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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 43**

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INDEX

ORDERS

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

PLEADINGS, MOTIONS, AND OTHER FILINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 50 - Penn National's Answers to Covil's First Set of Interrogatories and Responses to Covil's First Set of Requests for Admission, dated December 18, 2019 (Zurich American Insurance Company v. Covil Corporation, et al., MDNC No. 1:18-cv-000932.	18785
Exhibit 51 - Penn National's Answers to Covil's First Set of Interrogatories, dated May 15, 2020 (Covil v. Penn National, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2020-CP-40-01226.	18832
Exhibit 52 - Penn National's Responses to Covil's First Set of Requests for Production, dated May 15, 2020 (Covil v. Penn National, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2020-CP-40-01226.	18833
Exhibit 53 - Covil's subpoena duces tecum to Penn National, dated February 8, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18860
Exhibit 54 - Letter from D. Harris to M. Shisko dated Feb. 12, 2021	18891
Exhibit 55 - Penn National's objections to Covil's subpoena duces tecum to Penn National, dated February 22, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18892
Exhibit 56 - Penn National's supplemental objections to Covil's subpoena duces tecum to Penn National, dated March 9, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18893
Exhibit 57 - Penn National's Answers to the Receiver of Covil Corporation's First Set of Interrogatories, dated May 10, 2021	18894
Exhibit 58 - Penn National's Responses to the Receiver of Covil Corporation's Request for Production, dated May 10, 2021	18916
Exhibit 59 - Penn National's Supplemental Answers to the Receiver of Covil Corporation's First Set of Interrogatories, dated June 11, 2021	18917
Exhibit 60 - Penn National's Supplemental Responses to the Receiver of Covil Corporation's Request for Production, dated June 11, 2021.	18918
Exhibit 61 - Receiver's Notice of Filing of Late-Produced Policies, dated June 15, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	18919
Exhibit 62 - Order granting Covil's motions to compel, dated July 1, 2021 (Finch and Covil v. USF&G, Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003.	19273

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

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

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

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

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

1 wasn't going to send a HVAC technician to write
2 down policy numbers.

3 Q. And when they were looking at the
4 policy number, though, presumably there might be
5 lots of numbers, they'd have to know what the
6 policy to purge, right?

7 A. They knew it was a certain number of
8 characters. It was written. If they had
9 questions, they would ask.

10 Q. Could they have been told on the dec
11 page, you'll see a named insured, write that
12 down?

13 A. They did not go to the dec pages. They
14 did not go inside the file. They looked at the
15 number that was on the manila folder that the
16 information was in.

17 Q. I understand that.

18 A. Right.

19 Q. My question is slightly different,
20 which is, but the policy was there, correct? So
21 they could have opened it, looked at the policy,
22 right?

23 A. The contents that were in that file, I
24 do not know what they were. They may not have
25 been a policy. It may have just been

1 information. So, again, we don't understand
2 what it is that's in the file, but we knew what
3 the policy number looked like.

4 Q. And when you created this 2K10
5 database, what was your thought as to how it
6 would be used?

7 A. My thought on how it would be used, as
8 the reference area so that we could go to Iron
9 Mountain with a request and say, go to this
10 barcode number and retrieve this file number so
11 we could reduce the amount of search time
12 necessary to retrieve a file.

13 Q. If someone had a policy number, they
14 could put it into the 2K10 database and would
15 get a result as to whether or not you had a
16 policy matching that in your hard copy files at
17 least?

18 A. They would get a result that said there
19 was a file of whatever sort, whatever it
20 contained and where -- what barcode number it
21 was.

22 Q. And does this apply to the microfiche
23 as well?

24 A. Microfiche was always kept in the
25 building. The information is in that database

1 so that we have it for purging purposes. The
2 microfilm is all stored by terminal digit
3 numbering.

4 Initially there were 200 boxes. Those
5 200 boxes were right in front of us, so we could
6 pull a box off the shelf and look in there right
7 away. So we don't need to go to the database to
8 look for them; we can pull the box off the shelf
9 and go, is it there, yes, no.

10 Q. That's 200 boxes of microfiche cards,
11 is that right?

12 A. Yes. That's what it was, yes.

13 Q. What is it today?

14 A. 140 -- a hundred -- well, maybe 150.

15 Q. And it was a hundred -- it was 200
16 boxes as of approximately 2010?

17 A. Yeah. They weren't full all the way,
18 meaning they kept things -- they got loose or
19 they were loose. The second box may only be
20 half full, three-quarters full.

21 Q. So between 2010 and the present,
22 approximately 50 boxes of microfiche have been
23 purged, correct?

24 MR. YNTEMA: Object to the form.

25 THE WITNESS: No. No. The number of

1 boxes decreased. The number of pieces of
2 microfilm may not have represented 200 boxes to
3 start out with. They weren't all full.

4 BY MR. NES:

5 Q. I see. Do you know how many microfiche
6 cards have been destroyed as part of the purge
7 since 2010?

8 A. Not off the top of my head, no.

9 Q. Do you know how many microfiche cards
10 have been destroyed as part of the purge since
11 2018?

12 A. No.

13 Q. But, to your recollection, microfiche
14 cards were destroyed as part of the 2018 purge,
15 correct?

16 A. Correct.

17 Q. Is that --

18 A. Yes. Yes. Correct. Sorry.

19 Q. And microfiche cards were destroyed as
20 part of the purge in 2019?

21 A. I believe so, correct.

22 Q. And microfiche cards were destroyed as
23 part of the purge in 2020, correct?

24 A. Those I believe I still have. They
25 have been pulled. They have not been destroyed.

1 Q. And why did you not destroy them in
2 2020?

3 A. I believe before lunch we discussed
4 that somewhere along the line I had received
5 probably a verbal statement not to destroy them,
6 so I held on to them.

7 Q. Who gave you this verbal statement?

8 A. That I do not remember.

9 Q. Do you recall what date it was you got
10 this verbal --

11 A. No.

12 Q. -- order?

13 I'd like to turn back to Exhibit 1
14 which is the deposition notice. In particular,
15 I'd like to draw your attention to page 2 of 6.

16 A. Okay.

17 Q. Identification of all insurance
18 policies that were in Penn National's
19 possession, custody, or control that had been
20 destroyed, purged, or otherwise not retained
21 since June 2018.

22 Do you see that?

23 A. I do see that.

24 Q. What did you do to prepare for your
25 deposition today with respect to that topic

1 specifically?

2 A. If I recall, I looked at my database.

3 I think I created a list.

4 Q. Do you have that list with you?

5 A. I do not.

6 Q. So you have a list, you believe, of the
7 policies that were destroyed between 2018 and
8 2021?

9 A. I do, as do you, in Exhibit 4.

10 Q. Well, Exhibit 4 just has automatic
11 destruction dates running from 1982 through --

12 A. Correct.

13 Q. Okay. So that's more than just from
14 June 2018 to present?

15 A. Right. However, what I would have
16 would be what's stated therein.

17 Q. You mentioned that your staff is the
18 one that ultimately pulls the records and
19 transmits them to Iron Mountain for destruction,
20 correct?

21 A. They pull them, box them, and get them
22 prepared to go to Iron Mountain, correct.

23 Q. Do they create any type of work product
24 for you to confirm that they have destroyed the
25 documents that they are supposed to destroy?

1 A. No. They being the staff, correct?

2 Q. Yes.

3 A. No.

4 Q. How do you divide up the list of
5 documents to pull and destroy among the members
6 of your staff?

7 A. They pull a list and work out of a box.

8 Q. Presumably they're not all pulling the
9 same policies, though, right?

10 Is there some way in which -- let's
11 take 2018. How did each staff member know which
12 of the policies they were supposed to pull as
13 part of this process?

14 A. So the policy number lists of which
15 they were to pull were sorted in terminal digit
16 order. Those policies were then -- we also knew
17 what box they were in. We pulled that box.
18 They worked terminal digit order for that box
19 assigned to -- here's the numbers associated
20 with that box. They pulled that information
21 from that box based on the list.

22 Q. I believe you mentioned that there were
23 five individuals. There was a Sam, a Vicki, a
24 Sherry?

25 A. Sherry.

1 Q. Ron and I can't read my handwriting for
2 the first one.

3 A. Venetta.

4 Q. Venetta. Okay. So let's take Venetta.
5 How would Venetta know which one -- which
6 documents to pull as opposed to Ron?

7 A. Venetta would take the list. It would
8 have the box number on the list and the policy
9 numbers associated with that box.

10 Q. So if we could turn to exhibit --
11 whatever this big spreadsheet is. Go back to
12 the big spreadsheet. Which exhibit number is
13 that, 4?

14 MR. YNTEMA: 4.

15 BY MR. NES:

16 Q. If we could turn back to 4, could you
17 just walk me through where the information you
18 just mentioned is on Exhibit 4 --

19 A. Okay.

20 Q. -- from the box information?

21 A. I'm with you. So the box information
22 is not on Exhibit 4.

23 Q. So there's additional information that
24 they use to determine what to pull that's not on
25 Exhibit 4, is that right?

1 A. That is correct.

2 Q. What additional information did they
3 have?

4 A. They would have a barcode number which
5 is assigned to every box.

6 Q. Anything else?

7 A. I think there's a box number also which
8 is a user number. They would either have a box
9 number or a barcode number. I don't remember
10 exactly.

11 Q. And as you mentioned earlier in your
12 testimony, even if we just look at the year
13 2018, there are thousands of policies?

14 A. Correct.

15 Q. And what -- what I'm understanding is
16 that the five members of your staff would get
17 the spreadsheet with the policy number on it but
18 also with a barcode or box number, is that
19 right?

20 A. Correct. Yes. Yes. Sorry.

21 Q. So, again, what I guess I'm not
22 understanding is how would Ron or Sherry or
23 Vicki or Sam know, I'm supposed to pull the
24 first hundred, someone else is supposed to pull
25 the next hundred or those hundred have already

1 been pulled? That's what I'm not understanding.

2 A. I understand your question now. They
3 would take that section of the list, so there's
4 no other copy of it. There's only one copy of
5 the list created. They would pull a segment
6 which has only those boxes. The next list would
7 not have those boxes. So that way they were not
8 duplicating any effort.

9 Q. And these segments of the lists, how
10 were those distributed?

11 A. They picked up what they needed. A
12 list was made. They went to where the list was
13 at, picked it up, said I'm going to work on
14 these five boxes, took the list, took those five
15 boxes, and did the job.

16 Q. And where was -- you said they would
17 take the list. Where was the list for them to
18 take?

19 A. I believe I had it sitting outside my
20 office.

21 Q. So this was a paper copy of the list?

22 A. Right.

23 Q. And one of the five members of your
24 team would go to the copy of your list, take a
25 part of it, and work on that part of the list?

1 A. Correct.

2 Q. Would they then return that part of the
3 list to you to QC or verify that they have done
4 that section of the list?

5 A. They would write done on it. That way
6 we knew that that section --

7 THE COURT REPORTER: What? I didn't
8 understand you. They would write?

9 THE WITNESS: Done, D-O-N-E, on the
10 sheet. As they worked through the sheet, they
11 would check off each file so that they weren't
12 looking for something that they had already
13 found.

14 At the end of doing the list, they
15 would just -- we would know when they -- the
16 whole series was done because everything was
17 marked off.

18 BY MR. NES:

19 Q. And this was all done by hand?

20 A. Yes, sir.

21 Q. Do you have a copy of that list from
22 2018?

23 A. No.

24 Q. Do you have the list from 2019?

25 A. No.

1 Q. Do you have the list from 2020?

2 A. Not that I'm aware of.

3 Q. Do you have the current list from 2021?

4 A. I know that the microfilm lists are
5 wrapped up with the microfilm. I know that for
6 a fact.

7 Q. But to the extent that a full list for
8 2021 was generated and your staff went through
9 that and started pulling documents and either
10 checkmarking it or writing it done, does that
11 list still exist?

12 A. I'm not aware of it. I haven't looked
13 for it. I'm not aware of it.

14 Q. Did you save that list in December of
15 '21 as part of your litigation pull?

16 A. I think we might have been done with
17 2021 by that time, so we wouldn't have. Keeping
18 in mind 2021 represents files that were
19 cancelled/non-renewed 25 years prior and I've
20 offered that we may have worked on that in the
21 year prior, so we would have had that done
22 before we ever received a litigation hold.

23 Q. I understand that. I'm just --

24 A. Okay.

25 Q. -- trying to understand for that year

1 '21 --

2 A. Right.

3 Q. -- do you still have a copy of that
4 hard copy document --

5 A. No.

6 Q. -- that people were checking on?

7 A. I'm fairly certain I do not on paper.

8 Q. The documents that were collected as
9 part of the 2021 purge that never were purged
10 because you received the litigation hold, where
11 are those documents right now?

12 A. Paper documents are at Iron Mountain.
13 Microfilm is sitting on a desk.

14 Q. So to the extent that documents were
15 pulled for the '21 process, those were then
16 returned. You didn't keep them for destruction
17 at a later time. You're going to have to redo
18 that process for '21?

19 A. No. They were pulled and stuck in
20 boxes as part of the purge process which, again,
21 we talked about earlier. So they're ready to be
22 purged at some point in the future, whenever
23 that may occur. They're sitting at Iron
24 Mountain listed as purge 2021.

25 Q. Understood.

1 A. Okay.

2 Q. And you mentioned earlier that --
3 strike that.

4 When you transmitted the documents for
5 the purge 2021 that are currently being held by
6 Iron Mountain, how did you communicate to Iron
7 Mountain that they should not actually destroy
8 those documents?

9 A. They don't destroy anything until we
10 advise them to destroy. So if no communication
11 comes from us, they will not automatically
12 destroy.

13 Q. So they're marked for purge, but you
14 never actually gave the order, so Iron Mountain
15 presumably has not destroyed them yet?

16 A. Correct.

17 Q. Turning to the microfiche, how are the
18 microfiche organized?

19 A. Microfiche are organized by terminal
20 digit number only. They also have a color on
21 the microfiche which is some are orange, some
22 are green, red. It's -- it's a -- it's been an
23 industry standard on microfiche, the cards that
24 have different colors so that they're easily
25 identifiable, but the actual physical storage of

1 them is by terminal digit numbering.

2 Q. And I believe you mentioned earlier
3 that nothing has gone on the microfiche since
4 1991, is that right?

5 A. End of '91 time frame, yes.

6 Q. Did you have any role in converting
7 policies or policy-related documents to
8 microfiche?

9 A. No.

10 Q. Do you know if that was done by an
11 outside vendor or whether that was done
12 in-house?

13 A. Let me make sure I'm clear. Converting
14 paper originals to microfilm? I do know at one
15 point in time in the organization's history that
16 they did do some of that in-house. At some
17 point in time there was a decision made to send
18 it out. I wasn't involved in any of that. That
19 was pre my time.

20 Q. How many policies are there per
21 microfiche card or sheet?

22 A. Policies meaning more than one policy?

23 Q. Right.

24 A. Each policy number on a microfiche is
25 specific to that policy number, so there should

1 not be policies for arguably two different
2 policy insureds on one policy.

3 Q. So in this case, for example, Penn
4 National produced two policies, general
5 liability policies that were issued to Covil,
6 one for 1986-1987, one for 1987-1988. Were
7 those two separate microfiche cards or were
8 those on the same microfiche card? Were they
9 found somewhere else?

10 A. So the microfiche number was the same;
11 the policy number was the same. If the policy
12 number was the same, then those two policies,
13 because they're for the same insured, should
14 have been on that policy number of microfilm.
15 Whether it -- what microfiche. Whether it took
16 one card or two cards or three cards, I can't
17 speak to because I don't know how many pages was
18 there.

19 Q. Do you know if the underwriting files
20 that were produced were on the same microfiche
21 card or a different microfiche card?

22 A. So the underwriting file -- I do not
23 know. I don't -- again, I don't know. Whatever
24 was asked for on the microfiche card that was
25 produced, what the contents of that are, I do

1 not know. Where if there were additional
2 records provided or anything else from
3 somewhere, I can't answer that. I don't know.
4 What we provided comes off of microfiche only.

5 Q. Who's responsible for maintenance of
6 these microfiche cards?

7 A. Maintenance like -- not tightening the
8 bolts but ...

9 Q. Making sure that they are stored in an
10 environment that doesn't degrade over time, that
11 they are in an appropriate location?

12 A. Okay. I guess that falls on my
13 shoulders.

14 Q. And how large a team would you say has
15 access to those microfiche cards?

16 A. Where they're stored is my group. Does
17 that mean somebody else could come in the area
18 and get to them, I guess that's the nature of
19 your question. Could anybody else get to them?
20 You have to get on a floor first.

21 Q. It's not so much nefariousness but just
22 how many people are actually going and accessing
23 them for a legitimate --

24 A. Oh, okay.

25 Q. -- business purpose?

1 A. Okay. Thank you.

2 Just the names -- myself or Venetta or
3 Vicki or Sam would basically be it.

4 Q. And where specifically are they stored,
5 the microfiche?

6 A. In a box.

7 Q. Where is that box stored? And I know
8 it's in your building, but where do you store it
9 in your building?

10 A. Second floor.

11 Q. And is it on a shelf?

12 A. It's on shelving, yes, sir. Sorry.

13 Q. Is there a checkout policy of any kind
14 that when a microfiche card is taken from one of
15 the boxes, someone has to indicate that it's
16 going to be moved?

17 A. Barring the Covil microfilm, nothing
18 leaves the building. I do not give it to
19 anyone, period.

20 Q. Well, I'm thinking more along the lines
21 of in terms of the annual purge. So during the
22 annual purge, if a microfiche card is identified
23 for destruction and one of your five staff
24 members goes -- pulls it from the box, is there
25 some indication anywhere that this microfiche

1 card is no longer there?

2 A. No.

3 Q. Is there any index of what is available
4 on the microfiche?

5 A. Meaning what are the contents of the
6 microfiche?

7 Q. Correct.

8 A. Like, what's on each individual
9 microfiche itself?

10 Q. Well, I guess I'll start broadly. Is
11 there any type of indexing of the microfiche?

12 A. There's the 2K10 database which
13 provides me the policy number listing of what I
14 have or have had in microfiche. That exists.

15 Q. Is that the only indexing system you
16 have?

17 A. That I'm aware of, yes.

18 Q. Once a policy is pulled from the hard
19 copy microfiche set and sent for destruction,
20 how is that updated in the 2K10 database?

21 A. So the list that was provided that
22 gives us the cancellation/non-renew date is
23 actually used to create the query. The query
24 can be searched to say I'm looking for this
25 policy number. If it has a

1 cancellation/non-renew date beside it, we look
2 at that date. If that date's been exceeded,
3 meaning it's past the time of destruction, it's
4 been destroyed.

5 Now, we would use that if we went into
6 microfilm and couldn't find something that was
7 there -- something that was requested. Bear
8 with me.

9 Q. Once your staff takes the hard copy
10 list, pulls the documents for purging, they're
11 sent out, they're purged, does anyone go back
12 into the system to confirm in any way other than
13 that paper sheet you mentioned --

14 A. No.

15 Q. -- that a document has been destroyed?

16 A. No.

17 Q. I'd like you to turn back to Exhibit 1
18 which is the deposition notice. Okay?

19 A. Yeah.

20 Q. If you need a break, we've been going
21 almost an hour, we can go ahead and take a
22 break.

23 A. Okay.

24 THE VIDEOGRAPHER: Are we going off the
25 record?

1 MR. YNTEMA: Yeah.

2 THE VIDEOGRAPHER: We're going off the
3 video record. The time is 1:43. This concludes
4 media unit 3.

5 (Short recess was taken.)

6 THE VIDEOGRAPHER: We're back on the
7 video record. The time is 1:52. This begins
8 media unit 4. You may proceed.

9 BY MR. NES:

10 Q. I wanted to turn back to Exhibit 1,
11 topic number 11. All documents and
12 communications between you and Ellis & Winters,
13 LLP, related to the directives issued by Chief
14 Justice (retired) Jean Toal in November 5, 2021,
15 and May 5, 2022, orders. Do you see that?

16 A. I do see that.

17 Q. What -- what did you do to prepare
18 today with respect to topic 11?

19 A. I'm trying to remember what they asked
20 for. I don't remember communicating with them
21 electronically that I'm aware of.

22 Q. Do you know if there was ever
23 communications by anyone at Penn National with
24 Ellis & Winters related to enforcing the May 5th
25 order?

1 A. I have no recollection of it.

2 Q. Did you look through your e-mails or
3 communicate with anyone in preparation for topic
4 number 11?

5 A. Other than counsel?

6 Q. Yes.

7 A. No.

8 Q. Did you learn anything from counsel in
9 your preparation for topic number 11 related to
10 communication with Ellis & Winters?

11 I'm not looking for any legal advice,
12 just any facts that you learned about from the
13 communication.

14 A. No, none that I -- nothing that I
15 recall.

16 Q. Did you communicate at all with Ellis &
17 Winters related to their search for policies?

18 A. Verbally, yes.

19 Q. And when was the first time you recall
20 communicating with them verbally?

21 A. When they were on-site.

22 Q. When was that?

23 A. I believe it was last year. I want to
24 say December as a best guess.

25 Q. What do you recall about those

1 conversations?

2 A. We took everything that was requested
3 by them, put it in a conference room. I briefed
4 them on building safety, where the restrooms
5 were at, things of that nature, and explained
6 that -- that these are the boxes that you
7 requested.

8 Subsequently they also asked to see
9 micro -- microfiche boxes, showed them where
10 they were at, explained to them how to utilize
11 the viewer, and left them to do their thing.

