

14 MR. JONES: Christopher Jones, for the
15 receiver for Covil Corporation.

16 MR. YNTEMA: Brady Yntema, for Penn
17 National.

18 MR. HARRIS: And David Harris, for Penn
19 National.

20 BRENT REIFSNYDER,
21 being first duly sworn, testified as follows:

22 EXAMINATION

23 BY MR. NES:

24 Q. Good morning, Mr. Reifsnyder. My name
25 is Brad Nes, and I'm an attorney with Morgan Lewis,

1 representing the receiver for Covil Corporation.

2 I assume that you have been told how
3 the deposition will proceed today, but just so that
4 we're all on the same page, I will be asking you
5 questions, and my questions and your answers will
6 be taken down by the court reporter and the
7 videographer. So if you can, do your best to wait
8 for me to finish my question before you start your
9 answer, and I will do the same in waiting for you
10 to finish your answer before I start my question to
11 make this go as smoothly as possible.

12 Is that okay with you?

13 A. Yeah, that's perfectly fine.

14 Q. Have you ever been deposed before?

15 A. No, I have not.

16 Q. Okay.

17 If at any time during the deposition
18 you need a break for any reason, please let me
19 know, and we can go off the record for you to
20 either take a break or consult with your lawyers as
21 needed on attorney-client privilege issues, as long
22 as there is not a question pending. If there's a
23 question pending, you can take a break for
24 attorney-client privilege issues. Otherwise, I'm
25 going to need an answer before we take a break.

1 Is that okay?

2 A. Yes.

3 Q. Is there any reason preventing you from
4 giving full and accurate testimony today?

5 A. No.

6 Q. Are you under any medications currently
7 that would impair your testimony in any way?

8 A. I'm a diabetic. Other than that, no.

9 Q. Have you -- tell me what you've done to
10 prepare for your deposition today.

11 A. Met with counsel. We just reviewed
12 the --

13 MR. YNTEMA: Objection to what we
14 reviewed, if that's okay. Thank you.

15 BY MR. NES:

16 Q. You met with counsel. Did you meet
17 with anyone else in preparation for your deposition
18 today?

19 A. No.

20 Q. And when you say you met with counsel,
21 who specifically did you meet with?

22 A. Brady.

23 Q. And that's Brady Yntema, who's counsel
24 of record for Penn National?

25 A. Yes, sir.

1 Q. I'm sorry. Say that again?

2 A. Yes, sir. I'm sorry.

3 Q. Did you meet with anyone else?

4 A. No, not at all.

5 Q. How long did your -- or how many times
6 did you meet with Mr. Yntema?

7 A. We met yesterday. We've chatted for
8 other things during the past few weeks.

9 Q. How long did you meet yesterday?

10 A. About two and a half hours, if I
11 remember correctly.

12 Q. Did you review any documents?

13 A. We looked at some of the attachments
14 that were sent by your firm.

15 Q. Did you review any documents that were
16 not sent by our firm?

17 A. No.

18 Q. You mentioned that you spoke with
19 counsel more than once to prepare for your
20 deposition; did I hear that correctly?

21 A. No, you did not. I spoke with --

22 Q. So the only -- I'm sorry. Say that
23 again?

24 A. I spoke yesterday in preparation for
25 the deposition.

1 Q. So other than yesterday, you didn't
2 speak with counsel to prepare for the deposition at
3 any other times?

4 A. No, sir.

5 Q. And other than counsel for Penn
6 National, just to make sure I'm understanding you
7 clearly, you didn't speak with anyone else to
8 prepare for your deposition today, correct?

9 A. That is correct.

10 Q. When did you first learn that you were
11 going to be deposed in this case?

12 A. I believe it was last week.

13 Q. Other than the documents that you've
14 already mentioned and counsel for Penn National,
15 did you do anything else to prepare for your
16 deposition today?

17 A. No, sir.

18 Q. I'd like to take a step back and talk a
19 little bit about your background at Penn National.

20 When did you start working at Penn
21 National Mutual Casualty Insurance Company?

22 A. April of 1992.

23 Q. Do you have a college degree?

24 A. Yes, sir.

25 Q. Where did you go to college?

1 A. I have four college degrees, sir.

2 Q. Where did you go to college first?

3 A. Okay. First I was with Community
4 College of the Air Force, Wilmington College in New
5 Castle, Delaware. And then I have two degrees
6 through the community college -- or excuse me --
7 through California Coast University, which is an
8 external degree program.

9 Q. When was the last college degree you
10 received?

11 A. 2001.

12 Q. Prior to working for Penn National in
13 April 1992, were you employed with any other
14 insurance company?

15 A. No, sir.

16 Q. What was your first position at Penn
17 National starting in April of 1992?

18 A. Chief of security.

19 Q. And what were your job responsibilities
20 as chief of security?

21 A. Managing security for the company,
22 physical security.

23 Q. Is that -- I'm sorry. Say that again?

24 A. Physical security.

25 Q. And when you say, physical security,

1 what do you mean by that?

2 A. Everything not IT-related, so
3 protection of property, assets.

4 Q. Where were you located when you started
5 as chief of security in April 1992?

6 A. Our office was still in Harrisburg, but
7 it was at 1900 Dairy Street.

8 Q. How long were you chief of security?

9 A. If I recall, until about September of
10 1994.

11 Q. What position did you transition to in
12 September 1994?

13 A. I became the analyst for the division
14 I'm still in, which is now called corporate
15 services, but then it was administrative services.

16 Q. I'm sorry. And you said your position
17 title was analyst?

18 A. Analyst, yes, sir, business -- like a
19 business analyst.

20 Q. What caused you to move from chief of
21 security to analyst in September of 1994?

22 A. Our organization was moving its
23 corporate headquarters. The need for us to review
24 all our -- how we were doing things and what we
25 were going to be doing in a new facility needed to

1 be reviewed. This position was created, and I
2 moved into it.

3 Q. What were your job responsibilities as
4 an analyst?

5 A. A little bit more than your normal
6 analyst in that I was reviewing opportunities, ways
7 to do things differently. We were moving from a
8 campus style layout, three different buildings plus
9 a lot of outbuildings, into a mid-rise tower. So
10 we literally were moving everything from -- and we
11 were building that tower as well.

12 So anything that had to deal with that
13 was in my -- in my purview.

14 Q. How long did you hold the position of
15 analyst?

16 A. That I believe I was in until 1997, I
17 believe.

18 Q. In your role as an analyst, did you
19 have any responsibilities for document organization
20 or management?

21 A. Technically, no. However, I was
22 responsible for coordinating the movement of our --
23 of our files from the existing locations, and we
24 established our own corporate warehousing location.

25 Q. Did you have any role in determining

1 how that design took place in terms of how the
2 documents would be managed in this new format?

3 A. No.

4 Q. Do you recall who had responsibility
5 for designing the way in which documents would be
6 managed or transitioned at that time?

7 A. Can I have a clarification on what
8 that -- what you mean by that, how they are going
9 to be managed?

10 Q. Sure. Let's talk about indexing, how
11 documents would be indexed, first of all.

12 A. Those were already established many
13 years before I ever showed up at Penn National.

14 Q. You mentioned that you had
15 responsibility for coordinating the movement of
16 files; did I hear that right?

17 A. Inasmuch as we found a -- a location,
18 we acquired shelving, and then we instructed people
19 to move the records from where they were to where
20 they're going to be.

21 Q. So in terms of coordinating the
22 movement of the files, you were not responsible for
23 changing the way in which they were filed, just the
24 physical location of the files; is that a
25 fair summary?

1 A. That's a fair assessment.

2 Q. So starting in 1997, what was your job
3 responsibility -- or what was your job title?

4 A. Then I took over as the manager of
5 mail, document, and infrastructure in the same
6 division, the one I'm in now, corporate services.

7 Q. What were your job responsibilities as
8 a manager for the mail, document, and
9 infrastructure?

10 A. In essence, that's when I became
11 responsible for the warehouse itself, processing
12 requests, outbound mail, inbound mail. I also
13 managed all the things that I had previously
14 managed previously, plus not necessarily security,
15 but I had involvement with it.

16 Q. Where was --

17 A. (Inaudible.) Sorry.

18 Q. Where was the new -- where was the new
19 location for this warehouse in 1997?

20 A. It -- it was in Lemoyne, Pennsylvania.
21 I don't remember the exact address at this point in
22 time. It was approximately, I don't know, two
23 miles from our headquarters building.

24 Q. How long did you stay in the position
25 of the manager for mail, documents, and

1 infrastructure?

2 A. I believe that was 2005.

3 Q. And other than the responsibilities
4 you've talked about so far, did you have any other
5 responsibilities between '97 and 2005 in that role
6 as manager?

7 A. Some of the things I still do today. I
8 manage business continuity. I was getting -- I was
9 involved with our corporate facilities end. I also
10 managed our corporate -- our budget for our
11 division.

12 Q. When you say, business continuity, what
13 do you mean by that?

14 A. Preparation for in the event we have
15 something like a pandemic or a loss of -- loss of
16 whatever, you know, a -- a business shutdown, for
17 lack of a better word.

18 Q. When you say, corporate facilities,
19 what do you mean by that?

20 A. Corporate facilities means being
21 involved with our corporate headquarters facility
22 and also being involved with our regional office
23 locations that we lease.

24 Q. Starting in 2005, did you have a new
25 position title?

1 A. Yes. That's when I became the director
2 of the division.

3 Q. And how did your job responsibilities
4 change when you became director of division?

5 A. Then I became directly responsible for
6 all corporate real estate. I'm actually the
7 landlord as well for the corporate headquarters.
8 We act as a landlord. We act as a tenant in our
9 regional offices. So I do all that interaction. I
10 manage our corporate purchasing function. I manage
11 our corporate fleet. I'm involved in our corporate
12 safety committee as a cochair. I actively work
13 closely with our IT division on facilities-related
14 items that they may want to do.

15 Q. Any other job responsibilities?

16 A. And I've been managing as records
17 reten- -- I can't even say it -- the custodian of
18 records, yes. Sorry.

19 Q. Do you supervise any employees?

20 A. Yes, I do.

21 Q. How many employees do you supervise?

22 A. Directly, I have five direct reports.

23 Q. Are any of your direct reports -- do
24 they handle custodian of records duties as well?

25 A. They may look things up, yes.

1 Q. When you say, they may look things up,
2 what do you mean by that?

3 A. If somebody requests a policy file or
4 other records that may be stored outside of policy
5 files, they would request it either by policy
6 number or by, in the case of, say, accounting
7 records, a box number. We will request that
8 information from the storage facility and provide
9 it; or if it is stored in a microfilm format or an
10 image -- older imaging format, we'll look it up and
11 provide that.

12 Q. You mentioned the storage facility.
13 What do you mean by, the storage facility?

14 A. At this time we had shut down -- a
15 while ago we had shut down our own warehouse
16 location, and we moved all our items that were
17 stored in that building to Iron Mountain.

18 Q. When did you move your hard copy paper
19 files to Iron Mountain?

20 A. I want to say 2009, 2010 time frame,
21 but I could be off. It's not sooner.

22 Q. Were you involved in the decision to
23 move documents to Iron Mountain?

24 A. Yes -- from -- from the perspective of
25 what made the most business sense, yes.

1 Q. And why did you decide -- or why did
2 Penn National decide, to the best of your
3 recollection, to move documents to Iron Mountain?

4 A. The documents that are stored at Iron
5 Mountain are older. They're very infrequently
6 requested. And from a storage perspective, it just
7 made more sense from a dollars and cents
8 perspective to move them to a less costly location.

9 Q. Were you involved in the transition of
10 documents to Iron Mountain, the actual physical
11 transition of documents to Iron Mountain?

12 A. Picking them up and putting them down?
13 Is that the question?

14 Q. No. I'll ask a -- a clearer question.

15 A. Thank you.

16 Q. In deciding to move documents to Iron
17 Mountain -- Iron Mountain has a way in which it
18 catalogs documents; is that correct?

19 A. I understand what you're asking. So in
20 this case, Iron Mountain accepted our boxes from
21 us. They did not catalog the contents therein.
22 They just simply took our boxes based off of a
23 descriptor that was put on the label. So it could
24 be Box 25 and -- and not a lot of data. Okay?

25 Q. So who made the decision or decisions

1 as to how to label boxes that were transitioned to
2 Iron Mountain?

3 A. Back to the original statement, the
4 divisions -- the owners of those files had boxed
5 them up many, many years ago, or continually
6 through the time. They determined how the boxes
7 were labeled. We just took that information in
8 briefest of format.

9 Q. So your division, administrative
10 services, for which you are the director, do you
11 determine what the labels will be on the boxes or
12 how they're categorized?

13 A. We take the information from the label
14 that's provided by the person storing the box. And
15 this is older records, now. So if it said,
16 Box 123, and brief information, that's what we
17 would record, because there's only so many
18 characters that can be recorded on an Iron Mountain
19 label. And that's only just what the box would be.

20 Q. Is there an index maintained by Penn
21 National of the documents that were sent to Iron
22 Mountain?

23 A. Yes.

24 Q. For documents that are policy
25 documents, how are those policy documents indexed?

1 A. By policy number. So that's how
2 they're recorded. They are found by a terminal
3 digit numbering sequence.

4 Q. For documents that are not specifically
5 insurance policies, but other documents, how are
6 those documents indexed at Iron Mountain?

7 A. So again, they're stored -- if they
8 were -- if it was an accounting box, for an
9 example, I do not put the contents in the box. I
10 do not label the box. Whoever owns the box keeps
11 track of what's in it. They tell me it's Box 123,
12 accounting records, and that's what we record in
13 our database, and that's what's put on the label.

14 Q. Is there a master index that can be
15 referenced that indexes the information in all of
16 the boxes at Iron Mountain in some way?

17 A. There is a database that is maintained
18 that we built, my division. Policy records are
19 maintained only by policy number, policy number
20 only. If there are accounting records, then
21 there's a brief description of what was provided.
22 The owner of the box is responsible for making sure
23 that they know what the contents are.

24 Q. Why is it that your department decided
25 to use policy number only as the mechanism for

1 searching policies?

2 A. That's how the organization maintains
3 all its policy records, by policy number. We
4 didn't make the decision. It's just that policies
5 are stored by policy number. Just like you have a
6 social security number, that's how you're
7 recognized by the US government.

8 Q. You mentioned also accounting records.
9 What do you mean by, accounting records?

10 A. Whatever our financial division may be
11 required to maintain.

12 Q. Other than policy documents and
13 accounting records, what other categories of
14 records are currently housed at Iron Mountain?

15 A. That's predominantly it, from my
16 recollection. There may be some assorted others,
17 but off the top of my head.

18 Q. In responding to the subpoena that was
19 served by the receiver for Covil Corporation on
20 Penn National, did -- were you asked to identify
21 any other categories of documents that were
22 searchable other than the policy documents?

23 MR. YNTEMA: Objection to form as to
24 any other categories.

25 Mr. Reifsnyder, you can answer it if

1 you can.

2 A. I'm not certain I'm clear on the
3 question.

4 MR. NES: Okay. I will this time
5 restate my question. But, Counsel, I will remind
6 you that under the South Carolina rules, all you
7 can do is objection to form, so I would ask that
8 you please refrain from any other narrative in your
9 objection.

10 BY MR. NES:

11 Q. Mr. Reifsnyder, you mentioned so far
12 policy documents and accounting records.

13 Are there any other categories of
14 records other than policy documents and accounting
15 records at Iron Mountain?

16 A. Pardon my pause.

17 We have a subsidiary company. They
18 have old claim files for their clients. There's
19 not a lot else out there except policy-related or
20 bond-related files.

21 Q. If someone wanted to search the
22 accounting records, how does one search accounting
23 records?

24 A. They would coordinate with accounting,
25 who owns the records.

1 Q. Have you ever --

2 A. And the only -- excuse me. Go ahead.

3 Q. Have you ever been asked to search
4 accounting records?

5 A. No, never.

6 Q. Have you ever been asked to search for
7 a record other than by policy number or accounting
8 records?

9 A. No. Policy number is it. No policy
10 number, no record.

11 Q. You were involved in responding to the
12 subpoena from Covil Corporation to Penn National;
13 is that correct?

14 A. The one that I'm currently deposed for?

15 Q. Yes.

16 A. Yes.

17 Q. When did you first become involved in
18 searching for documents responsive to the subpoena
19 served by Covil Corporation?

20 A. I don't remember the date.

21 Q. Would it have been before February of
22 2021?

23 A. I don't remember Covil. I remember
24 policy numbers. So if something occurred prior to
25 February and it was Covil-related, I wouldn't

1 remember.

2 Q. What is the first thing you remember
3 getting involved with in terms of the Covil
4 searches?

5 A. Covil -- let me clarify. When somebody
6 asks for a record, they say, I'm looking for Policy
7 Number X. They do not provide to me, necessarily,
8 that this is regarding a litigation, a subpoena, or
9 whatever, because that has no bearing on the
10 ability to search for a record by policy number. I
11 just need a policy number.

12 So if somebody said -- if you said to
13 me, Brent, I need -- or Mr. Reifsnyder, however you
14 want to address me -- I need a policy -- I need a
15 policy for this company, that means nothing to me.
16 My response is, I need a policy number.

17 Q. So sitting here today, you don't recall
18 when you were first asked to identify policies that
19 were potentially covering Covil Corporation; is
20 that a fair statement?

21 A. That would be a fair statement, that I
22 don't recall it, yes.

23 Q. I'd like to show you first a document
24 which was sent to us, the receiver for Covil
25 Corporation, on July 9, 2021. It's a letter

1 attaching an affidavit of yours.

2 A. Okay.

3 Q. I'll pull that up on the screen and let
4 you take a look at it.

5 A. That's fine.

6 Q. This is the affidavit -- the first --
7 the cover page is a cover letter from Penn
8 National's counsel, and it's attaching what I
9 understand is your affidavit.

10 If you'd like to scroll through this
11 document to confirm that that is, in fact, your
12 affidavit, we can give you control or Ms. Guzzi can
13 go through it for you, however you feel most
14 comfortable.

15 A. No, that's my affidavit.

16 Q. If we could scroll to the last page.

17 A. There you go. Yep, that's my
18 affidavit. That's my signature.

19 MR. NES: And, Tiffany, if we could go
20 to Paragraph 20, just at the very end.

21 Q. And that is your signature on Page 5,
22 Mr. Reifsnyder?

23 A. Yes. I had indicated as such, yes.

24 Q. Okay. Let's turn to the first page of
25 your affidavit.

1 COURT REPORTER: This is the court
2 reporter. Is this being marked as an exhibit?

3 MR. NES: Yes. This will be marked as
4 Exhibit 1.

5 COURT REPORTER: Thank you.

6 (EXHIBIT 1, 7/9/2021 AFFIDAVIT OF BRENT
7 REIFSNYDER, was marked for identification.)

8 BY MR. NES:

9 Q. I'd like to turn to Paragraph 3 in
10 particular. It states, quote, I am currently, and
11 was at all times relevant herein, employed by
12 Pennsylvania National Mutual Casualty Insurance
13 Company, Penn National, as director of
14 administrative services, in which capacity I have
15 been involved with Penn National's investigation
16 and search for the documents requested by the
17 subpoena deuces tecum issued on February 8, 2021 on
18 behalf of the receiver for Covil Corporation in
19 this action, receiver's subpoena.

20 Do you see that?

21 A. I see that.

22 Q. And so when you signed your affidavit
23 with respect to Paragraph 3, you were acknowledging
24 that you were responding to -- or involved in the
25 response to the subpoena dated February 8, 2021,

1 correct?

2 A. Got you. Yes.

3 Q. Did you actually draft this affidavit
4 or did someone else draft this affidavit for you?

5 A. I did not draft this affidavit. I
6 worked with counsel.

7 Q. I'd like to turn your attention to the
8 next sentence in Paragraph 3. It says, quote, Boyd
9 Wright, senior home office claim examiner for Penn
10 National, coordinated Penn National's investigation
11 for the documents requested by the receiver's
12 subpoena.

13 Do you see that?

14 A. Yes. Yes.

15 Q. Who is Boyd Wright?

16 A. He's a senior home office claims
17 examiner.

18 Q. And when did Mr. Wright first contact
19 you regarding responding to the receiver's
20 subpoena?

21 A. You're asking me to bring up dates that
22 I do not recall off the top of my head. Did he
23 contact me? Yes. When? I do not recall.

24 Q. In your affidavit, you say that he
25 coordinated Penn National's investigation for

1 documents.

2 What did you mean by the fact that he
3 coordinated the investigation?

4 A. That Boyd would have looked up policy
5 data, is my -- he's the one responsible for
6 providing me policy number data to look up. If he
7 said, I need this policy number, then I looked for
8 that policy number.

9 Q. Other than looking for policy numbers
10 that Mr. Wright provided you, what other role, if
11 any, did you have in looking for responsive
12 documents or information?

13 A. I look up a policy number. That's all
14 I can do.

15 Q. And that's my question, is other than
16 looking up the policy number, did you do anything
17 to look for responsive documents in Penn National's
18 archives?

19 A. There's no other way for me to look for
20 anything other than a policy number.

21 Q. So is that that you did not do anything
22 other than look up by policy number?

23 A. That's what I said. Yes, sir.

24 Q. I'd like to turn to Paragraph 4. It
25 states, I am aware of the Court's order on the

1 receiver for Covil Corporation's motion to compel
2 and supplemental motion to compel against
3 Pennsylvania National Mutual Casualty Insurance
4 Company filed on July 1, 2021, which ordered Penn
5 National's description of how it maintains its
6 paper records, including physical locations where
7 Penn National's paper records are kept, the
8 identities of the persons responsible for those
9 records, the years and locations of the records
10 maintained, the categories of policies maintained,
11 and the manner in which those records are stored
12 and organized.

13 Do you see that?

14 A. Yes, sir.

15 Q. And I'd like to at this point pull up
16 another exhibit, which will be marked as Exhibit 2.
17 This is the order on the receiver for Covil
18 Corporation's motion to compel and supplemental
19 motion to compel against Pennsylvania National
20 Mutual Casualty Insurance Company, filed on July 1,
21 2021.

1 (EXHIBIT 2, ORDER ON THE RECEIVER FOR
2 COVIL CORPORATION'S MOTION TO COMPEL AND
3 SUPPLEMENTAL MOTION TO COMPEL AGAINST PENNSYLVANIA
4 NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, was
5 marked for identification.)

6 BY MR. NES:

7 Q. Have you seen this document before?

8 A. More than likely, yes, I looked through
9 the documents that you guys provided Friday after
10 3:00. I looked at them on Monday.

11 Q. And is this the order that you're
12 referring to in Paragraph 4 when you say that
13 you're aware of the Court's order on the receiver
14 for Covil Corporation's motion to compel?

15 A. I believe that to be the case.

16 Q. I'd like to turn to Page 3 of this
17 order.

18 On Page 3 of this order, in the middle
19 of the page, there's a paragraph that starts, the
20 receiver complied. I'll -- I'll go ahead and read
21 it into the record.

22 It says, quote, the receiver complied
23 with this Court's instructions, issuing and serving
24 a new subpoena on Penn National on February 8,
25 2021, which sought production of the following

1 information:

2 One, all insurance policies of any type
3 that Penn National issued to Covil Corporation or
4 that include Covil Corporation as an additional
5 insured, including policies that identify the
6 following entities as the named insured or as an
7 additional insured: List of potential contractors.

8 Number two, all certificates of
9 insurance or other documents evidencing any
10 insurance coverage that Penn National provided to
11 Covil Corporation, including certificates of
12 insurance or documents that identify or concern the
13 following entities: List of potential job sites.

14 And number three, all documents that
15 relate to the steps taken by Penn National to
16 locate information and documents responsive to
17 these requests.

18 Do you see that?

19 A. Yes, sir.

20 Q. Before preparing for your deposition
21 yesterday, had you actually seen these requests
22 that were in the subpoena or listed in the Court's
23 order on the motion to compel? Had you actually
24 seen these specific requests?

25 A. I don't recall that I did. I don't

1 recall that I didn't.

2 Q. Let's look at first request number one,
3 all insurance policies of any type that Penn
4 National issued to Covil Corporation or that
5 include Covil Corporation as an additional insured.

6 What steps do you recall taking to
7 locate documents that were issued to Covil
8 Corporation?

9 A. Steps that I would take that were
10 issued to Covil. Again, I need to be provided a
11 policy number. I do not have access to any systems
12 or technology that allows me to look up anything
13 related to Covil. Alls I have is the ability to
14 look up a policy number in our database to see
15 where it may be located in a box or in microfilm.
16 Then I go to that location, I take out what policy
17 number which has been requested, and I provide
18 that. I cannot physically look up anything related
19 to Covil. I do not have access to any of those
20 systems.

21 Q. And I appreciate that.

22 My question is slightly different, and
23 that is, what do you recall doing specifically to
24 find documents responsive to this request number
25 one?

1 A. I wouldn't have done anything looking
2 for anything related to Covil without a policy
3 number.

4 Q. And do you recall -- strike that.
5 It's your understanding that Mr. Wright
6 led the investigation for Covil -- or for the
7 documents responsive to Covil Corporation; is that
8 right?

9 A. That is my understanding.

10 Q. Did you ever speak with Mr. Wright
11 about his specific searches?

12 A. Again, Mr. Wright would just send me an
13 email and say, look for this policy number, and
14 that's what I would do.

15 Q. Do you recall Mr. Wright specifically
16 sending you an email regarding this February 2021
17 subpoena or is that generally just the process that
18 happens?

19 A. That's the process that happens.

20 Q. But you don't recall sitting here today
21 specifically any specific email that you got from
22 Mr. Wright about this particular case?

23 A. Not this particular case. You've got
24 to keep in mind, Mr. Wright works on other cases as
25 well. So he could send me an email with policy

1 information saying, I'm looking for this policy
2 number; I look and see, and respond back. The only
3 relevance to me is policy number.

4 Q. Do you recall Mr. Wright sending you
5 any type of email or otherwise requesting for you
6 to do any type of search for Covil documents other
7 than by policy number?

8 A. No. He would -- Mr. Wright knows that
9 I need a policy number; there's no other way for me
10 to search other than policy number. He may have
11 asked me -- he may have asked me, can I search for
12 it in any other way from a clarification
13 perspective. He's done that on multiple occasions
14 throughout the years. The reality of it is, I can
15 only search on policy number.

16 Q. So other than searching by policy
17 number, you don't recall doing any additional
18 searches for policies that may cover Covil
19 Corporation as either a named insured or an
20 additional insured; is that correct?

21 MR. YNTEMA: Objection to form.

22 Q. I'm sorry. I didn't hear your answer.
23 Could you...

24 A. I think Brady offered something.

25 MR. YNTEMA: I'm sorry. I just said,

1 objection to form, Mr. Reifsnyder. You can answer
2 if you can. Thank you.

3 A. No, I wouldn't have, because it's not
4 possible for me to look up things in any other
5 format.

6 Q. I'd like to turn back to Exhibit 1,
7 which is your July 9, 2021 affidavit in this case.
8 I'd like to turn to paragraph -- back to
9 Paragraph 4, where you're outlining what the Court
10 has ordered in terms of describing Penn National's
11 paper records.

12 In the middle of Paragraph 4, it says,
13 ordered Penn National's description of how it
14 maintains its paper records, including physical
15 locations where Penn National's paper records are
16 kept, the identities of persons responsible for
17 those records.

18 Let's stop there. Who is responsible
19 for Penn National's records?

20 A. So I'm responsible for the storage
21 location where they're located, and I am
22 responsible for retrieving those records, if
23 they're policy-related, by policy number.

24 Q. Are there any documents stored in
25 either microfilm or paper copy that are more than

1 just the actual copy of the insurance policy?

2 A. Again, what's in the file -- if it's an
3 underwriting file, it's an underwriting file.
4 What's in the contents of that file, I can't speak
5 to. It's under that policy number. Are there
6 microfilm records? Yes. What's in them in detail?
7 Underwriting files. The devil in the detail of it,
8 don't know.

9 Q. So let's take underwriting files as an
10 example.

11 An underwriting file may have
12 documentation in addition to a copy of the actual
13 policy, correct?

14 A. From the best of my knowledge, yes.

15 Q. But it's your understanding that the
16 way that Penn National organizes and indexes its
17 underwriting files, the only way you can find a
18 copy of that underwriting file is by policy number;
19 is that correct?

20 A. Correct. For those records in this
21 case, yes.

22 Q. So unless you have a copy of the actual
23 policy number, it's your understanding that you
24 couldn't actually locate a copy of that
25 underwriting file either in paper copy or

1 microfilm; is that right?

2 A. It's more than my understanding.

3 It's -- that's the way it works, yes.

4 Q. Can you find an underwriting file or a
5 hard copy paper file where the policyholder is
6 known, but not an actual policy number?

7 A. I cannot, no.

8 Q. I'd like to turn back to your affidavit
9 of July 9th, Exhibit 1. Paragraph 5 states, quote,
10 I am the person in charge of and responsible for
11 records that are archived or otherwise stored for
12 Penn National.

13 Do you see that?

14 A. Yep.

15 Q. I believe we -- you talked about this
16 earlier, but I just want to make sure I'm clear.

17 A. Sure.

18 Q. What role, if any, did you have in
19 designing the system for the way in which documents
20 are archived at Penn National?

21 A. None.

22 Q. Do you know who was responsible for
23 designing the system in which the documents are
24 archived or otherwise stored for Penn National?

25 A. How they originally decided terminal

1 digit? I don't know. I have no idea. And who,
2 when? Well before me ever showing up at Penn
3 National's doorstep.

4 Q. I'd like to look at Paragraph 6. It
5 says, quote, Penn National's archived
6 non-electronically stored documents consist of,
7 one, microfilm records, and two, paper records.

8 Do you see that?

9 A. Yes, sir.

10 Q. First, what role, if any, do you have
11 in retrieving electronically stored documents?

12 A. Electronically stored documents are
13 stored in the imaging system. I can look things up
14 by policy number.

15 Q. And is that one of your job
16 responsibilities, to locate electronically stored
17 documents as well as paper documents, or is there
18 another person responsible for retrieving
19 electronically stored documents?

20 A. For documents that are stored
21 electronically between 1992 and 1995 specifically,
22 I do that.

23 Q. For documents that are not between '92
24 and '95, who is responsible for retrieving those
25 archived documents?

1 A. Prior to nineteen --

2 MR. YNTEMA: Objection. Are those --
3 are you referring to electronically stored
4 documents?

5 MR. NES: Yes, electronically stored
6 documents.

7 MR. YNTEMA: Thank you, Mr. Nes.

8 A. That is through the image department.

9 BY MR. NES:

10 Q. When you say, microfilm records, in
11 Paragraph 6, what do you mean by, microfilm
12 records?

13 A. Imagine a 4-by-5 note card, but it has
14 a bunch of tiny little images of what was at one
15 time paper contained therein.

16 Q. And how are the microfilm records
17 indexed?

18 A. By policy number, terminal digit.

19 Q. Are there any other ways in which the
20 information on the microfilm records are indexed
21 other than by policy number?

22 A. No, sir. That is it, policy number.

23 Q. I'd like to turn to -- oh, I'm sorry.
24 Staying with Paragraph 6, you also
25 reference paper records. What do you mean by,

1 paper records?

2 A. In this case, it would be policy data.
3 The policy data is stored by policy number,
4 terminal digit.

5 Q. And policy data can include a copy of
6 the actual policy; is that right?

7 A. Yes, whatever -- whatever is under that
8 policy number, whatever they put in that file,
9 would be in that policy number. Whatever -- and,
10 they, is underwriting.

11 Q. Can policy data also include claims
12 handling files?

13 A. I have no idea. I do not do anything
14 with the underwriting files, unfortunately or
15 fortunately.

16 Q. Are you familiar with any difference
17 between an underwriting file and a claims handling
18 file?

19 A. Technically, no. I have no -- I have
20 no experience in that realm.

21 Q. I'd like to turn to Paragraph 8. The
22 first sentence says, Penn National's microfilm
23 records are stored in boxes identified by box
24 number; with respect to insurance policy documents,
25 such documents are stored on microfilm within the

1 microfilm boxes and are organized within each box
2 by using a terminal digit system.

3 Do you see that?

4 A. Correct. Yes.

5 Q. You used the phrase, with respect to
6 insurance policy documents. What do you mean by,
7 insurance policy documents?

8 A. Whatever would be related to that
9 insurance policy. I have no clue the devil in the
10 details of what's included in a policy. They're
11 insurance policy-related documents to me.

12 Q. I'd like to skip down to the last
13 sentence that starts on -- in Paragraph 8.

14 MR. NES: Will you go up a little bit,
15 Tiffany?

16 Thank you.

17 Q. It says, the policy number can be
18 manually searched within the microfilm boxes by
19 first locating the terminal number.

20 A. Right.

21 Q. What do you mean by, manually searched?

22 A. By human intervention, by my hands.

23 Q. Does that mean that someone, whether
24 it's you or someone else, physically goes to the
25 microfilm and pulls it off of a file to examine it?

1 A. What that means is that once I have a
2 policy number, I look at the last two digits. I go
3 to the box that has those last two digits -- this
4 is all in Exhibit A, by the way, of this
5 attachment. I look at the last two digits and then
6 the next two. I find the policy number for that
7 file. And then if I have it, then I have it, and I
8 can pull it and then make prints of it.

9 Q. And once you pull it, what does that
10 mean? What's the -- what's the system or process
11 for actually reviewing or examining microfilm once
12 you've found the right box?

13 A. Okay. Once I find the policy that's
14 been requested, I then take that piece of microfilm
15 to a microfilm reader/printer, and I print off each
16 page that's contained therein. I do not examine
17 it. I just provide the information based off the
18 policy number provided.

19 MR. NES: I think we've been going
20 about an hour. Why don't we take a five-minute
21 break.

22 THE WITNESS: Okay.

23 VIDEOGRAPHER: We are going off the
24 record. This is the end of Media Unit Number 1.
25 The time is 10:59 a.m.

1 (After a recess, proceedings were
2 continued as follows:)

3 VIDEOGRAPHER: We are back on the
4 record. This is the beginning of Media Unit Number
5 2. The time is 11:06 a.m.

6 MR. NES: If we could turn back to
7 Exhibit 1.

8 BY MR. NES:

9 Q. This is a copy of your July 9, 2021
10 affidavit.

11 MR. NES: And turn to Paragraph 11.

12 Q. The first sentence of Paragraph 11
13 says, quote, Penn National's archived paper policy
14 records are stored by Iron Mountain, an outside
15 document and information storage company, at its
16 facility located at 6 Lee Boulevard, Pennsylvania
17 19355.

18 Do you see that?

19 A. Yes, sir.

20 Q. Are there any other locations where
21 Penn National has archived paper policy records?

22 A. No, sir.

23 Q. And when you say, policy records,
24 again, what do you mean by that phrase?

25 A. Policy documents that would have, as

1 you had offered, decs or other underwriting
2 material therein.

3 Q. The next paragraph, Paragraph 12,
4 states, quote, any paper policy documents stored at
5 Iron Mountain's facility is stored by policy number
6 in the same sequence as stored on Penn National's
7 microfilm, the digital -- the terminal digit
8 system.

9 Do you see that?

10 A. Yes, sir.

11 Q. It is my understanding from your
12 earlier testimony that it's Penn National that
13 designed the system for how it would store
14 documents at Iron Mountain. Is that correct?

15 A. Yes, sir. Yes. Yeah, it's all by
16 policy number.

17 Q. I'd like to turn to Paragraph 14. It
18 says, quote, to obtain paper policy documents from
19 the Iron Mountain facility, Penn National must
20 submit a request to Iron Mountain, typically by
21 electronic communication, with the specific policy
22 numbers requested.

23 Do you see that?

24 A. Yes, sir.

25 Q. And again, this is a process that was

1 created by Penn National; is that correct?

2 A. It's the Iron Mountain process for
3 ordering. I can explain that if you would like.

4 Q. Please.

5 A. So if you were to say, I'm looking for
6 policy number whatever, then in our database, which
7 we've talked about previously, I would find out
8 which box it's located in by barcode number. I
9 send that request to Iron Mountain and say, please
10 provide me this policy number. Iron Mountain
11 people then go into that box, look for that policy
12 number, and then send it to us.

13 Q. So Iron Mountain will only find
14 documents that you specifically ask them to find by
15 box number; is that right?

16 A. They'll go to the bar code number on
17 the box, which is how Iron Mountain inventories
18 everything, and then from that, what we request.
19 Again, policy number if it's a policy file.

20 Q. Paragraph 16 says, policy documents
21 that are stored on microfilm or paper are only
22 searchable by policy number given that Penn
23 National has historically organized such documents
24 by using the terminal digit system.

25 Do you see that?

1 A. Yes, sir.

2 Q. Are you aware of any other way to
3 search for policy-related documents other than by
4 the policy number?

5 A. No.

6 Q. Have you ever been asked by anyone to
7 search for policy documents by any other way other
8 than policy number?

9 A. Have I been asked? I've been asked,
10 can I search any other way, just like you just
11 asked me. And the answer is, no, I need a policy
12 number.

13 Q. I'd like to turn back to Exhibit 2,
14 which was the Court's order on the motion to compel
15 that we talked about a little while ago --

16 A. Mm-hmm (affirmatively).

17 Q. -- specifically, paragraph -- I'm
18 sorry -- Page 3. We were looking at these requests
19 that Covil -- the receiver for Covil Corporation
20 issued to Penn National and that the Court was
21 addressing, specifically with respect to request
22 number one on Page 3. It has in brackets, list of
23 potential contractors.

24 Do you see that?

25 A. I see that.

1 Q. Were you ever provided a list of
2 potential contractors to search for with respect to
3 the Covil subpoena?

4 A. I was asked -- I remember this one. I
5 was asked if it was possible to search for
6 contractors, and my response was, I need a policy
7 number.

8 Q. Do you remember who made that request
9 to you?

10 A. Mr. Wright.

11 Q. Do you recall when that request came to
12 you?

13 A. It was this year. I don't remember
14 when.

15 Q. Do you recall whether that list -- or
16 that request was in writing or some other means?

17 A. I believe he called me.

18 Q. Did he actually provide you a copy of
19 the contractors list?

20 A. I don't recall receiving one. I did
21 see the list yesterday.

22 Q. Prior to yesterday do you recall seeing
23 the list?

24 A. I do not recall seeing it.

25 Q. I'd like to turn to request number two,

1 which is, all certificates of insurance or other
2 documents evidencing any insurance coverage that
3 Penn National provided to Covil Corporation,
4 including certificates of insurance or documents
5 that identify or concern the following entities,
6 and then in brackets it says, list of potential job
7 sites.

8 Do you see that?

9 A. Yes, sir.

10 Q. Do you recall receiving from Mr. Wright
11 or anyone else a list of potential job sites to
12 search?

13 A. Again, I think that was part of the
14 conversation I had with Mr. Wright. He said -- I
15 think he put both of those together. And the
16 answer is, again, no, I cannot; I need a policy
17 number.

18 Q. And in preparation for your deposition
19 yesterday did you actually see the list of
20 potential job sites?

21 A. I did click through and see that, yes.

22 Q. But prior to yesterday, do you recall
23 seeing the actual list of potential job sites?

24 A. I do not recall so, no.

25 MR. NES: I'd like to pull up what will

1 be marked as Exhibit 3.

2 (EXHIBIT 3, 7/23/2021 AFFIDAVIT OF
3 BRENT REIFSNYDER, was marked for identification.)
4 BY MR. NES:

5 Q. This is a copy of a letter that was
6 sent to counsel for the receiver from counsel for
7 Penn National dated July 23, 2021. And it attaches
8 a copy of your second affidavit dated July 23,
9 2021. We'll pull this up on the screen and scroll
10 through it.

11 Do you recognize this as your July 23,
12 2021 affidavit?

13 A. Yes, sir.

14 Q. And is that your signature at the end
15 of Page 4?

16 A. Yes, sir.

17 Q. Did you draft this affidavit which is
18 Exhibit 3?

19 A. No, I did not.

20 Q. I'd like to turn your attention to
21 Paragraph 4 on Page 2.

22 A. Yep.

23 Q. It says, quote, I am aware of the
24 Court's order on the receiver for Covil
25 Corporation's motion to compel and supplemental

1 motion to compel against Penn National filed on
2 July 1, 2021, which orders Penn National to
3 thoroughly search its paper records using the list
4 of contractors and facilities provided by the
5 receiver's subpoena.

6 Do you see that?

7 A. Yes, I do.

8 Q. And is it your understanding that the
9 list of contractors and facilities that were
10 provided by the receiver were the lists provided to
11 you on the phone by Mr. Wright?

12 A. That would be my understanding, yes,
13 sir.

14 Q. But you didn't actually see a physical
15 copy of either the contractor list or the facility
16 list when you executed this affidavit on July 23rd,
17 2021; is that correct?

18 A. As I recall, I do not. Again, it
19 wouldn't matter. I need policy numbers.

20 Q. Once Mr. Wright had that call with you
21 regarding the Court's order, what steps, if any,
22 did you take to do additional searches for policy
23 documents?

24 MR. YNTEMA: Objection to form.

25 A. So none additional, because without a

1 policy number, there's nothing for me to search.

2 Q. Did you consult with anyone at Penn
3 National about how you may be able to search for
4 additional documents other than by policy number?

5 A. No.

6 Q. Did you consult with anyone outside of
7 Penn National as to how you might be able to search
8 for policy documents other than by policy number?

9 A. No, I did not.

10 Q. I'd like to turn your attention to
11 Paragraph 6. It says, quote, in order to comply
12 with the Court's order, I have considered other
13 alternative means of searching Penn National's
14 non-electronically-stored paper documents due to
15 the fact that the receiver's list of 240
16 contractors and 650 facilities does not provide any
17 potential policy number information.

18 Do you see that?

19 A. Yes, sir.

20 Q. What alternative means of searching did
21 you consider?

22 A. There is only one other alternative
23 means to consider, and that would be that at a
24 considerable expense and a considerable amount of
25 time, somebody would need to coordinate having

1 somebody physically pull up and look through every
2 conceivable record from microfilm and paper
3 storage.

4 Q. And what steps did you take to
5 determine how many individuals it would take to
6 conduct such a search?

7 A. My database gives me an indication, and
8 just from experience with that database, that we
9 have several hundred thousand records. Each record
10 could contain untold number of pages. I would
11 imagine that if it was to look through a policy,
12 one would have to look at every page.

13 So I can't even begin to tell you how
14 long it would take to look through all of that, but
15 it could not possibly be done in two weeks. I
16 would surmise months, if not into the year-plus
17 realm, without consulting somebody to see how much
18 money and how much labor and how much effort it
19 would take.

20 Q. When you say, without consulting
21 somebody, who would you consult?

22 A. Presently I have no idea. I would have
23 to research the industry to see who would
24 conceivably even do something like that. And they
25 would need to be bonded --

1 Q. So as the --

2 A. -- and insured, because all this is
3 sensitive data that has -- that has no bearing on
4 Covil. So there are lots of records that they
5 would be looking at that would have nothing to do
6 with Covil.

7 Q. So sitting here today, is it fair to
8 say that you have not consulted with anyone as to
9 how such a search would be conducted?

10 A. That would be a fair statement, yes.

11 Q. And is it fair to say that sitting here
12 today, you have not determined precisely how long
13 such a search would take?

14 A. That is correct.

15 Q. And is it true that sitting here today,
16 you have not determined how many individuals it
17 would take to conduct such a search?

18 A. That's correct.

19 Q. Sitting here today, you have not
20 determined how much it would cost to conduct a
21 search for policies -- policy documents based on
22 the receiver's list of 240 contractors and 650
23 facilities, correct?

24 A. Correct. It's never been asked for in
25 the history of me being here, that I've been aware

1 of, so...

2 Q. I'd like to turn your attention to
3 Paragraph 8.

4 A. Sure.

5 Q. Oh, I'm sorry. Before we get to
6 Paragraph 8, I believe in response to one of my
7 earlier questions, you were talking about what's
8 actually in a policy document file and that you
9 weren't actually sure what in a policy file would
10 have to be reviewed --

11 A. Right.

12 Q. -- to determine whether there's
13 responsive information; is that correct?

14 A. That is 100 percent correct.

15 Q. When you were speaking with Mr. Wright
16 regarding Penn National's response to the Covil
17 subpoena, did you talk to Mr. Wright at all about
18 what specific documents your team would be looking
19 for within any policy file?

20 A. As I had offered earlier, we don't look
21 for documents. We look for policy number. We
22 print the contents and provide that to the
23 underwriting or claims people, who are the document
24 experts. We are not.

25 Q. So in talking to Mr. Wright, though,

1 you didn't discuss any ways to narrow a review of a
2 policy document -- if you were to review the
3 documents on a claim -- on a file-by-file basis,
4 you didn't talk to Mr. Wright about any way to
5 narrow that search; is that correct?

6 A. I need a policy number, period. That's
7 it. So other than that, no, we didn't talk about
8 anything else other than I need a policy number.

9 Q. Now I'd like to turn your attention to
10 Paragraph 8 of Exhibit 3. It says, quote, with
11 respect to Penn National's microfilm records, my
12 research has shown that Penn National's microfilm
13 records contain in excess of 200,000 separate
14 policies, with each policy containing multiple
15 pages of policy documents.

16 Do you see that?

17 A. Yes, sir.

18 Q. The microfilm records that you're
19 referencing in Paragraph 8, are those only
20 insurance policies or is there other policy-related
21 documents on the microfilm as well?

22 A. So the detail -- so the answer is, to
23 me, it is a policy number. What's contained in
24 there can be a dec or whatever other policy
25 information may or may not be contained that was

1 deemed necessary by those document experts that
2 handle those policies. So whatever --

3 Q. You stated -- I'm sorry. Go ahead.

4 A. You're good. Go.

5 Q. When you said there were 200,000
6 separate policies, is that more accurate to say
7 there were 200,000 separate policy files?

8 MR. YNTEMA: Objection to form.

9 A. There are policy numbers. If you want
10 to call them a file, it's a policy number. Each
11 policy number -- again, it's -- I -- it's a policy
12 number to me. I provide what's there.

13 Q. Well, that's not what -- that's not
14 what Paragraph 8 says, though. So I'm just trying
15 to understand what your affidavit says.

16 It says there were in excess of 200,000
17 separate policies. What does that mean?

18 A. Separate policy files is probably --
19 you know, I have individual -- individual policy
20 numbers. Is that more clear?

21 Q. Yes. Thank you.

22 A. Okay.

23 Q. Did you do anything to determine how
24 much it would cost to have an outside vendor review
25 those 200,000 separate policy files?

1 A. As we just discussed, no.

2 Q. Did Mr. Wright ask you to inquire as to
3 how much it would cost to have an outside vendor
4 review those 200,000 separate policy files?

5 A. There was no request.

6 Q. I'd like to look at Paragraph 9. It
7 says, quote, the paper documents stored at the Iron
8 Mountain facility are contained in approximately
9 5,800 boxes, which include approximately 4,300
10 boxes of commercial line paper, policy documents;
11 based on my research, at last count, the number of
12 separate policies stored in these boxes numbered
13 approximately 615,000.

14 Do you see that?

15 A. Yes, sir.

16 Q. First, when you -- again, when you're
17 referring to separate policies stored in these
18 boxes, what do you mean by, separate policies --

19 A. Policy --

20 Q. -- stored the boxes?

21 A. Policy numbers.

22 Q. So again, the separate policies are
23 more -- more clearly, they're separate policy files
24 based on policy number; is that correct?

25 A. Yes, sir. That would be -- that --

1 that sounds the best way of putting it.

2 Q. With respect to the boxes referred to
3 in Paragraph 9 of your affidavit, did Mr. Wright
4 ask you to find out how much it would cost to have
5 an outside vendor review the 5,800 boxes of
6 documents in paper copy for responsive material?

7 A. No, sir.

8 Q. And have you done anything separately
9 to determine how much it would cost to have an
10 outside vendor review your 5,800 boxes of paper
11 files?

12 A. No, I have not.

13 Q. I'd like to look at Paragraph 10.
14 Paragraph 10 of your affidavit says, quote, for
15 security reasons, a manual search of the paper
16 policy documents could not be conducted at Iron
17 Mountain, unquote.

18 Do you see that?

19 A. Yes, sir.

20 Q. What did you mean by, for security
21 reasons?

22 A. Iron Mountain has strict security
23 protocols, so -- and generally very limited
24 location to review things. We're talking about a
25 substantial quantity of boxes.

1 So they have security to get into the
2 facility, approvals, other things that need to be
3 done.

4 Q. I'd like to look at Paragraph 11.

5 A. Sure.

6 Q. It says, quote, a manual search of all
7 of Penn National's nonelectronic policy records for
8 any policy records that may pertain to any of the
9 240 contractors and 650 facilities that identify
10 Covil as an additional insured would be an endeavor
11 that would overwhelm and be well beyond the
12 capacity of Penn National's current internal staff.

13 Do you see that?

14 A. Yes, sir.

15 Q. Why is that?

16 A. I have 11 people, sir, 11 including
17 myself. Four of them are facilities-related that
18 work on maintaining the building, the HVAC,
19 electrical, all the things that go into that. I
20 have two people that work on a receiving dock. And
21 then I have purchasing agent, somebody who manages
22 my fleet -- actually, two purchasing agents.

23 We just do not have -- we have -- we
24 have the job that needs to be done day to day to
25 service our customers. This would take this staff

1 away from doing their day-to-day job to service and
2 support our clients, our insured, everybody else.
3 It's just beyond our capabilities.

4 Q. And when you say, beyond our
5 capabilities, you're referring to your department
6 of administrative services; is that right?

7 A. That's correct, sir.

8 Q. Did you speak with Mr. Wright about
9 procuring additional staff or resources from
10 anywhere else to try to respond to the subpoena by
11 doing this manual search that you reference in
12 Paragraph 11?

13 A. No, sir.

14 Q. I'd like to look at the last sentence
15 of Paragraph 11 on Page 4. It says, the amount of
16 time necessary -- sorry. I'll let Tiffany put it
17 up.

18 It says, the amount of time necessary
19 to conduct such a search would take many months to
20 conduct, and Penn National would incur significant
21 expenses that are currently incalculable to me.

22 Do you see that?

23 A. Yes, sir.

24 Q. With respect to that statement in
25 Paragraph 11, you have not done anything to

1 determine approximately how much time it would take
2 to conduct such a search, though; is that correct?

3 A. That is correct. I can share that many
4 years ago we wrote down the policy numbers before
5 we shipped everything to Iron Mountain. Just
6 writing down policy numbers took three people nine
7 months, just writing down a policy number. I can't
8 imagine the amount of time it would take somebody
9 to go through every file and look at every page,
10 knowing what I know there.

11 Q. Have you inquired how much it would
12 cost for an outside vendor to convert the 200,000
13 separate microfilm records into a digitally
14 searchable format?

15 A. No, I have not.

16 MR. YNTEMA: Objection to form.

17 Sorry, Mr. Reifsnyder.

18 A. And no, I have not.

19 Q. Have you inquired as to whether or not
20 it was possible to convert the microfilm records
21 into a digitally searchable format?

22 A. I have not inquired, no.

23 Q. Have you inquired as to whether it
24 would be possible for an outside vendor to convert
25 the 5,800 boxes of policy documents into an

1 electronically searchable format?

2 A. No, I have not.

3 Q. Why is it that Penn National, if you
4 know, keeps documents, these 5,800 boxes of
5 documents, in paper copy, but not in an
6 electronically searchable format?

7 A. Why? I can't answer the why.

8 Q. And do you know why Penn National keeps
9 the 200,000 separate policies on microfilm in a
10 format that's not digitally searchable?

11 A. Again, I cannot answer that.

12 Q. I'd like to look at Paragraph 12. It
13 says, quote, to conduct a search -- such a search,
14 an outside vendor would have to be retained to
15 conduct a manual search of all of Penn National's
16 non-electronically-stored policy documents as Penn
17 National does not have the capacity to conduct such
18 a search internally.

19 Do you see that?

20 A. Yes, sir.

21 Q. When you say, an outside vendor would
22 have to be retained, what did you mean by, an
23 outside vendor?

24 A. Somebody who is knowledgeable --
25 anybody who's capable of actually reviewing these

1 documents who would meet the required
2 specifications of the Court to know what they're
3 looking for and understand what they're looking
4 for. That vendor would have to also be insured and
5 bonded, and we'd have to have nondisclosure
6 agreements.

7 Q. Does -- in your experience, does Penn
8 National use outside vendors to conduct any type of
9 reviews of documents?

10 A. Not that I'm aware of, no.

11 Q. So why is it that your suggestion in
12 Paragraph 12 is to use an outside vendor?

13 A. This is the first time ever that I'm
14 aware of that anybody's requested us to go through
15 this capacity of records. I have no other solution
16 than that's the option. That's my opinion.

17 Q. And then in paragraph -- the last
18 sentence of Paragraph 12 says, given the
19 unprecedented nature of such a search for Penn
20 National, I cannot currently provide an estimate of
21 how much an outside vendor would charge for the
22 search of all Penn National's
23 non-electronically-stored policy documents.

24 Do you see that?

25 A. Yes, sir.

1 Q. And why is it that you cannot provide
2 an estimate of how much would be charged?

3 A. Because I haven't gone out to ask.

4 Q. And why did you not go out to ask?

5 A. Honestly, at the end of the day, I'm
6 actually shocked that the Court would want to do
7 something like that. I'm actually shocked that
8 there would be a request of that nature. We go by
9 policy number. That's what we go by. That's what
10 the industry goes by.

11 Now, if you ask me, we're going to do
12 this, then I will go out and get all the
13 information.

14 Q. How much time did you personally spend,
15 Mr. Reifsnyder, looking for responsive documents in
16 response to the motion to compel by the Court?

17 A. I have no idea.

18 Q. Would it be more than five minutes?

19 A. Oh, absolutely. But again, I have no
20 idea. I don't keep track of my time and how long
21 it takes me to go look for something.

22 Q. Well, the Court ordered Penn National
23 to do a search, and you've told us today on
24 numerous occasions that you can't do a search
25 unless you have the policy number.

1 A. Correct.

2 Q. So without the policy number, what did
3 you do to search in response to the Court's motion
4 to compel?

5 A. I'm required -- I need a policy number.
6 Without a policy number, there's nothing else I can
7 do.

8 Q. Right. I understand that. And that's
9 why I asked you how much time you had spent in
10 response to the Court's motion to compel to look
11 for documents.

12 You were not provided any policy
13 numbers; is that correct?

14 A. Whatever was -- whatever was listed
15 previously in other attachments.

16 Q. Well, let's start with just since
17 July 1st.

18 A. Okay.

19 Q. July 1st, the Court ordered a motion to
20 compel. And you have reviewed that motion to
21 compel and talked about it in your affidavits; is
22 that correct?

23 A. That's correct.

24 MR. YNTEMA: Objection to form.

25 You can answer if you can, Mr. Reifsnyder. Thank

1 you.

2 A. Okay. That -- that's correct.

3 Q. And so my question is, other than
4 preparing for the deposition today, about how much
5 time would you say you spent trying to locate
6 documents responsive to the Court's order?

7 A. Without a policy number, minimal.

8 Q. Is it fair to say it would be less than
9 five minutes?

10 A. Arguably, I would say that, without a
11 policy number.

12 MR. NES: Thank you, Mr. Reifsnyder. I
13 have no further questions at this time.

14 Pass the witness.

15 MR. YNTEMA: If we could take a break
16 for one second, Mr. Nes, and just give me like five
17 minutes, and I -- I may have one or two questions.
18 I don't know.

19 MR. NES: Sure.

20 VIDEOGRAPHER: We are going off the
21 record at 11:39 a.m.

22 (After a recess, proceedings were
23 continued as follows:)

24 VIDEOGRAPHER: We are back on the
25 record at 11:44 a.m.

1 MR. YNTEMA: Mr. Nes, just kind of a
2 procedural thing, I will probably need to have the
3 assistance of your paralegal to help me navigate
4 through some of the exhibits, if that's okay.

5 MR. NES: Sure. As long as they're
6 ones that I've marked, that's fine.

7 MR. YNTEMA: Yes, I'll just be using
8 the ones that you've marked.

9 EXAMINATION

10 BY MR. YNTEMA:

11 Q. For the record, this is Brady Yntema,
12 Mr. Reifsnyder. As you know, I represent Penn
13 National in this -- in this case. I have just a
14 couple of things I would like to -- to ask you with
15 respect to your testimony today.

16 There was a question that was asked to
17 you with respect to your affidavits as to whether
18 you drafted either or both of the two affidavits.

19 Did you actually draft those two
20 affidavits?

21 A. I did not write them, no.

22 Q. Right. But did you assist in the
23 drafting of the affidavits?

24 A. I assisted with that, yes.

25 Q. And how much time do you think it took

1 you to assist in -- in talking with counsel and --
2 and -- and helping and assisting in drafting the
3 affidavits?

4 A. Quite a number of hours, including a
5 lot of vacation time.

6 Q. Is there any way you can give me an
7 estimate? Would it have been over 40?

8 A. I would imagine so, yes, sir.

9 Q. With respect to the Court's order --

10 MR. YNTEMA: If I could have Exhibit 1,
11 the affidavit of Mr. Reifsnyder.

12 Okay. Don't have any control over. So
13 if you could scroll down to the next page, please.
14 Let's see. Just be patient with me. If you'd go
15 up. Stop right there, please.

16 Q. Mr. Reifsnyder, on the screen there is
17 Paragraph 4?

18 A. Yes, sir.

19 Q. And I'll read that again to you. It
20 says, I am aware of the Court's order on the
21 receiver or Covil Corporation's motion to compel
22 and supplemental motion to compel against Penn
23 National Mutual Casualty Insurance Company filed on
24 July 1, 2021, which ordered Penn National's
25 description of how it maintains its paper records,

1 including physical locations where Penn National's
2 paper records are kept, the identities of the
3 persons responsible for those records, the years
4 and locations of the records maintained, the
5 categories of policies maintained, and the manner
6 in which those records are stored and organized.

7 Do you see that?

8 A. Yes, sir.

9 Q. And do you agree with that statement
10 today?

11 A. Yes, sir.

12 Q. And did you -- did you comply with that
13 order of the Court?

14 A. To the best of my ability, I believe I
15 did.

16 Q. And so that -- and how much time would
17 you have -- would you have taken in -- in
18 responding to that order of the Court, do you know?

19 A. I do not know.

20 Q. Would it have been more than 40 hours?

21 A. It may have been, yes.

22 MR. YNTEMA: Okay. If we could go to
23 Exhibit 3, ma'am. And I think I'm looking more
24 towards the front end of the document. Thank you.

25 Right -- yes.

1 Q. Right there, Paragraph 4 again,
2 Mr. Reifsnyder --

3 A. Mm-hmm (affirmatively).

4 Q. -- on Exhibit 3, it says, I am aware of
5 the Court's order on the receiver for Covil
6 Corporation's motion to compel and supplemental
7 motion to compel against Penn National filed on
8 July 1, 2021, which orders Penn National to
9 thoroughly search its paper records using the list
10 of contractors and facilities provided by the
11 receiver's subpoena.

12 A. Right.

13 Q. In essence, did -- do you feel that you
14 complied with the Court's order?

15 A. In essence, I feel that I complied to
16 the degree that I could. I didn't have policy
17 numbers. So in absence of policy numbers, the
18 alternative was, what other way could it be done,
19 which is what I provided.

20 Q. And are you in any way aware of what
21 Mr. Wright has done to search for policy records?

22 A. I am not.

23 Q. Is it your opinion -- or do you have an
24 opinion as to whether Penn National has conducted a
25 reasonable search in responding to the receiver's

1 subpoena that was served in, I believe, February of
2 2021?

3 A. I would believe that we did a
4 reasonable search.

5 Q. And with respect to conducting a
6 search -- a manual search of all of Penn National's
7 policy records -- or paper policy records or
8 microfilm, would that be an unreasonable search, in
9 your opinion?

10 A. Yes.

11 MR. YNTEMA: I have no further
12 questions. Thank you, Mr. Reifsnyder.

13 MR. NES: I just have one or two quick
14 follow-ups.

15 EXAMINATION

16 BY MR. NES:

17 Q. Mr. Reifsnyder, since we started the
18 deposition around 10:00 a.m. this morning, have you
19 talked to anyone?

20 A. Have I talked to anyone? No.

21 MR. NES: No further questions.

22 MR. YNTEMA: All right. No further
23 questions.

24 VIDEOGRAPHER: We are off the record at
25 11:50 a.m. This concludes today's testimony given

1 by Brent Reifsnyder. The total number of media
2 units used was two and will be retained by A.
3 William Roberts, Jr. and Associates, a Veritext
4 company.

5 (Off-the-record conference.)

6 COURT REPORTER: And Mr. Nes, will the
7 original go to you, sir?

8 MR. NES: Yes, sir.

9 (Off-the-record conference.)

10 COURT REPORTER: And Mr. Yntema, do you
11 want to order a copy?

12 MR. YNTEMA: Yes, we would like a copy.

13 (The witness, after having been advised
14 of his right to read and sign this transcript,
15 waives that right.)

16 (The deposition was concluded at 11:52
17 a.m.)

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CERTIFICATE OF REPORTER

I, Eric S. Glazier, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 3rd day of August, 2021, at
Easley, Pickens County, South Carolina.



Eric S. Glazier,
Court Reporter
My Commission expires
April 11, 2026

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.



Deposition of:
Boyd Wright , Penn National 30(b)(6)

August 26, 2021

In the Matter of:
**Covil Corporation v. Pennsylvania
National Mutual Insurance Et Al**

PLAINTIFF'S
EXHIBIT

78

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

COVIL CORPORATION, by and through
its duly appointed Receiver Peter D.
Protopapas,
Plaintiff,

vs. CASE NO.: 2020-cp-40-02098

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

Defendants.

VIDEOTAPED (Appearing via Video Conference)

30(b)(6) DEPOSITION

OF: PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE COMPANY BY
BOYD WRIGHT

DATE: August 26, 2021

TIME: 10:04 a.m.

LOCATION: Goldberg Segalla
701 Green Valley Road
Greensboro, North Carolina

TAKEN BY: Counsel for Plaintiff

REPORTED BY: Mary K. Stepp, Court Reporter
(Appearing via Video Conference)

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ALSO PRESENT:

Roosevelt Harrison, Videographer

(INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: The time on the
2 monitor is 10:04 a.m. and today's date is August 26,
3 2021. This is video-recorded deposition of Penn
4 National 30(b)(6) of Mr. Boyd Wright, in the matter
5 of Covil Corporation versus Pennsylvania National
6 Mutual Insurance, et al. This deposition is being
7 held remotely via zoom.

8 My name is Roosevelt from the firm
9 Veritext. I'm the videographer. The court reporter
10 is Mary, representing the firm Veritext as well.

11 Counsel, please introduce yourselves,
12 after which the court reporter will swear in the
13 witness.

14 MR. NES: Brad Nes of Morgan Lewis &
15 Bockius for the Receiver for Covil Corporation.

16 MR. YNTEMA: Brady Yntema --

17 MR. JONES: Christopher Jones --

18 MR. YNTEMA: Oh, sorry. I apologize.

19 MR. JONES: No problem. Christopher Jones
20 of Harrison White, P.C. on behalf of the Receiver for
21 Covil Corporation.

22 MR. YNTEMA: Brady Yntema with Goldberg
23 Segalla, attorney for Penn National Mutual Insurance
24 Company.

25 MR. HARRIS: And David Harris with

1 Goldberg Segalla for Penn National as well.

2 (Witness sworn.)

3 THE REPORTER: Keep your voice up.

4 THE WITNESS: My wife claims I yell at
5 her, now you're telling me to talk louder.

6 BOYD WRIGHT,
7 having been duly sworn testified as follows:

8 EXAMINATION

9 BY MR. NES:

10 Q. Good morning, Mr. Wright. Could you state
11 your name for the record?

12 A. Boyd Wright.

13 Q. And this is our remote deposition today.
14 Where are you physically located?

15 A. Greensboro, North Carolina in counsel's
16 office.

17 Q. I'm sorry, where?

18 A. Greensboro, North Carolina, in Penn
19 National counsel's office.

20 Q. And the conference room in which you're
21 taking this deposition, is there anyone present in
22 the conference room with you?

23 A. Yes.

24 Q. And who is present with you?

25 A. David Harris and Brady Yntema.

1 Q. And who are they, to the best of your
2 knowledge?

3 A. Penn National counsel.

4 Q. You have been designated as Penn
5 National's 30(b)(6) witness for this deposition
6 today. Do you understand that?

7 A. Yes.

8 Q. And you've been deposed before, isn't that
9 correct?

10 A. Yes.

11 Q. So I won't go through the typical
12 admonitions, but I will ask you, for the record, is
13 there anything preventing you from giving full and
14 accurate testimony today?

15 A. No.

16 Q. When did you first learn that you would be
17 Penn National's 30(b)(6) corporate designee for
18 today's deposition?

19 A. Uhm, I guess it would have been whenever
20 Penn National received the request for a 30(b)(6)
21 deponent.

22 Q. What have you done to prepare for your
23 deposition today?

24 A. I'm sorry, I couldn't hear you.

25 Q. What have you done to prepare for your

1 deposition today?