12 Q. Did you have any -- did you answer any
13 questions other than -- strike that.

14 How long did your meetings with Ellis &
15 Winters last?

16 A. Not real long.

17 Q. Was anyone else present other than you
18 and the attorneys at Ellis & Winters?

19 A. This counsel, Brady.

20 THE WITNESS: I can never get your last
21 name right. Sorry.

22 BY MR. NES:

23 Q. Anyone other than outside counsel and
24 the lawyers from Ellis & Winters?

25 A. Not that I'm aware of.

1 Q. I'd like to --

2 MR. NES: What exhibit number are we up
3 to?

4 THE COURT REPORTER: 6.

5 THE WITNESS: 6.

6 BY MR. NES:

7 Q. -- hand you what's marked as Exhibit 6.
8 (Exhibit 6 was marked for
9 identification.)

10 BY MR. NES:

11 Q. This is a notice of filing of Ellis &
12 Winters, LLP, report and a letter attached. I
13 want to ask you about the letter which is
14 Exhibit 6. If you could turn to page 2 -- or 3
15 which is where the Ellis & Winters letter
16 starts, page 3.

17 A. Page 3, sir?

18 Q. Yes. Page 3 of the Exhibit Number 6
19 should be a letter from Ellis & Winters dated
20 March 22nd, 2022. Do you see that?

21 A. I do see that.

22 Q. Have you seen this document before?

23 A. No, I have not.

24 Q. I'd like to turn your attention to the
25 first page, the second bullet at the bottom. It

1 states, quote, Requested index data related to
2 storage of policy documents. On November 12,
3 2021, Ellis & Winters requested access to any
4 Penn National index applicable to its storage of
5 paper materials located at an Iron Mountain
6 facility in Pennsylvania and any similar index
7 for microfiche stored at Penn National's
8 headquarters.

9 Do you see that?

10 A. I do see that.

11 Q. Do you know if any index was provided?

12 A. I don't --

13 MR. YNTEMA: Objection to form. You
14 can answer.

15 THE WITNESS: I don't have a
16 recollection of it. That doesn't mean it didn't
17 occur or did occur. I just don't recall it.

18 BY MR. NES:

19 Q. Page 2 of exhibit -- sorry, page 4 of
20 Exhibit 6, which is page 2 of the Ellis &
21 Winters letter, the very top of the page
22 continues, Following an interview with Penn
23 National records custodian on November 19, 2021,
24 Ellis & Winters then requested a list from Penn
25 National's IT department of all policy numbers

1 and associated dates used for retention
2 purposes, and document -- documentation
3 associating three-digit prefixes with policy
4 lines of business. Penn National provided a
5 spreadsheet of hard copy inventory stored at
6 Iron Mountain on December 8, 2021.

7 Do you see that?

8 A. I see that.

9 Q. Was that list -- was that spreadsheet
10 something you reviewed in preparation for your
11 deposition today?

12 A. No, because I don't remember it.

13 Q. Do you know who provided Penn
14 National -- do you know who at Penn National
15 provided the spreadsheet that's referenced in
16 that paragraph?

17 A. I -- no, I don't -- I literally do not
18 remember this.

19 Q. So sitting here today, you're not able
20 to testify about what that references?

21 A. Correct.

22 Q. In the next bullet on page 2 of the
23 Ellis & Winters letter in Exhibit 6, there's a
24 reference in the middle of bullet 2 to, The
25 sample boxes were selected from a review of

1 historical descriptions within the hard copy
2 inventory spreadsheet provided on December 8th.

3 Again, you have no knowledge of that
4 spreadsheet?

5 A. I do not.

6 Q. The next bullet says, Interviewed Penn
7 National's director, administrative services,
8 and records custodian Brent Reifsnyder on
9 November 19, 2021, with follow-up questions
10 during the December 20 and 21, 2021, visit.

11 Do you see that?

12 A. I do see that.

13 Q. Do you recall what follow-up questions
14 were asked during their December visit?

15 A. No.

16 Q. Did you take any notes during any of
17 these meetings?

18 A. I did not.

19 Q. In preparation for your deposition
20 today, did you speak with anyone about any
21 communications that Penn National had with Ellis
22 & Winters other than you?

23 A. Outside of our counsel, no.

24 Q. And in speaking with your counsel --
25 and, again, I'm not asking for legal advice, but

1 were you informed as to who provided a
2 spreadsheet of hard copy inventory stored at
3 Iron Mountain to Ellis & Winters on December 8?

4 A. We did not discuss that.

5 Q. If you look two more bullets down on
6 page 2 of the Ellis & Winters letter --

7 THE COURT REPORTER: On page what? I
8 can't hear you.

9 BY MR. NES:

10 Q. Page 2 of the Ellis & Winters letter
11 that's contained in Exhibit 6, the one, two,
12 three, four -- the fifth bullet says, Assess a
13 Penn National risk-tracking data sheet of policy
14 claims received on February 15, 2022.

15 Do you see that?

16 A. I do see that.

17 Q. Are you familiar with the risk-tracking
18 data sheet that was transmitted to Penn
19 National?

20 A. I have no clue what that is. I'm not
21 familiar with it.

22 Q. The next bullet says, Reviewed
23 inventory data received on February 25th, 2022,
24 specific to microfiche records connecting policy
25 numbers to cancel/non-renew dates.

1 Do you know what that's referring to?

2 A. I can only guess.

3 Q. The next sentence of that bullet says,
4 Penn National subsequently provided two
5 additional data sheets that Ellis & Winters also
6 utilized for purposes of marrying the universe
7 of documents.

8 Do you see that?

9 A. I do see that.

10 Q. Do you know how Penn National provided
11 those documents to Ellis & Winters?

12 A. I don't know what they are, so I don't
13 know.

14 Q. And you did not review the Ellis &
15 Winters report in preparation for your
16 deposition today, is that right?

17 A. That is correct.

18 (Exhibit 7 was marked for
19 identification.)

20 BY MR. NES:

21 Q. The last document I'd like to show you
22 today which has been marked as Exhibit 7 is the
23 Penn National document retention policy that was
24 produced in this case which is Bates Number
25 PNI-0598 through PNI-1158.

1 MR. YNTEMA: I'm sorry, Counsel, could
2 you repeat that, the Bates stamp? I'm sorry.

3 MR. NES: Sure. It's PNI-0598
4 through PNI-1158. I've actually got a copy from
5 you.

6 MR. YNTEMA: I know that she sent it.
7 Thank you. I appreciate it.

8 MR. NES: More trees. My goodness.

9 BY MR. NES:

10 Q. We've spoken a little bit about the
11 document retention policy, but in preparation
12 for your deposition today, did you review the
13 Penn National document retention policy?

14 A. I did not.

15 Q. And I believe you said the last time
16 you reviewed this was in conjunction with a
17 project that the legal department gave you, is
18 that right?

19 A. That's correct.

20 Q. And which section specifically did you
21 review as part of that project?

22 A. Please stand by. Okay. I believe that
23 I looked at these page numbered -- they are -- I
24 just can't see it. So PNI-08, page 7.

25 MR. YNTEMA: It's PNI-0888.

1 THE WITNESS: Yeah, that's 888. Yes.

2 I'm sorry. It would be the very next page which
3 is 889 with a header of administrative services
4 division and page PNI-0890.

5 BY MR. NES:

6 Q. All right. Starting with PNI-0889, why
7 were you asked to review the administration
8 services division section of the document?

9 A. Okay. The administrative services
10 division is now known for the most part as
11 corporate services. This is my area.

12 Q. And what does administrative services
13 or corporate services mean?

14 A. What does it mean?

15 Q. Yes.

16 A. That handles purchasing, fleet,
17 facilities. It used to entail the mail center.

18 Q. Is there anything under administrative
19 services that applies to the retention of
20 insurance policies or policy-related documents?

21 A. No.

22 Q. Have you ever been asked to comment on
23 the section of the document retention policy
24 that applies to policies or policy-related
25 documents?

1 A. It's really open, meaning I've had
2 questions, I believe, from this deposition which
3 asked me to talk about stuff that is outside of
4 my realm. Relative to asking me questions about
5 how long things should be retained from a
6 company perspective, no.

7 Q. And just to be clear, you mentioned
8 that it was someone in the legal services
9 department that asked you -- or the in-house
10 counsel that asked you to comment on the
11 administrative service division section of the
12 retention policy, correct?

13 A. That would be correct, yes.

14 Q. Did the in-house lawyers at Penn
15 National ever ask you similarly to comment on
16 any other section of the document retention
17 policy that would apply to insurance policy or
18 policy-related documents?

19 A. Not that I -- not -- no. Not for this,
20 no. Not for anything I'm aware of, but not for
21 this.

22 Q. In reviewing your retention policy with
23 respect to that project, did you review the
24 entire document retention policy which is
25 Exhibit 7?

1 A. Regarding the purging project?

2 Q. No. In relation to the --

3 A. Oh.

4 Q. -- request that you got from the
5 in-house liaison.

6 A. I understand. Sorry.

7 No, I would not. I would only review
8 the section of which is applicable to the area
9 I'm responsible for.

10 Q. As part of your work on the document
11 purge project with respect to Penn National's
12 historic insurance policies, did you ever review
13 the document retention policy?

14 A. To know how long something was to be
15 retained relative to that, I would have looked
16 at that, yes. Not part of the legal review,
17 however.

18 Q. If we turn back to the page that we
19 were looking at a moment ago, the document
20 PNI-0889.

21 A. Uh-huh.

22 Q. The document page right before that is
23 PNI-0888. Do you see that?

24 A. Correct.

25 Q. And the one before that is 0887.

1 A. Correct.

2 Q. This -- at the top it's titled, Record
3 retention policy, last reviewed September 1,
4 2017.

5 Do you see that?

6 A. Uh-huh. Yes. I'm sorry.

7 Q. In the first paragraph under purpose of
8 record retention policy, it says, It is the
9 intent of Penn National Insurance to make
10 certain that designated records exist during the
11 stated retention period, and that conversely,
12 once the retention period on existing records is
13 met, those records are purged pursuant to the
14 records retention policy.

15 Do you see that?

16 A. Yes, sir.

17 Q. I believe previously in your affidavit
18 testimony you said that commercial line
19 insurance policies are retained for 25 years
20 after nonrenewal, is that right?

21 A. Cancellation/nonrenewal, yes.

22 Q. And with respect to the Covil
23 policy-related documents that were produced from
24 the 1986 to 1988 period, that's well after the
25 25-year nonrenewal date, correct?

1 MR. YNTEMA: Objection to form.

2 THE WITNESS: I don't know when they
3 cancelled/non-renewed.

4 BY MR. NES:

5 Q. Well, let me ask you this. Do you know
6 why the Covil policy numbers are not in this
7 spreadsheet that's Exhibit 4?

8 A. I do not know why.

9 Q. If it is true that -- assume with me
10 for a moment. If it's true that Penn
11 National -- excuse me. Strike that.

12 Assume with me that Covil either
13 cancelled or non-renewed its policies prior to
14 1995. It would be the case that Penn National's
15 policy-related documents should be subject to
16 destruction by 2022, correct?

17 A. I would agree with that, yes.

18 Q. And sitting here today, you do not know
19 why the Covil policy still exists, though,
20 correct?

21 A. That is correct.

22 Q. Is there anything in the record
23 retention policy -- strike that.

24 The fact that the Covil policy
25 documents currently exist is inconsistent with

1 the record retention policy, is that right?

2 A. Yes.

3 Q. Other than the document retention
4 policy that we have here as Exhibit 7, are you
5 aware of any other document retention policies
6 that are applicable?

7 A. I am not.

8 Q. Thank you, Mr. Reifsnyder. We've had
9 depositions now twice. In any of that
10 testimony, is there anything that you think was
11 not correct that you want to correct at this
12 point?

13 A. And it wasn't that long of a
14 deposition, but nothing that I can recall.

15 MR. NES: At this time, we'll leave the
16 deposition open because of the nature of
17 Mr. Reifsnyder only being designated on certain
18 topics. The deposition will be open also
19 subject to our pending motions. Otherwise I'll
20 pass the witness.

21 MR. YNTEMA: I have no questions for
22 Mr. Reifsnyder today. Thank you.

23 THE VIDEOGRAPHER: We are off the
24 record at 2:13, and this concludes today's
25 testimony given by Brent Reifsnyder. The total

1 number of media units was 4 and will be retained
2 by Veritext.

3 THE COURT REPORTER: Counsel, do you
4 both want a copy?

5 MR. NES: Yes, please. I'll take a
6 rough.

7 THE COURT REPORTER: Oh, you want a
8 rough? And I'm sorry, Bradley -- is that right?

9 MR. NES: Yeah, I'll go first. So this
10 is Brad Nes. If you could have a rough draft
11 sent to me, that would be great.

12 THE COURT REPORTER: Brady, did you
13 want a copy?

14 MR. YNTEMA: Yes. I'll take a rough
15 and then a complete. And we'll also have a
16 video synced.

17 (Deposition concluded at 2:20 p.m.)

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C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 16th of November, 2022.

Meg Davis, RMR

Notary Public

&	10:56 42:19	1987 70:20	43:14,18 46:16
& 1:9 2:2 4:18	10th 5:17	1987-1988 109:6	46:19 50:14
31:3,8 114:12,24	11 10:3 114:11	1988 127:24	52:23 53:4,5,7
115:10,16	114:18 115:4,9	1991 68:18,19	55:14 57:13
116:14,18,24	1158 4:21 122:25	108:4	58:25 66:11,14
117:11,15,19	123:4	1992 68:14 70:14	66:19 67:1,6,17
118:3,20,24	1159 4:11	71:15	69:22 70:8,16
119:23 120:22	1161 4:11 23:1	1995 37:24 65:19	75:7,10,18 76:16
121:3,6,10 122:5	117 4:18	128:14	79:22 82:15,16
122:11,14	11:03 42:23	1:43 114:3	82:19 83:1 86:6
	11:17 51:10	1:52 114:7	88:22 97:11,14
0	11:19 51:13	1st 41:11	98:21 99:7,14
0010 25:3,6,10	11:55 72:2	2	100:11 102:13
0597 65:14	12 4:17 10:3	2 4:11,13 10:3	104:22
0598 4:21 122:25	15:14 118:2	21:16,23 22:11	2019 1:5 6:7
123:3	122 4:20	22:20,21 23:24	42:8 43:6,10,18
08 123:24	12:50 72:6	24:17 25:16	44:6,11 45:4,10
0887 126:25	14 10:4	26:17 28:12,12	45:17,21,22,23
0888 123:25	140 96:14	31:10,14,14	46:6,8,11,13,17
126:23	15 121:14	32:10,10 42:24	46:20,24 47:6,12
0889 124:6	150 96:14	72:3 98:15	47:16,23 48:8
126:20	16th 131:13	117:14 118:19	50:10,11,16
0890 124:4	17 34:20 37:2	118:20 119:22	51:23 52:2,8,13
1	1717 2:3	119:24 121:6,10	52:24,25 53:6,7
1 4:9 5:25 8:25	18 82:21 87:20	20 41:11 47:10	53:11,15 54:18
9:1 21:15 24:17	87:23	75:10 82:21	54:18 55:14,18
25:9 42:20	18104 1:24 2:23	83:1 88:5 89:1	56:1 57:16
61:19 66:19	3:23	120:10	58:25 67:1
67:6 98:13	19 52:17 82:21	200 96:4,5,10,15	75:11 79:25
113:17 114:10	83:1 87:21	97:2	82:16 89:2
127:3	118:23 120:9	2010 90:22,24	97:20 104:24
10 1:18 10:3	1977 13:16	96:16,21 97:7	2020 37:23 40:16
11:20 15:19,20	1982 62:7,10,24	2017 53:5 67:17	47:10 50:9 52:3
17:16 42:15	99:11	127:4	53:12,18,24 54:5
80:15	1986 70:20	2018 23:17 35:5	54:23,23 55:3,17
100 61:24	127:24	41:18,20,24 42:3	55:21 56:4
10:07 1:18 5:16	1986-1987 109:6	42:4,5,7 43:2,5	57:19 59:1 65:9
			65:17 66:3 80:3

[2020 - actual]

Page 2

97:23 98:2 105:1 2021 22:16 34:20 37:2 38:23 41:2 41:12,12 53:25 57:2 58:6 89:2 99:8 105:3,8,17 105:18 106:9,24 107:5 114:14 118:3,23 119:6 120:9,10 2022 1:18 5:17 9:6 40:16 88:5 114:15 117:20 121:14,23 128:16 131:13 2046 40:18 2047 40:18 88:3 88:4 205 1:23 2:23 3:23 2079 4:15 21 55:3,20,24 56:7 57:23 89:1 105:15 106:1,15 106:18 120:10 214-466-4000 2:4 22 4:11 55:24 56:16,16 22nd 117:20 25 40:13 45:22 45:23 63:2 64:4 65:18,23 68:18 70:10 71:2 76:24 105:19 127:19,25	2530 2:9 25th 121:23 27408 3:4 29205 2:10 2:13 129:24 2:20 130:17 2k10 60:6 77:12 78:2 89:4 90:21 90:24 92:2,25 93:21 95:4,14 112:12,20 3 3 4:12 10:3 25:15 34:14,15 34:19 35:18,22 38:25 57:23 58:9 72:7 114:4 117:14,16,17,18 30 7:22 10:21 65:16 310 3:3 31st 41:12 3200 2:3 336-419-4900 3:4 34 4:12 3rd 9:6 4 4 4:14 26:18 59:8,9,19 61:7 61:14,19 62:16 65:7 67:25 68:3 69:15,16 99:9,10 101:13,14,16,18 101:22,25 114:8 118:19 128:7 130:1	40 10:21 11:16 40-2098 1:5 6:7 434-8588 1:24 2:24 3:24 5 5 4:16 10:3 28:12 29:1 42:15 68:23,25 69:1,4 114:14,15 50 80:13 96:22 5100 1:23 2:23 3:23 52500251011-... 67:6 59 4:14 5th 114:24 6 6 4:10,18 10:3 15:18 29:4,19 98:15 117:4,5,7 117:8,14,18 118:20 119:23 121:11 610 1:24 2:24 3:24 69 4:16 7 7 4:4,19,20 31:11 31:14 122:18,22 123:24 125:25 129:4 701 3:3 75201-7347 2:4 8 8 32:10,24 119:6 121:3	803-254-5445 2:10 8498 131:15 888 124:1 889 124:3 8th 120:2 9 9 4:9 10:3 900,000 61:12 91 108:5 92 67:15 a a.m. 1:18 able 86:10 119:19 absolutely 78:9 access 37:12 38:3 52:6 110:15 118:3 accessing 110:22 accidents 84:14 accurate 8:17 76:12 acknowledge 5:4 5:7 acknowledge... 25:19 26:9 28:21 act 44:21,23 action 1:4 6:6,15 131:11 active 84:20 85:9 actual 17:12 29:23 52:1 74:22 82:25 87:11 107:25

add 33:18 87:25 added 20:21 addition 85:24 85:25 86:4 additional 20:22 36:18 62:17 63:14 67:22 69:24 91:9 92:9 92:18 101:23 102:2 110:1 122:5 administer 5:9 6:13 administered 5:8 administration 124:7 administrative 120:7 124:3,9,12 124:18 125:11 admonitions 8:6 adopted 17:24 advice 115:11 120:25 advise 107:10 affidavit 127:17 affidavits 18:12 18:16 affiliations 6:21 aforesaid 131:5 agency's 17:1 aggressor 84:20 ago 22:2 38:1 41:4 49:2 87:19 87:24 126:19 agree 5:24 128:17	agrees 25:20 ahead 113:21 aided 131:9 al 6:4 allentown 1:24 2:23 3:23 allows 91:8 alpha 16:22 alphanumeric 16:23 64:14,21 alter 58:15 amount 86:15 95:11 analysis 40:1 analyzing 75:17 75:22,24 annual 19:12,19 19:24 56:18 57:3 72:10 111:21,22 annually 37:15 answer 9:24,24 14:15 23:15 33:13 53:22 61:10 65:25 68:21 70:4,24 92:16 110:3 116:12 118:14 answered 33:14 75:4 answers 8:9,14 anticipation 24:21 anybody 22:7 72:11 110:19 apart 65:12 apologize 42:13 86:2	appear 62:11 appearance 6:18 appearances 2:1 3:1 6:20 applicable 118:4 126:8 129:6 applies 124:19 124:24 apply 89:14 95:22 125:17 appointed 1:5 2:6,12 appreciate 123:7 appropriate 93:23 110:11 approximately 19:16 61:11 96:16,22 area 19:13 20:16 20:25 21:1,2,13 26:15,21 29:24 74:2 95:8 110:17 124:11 126:8 arguably 109:1 arrangement 5:10 aside 57:12 asked 10:11,18 32:11 43:20 59:17,20 109:24 114:19 116:8 120:14 124:7,22 125:3,9,10 asking 8:8 20:23 32:21 51:20 76:12 120:25 125:4	aspect 63:22 81:10 assess 121:12 assigned 93:23 100:19 102:5 assist 31:17 83:21 associated 89:16 100:19 101:9 119:1 associating 119:3 association 1:11 assume 128:9,12 attached 117:12 attachment 39:8 39:23 attention 43:2 98:15 117:24 attorney 6:22 24:20 attorneys 5:3 116:18 audible 8:13 audio 5:22 austin 2:8 7:2 austin.reed 2:11 author 85:6 authored 85:8 authorized 6:13 auto 48:10 automatic 99:10 automatically 39:9 107:11 available 15:9 32:17 93:25 112:3