2 A. Uhm, met with counsel and went over all
3 the -- all the exhibits that were submitted by
4 Covil's attorney.

5 Q. Let's start with meeting with counsel.
6 Specifically, who did you meet with?

7 A. Brady Yntema.

8 Q. Did you meet with anybody else?

9 A. No.

10 Q. When was the first time that you met with
11 Mr. Yntema to prepare for today's deposition?

12 A. We -- we met a few times since the notice
13 came out, but we met yesterday to go over all the
14 exhibits that were presented.

15 MR. YNTEMA: Mr. Nes, if I can interrupt
16 just a second. We're having some other technical
17 difficulties here. The laptop we're on, the battery
18 is running low and the output for some reason is not
19 working. If we can just get that fixed and then
20 resume. I apologize.

21 MR. NES: Sure. Let's go off the record.

22 THE VIDEOGRAPHER: The time on the monitor
23 is 10:09 a.m. We're going off the record.

24 (Recess was taken from 10:09 a.m. to 10:28
25 a.m.)

1 THE VIDEOGRAPHER: The time on the monitor
2 is 10:28 a.m., and we're back on the record.

3 BY MR. NES:

4 Q. Mr. Wright, before we went out on a break
5 to take care of some technical issues, we were
6 talking about your speaking with counsel to prepare
7 for your deposition.

8 But before we get back to that, I wanted
9 to ask you, during the break did you speak with your
10 lawyers about any issues, other than the technical
11 issues that were being addressed?

12 A. No.

13 Q. In terms of your preparation for today's
14 depositions, how many times did you speak with
15 counsel for Penn National, either in person or
16 remotely?

17 A. Uhm, I don't know the -- I know it was at
18 least three or four times. It may have been five
19 times. From whatever date the Harrison White
20 30(b)(6) notice came in.

21 Q. Other than counsel for Penn National, did
22 you speak with anyone else in preparation for your
23 deposition?

24 A. No.

25 Q. Since Mr. Reifsnyder was deposed in this

1 case a couple weeks ago, have you spoken with Mr.
2 Reifsnyder about any of the issues involving Covil?

3 A. No.

4 Q. You mentioned in preparing for your
5 deposition that you reviewed certain documents
6 produced by Covil's counsel.

7 Did you review any other documents, other
8 than the documents that were produced by Covil's
9 counsel, to prepare for your deposition today?

10 A. No.

11 Q. Other than what we've discussed so far,
12 which is reviewing documents and speaking with
13 counsel for Penn National, did you do anything else
14 to prepare for your deposition today?

15 A. Not that I can think of.

16 Q. About how much time would you say you
17 spent in total preparing for today's deposition,
18 between speaking with counsel and reviewing
19 documents?

20 A. Uhm, that was a big stack of documents.
21 I -- I don't know. Somewhere between 8 and 12 hours,
22 probably.

23 MR. NES: I'd like to pull up what will be
24 marked as Exhibit 1. This is the August 2nd, 2021
25 Deposition Notice for Penn National that was served

1 on Penn National's counsel.

2 (Exhibit No. 1 was marked for
3 identification.)

4 BY MR. NES:

5 Q. This is what will be marked as Exhibit 1.
6 This is a cover letter dated August 2nd, 2021 from
7 the Harrison White firm to counsel for Penn National.
8 And attached to the letter is a copy of the
9 deposition notice. Have you reviewed this document
10 before?

11 A. Yeah. I reviewed it when we received it.

12 Q. And is this the deposition notice that you
13 are here testifying in respect to today?

14 A. I believe so, yes.

15 Q. My understanding is that you have been
16 designated on certain topics only, is that your
17 understanding as well?

18 A. Yes.

19 Q. And, specifically, that you've been
20 designated on Topics 1 through 7, 9, 14 through 16,
21 18, 19, 39, 40, and 48; is that correct?

22 A. I'd have to defer to counsel on what
23 topics were agreed to. I don't have them memorized.

24 MR. NES: Well, counsel for Penn National,
25 is that your understanding is what the witness is

1 being designated on?

2 MR. YNTEMA: It is. Thank you.

3 BY MR. NES:

4 Q. Let's turn to page or PDF page 6 and at
5 the bottom it will be page 2 of the actual deposition
6 notice, where it states "Topics." Do you see that,
7 Mr. Wright?

8 A. Yes.

9 Q. Let's start with topic number 1. It says,
10 quote, "The general liability insurance policies that
11 Covil purchased from Penn National for the periods
12 from March 31, 1986 to March 31, 1987 and March 31
13 1987 to March 31, 1988, and the risks insured under
14 the same to include Penn National's understanding of
15 Covil's business operations, the location of those
16 operations, and the products used or otherwise worked
17 with in those operations," close quote.

18 Do you see that?

19 A. Yes.

20 Q. What did you do to prepare for topic 1 in
21 particular?

22 A. I looked at the underwriting material that
23 we have archived, as well as the two respective
24 policies that are referenced in the topic.

25 Q. Did you do anything else to prepare for

1 topic number 1?

2 A. There's only a limited amount of records
3 to review. And those records would provide the
4 material that Penn National had that would allow us
5 to understand the operations, the locations, and so
6 forth.

7 Q. I appreciate that, Mr. Wright. I'm just
8 asking if, in addition to what you said, if there was
9 anything else that you did to prepare.

10 A. I prepared to answer the questions under
11 that topic. And I've expressed what it was that I
12 looked at.

13 Q. Right. I don't mean to be argumentative
14 with you, I'm just asking -- you mentioned that you
15 reviewed certain documents, underwriting materials,
16 policies. Did you do anything else, other than
17 review the underwriting materials and the policies?
18 If the answer is no, then the answer is no. I'm
19 just trying to understand what you did to prepare for
20 topic number 1.

21 A. No. The materials that we have were all
22 what Penn National has regarding that operation and
23 there would be no reason to go beyond that.

24 Q. Other than reviewing those materials, did
25 you speak with anyone to prepare for topic number 1?

1 A. No.

2 Q. Let's look at topic number 1, where it
3 mentions Penn National's understanding of Covil's
4 business operations. What is Covil's -- what is Penn
5 National's understanding of Covil's business
6 operations?

7 A. That Covil was an insulation contractor
8 and supplier of insulation materials.

9 Q. In terms of the location of those
10 operations, what is Penn National's understanding of
11 where Covil did those business operations?

12 A. Covil had operations in a number of
13 states. Most principally in South Carolina, but they
14 also performed work in other states. And at one
15 point I seem to recall I saw a notation -- I don't
16 remember if it was in these policies -- but they also
17 had a location in Florida.

18 Q. Other than South Carolina and Florida,
19 what other locations is Penn National aware that
20 Covil operated?

21 A. I understand they operated in North
22 Carolina, Georgia. I believe I saw a reference to
23 Tennessee, at some point in time. I don't remember
24 if there were other locations. There may -- there
25 may have been, I just don't remember without looking

1 at the documents.

2 Q. And then, finally, with respect to the
3 products used or otherwise worked with in those
4 operations, what is Penn National's understanding of
5 what products were used by Penn National -- excuse
6 me, by Covil?

7 A. I understand that Covil supplied a variety
8 of insulation products, many of which are alleged to
9 contain asbestos. And by this point in time, it
10 would arguably be Covil's position that anything they
11 did during those two years did not contain asbestos,
12 but that's obviously a subject of fight under the --
13 under the pending liability claims.

14 Q. I'd like to turn to topic number 2 on page
15 2 of the deposition notice, which is Exhibit No. 1.
16 It says, quote, "All insurance policies of any type
17 that Penn National issued to Covil or that provide
18 coverage to Covil, including policies that identify
19 any of the contractors listed in the Receiver's
20 Subpoena to Penn National served on February 8,
21 2021," close quote.

22 Do you see that?

23 A. Yes.

24 Q. What did you do to prepare for topic
25 number 2 today, specifically?

1 A. Reviewed the, as the topic requests, all
2 the insurance policies that we could locate that are
3 applicable to Covil.

4 Q. How many policies has Penn National
5 identified that it issued that provided coverage for
6 Covil?

7 A. Yeah, I don't have -- I'd have to look at
8 the documents. It seems to me there are four
9 separate policy numbers, but I'm not -- like I said,
10 without looking at the documents, I'm not really
11 certain how many policies.

12 Q. Let's talk about categories of policies.
13 What categories or type of coverage has Penn National
14 identified covers Covil?

15 A. Are you referring to all insurance
16 policies?

17 Q. Yes.

18 A. During times Penn National wrote their
19 general liability coverage, their property coverage,
20 their inland marine coverage, their workers'
21 compensation coverage. And their auto coverage, I
22 believe.

23 Q. And with respect to the coverage that's
24 been identified by Penn National that you just
25 described, each of those coverage parts covers Covil

1 as a named or primary insured; is that correct?

2 A. Yes.

3 Q. And to date Penn National has not
4 identified any coverage where Covil is covered as an
5 additional insured, correct?

6 MR. YNTEMA: Object to the form. You can
7 answer.

8 THE WITNESS: Well, No. Because an
9 additional insured is not typically named in the
10 policy.

11 BY MR. NES:

12 Q. Let me rephrase that.

13 Has Penn National identified any policies
14 that identify anywhere in the policy that Covil is an
15 additional insured?

16 A. An additional insured is not typically
17 named in a policy, so the answer is no.

18 Q. What was the last policy that was
19 identified by Penn National, which -- in which Covil
20 was a named insured?

21 A. Without looking at the policy documents, I
22 don't know. The documents would -- would identify
23 that for us.

24 Q. You're aware that Penn National didn't
25 identify all the policies in which Covil was

1 identified as a named insured all at the same time,
2 correct? That they were identified over a period of
3 time?

4 A. I'm not sure what you mean. Penn
5 National -- well, I'm just not sure what you mean.

6 Q. Penn National responded to a Subpoena by
7 the Finch plaintiffs in 2018; is that correct?

8 A. Yes.

9 Q. And subsequent to that production of
10 policy information, Penn National identified
11 additional coverage that covered Covil through
12 workers' compensation policies, is that your
13 understanding?

14 A. Penn National responded to the Subpoena by
15 plaintiff's counsel of Finch and provided a copy of
16 the liability documents to them because it was a
17 liability claim.

18 Q. I understand that. And then subsequent to
19 that production, Penn National found additional
20 policies, different policies -- not general liability
21 policies, but additional policies -- that cover
22 Covil, is that your understanding?

23 A. Yes. We continued our search over a
24 period of time.

25 Q. That's all I was trying to get at. In

1 terms of the initial policy documents that were
2 identified and produced, what was the difference in
3 the searches that were done to identify the initial
4 general liability policies versus the subsequently
5 produced policies?

6 A. Well, the initial subpoena that came from
7 the Finch plaintiff firm provided a coverage chart
8 that had been prepared and listed all of Covil's
9 general liability insurers, and included Penn
10 National's policy number. So we were able to locate
11 Covil's general liability coverage from that chart.

12 We also checked to see if there were any
13 years on either side of that, that there may have
14 been some continuation of coverage. There was not.
15 It was consistent with the chart that was provided.
16 But we still continued to search further to see if
17 there were any other policies issued to Covil.

18 Q. Let's turn back to Exhibit 1. I'd like to
19 look at topic number 3. Quote, "All certificates of
20 insurance or other documents evidencing any insurance
21 coverage that Penn National provided to Covil,
22 including any Certificates of Insurance or documents
23 that identify or concern the job sites and/or
24 facilities listed in the Receiver's subpoena to Penn
25 National served on February 8, 2021."

1 Do you see that?

2 A. Yes.

3 Q. And Penn National did not identify any
4 Certificates of Insurance that would be responsive to
5 topic number 3; is that correct?

6 A. Correct. Because Certificates of
7 Insurance are issued by agents to the certificate
8 holder, they are not provided to the insurer. So we
9 wouldn't have the Certificate of Insurance.

10 Q. Are there any circumstances in which Penn
11 National, although they do not issue Certificates of
12 Insurance, otherwise receives Certificates of
13 Insurance?

14 A. When a claim arises, the certificate
15 holder, who may be seeking coverage, would provide
16 evidence of that coverage. Or if the insured had
17 been nonresponsive, say, from the general contract
18 point of view, they would provide the certificate to
19 document that the policy had been issued.

20 Q. Did Penn National do anything to search
21 for Certificates of Insurance in its files with
22 respect to Covil that it did not necessarily issue,
23 but would otherwise be in its possession?

24 MR. HARRIS: Object to the form.

25 MR. YNTEMA: Object to the form, sorry.

1 THE WITNESS: If it was in our possession,
2 it would have been contained in the policy documents
3 that have been archived, and there were none.

4 BY MR. NES:

5 Q. I'd like to turn to topic number 4. "Penn
6 National's efforts to search for, identify, and
7 produce any documents in response to the Receiver's
8 Subpoena to Penn National served in the case of Finch
9 versus United States Fidelity and Guaranty Co.,
10 2019-CP-40-03003 on February 8, 2021," close quote.

11 Do you see that?

12 A. Yes.

13 Q. What role did you have in searching for,
14 identifying or producing documents responsive to the
15 Receiver's Subpoena dated February 8, 2021?

16 MR. YNTEMA: Object to the form.

17 THE WITNESS: Penn National searched for
18 the -- as requested, with all the names that were
19 provided, its files to the extent that such documents
20 could be located and responded to that Subpoena.

21 BY MR. NES:

22 Q. So that Subpoena -- did you personally
23 have a role in seeking to -- documents to respond to
24 that Subpoena?

25 A. Yes.

1 Q. And what role, specifically, did you have
2 in searching for and identifying documents?

3 A. I looked up every name on the lists that
4 were provided personally.

5 Q. And when you say you looked up every name,
6 what does that mean?

7 A. I went to our electronic system to search
8 for by name any document or any policy that could be
9 located relative to the request being made, and was
10 able to locate a few names. And I provided the data
11 in response to that to Penn National's counsel.

12 Q. And you say you looked through electronic
13 systems. What electronic systems, in particular, did
14 you utilize?

15 A. Penn National has a Policy Management
16 System that allows us to research based on insured
17 name.

18 Q. Does this system have a name?

19 A. It's referred to as PMS, but we -- you
20 want to make sure you call it Policy Management
21 System.

22 Q. Other than the PMS system, the Policy
23 Management System that you mentioned, did you use any
24 other electronic search tools to identify policies
25 through the contractor or job site lists provided?

1 A. That's our -- that is how we locate things
2 initially. We require a policy number to search
3 further.

4 Q. So your initial search for the vast
5 majority of the contractors and job sites only
6 utilized the Policy Management System; is that
7 correct?

8 A. The search was conducted by name, because
9 that's all we were given. So we looked to see if we
10 have a name or corresponding or similar name. And if
11 we did, it will provide us a policy number. Which we
12 then ask our document custodian to research, and he
13 did.

14 Q. And if it did not have a hit on the name,
15 then there's no other search that you did
16 electronically for that particular contractor or job
17 site; is that right?

18 A. There's -- there's no other search
19 possible.

20 Q. And if the contractor or job site list
21 that you put into the PMS system provided a hit, if
22 it had a policy number, then you were able to go to a
23 second set of systems; is that right?

24 A. No. If it had a policy number, I would
25 contact the document custodian, provide him the

1 policy number, and ask him to provide me the
2 documents.

3 Q. What other systems are there, other than
4 the PMS system, electronically that you used, after
5 you got a hit in the PMS system?

6 A. That's the system we use to locate any
7 account by insured name.

8 Q. Right. And I believe that you said that
9 if you had a hit in that system, you could move to a
10 different electronic system --

11 A. No, I didn't say that.

12 Q. -- is that correct?

13 A. No, I didn't say that. I said that that
14 system, when I plugged the name in, will provide the
15 policy number, if there is a Penn National account.
16 I then take the policy number and I provide that to
17 the document custodian, who then provides me whatever
18 archived documents are available.

19 Q. And when you refer to the document
20 custodian, is that a custodian of hard copy
21 documents?

22 A. That's Brent Reifsnyder, correct.

23 Q. Are there any documents that are
24 maintained by Penn National that are only maintained
25 in electronic format?

1 A. Yes, but none of those documents
2 are -- extend to the time parameters that were listed
3 in the Subpoena.

4 Q. And what is the time frame, where there
5 are certain documents that are only electronic
6 documents?

7 A. There was a transition for those, which I
8 believe started in the early 2000s.

9 Q. So if I understand correctly, starting in
10 the early 2000s, there may be documents that were
11 created and stored electronically that are not
12 archived in hard copy; is that correct?

13 A. No. Starting in the early 2000s, active
14 accounts were being transitioned over time to
15 electronic format. Historical records were never
16 taken and converted.

17 Q. Let's go back to the PMS system, the
18 Policy Management System. You mentioned earlier that
19 you can only search by named insured, first named
20 insured; is that right?

21 A. Correct.

22 Q. Is there any way to search the electronic
23 system for any additional insured?

24 A. No. You'd have to have a policy number,
25 you'd have to look in the policy documents to see if

1 there was any supplemental named insureds. But
2 additional insureds are not traditionally listed. We
3 use what's called an automatic additional insured
4 endorsement, which is not contained on these
5 policies, that would -- that would provide whether
6 someone was an additional insured or not.

7 Q. Do you know why the electronic Policy
8 Management System is set up, so that you cannot
9 search by any other supplemental named insured or
10 additional insured?

11 A. Insurance companies, and Penn National is
12 no exception, issue policy numbers for a very
13 specific reason. Name similarity, locations, and
14 other things vary. Policy number is like a Social
15 Security number. It's the identifier for that
16 particular insured.

17 We have the ability to look electronically
18 for a policy number or an insured name, but a policy
19 number is what we need in order to find a historical
20 document.

21 Q. Your PMS system has a field to search by
22 insured name, correct?

23 A. Correct.

24 Q. But there's no field to search for a
25 supplemental named insured, correct?

1 A. The only field is name or policy number.

2 So --

3 Q. I'm just was focusing on -- before we go
4 on -- Mr. Wright, before we move on, I'm just
5 focusing right now on the fields that you can search.
6 And you mentioned you can search by named insured.

7 A. I said that.

8 Q. You cannot search -- you cannot search by
9 additional insured. We talked about that, correct?

10 MR. YNTEMA: Objection to the fact it
11 misstates his testimony.

12 BY MR. NES:

13 Q. You can answer.

14 A. The field requires a name.

15 Q. And if --

16 MR. YNTEMA: If you'll let him answer his
17 question, please, Mr. Nes. Thank you.

18 THE WITNESS: Again, we can put a name in.
19 If there is a name that comes up, it will provide a
20 policy number. It doesn't -- Penn National's system
21 for names is driven off of the primary named insured
22 on the policy. The system also allows us to search
23 by policy number, if we have a policy number.

24 BY MR. NES:

25 Q. It is the system, the PMS system, is not

1 designed to search for an additional insured,
2 correct?

3 MR. HARRIS: Object to form.

4 MR. YNTEMA: Object to form.

5 THE WITNESS: The system searches by name,
6 okay? And I already testified additional insureds
7 are not typically listed by name in a policy. They
8 are only there by endorsement. So we would need the
9 insured's name and policy number to look at the
10 particular policy to see if there is an endorsement
11 that grants additional insured coverage to someone
12 else, which is not listed by name.

13 So for the research it would be necessary
14 to find job documents, which we don't have, to
15 determine if coverage was afforded.

16 BY MR. NES:

17 Q. If a --

18 A. Additional insured is not someone listed
19 on the policy.

20 Q. And when you say it's not listed on the
21 policy, it would be listed in an endorsement to the
22 policy, correct?

23 A. It could be.

24 Q. So let's --

25 A. But it would be --

1 MR. YNTEMA: Mr. Nes, he wasn't finished
2 with his answer. I'm sorry.

3 MR. NES: I appreciate -- I appreciate
4 that. I'm not trying to interrupt. It is hard in
5 this remote format. So whenever he keeps going, I
6 just stop. Go ahead.

7 MR. YNTEMA: Mr. Nes, I appreciate that,
8 that being a difficulty. I just want to -- he was
9 continuing to talk, so I just wanted to remind you.
10 Thank you.

11 THE WITNESS: It could be that they are
12 listed in an endorsement schedule in a policy, but
13 that has not been a usual practice by Penn National.

14 Penn National issues an endorsement that
15 is called an automatic additional insured. And it's
16 driven by the language of that endorsement, which
17 references the construct -- specific construction
18 project needs to be named. It does not list the
19 project. It never has.

20 BY MR. NES:

21 Q. If a -- if an insured is listed by name on
22 the endorsement, as you just mentioned as a potential
23 example, if you put that insured's name into your PMS
24 search, will it identify that they are listed by
25 endorsement?

1 A. If an additional insured -- if there was
2 an endorsement with an additional insured by name on
3 an endorsement, no, it will not. You have to have
4 the named insured's policy and look at the policy
5 documents to see if that endorsement exists.

6 Q. And my question is, do you know why the
7 system is designed so that you cannot use the name of
8 the additional insured listed by endorsement in a
9 field to search for policies?

10 MR. YNTEMA: Objection, Mr. Nes. I'm
11 going to ask you to tell me which topic that question
12 would pertain to.

13 MR. NES: As you know, we've talked about
14 this before. You can object to form, but you cannot
15 provide these type of narrative objections. So I'm
16 going to ask the witness for an answer.

17 MR. YNTEMA: Mr. Nes, it wasn't an
18 objection. I'm just asking you to identify the topic
19 that that question pertained to.

20 BY MR. NES:

21 Q. You can answer, Mr. Wright, if you know
22 the answer.

23 A. (Inaudible) were provided by the agents.

24 THE REPORTER: I'm sorry, I couldn't
25 understand your answer.

1 THE WITNESS: Endorsements for additional
2 insured coverage are provided by the agent. They are
3 typically job specific. And those types of documents
4 are, at least back in the day, back in the late '80s,
5 early '90s, additional insured endorsements were not
6 unheard of, but were very infrequent.

7 And as I mentioned, Penn National has
8 issued an endorsement that's called an automatic
9 additional insured endorsement that has no names on
10 it, and is driven by whatever documents are available
11 when a claim arises, which include the construction
12 contract. So there would be no name, additional
13 insured name in any policy documents, except under
14 some unusual circumstances.

15 But the system does not pick up those
16 additional insured names. They are not entered.
17 It's an endorsement for a short period of time during
18 a project. So they don't pay a premium, so they are
19 not placed by name when an endorsement is issued.

20 MR. NES: I'd like to look at the next
21 document we're going to have as an exhibit. This is
22 -- will be Exhibit 2, the June 11, 2021 Affidavit of
23 Boyd Wright.

24 (Exhibit No. 2 was marked for
25 identification.)

1 BY MR. NES:

2 Q. Why don't we scroll to the end of this
3 document. This is Exhibit 2. This is your signature
4 on this Affidavit; is that correct, Mr. Wright?

5 A. Yes, it is.

6 Q. I'd like to go to the front page of
7 Exhibit 2, particular paragraph number 3 states,
8 quote, "I am currently and was at all times relevant,
9 herein, employed by Pennsylvania National Mutual
10 Casualty Insurance Company as a senior home office
11 claim examiner, in which capacity I have been
12 involved with, coordinated, and have firsthand
13 knowledge of Penn National's investigation for the
14 documents requested by the Receiver of Covil
15 Corporation's Request for Production Nos. 31 and 32
16 in this case, and the Subpoena Duces Tecum issued on
17 February 8, 2021 on behalf of the Receiver in the
18 Finch coverage action to which Penn National is not a
19 party.

20 Do you see that?

21 A. Yes.

22 Q. First, you mention that you're a senior
23 home office claim examiner. How long have you had
24 that title?

25 A. 17 years.

1 Q. And, generally, what are your current job
2 responsibilities as a senior home office claim
3 examiner?

4 A. I handle all the asbestos claims for Penn
5 National, all the environmental claims, almost all of
6 the -- or the vast majority of professional liability
7 claims. I'm assigned to also handle certain unique
8 or complicated cases. And I also provide technical
9 advice to field offices on their own campus.

10 Q. Do you supervise anyone in your position
11 as a senior home office claim examiner?

12 A. I don't have responsibilities of
13 supervising, perhaps, as you think of it. Insofar
14 as, I don't participate in the evaluation of a claim
15 handler's performance. But I do have authority to
16 provide them direction and technical advice on claims
17 they are handling.

18 Q. In paragraph 3 of your Affidavit, you said
19 that you coordinated the response to Covil's Request
20 for Productions and the Subpoena. What did you mean
21 by the word "coordinated"?

22 A. I either took care of it personally or
23 asked document custodian to follow up and provide
24 records that we were able to identify.

25 Q. And in terms of the document custodian,

1 that was Mr. Reifsnyder; is that right?

2 A. Yes.

3 Q. Other than Mr. Reifsnyder, did you speak
4 with anybody else regarding the response to Covil's
5 document request or the subpoena?

6 A. I believe that I may have initially talked
7 to some clerical people, just to get an idea of how
8 much time they would anticipate trying to spend -- it
9 would take. And that was mainly to gauge for myself
10 the time parameters that I was going to need to do
11 whatever research was necessary on my end.

12 Q. What specific research were you having to
13 coordinate that you are referring to?

14 A. Well, I took the list to a couple clerical
15 people and just asked them how much time did they
16 think it would take them to research this. They
17 looked over the list. They told me it would probably
18 take them several hours, if not days. That was --
19 that did not include the job site list. I thanked
20 them. And so I started to schedule my time to
21 perform the search by name of every entity that was
22 listed.

23 I also searched for the defendants that
24 were in Finch that were not part of the list
25 provided. I also researched all the supps- --

1 supplemental named insureds on the Covil policy to
2 ensure that there wasn't another policy out there for
3 one of them.

4 Q. So in terms of the supplemental named
5 insureds on the Covil policy, did you identify any
6 policies or hits for those entities?

7 A. No.

8 Q. And so using the PMS system, if you used
9 any of those names, and that's all you had, you
10 wouldn't actually identify the Covil policy; is that
11 right?

12 A. No. What I typed -- most of those
13 entities are entitled Covil whatever. So if I type
14 in Covil, I'm going to get a hit, if there is
15 anything out there, on everything in that name. Name
16 similarities and so forth. I go to that -- that is
17 the same policy number we already have. The
18 supplemental named insureds aren't named. I go to
19 the policy number and, yes, it's the same policy
20 number we have with that endorsement that lists all
21 the supplemental names. But each of those entities
22 are not -- don't show up.

23 Q. You mentioned that --

24 A. For instance -- for instance, the insured
25 is Covil Corp. If I type in Covil, I'll get Covil

1 spelled different ways sometimes. Personalized names
2 with people with two Ls on the end or something. But
3 if I type in Covil Corp., I get the policy number.
4 If I type in Covil by itself, I get that policy
5 number, but I'm not getting Covil Insulation. Those
6 don't show up, because they are not the primary named
7 insured. They are supplemental insured.

8 Q. You mentioned that you consulted with file
9 clerks about how much time it would spend. Did
10 anyone other than you do the electronic search for
11 contractors or job sites for the Covil response?

12 A. No.

13 Q. Other than Mr. Reifsnyder, did you direct
14 anyone to do any other types of searches or --

15 A. No.

16 Q. -- respond to the document?

17 A. No.

18 Q. When was the first time that you spoke
19 with Mr. Reifsnyder regarding searching for
20 responsive documents?

21 A. The earliest I would have spoken to him
22 would have been when the plaintiff's Subpoena came in
23 on Finch. It would have been our first notice of any
24 Covil claim back in 2018, I think.

25 Q. And with that search you had policy

1 numbers; is that correct?

2 A. Yes. And that's what was necessary, in
3 order to pull the historical documents.

4 Q. With respect to the contractor lists and
5 job sites, did you speak with Mr. Reifsnyder
6 regarding searches for paper documents using those
7 two lists?

8 A. Yes. And he told me that unless I had a
9 policy number, he had no -- no ability to locate any
10 of those by name.

11 Q. Did you speak with Mr. Reifsnyder about
12 any alternative means of searching the paper records,
13 other than by policy number?

14 A. I've asked about that and he -- his only
15 means of searching is by policy number.

16 Q. Did you speak with Mr. Reifsnyder about
17 the potential of hiring an outside vendor to do
18 searches for Covil documents in the hard copy
19 documents?

20 A. No, I did not.

21 Q. Did you speak with Mr. Reifsnyder about
22 having additional resources from Penn National
23 coordinated to do a paper search in-house for Covil
24 documents?

25 MR. YNTEMA: Objection to form.

1 THE WITNESS: As far as we know, we
2 located all the available Covil documents, and we
3 provided those.

4 BY MR. NES:

5 Q. I understand that. But my question is,
6 did you talk to Mr. Reifsnnyder about bringing in
7 additional assets within the company to manually
8 search for documents responsive to the Subpoena or
9 the document request?

10 MR. YNTEMA: Object to form.

11 THE WITNESS: The only -- no, I didn't,
12 because his only means of searching was by policy
13 number. And I believe he told me we were looking at
14 hundreds of thousands, if not millions of pages of
15 documents.

16 BY MR. NES:

17 Q. I'd like to turn back to Exhibit 2, which
18 is your Subpoena. I'm sorry, which is your
19 Affidavit. I'd like to turn your attention to
20 paragraph 10.

21 A. (Witness peruses document.)

22 Q. It states, quote, "In the event an
23 electronic search generates a result for a principal
24 named insured, the result will include the principal
25 insured's name and associated city and state, a

1 policy number, and the type of coverage provided,
2 general liability, inland marine, workers'
3 compensation, et cetera. When the electronic search
4 generates such a result, Penn National can then
5 conduct an electronic search for the insured's policy
6 documents by way of the policy number."

7 Do you see that?

8 A. Yes.

9 Q. Other than the systems that we've talked
10 about already today, the PMS system, are there any
11 other ways to conduct electronic search that would
12 generate an insured's policy number?

13 A. No.

14 Q. The next sentence in paragraph 10 says,
15 "If no policy documents are generated by an
16 electronic search, then a search can be conducted of
17 Penn National's archived paper policy documents,
18 which are stored by policy number only."

19 Do you see that?

20 A. Yes.

21 Q. Did you have any role in setting up the
22 system, where paper documents are stored by policy
23 number only?

24 A. No.

25 Q. Do you know who made the decision to set

1 up the archived paper documents by policy number
2 only?

3 A. No.

4 Q. I'd like to look at paragraph 11. It
5 says, quote, "With respect to the Receiver's
6 Subpoena, upon receiving it, I personally initiated
7 Penn National's search for policy documents relating
8 to the contractors and facilities listed in the
9 Receiver's Subpoena."

10 Other than the electronic searches that
11 you described today and speaking with Mr. Reifsnyder,
12 did you do anything else to search for policy
13 documents relating to the contractors and facilities
14 listed in the Receiver's Subpoena?

15 A. We used the search methods that are
16 available to us and those are the only search methods
17 available.

18 Q. Well, I'm just making sure that I have
19 caught everything that you've done. And you said you
20 used the searches available. So I'll ask you again.
21 Other than the searches, the electronic searches and
22 the paper searches that you've described so far
23 today, are you aware of any other searches for policy
24 documents relating to the contractors and facilities
25 listed in the Receiver's Subpoena that we haven't

1 talked about?

2 MR. YNTEMA: Object to form.

3 THE WITNESS: No.

4 BY MR. NES:

5 Q. And the last sentence of paragraph 11 it
6 says, quote, "No other information was provided to
7 Penn National with respect to any relationship that
8 Covil had with respect to any of the contractors or
9 facilities or any potential policy numbers that Penn
10 National could use in conducting its search, in order
11 to respond to the Receiver's Subpoena," close quote.

12 Do you see that?

13 A. Yes.

14 Q. You're noting here in this sentence that
15 there was no information provided about a
16 relationship between Covil and the contractors or the
17 facilities. How would understanding the relationship
18 between Covil and the contractors and the facilities,
19 aid in the search for responsive documents?

20 A. Well, the documents requested information
21 on whether Covil was an additional insured under any
22 policy issued by Penn National. Our policies, when
23 we're dealing with additional insureds, typically use
24 an automatic additional insured endorsement. There
25 are no contractor names on it. That document, in

1 order to determine coverage, requires certain
2 conditions be met, which is that there needs to be a
3 written contract that identifies the job or site or
4 project that would allow us to then evaluate that
5 endorsement, and if coverage applies to that
6 particular project and/or contractor.

7 Therefore, without any other documents,
8 even if we found a policy that belonged to someone,
9 we would still not know what Covil's relationship was
10 to the entity that was listed in that list, if they
11 were required to provide additional insured coverage
12 to that individual or were afforded coverage under
13 that entity's policy.

14 Now, all the --

15 Q. And --

16 A. -- policies that we were able to identify
17 from that list, none of them contained additional
18 insured endorsement.