aware 18:9 35:14 49:14,18 68:9 105:2,12,13 112:17 114:21 116:25 125:20 129:5	bates 22:25 122:24 123:2 bear 29:20 65:10 66:22 68:17 113:7 bearing 86:19 began 75:12 beginning 6:21 42:1 43:6 47:15 52:3 53:11,25 55:10 begins 42:23 72:6 114:7 behalf 2:5,11 3:5 8:21 85:17 believe 8:2 10:5 11:16 13:22 15:14 16:1 25:24 26:10 28:11 29:23 31:6,6 33:2 34:14 52:6,10,14 54:2,4,6 56:22 59:24 60:5,13,16 60:24 75:9 81:9 83:3 84:11 85:12 97:21,24 98:3 99:6 100:22 103:19 108:2 115:23 123:15,22 125:2 127:17 believes 24:18 belongs 78:21 best 35:17,20 115:24 better 76:14 91:17	beyond 83:7 86:23 big 84:21 101:11 101:12 bigger 85:4 bing 17:11 bit 89:3 123:10 bolts 110:8 book 65:11,11 66:15 bottom 117:25 box 44:25 45:1,4 45:6 76:1 78:19 78:21 79:1,4,6 89:11,13,15,16 89:21,23 90:13 90:19 91:9 92:21 96:6,8,19 99:21 100:7,17 100:17,18,20,21 101:8,9,20,21 102:5,7,8,18 111:6,7,24 boxed 74:18 boxes 38:6 46:12 60:20 74:16 77:21 79:2,7,14 81:7 89:25 90:9 90:17 91:5,19 96:4,5,10,16,22 97:1,2 103:6,7 103:14,15 106:20 111:15 116:6,9 119:25 boyd 30:12,17 30:23 brad 2:2 6:23 9:17 130:10	brad.nes 2:5 bradley 130:8 brady 3:2 6:25 116:19 130:12 break 42:10,17 71:23 113:20,22 breaking 66:15 brent 1:14 4:3 6:1 7:9,15 34:5 120:8 129:25 brief 25:1 28:13 89:16 briefed 116:3 brings 74:12 broad 29:14 58:18 broadly 112:10 brokious 2:2 budget 73:24 74:2 building 74:12 74:14 83:15,17 83:25 84:2,21 95:25 111:8,9,18 116:4 bullet 117:25 119:22,24 120:6 121:12,22 122:3 bullets 121:5 business 85:5,6 110:25 119:4 byntema 3:5
b			c
b 4:7 bachick 14:23 back 13:16 18:18 20:18 21:10,14 26:11 26:13,15 31:10 36:2 41:18 42:22 43:2 51:12 56:1 58:4 66:11 72:5 74:11,16 76:11 77:3 78:19,21,22 79:1,2,6 87:19 98:13 101:11,16 113:11,17 114:6 114:10 126:18 barcode 89:13 90:14 91:7 95:10,20 102:4,9 102:18 barring 111:17 base 86:20 based 15:8 41:8 41:14 45:21 56:11,21 61:16 64:5 78:19 100:21 basic 93:10,12 basically 111:3			c 131:3,3 calculated 62:5 62:20

calculation 65:23 calendar 38:12 46:8 55:9,11 63:13 68:7 88:15,22 call 12:5 called 28:20 calls 11:12 camera 5:19 cancel 40:12 62:5,6,9,19 63:9 63:17,19,24 64:6 121:25 cancellation 37:17 38:19 40:9 41:6 49:15 61:20 63:6 64:10,22 65:4,19 70:11 76:24 112:22 113:1 127:21 cancelled 37:24 40:6 63:21 68:19 105:19 128:3,13 card 49:23 108:21 109:8,16 109:21,21,24 111:14,22 112:1 cards 45:13,17 46:2 71:19 79:21,24 96:10 97:6,9,14,19,22 107:23 109:7,16 109:16 110:6,15 care 84:19	carolina 1:2,10 6:6 35:9 case 8:1 27:12 33:11 61:22 63:11,13 109:3 122:24 128:14 casualty 1:9,10 3:6 6:3 catch 78:13 category 34:4 center 11:11 15:4 124:17 certain 9:13 81:3 94:7 106:7 127:10 129:17 certified 1:19 certify 131:5 chain 12:14 13:25 changes 21:10 characters 94:8 check 77:13 82:9 104:11 checking 106:6 checkmarking 105:10 checkout 111:13 chief 114:13 circuit 1:2 6:5 civil 1:4 6:6 claims 121:14 clarification 29:16 52:5 75:23 81:21,24 clarify 34:12 91:4 clarifying 38:13	clear 32:4 66:16 108:13 125:7 clearly 31:9 clerk 74:9 93:12 clerks 93:8,11,17 close 57:6 clue 121:20 collect 28:9 91:25 collected 90:15 91:3 106:8 collecting 75:17 colon 23:25 color 107:20 colors 107:24 columbia 2:10 column 23:24 62:1 come 11:12 27:22 31:7 39:3 78:6,23,25 89:8 110:17 comes 11:9 14:24 18:22 39:7 49:16 63:2 63:12 77:15 86:19 107:11 110:4 commenced 24:23 comment 20:23 124:22 125:10 125:15 commercial 70:9 90:18 127:18 committee 84:15 common 1:1 6:5	communicate 15:22 107:6 115:3,16 communicated 11:7 13:7 communicating 15:16 114:20 115:20 communication 107:10 115:10 115:13 communications 13:4 114:12,23 120:21 company 6:4 11:13,15 13:15 24:24 84:18 125:6 compare 37:18 81:18 87:11 comparing 75:25 comparison 82:24 compensation 70:10 complete 73:10 130:15 completed 57:8 completely 61:23 comply 25:20 29:19 36:18 computer 131:9 conceivably 90:23 concerned 11:5

concluded 130:17 concludes 42:20 72:3 114:3 129:24 condense 79:3 conditions 69:25 conduct 17:14 66:6 conducted 5:18 6:8 16:15 46:9 54:5 conducting 40:1 72:9 conference 116:3 confirm 66:10 67:5 99:24 113:12 confirmed 67:8 confused 55:6 confusion 31:7 54:8 conjunction 123:16 connecting 121:24 connection 5:20 cons 16:18 consent 5:10 consider 92:13 consistent 25:2 consuming 82:14 contact 11:11 15:4 contacted 36:11	contained 9:14 95:20 121:11 contemporane... 50:16 contemporary 43:15 contents 89:17 94:23 109:25 112:5 continue 5:23 45:1 85:10 continued 3:1 continues 118:22 continuity 85:5 85:7 contrary 58:17 control 58:14 76:15 80:24 81:2,4,10,15,20 82:9,19 84:19 98:19 conversation 33:3,7,21,23 34:1,3,4 conversations 11:23 13:2,3 32:5 116:1 conversely 127:11 converting 108:6 108:13 cooperate 32:17 copies 29:7 copy 43:12 95:16 103:4,4,21,24 104:21 106:3,4 112:19 113:9 119:5 120:1	121:2 123:4 130:4,13 corporate 7:25 9:5,12 19:10 21:2,4,5,5,6,6,9 31:15 32:6 73:6 73:7 74:3 83:13 84:4,10,15,16,17 84:23 85:6,7,14 124:11,13 corporation 1:4 2:6,12 6:2,24 correct 8:22,23 13:9 21:13 22:13,14 23:22 26:2,6,7 27:9,10 36:16 46:18,20 46:23,23 50:13 51:18 52:13 54:20,21,25 55:12,15,19,21 55:25 56:2,3,5,6 56:8 62:4,17,18 63:4 65:9,24 67:9,10 76:16 79:9,10,13 82:11 82:12 83:9 85:16,18 87:10 87:12,13,15 92:2 92:5,6,9,10 93:3 94:20 96:23 97:15,16,18,21 97:23 99:12,20 99:22 100:1 102:1,14,20 104:1 107:16 112:7 119:21 122:17 123:19	125:12,13 126:24 127:1,25 128:16,20,21 129:11,11 131:10 correctly 131:8 correspondence 19:20 25:2 57:1 counsel 5:10 6:1 6:19,24,25 7:3,7 10:10,13,15 13:8 15:23 16:7,11 18:7 19:21 30:8 31:8 32:14 33:25 51:1 81:23 115:5,8 116:19,23 120:23,24 123:1 125:10 130:3 131:11 count 63:25 county 1:3 6:6 course 23:16 50:11 78:1 80:20 court 1:1 5:4 6:4 6:11 7:5 8:6,10 9:17,23 26:3 33:24 35:11 39:12,16 61:1 81:22 104:7 117:4 121:7 130:3,7,12 cover 4:20 49:25 coverage 35:8 48:2 covered 28:15 28:16,25 53:4

83:22,23 covil 1:4 2:6,12 4:12 6:2,24 7:4 21:19 23:17 26:1,6 28:3,10 35:1,4,8,19 44:12,17 45:6 53:16 57:12,22 57:25 62:10,11 62:16 70:12,13 109:5 111:17 127:22 128:6,12 128:19,24 cp 1:5 6:7 crain 1:9 create 20:2 59:23,25 87:14 87:17 88:4 90:2 99:23 112:23 created 37:12,13 43:11,14 51:23 60:2 87:20,21,23 87:24 89:4,24 90:23 91:1 95:4 99:3 103:5 creation 59:18 crisis 85:7 current 7:17,23 7:24 70:8 105:3 currently 50:15 54:19,24 107:5 128:25 custodial 32:12 custodian 118:23 120:8 custody 27:6,7 58:13 84:19 98:19	customer 11:11 15:3 cut 61:4 d d 1:5 2:7,13 4:1 4:7 73:22 104:9 dallas 2:4 data 38:2 58:15 58:18,20 87:22 88:2 89:21,23 90:8 91:11,20 118:1 121:13,18 121:23 122:5 database 37:12 38:18,21 40:7 41:7,14 52:6 60:8,9,13,14,17 60:18,19 61:11 77:12 89:4,5,8 89:10 90:21,24 91:3 92:2 93:1 95:5,14,25 96:7 99:2 112:12,20 date 12:22 37:17 40:9 41:6 45:16 45:20,21,23 46:15,24 57:20 61:20,25 62:1,4 62:5,9,20,23 63:6 64:6,10,22 65:16,19 66:3,13 68:11,14 70:8,11 71:2 76:20,22,24 77:15,16,19 81:6 81:14 89:18 98:9 112:22 113:1,2 127:25	date's 113:2 dated 9:5 34:20 68:19 117:19 dates 4:14 38:19 41:11 61:23 62:6 65:17 99:11 119:1 121:25 davis 1:19 3:9 6:10,11 day 14:20 86:9,9 86:10 days 86:11 88:16 deal 48:9 49:5,7 84:1 dealing 17:2 93:10,15 deals 21:2 dec 94:10,13 december 22:16 34:20 37:2 41:12 57:23 105:14 115:24 119:6 120:2,10 120:14 121:3 decided 68:3 decision 93:17 93:24 108:17 decreased 97:1 deeper 64:25 defendant 3:5 7:1 defendants 1:12 define 23:11 definition 58:18 degrade 110:10 degree 13:23	delay 80:19 delete 58:14 department 19:10,21 20:15 24:5,25 31:17,18 31:23 32:1,13,24 32:25 89:25 118:25 123:17 125:9 depending 16:25 78:15 depends 5:19 deponent 131:7 131:8 deposed 8:1 deposition 1:14 4:9 5:4,5,6,17 6:1,8 8:22 9:4 9:14,21 10:8,17 11:20 13:7 15:17 17:13 18:8,11,12,13,15 18:17,21,23 21:14 22:12 23:20 29:25 83:5 98:14,25 113:18 119:11 120:19 122:16 123:12 125:2 129:14,16,18 130:17 131:10 deposition's 17:15,21 depositions 129:9 described 24:6 41:19 68:5 70:22 75:6

88:11 description 4:8 89:17 descriptions 85:23 120:1 designated 8:20 9:12 10:3 127:10 129:17 desk 106:13 destroy 39:9 40:20 55:10 98:1,5 99:25 100:5 107:7,9,10 107:12 destroyed 37:22 38:11,21 42:6 43:10 44:5,10,13 45:8,11,14,17 46:2,4,7,22,25 47:2,12,15,20 50:2 53:18,25 54:9,18,23,25 55:1,9,14,17,20 55:24 56:2,4,5,8 56:14,24 57:6 62:2 63:1,3,15 63:16 65:9 67:1 67:8,16,22 68:21 69:18 70:16,21 71:3 77:17 87:12 97:6,10,14 97:19,22,25 98:20 99:7,24 107:15 113:4,15 destroying 56:17 68:7 71:13,18 destruction 4:14 43:5 50:1,12	52:3 53:24 57:8 61:25 63:12 64:2 65:16 66:3 66:13 68:11,20 73:1 74:22 75:18 76:22 77:4,11,14,16 81:1,3,20 89:18 99:11,19 106:16 111:23 112:19 113:3 128:16 detail 34:3 61:9 determine 20:16 26:18 27:2 40:2 41:1 44:12 45:5 53:16 65:8 67:7 67:12,16 76:15 101:24 devine 2:9 dienno 73:22 different 34:9 64:20 76:5 77:23 89:12 94:19 107:24 109:1,21 difficulty 85:1 dig 64:6 65:4 digit 11:21 12:2 12:19 13:15 14:19 16:16,24 17:17,24 18:3 64:13,15,19 78:20 96:2 100:15,18 107:20 108:1 119:3 digit's 17:4	digits 64:16 directives 114:13 director 7:24 120:7 discard 40:20 discarded 69:19 discomfort 85:2 discuss 20:13 51:6 121:4 discussed 18:19 20:7 98:3 discussing 16:10 discussion 51:11 disposed 69:19 distinction 49:3 49:17,19 distributed 103:10 distributes 74:13 divide 100:4 division 19:13 19:14 124:4,8,10 125:11 dock 74:11 document 9:7,9 18:24 19:2,9,23 20:3,11 21:8,11 22:1,24 23:2,3,5 23:7,10,20 49:4 49:12 50:1 54:4 57:8 61:22 69:10,18,20 80:8 83:7 85:21 86:14 106:4 113:15 117:22 119:2 122:21,23 123:11,13 124:8	124:23 125:16 125:24 126:10 126:13,19,22 129:3,5 documentation 119:2 documents 17:19 18:10,20 21:18 24:21 28:18 29:4,6,12 29:15,22 36:14 36:17,22,23 37:3 41:21 43:4,9,15 47:9 48:19,21 50:15 52:2,12,18 52:19,20,23 53:10,14 54:5,14 54:17,22,24 56:17 58:13,15 58:19 70:13 74:23 75:2 99:25 100:5 101:6 105:9 106:8,11,12,14 107:4,8 108:7 113:10 114:11 118:2 122:7,11 124:20,25 125:18 127:23 128:15,25 doing 12:22 14:19 18:6 22:11 42:5 75:20 77:5 78:8 80:19 81:1 88:13 90:5 93:5 104:14

dollar 93:24 door 74:13 draft 130:10 draw 98:15 drive 28:19 due 85:1 duly 1:5 2:6,12 7:9 131:7 duplicating 103:8 duties 84:7	107:2 108:2 early 42:7 53:8 easily 107:24 easy 66:12 effect 20:18 effort 103:8 either 14:5 28:9 53:5 77:16 79:1 80:22 102:8 105:9 128:12 electrical 84:3 electronic 26:19 27:3,5 31:11,15 31:19 58:15,17 electronically 114:21 elements 63:8 eligible 63:9 68:11,20 ellis 4:18 31:3,8 114:12,24 115:10,16 116:14,18,24 117:11,15,19 118:3,20,24 119:23 120:21 121:3,6,10 122:5 122:11,14 employed 7:21 employee 10:23 11:1 12:12,16 24:4,6,17,22,24 25:17,19 26:18 27:20 28:13 29:5 31:18 32:11,16 employee's 26:20,21 29:7	employees 10:18 10:19,20 14:22 15:5 24:13 73:10 75:16 84:12 employer 7:17 ended 68:17 75:13 endorsements 69:25 ends 60:11 enforcing 114:24 engine 17:11,12 ensure 32:14 75:3 ensures 74:12 entail 124:17 entails 21:5 enter 91:9 entered 91:10 entire 63:17,19 63:25 65:14 125:24 entries 58:20 environment 110:10 ergonomic 84:25 ergonomics 74:3 84:23 esq 2:2,8 3:2 establish 41:9 43:17 established 52:5 estate 83:13 85:14 estimate 80:9 et 6:4	evacuation 84:21 event 77:1 events 85:9 eventual 53:7 exactly 19:6 38:1 43:17 71:4 80:17 102:10 examination 7:11 examine 44:11 87:8 examined 7:10 examining 81:17 example 37:22 62:25 66:10 67:5,14 89:22 109:3 exceeded 113:2 excel 28:18 excellent 70:23 exchange 30:5 30:12 exchanged 30:9 excuse 10:13 33:24 90:1 128:11 exercise 93:1 exhibit 4:9,11,12 4:14,16,18,20 8:25 9:1 21:15 22:20,21 23:24 24:16 25:16 26:17 28:12 31:10,14 32:10 34:13,14,15,19 35:18,22 38:24 57:23 58:9 59:8
e			
e 4:1,1,1,7,7 10:25 11:1,2,18 11:19 12:5,6,13 12:20,23,25,25 13:5,24 14:10 15:6,11,13 18:18 18:18 19:20,25 20:11,12,15 27:9 27:10,12,18,21 28:3,9,16 29:14 30:5,9,12,16,19 30:24 31:3,15,23 32:3,8 34:19,23 36:1,8,8 38:24 39:4,7,11,23 41:4 43:16 57:1 58:23,24 59:2,21 73:22 104:9 115:2 131:3,3 e.g. 28:15 29:5 31:15 earlier 16:1 18:19 25:24 58:23 81:9 88:1 102:11 106:21			

59:9,19 61:7,14 61:19 62:16 65:7 67:25 68:3 68:23,25 69:1,4 98:13 99:9,10 101:10,12,18,22 101:25 113:17 114:10 117:2,7,8 117:14,18 118:19,20 119:23 121:11 122:18,22 125:25 128:7 129:4 exist 105:11 127:10 128:25 existing 127:12 exists 70:20 112:14 128:19 experience 12:17 85:10 93:9,9 experienced 14:17 explain 49:8 explained 116:5 116:10 extend 26:14 extent 13:10 30:7 33:22,25 36:3 105:7 106:14 extraneous 90:13 92:1,4,14	facility 74:20 83:20 118:6 fact 48:13 105:6 128:24 facts 25:1 115:12 fair 20:10,14 23:19 82:22 83:2 86:12 fairly 106:7 falling 65:11,12 falls 110:12 familiar 121:17 121:21 far 58:4 75:4 february 42:4 121:14,23 fields 91:9 fifth 1:2 6:5 58:10 121:12 file 17:17 57:7 76:21,22,25 77:8 77:15 78:23 79:7 81:14 86:22 90:11 94:14,23 95:2,10 95:12,19 104:11 109:22 filed 6:4 files 29:5,7,20 38:7 72:25 73:13,20 74:5 75:21 76:3,4 78:22 79:3 81:5 81:8 92:11 95:16 105:18 109:19 filing 4:18 117:11	final 38:10,15 90:24 finance 89:22 financially 6:15 find 38:6 44:24 66:12 77:2,18 78:18 92:21 113:6 fine 31:13 42:16 first 10:23 11:1 23:23 25:6 35:18,21 56:17 63:15,16 85:13 101:2 102:24 110:20 115:19 117:25 127:7 130:9 fit 75:20 85:22 five 10:9 16:2,3 42:17 88:16 100:23 102:16 103:14,14,23 111:23 fleet 21:6 73:6,7 84:10 124:16 floor 2:9 110:20 111:10 focus 40:19 48:12 focusing 87:5 folder 28:19 94:15 follow 24:6 120:9,13 following 53:8 80:15 118:22 follows 7:10 70:7	foregoing 70:6 foreseeable 24:19 forgive 44:20 form 5:2 26:20 27:14 28:5 35:10,12,13 39:3 39:14 40:3 45:19 47:21,24 47:25 49:6 50:21 53:2 56:9 56:19,20 58:3 60:10,11 64:8 67:18,19 68:15 76:8,9 86:17 88:18 92:15 93:7 96:24 118:13 128:1 format 59:15 former 18:13 forth 25:3 found 104:13 109:9 four 10:9 16:2 16:22,25 121:12 frame 108:5 friday 34:20 front 82:2 96:5 full 8:17 96:17 96:20,20 97:3 105:7 fully 32:18 furniture 83:24 further 5:7 40:1 future 52:16 106:22
f			
f 131:3 facilities 7:25 21:7 124:17			

g	99:22 101:11 103:24 113:11 113:21 130:9 goes 74:13 111:24 going 5:16 8:5 31:10 34:13 40:25 42:14,18 51:9 56:1 57:3 61:9 72:1 79:2 80:19,21 81:13 84:12 85:2 92:25 94:1 103:13 106:17 110:22 111:16 113:20,24 114:2 goldberg 3:2 goldbergsegall... 3:5 good 5:15 7:13 7:15 71:22 131:5 goodness 123:8 google 17:11 gotcha 67:10 government 24:18,22 great 8:16 130:11 green 3:3 107:22 greensboro 3:4 group 11:2 15:13 110:16 guaranty 1:11 guess 76:2,3 80:12 86:7 102:21 110:12 110:18 112:10	115:24 122:2 guessing 19:18 guidance 19:14 guidelines 25:3 25:11,13 guy 85:5 guzzi 3:9	heard 5:21 9:18 33:25 61:2 heavily 83:13 heck 72:20 held 51:11 56:17 98:6 107:5 help 32:14 34:12 helping 86:10 highly 17:4 historic 17:18 126:12 historical 120:1 history 108:15 hit 17:12 65:17 65:18 68:11 hits 71:2 hold 4:11,12 21:18,24 22:15 23:1,8 24:4,12 24:14,20 25:17 25:21,25 26:8,14 27:1,12,20 28:15 28:16 29:1,2,13 31:25 33:10 34:25 35:4,19 36:14,19 54:12 56:22 57:22,24 59:5 60:22 71:20 105:22 106:10 holds 57:13,16 57:19 61:11 hospitals 17:6 hour 42:15 113:21 hours 10:9 16:3 16:12,14 18:5
gaining 10:10 garage 83:15 gathering 24:7 general 13:20 15:1 48:7 67:25 74:1 83:10 91:5 109:4 generally 10:7 30:2,3 33:6 41:19 72:23 75:14 78:10,12 80:20 82:12 83:6 91:12 generate 15:5 37:11 38:3,20 generated 15:8 39:3 41:8 105:8 getcha 55:25 getting 55:6 66:22 give 15:6 111:18 given 68:3 85:19 88:9,10 92:19 129:25 131:10 gives 38:19 112:22 giving 8:17 go 5:24 8:5 20:22 38:5 41:18 48:10 51:5,7 65:2 66:11 76:11,20 76:21 77:12 78:17 79:2 81:7 81:8 83:7,20 90:9 94:13,14 95:8,9 96:7,9	h h 4:7 half 96:20 hand 104:19 117:7 131:12 handle 11:12 84:16 handles 72:22 73:6 74:2,3 124:16 handling 83:23 handwriting 101:1 hard 75:19 95:16 106:4 112:18 113:9 119:5 120:1 121:2 hardcopy 31:4 harrisburg 79:12 head 15:12 25:7 38:14 60:16 68:17 97:8 header 124:3 headquarters 118:8 hear 9:23 26:4 39:17 61:1 121:8		

house 19:20 108:12,16 125:9 125:14 126:5 hr 85:3 huh 58:22 82:17 126:21 127:6 hundred 32:4 96:14,15 102:24 102:25,25 hundreds 17:3 38:6 hvac 84:2 94:1 hypothetically 40:5,17 88:2	identify 41:20 44:2 50:16 52:2 52:12,16,19 62:1 62:15 69:16 identifying 31:18 68:6 ignorance 44:20 49:24 immediately 24:24 36:24 impact 22:3 impacted 22:3 import 40:7 inbox 28:17 include 11:17 12:13 16:6 36:3 60:23 61:3,7 92:7 included 86:3 89:19 90:14 includes 58:18 including 6:19 41:12 69:22 84:19 inconsistent 128:25 independent 18:2 index 112:3 118:1,4,6,11 indexing 16:23 112:11,15 indicate 111:15 indicated 131:6 indicating 57:2 indication 111:25	individual 32:3 81:13 82:8 112:8 individually 53:19 individuals 80:6 100:23 industry 107:23 information 15:9 21:17 24:8 26:19 27:3,5 28:14,25 29:6 31:16,19 32:6 41:5 44:2 59:16 60:12 71:7,10 89:7,10,12,24 90:15 91:2,23 92:1,5,14 94:16 95:1,25 100:20 101:17,20,21,23 102:2 informed 121:1 initially 60:1 96:4 inside 94:14 insight 10:11 insurance 1:9,11 3:6 6:4 7:18 17:18 68:2 69:17,17 71:14 84:6 98:17 124:20 125:17 126:12 127:9,19 insured 44:12 45:7,7 53:17 62:16,17 69:23 90:12 92:8,9 94:11 109:13	insureds 69:24 69:24 109:2 intent 127:9 interact 85:10 interacting 10:10 84:9 interchangeably 49:22 interested 6:15 131:11 interfacing 83:16 interject 86:24 internet 5:20 16:15,19,21 17:9 17:10,14,22 18:1 18:6 interrogatories 4:17 69:5 interview 32:12 32:18 118:22 interviewed 120:6 introduce 7:13 inventory 37:14 37:19 90:2 119:5 120:2 121:2,23 investigation 24:19,22 involved 32:14 48:15,18 59:17 73:14 74:3 108:18 involves 24:23 iron 47:4,5 74:17,19,24 77:3 79:6,9 90:4 91:6
i			
idea 14:5,6 44:16 45:15 50:8 86:25 93:5 identifiable 107:25 identification 9:2 22:22 34:16 59:10 69:2,23 98:17 117:9 122:19 identified 4:8 17:23 26:23 32:16 36:10 41:16 43:4 46:7 50:10 52:12,24 53:14,17,23 54:20 55:24 58:11,12 60:5,7 62:15 78:8,25 111:22 identifies 43:25			

91:16 95:8 99:19,22 106:12 106:23 107:6,6 107:14 118:5 119:6 121:3 issue 28:18 84:25 issued 21:19 71:14 84:11 109:5 114:13 issues 16:10 74:4 84:14 item 11:19 89:18 items 19:14 66:3 iteration 90:24	judicial 1:2 6:5 june 19:18 69:22 98:21 99:14 justice 114:14	119:13,14 122:1 122:10,12,13 123:6 126:14 128:2,5,8,18	115:11 120:25 123:17 125:8 126:16 legitimate 110:23 length 83:3 lessor 83:18 letter 36:15 117:12,13,15,19 118:21 119:23 121:6,10
j	k	knowing 68:1 80:17 knowledge 12:1 12:17 120:3 known 124:10 knows 24:22	letters 93:16 level 93:23 levels 85:11 lewis 2:2 6:23 liability 48:7 67:25 109:5 liaison 126:5 lieu 5:7 likewise 67:11 limit 91:14 limited 58:19 69:22 87:1 91:8 91:10 line 16:23 98:4 127:18 lines 70:9 111:20 119:4 list 12:8 15:5,8 37:3,6,7,9,15,16 37:19,24 38:3,10 38:14,15,17,18 38:20,22 39:1,24 39:25 40:4,7,11 40:12,16,20,25 41:2,3,15 43:9 43:12,13 44:6 50:15,18 54:19
j 1:9 jackets 38:7 64:23 janitorial 84:2 january 41:11 42:4,8 43:10 46:20 47:7,23 48:8 54:18,23 55:3 56:7,16 57:2 66:14,19,19 67:6 68:7 75:11 jean 114:14 job 7:23,24 13:18,20 15:1 19:12 72:21 73:10 80:7 82:8 83:4,6,10 85:19 85:23 88:10 93:5 103:15 jobs 75:20 84:13	karen 11:8,10 keep 39:17 78:1 79:5 106:16 keeping 105:17 kept 77:8 95:24 96:18 kin 131:11 kind 40:1 111:13 knew 94:7 95:2 100:16 104:6 know 12:3,11 13:18,20 14:8,15 14:18 25:6 30:19 32:2 47:1 47:8,13,14,18 48:5,13,18,21,25 51:2,3,3,25 61:13 62:11,13 69:6,9 71:12,17 72:22 73:24 76:23 77:2,9,16 77:18 80:20 82:22 86:19 90:11 93:5 94:5 94:24 97:5,9 100:11 101:5 102:23 104:15 105:4,5 108:10 108:14 109:17 109:19,23,23 110:1,3 111:7 114:22 118:11	landlord 83:18 83:23 language 55:5 large 110:14 lawsuit 24:23 lawyers 31:3 116:24 125:14 le 25:3,6,10 lead 71:6 72:10 leading 82:16 learn 11:20 16:19 115:8 learned 115:12 lease 73:9 leases 83:14 85:14 leasing 91:15 leave 129:15 leaves 111:18 left 116:11 legal 1:23 2:22 3:22 19:10,21 20:15 22:8 24:5 24:25 25:3,10,12 31:17 32:3,13,23 32:25 35:4	115:11 120:25 123:17 125:8 126:16 legitimate 110:23 length 83:3 lessor 83:18 letter 36:15 117:12,13,15,19 118:21 119:23 121:6,10 letters 93:16 level 93:23 levels 85:11 lewis 2:2 6:23 liability 48:7 67:25 109:5 liaison 126:5 lieu 5:7 likewise 67:11 limit 91:14 limited 58:19 69:22 87:1 91:8 91:10 line 16:23 98:4 127:18 lines 70:9 111:20 119:4 list 12:8 15:5,8 37:3,6,7,9,15,16 37:19,24 38:3,10 38:14,15,17,18 38:20,22 39:1,24 39:25 40:4,7,11 40:12,16,20,25 41:2,3,15 43:9 43:12,13 44:6 50:15,18 54:19

54:21,24 65:10 66:1,18 71:5,5 71:11 76:11,21 77:6,25 80:24 88:1,4 99:3,4,6 100:4,7,21 101:7 101:8 103:3,5,6 103:12,12,14,17 103:17,21,24,25 104:3,4,14,21,24 105:1,3,7,11,14 112:21 113:10 118:24 119:9 listed 61:14 67:24 106:24 listing 112:13 lists 37:17,21 88:1 100:14 103:9 105:4 literally 119:17 litigation 4:11 4:12 21:18,19,24 22:15 23:1,8,17 24:4,12,14,18,21 25:17,21,25 26:1 26:6,8,14 27:1 27:12,20 28:3,10 28:15 29:1,2,13 31:25 33:10 34:25 35:1,8,19 35:19 36:14,19 50:24 51:20 54:11 56:22 57:13,15,18,22 57:24 59:5,14 71:20 105:15,22 106:10	little 89:3 123:10 llp 114:13 117:12 located 28:19 118:5 location 28:14 28:25 110:11 logan 74:7,8,9 logic 91:12 logical 91:23 long 7:19 10:20 11:14 12:12,15 49:2 75:11 87:24 90:16 116:14,16 125:5 126:14 129:13 longer 63:24 112:1 look 22:6 37:6 41:16 52:21 57:20 59:2 61:17,19,22,25 64:8 66:2,10,18 67:4 69:6 77:2 80:24 81:2,4 85:2 96:6,8 102:12 113:1 115:2 121:5 looked 22:7 82:13 94:14,21 95:3 99:2 105:12 123:23 126:15 looking 18:19 53:19 65:6,10,22 75:24 82:18 91:21 93:7 94:3 104:12 112:24	115:11 126:19 loose 96:18,19 lorrie 14:23 lot 30:1 88:12 89:20 lots 94:5 lunch 98:3 m machine 131:8 maier 33:5 34:19 36:2 maier's 36:7 mail 11:18,19 12:5,6,13,20,23 12:25,25 13:5,24 14:10 15:6,11,13 18:18 19:20 20:11,12,15 27:9 27:10,12 31:23 32:3 34:19,23 36:1,8,8 38:24 39:4,7,11,23 41:4 43:16 57:1 59:2,21 74:13 124:17 mailed 10:25 11:1,2 mailing 30:24 mailroom 93:15 mails 18:18 19:25 27:18,21 28:3,9,16 29:14 30:5,9,12,16,19 31:3,15 32:8 58:23,24 115:2 main 2:3	maintain 38:17 91:24 maintained 90:25 92:22 maintains 19:11 maintenance 110:5,7 making 110:9 manage 83:13 83:14,25 84:10 84:13,15 management 80:8 83:7 manager 84:6,8 manila 94:15 manner 5:11 manual 93:22 manually 38:5 39:24 march 117:20 mark 57:7 marked 8:24 9:1 22:20,21 34:15 34:18 59:8,9 68:24 69:1 78:25 104:17 107:13 117:7,8 122:18,22 marker 65:18 marrying 122:6 master 77:8 matching 95:16 material 29:21 30:10 materials 60:21 118:5 math 68:16

matter 6:2 26:22 32:14 mean 20:20 21:4 36:22 43:22 44:18 46:21 62:25 71:10 73:8 74:10 76:4 76:10 86:21 87:16 93:13 110:17 118:16 124:13,14 meaning 10:21 22:4 29:14 38:5 42:8 46:12 48:10 63:20 64:12 81:6 84:25 86:18,21 96:18 108:22 112:5 113:3 125:1 means 44:24 mechanical 84:3 media 5:25 16:17 42:20,24 72:3,7 114:4,8 130:1 medical 17:6 meet 64:22 meeting 32:22 32:23 meetings 20:6 116:14 120:17 meg 1:19 6:11 39:15 member 31:16 32:13 100:11 members 70:1 100:5 102:16	103:23 111:24 memo 4:20 memory 11:9 mental 74:4 mentioned 8:7 16:1 31:22 36:13 39:2 43:24 58:23 79:16,18 80:5 81:9 85:13,20,23 86:4,13 87:8 91:1,25 99:17 100:22 101:18 102:11 107:2 108:2 113:13 125:7 merit 1:19 met 127:13 method 17:5,8 methods 16:17 16:22 micro 116:9 microfiche 45:11 45:13,17 46:2,3 47:12 48:16,19 48:22 49:1,5,13 49:20,22,22 50:2 50:3 52:20 60:24,25 61:3,8 61:15 68:13,17 70:15,21 71:1,19 78:14 79:8,11,15 79:21,24 80:2 95:22,24 96:10 96:22 97:5,9,13 97:19,22 107:17 107:18,19,21,23 108:3,8,21,24	109:7,8,10,15,20 109:21,24 110:4 110:6,15 111:5 111:14,22,25 112:4,6,9,11,14 112:19 116:9 118:7 121:24 microfilm 14:18 27:8 29:22,24 36:25 38:6 45:2 47:4 49:17,20,21 49:23 50:2,5 60:20,25 61:21 61:24 78:14 90:18 96:2 97:2 105:4,5 106:13 108:14 109:14 111:17 113:6 microsoft 37:11 52:6 middle 119:24 mind 14:24 18:22 48:12 105:18 mine 84:22 93:25 minus 45:22,23 minute 42:17 minutes 42:15 51:8 88:16 misunderstood 40:23 mixed 82:5 moment 126:19 128:10 month 77:4 morgan 2:2 6:23	morganlewis.c... 2:5 morning 5:15 7:13,15 8:18 motions 129:19 mountain 47:4,5 74:17,19,24 77:3 79:6,9 90:5 91:6 91:16 95:9 99:19,22 106:12 106:24 107:6,7 107:14 118:5 119:6 121:3 move 48:25 moved 29:24 48:21 90:4 111:16 moving 48:15,18 79:3 91:15 multiple 52:16 62:22 64:3 mutual 1:9 3:6 6:3 myer 11:17,24 myers 11:8,10 11:14 12:7
			n
			n 4:1,1,7 73:22 73:22 104:9 name 6:9 7:15 14:21,23 90:12 92:5,14 93:3,6 116:21 name's 79:16 named 62:16 69:23 94:11

names 15:7 72:16 111:2 national 1:8 3:6 4:14 6:3 7:1,18 7:20,21 8:21 9:5 10:15 11:21 12:18 17:24 18:3,25 19:3 20:8 22:24 45:4 49:4,12 50:7 59:13 70:6,9 71:13,18 75:16 84:6 85:17 109:4 114:23 118:4,23 119:4 119:14,14 120:21 121:13 121:19 122:4,10 122:23 123:13 125:15 127:9 128:11 national's 4:16 9:12 31:4 69:4 69:20 98:18 118:7,25 120:7 126:11 128:14 nature 53:20 86:23 87:25 110:18 116:5 129:16 navy 17:5 nc 3:4 necessarily 89:20 necessary 32:15 95:12 need 8:13 20:22 38:20 41:10	42:10 83:22 96:7 113:20 needed 19:15 20:16,19 21:11 22:7 26:11,14 32:2 36:3,11 77:1 88:4 103:11 nefariousness 110:21 negotiate 85:14 neither 131:11 nes 2:2 4:4 5:13 6:23,23 7:12 9:3 9:20 10:1 14:13 22:23 26:5 27:16 28:7 30:11 33:16 34:8,17 35:16 39:21 40:14 42:11,14,17,25 45:25 47:22 48:3 49:9 51:1,7 51:15 53:9 56:15,25 58:5 59:11 61:5 67:23 68:22 69:3 71:22 72:8 76:13 81:25 82:2,6 87:4 88:19 92:24 97:4 101:15 104:18 114:9 116:22 117:2,6 117:10 118:18 121:9 122:20 123:3,8,9 124:5 128:4 129:15	130:5,9,10 never 106:9 107:14 116:20 new 42:2 non 37:17,24 38:19 40:6,9,9 41:6 49:15 61:20 62:5,6,9 63:6,19 64:6,10 64:22 65:4 67:13,15 68:19 70:11 76:24 105:19 112:22 113:1 121:25 128:3,13 nonrenewal 62:20,23 65:24 66:13 68:14 71:2 127:20,21 127:25 normal 8:6 86:23 north 35:9 notary 131:5,16 note 5:17 49:23 noted 63:5 notes 120:16 notice 4:9,13,18 8:22 9:4,14,21 18:17 21:15,18 21:25 22:16 24:5 25:17,25 26:9,23 27:2,13 29:2,13 33:10 34:25 35:4,8 36:19 58:11,16 98:14 113:18 117:11 131:6	noticing 6:22 notification 24:20 notified 22:8 32:3 notify 24:25 november 1:18 5:16 9:6 114:14 118:2,23 120:9 131:13 number 11:20 15:14,18,18,20 17:1,16 21:15,16 22:11,25 24:17 25:15 26:18 28:12 29:1,4 31:10,11,14 32:10,24 37:20 37:25 40:8 41:5 41:9 44:14,16 45:2 47:14 49:16 61:17 63:20 64:9,19 65:13,15 67:6 69:15 71:6 75:25 81:18 89:14,16 90:10 90:10,13,13,14 90:14,18,19 91:8 91:8,10,20,22 92:11,12,19,20 92:23 93:2,19 94:4,7,15 95:3 95:10,10,13,20 96:25 97:1 100:14 101:8,12 102:4,7,8,9,9,17 102:18 107:20

108:24,25 109:10,11,12,14 112:13,25 114:11 115:4,9 117:2,18 122:24 130:1 numbered 123:23 numbering 12:2 13:15 64:13,15 78:20 96:3 108:1 numbers 37:7,8 37:10,13,16 38:4 38:7 43:25 44:24 62:15 66:25 91:19 94:2,5 100:19 101:9 118:25 121:25 128:6 numerous 66:19	70:5 76:8,9 86:17 88:18 92:15 118:13 128:1 objections 5:1,2 5:11 6:16 70:6 obscure 17:7 observation 63:4 64:11,18 obviously 77:6 occupants 74:14 occur 106:23 118:17,17 occurred 28:1 offer 86:24 offered 55:2 88:1 105:20 offers 25:10 68:10 office 79:12 83:14 103:20 officer 31:16 32:7 offices 83:21 official 131:12 oh 110:24 126:3 130:7 okay 8:14 31:13 33:15,20 34:6,11 39:19 40:15,22 43:3 51:24 52:4 58:7,7 65:11,21 66:9,17,20 77:24 82:1 86:1 88:21 98:16 99:13 101:4,19 105:24 107:1 110:12,24 111:1 113:18,23	123:22 124:9 older 56:23 once 24:13 27:1 27:12 39:8 45:5 68:10 112:18 113:9 127:12 ones 43:17 56:23 64:23 open 125:1 129:16,18 opened 94:21 operate 83:17 opinion 92:17 opposed 101:6 opposing 15:23 18:7 oral 13:2 orange 107:21 order 11:3 79:5 90:2 98:12 100:16,18 107:14 114:25 orders 114:15 organization 60:22 83:12 85:11 organization's 108:15 organizations 16:16 organized 107:18,19 originals 108:14 outcome 6:16 131:11 outlines 23:7 52:7	outlook 28:17 outside 13:8 16:7,10 32:13 103:19 108:11 116:23 120:23 125:3 oversee 75:1 84:4 overseeing 84:8 85:20 86:14 overtime 80:22 owner 89:15,25
p			
p.m. 130:17 pa 1:24 2:23 3:23 packages 74:12 74:16 page 4:2 23:23 25:9 26:17 28:12 31:14 32:10 61:19 65:13,14 69:16 94:11 98:15 117:14,16,17,18 117:25 118:19 118:19,20,21 119:22 121:6,7 121:10 123:23 123:24 124:2,4 126:18,22 pages 4:10,13,15 4:17,19 65:12 94:13 109:17 pandemic 85:8 paper 27:7 29:5 29:20 36:25			

38:6,20 43:12 45:2 47:3,7 48:16,19,22 49:1 49:5,17 50:18,21 52:20 54:21,25 56:1,5,12 60:19 78:22 81:16 103:21 106:7,12 108:14 113:13 118:5 paragraph 24:3 58:10 119:16 127:7 paralegal 3:9 parameter 41:11 pardon 26:12 49:25 parking 83:15 part 19:19,23 20:4 30:4 45:10 80:23 82:7 85:7 86:14 92:1 97:6 97:10,14,20,23 100:13 103:25 103:25 104:2 105:15 106:9,20 123:21 124:10 126:10,16 participants 5:20 participate 32:12 participating 5:3 particular 40:21 66:6 98:14 particularly 11:5	parties 5:9,24 party 6:14 131:11 pass 129:20 patterson 72:18 72:19 pause 71:21 pdfs 58:20 pending 35:9 129:19 penn 4:14,16 7:1 7:18,19,21 8:21 9:4,12 10:13,15 11:21 12:18 17:23 18:3,25 19:3 20:7 22:24 31:4 45:4 49:4 49:11 50:6 59:13 69:4,20 70:6,8 71:12,17 75:16 84:6 85:17 98:18 109:3 114:23 118:4,7,22,24 119:4,13,14 120:6,21 121:13 121:18 122:4,10 122:23 123:13 125:14 126:11 127:9 128:10,14 pennsylvania 1:8 3:6 6:3 118:6 people 79:18 93:5,8 106:6 110:22 percent 32:4 61:24 80:14,15	percentage 81:3 86:5 period 48:1 49:16 93:2 111:19 127:11 127:12,24 periods 47:19 64:3 67:13 70:1 person 5:8 11:8 58:12 personally 82:8 perspective 93:24 125:6 peter 1:5 2:7,13 phone 11:12 12:5 physical 26:20 29:4,12 44:21,23 50:21 84:17,18 107:25 physically 5:5 38:5 39:1 43:12 44:25 46:12,19 picked 103:11 103:13 pictures 46:1 piece 91:20,23 92:14 pieces 38:2 89:12 91:11 92:4 97:1 place 5:23 19:17 33:7 42:3 46:17 75:11 81:15 90:20 131:6 plaintiff 1:6 2:5 2:11 6:2 7:3	plan 85:7,8 play 72:23 73:11 74:15,25 pleas 1:1 6:5 please 5:17 6:17 7:6 23:12 34:7 39:20 49:8 71:25 123:22 130:5 plus 16:12,14 76:24 88:10 pni 4:11,11,21 4:21 65:14 122:25,25 123:3 123:4,24,25 124:4,6 126:20 126:23 pni1159 22:25 point 12:11 15:3 22:1 27:25 28:8 30:15 60:7 65:20 66:5 67:1 72:25 88:6 90:4 106:22 108:15 108:17 129:12 policies 17:18 25:10 27:24 30:1,5,13,16,20 30:25 37:23 38:11 39:10,24 40:2,5,11,20 41:10,16,23,25 44:5,6,8,10,11 45:3,5 46:6,11 46:24 47:2,6,7 47:11,15,19 48:7 48:10,16 49:5 50:10 53:16,18