19 Q. I'd like to look at paragraph 12 of your
20 Affidavit. It says, quote, "I personally conducted
21 an electronic search as to each of the contractors,
22 facilities, and Finch defendants."

23 Do you see that?

24 A. Yes.

25 Q. Other than what we talked about today, did

1 you do anything else to conduct the electronic search
2 for the contractors, facilities or Finch defendants?

3 A. No.

4 Q. I'd like to turn to paragraph 16.
5 Paragraph 16 of your Affidavit on page 5 says, quote,
6 "After completing my electronic searches, I requested
7 Brent Reifsnyder, Director of Administrative
8 Services, to conduct a search of Penn National's
9 archived paper policy documents for the general
10 liability policies.

11 Mr. Reifsnyder is the Penn National
12 employee with the most knowledge regarding Penn
13 National's archived policy documents and the manner
14 for searching such documents."

15 Do you see that?

16 A. Yes.

17 Q. How many conversations do you recall
18 having with Mr. Reifsnyder regarding the search for
19 paper documents, after the Court issued its Motion to
20 Compel, which was on July 1st of this year?

21 MR. YNTEMA: Objection to form.

22 THE WITNESS: Off the top of my head, I
23 don't know. I know that I haven't talked to Brent
24 since his deposition was conducted. And for this
25 particular paragraph, I was able to come up with some

1 accounts from the list that had either the names
2 lined up, whether they were truly related to anything
3 to do with Covil was unknown, just a name similarity.
4 But because of the archive nature of some of those
5 documents, I asked Mr. Reifsnyder to provide that
6 material to me.

7 I know I did it once or twice. Maybe I
8 had two different -- two different lists. I don't
9 remember. But I do know that anything that I came up
10 with that was archived, I asked him to provide it to
11 me.

12 BY MR. NES:

13 Q. Did you provide Mr. Reifsnyder with a
14 complete copy of the contractor list and the job site
15 facilities' list that were in the Subpoena for him to
16 search?

17 A. No.

18 Q. I'd like to look at paragraph 19 of your
19 Affidavit. It says, quote, "During my research and
20 investigation for documents responsive to the
21 Receiver's Subpoena, I recorded the time I expended
22 in conducting such research and investigation, which
23 totaled 64 hours."

24 Do you see that?

25 A. Yes.

1 Q. When you say you recorded your time, where
2 did you record your time?

3 A. At that particular point in time, we were
4 working at home because of the COVID virus. And as I
5 spent time on it, I would -- I would allocate a
6 certain period of time during the day. And I would
7 just -- wrote -- wrote it down in a -- on a piece of
8 scratch paper or a pad that I had and -- because I
9 was asked to keep track of my time on it.

10 Q. Who asked you to keep track of your time?

11 A. Penn National counsel.

12 Q. Did you keep these pieces of paper, where
13 you were tracking your time?

14 A. Uhm, I don't know. I do have some
15 paperwork still at home. I'd have to look and see.
16 I know I didn't bring them to the office, when they
17 reopened the office.

18 Q. When you told Penn National that you had
19 spent 64 hours responding to the Subpoena, did anyone
20 ask you to -- for any written verification of those
21 64 hours?

22 MR. YNTEMA: Object to form.

23 THE WITNESS: I didn't report anything to
24 Penn National. I'm salaried. So -- and I'm
25 accountable for my own time and what I spend and how

1 I allocate it.

2 BY MR. NES:

3 Q. Did Penn National's counsel ever ask you
4 if you kept paper records to verify those 64 hours
5 identified in your subpoena?

6 MR. YNTEMA: Objection to the extent that
7 it requests for information which then has been
8 provided by myself as counsel or David Harris as
9 counsel for Penn National, as being attorney-client
10 privilege.

11 MR. HARRIS: I do as well.

12 BY MR. NES:

13 Q. Was the vast majority of the 64 hours
14 mentioned in paragraph 19, manually inserting the
15 various names of the contractors and job sites into
16 the PMS system?

17 A. Yes. And it included some variations of
18 names. I mean, you type in, say -- uhm, I don't
19 know. Pick a company name that's got, you know, Joe
20 Smith Corporation, Incorporated. You type that in,
21 you narrow the search parameters. So you have to
22 back it off step by step to make sure that there
23 isn't some shorter name variation out there.

24 MR. NES: I think we've been going over an
25 hour. Why don't we take a five-minute break?

1 THE WITNESS: Great.

2 MR. YNTEMA: Thank you, Mr. Nes.

3 (Recess was taken from 11:26 a.m. to
4 11:35 a.m.)

5 THE VIDEOGRAPHER: Time on the monitor is
6 11:35 a.m. and we're back on the record.

7 MR. NES: Mr. Wright, I have no further
8 questions, at this time. Thank you for your
9 testimony.

10 THE WITNESS: All right.

11 MR. YNTEMA: Can we go off the record a
12 second and let me look at my notes and see if I have
13 any questions.

14 THE VIDEOGRAPHER: The time on the monitor
15 is 11:35 a.m. and we're going off the record.

16 (Recess was taken from 11:35 a.m. to 11:44
17 a.m.)

18 THE VIDEOGRAPHER: The time on the monitor
19 is 11:44 a.m. and we're back on the record.

20 MR. YNTEMA: Mr. Nes, Madam Court
21 Reporter, I do have a few questions in follow up.

22 EXAMINATION

23 BY MR. YNTEMA:

24 Q. Again, this is Brady Yntema. I represent
25 Penn National Mutual Insurance Company in this case.

1 Mr. Wright, I do have a few follow-up
2 questions to ask you, mainly with respect to the
3 Subpoena that was served on Penn National in the
4 Finch case in June of 2018. Do you recall giving
5 some testimony about that this morning?

6 A. Yes.

7 Q. Do you recall that Subpoena, actually
8 seeing it and reading it?

9 A. Yes.

10 (Exhibit No. 3 was marked for
11 identification.)

12 BY MR. YNTEMA:

13 Q. Okay. Sir, I'm going to hand you a
14 Subpoena that I believe was served on Penn National
15 in June 2018 or thereabouts. If you can review that
16 document and tell me if, in fact -- what that
17 document is.

18 A. Uhm, that's a U.S. District Court Subpoena
19 in Finch versus all these other parties that was
20 served on Penn National by Dean Omar.

21 Q. Okay. And does it refer to an Exhibit A
22 in the Subpoena?

23 A. Yes.

24 Q. And did that Exhibit A tell you what
25 documents they are looking for?

1 A. Yes.

2 Q. And as far as the documents they are
3 looking for listed in Exhibit A, do you see a number
4 1?

5 A. Yes.

6 Q. And does that read, "Copies of all
7 liability insurance policies and endorsements issued
8 to Covil between 1969 and 1995, including without
9 limitation the commercial, general liability,
10 umbrella, or other liability policies?

11 A. Yes.

12 Q. Does it ask for any other type of
13 liability policies, such as workers' comp?

14 A. No.

15 Q. Did it ask for any other kind of policies,
16 such as inland marine?

17 A. No.

18 Q. Did it ask for any other policies, such as
19 property policies?

20 A. No.

21 Q. I think that's it, sir.

22 Mr. Wright, do you recall, was there any
23 other communications between -- or any other
24 Subpoenas served on Penn National, after responding
25 to that Subpoena that was issued in June 2018 and the

1 initiation of a Middle District of North Carolina
2 action that was asserted against Penn National?

3 A. There may have been a Subpoena that came
4 from defense counsel for Covil, but I don't remember
5 if -- I know that we answered that. And I had talked
6 to Covil's defense counsel, who said he was charged
7 with putting together a list of appropriate liability
8 insurers to address the Finch matter.

9 Q. Okay. Did that add -- did that entail
10 anything outside of the general liability policy?

11 A. No. No, it didn't.

12 Q. Sir, do you recall Penn National being
13 third-partied into a case that was pending in the
14 Middle District of North Carolina that involved the
15 Finch case?

16 A. Yes. I think it was -- USF&G was the
17 plaintiff and they had named a number of other
18 insurers and Covil in that Middle District action.

19 Q. And, sir, do you recall about when -- is
20 it accurate that it was a third-party action filed
21 against Penn National in the Middle District of North
22 Carolina, and was filed around November 2019?

23 A. That sounds about right.

24 Q. Was there discovery, meaning
25 Interrogatories and Request for Production of

1 Documents, served in the Middle District of North
2 Carolina action on Penn National?

3 A. They were.

4 Q. Is it accurate to say that there were two
5 sets of discovery that were served on Penn National
6 in that case?

7 A. Yes.

8 Q. And the first set was served on
9 Pennsylvania National Security Insurance Company,
10 would that be accurate?

11 A. I don't remember if the first set was
12 served on Penn National Mutual or Penn National
13 Security, but I know each got -- was served with
14 discovery requests.

15 Q. By your recollection, sir, there were two
16 sets of discovery, and interrogatories, documents
17 requests, one served on Penn National Security and
18 the other served on Pennsylvania National Mutual,
19 correct?

20 A. Yes.

21 Q. To your recollection, the Interrogatories
22 and document requests that were served on Penn
23 National Security, were they -- did they, in effect,
24 mirror the ones that were served on Pennsylvania
25 National Mutual?

1 A. Yes, because at first we couldn't figure
2 out why we were being served with a duplicate set of
3 requests.

4 Q. And with respect to the document request
5 and interrogatories both -- let me ask you this way.
6 With respect to the interrogatories, did they ask for
7 any and all policies issued by Penn National to
8 Covil?

9 A. Yes.

10 Q. And with respect to the document requests,
11 did they also ask for any and all policies issued by
12 Penn National to Covil?

13 A. Yes.

14 Q. And to your -- to your recollection, did
15 Penn National object to the document -- to that
16 document request?

17 A. Yes. We provided the general liability
18 policies because we knew from our investigation that
19 Finch was clearly a liability asbestos claim and
20 objected to the production of non-related policies.

21 Q. Non-related policies being workers'
22 compensation policies?

23 A. Work comp, auto, property, inland marine.
24 Yes.

25 Q. And the Finch case -- your understanding

1 of the Finch case -- what was your understanding of
2 the assertions in the Finch case?

3 A. Mr. Finch was deceased. His wife brought
4 an action -- brought personal injury action for his
5 exposure to asbestos, I believe at a Firestone plant.

6 Q. So is it your understanding that the Finch
7 case involved claims of asbestos exposure and
8 personal injuries resulting, therefrom?

9 A. Yes. I understand this was a general
10 liability claim.

11 Q. And as a result of Penn National's answers
12 to the document requests and the interrogatories
13 served in the Middle District of North Carolina case,
14 do you recall any discovery deficiency letter sent to
15 Penn National's counsel or Penn National with respect
16 to their -- their discovery responses?

17 A. I'm not aware of any deficiency letter in
18 that action.

19 THE REPORTER: I'm sorry, I can't hear
20 you.

21 THE WITNESS: I'm not aware of any
22 deficiency letter in that action.

23 BY MR. YNTEMA:

24 Q. Just looking at my notes, sir. Thank you.

25 Fast forwarding, Mr. Wright, do you recall

1 that there was a stipulation and an eventual
2 dismissal of Penn National in the Middle District of
3 North Carolina case?

4 A. Yes.

5 Q. Do you recall -- do you recall in December
6 of 2020 or 2020, I apologize, Penn National being
7 asked to submit to a Rule 30(b)(6) deposition?

8 A. Yes.

9 Q. And did -- and did, in fact, you did
10 submit -- you did provide Rule 30(b)(6) deposition
11 testimony as a designee of Penn National in January
12 of 2021?

13 A. Yes.

14 Q. And, thereafter, you remember that there
15 was a Motion to Compel filed against Penn National in
16 or about February of 2021?

17 A. Yes.

18 Q. And you recall the Court issuing an order
19 for -- or issuing a directive for the Receiver's
20 counsel to issue a Subpoena upon Penn National with
21 respect to approximately 600 to 650 facilities and
22 contractors to determine if there were any policies
23 that covered Covil as an additional insured?

24 A. Yes. And I don't -- I can't remember
25 which action that was in. I know there was still a

1 Finch action pending in South Carolina state court
2 and then there was this action.

3 Q. I apologize, Mr. Wright. Do you recall if
4 your testimony in the Rule 30(b)(6) -- in the Rule
5 30(b)(6) notice, the initial testimony that you
6 provided, was that in the Finch case?

7 A. That's what I seem to recall is that
8 referred to Finch.

9 Q. And the Subpoena that resulted from the
10 Motion to Compel hearing that was conducted in
11 February of 2021, was that also in the Finch case, to
12 your understanding?

13 A. That was really -- that's when it came
14 back -- right. I believe it was related or recall it
15 was related to the Finch state court matter.

16 Q. And that case being a South Carolina state
17 court matter?

18 A. Yes.

19 Q. And, again, was it your understanding that
20 that action only pertained to the Finch case that
21 asserted asbestos exposure and personal injury
22 resulting, therefrom?

23 A. Yes.

24 Q. You don't recall any Request for
25 Production Documents or Interrogatories specifically

1 served on Penn National in the Finch South Carolina
2 state court case, do you?

3 A. Uhm, I don't -- there -- I don't recall.
4 It could have been, but I don't remember if there was
5 or not.

6 Q. Now, with respect to the case that
7 you're -- that you're testifying to in today, that is
8 the Covil or Receiver for Covil versus Penn National
9 Mutual Insurance Company, correct?

10 A. Yes.

11 Q. And do you recall receiving or being
12 served with interrogatories and document requests in
13 the Covil -- in the Covil or Receiver for Covil
14 versus Penn National case?

15 A. This action?

16 Q. Yes.

17 A. (Nods head.)

18 Q. Do you recall responding to those
19 interrogatories and document requests, initially?

20 A. Yes.

21 Q. And you recall receiving a deficiency --
22 discovery deficiency letter from Receiver's counsel,
23 after serving Penn National's responses to that set
24 of discovery?

25 A. Yes.

1 Q. And you recall that counsel sent
2 Receiver's counsel a letter stating that they
3 would -- they would re-examine or that they
4 appreciated the opportunity to supplement Penn
5 National's responses to address many of Receiver's
6 counsel's concerns. Do you remember that letter?

7 A. Yes.

8 Q. And do you recall that Penn National's
9 counsel asked to have till June 11, 2021 to
10 supplement its responses?

11 A. Correct.

12 Q. And did indeed Penn National supplement
13 its responses with a document production?

14 A. Yes, it did.

15 Q. And do you recall what that document
16 production entailed, in general?

17 A. Yes. They asked for copies of all the
18 policies that Penn National issued to Covil and we
19 provided them.

20 Q. And those policies being auto policies?

21 A. Auto, property, work comp, inland marine.
22 And, of course, we already produced general
23 liability.

24 Q. And property as well?

25 A. Yes.

1 MR. YNTEMA: Sir, that's all I have.

2 Thank you for your time.

3 MR. NES: No further questions.

4 THE VIDEOGRAPHER: Off the record. The
5 time on the monitor is 11:58 a.m. And this concludes
6 the deposition.

7 (The witness, after having been advised of
8 his right to read and sign the transcript, does not
9 waive that right.)

10 (Deposition was concluded at 11:58 a.m.)

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CERTIFICATE OF REPORTER

I, MARY K. STEPP, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of August, 2021, at Campobello, Spartanburg County, South Carolina.



Mary K. Stepp, Notary Public
My Commission Expires:
March 1, 2028

I N D E X

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REQUESTED INFORMATION
(No information requested.)

E X H I B I T S

Marked for Identification		
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Exhibit No. 3 6/2018 Subpoena in Finch Case	46	10

1 To: BOYD WRIGHT

2 Re: Signature of BOYD WRIGHT

3 Date Errata due back at our offices: 30 days

4

5 Greetings:

6 The deponent has reserved the right to read and sign.

7 Please have the deponent review the deposition

8 transcript, noting any changes or corrections on the

9 attached Errata.

10 Once the Errata is signed by the deponent and notarized,

11 please mail it to the address below. When the signed

12 Errata is returned to us, we will seal and forward to the

13 hiring attorney for filing with the court.

14 We will also send copies of the Errata to all ordering

15 parties.

16 If the signed Errata is not returned by the date

17 above, the original transcript may be filed with the

18 court without the signature of the deponent.

19

20 Please send completed Errata to:

21 Veritext Production Facility

22 20 Mansell Court

23 Suite 300

24 Roswell, GA 30076

25 770-343-9696

ERRATA

I, the undersigned, do hereby certify that I have read the transcript of my testimony, and that

___There are no changes

___The following changes are noted:

Pursuant to the governing rules of Civil Procedure, any changes in form or substance which you desire to make to your testimony shall be entered upon the deposition with a statement of the reasons given for making them. To assist you in making any such corrections, please use the form below. If additional pages are necessary, please furnish same and attach.

Page ____ Line ____ Change _____

Reason for Change _____

Page ____ Line ____ Change _____

Reason for Change _____

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

EVELYN WHITE, Executrix of the
Estate of Walter F. White,

Plaintiff,

-vs-

COMBUSTION ENGINEERING COMPANY,
INC., et al,

Defendants.

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C/A No. 77-1369
(Wrongful Death)

C/A No. 77-1384
(Survival Action)

*Covil
Insulation*

DEPOSITION OF MR. PALMER COVIL

VOLUME I - PAGES 2 - 135

PURSUANT to Notice and agreement between the parties,
the deposition of Palmer Covil, called by the Defendants, was
taken commencing at the hour of 11:00 O'Clock, A. M., on
Wednesday, July 13, 1977, in the offices of the Haynsworth
Law Firm 409 East North Street, Greenville, South Carolina.

NELDA M. KAY, REPORTER

G.W. Coleman Associates



Court and Deposition Reporters

P. O. Box 10114 / Greenville, South Carolina 29603

PLAINTIFF'S
EXHIBIT

79

1 A Yes sir.

2 Q Do you have that with you today?

3 A I think so, I'm not sure if I brought that or
4 not.

5 Q I'm interested in past coverage as well as
6 your present situation on back to Nineteen Forty-eight.

7 A Yes sir, I have a copy of that.

8 Q Great. If you'd let Mr. McKay look at it first,
9 please.

10 This says prior to March of Nineteen Sixty-four,
11 I assume that means back to Nineteen Forty-eight when you
12 started?

13 A I think so.

14 MR. DAVIES: Could we have that marked?

15 (Such document marked by the reporter as
16 Defendants' Exhibit Number One, Palmer Covil)

17 Q Mr. Covil, you mentioned Industrial Associates,
18 was that correct?

19 A Yes sir.

20 Q And you say this is affiliated somehow with you?

21 A Well, it's a wholly owned subsidiary. We
22 bought these two branches in January of Seventy-six from
23 Keene Corporation, they were getting out of the insulation
24 business and we bought the Birmingham branch and the Jackson-
25 ville branch from them.

1 will buy, what's on that approved list. Daniel at certain
2 times on a certain job will say, we want a certain manufactur-
3 er's products. I guess just about all of them sometime for
4 a particular job they'll say we want to buy a particular
5 product.

6 I like to got fired one time for sending s
7 Johns-Manville products to a Owens-Corning plant.

8 Q I would assume that if you're working on
9 something for one of these people they want their own.

10 A Yeah. They let us known in no uncertain terms
11 we needed to get it out of there right quick.

12 ↓ Q In the course of your business since Nineteen --
13 well, whenever you started in the insulation business --- let's
14 go into that first. When did you personally first get
15 involved in insulation?

16 A In business for myself or ---

17 Q No, just first have any contact with it.

18 A About Nineteen Thirty.

19 Q How was that?

20 A Working as an apprentice.

21 Q And you worked as an apprentice or a mechanic
22 up until about Nineteen Forty-two?

23 A No, I didn't work all the time, I worked for
24 about a couple or three years as an apprentice and then I
25 got out of the insulation business and worked at something

1 else until about Nineteen Thirty-six or Thirty-seven and went
2 back to it at that time and I worked in the business in
3 various capacities until Nineteen Forty-eight when I started
4 my own business.

5 Q Where did you grow up, sir, where are you from?

6 A Greenville County.

7 Q So you've lived most of your life here in
8 Greenville County?

9 A Yeah, I lived in Savannah, Georgia for awhile
10 and lived in Richmond, Virginia for awhile and Wilmington,
11 North Carolina for awhile. Now outside of about ten years
12 I've lived in Greenville all my life.

13 Q So off and on for the last forty-seven years
14 you've had something to do with insulation?

15 A Right.

16 Q Since about Nineteen Forty-eight you've been in
17 it, for the last thirty years, pretty solid?

18 A That's correct.

19 Q During this time have you kept up with the
20 articles and things like this on the subject?

21 A Well, pretty much.

22 Q I assume you all have had a good bit of sales
23 paraphernalia in your offices of people trying to sell you
24 insulation materials?

25 A Yes sir.

- 19581 -

Jun 22 2020
REFERENCE ID: 541419

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ADD. OF CORP:	AMMENDMENTS TO CHARTER	
Greenville	Increased 1-12-65	
NAME AND ADD. OF AGENT		
Palmer, Covil	increased 4-22-58 \$69538, \$9,571	
129 River St	increased 1-28-70	
Greenville	offic. chg. 1-28-70 *	
Berea Industrial Park		
	Name changed to: COVIL CORPORATION	
	6-16-75	
PURPOSES:		
CAPITAL STOCK	\$ 500,000 5,000 @ \$100.00	
	\$ 1,500,000 15,000 " " 1-28-70	
STATE OF INC.	DATE DOM.	PERIOD OF DURATION
	12-30-54	
NAME		FILE NO.
COVIL INSULATION COMPANY		28334

PLAINTIFF'S
EXHIBIT

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Jun 22 2020
REFERENCE ID: 541419

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

SOUTH CAROLINA SECRETARY OF STATE

PAYMENTS		NAME AND ADDRESS OF OFFICERS AND DIRECTORS
YEAR	DATE PAID	
1965	APR 2 1965 - 138240	
1966	12593	
1967		
1968		
1969		
1970		
1971		
1972		
1973		
1974		

RESUME OF WORK PERFORMED BY COVIL CORPORATION

OWNER	TYPE OF WORK	OWNER OR CONTRACTOR	LOCATION OF JOB	YEAR COMPLETED
Santee Cooper (Wimyah #2)	Insulation	Burns & Roe Inc.	Georgetown, S.C.	1977
Oconee Nuclear Facility	Insulation	Duke Power Company	Seneca, S.C.	1975
Cliffside Power Plant	Insulation and Lagging	Daniel Const. Co.	Cliffside, N.C.	1973
Slyland Steam Plant	Insulation	Ebasco Services	Skyland, N.C.	1961
Skyland Steam Plant	Insulation and Lagging	Brown & Root	Skyland, N.C.	1970
Firestone Tire & Rubber	Insulation	Firestone Tire & Rubber	Nashville, Tenn.	1976
Firestone Tire & Rubber	Insulation	Firestone Tire & Rubber	Albany, Georgia	1970
Jow Badische	Insulation	Daniel Const. Co.	Anderson, S.C.	1968
Champion Paper	Insulation	Daniel Const. Co.	Canton, N.C.	1965
Ferck & Company	Insulation	Daniel Const. Co.	Albany, Georgia	1976
Michelin Tire	Insulation	Daniel Const. Co.	Greenville & Anderson, S.C.	1976
McGuire Nuclear Station	Insulation	Duke Power Company	Cowans Ford, N.C.	1980
Selews Creek	Insulation and Lagging	Duke Power Company	Walnut Cove, N.C.	1976
Carolina Power & Light Plant	Insulation and Lagging	Brown & Root	Goldsboro, N.C.	1969
Fusta Paper	Insulation and Lagging	Olin Corporation	Brevard, N.C.	1976
Virgil C. Summer Nuclear Plant	Insulation	S.C. Electric & Gas	Parr, S.C.	1979

They have also done precipitators and miscellaneous work for South Carolina Electric & Gas, Duke Power Company, Federal Paper, and Carolina Power & Light.

Note: The above jobs were performed on a contract basis.

Total amount approximately \$19,100,000.00

~~26,100,000.00~~
26,100,000.00

PLAINTIFF'S
EXHIBIT

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COV_005785

OWNER	TYPE-OF WORK	OWNER OR CONTRACTOR	LOCATION OF JOB	YEAR COMPLETED
Catawba Nuclear Plant	Insulation	Duke Power Company	Catawba, S. C.	1985

The above job has been secured since previous information was submitted to Burns and Roe, Inc. on May 11, 1979.
This contract is approximately \$7,000,000.00.

RESUME OF WORK PERFORMED BY COVIL CORPORATION

OWNER	TYPE OF WORK	OWNER OR CONTRACTOR	LOCATION OF JOB
SANTEE COOPER (WIMYAH # 2)	INSULATION	BURNS & ROE INC.	GEORGETOWN, S. C.
OCONEE NUCLEAR FACILITY	INSULATION	DUKE POWER COMPANY	SENECA, S. C.
CLIFFSIDE POWER PLANT	INSULATION & LAGGING	DANIEL CONSTRUCTION CO.	CLIFFSIDE, N.C.
SKYLAND STEAM PLANT	INSULATION	EBASCO SERVICES	SKYLAND, N.C.
SKYLAND STEAM PLANT	INSULATION & LAGGING	BROWN & ROOT	SKYLAND, N.C.
FIRESTONE TIRE & RUBBER	INSULATION	FIRESTONE TIRE & RUBBER	NASHVILLE, TENN.
FIRESTONE TIRE & RUBBER	INSULATION	FIRESTONE TIRE & RUBBER	ALBANY, GEORGIA
DOW BADISCHE CORP.	INSULATION	DANIEL CONSTRUCTION CO.	ANDERSON, S. C.
CHAMPION PAPER	INSULATION	DANIEL CONSTRUCTION CO.	CANTON, N.C.
MERCK & COMPANY	INSULATION	DANIEL CONSTRUCTION CO.	ALBANY, GEORGIA
MICHELIN TIRE	INSULATION	DANIEL CONSTRUCTION CO.	GREENVILLE & ANDERSON, S. C.
MCGUIRE NUCLEAR STATION	INSULATION	DUKE POWER CO.	COWANS FORD, N. C.
BELEWS CREEK	INSULATION & LAGGING	DUKE POWER CO.	WALNUT COVE, N.C.
CAROLINA POWER & LIGHT PLT.	INSULATION & LAGGING	BROWN & ROOT	GOLDSBORO, N.C.
ECUSTA PAPER	INSULATION & LAGGING	OLIN CORPORATION	BREVARD, N.C.
VIRGIL C. SUMMER NUCLEAR PLT.	INSULATION	S. C. ELECTRIC & GAS	PARR, S. C.



December 4, 1979

Flint River Project
Buckeye Cellulose
P. O. Box 392
Oglethorpe, Georgia 31068

Attention: Mr. Jim Musick
Purchasing Agent

Gentlemen:

Covil Corporation is a Greenville, S. C. based Insulation Contractor and Distributor. Founded in 1947, we have for 32 years furnished the Southeast with insulation products from companies that set industry standards. As contractors our workmanship has proved to be of such a high quality that we too, are setting standards throughout the Southeast.

Covil Corporation has the facilities, capabilities and expertise to satisfy the requirements for any size job. We have supplied material and labor for contracts ranging up to \$10,000,000.00. Owens-Corning, Johns-Manville, Pabco, Knauf, Benjamin Foster, Childers Products, Goodtemp, Forty-Eight Insulation and Ceel-Co are just a few of the many companies for whom we serve as distributors.

Our Sales Engineers have recently informed us of the Flint River Project. We would like the opportunity of serving you and ask your consideration in placing Covil Corporation on the bidders list for this project. Attached is a partial listing of satisfied Covil customers. Please allow us the opportunity of including you among them.

Please do not hesitate to contact me should you have any questions regarding Covil Corporation.

Yours very truly,

COVIL CORPORATION

Russell L. Johnson
Russell L. Johnson
Senior Vice President

RLJ:yww

Attachment

P. O. BOX 1804 • GREENVILLE, SC 29602 • (803) 246-1521

COV_005788

RESUME OF WORK PERFORMED BY COVIL CORPORATION

OWNER	TYPE OF WORK	OWNER OR CONTRACTOR	LOCATION OF JOB
SANTEE COOPER (WIMYAH # 2)	INSULATION	BURNS & ROE INC.	GEORGETOWN, S. C.
OCONEE NUCLEAR FACILITY	INSULATION	DUKE POWER COMPANY	SENECA, S. C.
CLIFFSIDE POWER PLANT	INSULATION & LAGGING	DANIEL CONSTRUCTION CO.	CLIFFSIDE, N.C.
SKYLAND STEAM PLANT	INSULATION	EBASCO SERVICES	SKYLAND, N.C.
SKYLAND STEAM PLANT	INSULATION & LAGGING	BROWN & ROOT	SKYLAND, N.C.
FIRESTONE TIRE & RUBBER	INSULATION	FIRESTONE TIRE & RUBBER	NASHVILLE, TENN.
FIRESTONE TIRE & RUBBER	INSULATION	FIRESTONE TIRE & RUBBER	ALBANY, GEORGIA
DOW BADISCHE CORP.	INSULATION	DANIEL CONSTRUCTION CO.	ANDERSON, S. C.
CHAMPION PAPER	INSULATION	DANIEL CONSTRUCTION CO.	CANTON, N.C.
MERCK & COMPANY	INSULATION	DANIEL CONSTRUCTION CO.	ALBANY, GEORGIA
MICHELIN TIRE	INSULATION	DANIEL CONSTRUCTION CO.	GREENVILLE & ANDERSON, S. C.
MCGUIRE NUCLEAR STATION	INSULATION	DUKE POWER CO.	COWANS FORD, N. C.
BELEWS CREEK	INSULATION & LAGGING	DUKE POWER CO.	WALNUT COVE, N.C.
CAROLINA POWER & LIGHT PLT.	INSULATION & LAGGING	BROWN & ROOT	GOLDSBORO, N.C.
ECUSTA PAPER	INSULATION & LAGGING	OLIN CORPORATION	BREVARD, N.C.
VIRGIL C. SUMMER NUCLEAR PLT.	INSULATION	S. C. ELECTRIC & GAS	PARR, S. C.

Covil Trial Exhibit 82

Duplicative of 2022.11.16 Order

See R. pp. 33-36

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

.....

TRANSAMERICA INSURANCE .
COMPANY, .
Plaintiff .

vs. .

Cause No. 894-00289

GENERAL GASKET .
CORPORATION, et. al., .
Defendants .

Division No. 2

.....

Deposition of: EDWIN L. RICE

Taken by : Defendants

Date : October 3, 1991, 10:55 a.m.

Place : Goldberg, Katzman & Shipman, P. C.
320E Market Street
Strawberry Square
Harrisburg, Pennsylvania

By : Susan L. Schreffler, RPR
Reporter - Notary Public

PLAINTIFF'S
EXHIBIT

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0023

FILIUS & McLUCAS REPORTING SERVICE

Harrisburg 717-236-0623 York 717-845-6418 PA 1-800-233-9327

1 APPEARANCES:

2 KOHN, SHANDS, ELBERT, GIANOULAKIS & GILJUM
3 By: ANDREW M. BURNS, ESQ.

4 For - Travelers Insurance Company and Phoenix
5 Insurance Company

6 BROWN & JAMES, P. C.
7 By: MICHAEL M. FLAVIN, ESQ.

8 For - Defendants

9 HOLTKAMP, LIESE, BECKEMEIER & CHILDRESS, P. C.
10 By: LEO W. NELSEN, ESQ.

11 For - Pennsylvania National Insurance
12 Companies

13 ALSO PRESENT:

14 PENNSYLVANIA NATIONAL INSURANCE COMPANIES
15 By: MICHAEL A. CASSATA, Director - Automobile/
16 General Liability
17
18
19
20
21
22
23
24
25

0000

I N D E X
WITNESS

Edwin L. Rice

Examination

By Mr. Flavin

3

EXHIBITS

Rice Deposition
Exhibit Number

Page

1 Billing form

43

2 Billing form

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REPORTER'S NOTE: Exhibits were retained by
counsel.

0030

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are hereby waived; and all objections except as to the form of the question are reserved to the time of trial.

EDWIN LAVERNE RICE, called as a witness, having been duly sworn, testified as follows:

EXAMINATION

BY MR. FLAVIN:

Q. Would you state your full name, please?

A. Edwin Laverne Rice.

Q. And what is your home address?

A. Home address? 603 South Bedford Street, Carlisle, Pennsylvania.

Q. What's the zip on that?

A. 17013.

Q. And what is your occupation or profession?

A. I'm the production underwriting manager for the commercial lines division of Pennsylvania National Insurance Companies, so I'm an underwriter by trade.

Q. How long have you been in that particular position?

CC31

1 A. Five years approximately.

2 Q. What generally are the duties of your current
3 position?

4 A. I'm responsible for recommending, training and
5 verifying the company's underwriting position with
6 all of our branch offices, responsible for
7 development, filing, and release of new products,
8 and then responsible for all referral underwriting
9 in the company.