53:23,24 54:20 55:9,13 57:5 60:19 61:7 62:11,21,22 63:1 63:5,14,14 64:1 64:2,11,14 65:5 65:8 66:19 67:12,14,24,25 68:6,14 69:21 70:9,10,12 71:14 71:19 76:16 77:10 82:18,25 87:12 93:10 98:18 99:7 100:9,12,16 102:13 108:7,20 108:22 109:1,4,5 109:12 115:17 124:20,24 126:12 127:19 128:13 129:5 policy 4:14,20 17:19 18:24 19:3,9,11 20:11 20:24 21:9,11 23:25 25:9 29:22 37:7,8,9 37:13,16,20 38:4 38:7 40:8 41:5,8 41:20,21 43:25 44:13,14,15,23 44:24,25 45:1,7 45:16 47:19 48:1,22,25 49:4 49:12,16 50:10 60:21 61:14,17 62:2,15,19 63:2 63:3,8,12,15,16	63:17,19,20,21 63:22,25 64:3,4 64:7,9 65:2 66:13,24 67:5,12 68:8,10 69:17,18 70:1,1,13,20,22 71:6,12,17 75:24 76:7 78:7 80:25 80:25 81:2,18,19 83:1 85:21 89:23 90:8,10,10 90:14,18 91:18 91:20,21 92:11 92:19,20,23 93:18 94:2,4,6 94:20,21,25 95:3 95:13,16 100:14 101:8 102:17 108:7,22,24,25 109:2,2,11,11,14 111:13 112:13 112:18,25 118:2 118:25 119:3 121:13,24 122:23 123:11 123:13 124:20 124:23,24 125:12,17,17,18 125:22,24 126:13 127:3,8 127:14,23 128:6 128:15,19,23,24 129:1,4 policy's 63:23 policyholder 44:3 62:21 92:5 92:8,13 93:1,3,6	policyholders 44:8 portfolio 86:13 position 72:21 73:16 possession 26:20 27:4 58:13 98:19 possible 29:8 post 38:17 practices 69:21 pre 108:19 predated 70:14 prefix 64:15,20 prefixed 64:12 prefixes 64:16 64:20,21 119:3 prep 16:6 81:5 preparation 10:16 17:13 18:11,20,23 21:22 23:20 41:17 53:7 72:25 115:3,9 119:10 120:19 122:15 123:11 prepare 10:7 13:7 15:16,23 16:14 18:8 22:12 38:8 98:24 114:17 prepared 38:10 44:19,19 99:22 preparing 16:3,9 82:10 present 3:8 5:5 6:19 70:16 75:7 96:21 99:14	116:17 preservation 32:7 preserve 21:17 27:17 58:14 preserved 27:21 32:16 presumably 94:4 100:8 107:15 prevalent 78:14 prevent 71:13 preventing 8:16 previous 29:25 previously 8:2 18:16 79:18 86:4 127:17 print 60:9 printed 61:10 printout 59:12 prior 18:1,15 46:4,12 58:24 59:4 63:1,23 67:12 68:14 71:14 90:23 105:19,21 128:13 probably 87:20 87:21 98:5 problem 69:12 procedure 4:11 19:24 23:2 24:12,12,16 25:15 procedures 24:6 proceed 7:7 42:24 51:14 72:7 114:8

proceeding 6:17 process 19:19 20:4 23:7 30:4 41:19,20 45:10 68:5 72:24 73:12,19 75:1,5 75:8,12 76:15 79:22,25 80:3 82:10,16 85:22 86:6,15 88:24 90:16,20 91:6,13 92:1 93:21 100:13 106:15 106:18,20 processing 58:19 produced 22:25 50:23 51:3,20 59:13 109:4,20 109:25 122:24 127:23 produces 41:9 41:15 product 20:2 99:23 program 84:23 prohibits 71:18 project 73:24 74:5 80:6,8,11 80:11,18 123:17 123:21 125:23 126:1,11 promptly 25:18 properly 32:15 property 1:10 pros 16:18 protopapas 1:6 2:7,13	provide 14:10 26:9 28:13 provided 14:3 15:10 29:23 71:7,10 87:22 110:2,4 112:21 118:11 119:4,13 119:15 120:2 121:1 122:4,10 provides 37:16 112:13 public 131:5,16 pull 38:7 41:25 44:25 64:1,5 73:13 74:5 75:2 78:12,19 81:5,6 96:6,8 99:21 100:5,7,12,15 101:6,24 102:23 102:24 103:5 105:15 pulled 42:6 44:15,18,21 45:3 45:6 46:11 52:25 53:5,6,10 66:25 67:8,13 76:7,16,22 77:7 77:10 78:3,7 79:22,25 80:3 82:25 93:2 97:25 100:17,20 103:1 106:15,19 112:18 pulling 44:21,23 45:10 64:2 73:20 75:21 79:19 93:1,18 100:8 105:9	pulls 79:14 99:18 111:24 113:10 purchases 84:8 purchasing 21:6 72:22 73:17 84:4,5,8 124:16 purge 37:4 38:8 38:14,23 39:24 40:2,13 41:1,17 41:25 42:3,5 44:19 46:8,14,16 46:19 53:8 54:4 56:18 57:3 64:21,23 66:7 69:21 71:11 72:10,10,14,24 73:12,18 74:21 75:3,8,10,18 79:25 80:3,11 82:9,15,16 85:22 86:6,15,23 87:6 88:24 94:6 97:6 97:10,14,20,23 106:9,20,24 107:5,13 111:21 111:22 126:11 purged 22:4 36:24 37:4 38:4 41:23 42:1,7,7 43:5,18 46:11,20 46:21 47:7,9 48:7 52:8,24 53:4,6,11,15 55:3 63:10 66:4 68:12,13 69:19 70:15 74:18 77:17 96:23	98:20 106:9,22 113:11 127:13 purging 36:4,13 36:17,21 38:17 41:21 45:21 46:4 52:13 58:24 63:5 96:1 113:10 126:1 purpose 19:8 90:3 110:25 127:7 purposes 96:1 119:2 122:6 pursuant 69:20 70:22 127:13 131:6 put 15:6 27:20 38:2 41:6 68:4 76:20 78:18,19 78:21,22 79:1 81:7 91:3 95:14 116:3 putting 57:12 81:14
q			
qc 76:11 78:8 104:3 quality 5:18,19 76:15 80:23 81:1,4,10,15,20 82:9,19 quarters 96:20 queries 60:11 query 37:20 41:8 41:10,13,15 77:14 112:23,23			

question 8:14 10:18 11:25 12:16 15:21 17:15 33:13 34:7,9 38:13 48:5 50:19 53:20 61:6 66:1 70:19,23 76:14 77:22 88:20 94:19 103:2 110:19 questioning 64:25 questions 8:8,9 10:11 48:24 69:8 75:4 94:9 116:13 120:9,13 125:2,4 129:21 quicker 91:16 quite 22:1 37:25 41:4 90:22 quote 24:4 118:1	realtime 1:20 reask 88:20 reason 17:17 71:8 reasonably 24:19 26:22 recall 8:3 11:25 13:10,14 14:16 14:21 15:10 17:9 18:19 22:11 23:18 26:10,16 28:6,8 28:24 30:2,3,23 31:2,9 32:5,22 33:3,6,20 34:23 35:1,3,7,15 36:5 36:9,10,12 38:1 41:23 43:22,23 47:17 54:13 57:4,11,12,15,18 57:24 58:8 59:21 60:1,3 69:13 78:10 79:21,24 80:2 82:18 98:9 99:2 115:15,19,25 118:17 120:13 129:14 receipt 25:16 receive 19:20 24:13 25:25 37:15,18,21 39:22 40:4,17 41:2 58:16 received 20:10 20:14 21:24 22:16 25:2,20 27:1 28:10	33:10 35:18,23 37:25 38:24 40:11 41:3 98:4 105:22 106:10 121:14,23 receiver 1:5 2:6 2:12 6:24 7:3 receiver's 4:16 69:5 receives 24:4,20 receiving 34:23 35:1,3,7 36:1 57:13,15,18,24 58:10 74:9 recess 42:21 72:4 114:5 recognize 9:6 23:2,3 59:14,15 recognizing 22:2 recollection 35:17,20 43:7,8 82:20 97:13 115:1 118:16 recommended 17:4 record 5:16,24 6:21 42:19,23 46:3 51:5,7,10 51:11,13 56:2,5 56:7,12 66:9 67:7,11,15 69:21 71:25 72:2,6 90:9 113:25 114:3,7 127:2,8 128:22 129:1,24 131:10 recorded 5:22 5:25 90:18	131:8 recording 5:19 5:23 records 4:20 12:2 17:1 31:5 31:12,15 32:15 36:4 44:17 46:19 56:23 61:12 67:4 68:10 99:18 110:2 118:23 120:8 121:24 127:10,12,13,14 recreate 44:7 recreating 43:13 red 107:22 redo 106:17 reduce 95:11 redundancies 76:6 reed 2:8 7:2,2 reference 11:19 33:9 38:21 49:11 54:11 89:17 91:21 95:8 119:24 referenced 39:2 50:20 119:15 references 119:20 referencing 31:8 90:22 referring 19:8 44:22 122:1 regarding 15:14 30:13,24 32:7,24 126:1
r			
r 131:3 range 45:23,24 ranges 45:16,21 read 23:13,19 35:22 101:1 ready 106:21 real 83:13 85:14 116:16 really 39:17 74:11 75:22 125:1 realm 11:16 84:24 125:4			

regardless 71:1 regional 83:14 83:21 registered 1:19 regular 75:20 reifsnyder 1:14 4:3 6:1 7:9,16 43:1 51:16 72:9 82:7 120:8 129:8,17,22,25 related 6:14 17:19 21:19 25:9 26:22 28:3 28:10,18 29:22 30:16,20 31:4 35:4,8,19 41:21 48:23 58:15,17 60:21 69:18 70:12,13 108:7 114:13,24 115:9 115:17 118:1 124:20,24 125:18 127:23 128:15 relation 126:2 relative 31:25 36:3 60:1 65:1 74:4 84:18 125:4 126:15 relevant 27:4 79:14 remain 63:8 remember 11:3 12:4 14:3 19:7 72:21 98:8 102:9 114:19,20 119:12,18	remembering 14:1 remotely 1:17 5:7,9 6:9,20 removed 46:12 renew 37:17 38:19 40:9,9 49:15 61:20 62:5,6,9 63:6,19 64:6,10 65:4 70:11 76:24 112:22 113:1 121:25 renewal 62:22 63:14 renewed 37:24 40:6 41:6 63:22 64:22 67:13,15 68:19 105:19 128:3,13 repack 79:7 repackage 79:2 repaired 83:22 repeat 83:5 123:2 rephrase 61:18 reply 36:8 report 4:18 117:12 122:15 reported 21:10 reporter 1:19,20 5:4 6:11 7:6 8:7 8:10 9:17,23 26:3 33:24 35:11 39:12,16 61:1 81:22 104:7 117:4 121:7 130:3,7,12	reporting 5:6,12 represent 62:10 representative 9:5,13 represented 97:2 representing 6:10 represents 37:23 60:20 105:18 request 17:21 22:8 60:2 69:15 86:22 95:9 126:4 requested 29:6 113:7 116:2,7 118:1,3,24 requester 30:10 requirement 19:11 24:13 research 17:14 17:23 18:1,6 reserved 5:2 respect 9:13,18 21:9 22:10 26:1 26:3,4 44:3 50:22 58:17,24 62:21 70:12 98:25 114:18 125:23 126:11 127:22 respond 12:20 14:15 19:24 26:15 36:8 responded 11:4 15:19 20:12,18 26:11,13 36:2,7 responds 70:7	response 8:21 12:4,5,23,25 13:13 14:4,10 15:11 17:20 26:8 29:1,12 36:1,14 59:4 responses 4:16 69:4 responsibilities 13:21 15:2 74:1 80:7 82:8 83:4,6 83:11 84:7 85:19 88:10 responsible 110:5 126:9 rest 15:21 restate 34:6 restricts 41:13 41:14 restroom 42:12 restrooms 116:4 result 95:15,18 retain 28:16 retained 30:21 37:1 98:20 125:5 126:15 127:19 130:1 retains 70:9 retention 4:20 18:24 19:3,9,13 19:23 20:11 21:8,11 24:7 49:4,12,15 68:10 69:20 85:21 86:14 119:1 122:23 123:11 123:13 124:19 124:23 125:12

125:16,22,24 126:13 127:3,8 127:11,12,14 128:23 129:1,3,5 retired 114:14 retrieve 95:10 95:12 return 25:18 104:2 returned 106:16 revealed 16:21 review 18:10,24 19:12,12,16 20:15 22:15 25:3,10,12,18,18 28:2 39:23 45:5 53:15 119:25 122:14 123:12 123:21 124:7 125:23 126:7,12 126:16 reviewed 18:14 19:15 21:8,25 25:12 119:10 121:22 123:16 127:3 reviewing 10:9 27:24 125:22 richland 1:3 6:6 right 9:15,16 16:4,5 20:24 21:12 26:1 31:24 36:15 43:25 50:12,17 50:24 51:21 52:25 54:1 56:18 62:3 65:20,25 66:7	67:2 68:24 76:17 78:13 79:12 81:11 83:8 85:15 92:3 94:6,18,22 96:5 96:6,11 99:15 100:9 101:25 102:19 103:22 106:2,11 108:4 108:23 116:21 122:16 123:18 124:6 126:22 127:20 129:1 130:8 risk 121:13,17 road 3:3 robinson 2:8 7:3 rogue 93:22 role 72:23 73:11 73:18 74:15,25 83:12 84:5,21 85:9 86:7 93:18 108:6 roles 85:4 roll 49:24 ron 74:7,8,9,16 101:1,6 102:22 room 5:5 60:8 116:3 rotate 84:13 rough 130:6,8,10 130:14 routine 86:24 rule 68:18 running 77:25 99:11 runs 11:11	s s 4:1,1,1,7 safety 74:4 84:15 84:16 116:4 safety's 84:21 sam 1:9 73:4 100:23 102:23 111:3 samantha 73:4 sample 119:25 sat 46:13 save 105:14 saw 19:5 23:9,11 saying 56:11 67:21 says 21:16 23:25 24:3,17 25:16 28:13 29:4 31:11 32:11 58:10 69:16 70:5 120:6 121:12,22 122:3 127:8 sc 2:10 scheduled 36:23 37:3 40:12 50:12 55:23 56:13 71:3 74:17 scott 33:5 34:19 36:2 scratch 47:10 85:21 screen 5:22 se 27:7 75:23 seal 131:12 search 16:15,20 16:21 17:10	30:1,13,16,20,24 31:4 43:20 87:2 91:19 92:18,19 92:21 95:11 115:17 searched 112:24 searching 30:5 second 4:16 24:3 69:5 96:19 111:10 117:25 section 23:25 24:16 103:3 104:4,6 123:20 124:8,23 125:11 125:16 126:8 secure 29:24 74:20 securing 31:19 security 31:16 32:7 84:2,17,18 see 19:14 21:10 21:20 22:6,6,7 23:25 24:9,10 25:4,22 26:24,25 28:22,23 29:9,10 31:20,21 32:19 32:20 34:21,22 58:21,22 59:2 62:7,8 63:7 66:21 70:2,3,17 70:18 94:11 97:5 98:22,23 114:15,16 116:8 117:20,21 118:9 118:10 119:7,8 120:11,12 121:15,16 122:8 122:9 123:24

126:23 127:5,15 seeing 58:8 69:13 seeking 29:15 seen 5:21 9:9 19:2 50:5,6,7 69:9 92:10 117:22 segalla 3:2 segment 103:5 segments 103:9 segregate 27:11 27:15 64:7 select 55:8 91:2 selected 55:14 55:18,21 119:25 selecting 84:9 send 31:22 57:5 77:3 90:6 94:1 108:17 sending 25:1 28:24 59:21 75:17 79:6 93:15 sends 37:9 sense 88:23 sent 15:14 28:9 28:20 32:2 39:10 57:2 80:25 81:3,19 89:25 112:19 113:11 123:6 130:11 sentence 122:3 separate 29:5,11 30:15 52:9 65:1 65:2 78:2 88:14 109:7	september 127:3 sequence 11:3 78:20 sequencing 11:6 series 104:16 service 125:11 services 7:25 21:3,4,5,9 120:7 124:3,8,9,11,12 124:13,19 125:8 set 4:16 25:3 69:5 112:19 seven 4:19 shape 64:8 sharon 12:8,10 sheet 75:25 91:6 91:7 104:10,10 108:21 113:13 121:13,18 sheets 122:5 shelf 96:6,8 111:11 shelving 111:12 sherry 73:22 100:24,25 102:22 ship 74:16 shipped 74:19 short 42:21 72:4 114:5 shorthand 131:8 shoulders 110:13 show 22:19 34:13 59:7 122:21 showed 116:9	showing 8:24 34:18 59:7 68:24 shredded 47:3,4 sic 8:9,9 side 23:24 signature 131:15 signed 18:13,17 significance 88:13 significant 86:15 86:21 similar 35:3,7 50:14 52:23 118:6 similarly 125:15 simple 75:5 simplified 79:5 single 80:25 81:2 83:1 sir 25:23 55:16 66:8 81:9 104:20 111:12 117:17 127:16 sit 48:11 site 74:19,20 83:19 115:21 sites 17:9,12 sitting 47:18 51:25 61:13 62:14 65:6 82:23 103:19 106:13,23 119:19 128:18 situation 24:25 78:6 six 4:10 16:2	size 68:3 skim 69:11 slated 37:22 38:4 56:13,24 66:4 slightly 77:22 94:19 smith 2:8 7:2 smithrobinson... 2:11 snow 15:1 solutions 1:23 2:22 3:22 somebody 32:1 80:13 93:14 110:17 somebody's 84:25 someplace 90:6 sorry 9:17,25 12:25 13:12 15:20 16:2 28:6 40:24 42:9 44:19 47:10,25 50:9 55:7 58:7 67:19 69:11 79:17 81:22 82:1 97:18 102:20 111:12 116:21 118:19 123:1,2 124:2 126:6 127:6 130:8 sort 49:21 88:6 95:19 sorted 81:7 92:22 100:15 sound 88:11

south 1:2,10 6:6 speak 10:16 34:3 109:17 120:20 speaking 120:24 specific 10:6 19:13,14 20:16 20:25 21:1,13 27:7 32:2 57:25 108:25 121:24 specifically 9:22 17:16,20,23 21:16,23 22:10 22:12 32:25 36:11 37:13 63:20 65:8 81:16,17 88:24 90:8 99:1 111:4 123:20 speculative 48:12 spelling 14:25 spend 16:9 80:13 80:18 86:10 88:9 spending 80:10 spent 10:9 16:2 18:5,7 75:17 86:6 88:23 spoke 10:24 spoken 123:10 spot 78:13 spreadsheet 4:14 39:4,8,10,22,25 43:19,21,24 50:20,22 51:4,19 52:1,4,7,9,11,18 59:12,14,18,23 59:25 60:4,6,10	60:11,23 61:2,7 62:12,24 65:7,22 66:6,16 78:1 81:18 82:24 87:18 101:11,12 102:17 119:5,9 119:15 120:2,4 121:2 128:7 spreadsheets 20:3 51:17 52:14 58:20,25 59:3 87:9,14 staff 72:15 78:7 79:15 80:5,10 82:10 83:20 93:23 99:17 100:1,6,11 102:16 105:8 111:23 113:9 stamp 123:2 stand 123:22 standard 107:23 standing 131:5 start 38:22 76:18 97:3 112:10 started 12:19 13:14 14:20 105:9 starting 62:7 124:6 starts 63:25 117:16 state 1:2 6:17,20 stated 99:16 127:11 statement 83:2 98:5,7	states 17:16 118:1 stating 25:19 status 46:13 step 29:19 steps 21:16 27:2 36:18 stick 78:15 stopped 36:4,13 36:21,24 37:4 38:23 storage 11:22 12:2 16:17,22 17:5,8 107:25 118:2,4 store 111:8 stored 63:7 64:17 70:14 74:19,20 77:4 79:11 91:5,22 92:22,23 96:2 110:9,16 111:4,7 118:7 119:5 121:2 stores 64:15 89:11 storing 17:1 straight 16:23 street 1:23 2:3,9 2:23 3:23 strike 25:8 35:21 36:5 49:10 59:22 107:3 116:13 128:11 128:23 strikes 60:15 stuck 106:19	stuff 37:21 86:8 86:24 91:5,14 125:3 subfolder 28:17 subject 26:22 34:4 70:5 71:20 128:15 129:19 subpoena 35:4 subsequently 43:5 116:8 122:4 substantive 13:1 14:10,12 suite 1:23 2:3,23 3:3,23 summary 25:1 28:14,24 summer 8:2 supervising 88:24 supervision 80:23 131:9 supervisor 77:9 supplemental 45:7 62:17 69:24 92:8 support 54:14 supposed 71:3 99:25 100:12 102:23,24 sure 23:13 39:22 42:11 76:11 108:13 110:9 123:3 swager's 13:11 swartz 73:4,5 swear 7:6

[sweger - titled]