10 Q. Just for the record, could you explain what
11 underwriting is, what that term means?

12 A. There's books written on it. I guess
13 simplistically it's taking insurance applications
14 that are submitted to us by our agency force,
15 which are independent agents, reviewing those
16 applications for acceptability with the company's
17 underwriting guidelines and standards, pricing --
18 making a decision to write coverage or not write
19 coverage, pricing that coverage, and then
20 servicing the business from a policy management
21 point of view while it's with the company.

22 Q. Prior to this position, what was your position
23 with the company?

24 A. I was the commercial lines manager of the
25 Harrisburg regional office, which is co-located

1 with our home office.

2 Q. And how long were you in that position?

3 A. Three years.

4 Q. Were your duties here having to do also with
5 underwriting?

6 A. They're very heavily underwriting. Basically,
7 it's the regional office version of the home
8 office position, for simplicity.

9 Q. And what was your position before that?

10 A. I was a home office staff underwriting analyst.

11 Q. And how long did you do that?

12 A. Four years.

13 Q. How long have you been with the company all
14 together?

15 A. 17 years.

16 Q. Have you always been in underwriting or have you
17 done any other aspects of the business?

18 A. I've always been in either our underwriting or
19 what we now call our production underwriting
20 department, which also has some marketing
21 responsibilities.

22 Q. What educational background do you have?

23 A. B. A. degree.

24 Q. From what university?

25 A. Dickinson College, Carlisle, Pennsylvania.

Exam./Flavin - Rice

7

1 Q. What types of insurance policies does Pennsylvania
2 National write generally?

3 MR. NELSEN: Are you talking about now, Mike?

4 MR. FLAVIN: Since now is a little irrelevant,
5 let's go back.

6 BY MR. FLAVIN:

7 Q. The lawsuit involves a period of time -- an
8 alleged period of time between 1956 and 1968.
9 Were you with the company back then?

10 A. I started with the company in 1974.

11 Q. Are you going to be able to answer any questions
12 concerning the company's operation or underwriting
13 operation from 56 to '68?

14 A. I can answer some based on historical information
15 that I'm aware of.

16 Q. Generally during that period of time, what types
17 of policies was the company writing?

18 A. Okay, Pennsylvania National Mutual Casualty
19 Insurance Company at that time wrote personal
20 lines products. I've been in the commercial lines
21 area the whole time, but we wrote basically
22 personal auto, personal home owners. Commercial
23 lines, we wrote commercial fire, commercial --
24 what's now called general liability. Back then it
25 was called liability. Commercial automobile,

Exam./Flavin - Rice

8

workers' compensation and then some limited inland marine coverages.

Q. Did the liability policies include -- the commercial lines of liability policies, did they include workers -- or products liability?

A. They could. At that time liability was done a little differently than it is now and you could buy separate -- an OL & T policy, which was separate premises operations coverage. You could buy an M & C, manufacturers and contractors, policy, which again provided premises operations only. And then you could buy a completed operations and products coverage form.

Q. Was there a comprehensive general liability policy back then?

A. Not as we know it today, no. There was a general liability policy. It was no means comprehensive, at least by today's standards.

Q. Might it have been referred to as a CGL policy?

A. It may have been, I don't know.

Q. Does underwriting have responsibility today for the drafting of policies? Let's talk just about comprehensive general liability policies at this point.

MR. NELSEN: Are you talking about drafting

1 today's policies?

2 MR. FLAVIN: Yes.

3 A. Today we utilize the services of Insurance
4 Services Offices -- or Office, which is a national
5 trade organization, to draft the majority of our
6 policy language for what's now called commercial
7 general liability. So they draft basically all
8 the general forms for the great majority of
9 everything that's used.

10 My department will draft in conjunction with
11 either our legal department or assistance from our
12 legal department and our claims department
13 specific general liability coverages that
14 supplement the bureau file^s coverages. So, yes, we
15 do it to an extent. We don't do all of it.

16 BY MR. FLAVIN:

17 Q. How was that handled back in 56 to '68?

18 A. Very similar. There was much more -- because of
19 the size of our company, there was much more
20 reliance on bureau forms back then, and there
21 were -- due to the nature of the business and the
22 marketplace at that time, there were very few
23 company drafted forms. So they relied from what I
24 can tell from my knowledge of the company, relied
25 very heavily on the bureaus much more than we do

1 today.

2 Q. What is the bureau that you rely on today?

3 A. Insurance Service Office -- Insurance Services
4 Office. ISO, commonly called.

5 Q. And back in 56 to '68, what was the name of the
6 bureau?

7 A. I'm not sure. I believe we answered that in the
8 interrogatories. It was National....

9 Q. National Bureau of Casualty Underwriters --

10 A. Right.

11 Q. -- is mentioned in the interrogatories and the
12 Insurance Rating Board.

13 A. Right.

14 Q. Are those organizations similar to ISO?

15 A. Those organizations have been absorbed or merged
16 into what is called ISO today.

17 Q. Do you know whether the comprehensive general
18 liability policy that was in effect through the
19 years 1956 to 1968 was substantially the same
20 during that period of time?

21 A. There was a change in 1966 in forms and coverage,
22 so I'm not sure when that went into effect. It
23 was effective obviously prior to 1966. But 1966,
24 either the National Bureau of Casualty
25 Underwriters or the Insurance Rating Board filed a

1 new liability policy in 1966. So there were two
2 different coverage forms, you know, two different
3 sets of coverages in that time frame.

4 Q. When the new forms came out, were they used by
5 Pennsylvania National?

6 A. Sometime along the line, they were, yes. I do not
7 know and we could not find what date we adopted
8 those forms.

9 Q. How does the procedure work? Do you make a
10 request of the agency to send you forms or to
11 draft specific forms for your company?

2 A. You mean the bureau?

13 Q. The bureau.

14 A. That's a little hard to answer. The bureau works
15 through various committees. There's underwriting
16 committees, claims committees, or ISO. There's
17 all these various committees. From input from
18 their members, of which we are one, they determine
19 what expansions, what changes in the form that
20 their members would like to see on a collective
21 basis.

22 They also review current court cases, current
23 administrative law, whatever, see what changes
24 should be made from those. And then working
25 through the committees, they recommend form

1 changes, new coverages or new forms.

2 If Pennsylvania National has a singular
3 interest in some coverage, that is when my
4 department would draft that coverage rather than
5 going to the bureau. We would first check to see
6 if they would be working on anything similar. If
7 not, we would work on drafting our own form.

8 Q. In terms of comprehensive general liability
9 policies, from '56 to '68, was Pennsylvania
10 National using bureau forms?

11 A. Yes. As best as we can determine, we believe that
12 we were using forms by one of those two bureaus in
13 that time frame.

14 Q. What were you able to review to give you that
15 information? How did you arrive at that
16 conclusion?

17 A. I guess there were two things. Number one, having
18 started in 1974 and working through various
19 insurance courses that are common to underwriting,
20 culminating with CPCU, which is Chartered Property
21 and Casualty Underwriter. There's a lot of
22 textbook studies on what coverages were available
23 and the rough time periods in the past they were
24 available. So that's the one area where we came
25 up with the information that there were two

1 coverage forms available, and -- you know, in that
2 time frame. So I guess that's the historical
3 information.

4 The other source that we've used, since we are
5 responsible for filing forms and so forth, we do
6 have records of all active forms in the company as
7 well as some obsolete forms that go back into the
8 '70s at this point. We went back and researched
9 through all of those forms, found in reality that
10 we were represented by both -- or we were members
11 of both of these bureaus in the past. We found
12 other forms that extended into the '70s that we
13 did use. So, you know, we're saying while we
14 don't know for sure that we did use their general
15 liability forms, we can make an assumption that we
16 did.

17 Q. What was the name again of the -- where you got
18 the historical information?

19 A. Well, it was through various insurance courses.
20 Most of them are offered by -- I want to say the
21 Insurance Institute of America, which might not be
22 the right name, but it's an insurance educational
23 group that's in Malvern, Pennsylvania, that offers
24 a whole series of underwriting, claims, all sorts
25 of insurance courses. They also offer in effect

1 like what might be considered a graduate level
2 course, which is CPCU.

3 Q. Did you take those courses, incidentally, through
4 the years?

5 A. I've taken the underwriting courses and CPCU and
6 I've taught some of them.

7 Q. When we talk about using the forms from the
8 bureaus back during that period of time, are we
9 talking about policies and exclusions and
10 endorsements? Would all three of those things be
11 governed by forms?

12 A. Yes, back then, as in today, the various rating
13 bureaus file all of the policy documents, dec
14 pages, declarations pages, which is the cover
15 sheet, the coverage form exclusions, endorsements,
16 all of the attachments, probably less billing
17 statements, which would be our own.

18 Q. Do those same bureaus also contribute or give any
19 help towards setting rates or premiums?

20 A. In the past they almost exclusively set rates.
21 Today they don't have as heavy of an impact. But
22 traditionally the bureaus have set the rates and
23 then a mutual insurance company like Pennsylvania
24 National, if we could justify doing it based on
25 our company experience, we would file with the

1 individual states a deviation to those rates, but
2 we used bureau rates then as we do now.

3 Q. Does the underwriting department have any contact
4 with insureds, with your clients?

5 A. Yes.

6 Q. And what type of contact do you have?

7 A. At what level?

8 Q. Well, I guess like when an application comes in
9 that would be from an insured, I guess, do you
10 evaluate that or does that come in through an
11 agent?

12 A. Today it's a little different than it was in the
13 past. In the past we dealt exclusively through
14 agents. The underwriting personnel would have
15 very or had at that time very little contact with
16 insureds. Today, while we still deal through
17 independent agents, there is more what we call
18 field underwriting where our underwriters would
19 actually visit the insured or the client, review
20 their operations so we could understand it better
21 and provide better coverages as well as provide a
22 better price. In the past, that wasn't
23 necessarily true.

24 Q. The company or insured involved in this lawsuit is
25 General Gasket, also known by various names, an

1 asbestos manufacturer in St. Louis. Do you have
2 any knowledge at all of General Gasket?

3 A. In what scope?

4 Q. Outside of this lawsuit.

5 A. Outside of this lawsuit, no.

6 Q. Did you take part in the investigation within the
7 company to try to find forms or policies or answer
8 the interrogatories, requests for production?

9 A. Both myself and several of my people provided
10 assistance in preparing the answer to the
11 interrogatories.

12 Q. Could you give me some idea what type of search
13 the company put on to try to answer those
14 interrogatories, to try to find whether there were
15 policies issued to General Gasket?

16 A. In order to find if there were policies issued to
17 General Gasket, we went back and went through our
18 indexing system by name as well as by the policy
19 number that was -- or the alleged policy number
20 that was provided on the documents that you
21 furnished. That came up fruitless, I guess, or we
22 found nothing from that.

23 We went back and from an underwriting point of
24 view also researched our files and the forms that
25 we currently use and their predecessors to see if

1 we could come up with any of the forms questions
2 that you asked.

3 We also went a step further and did both
4 correspond and talk with ISO to try to find out
5 some of the historical information as to what
6 forms were in effect and when. That had mixed
7 results because I guess as any firm that absorbs
8 other firms, their records going back to the '60s
9 are very sparse.

10 So, you know, we went through our indexing
11 system to try to find a name. We went through our
12 files to try to answer the forms issues. We went
13 to the service bureau to find out what we could
14 from them. We also cooperated with the claims
15 department in some of their efforts in searching
16 it, I guess collaborate ideas on what we could do
17 to go back, different ways we could attack the
18 problem.

19 Q. You were not able to find any evidence or
20 information that these policies either existed or
21 didn't exist?

22 A. In the search in my area, in the underwriting
23 department, no, we found no verification either
24 way.

25 Q. And could the same be said for any exclusions or

1 endorsements to those various policies that were
2 listed? I guess you're -- When I talk about the
3 policies, I guess you're understanding me to mean
4 that that would include all exclusions and
5 endorsements?

6 A. Yes.

7 Q. Does the underwriting department get involved in
8 any litigation concerning coverage?

9 A. How do you mean by litigation?

10 Q. Well, a lot of times there are lawsuits filed to
11 try to determine whether an insured is covered or
12 is not covered, whether there is a duty to defend
13 or not to defend.

14 A. Well....

15 Q. Do you get involved in any of that type of
16 litigation?

17 A. Yes.

18 Q. Do you have a legal department that handles your
19 litigation or is that handled outside the company?

20 A. I believe that the real answer to that is it's
21 done probably both ways. Our legal department
22 does not actively try cases, but our legal
23 department is involved in some case management,
24 like this case.

25 Q. Back between 1958 to '64, Penn National had a home

1 office and you mentioned a regional office, also.
2 Were there other regions, regional offices?

3 A. In that time frame there was a home office, there
4 were several other either regional or branch
5 offices, depending on the time period and
6 structure we used, and then we also utilized
7 general agencies.

8 Q. Do you still have regional offices?

9 A. I'm not quite sure how to answer that. The
10 person -- It depends I guess on names or labels.
11 The personal lines department has two regional
12 offices, one in Greensboro, North Carolina, one in
13 Harrisburg, Pennsylvania. The commercial lines
14 division has six branch offices today.

15 Q. Where are those located?

16 A. Harrisburg, Pennsylvania; Bridgewater, New Jersey;
17 Pittsburgh, Pennsylvania; Hunt Valley, Maryland;
18 Greensboro, North Carolina; Nashville, Tennessee,
19 and then we have our special accounts department
20 which we consider to be a branch office, which is
21 also located in Harrisburg, Pennsylvania. So
22 they're branch offices, not regional, but it
23 depends on the label you're using.

24 Q. Were those in existence during the prior time
25 period we were talking about?

1 A. Harrisburg definitely was. I believe Pittsburgh
2 and Greensboro was, also, but I'm not quite sure
3 what date they were opened.

4 Q. You mentioned that you utilized agents previously
5 in the past. Would the agents be concerned with
6 sales and servicing the policies?

7 A. In the time frame we're talking about, we utilized
8 two types of agents. One was the independent
9 agent, which does the same thing they do today,
10 which is basically sales and service. We also
11 used general agents in that time frame, which
12 basically acted as either a regional or branch
13 office, depending again on the label used.

14 Q. And Associated Agency was a --

15 A. General agent.

16 Q. A general agent for you. Do you know when that
17 agency was purchased by Pennsylvania National
18 whether any of its records were transferred to
19 Pennsylvania National?

20 A. I do not personally know, no.

21 Q. Did that happen when you were with the company?

22 A. From working on this case, it happened about six
23 months before I joined the company, somewhere
24 around January of 1974, I think.

25 Q. Getting back to the preparation of the -- well,

1 the preparation of the forms by the bureau. Once
2 the committee agrees on a specific form that's
3 going to be used -- and I would like to talk just
4 about the comprehensive general liability
5 policy -- then it's up to the insurance company
6 whether or not they're going to adopt that and use
7 that, I guess, is that right?

8 MR. NELSEN: When you talk about committee,
9 you're talking about bureau?

10 MR. FLAVIN: Bureau, yes.

11 A. I guess it's actually up to two agencies. One,
12 the form has to be promulgated and filed, and the
13 bureau, whichever bureau you're talking about,
14 files it with the individual state insurance
15 departments.

16 BY MR. FLAVIN:

17 Q. But isn't that after the company says go ahead and
18 file that for us?

19 A. Well, I guess in reality it happens about the same
20 time. When we become members of the bureau, we
21 have to sign for a level of service by state. And
22 that level of service is we will file -- They will
23 file forms, rates and rules on our behalf or they
24 will file any one of the three individually on our
25 behalf. So we make the choice basically up front

1 when we sign the contract.

2 When individual policy forms are filed with
3 the insurance departments and approved, at that
4 time if we elect, we could file a document with an
5 individual state insurance department saying even
6 though we have given the permission for them to
7 file this information on our behalf, we will
8 either not use it at all or we will not use it at
9 this time and maybe have a different effective
10 date.

11 Q. During the period of time we were talking about,
12 '57 or '58 to '64, what level of services was the
13 bureau providing to Penn National?

14 MR. NELSEN: Which bureau are we talking
15 about? There are several bureaus.

16 MR. FLAVIN: I thought we established that
17 those bureaus were incorporated into ISO.

18 A. They are incorporated today into ISO. They were
19 individual bureaus back then. And I do not know
20 the level of service that they provided. We could
21 not find any documents from that time.

22 BY MR. FLAVIN:

23 Q. Could you find any documents or any verification
24 where Penn National would have excepted or filed
25 exceptions with like, say, the State of Missouri

1 on the comprehensive general liability forms that
2 would have been filed by the bureau?

3 A. We found no exceptions when we looked, nor did we
4 find any verification that we had accepted the
5 form or when.

6 Q. Once the company starts to use the form, does the
7 company have that form printed for the company
8 itself or does the bureau do that for you?

9 A. We buy our form -- all of our -- all of those
10 forms even today from outside sources.

11 Q. Is the bureau the outside source or is there an
12 individual -- Do you have a printing company that
13 you hire?

14 A. There's both sources. They print some of their
15 own forms. Other forms, for whatever reason, they
16 have outside vendors print for them.

17 Q. Do they arrange for the printing or does Penn
18 National?

19 A. They arrange.

20 Q. And that was the case back then?

21 A. Yes. As far as I can determine.

22 Q. In your search, were you able to come up with any
23 copy of a comprehensive general liability policy
24 for Penn National during 56 to '67?

25 A. Not that far back, no.

1 Q. Once the premiums are -- Well, let's just get into
2 the premiums back then. We mentioned that
3 premiums could be set by the bureau?

4 A. (Nods head.)

5 Q. Were they pretty fairly standard for a certain
6 line? Say the comprehensive general liability
7 policy in the State of Missouri, would that have a
8 specific rate for a specific coverage?

9 A. Yes.

10 Q. What types of rates were there? Were there fixed
11 rates and/or were there any variable rates?

12 A. Again, we never found any rates from Missouri for
13 that time, so I don't know. I could guess, but I
14 don't know.

15 Q. Was there any procedure for auditing the rates or
16 the premiums?

17 A. Which one?

18 Q. Let's say a products liability or general
19 comprehensive liability policy, could it be
20 written with a rate that would have to be audited
21 at the end of the year, at the end of the policy?

22 A. Do you mean an audit for an adjustment of premium
23 or a compliance audit?

24 Q. An audit for adjustment of premium.

25 A. Yes. Rates, from what I can tell, could have

1 been -- The rates were probably fixed. The
2 premiums would vary based on sales or whatever.
3 So that would be audited by premium auditors to
4 determine the actual premium.

5 Q. Would the company pay a certain amount of money up
6 front and then later on the audit would take place
7 and it would be adjusted up or down?

8 MR. NELSEN: When you say company, you're
9 talking about the insured?

10 MR. FLAVIN: The insured.

11 A. Yes, the insured. At least back into say like
12 1972, 1973, when I started with the company -- and
13 I presume it carried before then, and it carries
14 through to today, so it was probably the same --
15 the insured will pay an estimated premium based on
16 whatever the premium base is. If he believes his
17 sales for a given year will be \$50,000, he would
18 pay a premium up front based on that amount of
19 money.

20 After the policy expires or is cancelled, for
21 whatever reason, then premium auditors, depending
22 on the size of the premium, obviously, would go
23 out and actually review his books to see what
24 sales he actually had and then the premium would
25 be adjusted accordingly.

1 BY MR. FLAVIN:

2 Q. What is the compliance audit?

3 A. Compliance audit, we get audits usually on a three
4 year cycle from our active states where they come
5 in and it's a market conduct exam, where they come
6 in and through reviewing policies, talking with
7 insureds, whatever they want to do, they verify
8 that we're complying with not only the rules and
9 regulations of the various states, but that we're
10 complying with the rates, rules, forms that are
11 filed either by us or on our behalf with that
12 individual state. So it's a state policing
13 action, if you will.

14 Q. And that would in effect guarantee that the rates
15 that have been filed by the bureau and the forms
16 and the regulations that have been filed are in
17 fact being followed?

18 A. It verifies that we're doing what we are supposed
19 to, yes.

20 Q. What department with Penn National does the
21 premium audit that we were talking about? Is that
22 underwriting?

23 A. Today it's the loss control and premium audit
24 department. Back then it was merely a section of
25 the underwriting department.

1 Q. I just want to go through a few exhibits here with
2 you. Let's start with Exhibit No. 1.

3 MR. BURNS: Is that Hoover Exhibit No 1?

4 MR. FLAVIN: Yes.

5 MR. BURNS: Again, just for the record, let me
6 object that there's no foundation for this exhibit
7 and just make it a standing objection through any
8 of the questions directed to this exhibit.

9 MR. FLAVIN: Fine.

10 BY MR. FLAVIN:

11 Q. This is a blank liability policy. It has the
12 heading on it Phoenix of Hartford. And I'm not
13 going to -- I know you don't work for Phoenix.

14 A. Never have.

15 Q. I'm just going to ask you some general questions
16 about it. First of all, does this policy contain
17 the usual parts of a comprehensive general
18 liability policy, like the declaration page and
19 definitions and what coverages are involved?

20 MR. NELSEN: Let me object. That's awfully
21 broad and vague and --

22 MR. FLAVIN: It is a little vague. Let me go
23 through specifically.

24 BY MR. FLAVIN:

25 Q. It does contain a declaration page, does it not?

1 A. Yes.

2 Q. And that would be pretty fairly standard for every
3 comprehensive general liability policy, would it
4 not?

5 MR. NELSEN: Let me just show a running
6 objection to this. First of all, we aren't
7 talking about any particular time, too. I think
8 his testimony is that policies have changed over
9 the years.

10 MR. FLAVIN: I would like to limit the time
11 back to the prior period of time we were talking
12 about.

13 MR. NELSEN: Which is what; 1956 through --

14 MR. FLAVIN: 1956 through '67.

15 A. Well, the dec page is one that was issued I would
16 presume October 1st of '66. At least that's what
17 the form number seems to indicate. I honestly
18 don't know if it would have been standard or not.
19 At that point it appears -- The format and so
20 forth appears to be very similar to the bureau
21 formats I've seen before.

22 BY MR. FLAVIN:

23 Q. The next page includes definitions. The bureau
24 forms for comprehensive general liability policies
25 also back for that period of time included

1 definitions?

2 A. Yes, and they do today, also.

3 Q. Would you look at the definition for bodily
4 injury? Does that appear to be the definition
5 that was in effect back in the prior period of
6 time we were talking about?

7 A. I guess not knowing if Hartford was a member of
8 the same bureaus that we were and what the source
9 document was, that is a common definition of
10 bodily injury from that time period. I'm not sure
11 if it would be the same in the forms that we used
12 or not.

13 Q. On the next page, page number three, there's also
14 a definition of occurrence and of named insureds'
15 products. Do those also appear to be standard
16 definitions that were in effect during that period
17 of time?

18 MR. NELSEN: We're talking again '56 to '67?

19 MR. FLAVIN: Yes.

20 A. Well, that's where there's a problem. Because
21 what I know from the historical background I have,
22 in 1966 -- in the whole middle '60s and in 1966,
23 when the bureaus we think filed the forms, there
24 was a difference. Occurrence was a very new topic
25 back then and not all policies included the phrase

1 occurrence. Many of them included the much more
2 restrictive term accident. And this was one of
3 the really controversial and forth -- you know,
4 new coming ideas back in the mid '60s, the idea of
5 insuring on the much broader term occurrence than
6 the more narrower term accident.

7 So just because this form uses the phrase
8 occurrence, it might have been a very progressive
9 form of its time. It might not have been typical
10 of the coverage back then. And the same thing
11 with completed operations and products. As I
12 stated, to the best of my knowledge, we
13 provided -- we used a form that had separate M & C
14 coverage for premises operations and then a
15 separate coverage part for products and completed
16 operations.

17 So this form, the way it's written, would
18 appear to include both of them on the same form.
19 So it may very well be atypical of what was in the
20 marketplace for a small regional insurer as
21 opposed to the Hartford, which is a large stock
22 company today and was back then.

23 BY MR. FLAVIN:

24 Q. If you'd move a couple pages on, there's a page
25 that is entitled insuring agreement. And under

1 Roman numeral I, it mentions coverage A, bodily
2 injury liability. It sets out what the company is
3 to pay.

4 Was that fairly standard during that period of
5 time?

6 A. Again, I don't personally know, but it would
7 appear to be.

8 Q. And later down below that with the Roman numeral
9 II, there's a paragraph that has to do with the
10 duty to defend. Was the duty to defend part of
11 all comprehensive general liability policies back
12 then?

13 A. Based again on the studying I guess I've done, it
14 wasn't typical on all policies. There were two
15 types of policies. One provided the duty to
16 defend and the other one -- The term escapes my
17 mind, but it was not there. So there were two
18 policy forms. One did and one did not.

19 Q. The policy form that did not include it, who would
20 defend the claim or --

21 A. In all honesty, the insured would have managed his
22 own defense and then he would have been reimbursed
23 by the terms of the policy.

24 Q. Do you know whether that would have been a special
25 endorsement that was added to the policy?

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1 A. I do not know. What I've read said that that was
2 built into the form itself, that there would be
3 two completely different forms, and probably any
4 one company would not use both, they would only
5 use one of the two, whichever matched their
6 philosophy and so forth at the time.

7 Q. And do you know whether Pennsylvania National used
8 a policy with a duty to defend in it or --

9 A. In the '60s, I do not know. Could not find.

10 Q. So it could have been either one?

11 A. Could have been either one. It's pay on behalf.
12 The term is pay on behalf.

13 Q. You have had a chance to look at that for a
14 second. I'd like to go down and ask you some
15 questions about Exhibit No. 2.

16 A. Okay.

17 Q. Which is the OPS manual with the subject matter is
18 retention of underwriting file. Are you familiar
19 with that exhibit?

20 A. What do you mean by familiar? I've seen it
21 before, but....

22 Q. Well, do you use it in your work?

23 A. We use documents like this. Since this one is
24 actually from 1965, we don't use that today, but,
25 yes, the manual is one that we use all the time.

1 Q. Were you instrumental in providing these documents
2 in response to our request for production?

3 A. I honestly don't remember who provided this
4 document.

5 Q. What I was wondering is if there are any OPS
6 manuals prior to this one.

7 A. Not that I know of.

8 Q. Would the same or similar types of procedures have
9 been in effect for policies issued during 1954 to
10 1967?

11 A. I honestly don't know.

12 Q. Let's go through this and let me ask you some
13 questions. I'm basically just seeking information
14 about some of the terms and things that are stated
15 here. There's reference on page number one, the
16 paragraph numbered 3A, if there is a requirement
17 of any rating body for a period beyond the
18 destruction date.

19 What are we referring to as a rating body; the
20 bureau?

21 A. That would have been one of the rating bureaus.

22 Q. And what do you understand the word daily to mean?

23 A. At that time we called declarations pages dailies.

24 Q. And in B there's a reference to alphabetical index
25 card. What is that system?

1 A. I don't know.

2 Q. Do you have an alphabetical index card system now?

3 A. Today, no, we have a computerized alphanumeric
4 index, so I presume that that was the paper
5 version -- the paper predecessor of our
6 computerized version.

7 Q. And that was searched in order to respond to the
8 interrogatories and request for documents?

9 A. We searched the computer records which go back
10 into the past. We do not have any paper indexing
11 system available today to search.

12 Q. C mentions that files may be retained permanently
13 at the discretion of the underwriter. Are you
14 aware of any files from the period of time that
15 we're seeking that have been retained --

16 A. No.

17 Q. -- in discretion? On the next page the subject
18 changes and it's called purging of dailies. 2C
19 refers to transferring master jackets. Could you
20 tell me what a master jacket is?

21 A. Okay, this was in 1966. In 1974, we started
22 retention -- Instead of storing paper files, we
23 started using microfiche to retain policy
24 documents. Those little pieces of microfiche were
25 contained in a three-by-five plastic holder, which

1 we call a jacket. Same system we use today.

2 Q. Is there a system for systematically destroying
3 those?

4 A. There is a purging system in place, yes.

5 Q. How often are they purged?

6 A. It follows whatever the current version of this
7 document indicates.

8 Q. Were those checked in your search for policies and
9 forms?

10 A. Yes. The microfiche files did not start until
11 1974, but we did go back anyhow and check to see
12 if there were any policy documents bearing the
13 numbers that you had provided with us and we found
14 none.

15 Q. It mentions in that same paragraph the words
16 active and inactive power files. What's a power
17 file?

18 A. Power file is the machine that all these things
19 are stored in. It's kind of like a carousel or a
20 ferris wheel type thing. Just has trays.

21 Q. And this is all in the home office microfilm
22 section?

23 A. Yeah, I think it's today called just home office
24 files, but, yes.

25 Q. On the next page, Page 2, there's a reference to

1 1A, which has to do with, if there's renewal,
2 moving the appropriate documents forward from
3 expiring to renewal daily.

4 When a policy would be renewed, would a new
5 policy be written or would the old one just simply
6 be renewed by filing some form?

7 A. There's two ways to do it. One is a certificate
8 renewal, which is the latter of the two that you
9 mentioned. And we use that predominantly for
10 workers' compensation today. In the time frame
11 we're talking about, I'm not sure what was used.
12 I believe it was only used for personal lines
13 policies. Commercial lines policies were
14 basically brand new policies that were issued
15 every year.

16 Q. If it was considered to be a renewal, would the
17 old policy be transferred into the new jacket so
18 that you had some history of the thing?

19 A. It would kind of be merged. You have all of the
20 expiring policy and its forms would be kept in a
21 separate file folder or whatever. And then, as
22 they say, the appropriate or pertinent documents
23 would be brought forward. The appropriate
24 documents were typically the application, any loss
25 information from prior years, and then whatever

1 underwriting information the underwriter thought
2 was appropriate to move forward, which would
3 typically be inspection reports or maybe the
4 explanation of some questions or item of concern
5 to them. That's the same basic system we use
6 today.

7 Q. Would the policy itself be one of those documents?

8 A. No, the old policy at that time was kept separate
9 and we had multiple policy files for multiple
10 years.

11 Q. Further down it states data processing, number 1.
12 There's reference to the policy master file. What
13 is that?

14 A. Well, the policy master file is the name of the
15 alphanumeric name and address file that we use for
16 finding policies or for indexing or whatever you
17 want to call it.

18 Q. And that list is also purged after a certain
19 period of time?

20 A. What they call the master file?

21 Q. Yes.

22 A. Yes, once policies are cancelled or nonrenewed.

23 The time period is varied over the past. It's
24 currently after three months -- Three months after
25 the policy is nonrenewed or whatever, it drops off

1 that master file unless there are outstanding
2 claims, in which case it stays active as long as
3 the claim is open. It's supposed to.

4 Q. If you'd go to page number 2 of the purging
5 dailies from regional file.

6 A. Okay.

7 Q. The 1980 revision.

8 A. Okay.

9 Q. There's reference on the second page, paragraph
10 number 3B to Form 74.01 index card. Could you
11 tell me what those are?

12 A. I really don't know. I believe it's an out card
13 that we use when you -- You know, we use a library
14 system for the microfiche. Whenever they pull a
15 file out, they put a card in that says this thing
16 was pulled on this date for whatever reason. I
17 believe that's what that refers to.

18 Q. Is there any record kept of the files or documents
19 that are destroyed? I mean just to keep a record
20 of what has been destroyed and what hasn't.

21 A. I'm not certain. We get the purge list and they
22 come out and say here are the policies to destroy.
23 I really don't know. I presume there is, but I
24 don't know.

25 Q. What's done with those purge lists down there?

1 Does anybody keep those?

2 A. That's what I'm saying, I don't know. I never
3 really thought of it.

4 Q. Since you hadn't thought of it, do you know
5 whether or not they've been checked or not?

6 A. You mean the purge lists?

7 Q. Yes.

8 A. One of the departments that did help in our search
9 was our office services department, which is
10 responsible for this particular operation. I
11 don't know.

12 Q. On the next page, page number 3, number 5 refers
13 to completes and files Form 38-3. Do you know
14 what that is?

15 A. I'm sorry, could you say that again?

16 Q. Sure. On page number 3, which is the next page
17 over, paragraph number 5 refers to Form 38-3. Do
18 you know what that is?

19 A. Yes, that's a request for a file. If you follow
20 the sequence, right in front of that it says marks
21 purge list if daily is not in file. And then if
22 the daily is not in file, they complete and file a
23 Form 38-3, which means it sets in our file. When
24 the file comes back, it says somebody wants this
25 for whatever reason. So it's like a due out.

1 (Recess taken.)