Page 26

sweger 12:8,10 13:12,12 14:9,14 sweger's 13:13 sworn 7:10 131:7 synced 130:16 system 17:17,24 18:3 64:13 78:2 78:24 112:15 113:12	talking 51:2,16 55:13 76:2 85:12 88:15 task 93:22,24 teach 84:20 teaching 84:20 team 75:6,7 85:8 103:24 110:14 technical 72:20 technically 84:5 technician 73:24 94:1 technology 6:9 telephone 13:1 tell 61:16,23 65:13 75:19 131:7 tenants 74:14 83:16 tendency 78:15 tens 17:2 tenured 10:20 12:12,15 term 49:24 63:24 terminal 11:21 12:2,19 13:15 14:19 16:16,24 17:3,17,24 18:3 64:13,15,19 78:20 96:2 100:15,18 107:19 108:1 terms 15:15 69:25 111:21 testified 7:10 25:24	testify 119:20 testimony 8:7,17 18:16 102:12 127:18 129:10 129:25 131:6,8 131:10 thank 34:5 39:15 39:18 111:1 123:7 129:8,22 theory 71:6 thereabouts 55:22 thereof 131:11 thing 49:14 50:4 65:14 76:19 85:13 116:11 things 36:25 52:7 61:4 68:18 74:13 79:3,5 84:20 91:9,21 96:18 116:5 125:5 think 33:14 34:12 52:8 53:3 54:10 55:1,4 68:23 77:22 99:3 102:7 105:16 129:10 thinking 46:10 111:20 third 2:9 thomas 73:15 thomas's 73:16 thought 86:25 95:5,7 thousands 17:2 17:3,3 76:3 102:13	three 88:16 96:20 109:16 119:3 121:12 thursday 1:18 tiffany 3:9 tightening 110:7 tilghman 1:23 2:23 3:23 time 6:17 16:6,9 17:6 18:6 19:5 22:1 23:9,13 27:25 35:18,21 41:4 42:19,23 49:2 50:6 51:10 56:17 63:1 71:21,22 72:2,6 75:12,12,15,21 78:16 80:9,14,14 80:16,18 82:13 86:5,8,16,21 87:24 88:9,12,23 90:9 91:13 95:11 105:17 106:17 108:5,15 108:17,19 110:10 113:3 114:3,7 115:19 123:15 129:15 131:6 time's 51:13 timeline 55:16 times 64:19 75:1 title 7:23,24 12:11 13:18 60:15 73:23 titled 23:1,8 127:2
t			
t 4:1,1,7,7 131:3 131:3 tab 52:15 tabs 52:16 take 5:23 19:17 27:2 36:18 42:9 42:15 43:1 46:1 66:1 69:6 80:21 90:20 100:11 101:4,7 103:3,17 103:18,24 113:21 120:16 130:5,14 taken 1:17 6:1 8:10 21:17 42:21 72:4 111:14 114:5 131:6 takes 75:14 88:12 91:13 113:9 talk 10:19 50:19 82:15 125:3 talked 29:25 77:13 83:3 89:3 106:21			

toal 114:14 today 15:17 18:8 23:21 40:5,16,17 47:18 51:25 61:13 62:14 68:6 82:23 88:2 96:13 98:25 114:18 119:11 119:19 120:20 122:16,22 123:12 128:18 129:22 today's 10:8 129:24 told 76:3 94:10 top 15:12 25:7 26:18 60:16 97:8 118:21 127:2 topic 13:9 15:14 15:18,20 20:7 21:16,23 22:10 98:25 114:11,18 115:3,9 topics 9:13,19 10:3,7 15:24 129:18 total 16:3 47:14 75:16 80:9,10 129:25 touch 50:4 64:24 86:20 90:7 touched 40:18 88:3 tracking 121:13 121:17 tracks 78:3	transcribed 131:9 transcription 131:9 transfer 91:13 transmits 99:19 transmittal 91:7 transmitted 107:4 121:18 travel 21:6 trees 123:8 true 13:6 128:9 128:10 131:10 truly 49:23 truth 131:7,7,8 truthfully 69:13 trying 11:6 29:17,18 51:22 69:11 88:8,14 91:14 105:25 114:19 turn 21:14 23:23 50:9 58:9 69:15 98:13 101:10,16 113:17 114:10 117:14,24 126:18 turning 75:10 107:17 twice 129:9 twist 78:17 two 4:13 16:12 16:13 18:5 38:2 48:24 51:8 64:16 109:1,4,7 109:12,16 121:5 121:11 122:4	tx 2:4 type 77:25 99:23 112:11 types 29:15 48:9 76:5 u u.s. 17:5 uh 58:22 82:17 126:21 127:6 ultimately 29:23 99:18 understand 8:11 8:15 10:2 11:6 23:4 24:11 29:18 39:6 44:7 46:17 51:22 52:22 66:17 67:20 81:23 87:5 88:8,15 90:5 94:17 95:1 103:2 104:8 105:23,25 126:6 understanding 9:11 10:4 12:18 18:2 23:6 27:19 27:22,25 55:8 63:18 70:25 102:15,22 103:1 understands 25:20 understood 78:5 106:25 underwriting 13:22 89:23 93:8,9 109:19,22 unit 5:25 42:20 42:24 72:3,7	114:4,8 units 130:1 universe 122:6 unknown 17:7 71:7 updated 20:17 20:20 112:20 use 12:1 13:17 14:20 16:16 17:17 38:14,15 40:20 41:1,15 42:10 49:21 52:14 61:20 65:7 66:5 101:24 113:5 user 102:8 uses 19:3 utilize 116:10 utilized 12:18 122:6 utilizes 18:25 utilizing 12:17 v valid 63:23,24 valley 3:3 varies 76:4 80:13 86:9 vehicle 84:10 vehicles 73:9,9 84:11,13 vendor 108:11 vendors 84:9,9 venetta 72:18,19 101:3,4,4,5,7 111:2 verbal 98:5,7,10

verbally 115:18 115:20 verify 76:6,22 104:3 veritext 1:23 2:22 3:22 6:10 6:12 130:2 version 43:16 versus 6:3 vicki 73:15,16 100:23 102:23 111:3 video 5:23,25 42:19,23 51:10 51:13 72:2,6 114:3,7 130:16 videographer 3:9 5:15 6:11 7:5 42:18,22 51:9,12 72:1,5 113:24 114:2,6 129:23 videotaped 1:14 viewer 116:11 virtual 6:9 virtually 5:18 visit 120:10,14 visited 17:10 visits 83:19 voice 39:17 vs 1:7	walk 101:17 want 40:19 69:9 72:15 82:4 90:5 115:23 117:13 129:11 130:4,7 130:13 wanted 33:18 114:10 warehouse 90:3 91:15 way 43:13 44:7 57:6,7 63:7 64:8 64:12 68:1 77:5 80:17 88:11 92:20,23 96:17 100:10 103:7 104:5 113:12 we've 42:14 77:13 89:3,18 90:25 113:20 123:10 129:8 week 80:13,15 86:9,9 weeks 86:11 went 13:16 50:7 103:12 105:8 113:5 wide 84:18 william 3:9 6:10 winters 4:18 31:3,8 114:12,24 115:10,17 116:15,18,24 117:12,15,19 118:3,21,24 119:23 120:22 121:3,6,10 122:5 122:11,15	witness 4:2 5:21 7:6 8:20 9:25 14:12 27:15 28:6 30:9 33:15 34:6 35:14 39:19 40:4 45:20 48:1 49:7 53:3 56:10,21 58:4 67:20 68:16 71:24 76:10 86:18 92:17 96:25 104:9 116:20 117:5 118:15 124:1 128:2 129:20 131:10 131:12 word 9:18 20:3 28:18 58:19 work 20:2 26:21 80:22 85:1,3 99:23 100:7 103:13,25 126:10 worked 7:19 100:18 104:10 105:20 workers 70:10 working 14:18 29:7 72:11 80:6 93:14 works 72:14 74:11 wrapped 105:5 wright 30:13,17 30:23 write 77:6 94:1 94:11 104:5,8	writing 91:18 105:10 written 25:16 58:16 68:8 76:25 94:8 wrong 76:7 78:7 wrote 92:12
			x
			x 4:1,7,7 xxxxx 28:17
			y
			y 28:19 y2k 60:6,8,14 y2k10 60:16 yeah 86:2 87:7 88:7,7 96:17 113:19 114:1 124:1 130:9 year 11:16 19:6 38:9,12 39:8 40:6,21 41:1 42:2 45:24 46:8 46:15 50:11,14 53:8 54:18 55:9 55:11 57:7,9 58:6,24 63:13 65:18 68:7,8,18 71:2 75:14 76:4 77:9 78:2,16 80:10,21 87:17 88:9,15,22 102:12 105:21 105:25 115:23 127:25 years 7:22 10:22 37:25 40:13 45:22,24 52:16

[years - zzzz]

Page 29

59:4 63:2 64:4 65:1,2,23 67:14 70:10 76:24 87:19 105:19 127:19 yntema 3:2 5:1 5:14 6:25,25 14:11 27:14 28:5 30:7 33:13 33:22 34:2 35:10,13 39:14 40:3 42:9,12,16 45:19 47:21,24 49:6 50:25 51:5 53:2 56:9,19 58:3 67:18 68:15 71:25 76:8 81:21 82:1 82:4 86:17 88:18 92:15 96:24 101:14 114:1 118:13 123:1,6,25 128:1 129:21 130:14 yup 66:23
z
zoom 1:17 zzzz 28:20

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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COVIL CORPORATION – PRE-TRIAL REPORT

GARY JAY MOSS

Trial Date: December 6, 2021 (second of six on trial calendar)

Judge Assigned: The Honorable Jean Hoefer Toal

Court Docket No.: 2020-CP-40-02692 **Venue:** Richland County, SC Court of Common Pleas

Claim Professional: Jerry Begley, Steve Fries, and Irene Muse (Travelers); Boyd Wright (Penn National); Troy Chute (Covil QSF)

This lawsuit contains both liability and alter-ego claims. The alter-ego claims allege that from or after 1991, Covil's insurers and previous counsel acted as the company's alter ego. As defense counsel retained to represent Covil, we are addressing in this report only the asbestos defense and are not commenting on or evaluating the effect of the alter-ego claims.

A. INSURED:

Named Insured: Covil Corporation

Insured Defendant(s): Covil Corporation

Name and Phone of Authorized Contact: Peter Protopapas, (803) 978-6111

B. PLAINTIFF

Name: Joshua J. Moss, as Successor Personal Representative of the Estate of Gary Jay Moss

Age/Date of Birth/Date of Death/SSN:

Injured Decedent: Gary Jay Moss was born on [REDACTED], and was [REDACTED] years old when he died on [REDACTED]. His Social Security number is [REDACTED].

Spouse: N/A

Male/Female: Male

Married (Y/N): N (divorced)

Decedent's Address: [REDACTED], SC 29341

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 9/27/2021

Number of dependents and ages for each: N/A

Highest Level of Education: High school diploma (1966)

Medicare Information: Unknown at this time

Previous lawsuits: Mr. Moss was a plaintiff in a multi-district litigation docket for his asbestosis diagnosis. He was deposed in that matter on April 6, 2010. He has settled two workers' compensation claims against Duke Power (one for his asbestosis diagnosis, and one for his mesothelioma diagnosis).

C. OCCURRENCE

Date of Occurrence: Primary exposure: 1970; potential take-home exposure: pre-1966

Length of Occurrence: Primary exposure: 1970–2015; potential take-home exposure: 1948–1966

Location of Occurrence:

Mr. Moss worked for Daniel Construction at the Fiber Industries plants in Shelby, North Carolina, and Greenville, South Carolina, from July 1970 to 1979. He worked primarily as an insulator for Daniel. He worked for Duke Power from 1979 to 2015.

Plaintiff also alleges that Mr. Moss was exposed from his mother's work at an unidentified Monsanto plant, and from his father, JC Moss's, work at the Limestone Manufacturing Plant in Gaffney, South Carolina. Plaintiff does not provide information about the time periods for these alleged take-home exposures. Mr. Moss likely moved out of his parents' house when he joined the military in late 1966.

Mr. Moss's work history is summarized below.

1. Lowenstein Corporation
 - a. Limestone Manufacturing Plant – Gaffney, SC (3Q 1965, 2Q–3Q 1966). Mr. Moss worked part-time at this mill during the summers. He swept floors and helped tear down machines.¹
2. United States Air Force (Dec. 1966–July 1970). Mr. Moss received training in teletype communications at the Shepherd Air Force Base in Texas. He was assigned to Korea for thirteen months, to California for a year, and then to Thailand for a year.

¹ There are no known Covil connections to this plant.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 9/27/2021

3. Daniel Construction
 - a. Fiber Industries – Shelby, NC (July 1970–3Q 1972, 2Q 1973–1979)
 - b. Fiber Industries – Greenville, SC (3–4 months within dates listed above)
4. Thermo Kinetics, Inc. (4Q 1972–1Q 1973) (jobsite unknown)
5. Starr Davis Co. of South Carolina (3Q 1973) (jobsite unknown)
6. Duke Energy
 - a. Cherokee Nuclear Station – Gaffney, SC (1979–1980)²
7. L. J. Shuster Co. (1980–1981) (jobsite unknown)
8. Yeargin Inc. (1980–1981) (jobsite unknown)
9. Duke Energy (1981–2015)
 - a. Catawba Nuclear Station – York, SC (Nov. 1981–1985)
 - b. Oconee Nuclear Station – Seneca, SC (1985–1992)
 - c. McGuire Nuclear Station – Cowans Ford, NC (1992–2010 or later)
 - d. Mr. Moss also visited multiple Duke Power fossil plants for routine maintenance between 1985 and 2010 or later, including the Cliffside Steam Plant, the Riverbend Steam Plant, the Lee Steam Plant, the Belews Creek Steam Station, and the Dan River Steam Plant.³

Below is a summary of the evidence that links Covil to the jobsites listed above at which Plaintiff alleges that Mr. Moss was exposed to asbestos.

² This is an uncompleted energy project that Duke abandoned. There are no known Covil connections to this site.

³ Plaintiff's discovery responses list all Duke Power plants in North Carolina and South Carolina as jobsites for Mr. Moss. This report analyzes only the sites that Mr. Moss testified to working at.

I. Mr. Moss's Work for Daniel Construction

A. Fiber Industries Plant (Earl/Shelby, NC)

Mr. Moss's Work

Mr. Moss's primary work for Daniel Construction was at the Fiber Industries plant in Shelby, North Carolina. He started working at this plant in July 1970, and stayed there through 1979, other than a few months during that period when he went to the Greenville plant. He started off as a rod buster, performing iron work. Mr. Moss testified that he was not exposed to asbestos in his role as a rod buster. After a few months, around October or November 1970, he became an insulator, and stayed in that role for his entire employment with Daniel.

Mr. Moss testified that as an insulator, he worked all over the Shelby plant. He performed some new-construction work, but the majority of his work was maintenance work, which he described as "tearing off insulation off of one thing, putting it on another one." He did not recall the names of specific buildings that he worked on at the plant. The new-construction work involved three or four large additions to the plant. He estimated that 10–15% of his work was performed outside on the roofs of buildings. The outside work involved duct work.

Mr. Moss recalled using Kaylo and Carey Temp insulation at the plant. The insulators usually cut their own insulation (i.e., it was not pre-cut). Mr. Moss insulated a variety of products, including Dow polymer-heating boxes and pipes. He used fiberglass insulation to insulate duct systems. Mr. Moss estimated that he removed insulation "off and on" for eight years, and he never wore a mask or other protective gear while performing that work. He testified that not all insulation that he used while employed by Daniel contained asbestos. When asked whether Fiber Industries employees also removed and installed insulation at the plant, Mr. Moss said, "No, we – we done all of it." He did not identify the names of any outside contractors, but he guessed that Fiber Industries likely had some of their own maintenance employees at the plant. He testified that those employees would have worked only on minor repair jobs. He believes that his asbestos exposures at the plant were a result of his direct work and that he was not exposed as a bystander.

Covil Connections

Daniel Construction began construction on this plant in 1959. Records show that Covil supplied insulation materials to the plant as early as December 1960, and that Daniel ordered insulation materials from Covil for the plant in at least 1960, 1963, and 1964. Former Covil employee Frank Schneider testified that he delivered material from Covil to Daniel at the plant several times between 1964 and 1968. He recalled Daniel crews insulating while Covil provided the insulation material. Former Daniel employees Steve Holbrooks and Lewis Childers testified that Covil also provided insulation materials to the plant in the 1970s. Corporate records of "major material contracts" created in the 1980s show a \$150,000 contract to supply piping and insulation to the plant.

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ATTORNEY WORK PRODUCT

Last revised 9/27/2021

Documentary and deposition text offer some evidence that Covil provided insulation contracting to the plant. A Covil personnel record places one employee on site as of May 1969. Former contractor Eddie Ford testified to working at this plant for Covil in 1966. Deponents Lewis Childers, Harley Neelands, and James Michael Hill also testified to certain contracting there for Covil in the 1970s. Former Daniel employee Steven Horton also testified to seeing Covil insulators on site at the plant between 1970 and 1976. Mr. Horton's testimony, however, is inconsistent and lacks credibility.

Former Covil employee Noral Belvin, who served as branch manager for the Greensboro office from June 1969 until 1973, said in an interview with Ellis & Winters that Covil's work at the Fiber Industries plant in Shelby was limited to air-conditioning units on the roof of the building, as a subcontractor for AC Corporation. Air-conditioning work involved primarily cold lines, which would not have contained asbestos.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

B. Fiber Industries Plant (Greenville, SC)

Mr. Moss worked at the Fiber Industries plant in Greenville, South Carolina, for three to four months as an insulator. He worked on new construction at the plant, for which he installed new insulation. He thinks that the Daniel crews used the same insulation at this plant that they used at the Shelby plant.

Covil Connections

Covil historical records show that Covil performed certain insulation work and supplied materials during the 1960s and 1970s for this facility. Records retrieved from the law office of Gallivan White & Boyd (primarily Owens-Corning invoices) indicate that Covil supplied Kaylo material to Daniel Construction at this facility in 1964 and 1967. Some of these invoices indicate a "ship to" Covil Insulation in care of Daniel Construction. It is unclear whether these invoices suggest that Covil subcontracted with Daniel to provide insulation labor at the facility, in addition to merely supplying materials.

Other deposition testimony suggests that Covil conducted business (material sales and contracting) with Fiber Industries at Greenville as early as the 1960s.

Personnel records place Covil contractors at this facility in March 1969, October 1971, and January 1974. A Covil communication with Daniel Construction from December 1979 also confirms that Covil contracted with Daniel to provide insulation material and contracting services for the facility earlier that year.

In an earlier case, former Covil employee Richard Howell testified that he worked for Covil at Fiber Industries in Greenville in 1964/1965. Mr. Howell installed insulation with Covil for new construction through Daniel Construction at this worksite. He worked there for

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

approximately two months. He estimated that approximately 100 Covil employees were there at the time. He thought that Covil supplied the insulation materials. Mr. Howell recalled using Kaylo insulation “quite a bit” while working for Covil at this plant. He remembered installing and removing Kaylo insulation. He remembered seeing the Kaylo product name on the boxes. However, he admitted that he never saw the name on the actual product itself. He thought that he was exposed to asbestos by working with Kaylo and blue mud there. He also recalled installing fiberglass on the roof, as well as air washers, chicken wire, and finish mud. He recalled using Kaylo on the steam pipes around the air washers.

In a December 2019 interview with former Covil executive Charles McWhorter, Mr. McWhorter said that Covil performed duct work involving spray insulation on the roof of the Fiber Industries plant in Greenville.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

II. Mr. Moss’s Work at Duke Power Plants

A. Duke Power Catawba Nuclear Station (York/Newport, SC)

Mr. Moss worked as an MDE welding inspector at Duke Power’s Catawba Nuclear Station from November 1981 to 1985. As a welding inspector, Mr. Moss checked for problems in the weld metal when workers were tying together pipes and vessels. He testified that he was not in close proximity to workers tearing out old insulation or other materials. He testified that while he was around “a lot of grinding and that kind of work,” he does not know whether the materials that he was around as a bystander contained asbestos. He was around dust at the plant, but he did not know whether the dust contained asbestos.

Construction on Duke Power’s Catawba Nuclear Station began in July 1974. Unit One began commercial operation in 1985, and Unit Two went into operation in 1986. By the time that Mr. Moss worked at the plant in between 1981 and 1985, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

As explained below, Covil provided insulation labor and supplied materials for the construction of this plant in the late 1970s and early 1980s.

Covil connections

Significant documentary and deposition evidence shows that Covil provided insulation labor and materials for construction of the Catawba Nuclear Plant, at least in the early 1980s, and to a certain degree in the late 1970s. Records produced by Duke Power outline the process by which Covil was awarded in 1979 the material and labor contract to insulate Catawba Units One and Two. Invoices and purchase orders make clear that Covil stayed on the job until 1983, then provided material for the facility in 1985 and 1986.

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

Covil records corroborate Duke Power's documents. Resumes of work reference insulation and lagging projects at Catawba for completion in 1982 and 1985. Other handwritten records reference a variety of "Time and Materials" projects in-progress for the facility in 1980 and 1981. Covil personnel records further demonstrate a substantial Covil labor force at the facility starting as early as 1979 until 1983.

Several plant workers testified that Catawba was planned as an asbestos-free facility. However, testimony and records from product vendors Fisher Controls and Crosby Valves confirm that the facility was built with at least some asbestos-containing valve and gasket materials. An internal Duke Power memo retrieved from the litigation files of Gallivan White & Boyd also indicates that by 1995, Duke Power had tested the plant and found asbestos-containing materials in piping insulation around valves, elbows, and tee joints at the plant.

Duke Power records reveal that Covil planned for asbestos-free Owens-Corning calcium silicate insulation for the facility. However, testimony such as from former Covil employee Cornelius Ross alleges that later testing revealed asbestos-containing insulation. Mr. Ross did not specify if he was referring to asbestos-containing insulation as opposed to accessory products such as asbestos cloth or paper. Former Covil employees Dwaine Waters and Norman Nolen further alleged that Covil knowingly supplied asbestos-containing insulation to build the plant. Machen Lee Carpenter, also from Covil, testified that Covil supplied the insulation materials at the Catawba plant (whether asbestos-containing or otherwise).

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

B. Duke Power Oconee Nuclear Station (Seneca, SC)

Mr. Moss worked at this site as an MDE welding inspector from 1985 to 1992. He testified that because Oconee was an old plant, he and other workers "knew there was asbestos all over" the plant. "They had to get it tested and try to keep it down as much as they [could]." He did not work at the plant while asbestos was being removed, and he conceded that Duke had elaborate protocols for removing asbestos from its plants. He testified that he "probably could have been" exposed to asbestos at this plant because it was "just a dusty old plant in some areas."