2 BY MR. FLAVIN:

3 Q. If we can continue, on Page 2 of the heading
4 purging policies from branch/regional files, 1989
5 revision.

6 A. '89 or '81?

7 Q. I think it's '89.

8 A. Okay. That's somewhat back. Okay, 8/31/89?

9 Q. Yes. Number 6 refers to retaining all jackets for
10 permanent retention. Was that a new policy as of
11 '89?

12 A. It wasn't in the previous instructions, so I
13 presume it was new in 1989.

14 Q. Let's switch subjects here.

15 A. You had nothing on No. 3?

16 Q. Not yet, no. Just so you understand what those
17 are as you're looking at them, that's a microfilm
18 of a line card that was an exhibit from other
19 depositions in our discovery. The typed exhibit
20 is supposed to be the same exhibit basically,
21 trying to make it comprehensible. Let's just use
22 the typed exhibit.

23 On the first page of it, there are a list of
24 policy numbers or a line that lists policy
25 numbers. Back in 1956 through 1963, was Penn

1 National -- and when I say Penn National, I'm
2 referring to the company by its former name,
3 including what was its former name -- was that
4 designation CGL-10585, was that type of
5 designation the type of designation the company
6 was using to number its comprehensive general
7 liability policies?

8 A. From the research I've done, we preceded our
9 policy numbers by one or more alpha characters,
10 indicating the line of business. I'm not certain
11 if we used CGL or not, but we did use a similar
12 numbering system.

13 Q. And the CGL would ordinarily refer to
14 comprehensive general liability?

15 A. Ordinarily. I didn't realize it was around in
16 1956, but ordinarily.

17 Q. And the numbers after that would identify the
18 particular policy?

19 A. From what I know, yes.

20 Q. You'll notice that under limits of liability there
21 are two amounts for let's say the '56 policy and
22 actually all the way through, 25/50 and 10/25.

23 Could you tell me why a comprehensive general
24 liability policy might have two sets of limits?

25 A. First, the source of these are not Pennsylvania

1 National, it's an outside source, right?

2 Q. Right.

3 A. I honestly don't know what the numbers stand for.
4 I would presume for a general liability policy one
5 would stand for a BI limit and the other would
6 stand for -- bodily injury limit -- and the second
7 would stand for property damage. But, you know,
8 not knowing who set these up, I'm not really
9 certain.

10 Q. No, I'm not asking you anything more than that
11 general question at this point.

12 The premiums that are listed for the CGL
13 policies from '56 through '63 are uniform, \$25.04.
14 Well, no, that's not -- In '63, they go up to 64
15 cents. They go up 60 cents. Are you familiar at
16 all with the premiums that were being charged back
17 during that period of time for CGL policies?

18 A. Other than knowing that the premiums were very low
19 by today's standards, I'm not familiar with them,
20 no.

21 Q. Those premiums would ordinarily be set, as you had
22 mentioned previously, by the bureau?

23 A. Yes, they would be set by the bureau and then we
24 may or may not have deviated from those premiums.
25 The only other thing is in the '60s and early '70s

1 especially, rates were much more stable than they
2 are today and they didn't -- inflation, number
3 one, wasn't the same issue it is, but....

4 (Rice Deposition Exhibit Nos. 1 and 2 produced
5 and marked for identification.)

6 BY MR. FLAVIN:

7 Q. Are you ready to talk about those two?

8 A. Yes, sir.

9 Q. You have in front of you Rice Deposition Exhibits
10 1 and 2. Let's use 1 first. First of all, does
11 it contain a logo that was used by Pennsylvania
12 National Mutual Casualty Insurance Company back in
13 1966?

14 A. Yes, it has the company's logo we used back then.

15 Q. Does that mean that it was a form used by the
16 company on a regular basis?

17 A. Yes.

18 Q. And it's called an agent's copy. What type of
19 form is this generally?

20 A. Okay, this is a billing form typically used for an
21 audit bill, a premium audit.

22 Q. Where would it be generated from?

23 A. The source of the document is actually listed in
24 the upper left-hand corner. In the case of a
25 company branch office it would have been generated

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1 by personnel in our branch office. In the case of
2 a general agency, which in this case it was issued
3 by Associated Agencies, which was the general
4 agent, it would be prepared and issued by the
5 general agency.

6 Q. And would it be prepared or issued at or about the
7 time that it was to become effective?

8 A. Since it's a billing statement, the effective date
9 doesn't really have anything to do with it.

10 Coverage effective, ^{date} doesn't have anything to do
11 with it. If you look again about the center of
12 the page under agent's copy, the date 6/21/67
13 should be the date that this was prepared on.

14 Q. Under the general agent is listed a subagent.
15 What or who is the subagent?

16 A. In the case of a general agency situation, the
17 subagent is an agency licensed by the agent or
18 he's contracted or whatever the correct term would
19 be to do business with the general agency.

20 Q. And the subagent or broker would be the contact
21 with the insured?

22 A. It would be the producing agency, yes.

23 Q. Would they likewise receive a copy of this from
24 the general agent?

25 A. Based on the processing system we used since 1974

1 I would have said yes, they should have. I'm not
2 certain, but I would presume they would.

3 Q. You have no information that it would be
4 different?

5 A. I don't have any personal knowledge that it would
6 be different, no. That's what I meant.

7 Q. Under subagent there's a listing of initials over
8 there, D. J. B. What are those? Do you know what
9 those are?

10 A. I really don't know. I would presume, knowing how
11 typed documents are prepared, that those are the
12 initials of the person that typed it.

13 Q. The next box includes the Code 1. Do you know
14 what that means?

15 A. No.

16 Q. The next box includes the initials C. L. That's
17 under policy. Would that be general liability or
18 comprehensive liability?

19 A. Again, I presume it would be one or the other. I
20 would presume it would be G. L., not C. L., but
21 I'm not sure.

22 Q. And then the numbers would identify the policy?

23 A. Should, yes.

24 Q. And the numbers to the side of that under agency,
25 would those be the numbers that would identify the

1 general agent?

2 A. It's the numbers that either identify the general
3 agent or the general agent and the particular
4 subagent. I'm not -- Under today's system, it
5 would be general agent down through subagent.

6 Q. So you could look at those numbers and tell who
7 the general agent was and who the subagent was?

8 A. Should be able to, yes. If we had whatever key it
9 was that was used.

10 Q. And then the next line over, the effective date,
11 what does that mean?

12 A. Should be the effective date of coverage.

13 Q. And then the policy period goes to 2/17/67. That
14 would be a period of one year, I guess?

15 A. It's a period of one year. I'm not sure, I think
16 the form -- I think the 2/7/66 should be from --
17 the way the form really should be filled out. But
18 it seems to indicate a policy period of one year,
19 2/17/66 to 2/17/67.

20 Q. And then the next date would be the date that the
21 audit was -- premium audit was to be conducted?

22 A. Should be the date the bill was prepared.

23 Q. And then the next line, General Asbestos Gasket
24 Manufacturing Corporation, that's the name and
25 address of the insured?

1 A. Yes.

2 Q. Then under operations there are listed various
3 types of -- or various things. Could you tell me
4 what operations are referred to?

5 A. Those should be the coverages that were provided
6 by this particular policy. In this case, it's
7 hired car coverage. I'm not sure what the last
8 word on that line is. And then underneath that is
9 the billing mechanism. Class 1 and Class 2
10 persons or employees were the classifications that
11 were utilized to determine the premium.

12 Q. Would this basically be an auto liability, for an
13 auto liability policy?

14 A. Yes. It specifically should be auto liability for
15 vehicles that were not owned by the insured, but
16 hired from somebody else for their use. Probably
17 a truck man or some similar type thing.

18 Q. And then to the right of that would be the rates
19 and the premiums for bodily injury and the rates
20 and the premium for property damage?

21 A. Correct.

22 Q. And then what is the box with 17.84 in it?

23 A. That's the premium that -- Evidently, on this
24 particular coverage, we didn't charge enough
25 initial premium or advance premium and that's the

1 debit to the agent's account. So we charged them
2 an additional \$17.84 as a result of this bill.

3 Q. And that gives a total cost of the 36.79?

4 A. Right.

5 Q. What is the \$18.95?

6 A. I think it's amount previously charged. At least
7 that's what it should be.

8 Q. So the debit and the amount previously charged
9 ought to equal total cost?

10 A. Should.

11 Q. Let's look at the next form. Do you have No. 2?

12 A. Yes, or Exhibit 2.

13 Q. Exhibit 2. The first boxes that we talked about,
14 everything seems to be identical. Would you agree
15 with that; general agent, subagent, effective
16 date?

17 A. Right, down through and including the insured.

18 Q. Right. Now, when you get down to the insurance,
19 there is a Code 2445 and then next to the
20 operations, asbestos goods manufacturing. Could
21 you tell me what that code means?

22 A. Okay, from the research I've done, that's the
23 M & C -- manufacturer's and contractor's premises
24 operations code -- for someone who is involved in
25 asbestos goods manufacturing.

1 Q. And that would refer to the type of business that
2 the insured was conducting?

3 A. It would be the general classification of his
4 operation, correct.

5 Q. And then below that is a code 1067, composition
6 goods. What is that code?

7 A. Again, from the research we did, that is the
8 completed operations, and in this case products
9 code for someone who manufactures composition
10 goods.

11 Q. Where do those codes come from?

12 A. Again, they're established by the rating bureau as
13 a methodology, common methodology, for controlling
14 everything. There were manuals issued. We went
15 back and we couldn't find a manual for Missouri in
16 that time period. However, I did find one for
17 Pennsylvania, which indicated what those class
18 codes were and verified that they stood for those
19 operations.

20 Q. Would ordinarily the class codes that were used in
21 Pennsylvania also be used in Missouri?

22 A. They should be country wide. In the case of
23 general liability only. They vary for other
24 coverages, but GL, they're basically country wide.

25 Q. The next line has to do with payroll. Is that the

1 insured's payroll?

2 A. That's the premium base and it should be the
3 insured's premium base, correct.

4 Q. And then the rate and the premium for bodily
5 injury and the rate and the premium for property
6 damage are set out to the side?

7 A. Correct.

8 Q. And again there's a debit of \$55. I guess it is
9 55.

10 A. Yes.

11 Q. That meant that after the audit this bill was
12 generated for an additional \$55?

13 A. Right, the amount previously charged was \$60.
14 After the audit it was determined that the bill
15 for that policy period should have been \$115, so
16 there's an additional \$55 debited to the agent's
17 account or account current.

18 Q. And the policy number on this agent's copy is GL
19 or CL 390 61?

20 A. That's what's indicated, yes.

21 Q. And is that policy number also indicated on your
22 Exhibit No. 4 and 5?

23 A. It would appear to be listed on Exhibit 5 at the
24 top of the second page. There's an entry that
25 says CL 890 61, which was then corrected to say

1 390 61.

2 Q. Right. Take a look at the Exhibit No. 4.

3 A. Okay, Exhibit No. 4 -- The only thing that seems
4 to come close in Exhibit No. 4 is the same thing.
5 There appears to be CL 890 61, but not a 390 61.
6 That's the only number that appears to be close to
7 it.

8 Q. And the effective date for that policy would be
9 2/17/66?

10 A. From what is indicated on the exhibits, yes,
11 2/17/66 to 2/17/67.

12 Q. And those are the same dates that are on the
13 agent's copy?

14 A. Yes.

15 Q. These Exhibits Nos. 1 and 2, they would be
16 ordinary business records that would be kept by --
17 or would be prepared at or around the time that
18 they were dated, would they not?

19 MR. NELSEN: Let me object. He's testified
20 that these are records that were generated by
21 Associated Agencies or someone working for them.
22 These weren't generated by Pennsylvania National.
23 I don't think he has knowledge to lay any kind of
24 foundation for these.

25 BY MR. FLAVIN:

1 Q. Would these records have been transmitted to
2 Pennsylvania National?

3 A. I'm not sure exactly how we handled through the
4 billing reports of our general agents, if they
5 transmitted detailed information to us or if they
6 merely transmitted some summary or some
7 statement of account. I honestly don't know.

8 Q. As you understand it, did not Penn National
9 purchase and take over Associated Agencies?

10 A. Yes, sometime around 1973, 1974.

11 Q. Do you know whether Associated Agencies would keep
12 these records in the ordinary course of business?

13 A. Specifically if Associated Agencies were -- I
14 don't know. Typical business practice is that
15 agencies would maintain these billing records
16 with, you know, their other accounts.

17 Q. In your answers to interrogatories, Pennsylvania
18 National's answers to interrogatories, at Code
19 1067 that was used on form number 2 was referred
20 to as products liability coverage for, quote,
21 composition goods, not pyroxylin.

22 Is that a general category or is pyroxylin
23 some special sort of product?

24 A. That was a general category as it was in the
25 manual that we found for Pennsylvania.

1 Q. Do you know what pyroxylin is?

2 A. Not off the top of my head. I'd have to research
3 it.

4 (Discussion held off the record.)

5 BY MR. FLAVIN:

6 Q. What are composition goods?

7 A. Composition goods can be any number of things that
8 are made up not of one substance, but of several
9 substances put together. Some gaskets are
10 composition goods, other gaskets are rubber or
11 whatever.

12 MR. FLAVIN: That's all I've got.

13 EXAMINATION

14 BY MR. BURNS:

15 Q. Mr. Rice, I just have a few questions for you. My
16 name is Andrew Burns. I represent the Travelers
17 Insurance Company and Phoenix Insurance Company.

18 I take it from your testimony you began
19 working for Pennsylvania National right out of
20 college?

21 A. No.

22 Q. Oh, okay. What did you do in between the period
23 you graduated from college and worked for
24 Pennsylvania National?

25 A. Spent five years -- basically five years in the

1 United States Army in the United States, Panama,
2 Viet Nam and Germany.

3 Q. And after your Army service, did you go to work
4 for Pennsylvania National?

5 A. Yes.

6 Q. So I take it then that you have not worked for
7 either Travelers or Phoenix or any subsidiaries of
8 either of those corporations?

9 A. Correct.

10 Q. I believe you were also showed what's been marked
11 Hoover Deposition Exhibit No. 1, which was a
12 document. The first page was the Phoenix
13 Insurance Company on it. Do you have any personal
14 knowledge of that document?

15 A. Prior to today, no.

16 Q. You've never seen it before prior to today?

17 A. I don't believe so. I don't remember in all
18 honesty. What do you mean by personal knowledge,
19 I guess is --

20 Q. Any personal knowledge of any of the language in
21 that policy or anything like that. I'm just
22 asking you as --

23 A. I mean, besides the fact that it's typical boiler
24 plate language of insurance policies.

25 Q. But it's not a document of a company that you

1 worked for?

2 A. That's correct.

3 Q. That's just what -- I'm trying to establish that.

4 MR. BURNS: I don't have any further questions
5 then.

6 EXAMINATION

7 BY MR. NELSEN:

8 Q. Mr. Rice, I just have several questions I'd like
9 to ask you just to clear up a couple of things.

10 You testified earlier about some pages that
11 were from the OPS manual in various editions. Of
12 the various exhibits that you've identified and
13 talked about in the OPS manual, were any of these
14 in effect prior to December 10th, 1965?

15 A. No.

16 Q. Do you have any reason to believe that any
17 policies allegedly issued by Pennsylvania National
18 to General Gasket were improperly disposed of or
19 disposed of not in accordance with the procedures
20 set out in the OPS manuals?

21 A. I have no reason to believe that, no.

22 Q. Exhibits 4 and 5, which purport to be -- Exhibit 4
23 is the photocopy of the microfilm of the line
24 cards. These were not documents that were created
25 by Pennsylvania National, is that correct?

1 A. Not to the best of my knowledge. Or it's correct,
2 yes, I agree.

3 Q. These aren't Pennsylvania National documents?

4 A. Correct.

5 Q. They're not documents that are kept in the regular
6 business of Pennsylvania National?

7 A. No, they're not ours.

8 Q. The documents that were marked as Rice Deposition
9 Exhibit No. 1 and Exhibit No. 2, the audit sheets,
10 again, these are not documents that were prepared
11 by Pennsylvania National Mutual Casualty Insurance
12 Company, is that correct?

13 A. To the best of my knowledge, they were not
14 prepared by us, they would have been prepared by
15 the general agency.

16 Q. Prior to this litigation, have you ever seen these
17 documents before?

18 A. Prior to my involvement in this litigation, no, I
19 have not -- I did not see them before.

20 Q. And these were simply copies of the documents that
21 you've seen and copies that we've given you that
22 came from earlier depositions in this case, is
23 that correct?

24 A. Right, they're plaintiff's documents.

25 Q. You don't have any personal knowledge regarding

1 the preparation of these documents?

2 A. No personal knowledge, no.

3 Q. You have no knowledge as to whether Rice Exhibits
4 1 and 2 were prepared in the ordinary course of
5 business of Associated Agencies at or about the
6 time of the dates indicated on there?

7 A. Correct, no personal knowledge.

8 MR. NELSEN: I don't have anything further.

9 MR. FLAVIN: I have nothing further.

10 (Whereupon the deposition was concluded at
11 12:50 p.m.)

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COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF DAUPHIN :

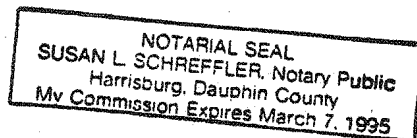
I, Susan L. Schreffler, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing deposition was taken before me at the time and place hereinbefore set forth, and that it is the testimony of

EDWIN LAVERNE RICE

I further certify that said witness(es) was/were by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for or related to any of the parties to the foregoing cause, or employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania this 11th day of October, 1991.




Susan L. Schreffler, RPR

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

COVIL CORPORATION, by and : CIVIL ACTION NO.
through its duly appointed : 2019-CP-40-2098
Receiver PETER D. :
PROTOPAPAS, :
Plaintiff :

vs. :

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

VIDEOTAPED DEPOSITION OF BRENT A. REIFSNYDER

Taken remotely via Zoom on
Thursday, November 10, 2022, at 10:07 a.m. by
Meg Davis, Registered Merit Reporter, Certified
Realtime Reporter.

* * *

VERITEXT LEGAL SOLUTIONS
5100 Tilghman Street, Suite 205
Allentown, PA 18104
(610) 434-8588

PLAINTIFF'S
EXHIBIT

84

APPEARANCES:

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BY: W. BRAD NES, ESQ.

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-- on behalf of the Plaintiff

Covil Corporation, by and through

its duly appointed Receiver

Peter D. Protopapas

SMITH ROBINSON

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-- on behalf of the Plaintiff

Covil Corporation, by and through

its duly appointed Receiver

Peter D. Protopapas

* * *

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APPEARANCES CONTINUED:

GOLDBERG SEGALLA

BY: BRADY A. YNTEMA, ESQ.

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Greensboro, NC 27408

336-419-4900

byntema@goldbergsegalla.com

-- on behalf of the Defendant

Pennsylvania National Mutual

Casualty Insurance Co.

ALSO PRESENT:

TIFFANY GUZZI, PARALEGAL

WILLIAM DAVIS, VIDEOGRAPHER

* * *

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1	I N D E X T O W I T N E S S E S	
2	WITNESS	PAGE
3	BRENT A. REIFSNYDER	
4	By Mr. Nes	7

7	I N D E X T O E X H I B I T S	
8	Description	Identified
9		
10	Exhibit 1 Deposition notice,	9
11	six (6) pages	
12	Exhibit 2 Litigation hold procedure,	22
13	PNI-1159 through PNI-1161	
14	Exhibit 3 Covil litigation hold	34
15	notice, two (2) pages	
16	Exhibit 4 Penn National spreadsheet of	59
17	policy destruction dates,	
18	2079 pages	
19	Exhibit 5 Penn National's Responses to	69
20	Receiver's Second Set of	
21	Interrogatories, 12 pages	
22	Exhibit 6 Notice of filing Ellis &	117
23	Winters report,	
24	seven (7) pages	
25	Exhibit 7 Records retention policy	122
	with cover memo,	
	PNI-0598 through PNI-1158	

* * *

1 MR. YNTEMA: All objections are
2 reserved except for objections to form.

3 (The attorneys participating in this
4 deposition acknowledge that the court reporter
5 is not physically present in the deposition room
6 and that she will be reporting this deposition
7 remotely. They further acknowledge that in lieu
8 of an oath administered in person, she will
9 administer the oath remotely. The parties and
10 their counsel consent to this arrangement and
11 waive any objections to this manner of
12 reporting.)

13 MR. NES: Yes.

14 MR. YNTEMA: Yes.

15 THE VIDEOGRAPHER: Good morning. We
16 are going on the record at 10:07 on November
17 10th, 2022. Please note that this deposition is
18 being conducted virtually. The quality of the
19 recording depends on the quality of camera and
20 Internet connection of participants.

21 What is seen from the witness and heard
22 on screen is what will be recorded. Audio and
23 video recording will continue to take place
24 unless all parties agree to go off the record.
25 This is media unit 1 of the video-recorded

1 deposition of Brent Reifsnyder taken by counsel
2 for plaintiff in the matter of Covil Corporation
3 versus Pennsylvania National Mutual Casualty
4 Insurance Company, et al., filed in the Court of
5 Common Pleas of the Fifth Judicial Circuit,
6 Richland County, South Carolina, Civil Action
7 2019-CP-40-2098.

8 This deposition is being conducted
9 remotely using virtual technology. My name is
10 William Davis representing Veritext and I'm the
11 videographer. The court reporter is Meg Davis,
12 also from Veritext.

13 I am not authorized to administer an
14 oath. I am not related to any party in this
15 action, nor am I financially interested in the
16 outcome. If there are any objections to
17 proceeding, please state them at the time of
18 your appearance.

19 Counsel and all present, including
20 remotely, will now state their appearances and
21 affiliations for the record beginning with the
22 noticing attorney.

23 MR. NES: Brad Nes of Morgan Lewis,
24 counsel for the receiver for Covil Corporation.

25 MR. YNTEMA: Brady Yntema, counsel for

1 defendant Penn National.

2 MR. REED: Austin Reed of Smith
3 Robinson, counsel for plaintiff, the receiver
4 for Covil.

5 THE VIDEOGRAPHER: Would the court
6 reporter please swear in the witness and then
7 counsel may proceed.

8 * * *

9 BRENT A. REIFSNYDER, having been duly
10 sworn, was examined and testified as follows:

11 EXAMINATION

12 BY MR. NES:

13 Q. Good morning. Could you introduce
14 yourself?

15 A. Good morning. My name is Brent
16 Reifsnyder.

17 Q. Who is your current employer?

18 A. It is Penn National Insurance.

19 Q. And how long have you worked at Penn
20 National?

21 A. I've been employed with Penn National
22 for just over 30 years.

23 Q. What is your current job title?

24 A. My current job title is the director of
25 corporate services and facilities.

1 Q. You've been deposed in this case
2 previously. I believe it was last summer. Do
3 you recall that?

4 A. I do.

5 Q. So I'm not going to go through again
6 the normal admonitions, but just as the court
7 reporter mentioned, your testimony is under
8 oath. And I'll be asking you questions, and
9 your [sic] questions and my [sic] answers will
10 be taken down by the court reporter. Do you
11 understand that?

12 A. I do.

13 Q. Because of that, we need audible
14 answers to each question. Okay?

15 A. I understand.

16 Q. Great. Is there anything preventing
17 you from giving full and accurate testimony this
18 morning?

19 A. No.

20 Q. You've been designated as a witness on
21 behalf of Penn National in response to a
22 deposition notice, is that correct?

23 A. That is correct.

24 Q. I'm showing you what will be marked as
25 Exhibit 1.

1 (Exhibit 1 was marked for
2 identification.)

3 BY MR. NES:

4 Q. This is a deposition notice of Penn
5 National as a corporate representative dated
6 November 3rd, 2022. Do you recognize this
7 document?

8 A. I do.

9 Q. Have you seen this document before?

10 A. Yes.

11 Q. My understanding is that you are being
12 designated as Penn National's corporate
13 representative with respect to certain topics
14 contained in this deposition notice, is that
15 right?

16 A. Right.

17 THE COURT REPORTER: I'm sorry, Brad.
18 I -- the last word I heard was, With respect to
19 topics?

20 BY MR. NES:

21 Q. In this deposition notice.
22 Specifically I --

23 THE COURT REPORTER: And I didn't hear
24 the answer. And the answer?

25 THE WITNESS: I do -- yes. I'm sorry.

1 BY MR. NES:

2 Q. I understand that you're being
3 designated on topics 2, 3, 5, 6, 9, 10, 11, 12,
4 and 14. Is that your understanding?

5 A. I believe so, yes.

6 Q. Before we get into each of the specific
7 topics, generally what did you do to prepare for
8 today's deposition?

9 A. Spent about four, five hours reviewing
10 this, interacting with counsel, gaining some
11 insight onto some questions that were asked in
12 here.

13 Q. Other than counsel for Penn -- excuse
14 me.

15 Other than counsel for Penn National,
16 did you speak with anyone else in preparation
17 for your deposition?

18 A. I asked question of a few employees.

19 Q. Which employees did you talk to?

20 A. Employees that are very long tenured,
21 meaning they -- they've been here about 30, 40
22 years.

23 Q. And who is the first employee that you
24 spoke with?

25 A. I e-mailed them, actually.

1 Q. Who is the first employee you e-mailed?

2 A. I e-mailed them in a group so -- and I
3 don't remember the sequence of the order of when
4 they responded.

5 Q. And I'm not particularly concerned with
6 sequencing. I'm just trying to understand who
7 it is that you communicated with.

8 A. One person would be Karen Myers that
9 comes to memory.

10 Q. And who is Karen Myers?

11 A. She runs the customer contact center.
12 They handle all the phone calls that come into
13 the company.

14 Q. How long has Ms. Myers been with the
15 company?

16 A. I believe she's in the 40-year realm.

17 Q. And why did you include Ms. Myer on
18 the -- your e-mail?

19 A. The e-mail was in reference to item
20 number 10 on this deposition, so I could learn
21 when Penn National was using terminal digit
22 storage.

23 Q. Did you have any conversations with
24 Ms. Myer?

25 A. The question was, do you recall when or

1 did you have any knowledge of the use of
2 terminal digit numbering for storage of records?

3 I don't know that she did. If -- I don't
4 remember what her response was, but it was an
5 e-mail response. It wasn't a phone call.

6 Q. Who else was on the e-mail other than
7 Ms. Myers?

8 A. There was a list. Sharon Sweger was
9 one.

10 Q. Who is Sharon Sweger?

11 A. I don't know her title at this point.
12 She's just a long-tenured employee.

13 Q. Why did you include her on your e-mail
14 chain?

15 A. Again, because she was a long-tenured
16 employee, and the question was, do you have any
17 knowledge or experience in utilizing --
18 understanding when Penn National utilized
19 terminal digit, when they started?

20 Q. Did she respond to your e-mail?

21 A. She did. She did and gave me -- she
22 gave me a date when they were doing it.

23 Q. And was this an e-mail response or did
24 you actually have --

25 A. E-mail. E-mail response. Sorry.

1 Q. Did you have any substantive telephone
2 conversations with her or any other oral
3 conversations with her?

4 A. No. All my communications were via
5 e-mail.

6 Q. And is that true for everyone who you
7 communicated with to prepare for your deposition
8 other than outside counsel?

9 A. Correct. On this topic, yes.

10 Q. And to the extent you recall, what was
11 Ms. Swager's --

12 A. Sweger. Sweger. Sorry.

13 Q. What was Ms. Sweger's response?

14 A. She did recall when she started that
15 the company was using terminal digit numbering
16 which went back to 1977, and it was already in
17 use.

18 Q. Do you know what her job title is?

19 A. No, I do not.

20 Q. Do you know what her general job
21 responsibilities are?

22 A. She was in underwriting, I believe. To
23 what degree, no.

24 Q. Was there anyone else on this e-mail
25 chain?

1 A. There were. Remembering them all, no,
2 I don't.

3 Q. Do you remember if anyone provided you
4 a response?

5 A. Most did of either they had no idea or
6 they didn't -- they had no idea when or they
7 were here and it was being done, but they don't
8 know why.

9 Q. Other than Ms. Sweger, did anyone
10 provide a substantive response to your e-mail?

11 MR. YNTEMA: Objection.

12 THE WITNESS: Substantive how?

13 BY MR. NES:

14 Q. Did anyone other than Ms. Sweger
15 respond with an answer other than I don't know
16 or I don't recall?

17 A. A few did, yes. They had experienced
18 working with the microfilm, did not know why
19 they were doing terminal digit, just that it was
20 in use from the day they started.

21 Q. And do you recall the name of any of
22 the -- these employees?

23 A. Lorrie Bachick is another name that
24 comes to mind and that's -- don't ask for the
25 spelling.

1 Q. Do you know what her general job
2 responsibilities are?

3 A. At this point, she's in the customer
4 contact center.

5 Q. Did you generate the list of employees
6 that you put on your e-mail or did someone give
7 you some or all of these names?

8 A. I generated the list based off of
9 information that I have available to me.

10 Q. Do you recall anyone else who provided
11 you a response to your e-mail?

12 A. Not off the top of my head, no.

13 Q. Other than this group e-mail that you
14 sent regarding topic number 12, I believe you
15 said, did you do anything else in terms of
16 communicating with anyone to prepare for your
17 deposition today?

18 A. So that was topic number 6 -- or number
19 10 that I responded to.

20 Q. I'm sorry. Topic number 10, yes.

21 A. And then the rest of the question was?

22 Q. Did you communicate with anyone else
23 other than opposing counsel to prepare for any
24 of the other topics?

25 A. No.

1 Q. I believe earlier you mentioned that
2 you spent about five or six -- I'm sorry, four
3 or five hours total preparing. Is that about
4 right?

5 A. That's about right, yes.

6 Q. And does that include prep time with
7 your outside counsel?

8 A. Yes, it does.

9 Q. How much time did you spend preparing
10 other than discussing issues with outside
11 counsel?

12 A. Two plus hours, I would say.

13 Q. And what did you do during that two
14 plus hours to prepare?

15 A. I actually conducted an Internet search
16 of why organizations use terminal digit as a
17 storage media, what other methods there are,
18 pros and cons.

19 Q. What did you learn in your Internet
20 search?

21 A. My Internet search revealed that there
22 are four methods of storage: Alpha,
23 alphanumeric, straight line indexing, and
24 terminal digit.

25 Of the four -- depending upon the

1 number of records an agency's storing, since
2 you're dealing with thousands, tens of
3 thousands, hundreds of thousands, terminal
4 digit's actually highly recommended as the
5 storage method. It's used by the U.S. Navy
6 medical -- or was at some time. Hospitals have
7 used it. It's -- it's not an unknown or obscure
8 storage method.

9 Q. Do you recall what Internet sites you
10 visited in your Internet search?

11 A. I do -- I used Google engine or Bing
12 engine, but the actual sites that I hit, no.

13 Q. In preparation for your deposition, why
14 did you conduct this Internet research?

15 A. Because of this deposition's question
16 as to number 10, which specifically states, The
17 reason you use a terminal digit system to file
18 your historic insurance policies or
19 policy-related documents.

20 So it was specifically in response to
21 this deposition's request.

22 Q. Was there anything in your Internet
23 research that identified specifically why Penn
24 National had adopted the terminal digit system?

25 A. No.

1 Q. And prior to your Internet research,
2 did you have any independent understanding of
3 why Penn National used a terminal digit system?

4 A. No, I did not.

5 Q. Other than the two hours you spent
6 doing this Internet research and the time you
7 spent with opposing counsel, did you do anything
8 else to prepare for your deposition today?

9 A. Not that I'm aware of, no.

10 Q. Did you review any documents in
11 preparation for your deposition?

12 A. This deposition, the affidavits that
13 were signed, the former deposition that I had
14 done, I reviewed those as well.

15 Q. Other than your prior deposition
16 testimony, the affidavits that you previously
17 signed, and the deposition notice, and the
18 e-mails that came back from your e-mail that we
19 discussed earlier, do you recall looking at any
20 other documents in preparation for your
21 deposition?

22 A. Nothing comes to mind.

23 Q. In preparation for your deposition, did
24 you review the document retention policy that
25 Penn National utilizes?

1 A. No, I did not.

2 Q. Have you ever seen the document
3 retention policy that Penn National uses?

4 A. Yes, I have.

5 Q. When was the last time you saw that?

6 A. This year. When exactly, I do not
7 remember.

8 Q. What was the purpose of you referring
9 to the document retention policy?

10 A. Our corporate legal department which
11 maintains that policy has a requirement to do an
12 annual review, so my job was to review my
13 division-specific area and the retention
14 guidance for my division-specific items to see
15 if anything needed to be reviewed.

16 Q. And approximately when did this review
17 take place?

18 A. I am guessing maybe June.

19 Q. As part of this annual process, did you
20 receive any e-mail correspondence from in-house
21 counsel or the legal department?

22 A. Yes.

23 Q. And as part of this document retention
24 annual procedure, did you respond with any
25 e-mails?

1 A. Yes.

2 Q. Did you create any work product, such
3 as a Word document, spreadsheets, anything, as
4 part of this process?

5 A. No.

6 Q. Did you have any meetings in which you
7 discussed this topic with anyone within Penn
8 National?

9 A. No.

10 Q. So is it fair to say you received an
11 e-mail about the document retention policy and
12 then you responded by e-mail, but you didn't
13 discuss it with anyone?

14 A. It's fair to say that I received an
15 e-mail from our legal department to review my
16 specific area and determine if I needed anything
17 to be updated, of which I did not, and I
18 responded back to that effect.

19 Q. And when you say whether you needed
20 anything updated, what do you mean by that?

21 A. Anything added. Do we have something
22 additional that we need to go over.

23 Q. So they were asking you to comment on
24 the policy itself, is that right?

25 A. My specific area of it, yes.

1 Q. And which is your specific area?

2 A. The area that deals with corporate
3 services.

4 Q. And what does corporate services mean?

5 A. Corporate services entails corporate
6 purchasing or corporate travel, corporate fleet,
7 and facilities.

8 Q. You reviewed the document retention
9 policy with respect to corporate services and
10 reported back that you didn't see any changes
11 needed for the document retention policy, is
12 that right?

13 A. To my specific area, correct.

14 Q. I'd like to turn back to the deposition
15 notice which is Exhibit Number 1, and
16 specifically topic number 2 says, All steps
17 taken by you to preserve information and
18 documents after any litigation hold notice was
19 issued related to the Covil litigation.

20 Do you see that?

21 A. Yes, I do.

22 Q. What did you do in preparation for
23 topic 2 specifically?

24 A. So we received our litigation hold
25 notice. When that was done, I had reviewed that

1 document at that point in time, which was quite
2 a while ago, recognizing what was there, what
3 that impacted, what the impact of that was to
4 me, meaning nothing was to be purged, and that
5 was it from my end.

6 And look to see -- let me see. And
7 looked to see if anybody else needed to be
8 notified from legal. That was the request from
9 them.

10 Q. So specifically with respect to topic
11 number 2, you don't recall doing anything
12 specifically to prepare for this deposition,
13 though, is that correct?

14 A. Correct.

15 Q. Did you review that litigation hold
16 notice that you received in December of 2021
17 recently?

18 A. No.

19 Q. I'd like to show you what will be
20 marked as Exhibit 2.

21 (Exhibit 2 was marked for
22 identification.)

23 BY MR. NES:

24 Q. This is a document that Penn National
25 produced with a Bates Number PNI1159

1 through 1161. It is titled Litigation Hold
2 Procedure. Do you recognize this document?

3 A. I do recognize the document, yes.

4 Q. And what do you understand this
5 document to be?

6 A. It is a -- it is my understanding that
7 it is a document that outlines the process for a
8 litigation hold, as titled.

9 Q. When was the last time you saw this
10 document?

11 A. When you say saw, could you define
12 that, please?

13 Q. Sure. When was the last time you read
14 it?

15 A. That I cannot answer.

16 Q. Would it have been during the course of
17 the Covil litigation, let's say, 2018 to now?

18 A. I don't recall.

19 Q. So it is fair to say you did not read
20 this document in preparation for your deposition
21 today?

22 A. Correct.

23 Q. I'd like to turn to the first page of
24 Exhibit 2. Under the side column, there's a
25 section that says, policy, colon. Do you see

1 that?

2 A. Yes.

3 Q. And in the second paragraph, it says,
4 quote, If an employee receives a litigation hold
5 notice from the legal department, then the
6 employee should follow the procedures described
7 below in the gathering and retention of such
8 information.

9 Do you see that?

10 A. I do see that.

11 Q. And do you understand that this
12 litigation hold procedure is a procedure or
13 requirement for employees once they receive a
14 litigation hold?

15 A. Yes.

16 Q. Under the procedure section of Exhibit
17 2, under number 1, it says, If an employee
18 believes that litigation or a government
19 investigation is reasonably foreseeable,
20 receives notification from an attorney to hold
21 documents in anticipation of litigation or
22 government investigation, or an employee knows
23 that a lawsuit has commenced that involves the
24 company, then the employee should immediately
25 notify the legal department of this situation by

1 sending a brief summary of the facts and any
2 correspondence received consistent with the
3 legal review guidelines set forth in LE-0010.

4 Do you see that?

5 A. I do.

6 Q. First, do you know what LE-0010 is?

7 A. I do not off the top of my head, no.
8 Well, strike that.

9 On this policy page 1 under related
10 policies, it offers LE-0010 as the legal review
11 guidelines.

12 Q. Have you reviewed the legal review
13 guidelines?

14 A. No.

15 Q. Under number 3 under procedure in
16 Exhibit 2, it says, Upon receipt of a written
17 litigation hold notice, an employee should
18 promptly review and -- review and return an
19 acknowledgement stating the employee has
20 received, understands, and agrees to comply with
21 the litigation hold.

22 Do you see that?

23 A. Yes, sir.

24 Q. I believe you testified earlier that
25 you did receive a litigation hold notice with

1 respect to the Covil litigation. Is that right?

2 A. That is correct.

3 THE COURT REPORTER: With respect to --

4 I couldn't hear. With respect to?

5 BY MR. NES:

6 Q. The Covil litigation, is that correct?

7 A. That is correct.

8 Q. In response to that litigation hold
9 notice, did you provide an acknowledgement?

10 A. I believe I did, but I do not recall.
11 I responded back that IT needed to -- or not IT.
12 Pardon me.

13 I responded back to them that they
14 needed to extend this litigation hold to
15 our IT area, so I did respond back. How I did
16 that, I do not recall.

17 Q. On the next page of Exhibit 2 at the
18 top, number 4, The employee should determine
19 what information, whether in electronic or
20 physical form, is in the employee's possession
21 or within the employee's work area that is
22 reasonably related to the subject matter
23 identified in the notice.

24 Do you see that?

25 A. I do see that.

1 Q. Once you received the litigation hold
2 notice, what steps did you take to determine
3 what electronic information would have been in
4 your possession that might be relevant?

5 A. Electronic information in -- that I
6 have custody of? I don't have any that's in my
7 specific custody per se. I have paper and
8 microfilm.

9 Q. And you have e-mail, correct?

10 A. Correct, we have e-mail.

11 Q. Did you do anything to segregate your
12 e-mail about this case once that litigation hold
13 notice came in?

14 MR. YNTEMA: Objection to form.

15 THE WITNESS: Segregate?

16 BY MR. NES:

17 Q. Did you do anything to preserve your
18 e-mails?

19 A. I did not. It is my understanding that
20 when an employee is put under a litigation hold,
21 those e-mails are preserved.

22 Q. And where does that understanding come
23 from?

24 A. Reviewing these policies in the past at
25 some point in time and understanding that that

1 occurred.

2 Q. Did anyone ever ask you to review your
3 e-mails related to the Covil litigation?

4 A. Not that I --

5 MR. YNTEMA: Objection to form.

6 THE WITNESS: -- recall. Sorry.

7 BY MR. NES:

8 Q. Do you recall whether at any point you
9 did collect any e-mails that you either sent or
10 received related to the Covil litigation?

11 A. I don't believe I did.

12 Q. Under number 5 on page 2 of Exhibit 2,
13 it says, The employee should provide a brief
14 summary of the location of information that
15 would be covered by the litigation hold, e.g., I
16 retain e-mails covered by this hold in
17 subfolder XXXXX of my Outlook inbox where all my
18 Word and Excel documents related to this issue
19 are located on the Y drive in a folder
20 called ZZZZ. This may be sent along with the
21 acknowledgement.

22 Do you see that?

23 A. I do see that.

24 Q. Do you recall ever sending a summary of
25 the location of information covered by the

1 litigation hold such as in number 5 in response
2 to the litigation hold notice?

3 A. I do not.

4 Q. Number 6 says, For physical documents,
5 e.g., paper files, the employee should separate
6 the documents of the requested information from
7 the employee's working files and make copies, if
8 possible.

9 Do you see that?

10 A. I do see that.

11 Q. Did you make any -- did you separate
12 any physical documents in response to the
13 litigation hold notice?

14 A. That's broad. So meaning e-mails or
15 other types of documents? Seeking
16 clarification.

17 Q. And I'm just trying -- so that would
18 be, I'm trying to understand what, if anything,
19 you did to comply with step 6.

20 A. Bear with me. Paper files I did not.
21 We do -- we did have material that was
22 policy-related documents in microfilm that were
23 provided, and ultimately I believe the actual
24 microfilm has been moved into a secure area.

25 Q. In your previous deposition, we talked

1 a lot about your search for policies. Do you
2 recall that generally?

3 A. I generally recall that.

4 Q. And as part of that process of
5 searching for policies, did you exchange e-mails
6 with anyone?

7 MR. YNTEMA: Objection to the extent
8 that it would be with counsel.

9 THE WITNESS: I exchanged e-mails with
10 anyone? The requester of that material.

11 BY MR. NES:

12 Q. Did you exchange any e-mails with Boyd
13 Wright regarding the search for policies?

14 A. Yes.

15 Q. Did you at any point separate your
16 e-mails related to the search for policies that
17 you had with Boyd Wright?

18 A. No, I did not.

19 Q. Do you know whether all of your e-mails
20 related to the search for policies have been
21 retained?

22 A. I do not.

23 Q. Other than Boyd Wright, do you recall
24 e-mailing anyone else regarding the search for
25 policies?

1 A. No, I do not.

2 Q. Do you recall whether you were on any
3 e-mails with any lawyers at Ellis & Winters
4 related to a search of Penn National's hardcopy
5 records?

6 A. That I believe I was, I believe. My
7 confusion is, it could have come from our
8 counsel referencing Ellis & Winters, so I
9 don't -- I don't clearly recall.

10 Q. Under number -- going back to Exhibit 2
11 under number 7, it says, For electronic
12 records --

13 A. That's okay. You're fine.

14 Q. For Exhibit 2, page 2, number 7, For
15 electronic records, e.g., e-mails, the corporate
16 information security officer or a member of
17 the IT department may assist the legal
18 department and the employee with identifying and
19 securing that electronic information.

20 Do you see that?

21 A. I do see that.

22 Q. You mentioned that you did send an
23 e-mail to someone in the IT department, is that
24 right?

25 A. I -- relative to the litigation hold,

1 there was somebody in the IT department that
2 needed to know that. Specific to if I sent that
3 individual an e-mail or notified legal, that I'm
4 not a hundred percent clear on.

5 Q. Do you recall having any conversations
6 with anyone in IT or the corporate information
7 security officer regarding preservation of your
8 e-mails?

9 A. No.

10 Q. Under number 8 on page 2 of Exhibit 2,
11 it says, The employee may be asked to
12 participate in a custodial interview with a
13 member of the legal department and any outside
14 counsel involved in the matter to help ensure
15 that all necessary records are properly
16 identified and preserved. The employee must
17 make him or herself available and cooperate
18 fully with any such interview.

19 Do you see that?

20 A. I do see that.

21 Q. I am not asking you about what was said
22 in any meeting, but did you -- do you recall
23 having a meeting with someone in the legal
24 department regarding number 8?

25 A. Our legal department specifically?

1 Q. Yes.

2 A. I believe I did.

3 Q. Do you recall who that conversation was
4 with?

5 A. That would have been Mr. Scott Maier.

6 Q. And do you recall generally when this
7 conversation took place?

8 A. I do not.

9 Q. Was this in reference to your
10 litigation hold notice that you received?

11 A. That would have been the case, yes.

12 So --

13 MR. YNTEMA: Just answer the question.
14 I think you answered it.

15 THE WITNESS: Okay.

16 BY MR. NES:

17 Q. Did you have something else that you
18 wanted to add?

19 A. No.

20 Q. Okay. Do you recall anything else
21 about that conversation?

22 MR. YNTEMA: Objection to the extent
23 the conversation --

24 THE COURT REPORTER: Excuse me,
25 Counsel. I heard objection to the extent the

1 conversation and that's it.

2 MR. YNTEMA: Objection to his
3 conversation in detail. He can speak to maybe
4 the category of subject of the conversation, but
5 that's it. Thank you, Brent.

6 THE WITNESS: Okay. Restate the
7 question, please.

8 BY MR. NES:

9 Q. I'll -- I'll ask a different question
10 then.

11 A. Okay.

12 Q. I think this might help clarify.
13 I'm going to show you the next exhibit
14 which I believe is Exhibit 3.

15 (Exhibit 3 was marked for
16 identification.)

17 BY MR. NES:

18 Q. I'm showing you what's been marked as
19 Exhibit 3. This is an e-mail from Scott Maier
20 to you dated Friday, December 17, 2021. Do you
21 see that?

22 A. I do see that.

23 Q. Do you recall receiving this e-mail?

24 A. Yes.

25 Q. Is this the litigation hold notice that

1 you recall receiving in the Covil litigation?

2 A. It is.

3 Q. Do you recall receiving any similar
4 legal hold notice related to a Covil subpoena in
5 2018?

6 A. I do not.

7 Q. Do you recall receiving any similar
8 notice related to any Covil coverage litigation
9 pending in North Carolina?

10 MR. YNTEMA: Object to the form.

11 THE COURT REPORTER: Did you object to
12 the form?

13 MR. YNTEMA: Yes, objection to form.

14 THE WITNESS: I am not aware of it. I
15 don't recall it.

16 BY MR. NES:

17 Q. To the best of your recollection, is
18 Exhibit 3 the first time you received a
19 litigation hold related to any Covil litigation?

20 A. To the best of my recollection, yes.

21 Q. When was the first time -- strike that.
22 Did you read Exhibit 3 when you
23 received it?

24 A. I did.

25 Q. And what did you do, if anything, in

1 response to receiving this e-mail?

2 A. I responded back to Scott Maier that he
3 needed to include IT. Relative to the extent of
4 this, I -- I stopped purging any records.

5 Q. Do you recall who in IT you -- strike
6 that.

7 When you responded to Mr. Maier's
8 e-mail, did you respond with a reply e-mail?

9 A. I don't recall.

10 Q. Do you recall if you identified anyone
11 specifically in IT that needed to be contacted?

12 A. I do not recall if I did.

13 Q. You mentioned that you stopped purging
14 documents in response to this litigation hold
15 letter, is that right?

16 A. That is correct.

17 Q. Other than not purging documents, did
18 you take any additional steps to comply with the
19 litigation hold notice?

20 A. No.

21 Q. When you say you stopped purging
22 documents, what do you mean by that?

23 A. Any documents that were scheduled to be
24 purged were immediately stopped. It -- the --
25 so things that are paper or microfilm were

1 retained.

2 Q. As of December 17, 2021, did you have a
3 list of documents that were scheduled to be
4 purged that you stopped the purge on?

5 A. Yes.

6 Q. What does that list look like?

7 A. It is a list of policy numbers and only
8 policy numbers.

9 Q. Who sends you that list of policy
10 numbers?

11 A. So we generate out of a Microsoft
12 access database of which we created, we being me
13 specifically created, that has policy numbers of
14 what we have in inventory.

15 I receive a list from IT annually.
16 That list provides us policy numbers and a
17 cancellation/non-renew date. The lists we
18 receive are then used to compare what they have
19 on the list to what I have in inventory by
20 policy number, a query.

21 The lists that we receive for the stuff
22 that is slated to be destroyed, for example,
23 2020, represents policies that
24 cancelled/non-renewed in 1995. So that list
25 would have been received quite a number of years

1 ago. When exactly, I do not recall.

2 Those two pieces of data are then put
3 together. Out of access, we generate a list of
4 policy numbers that are slated to be purged, and
5 then we physically, meaning manually, go through
6 hundreds of boxes of paper and microfilm to find
7 policy numbers on jackets, files, and pull them
8 so that we can prepare to purge them at the end
9 of the year.

10 Q. Is there a final list prepared of the
11 policies that have been destroyed in that
12 calendar year?

13 A. I'm clarifying your question in my
14 head. That list that we use to purge would be
15 that final list. That's what we would use.
16 That's it.

17 Do we maintain a list post purging?
18 Because we have the database and we have a list
19 that gives us cancellation/non-renew dates, I do
20 not need to generate a paper list of what was
21 destroyed because I can reference the database.

22 Q. For -- let's start with the list that
23 you had for 2021 that you stopped the purge on
24 because you received the e-mail that is Exhibit
25 3.

1 How do you physically get that list
2 that you referenced? You mentioned it's
3 generated by IT, but does it come in the form of
4 a spreadsheet, an e-mail? How does that get to
5 you?

6 A. Understand.

7 That comes as an e-mail with an
8 attachment as a spreadsheet once a year.

9 Q. Do you automatically destroy each of
10 the policies on the spreadsheet that is sent to
11 you via e-mail?

12 THE COURT REPORTER: Was there an
13 objection?

14 MR. YNTEMA: Object -- object to form.
15 Yes, Meg. Thank you.

16 THE COURT REPORTER: If you could just
17 keep your voice up. I can't really hear you.
18 Thank you.

19 THE WITNESS: Okay. Ask it again,
20 please.

21 BY MR. NES:

22 Q. Sure. You receive this spreadsheet as
23 an e-mail attachment. Do you then review that
24 list and manually purge each of the policies on
25 the list on the spreadsheet or are you

1 conducting a further analysis of some kind to
2 determine which of the policies to purge?

3 MR. YNTEMA: Objection to form.

4 THE WITNESS: So the list we receive
5 hypothetically today is policies that
6 cancelled/non-renewed within the last year. So
7 that list I actually import into the database,
8 which is policy number and
9 cancellation/non-renew -- non-renew date.

10 I have nothing more to do with that
11 list because those policies that I just received
12 a list on won't be scheduled for cancel -- or
13 for purge for 25 years.

14 BY MR. NES:

15 Q. Okay.

16 A. So from 2020 -- today, 2022, the list I
17 would receive hypothetically today wouldn't be
18 touched until 2047 -- 2046.

19 Q. And, again, I want to focus then on the
20 list that you use to destroy or discard policies
21 in a particular year.

22 A. Okay.

23 Q. And so I must have misunderstood.

24 A. Sorry.

25 Q. So how does the list that you're going

1 to use to determine what to purge in this year,
2 2021, how did you receive that list?

3 A. That list would have been received
4 quite some time ago via e-mail. That
5 information by policy number,
6 cancellation/non-renewed date, is put into the
7 database.

8 A query is generated based on policy
9 number which then produces -- we can establish
10 the query to say, I need policies within the
11 parameter of these dates, 20 -- January 1st,
12 2021, through and including December 31st, 2021.

13 From that query, it restricts -- it
14 being the database. It restricts based on that
15 query and produces a list that we would use to
16 then look for the identified policies in
17 preparation for purge.

18 Q. So let's go back to 2018. Was the
19 process you just described generally the same
20 process that was used in 2018 to identify policy
21 or policy-related documents for purging?

22 A. Yes.

23 Q. Do you recall when policies were purged
24 in 2018?

25 A. We purge policies -- we -- we pull

1 them. Everything is then purged the beginning
2 of the new year.

3 Q. So if a purge was taking place in 2018,
4 it would have been January or February of 2018?

5 A. If we were doing a purge in 2018, then
6 everything that was pulled to be destroyed -- to
7 be purged in 2018 would have been purged early,
8 meaning January, 2019.

9 MR. YNTEMA: I'm sorry. Can we take a
10 break? I need to use --

11 MR. NES: Sure.

12 MR. YNTEMA: -- the restroom. I
13 apologize.

14 MR. NES: We've been going about an
15 hour. Why don't we take 5, 10 minutes?

16 MR. YNTEMA: Fine.

17 MR. NES: Five-minute break.

18 THE VIDEOGRAPHER: We're going off the
19 video record. The time is 10:56. This
20 concludes media unit 1.

21 (Short recess was taken.)

22 THE VIDEOGRAPHER: We're back on the
23 video record. The time is 11:03. This begins
24 media unit 2. You may proceed.

25 BY MR. NES:

1 Q. Mr. Reifsnyder, I'd like to take your
2 attention back to 2018.

3 A. Okay.

4 Q. The documents that were identified for
5 destruction in 2018 were subsequently purged in
6 the beginning of 2019. Is that your
7 recollection?

8 A. That would be my recollection, yes.

9 Q. Do you have a list of the documents
10 that were destroyed in January of 2019?

11 A. One could be created, yes. I do not
12 physically have a paper copy list, no.

13 Q. Other than recreating the list the way
14 you would have created it in 2018, do you have
15 any contemporary documents, whether it's in an
16 e-mail or any other version, which would
17 establish exactly which ones were actually
18 purged in 2018 -- 2019?

19 A. I may have a spreadsheet somewhere.

20 Q. Were you ever asked to search for that
21 spreadsheet?

22 A. That I don't recall. That doesn't mean
23 I did not or did. I don't recall.

24 Q. You mentioned that the spreadsheet
25 identifies policy numbers, is that right?

1 A. Yes.

2 Q. Does it identify any other information
3 with respect to the policyholder?

4 A. No.

5 Q. For the policies that were destroyed in
6 2019, for that list of policies, is there any
7 way to recreate or understand who the
8 policyholders were for those policies?

9 A. From my end, no.

10 Q. For the policies that were destroyed in
11 2019, did you examine each of those policies to
12 determine whether Covil was an insured on the
13 policy before they were destroyed?

14 A. So everything is only by policy number.
15 Everything that was in -- pulled was by policy
16 number. I would have no idea out of all the
17 records who was Covil, who was not.

18 Q. When you say pulled, what do you mean?

19 A. Prepared -- prepared for purge. Sorry.

20 Q. And -- and forgive my ignorance, but
21 when you say pulled, the physical act of pulling
22 it, what are you -- what are you referring to?

23 A. So a physical act of pulling a policy
24 means we have to find the policy numbers in a
25 box and then physically pull the policy out of

1 the box and continue on with the next policy
2 number, whether it be paper or microfilm.

3 Q. For the policies that you pulled out of
4 the box in 2019, did anyone at Penn National
5 review those policies to determine, once you've
6 pulled it out of the box, whether Covil was an
7 insured or a supplemental insured on the policy
8 before it was destroyed?

9 A. No.

10 Q. As part of the pulling process in 2019,
11 was any microfiche destroyed?

12 A. Yes.

13 Q. How many microfiche cards were
14 destroyed?

15 A. I have no idea.

16 Q. What were the policy date ranges on the
17 microfiche cards that were destroyed in 2019?

18 A. So --

19 MR. YNTEMA: Objection to form.

20 THE WITNESS: -- when you ask date
21 ranges, 2019, based off of the purging date,
22 would with have been 2019 minus 25 years. So
23 the date range would have been 2019 minus 25
24 years in that year range.

25 BY MR. NES:

1 Q. Did you take any pictures of the
2 microfiche cards that were about to be destroyed
3 so that there was some record of what microfiche
4 was destroyed prior to purging?

5 A. No.

6 Q. In 2019 or let's -- for the policies
7 that were identified to be destroyed in the
8 calendar year 2019, when was that purge
9 conducted?

10 A. So I'm thinking. Because we -- so
11 2019-purged policies may have been pulled,
12 meaning physically removed from the boxes, prior
13 to 2019 but only sat in -- in a wait status. So
14 we don't do anything with them until the purge
15 date that year is done.

16 Q. So for the 2018 purge -- which I
17 understand it took place in 2019, is that
18 correct?

19 A. 2018 purge, the records were physically
20 purged January of 2019, correct.

21 Q. And when you say purged, you mean
22 destroyed?

23 A. Correct. Correct.

24 Q. What date in 2019 were those policies
25 destroyed?

1 A. I do not know.

2 Q. How are policies destroyed?

3 A. So paper is shredded. That is done at
4 Iron Mountain. Microfilm is also shredded by
5 Iron Mountain.

6 Q. How many policies in 2019 that were
7 purged in January were paper policies?

8 A. I do not know.

9 Q. How many documents that were purged in
10 2020 -- I'm sorry, in 20 -- scratch that.

11 How many -- how many policies were on
12 microfiche that were destroyed in 2019?

13 A. I do not know.

14 Q. Do you know the total number of
15 policies that were destroyed in the beginning of
16 2019?

17 A. I -- I do not recall.

18 Q. Do you know sitting here today the --
19 the policy periods for the policies that were
20 destroyed --

21 MR. YNTEMA: Objection to form.

22 BY MR. NES:

23 Q. -- in January 2019?

24 MR. YNTEMA: Objection to form.

25 Objection to form. Sorry.

1 THE WITNESS: The policy period for
2 their coverage --

3 BY MR. NES:

4 Q. Yes.

5 A. -- question? No, I would not know
6 that.

7 Q. Were general liability policies purged
8 in January of 2019?

9 A. So I do not deal with what types of
10 policies they are, meaning GO or an auto or
11 whatever. That is not something I sit down and
12 focus on. So speculative in my mind could there
13 have been? Yes. Do I know for a fact? No,
14 because it's not what I do.

15 Q. Were you involved at all in moving
16 policies from paper to microfiche?

17 A. No.

18 Q. Do you know who was involved in moving
19 documents from paper to microfiche?

20 A. No.

21 Q. Do you know, when documents are moved
22 from paper to microfiche, if there's a policy
23 related to that?

24 A. So that was two questions. I do not
25 know if there is a policy, and we do not move

1 anything from paper to microfiche now. That was
2 done a long time ago.

3 Q. Is there any distinction made in the
4 Penn National document retention policy for how
5 to deal with microfiche or paper policies?

6 MR. YNTEMA: Objection to form.

7 THE WITNESS: When you say how to deal
8 with, explain that, please.

9 BY MR. NES:

10 Q. Strike that.

11 Is there any reference made in the Penn
12 National document retention policy to
13 microfiche?

14 A. The only thing that I'm aware of for
15 retention of that is cancellation/non-renew when
16 it comes to a policy number, period. No
17 distinction between paper and microfilm that I'm
18 aware of.

19 Q. Is there a distinction between
20 microfiche and microfilm?

21 A. There is. I use microfilm sort of
22 interchangeably with microfiche. Microfiche is
23 truly a note card where microfilm would have
24 been roll. So my ignorance is using one term to
25 cover both, my pardon.

1 Q. And in your document destruction, have
2 you destroyed both microfilm and microfiche?

3 A. Only microfiche. Their -- that's --
4 that's the only thing that -- that we touch.

5 Q. So you haven't seen any microfilm?

6 A. Have I seen it in my time at Penn
7 National? Yes, I have seen it. Where it went,
8 I have no idea.

9 Q. I'd like to turn to 2020 -- I'm sorry,
10 2019. So the policy -- you identified policies
11 during the course of the year 2019 that would be
12 scheduled for destruction, is that right?

13 A. Correct.

14 Q. And similar to the year 2018, you do
15 not currently have a list of the documents that
16 you did contemporaneously identify in 2019, is
17 that right?

18 A. So I don't have a paper list, but we
19 did talk about this question already, and I
20 referenced that I may have a spreadsheet, but
21 I -- it's not in physical paper form.

22 Q. And with respect to the spreadsheet,
23 though, it has not been produced in this
24 litigation, is that right?

25 MR. YNTEMA: Objection.

1 MR. NES: So -- well, Counsel, if you
2 know what he's talking about and it's been
3 produced, let me know, because I only know of
4 one spreadsheet.

5 MR. YNTEMA: We can go off the record
6 and discuss this.

7 MR. NES: Let's go off the record for
8 two minutes.

9 THE VIDEOGRAPHER: We're going off the
10 video record. The time is 11:17.

11 (Discussion held off the record.)

12 THE VIDEOGRAPHER: We're back on the
13 video record. The time's 11:19. You may
14 proceed.

15 BY MR. NES:

16 Q. Mr. Reifsnyder, we were talking about
17 spreadsheets, and --

18 A. Correct.

19 Q. -- there is a spreadsheet that was
20 produced in this litigation. I will be asking
21 you about that, but for right now, I'm just
22 trying to understand what you had or still have
23 that was created in 2019.

24 A. Okay.

25 Q. Do you, sitting here today, know

1 whether you have the actual spreadsheet that you
2 used in 2019 to identify documents for
3 destruction at the beginning of 2020?

4 A. Okay. So that spreadsheet, for
5 clarification, would have been established from
6 our Microsoft access database. I believe I do
7 have a spreadsheet that outlines the things that
8 were -- that were purged from the 2019. I think
9 I have that as a separate spreadsheet. I
10 believe so.

11 Q. And for that spreadsheet, it would only
12 identify the documents that were identified for
13 purging in 2019, is that correct?

14 A. I believe so. We use spreadsheets more
15 than just the one tab. So there could be
16 multiple tabs that identify future years, but
17 there would be one that had '19.

18 Q. For the documents on that spreadsheet,
19 would it identify documents that were on
20 microfiche as well as on paper documents?

21 A. I would have to look at it to
22 understand it.

23 Q. Similar for 2018, for the documents you
24 identified in 2019 to be purged, those were
25 pulled in 2019, is that right?

1 A. So --

2 MR. YNTEMA: Objection to the form.

3 THE WITNESS: So -- and I think we
4 covered this. What was purged in 2018 would
5 have been pulled either in 2018 or maybe 2017.
6 What was purged for 2019 would have been pulled
7 2018, 2019 in preparation for their eventual
8 purge early the following year.

9 BY MR. NES:

10 Q. So for the documents that were pulled
11 in 2019, they were purged at the beginning of
12 2020?

13 A. Yes.

14 Q. So the documents identified to be
15 purged in 2019, did you review any of those
16 policies to determine whether Covil was
17 identified as an insured on any of those
18 policies before you destroyed them in 2020?

19 A. From looking through them individually
20 is the nature of your question?

21 Q. Yes.

22 A. The answer is no.

23 Q. For the policies that you identified
24 for destruction in 2020, those policies were
25 destroyed at the beginning of 2021, is that

1 right?

2 A. They should have been. I believe I
3 still have them.

4 Q. So you believe that no document purge
5 actually was conducted for the 2020 documents?

6 A. I believe so.

7 Q. And -- and why is it that you have
8 confusion about whether or not those have been
9 destroyed?

10 A. I think it had to do with this
11 litigation and somewhere a reference to just
12 hold on to them. Where that came from, I do not
13 recall.

14 Q. Do you have any documents that support
15 that?

16 A. No.

17 Q. For the documents that were actually
18 destroyed in 2019, January 2019, that year,
19 there's no list that you currently have that
20 identified those policies, correct?

21 A. No paper list, correct.

22 Q. And for the documents that were
23 destroyed in 2020, January of 2020, you don't
24 have a list currently of the documents that were
25 destroyed in paper, correct?

1 A. I don't think they were destroyed is
2 what I offered because they would have been
3 purged 2020, so it would have been January '21.
4 I think we just said that.

5 Q. This is where our -- where our language
6 is getting confused.

7 A. I'm sorry.

8 Q. So my understanding is you select
9 policies to be destroyed in a calendar year; you
10 destroy them at the beginning of the next
11 calendar year?

12 A. That is correct.

13 Q. So we're talking about policies
14 destroyed in 2019, they were selected in 2018,
15 correct?

16 A. That timeline, yes, sir.

17 Q. If they were destroyed in 2020, they're
18 selected in 2019?

19 A. Correct.

20 Q. If they're destroyed in '21, they're
21 selected in 2020, correct?

22 A. Thereabouts, yes.

23 Q. And then if they're scheduled to be
24 destroyed in '22, they're identified in '21?

25 A. Correct. I getcha.

1 Q. So going back to 2019, there's no paper
2 record for what's destroyed, correct?

3 A. Correct.

4 Q. For what's destroyed in 2020, there's
5 no paper record of what was destroyed, correct?

6 A. Correct.

7 Q. For January of '21, there's no record
8 of what was destroyed, correct?

9 MR. YNTEMA: Objection to form.

10 THE WITNESS: There would be no -- yes,
11 there would -- based on what you're saying,
12 there would be no paper record of what will be
13 to be -- what is scheduled or slated to be
14 destroyed, yes.

15 BY MR. NES:

16 Q. And then for '22, January of '22 is the
17 first time you held destroying documents for
18 your annual purge, is that right?

19 MR. YNTEMA: Objection to form.

20 Objection to form.

21 THE WITNESS: So based on this
22 litigation hold, yes. However, I believe I have
23 records that are older than the ones that are
24 slated to be destroyed.

25 BY MR. NES:

1 Q. Do you have any e-mail correspondence
2 that were sent in January of 2021 indicating
3 that you were not going to do the annual purge?

4 A. There's nothing that I recall.

5 Q. Do you send -- after policies are
6 destroyed, do you have any way that you close
7 that file for the year, any way you mark that
8 you have completed the document destruction for
9 the year?

10 A. No.

11 Q. Do you recall whether there were any --
12 putting aside Covil, do you recall any --
13 receiving any litigation holds in 2018?