Duke Power broke ground on the Oconee Nuclear Station in 1967 and began operating Unit One in 1973. Units Two and Three became operational in 1974. *Power Plants*, Duke Energy, <https://www.duke-energy.com/our-company/about-us/power-plants> (last visited Apr. 20, 2020). The plant is located eight miles north of Seneca, South Carolina. By the time that Mr. Moss worked at the plant in 1985, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Production records make clear that Covil performed insulation contracting and supplied materials for construction at the Oconee facility throughout much of the 1970s. After construction of Units One through Three ended around 1975, Covil sprayed monotherm

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

insulation and repaired insulation at the plant. Covil also continued to provide materials to the plant off and on until at least 1987, and again in the early 1990s.

Duke Power records show that Covil won a bid in 1969 to provide labor and materials for Oconee Nuclear Plant Units One through Three. Numerous business communications between Covil and Duke Power and/or Mill-Power Supply between 1971 and 1974 track extra work and labor charges related to that job. Owens-Corning Fiberglas invoices retrieved from the law firm Gallivan White & Boyd further document Covil's material sales of Kaylo insulation during the 1970 to 1972 time period. Additional records show that Covil provided materials and labor for other projects in 1975 and 1976. Duke Power records also show material sales from 1976 to 1977, 1980, 1983, 1984, and 1985 to 1987.

Multiple Covil records, including resumes of work and contractor qualification statements, make note of at least one contract with Duke for this facility amounting to more than \$3 million. Numerous personnel records place Covil at Oconee Nuclear from 1970 to 1976 and between 1987 and 1988. Invoices also show that Covil provided (asbestos-free) insulation to the facility in 1990 and 1991.

Significant deposition testimony corroborates that Covil worked at Oconee in the early 1970s. The company's founder, Palmer Covil, testified that Covil installed the insulation in the early 1970s at Oconee, a project that took seven years. Former Covil employees, including David Garland and Machen Carpenter, recalled contracting at the Oconee facility during that period. Machen Carpenter in particular recalled up to 600 Covil crew members at one time.

Former Duke employees testified to similar details. For example, deponent James Freeman recalled that Covil insulated Unit One through Unit Three at the site.

Palmer Covil also explained that Covil provided insulation materials during construction of Oconee, some of which were ordered through North Brothers. In a December 2019 interview with former executive Charles McWhorter, Mr. McWhorter described Covil sending 100 railcars of material to the site. He estimated that half of the original insulation installed at the site contained asbestos.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

C. Duke Power McGuire Nuclear Plant (Cowans Ford, NC)

Mr. Moss worked at this site as an MDE welding inspector from 1992 until at least 2010, at the time of his deposition. He could not say for sure whether he was exposed to asbestos at this plant, but he referenced the elaborate protocols that Duke had in place for removing asbestos.

The McGuire Nuclear Station was built in 1963 by damming the Catawba River with Cowans Ford Hydroelectric Station. Unit 1 at McGuire Nuclear began commercial operation in

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

1981, and Unit 2 began operating in 1984. By the time that Mr. Moss worked at the plant in 1992, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Substantial evidence from various production records demonstrates that Covil sold material and installed insulation for Duke Power at the McGuire Nuclear Station from at least the mid-1970s to the 1980s. For example, Duke Power records demonstrate that Covil insulated and provided materials for Units One and Two at the plant starting in 1974. These records show continuous insulation projects until at least 1979, and related work from 1980 to 1983. Pricing sheets from Owens-Corning Fiberglas demonstrate that Covil bid to provide asbestos-free calcium silicate insulation at McGuire as early as 1974.

Several Covil records, including resumes of work, reference a \$5 million project for thermal insulation and lagging at the McGuire Station for completion in 1982. Insurance documents and Covil records of Work in Progress for time-and-material jobs also suggest multiple Covil projects at the McGuire site in the 1979 to 1981 timeframe. Numerous Covil personnel records also place company insulators onsite between 1975 and 1984 (most between 1978 and 1982).

Later records also show that Covil sold material for the plant in the mid-1980s as well as in 1990. Records produced by Duke Power demonstrate that Covil provided insulation materials in 1985 and 1986. These records include purchase orders expressly requesting asbestos-free Kaylo-10. Invoices to Duke Power for McGuire also indicate sale of pipe covering and other insulation material in 1990.

Several former Covil employees testified to working at the McGuire plant as insulators for Covil. In addition, deponents including Dwaine Waters, James Michael Hill, and Cornelius Ross testified that Covil removed insulation from asbestos-free boxes at McGuire and replaced it with asbestos-containing insulation for installment there.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

D. Duke Power Marshall Steam Station (Terrell, NC)

Mr. Moss testified that he visited this plant while he was based at the Oconee Nuclear Station from 1985 to 1992, and while he was based at the McGuire Nuclear Plant from 1992 to 2010. His crew would perform maintenance checks on this and other fossil plants.

Duke Energy's Marshall Steam Station is a coal-fired facility that began operations in 1965. It currently operates four units and is located in Catawba County, North Carolina. *Marshall Steam Station*, Duke Energy, <https://www.duke-energy.com/our-company/about-us/power-plants/marshall-steam-station> (last visited Jan. 9, 2020). The four units began operations as follows: 1) Unit One in 1965, 2) Unit Two in 1966, 3) Unit Three in 1969, and 4) Unit Four in 1970. By the time that Mr. Moss worked at or visited the plant in 1985 or later,

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Covil and Duke Power records demonstrate that Covil conducted insulation contracting at the Marshall Steam Station at least between 1972 and 1973. Personnel records place Covil contractors at the site during that time. A Duke Power list of "Major Contracts for Construction" documents a contract in-progress with Covil for insulation of Units One and Four in October 1972. A Covil record from January 1973 further corroborates that Covil retained powerhouse-related jobs at the site, including for precipitator roof work and other "cost plus" assignments. A letter produced by Duke Power indicates that at least Covil provided material and labor here in the early 1970s to insulate precipitators with asbestos-free insulation.

Deposition testimony also reflects Covil potentially contracting at Marshall during other years. Former Covil employee Cornelius Ross testified to working for Covil at the Marshall Steam plant for Covil sometime during his employment between 1974 and 1986. Former Duke employee Richard Carpenter testified that Covil contractors worked on site for nine months during the 1963 to 1965 time period. Significant correspondence between Duke and North Brothers, however, shows that North Brothers held the insulation contract at the plant between 1963 and 1967 for Units 1 and 2. North Brothers both supplied and installed insulation during the initial construction of the plant. Porter-Hayden won the contract to insulate Units 3 and 4 in 1967.

In addition to contracting, Covil also sold materials to the Marshall Steam Station. Records produced by Duke Power show material sales in 1976 and 1978, and in the early 1980s. A record of material sales created sometime between 1984 and 1989 also lists this plant as a Covil customer. Longtime Covil employee Machen Lee Carpenter testified that Covil supplied insulation to all Duke nuclear and fossil fuel plants. Former Duke employee Thomas Simpson also testified that he saw the Covil name on insulation boxes at this worksite.

Evidence also makes clear that Daniel Construction conducted business at the Marshall Steam Station in the 1970s and 80s.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

E. Duke Power Belews Creek Steam Station (Walnut Cove, NC)

Mr. Moss testified that he visited this plant while he was based at the Oconee Nuclear Station from 1985 to 1992, and while he was based at the McGuire Nuclear Plant from 1992 to 2010. His crew would perform maintenance checks on this and other fossil plants.

The Belews Creek Steam Station is a two-unit coal- and natural gas-fired generating facility that began operations in 1974. Construction for the plant began in the early 1970s. By the time that Mr. Moss worked at or visited the plant in 1985 or later, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials. Moreover,

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

asbestos-abatement projects performed by Duke Power at Belews Creek between 1985 and 1990 confirm that most of the bulk samples of insulation analyzed contained no asbestos. These abatement projects were performed under the regulatory scrutiny of the N.C. Department of Environmental Quality. Given that the abatement projects were performed after provision of notice to NCDENR, the abatements almost certainly were performed under controlled conditions.

Covil performed contract insulation work at Duke Power Belews Creek in the 1970s and provided materials to Belews Creek in the 1970s and '80s. It appears that during the 1970s, Covil contracted directly with Duke Power for labor and materials for all non-turbine-related insulation needs on Units One and Two. As a change order, Covil then contracted with Duke Power to provide labor for the turbine systems supplied by Westinghouse. Separately, Covil supplied the thermal insulation materials for the turbine systems to Westinghouse for inclusion within the scope of the Westinghouse contract with Duke Power.

Significant documentation shows that Covil completed a \$4 million insulation and lagging project in 1976 at Belews Creek. Duke Power records clarify that Covil won a bid in 1972 to provide labor and materials to insulate Units One and Two at this facility. Duke Power revised specifications that year, and Covil agreed to supply asbestos-free calcium silicate heat insulation. Corporate employment records place Covil workers at the station primarily from 1973 to 1976. One record places Covil onsite as late as 1978.

Invoices also indicate that during this time, Covil ordered materials for the station from prominent supply companies, including Armstrong, Owens-Corning, and Rock Wool. Most invoices for the project from Owens-Corning dating back to July 1973 indicate asbestos-free insulation. A letter from Owens-Corning to Duke Power also certified that the company would produce 100 percent asbestos-free pipe insulation by January 1973. However, one bad document for Covil shows a shipment of asbestos-containing calcium silicate to Belews Creek in 1974.

Duke Power records also show that Covil provided additional labor and materials for one or two projects onsite in 1977. Covil also sold material for the site from 1975 to 1976 and 1985 to 1987.

Plaintiff Kenneth McDaniel (*McDaniel* case), a Duke employee at Belews Creek from 1974 to 2005, testified that Covil provided all of the original insulation and insulation contracting to the Belews Creek plant. He also testified to seeing Covil insulators at outages and for other maintenance purposes during his career. Corporate representative for CBS Corporation, Doug Ware, further testified that Westinghouse specified almost entirely asbestos-free products to Covil for power generator Units One and Two (with the exception of asbestos cloth, paper, and yarn). Mr. Ware presented evidence of Westinghouse management letters specifying all asbestos-free insulation products as early as March 1973. However, Mr. Ware could not provide written evidence that Covil received these instructions.

The exposure report that we have prepared for this site includes a complete list of the

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

records and deposition testimony that link Covil to this site.

F. Duke Power Riverbend Steam Station (Mt. Holly, NC)

Mr. Moss testified that he visited this plant while he was based at the Oconee Nuclear Station from 1985 to 1992, and while he was based at the McGuire Nuclear Plant from 1992 to 2010. His crew would perform maintenance checks on this and other fossil plants.

The Duke Power Riverbend Steam Station first became operational in 1929, expanding over the years to a total of four gas-fired combustion turbine units. The facility was built in Gaston County, NC, and is now retired. By the time that Mr. Moss worked at or visited the plant in 1985 or later, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Only a few production records demonstrate Covil business at the Duke Riverbend facility. Various copies of a Covil record of "Material Sales Contracts for Large Industrial Plants," created sometime between 1984 and 1989, list the Riverbend Station. Records produced by Duke Power confirm material sales to this facility in 1985 and 1986. An undated list of Covil customer names also includes an entry for Duke Power at Riverbend. A Duke purchase order and a Covil invoice from July 1990 also demonstrate Covil insulation sales for the Riverbend site.

Former Covil employees Machen Carpenter and Clayton Coggins both testified to Covil conducting insulation contracting at "almost all" or primarily all Duke Power plants. Mr. Carpenter also testified to Covil distributing insulation to Duke Power plants. However, former Duke employee Bobby Blankenship testified that Reid-Hayden was the insulation contractor and distributor during his time at Riverbend in the 1950s.

Deposition testimony from Daniel Construction's corporate representative Don Buck and related records show that Daniel contracted at this plant for projects in the 1970s and '80s.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

G. Duke Power Dan River Steam Station (Eden, NC)

Mr. Moss testified that he visited this plant while he was based at the Oconee Nuclear Station from 1985 to 1992, and while he was based at the McGuire Nuclear Plant from 1992 to 2010. His crew would perform maintenance checks on this and other fossil plants.

Duke Power's Dan River Steam Station began construction in 1948 with Units One and Two in operation by 1950. The facility added Unit Three in 1955. Duke Energy has since retired the plant and replaced it with a new natural gas facility. *Dan River Steam Station*, Duke Energy, <https://www.duke-energy.com/our-company/about-us/power-plants/dan-river-steam-station> (last visited Mar. 12, 2020). By the time that Mr. Moss worked at or visited the plant in

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 9/27/2021

1985 or later, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Corporate records indicate that Covil Corporation sold material and conducted certain contracting services at the Dan River Plant. A Covil record of “Material Sales Contracts for Large Industrial Plants” (created between 1984 and 1989) lists a contract with a Duke Power fossil fuel plant in Eden. Invoices and purchase orders produced by Duke Power confirm such material sales in 1985 and 1986. Personnel records also point to certain contract work in 1971 and 1987. Other personnel records that reference work in Eden or at “Dan River” could point to further contract work at this facility, but do not provide specificity to confirm.

Deposition testimony from former Covil employees and Daniel Construction’s corporate representative Don Buck could suggest broader involvement by Covil at the plant. Former Covil employee Machen Lee Carpenter testified that Covil performed virtually all the insulation work in the Duke Power nuclear plants and primarily all at Duke fossil plants. Former Covil employees Hershel Jones, Jerry Lee Hill, and his brother James Michael Hill recalled contracting at the plant possibly as early as the late 1960s to the mid-1980s. Mr. Buck also testified to Covil being the exclusive insulation contractor to Duke Power facilities at one time.

Mr. Buck’s deposition also makes clear that Daniel Construction maintained a substantive presence in construction and maintenance at Dan River and other Duke Power facilities in the 1970s and ‘80s.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

H. Duke Power Lee Steam Station (Belton/Pelzer, SC)

Mr. Moss testified that he visited this plant while he was based at the Oconee Nuclear Station from 1985 to 1992. His crew would perform maintenance checks on this and other fossil plants.

The Duke Power Lee Steam Station began as a coal-fired steam station in the 1950s or 1960s. Duke purchased three combustion turbine units for the plant from Westinghouse in 1967. Two of those units were retired in 2014 and replaced, another converted to natural gas. Today, the station operates as a combined-cycle natural gas plant. *W.S. Lee Station*, Duke Energy, <https://www.duke-energy.com/our-company/about-us/power-plants/w-s-lee-station> (last visited Mar. 10, 2020). By the time that Mr. Moss worked at or visited the plant in 1985 or later, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Covil conducted business with Duke Power at the Lee Steam facility by providing materials, and at least some contracting services. Duke Power records indicate Covil’s sale of heat insulation materials for this facility as early as 1966. Covil listed Lee Steam Station as one of its “Tax Exempt Jobs” in July 1974. Corporate records created sometime between 1984 and

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

1989 show that Covil provided material to the plant, among other Duke facilities. Covil invoices and related materials produced by Duke Power also indicate material sales for this facility in 1975, 1977, 1981, 1985, and 1986. Purchase orders and other records also show that Covil provided materials to the plant in the early 1990s.

Evidence suggests that Covil provided a certain degree of contracting services to the site. Personnel records show Covil as a contractor at the Lee Plant in 1973. Former Covil employee Dwaine Waters also testified to working there for Covil for two days in 1973.

Deposition testimony from former Covil employee Machen Lee Carpenter could suggest broader involvement by Covil at the plant. Mr. Carpenter testified that Covil had supplied or installed products for the Lee Steam Station. Mr. Carpenter also testified that Covil installed virtually all the insulation at Duke Power nuclear plants and primarily all Duke Power fossil fuel plants.

Corporate representative for Daniel Construction, Don Buck, also recalled that Daniel used both Covil and Starr Davis to supply insulation for Daniel jobs in North and South Carolina. Exhibits to Mr. Buck's deposition show Daniel's significant presence at the Lee Station and other Duke facilities in the 1970s and '80s. Mr. Buck also testified to Covil being the exclusive insulation contractor to Duke Power facilities at one time.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

I. Duke Power Cliffside Steam Station (Cliffside, NC)

Mr. Moss testified that he visited this plant on five or six occasions while he was based at the Oconee Nuclear Station from 1985 to 1992, and while he was based at the McGuire Nuclear Plant from 1992 to 2010. His crew would perform maintenance checks on this and other fossil plants.

Duke Power's Cliffside Steam Plant was constructed in 1939. Its first four units were retired in 2011. However, Unit Five—built in 1972—continues operations following two upgrades in 2002 and 2010. Duke also constructed Unit Six in 2012. *Rogers Energy Complex*, Duke Energy, <https://www.duke-energy.com/our-company/about-us/power-plants/rogers-energy-complex> (last visited Mar. 17, 2020). By the time that Mr. Moss worked at or visited the plant in 1985 or later, Duke Power had elaborate safety procedures in place for any handling of asbestos-containing materials.

Documentary records and testimony provide evidence of Covil insulation contracting and material sales at the Cliffside Station. These point to contract work primarily in 1971 and 1972. A Duke Power record further confirms that Covil won the bid in 1972 to provide labor (only) to insulate the turbine for Cliffside Unit Five. Covil resumes of work list a \$650,000 contract to perform insulation and lagging at the Cliffside Plant, complete in 1973. Personnel records corroborate these facts, showing Covil contractors at the plant in 1971 and 1972. Certain of

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

these records specifically mention work on Unit Five, others for Units One and Two. Records retrieved from the litigation files of Gallivan White & Boyd indicate that Covil provided Owens-Corning Fiberglas material for the facility those two years.

With regard to material sales, an undated Covil record created sometime between 1984 and 1989 lists Cliffside among venues for “Material Sales Contracts for Large Industrial Plants.” Invoices and purchase orders produced by Duke Power make clear that Covil provided certain materials in 1976, 1985, and 1986. Covil records also show material sales to Duke Power for Cliffside in 1990.

One former Covil employee testified to contracting at this facility as early as 1969. Additionally, at least three former Covil employees (Hershel Jones, David Garland, and Cornelius Ross) testified to insulating parts of this facility with asbestos-containing insulation in the 1970s (one as late as 1974). Former Covil employee Machen Carpenter also testified that if there were asbestos-containing materials at the Cliffside plant, Covil would have supplied them. Mr. Carpenter further attested to 1972 invoices showing Covil sales of certain asbestos-containing cloth there.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

III. Take-Home Exposure

Plaintiff also claims that Mr. Moss was exposed to asbestos by his father, who worked as a doffer at the Limestone Manufacturing plant in Gaffney, South Carolina, and by his mother, who worked as a pipefitter at an unidentified Monsanto plant.⁴ Both of Mr. Moss’s parents are deceased, and Plaintiff has provided no time period for Mr. Moss’s alleged take-home exposures. Mr. Moss most likely lived in the family home until late 1966, when he left to join the service.

In 2010, Mr. Moss testified that he has no reason to believe that he was exposed to asbestos through contact with his father when he worked at the Limestone plant. We have found no Covil connections to this plant.

Mr. Moss did not testify about his mother’s work. He testified that she died of lung cancer at the age of 89, but he also testified that she smoked cigarettes for at least thirty years.

In sum, we do not have adequate information to evaluate Plaintiff’s allegations of take-home-exposure, particularly from Mr. Moss’s mother.

⁴ Plaintiff does not provide even a city for this Monsanto plant. We know from our research in other cases that there are multiple Monsanto plants in South Carolina, including plants in Blacksburg, Orangeburg, Greenwood, and Moore.

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

D. DIAGNOSIS

Asbestos-Related Disease: Mesothelioma (pleural)

Date of Diagnosis: February 21, 2020

Doctor Making Diagnosis: Dr. Benjamin Cohen, Wake Forest Baptist Health
(Winston-Salem, NC)

Defendant's Medical Review and/or Confirmation: In August 2021, the Court granted defendant Johnson & Johnson's request for a division of Mr. Moss's lung tissue. The Court appointed a neutral pathologist to collect the samples and perform a tissue digestion. Once the digestion has been performed, experts for Johnson & Johnson and Plaintiff are to exchange digestion reports. Those reports have not yet been served.

Defendant's Experts: Covil has retained certified industrial hygienist Dr. Earl Gregory. Covil has also co-retained Dr. Tim Oury for purposes of confirming Mr. Moss's medical diagnosis.

E. LITIGATION

Suit Name: Joshua J. Moss, as Successor Personal Representative of the Estate of Gary Jay Moss v. Covil Corporation

Plaintiff's Attorneys and Phone: Trey Branham
Jonathan Holder
Dean Omar Branham & Shirley, LLP
(214) 722-5990

Theile McVey
Kassel McVey, Attorneys at Law
(803) 256-4242

**Co-defendant(s) / Counter or Cross-Defendant(s) / Third Party Defendant(s)
(excludes settled and dismissed parties):**

Premises, Contractor, or Insulation Defendants*	Product Defendants*
• 4520 Corp., Inc. • Ablest Inc. • AECOM Energy & Construction, Inc. • Bahnson, Inc. • Bayer Corporation	• Air & Liquid Systems Corp. • Anchor Darling Valve Company • Armstrong International, Inc. • Carboline Company • Circor Instrumentation Technologies, Inc.

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ATTORNEY WORK PRODUCT

Last revised 9/27/2021

• Bechtel Corp. / Sequoia Ventures, Inc. • Bonitz, Inc. • Covil Corporation • Daniel International Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; • Fluor Enterprises, Inc. • Great Barrier Insulation Co., Inc. • International Paper Company • J & L Insulation, Inc. • Presnell Insulation, Inc. • Reynolds American, Inc. • R.J. Reynolds Tobacco Company • Southern Insulation, Inc. • Starr Davis Company, Inc. / Starr Davis Company of S.C., Inc. • Tutor Perini Corporation	• Crosby Valve, LLC • Fisher Controls International LLC • Flowserve US Inc. • Foster Wheeler Energy Corporation • Gardner Denver, Inc. • General Electric Company • Goodyear Tire & Rubber Co. • Goulds Pumps, Inc. • Greene, Tweed & Co., Inc. • Grinnell LLC • Hajoca Corporation • IMO Industries, Inc. • ITT, LLC • John Crane Inc. • Johnson & Johnson / Johnson & Johnson Consumer, Inc. • Morse Tec LLC • Research-Cottrell, Inc. • Spirax Sarco, Inc. • United Conveyor Corporation • ViacomCBS Inc. • Viking Pump, Inc. • Weir Valves & Controls USA, Inc. • Zurn Industries, LLC

*Based on allegations and discovery to date.