14 A. I do not.

15 Q. Do you recall receiving any litigation
16 holds in 2019?

17 A. I do not.

18 Q. Do you recall receiving any litigation
19 holds in 2020?

20 A. I have to look at the date of this.

21 No, I do not.

22 Q. Other than the Covil litigation hold
23 that is Exhibit 3 in December of '21, do you
24 recall receiving any other litigation hold?

25 A. Specific to Covil?

1 Q. No. Any.

2 A. Any?

3 MR. YNTEMA: Objection to form.

4 THE WITNESS: How far back?

5 BY MR. NES:

6 Q. Just for the year 2021.

7 A. Okay. Okay. I'm sorry. I do not
8 recall seeing any.

9 Q. I'd like to turn to Exhibit 3. In the
10 fifth paragraph, it says, You are receiving this
11 notice because you have identified -- you have
12 been identified as a person who may have such
13 documents in your possession, custody, or
14 control. You must preserve and not delete or
15 alter these documents or related electronic data
16 until you receive written notice to the
17 contrary. With respect to related electronic
18 data, this broad definition includes, but is not
19 limited to, word-processing documents,
20 spreadsheets, PDFs, and data entries.

21 Do you see that?

22 A. I do see that, uh-huh.

23 Q. You mentioned earlier the e-mails with
24 respect to the prior year purging, so e-mails
25 that might have spreadsheets in 2018, 2019,

1 2020.

2 Did you look through your e-mail to see
3 if any of those spreadsheets are there for any
4 of those prior years in response to this
5 litigation hold?

6 A. I -- I did not. All -- no, I did not.

7 Q. I will show you now this -- I'm showing
8 you what has been marked as Exhibit 4.

9 (Exhibit 4 was marked for
10 identification.)

11 BY MR. NES:

12 Q. This is a printout of a spreadsheet
13 that was produced by Penn National in this
14 litigation. Do you recognize this spreadsheet?

15 A. I recognize the format of this
16 information.

17 Q. Were you asked to or were you involved
18 in the creation of this spreadsheet which is
19 Exhibit 4?

20 A. I would have been asked for this, yes.

21 Q. Do you recall sending an e-mail to --
22 strike that.

23 Did you create this spreadsheet?

24 A. I believe I did.

25 Q. When did you create this spreadsheet?

1 A. I don't recall relative to initially.
2 For this, I would have created it upon request
3 of it. When it was, I do not recall.

4 Q. What is this spreadsheet?

5 A. So I believe you identified this as
6 the Y2K -- or 2K10 spreadsheet or it was
7 identified as that at some point recently, just
8 in this room. Y2K is a database.

9 This -- when you print from a database,
10 you end up with a spreadsheet form. When you do
11 queries, it ends up in a spreadsheet form. So
12 this information would have came from the
13 database, I believe.

14 Q. What is the Y2K database?

15 A. It's a -- the title strikes me off the
16 top of my head, but it's Y2K10, I believe,
17 database.

18 Q. And what is that database?

19 A. It is a database of paper policies of
20 microfilm. It also represents boxes that are
21 not policy-related materials that the
22 organization may hold.

23 Q. Does this spreadsheet also include
24 microfiche? I believe it's --

25 A. Microfiche, microfilm.

1 THE COURT REPORTER: I didn't hear the
2 end of your -- I heard, Does this spreadsheet
3 also include microfiche? And then you said
4 other things that -- it was cut off.

5 BY MR. NES:

6 Q. That's my question. Does the
7 spreadsheet that is Exhibit 4 include policies
8 that are on microfiche?

9 A. Without going through it in detail, I
10 can't answer if that was printed from there
11 because the database is -- holds approximately
12 900,000 records.

13 Q. So sitting here today, you don't know
14 whether any policy listed on Exhibit 4 was ever
15 on microfiche?

16 A. I can't tell you that based on just a
17 policy number unless I were to look up -- let me
18 rephrase that.

19 If I look on page 1 of Exhibit 4, the
20 cancellation/non-renew date was what I would use
21 to say whether that was microfilm or not. In
22 this case, as I look at this document, I can
23 completely tell you that there are dates here
24 which would be 100 percent microfilm.

25 Q. So if you look at the destruction date

1 column, that does not actually identify the date
2 the policy was actually destroyed, is that
3 right?

4 A. Correct. That is the date that's
5 calculated from the cancel/non-renew date.

6 Q. There are cancel/non-renew dates here
7 starting in 1982. Do you see that?

8 A. I do see that.

9 Q. The cancel/non-renew date I will
10 represent to you for Covil was after 1982. Do
11 you know why the Covil policies do not appear on
12 the spreadsheet?

13 A. I do not know.

14 Q. And sitting here today, you couldn't
15 identify if any of the policy numbers identified
16 in Exhibit 4 had Covil as a named insured or a
17 supplemental or additional insured, correct?

18 A. Correct.

19 Q. When a policy has a cancel or
20 nonrenewal date, how is that calculated with
21 respect to policies where a policyholder had
22 multiple renewal policies?

23 If the date of nonrenewal, let's say,
24 is 1982 -- and I'm not using the spreadsheet,
25 just as an example -- does that mean that all of

1 the prior policies are destroyed at one time or
2 as each 25 years comes up on each policy, each
3 policy is destroyed?

4 A. Correct. So from observation of
5 purging, we have noted that some policies may
6 have a cancellation/non-renew date. Because of
7 the way they're stored, we can see that. Some
8 elements of that policy remain because they did
9 not cancel, so they're not eligible to be
10 purged.

11 Q. So is it the case that if a -- if a --
12 if a policy comes up for destruction in a
13 calendar year, it may be the case that there are
14 additional policies, renewal policies after that
15 first policy that are not destroyed, but that
16 first policy gets destroyed?

17 A. No. The entire policy must cancel --
18 and, again, this is my understanding only. The
19 entire policy must cancel/non-renew for that
20 policy number specifically; meaning, if you had
21 a policy that cancelled and then you had another
22 aspect of that policy or -- or you renewed it,
23 that policy's still valid even though that prior
24 term is no longer valid. When you cancel the
25 entire policy, that's when the count starts.

1 Q. So when you pull policies for
2 destruction, are you pulling policies then from
3 multiple policy periods or just when -- for the
4 policy where it is the 25 years are up?

5 A. We pull based off of that
6 cancel/non-renew date. We do not dig into a
7 policy to segregate out anything. We do not
8 look at it in any way, shape, or form other than
9 this is the policy number, here is the
10 cancellation/non-renew date.

11 My observation in some policies,
12 because of the way they are prefixed, meaning
13 under a terminal digit numbering system, if you
14 had several policies that had an alphanumeric
15 prefix, because terminal digit numbering stores
16 by the last two digits, those prefixes would be
17 all stored together.

18 So my observation only is that there
19 are times when a terminal digit number may have
20 several different prefix -- prefixes on it,
21 alphanumeric prefixes, we would purge only those
22 that meet the cancellation/non-renewed date for
23 purge. The other ones in those jackets we do
24 not touch.

25 Now, if you're questioning those deeper

1 relative to, again, separate years, then, no, we
2 do not go into a policy and separate out years
3 or anything like that. It's only
4 cancellation/non-renew. We do not dig into the
5 policies.

6 Q. So sitting here looking at the
7 spreadsheet that's Exhibit 4, you could not use
8 this to determine specifically what policies
9 were destroyed in 2020, is that correct?

10 A. Looking through this list -- bear with
11 me. Okay. My book is falling -- or your book
12 is falling apart. So many pages down, I can't
13 tell you what page number it would be, that's
14 the entire thing PNI-0597. There's no page
15 number on here.

16 There is a destruction date of 30 May
17 2020, so those dates would be -- hit that --
18 they would hit that 25-year marker, anything
19 that has a cancellation date in 1995.

20 Q. Right. That's my point.

21 A. Okay.

22 Q. Looking at this spreadsheet, this is
23 just a calculation of 25 years after the
24 nonrenewal, correct?

25 A. Right. So -- so to answer your

1 question, however, you could take this list here
2 and look at this and say everything that has a
3 destruction date of 2020 would be those items
4 which were to be slated to be purged.

5 Q. But my point is that you didn't use
6 this particular spreadsheet to conduct the
7 purge, is that right?

8 A. Not this one, no, sir.

9 Q. Okay. And you have no record to
10 confirm -- for example, let's look at -- let's
11 go back to something in 2018. Why don't we
12 just -- so it's easy for us both to find it, a
13 policy with a nonrenewal destruction date of
14 January 2018.

15 A. I am breaking your book.

16 Q. To be clear, that's your spreadsheet.

17 A. I understand. Okay.

18 Q. So if you look, there is a list of
19 numerous policies. January -- 1 January 2018?

20 A. Okay.

21 Q. Do you see that?

22 A. I'm -- I'm getting there. Bear with
23 me. Yup.

24 Q. So for each one of these policy
25 numbers, you would have pulled those at some

1 point during 2018 and destroyed them in 2019, is
2 that right?

3 A. That's what we did, yes.

4 Q. But we don't have any records to look
5 at to confirm, for example, whether policy
6 number 52500251011-1993, 1 January 2018 --
7 there's no record to determine whether that was
8 actually pulled and destroyed and confirmed,
9 correct?

10 A. Correct. I gotcha.

11 Q. Likewise, there's no record to
12 determine whether policies from prior policy
13 periods that were non-renewed were pulled in
14 later years. So, for example, policies that
15 were non-renewed in '92, there's no record to
16 determine that they were actually destroyed in
17 2018 or 2017?

18 MR. YNTEMA: Objection to form. I'm
19 sorry. Objection to form.

20 THE WITNESS: No -- yes. I understand
21 what you're saying. There's nothing that's
22 additional to say we destroyed them.

23 BY MR. NES:

24 Q. Are any of the policies listed in
25 Exhibit 4 general liability policies?

1 A. I have no way of knowing. I do not do
2 insurance.

3 Q. Given the size of Exhibit 4, I decided
4 not to put it up.

5 The process that you have described
6 here today for identifying policies in a
7 calendar year and destroying them in January of
8 the next year, is that policy written anywhere?

9 A. Not that I'm aware of. Our -- our
10 records retention policy offers that once they
11 hit that destruction date, then they're eligible
12 to be purged.

13 Q. Have you purged any microfiche with
14 policies with a nonrenewal date prior to 1992?

15 MR. YNTEMA: Objection to form.

16 THE WITNESS: I have to do math in my
17 head. Bear with me. So microfiche ended in
18 1991, so using the 25-year rule, things that
19 were dated 1991 and cancelled/non-renewed would
20 have been eligible for destruction. So the
21 answer is, yes, we would have destroyed them.

22 BY MR. NES:

23 Q. I think we're on Exhibit 5. Is that
24 right? I'm showing you what will be marked as
25 Exhibit 5.

1 (Exhibit 5 was marked for
2 identification.)

3 BY MR. NES:

4 Q. Exhibit 5 is Penn National's Responses
5 to Receiver's Second Set of Interrogatories.
6 Could you take a look at that and let me know
7 when you're done.

8 And I'll ask you some questions about
9 these. I do want to know if you've seen this
10 document before.

11 A. I'm sorry. I was trying to skim it.

12 Q. No problem.

13 A. Truthfully, I don't recall ever seeing
14 it.

15 Q. I'd like to turn to request number 4 on
16 page 4. It says, Identify each and every
17 insurance policy or other insurance
18 policy-related document that was destroyed,
19 discarded, purged, or otherwise disposed of
20 pursuant to Penn National's document retention
21 or record purge policies and practices since
22 June 2018 including, but not limited to, the
23 identification of: The named insured; the
24 supplemental insureds or additional insureds;
25 the terms, conditions, and endorsements; the

1 policy periods; and the policy members.

2 Do you see that?

3 A. I see that.

4 Q. And then under the answer after the
5 objection, it says, Subject to and without
6 waiving the foregoing objections, Penn National
7 responds as follows:

8 In 2018 up to the current date, Penn
9 National retains commercial lines policies other
10 than workers' compensation policies for 25 years
11 from cancellation or non-renew date. With
12 respect to Covil-related policies, any
13 Covil-related policy documents would have
14 predated 1992 and therefore were stored on
15 microfiche and would not have been purged or
16 destroyed between 2018 to present.

17 Do you see that?

18 A. I see that.

19 Q. My question, though, is, why is it that
20 a policy that exists from 1986, 1987 would still
21 be on microfiche and not have been destroyed
22 pursuant to the policy you described?

23 A. Excellent question. I don't have an
24 answer.

25 Q. So it's your understanding that

1 regardless of whether it's on microfiche or not,
2 if it hits the 25-year nonrenewal date, that is
3 supposed to be scheduled for and is destroyed?

4 A. Yes. Yes, exactly. It has to be on
5 that list. If it's not on the list, which could
6 lead to a theory that that policy number wasn't
7 on the information provided for an unknown
8 reason.

9 Q. When you say it wasn't on the
10 information provided, what do you mean by that?

11 A. A purge list.

12 Q. Do you know of any policy at Penn
13 National that would prevent destroying any
14 insurance policies that were issued prior to
15 1992?

16 A. No.

17 Q. Do you know of any policy at Penn
18 National that prohibits you from destroying
19 policies that are on microfiche cards?

20 A. No. Subject to litigation hold, that's
21 the only time I would pause.

22 MR. NES: Maybe now is a good time for
23 another break.

24 THE WITNESS: Yes.

25 MR. YNTEMA: Off the record, please.

1 THE VIDEOGRAPHER: We're going off the
2 video record. The time is 11:55. This
3 concludes media unit 2.

4 (Short recess was taken.)

5 THE VIDEOGRAPHER: We're back on the
6 video record. The time is 12:50. This begins
7 media unit 3. You may proceed.

8 BY MR. NES:

9 Q. Mr. Reifsnyder, when you are conducting
10 the lead-up to the annual purge and the purge
11 itself, do you have anybody that's working with
12 you?

13 A. Yes.

14 Q. Who works with you on the purge?

15 A. My staff that's with me. So you want
16 names?

17 Q. Yes.

18 A. Venetta Patterson.

19 Q. And who is Venetta Patterson?

20 A. She's a technical -- what the heck is
21 her position? I don't even remember her job. I
22 know what she does. She handles purchasing.

23 Q. And generally what role does she play
24 in the purge process?

25 A. Point files out for preparation.

1 Q. Does she actually do the destruction?

2 A. No.

3 Q. Who else?

4 A. Sam Swartz, Samantha.

5 Q. And what does Ms. Swartz do?

6 A. She handles our corporate fleet.

7 Q. When you say corporate fleet, what do
8 you mean by that?

9 A. We lease vehicles. We own vehicles for
10 our employees to complete their job.

11 Q. And what role does she play in the
12 purge process?

13 A. She will pull files.

14 Q. Who else is involved?

15 A. Vicki Thomas.

16 Q. And what is Vicki Thomas's position?

17 A. She does purchasing.

18 Q. What role does she have in the purge
19 process?

20 A. Just pulling files.

21 Q. Anyone else?

22 A. Sherry Dienno, D-I-E-N-N-O.

23 Q. What is her title?

24 A. Budget and project technician. I know
25 that one.

1 Q. What are her general responsibilities?

2 A. She handles budget for our area. She
3 handles corporate ergonomics. She's involved
4 with mental safety issues, and relative to this
5 project, she does pull files.

6 Q. Anyone else?

7 A. Ron Logan.

8 Q. Who's Ron Logan?

9 A. Ron Logan is a receiving clerk.

10 Q. And what does that mean?

11 A. He really works at the dock in the back
12 of the building, brings in packages, ensures the
13 mail goes out the door, distributes things to
14 our building occupants or tenants.

15 Q. And what role does he play?

16 A. Ron packages up boxes that we ship back
17 to Iron Mountain, so anything that's scheduled
18 to be purged is actually boxed up and then
19 shipped to Iron Mountain and stored off-site.
20 So it's stored in a secure facility off-site,
21 and then they'll purge.

22 Q. Who does the actual destruction of the
23 documents?

24 A. Iron Mountain.

25 Q. And what role do you play?

1 A. I oversee the process. There are times
2 where I actually will pull documents out to
3 purge, but I ensure that if there's any
4 questions, they're answered, which are far and
5 few between because it's a simple process.

6 Q. Was the team that you described the
7 same team from 2018 through the present in the
8 purge process?

9 A. Yes, I believe so.

10 Q. Turning to 20 -- the 2018 purge that
11 took place in January of 2019, how long was that
12 process from the time it began until the time it
13 ended?

14 A. It generally takes a year.

15 Q. About how much time would you say in
16 total all of the employees at Penn National
17 spent collecting, analyzing, and then sending
18 off for destruction the 2018 purge?

19 A. So it's hard to tell because they're
20 doing their regular jobs and then they fit in
21 this when they have time for pulling the files.
22 They really don't -- there's not an analyzing
23 per se to -- for clarification.

24 Analyzing is looking at the policy
25 number at the sheet and comparing it to what's

1 in the -- in the box. That's it. I couldn't
2 even begin to guess because we're talking about
3 thousands of files all told. And I can't guess
4 how many files. I mean, it varies every year,
5 and there's different types.

6 Q. Are there any redundancies to verify
7 that the wrong policy isn't pulled?

8 MR. YNTEMA: Objection to form.
9 Objection to form.

10 THE WITNESS: So you mean, like,
11 a QC to go back and make sure that the list is
12 accurate? Is that what you're asking?

13 BY MR. NES:

14 Q. That's a better question. Is there any
15 process of quality control to determine that the
16 correct policies were pulled for 2018?

17 A. Right.

18 Q. We'll start with that.

19 A. So the only thing that is done is that
20 we actually go through and put a date on each
21 file. So as we go down through the list, as the
22 file is pulled, they verify the destruction date
23 that's on, you know, the -- the
24 cancellation/non-renew date plus 25 years.
25 That's written on the file.

1 We do that so in the event we needed to
2 find anything, we know to look in what --
3 because when we send them back to Iron Mountain,
4 they're stored by month of destruction. So it's
5 just a way for us to -- in doing that
6 write-down, if they're not on a list, obviously
7 it wasn't to be pulled.

8 Q. Is there a master file kept throughout
9 the year so that you know, as the supervisor,
10 all of the policies that have been pulled for
11 destruction?

12 A. So I would go to the 2K10 database,
13 which we've talked about, and I check in there
14 because that query will have the destruction
15 date. So if it -- if that file comes up with a
16 destruction date, then I know that it was either
17 destroyed, purged, or we have it and where to
18 find it or it hasn't -- or, you know, or it --
19 there's nothing to it. Then there's no date.
20 There's -- it should be in the -- it should be
21 in the boxes.

22 Q. I think my question is slightly
23 different.

24 A. Okay.

25 Q. Is there some type of running list or

1 spreadsheet that you keep throughout the course
2 of the year separate from the 2K10 system that
3 tracks everything that's been pulled by
4 yourself?

5 A. Understood. No.

6 Q. Have you ever come across a situation
7 where your staff pulled the wrong policy and in
8 doing the QC, you identified that?

9 A. Yes, absolutely.

10 Q. And what generally do you recall about
11 that?

12 A. If they pull something -- generally
13 they catch it right on the spot. It's very
14 prevalent with microfilm, microfiche because
15 they have a tendency to stick together depending
16 on the time of the year.

17 So you can twist them, but if we go
18 through and we find it, you put it -- you just
19 pull it out and put it back in the box. Based
20 off of terminal digit numbering sequence, you
21 put it back in the box where it belongs.

22 Paper files, we would put it back in.
23 We would re-file it. So it wouldn't come out of
24 the system because it wasn't -- it wasn't
25 marked, it wasn't identified to come out, so we

1 would put it back into either the box that was
2 going to go back or we repackage boxes to
3 condense things because we're moving files from
4 one box to another.

5 So in order to keep things simplified
6 so we're not sending a box back to Iron Mountain
7 with one file in it, we'll repack boxes.

8 Q. Are the -- the microfiche are not at
9 Iron Mountain, is that correct?

10 A. That is correct.

11 Q. Those -- the microfiche are stored at
12 your office in Harrisburg, is that right?

13 A. That is correct.

14 Q. And who pulls the relevant boxes of the
15 microfiche? Is that someone from your staff?

16 A. Yes. The name's mentioned.

17 Q. I'm sorry?

18 A. So the people mentioned previously
19 would be -- if they're pulling from that, they
20 would do that.

21 Q. Do you recall how many microfiche cards
22 were pulled during the 2018 process?

23 A. I do not.

24 Q. Do you recall how many microfiche cards
25 were pulled during the 2019 purge process?

1 A. I do not.

2 Q. Do you recall how many microfiche were
3 pulled during the 2020 purge process?

4 A. No.

5 Q. You mentioned that the staff of
6 individuals that are working on this project
7 with you have other job responsibilities other
8 than this document management project. In
9 total, how much time would you estimate that the
10 staff is spending in a year total on this
11 project, the purge project?

12 A. I -- I couldn't begin to guess because
13 it varies. In one week somebody may spend 50
14 percent of their time because they have the time
15 and the following week, maybe 10 percent of
16 their time.

17 I have no way of knowing exactly how
18 much time they would spend or what project that
19 they have is going to delay them from doing
20 this. We just generally know during the course
21 of the year that's what it's going to take. We
22 do not work overtime either.

23 Q. As part of your supervision and quality
24 control, do you actually look at the list and
25 the policy for every single policy that's sent

1 for destruction or are you doing a quality
2 control that doesn't look at every single policy
3 sent for destruction but a certain percentage?

4 A. I do not look at a quality control at
5 all. They pull the files. They prep them,
6 meaning pull them out and -- and date them, and
7 we go to -- they're sorted and put in boxes. I
8 do not go through the files.

9 Q. Sir, I believe earlier you mentioned
10 that there was a quality control aspect to this,
11 is that right?

12 A. I did, and that's done by the
13 individual. As they're going through, they're
14 putting a date on the file, so that's the
15 quality control that would be in place
16 specifically for paper.

17 Q. But you specifically are not examining
18 each policy number on the spreadsheet to compare
19 it to the policy that's being sent for
20 destruction as in quality control?

21 MR. YNTEMA: For clarification, you --

22 THE COURT REPORTER: I'm sorry. I
23 didn't understand, Counsel, what you said. For
24 clarification?

25 MR. NES: Let me just ask it again.

1 MR. YNTEMA: Okay. I'm sorry.

2 MR. NES: I'll ask it again in front
3 of --

4 MR. YNTEMA: I didn't want it to get
5 mixed up. That's all.

6 BY MR. NES:

7 Q. Mr. Reifsnyder, as part of your
8 individual job responsibilities, you personally
9 do not do a quality control check on the purge
10 process that the staff is preparing for you, is
11 that correct?

12 A. Generally correct. I have in the past
13 looked at them, but it's, again, very time
14 consuming.

15 Q. So let's talk just for 2018, the purge
16 process of 2018 leading into the 2019 purge.

17 A. Uh-huh.

18 Q. Do you recall looking at any policies
19 as a quality control in 2018?

20 A. I have no recollection of whether I did
21 or did not for '18, '19, or '20.

22 Q. But you know -- would it be fair to say
23 that sitting here today you could say that you
24 did not do a comparison of the spreadsheet to
25 the actual policies that were pulled for every

1 single policy in 2018, '19, or '20?

2 A. That would be a fair statement, yes.

3 Q. I believe we talked at length about
4 your job responsibilities in the last
5 deposition, so I won't repeat that.

6 But generally your job responsibilities
7 go well beyond document management, is that
8 right?

9 A. Correct.

10 Q. In general, what are your job
11 responsibilities?

12 A. My role in the organization is
13 corporate real estate heavily, so I manage all
14 our regional office leases. I manage the
15 building that we own and our parking garage, so
16 I do interfacing with all our tenants that we
17 have in this building. So I operate as the
18 lessor of the landlord.

19 We do site visits or whatever may be
20 done. My facility staff will also go out to the
21 regional offices to assist in anything that may
22 need to be repaired that's not covered by the
23 landlord. That's all covered under us handling
24 all the furniture.

25 When I say manage the building, that's

1 from anything that has to deal with the
2 building, from janitorial to security to HVAC,
3 electrical, mechanical, all of that.

4 Then I oversee corporate purchasing, so
5 technically as a role, I am the purchasing
6 manager for Penn National Insurance, all the
7 duties and responsibilities of being a
8 purchasing manager, so overseeing purchases and
9 interacting with vendors, selecting vendors.

10 I manage the corporate vehicle fleet
11 which are vehicles that are issued, I believe I
12 said, to employees who are going to do their
13 jobs. So we -- we rotate vehicles. We manage
14 all those accidents, issues.

15 I manage the corporate safety committee
16 or corporate safety as a whole. I also handle
17 corporate physical security, so anything
18 relative to physical security company-wide is
19 under my care, custody, and control including
20 teaching such things as active aggressor, teach
21 building evacuation. So safety's a big role of
22 mine.

23 The corporate ergonomics program is
24 also under my realm as well because if
25 somebody's having an ergonomic issue, meaning

1 they're having difficulty at work due to a
2 discomfort, we will look at what's going on with
3 that. We'll work with HR. So that's -- that's
4 the bigger roles.

5 I'm also the business continuity guy.
6 I'm the author of our corporate business
7 continuity plan, part of our corporate crisis
8 team. I authored our pandemic plan, so I have
9 active role in events such as we have and
10 continue to experience. I interact at all
11 levels in the organization.

12 Q. I believe when you were talking about
13 your -- the first thing you mentioned was
14 corporate real estate. You negotiate leases, is
15 that right --

16 A. Correct.

17 Q. -- on behalf of Penn National?

18 A. Correct.

19 Q. Given all of these job responsibilities
20 that you mentioned, where does overseeing the
21 document retention policy -- or scratch that.

22 Where does the purge process fit into
23 any of the job descriptions that you mentioned?
24 Was that in addition to?

25 A. That's in addition to.

1 Q. Okay.

2 A. Yeah. It's -- yes. I -- I apologize.

3 I should have included that. That is in

4 addition to everything previously mentioned.

5 Q. What percentage of your time would you
6 say in 2018 you spent on the purge process?

7 A. I couldn't guess. Did I have a role
8 that I do stuff? Yes. How much time? It
9 varies from day to day, week to week. So
10 sometimes I may be able to spend a day helping
11 out, and other days, other weeks, nothing.

12 Q. But is it fair to say with the
13 portfolio you just mentioned of the --
14 overseeing the document retention part of the
15 purge process is not a significant amount of
16 your time?

17 MR. YNTEMA: Objection to the form.

18 THE WITNESS: It -- it has its meaning
19 and bearing. If something comes up, they know
20 to touch base with me, but it could have
21 significant meaning in a time. I mean, if we
22 have a request for a file or something of that
23 nature which is beyond purge, that's just normal
24 routine stuff. I may interject or offer a
25 thought, an idea.

1 Again, everything we do is very limited
2 so -- how we -- how we search and everything
3 else so ...

4 BY MR. NES:

5 Q. I understand that. I'm just focusing
6 on the purge.

7 A. Yeah.

8 Q. You mentioned that you don't examine
9 the spreadsheets --

10 A. Correct.

11 Q. -- and compare them to the actual
12 policies being destroyed, correct?

13 A. Correct.

14 Q. You don't create the spreadsheets
15 yourself, correct?

16 A. I have. I mean ...

17 Q. What year did you create the
18 spreadsheet yourself?

19 A. They would have been back years ago.
20 So would I have created '18? Probably not.

21 '19, probably not. I might have already created
22 them because the data was already provided, but
23 I wouldn't have created it in '18. I might have
24 created it a long time ago.

25 I'll add, because of the nature how we

1 get the lists, as I offered earlier, a list, if
2 we hypothetically have it today, has data in it
3 that won't be touched until 2047. So I wouldn't
4 create a list that needed to be done for 2047 in
5 20 -- 2022.

6 Q. And that's sort of my point.

7 A. Yeah. Yeah.

8 Q. I'm just trying to understand how much
9 time in a given year you would spend on this,
10 and given your other job responsibilities plus
11 the way you described it, it does not sound like
12 this takes up a lot of your time.

13 The significance of what you're doing
14 might be separate, but I'm just trying to
15 understand in a calendar year, are we talking
16 about three days, five minutes, that --
17 somewhere in between?

18 MR. YNTEMA: Objection to form.

19 BY MR. NES:

20 Q. Then I'll reask the question again.

21 A. Okay.

22 Q. In the calendar year 2018, do you have
23 a sense of how much time you might have spent
24 specifically on supervising the purge process?

25 A. I do not.

1 Q. Would that be the same for '20 and '21?

2 A. 2019 and 2021, yes.

3 Q. We've talked a little bit about this
4 2K10 database. Who -- who created that
5 database?

6 A. I did.

7 Q. And how -- where is the information
8 that's in the database, where does that come
9 from?

10 A. The information in the database came
11 from if it was a box, and it -- it stores
12 several different pieces of information in
13 that -- if it were a box, then we have a barcode
14 number that we apply to it.

15 The owner of that box may have had a
16 box number associated with it. We do a brief
17 description of the contents only as a reference
18 item, and if it has a destruction date, we've
19 included that.

20 It doesn't necessarily have a lot of
21 data to it. That's just a box, say, for
22 finance, for example, whereas if it were an
23 underwriting box that had policy data in it,
24 again, all that information was created by the
25 owner department, and then they sent those boxes

1 to us. Excuse me.

2 In order to create this inventory, the
3 purpose behind it was, we had our own warehouse
4 at one point, and we moved everything to Iron
5 Mountain. In doing so, you want to understand
6 what you have before you send it to someplace
7 where you can't touch it.

8 So specifically with policy data, we
9 took time to go through all the boxes and record
10 the policy number, policy number only. There's
11 no other -- you know, what the file -- who --
12 who the -- the name of the insured was or any
13 other extraneous number. Box number, that was
14 included, barcode number, policy number.

15 That information was collected. That
16 was a very long process. We did that for the
17 boxes, and then we also did that for the
18 commercial microfilm and recorded policy number
19 and box number.

20 Q. When did that process take place?

21 A. Well, the database is 2K10 because it's
22 referencing 2010. I can say that it quite
23 conceivably was created prior to that, but the
24 2010, 2K10 database is the final iteration of it
25 that we've maintained.

1 Q. You mentioned that you created it. Did
2 you select the information that would be
3 collected to put into the database?

4 A. Yes. When -- if it came -- and clarify
5 that. With boxes that stored general stuff, the
6 Iron Mountain process, they have a sheet, and
7 its a transmittal sheet. And it has a barcode
8 number, and then it allows you a limited number
9 of fields by box to enter in additional things.

10 So we entered in a limited number of
11 pieces of data, and that was it. That was
12 generally the logic behind what we did because
13 it takes -- that transfer process, we had a time
14 limit of trying to get that stuff out of our
15 warehouse that we were leasing and moving it to
16 Iron Mountain. So the quicker we could get it
17 done, the better.

18 The writing down of all the policy
19 numbers in the boxes, because we only search on
20 policy number, the only piece of data that we
21 have reference for looking up things is policy
22 number because that's how they're stored. That
23 was the logical piece of information to
24 maintain.

25 Q. You mentioned that you didn't collect

1 extraneous information as part of the process
2 for the 2K10 database, correct?

3 A. Right.

4 Q. And one of those pieces of extraneous
5 information was policyholder name, correct?

6 A. Correct.

7 Q. And that would also include whether the
8 policyholder was the insured or supplemental or
9 additional insured, correct?

10 A. Correct. We wouldn't have seen that
11 because files had policy number only on them, so
12 we wrote down that number.

13 Q. Why do you consider the policyholder
14 name as an extraneous piece of information?

15 MR. YNTEMA: Objection to form. You
16 can answer.

17 THE WITNESS: My opinion is it's
18 additional -- it's not something we search for.
19 We are given a policy number, and we search for
20 that policy number. There is no way for us to
21 search through each box to find something else
22 when it's not stored or sorted or maintained
23 that way. It's only stored by policy number.

24 BY MR. NES:

25 Q. When you were going through this 2K10

1 database exercise and pulling the policyholder
2 number, at that period, you could have pulled
3 the policyholder name as well, correct?

4 A. We could have, however -- however, the
5 people doing that job would have no idea to know
6 whether that was the policyholder name without
7 looking at each form. They were not
8 underwriting people. They were clerks. No
9 experience in underwriting, no experience in
10 dealing with policies. They were just basic
11 clerks.

12 Q. And when you say a basic clerk, what do
13 you mean by that?

14 A. Somebody that's working in the
15 mailroom, so they're dealing with sending out
16 letters.

17 Q. Who made the decision that the clerks
18 would have this role as pulling the policy
19 number in the --

20 A. It was a --

21 Q. -- 2K10 process?

22 A. It was a manual rogue task. We
23 assigned the appropriate level staff from a
24 dollar perspective to that task. The decision
25 was mine. That's what I had available. I