United States Fidelity & Guaranty Co. is the only remaining alter-ego defendant.

DISCOVERY ACTIVITY

- Depositions completed
 - 02/17/2021: Yuba Heat 30(b)(6)
 - 05/21/2021: Arrowood Indemnity 30(b)(6)
 - 09/20/2021: Foster Wheeler 30(b)(6)
- Depositions noticed for next 30 days
 - 10/07/2021: Bechtel / Sequoia Ventures 30(b)(6)
 - 10/13/2021: Viking Pump 30(b)(6)
 - 10/15/2021: Fisher Controls 30(b)(6)
 - 10/15/2021: Daniel Construction 30(b)(6)
 - 10/19/2021: Crosby Valve 30(b)(6)
 - 10/20/2021: Morse Tec 30(b)(6)
 - 10/20/2021: Flowserve US 30(b)(6)

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

ATTORNEY WORK PRODUCT

Last revised 9/27/2021

- 10/21/2021: Carboline Co. 30(b)(6)
- 10/21/2021: United Conveyer 30(b)(6)
- 10/21/2021: Gardner Denver 30(b)(6)
- 10/22/2021: 4520 Corp. 30(b)(6)
- 10/29/2021: Research Cottrell 30(b)(6)
- 11/02/2021: John Crane 30(b)(6)
- 11/02/2021: Spirax Sarco 30(b)(6)
- Hearings attended
 - N/A
- Hearings noticed
 - N/A
- Motions filed
 - N/A
- Motions to be filed
 - Covil anticipates filing a motion for summary judgment and motions in limine.
- Mediation scheduled
 - Mediation has not yet been scheduled. The deadline to mediate all cases for the December trial block is 11/5/2021.
- Trial notice/trial date
 - 12/6/2021 (2 of 6 on trial calendar)

Plaintiff's Theory of Liability:

Plaintiff alleges that Mr. Moss was exposed to asbestos-containing products through his work for Daniel Construction at Fiber Industries plants in Shelby, North Carolina, and Greenville, South Carolina, from 1970 to 1979, and at various Duke Power plants from approximately 1979 to 2015. In connection with Mr. Moss's alleged asbestos exposure, Plaintiff asserts claims for negligence, strict product liability, breach of implied warranties, fraudulent misrepresentation, wrongful death, survival, and loss of consortium.

Our Theory of Defense:

We will focus on the late (post-OSHA) time periods of Mr. Moss's alleged exposures and Daniel's and Duke Power's elaborate safety protocols at the relevant plants during that period. At least as of 1972, Duke, Daniel, and Fiber Industries (the premises owner) would have implemented asbestos safety policies under OSHA. Mr. Moss's first alleged exposure at a Duke plant—aside from the Cherokee plant in 1979, to which Covil has no known connections—was at the Catawba Nuclear Station in 1981. By that time, Duke had already implemented an elaborate safety program for the handling of asbestos-containing materials at Duke Power

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

facilities. Any abatement of asbestos-containing materials during this period should have been under controlled conditions. If not, that was a result of Duke's failure to follow its own policies. The same is true for Fiber Industries and Daniel, at least starting in 1972. Nonetheless, because of the number of Duke Power and Fiber Industries sites at issue—all but one of which Covil had provided insulation contracting, sales, or both—combined with the venue, Plaintiff's counsel may view this as a strong case for Plaintiff.

For Mr. Moss's work at the Fiber Industries and Duke plants, Covil will argue that there is insufficient evidence of Mr. Moss's exposure to asbestos-containing material supplied, installed, or disturbed by Covil. South Carolina recognizes the "frequency, regularity, and proximity" test, which requires "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). Covil's documents and testimony establish that Covil performed insulation services and/or supplied materials at the Fiber Industries plants and at numerous Duke Power facilities before or during Mr. Moss's work at those sites. Despite the argument noted above regarding the late time periods of Mr. Moss's exposures at the Duke sites and Duke's extensive protocols for the handling of asbestos-containing materials, this evidence might be enough to support a verdict for Plaintiff in this jurisdiction.

Covil will also argue that it was not in a position to have knowledge of the risks of use of asbestos-containing products. Covil was not a manufacturer of asbestos products and therefore should not be held to the level of an expert as to the risks incident to the use of asbestos-containing products. Covil's workers were exposed to the same asbestos-containing products to which Mr. Moss would have been exposed, and Covil certainly would not have exposed its workers to this danger if it was aware of it. Significantly, two of Covil's principals, Palmer Covil and Russell Johnson, both died of mesothelioma, which makes this argument more compelling. Covil will contend that it was legal to sell and install asbestos thermal-insulation products up until the products were banned in 1975. Covil will also contend that it complied with the workplace engineering controls for asbestos work when those regulations were adopted by OSHA.

Covil's arguments against liability will be an uphill battle in this jurisdiction. The deposition testimony and documents presently available show that Covil supplied insulation to, and installed insulation at, several of Mr. Moss's jobsites. For at least the Fiber Industries plant in Shelby, this insulation was likely asbestos-containing. Moreover, much of the deposition testimony and documentary evidence places Covil at Mr. Moss's jobsites either before or during the years that Mr. Moss worked at those sites. **That makes this a dangerous case in this jurisdiction.** This evidence will be enough to prevent summary judgment, and it might be enough to support a jury verdict in this venue. Covil's best defenses might ultimately come down to the amount of damages at issue, given that Mr. Moss was unmarried and had no dependents at the time of his death

Co-defendant / counter-defendant / third-party defendant theories of liability and defense:

Several of the remaining codefendants in this case are manufacturers or distributors of equipment such as turbines, water pre-heaters, and valves. Most of these products were used with accessories made of chrysotile asbestos until they were discontinued in the 1980s. These product manufacturers have experts who will testify that working with or around this equipment and its component parts involved a very low level of exposure to asbestos fibers. In fact, many will say that this low-level exposure is barely above the background level of asbestos in ambient air. Moreover, the experts for these co-defendants will testify that these products were composed of chrysotile asbestos and that chrysotile asbestos does not cause mesothelioma. It is possible that the tissue digestion that counsel for Johnson & Johnson is performing will be unhelpful to Covil and helpful to the chrysotile defendants, if the digestion show the presence of amphibole fibers.

There may be additional defenses to the alter-ego claims. As defense counsel for Covil in the asbestos lawsuits, those defenses are not being addressed by this report.

Plaintiff's ad damnum as prayed for in the complaint:

1. For Mr. Moss's actual damages according to proof, including his pain and suffering, mental distress, and medical, surgical, and hospital bills;
2. For Mr. Moss's loss of income or earnings according to proof;
3. For loss of care, comfort, and society;
4. For pecuniary loss of the beneficiaries/heirs, including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heirs, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of Mr. Moss's companionship, and deprivation of the use and comfort of Mr. Moss's experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries;
5. For punitive damages according to proof;
6. For Plaintiff's costs of suit;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for breach of implied warranty according to proof;
9. All economic and non-economic damages allowed under the Survival and Wrongful Death Act; and

10. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

F. INJURIES/DAMAGES

Plaintiff's alleged Injuries: Mesothelioma and death

Amount of past medical bills: Plaintiff has provided no medical bills.

Anticipated amount of future medical care: N/A

Occupation at time of occurrence: Retired

Dates of related unemployment: N/A

Amount of past lost wages: Unknown

Anticipated future lost wages: N/A

Other claimed damages and amounts:

In connection with Mr. Moss's alleged asbestos exposure, Plaintiff asserts claims for negligence, negligence per se, strict product liability, breach of implied warranties, fraudulent misrepresentation, wrongful death, survival, and loss of consortium. Plaintiff seeks recovery for Mr. Moss's pain and suffering, medical bills, loss of earnings, and loss of care, comfort, and society. Plaintiff also seeks punitive damages and costs, to the extent recoverable.

Do any liens exist (Y/N)? If so, how much and to whom: Unknown at this time.

G. CASE ASSESSMENT

Chief Justice Toal:

Chief Justice Toal's rulings have changed the landscape of asbestos litigation in South Carolina. A first example is summary judgment. A win at the summary-judgment stage has become nearly impossible for defendants. Starting with the *Taylor* case in spring 2017, Chief Justice Toal has consistently stated during defense arguments that if a defendant's products were in the plant where the plaintiff worked, even if sold to the location decades beforehand without any evidence they still remain, this is a scintilla of evidence to defeat summary judgment. These holdings seem to be at odds with the Supreme Court of South Carolina's ruling in *Henderson*, a mesothelioma case in which the court expressly adopted the federal *Lohrmann* "frequency, regularity, and proximity test." Under *Lohrmann*, "to support a reasonable inference of

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.” Another common refrain during argument is that the use of asbestos gaskets to attach pumps and valves to piping systems is enough to make the pump and valve manufacturers liable, even though the pump and valve manufacturers did not sell or provide the asbestos gaskets for use at the site at issue. Anecdotally, counsel is aware that Chief Justice Toal has granted roughly two defendants’ motions for summary judgment in the three years prior to this report. Both involved defendants rarely seen in the South Carolina asbestos docket and with unique procedural postures.

A second example relates to motions in limine. Plaintiffs now have a database of prior rulings that they select from and rely on to support their arguments in case after case before Chief Justice Toal. Relevant to Covil, Chief Justice Toal has ruled on several occasions that the jury cannot be informed that a defendant is defunct or no longer in business because it raises the concept of insurance. Introducing such evidence also opens the door to introduction of evidence regarding insurance. Chief Justice Toal also prevents defendants from mentioning or acknowledging before the jury other defendants that are no longer in the case.

Finally, there is a pattern of sanctions awards during discovery and trial. Chief Justice Toal has found sanctionable what previously had been the accepted practice of the defense bar in asbestos cases, from pleadings through discovery. Sanctions have included the exclusion of experts of witnesses and the striking of pleadings. As we have seen recently with frequent co-defendant Lincoln Electric, Chief Justice Toal has made it nearly impossible for Covil not to be sanctioned in every case in which a Rule 30(b)(6) deposition of Covil has been requested. Most recently, Chief Justice Toal granted the plaintiff in *Crawford* a new trial, citing multiple discovery abuses by Covil, including extrinsic fraud based on the discovery of a data tape that had not been specifically identified for plaintiffs’ counsel during discovery. Unless we are eventually able to extract what is on that tape and prove that the contents are irrelevant, this will be another basis for future spoliation motions against Covil.

Assessment of our insured’s percentage of liability in relation to that of plaintiff and other parties (include % of each):

Covil will be entitled to a set-off for all amounts that Plaintiff has received in settlement or actually received from bankruptcy trusts. Unfortunately, we are not at this time aware of the specific amount of set-off that might be available.

Total verdict potential:

In 2012, in the *Garvin* case, a jury in Richland County, South Carolina, awarded a verdict of \$38 million to a living plaintiff diagnosed with testicular mesothelioma. The three defendants were pump and valve companies (Crane Co., Byron Jackson, and Duriron). The lawyer in *Garvin* who obtained that verdict is Jessica Dean, who at that time was with the Texas firm of Simon Greenstone. Jessica Dean is now a partner with Dean Omar Branham & Shirley.

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

In October 2015, a jury in Spartanburg County, South Carolina, awarded \$14 million to a Hoechst Celanese mechanic who was in the vicinity of insulation workers in the Hoechst Plant in Spartanburg, South Carolina. Simon Greenstone represented the plaintiff in that case.

In July 2017, the *Jolly* case was tried in Spartanburg County and resulted in a plaintiff's verdict. Dean Omar represented the plaintiff. The jury found for the plaintiff on the negligence and breach of implied warranty causes of action, and for the defendants on the strict liability cause of action. The jury awarded actual damages of \$300,000 and no punitive damages. Justice Toal subsequently granted the plaintiff's motion for new trial *nisi additur*, raising the total verdict to \$1,870,000. The South Carolina Court of Appeals affirmed that verdict in August 2021.

The *Crawford* case was a single-site case tried in 2018 to a defense verdict for Covil in Spartanburg. *Crawford* involved the same site at issue here, Celanese in Spartanburg, and Covil was the only defendant at the time trial. Dean Omar represented the plaintiff. Justice Toal invoked the thirteenth-juror doctrine and awarded the plaintiff a new trial. This order was appealed and is awaiting oral argument at the South Carolina Court of Appeals.

In early 2019, the *Rita Glenn* case was tried by Jessica Dean of Dean Omar against Fisher Controls. Justice Toal invoked the thirteenth-juror doctrine to unhang the jury, which resulted in a plaintiff's verdict of \$4,125,000. Justice Toal denied the defendant's post-trial motions.

The *Johnson* case was tried before Justice Toal in May 2019 to a defense verdict for Johnson & Johnson. Chris Swett of Motley Rice represented the plaintiff in this talc case. Plaintiff's post-trial motions were heard in July 2019 and denied.

In September 2021, Justice Toal presided over two asbestos trials in Richland County. The first case, *Manning*, was tried to a defense verdict. Chris Swett of Motley Rice represented the plaintiff in this talc case. We are monitoring the docket in that case for any post-trial motions. The second case, *Weist*, was a mesothelioma case involving take-home exposures by the daughter of a former Daniel Construction insulator. The case was ultimately tried against Kraft Heinz and Metal Masters—the premises owner and contractor for the father's contract work at a Louis Rich facility in South Carolina, where he worked for only six months in 1981. The jury returned a \$32 million verdict for the plaintiff. Attorneys from Meiowitz & Wasserberg, LLP represented the plaintiff.

As noted above, Covil's documents and testimony establish that Covil performed insulation services and/or supplied materials at the Fiber Industries plants in Shelby and Greenville, and at all of the Duke Power sites at issue at some point in time. Because of Covil's connections to the sites at issue, we would expect any verdict for this case to fall within the ranges indicated below:

Low: \$ [REDACTED]

Medium: \$ [REDACTED]

High: \$ [REDACTED]

History of plaintiff's settlement demand(s) and any offers we extended: None.

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

Settlement authority: Not yet known.

Other comments/factors to consider in negotiations: No demand has been made.

H. TRIAL

Name of trial attorney: Leslie Packer
Ashley Brathwaite

Anticipated length of trial (in days): 5–7 days

For the Plaintiff: The following fact witnesses were identified in Plaintiff's initial witness disclosures:

- Gary Jay Moss (by deposition)
- Joshua Jay Moss (Plaintiff; Mr. Moss's son)
- Jennifer Carlson (Mr. Moss's daughter)
- Norma Bowlin (former representative of Mr. Moss's estate; relationship unknown)
- Beverly Dale Jolly (coworker; by deposition)

For Covil:

- Palmer Covil (by deposition)
- James Covil (by deposition)
- Russell Johnson (by deposition)
- Machen Carpenter (by deposition)
- Rik Bridges (corporate representative)
- Rick Link
- Dr. Earl D. Gregory, CIH (expert)

Other parties: Deadlines related to witness disclosures have not yet passed.

Anticipated trial date and location: 12/6/2021 in Columbia, South Carolina

Identify the expert witnesses you intend to call to testify:

1. Earl Gregory, Ph.D, CIH

Covil has retained Dr. Earl Gregory, a board-certified industrial hygienist. Dr. Gregory will testify that asbestos exposure at certain concentration levels can cause disease and that the levels that have been considered acceptable in the workplace have changed over time as the scientific community's knowledge about asbestos has evolved.

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ATTORNEY WORK PRODUCT
Last revised 9/27/2021

Dr. Gregory will also testify that Covil acted appropriately and responsibly in light of the information and knowledge available to it, the government, and the scientific community over time. Based on the state of the medical and scientific literature at relevant times, Covil could reasonably conclude that the sale and use of asbestos-containing products could be done safely, if appropriate precautionary measures were taken, and would not pose a risk of disease to individuals such as Mr. Moss.

Dr. Gregory will also testify about Daniel Construction's and Duke Power's obligations under OSHA as employers, and Fiber Industries' and Duke's obligations as premises owners, as well as those companies' extensive safety programs and protocols for handling asbestos-containing materials, which the companies adopted as a result of OSHA. He will testify that, accordingly, any asbestos-abatement activities should have been performed under controlled conditions for the safety of Daniel's and Duke's employees.

Do you foresee any problems concerning the availability of witnesses, the introduction or barring of evidence, or other issues that may affect the presentation of plaintiff's case, our defense, or the theories asserted by other parties? If so, please identify the problem and briefly describe its impact on the case:

We do not currently foresee any issues with witness availability. However, we anticipate that Plaintiff will continue their recent practice of filing a motion in limine to preclude Covil's (and other defendants') corporate representative from testifying about Covil's knowledge because the corporate representative lacks personal knowledge. This is particularly problematic for Covil, since most of the company's employees are no longer living, and Covil's current corporate representative did not work for Covil while it was in business. If this motion is granted, Covil would be precluded from affirmatively presenting some, but not all, of its corporate representative's testimony. This type of motion has a high likelihood of being granted in this jurisdiction and might limit Covil's ability to tell its story at trial.

With this report please submit a uniform task based billing budget for the legal fees and expenses you anticipate will be incurred from now through trial.

A budget and trial plan will be submitted separate from this report.

Prepared by: Leslie C. Packer; Ashley K. Brathwaite **Date:** September 27, 2021

COVIL CORPORATION – PRE-TRIAL REPORT

JERRY WAYNE ARCHER, SR.

Trial Date: September 21, 2020 (consolidated with *Aspray, D'Amico, James Smith, and White* cases for trial; expected to last 2 weeks)

Judge Assigned: The Honorable Jean Hoefer Toal

Court Docket No.: 2019-CP-40-05339 **Venue:** Richland County, SC Court of Common Pleas

Claim Professional: Amanu Nwaomah (Zurich); Jerry Begley, Irene Muse, and Steve Fries (Travelers); Boyd Wright (Penn National)

A. INSURED:

Named Insured: Covil Corporation

Insured Defendant(s): Covil Corporation

Name and Phone of Authorized Contact: Peter Protopapas, (803) 978-6111

B. PLAINTIFF

Name: Kayla Keith, individually and as Personal Representative of the Estate of Jerry Wayne Archer, Sr.

Age/Date of Birth/Date of Death/SSN:

Injured Decedent: Jerry Wayne Archer, Sr. was born on [REDACTED], and was [REDACTED] years old at the time of his death on [REDACTED]. His Social Security number is [REDACTED].

Spouse: Leophie Brock (according to death certificate, but not identified by Plaintiff)

Male/Female: Male

Married (Y/N): Y

Decedent's Address: [REDACTED], SC 29325

Number of dependents and ages for each: None

Highest Level of Education: High school diploma

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Medicare Information: Medicare Part A & B (Medicare Claim No. [REDACTED])

C. OCCURRENCE

Date of Occurrence: 1963, when Mr. Archer began working as a pipefitter and a welder.

Length of occurrence: 1963 through approximately 1995 (exact year unknown)

Location of Occurrence: Plaintiff alleges that Mr. Archer worked as a pipefitter and welder at various industrial sites from approximately 1963 to the 1980s or 1990s. Mr. Archer also installed and fitted vessels and ducts, welded pipes, and removed and replaced insulation. Mr. Archer was a member of the Plumbers/Pipefitters Union of Dallas, Texas, Local Union No. 100, and the Plumbers/Pipefitters Union in West Palm Beach, Florida, Local Union No. 630.

The job sites at which Plaintiff alleges that Mr. Archer was exposed to asbestos are listed below.¹ We have found Covil connections to only two of these sites. For one of the two sites, the Savannah River Plant, Plaintiff's counsel agreed on the record during a deposition that Plaintiff will not seek to recover for any alleged asbestos exposures at that site. At present, no parties—including Plaintiff's counsel—have been able to obtain Mr. Archer's Social Security records. The dates listed below are based on Plaintiff's discovery responses.

1. Florida Power & Light Turkey Point Nuclear Generating Station – Homestead, FL (1969–1972)
2. Glenwood Power Plant – Yonkers, NY (1972)
3. Indian Point Nuclear Power Plant – Buchanan, NY (1972)
4. Lake Ray Hubbard Power Plant – Sunnyvale, TX (1972–1973)
5. Big Bend Power Plant – Tampa, FL (1973)
6. Florida Power & Light Turkey St. Lucie Power Plant – Port St. Lucie, FL (1973–1975; 1979–1980)

¹ Additional job sites are named in Plaintiff's Complaint and Amended Complaint. Plaintiff, however, has omitted those job sites from its subsequent discovery responses and 30(b)(6) notices. Thus, these sites appear to be no longer at issue in the case. The sites include the following: Duke Energy Marshall Steam Station in Sherills Ford, NC; Westinghouse plant in King, NC; R.J. Reynolds in Winston-Salem, NC; Lorillard Tobacco in Greensboro, NC; American Tobacco in Durham, NC; Appalachian State University in Boone, NC; Duke Energy McGuire Nuclear Plant in Huntersville, NC; Philip Morris Tobacco in Richmond, VA; and Carolina Power & Light Shearon Harris Nuclear Plant in New Hill, NC.

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7. Edwin I. Hatch Nuclear Plant – Baxley, GA (1975–1977)
8. Perry Nuclear Power Plant – Perry, OH (1977–1979)
9. Diablo Canyon Nuclear Power Plant – San Luis Obispo, CA (1980)
10. Florida Power & Light Turkey Martin Power Plant – Indiantown, FL (1980–1981)
11. Georgia Power Vogtle Nuclear Power Plant – Augusta, GA (1981–1989)
12. DuPont/Westinghouse Savannah River Plant – Aiken, SC (1989–1995)
13. Kimberly Clark Paper Mill – Beech Island, SC (unknown time)
14. Indian River Power Plant – Titusville, FL (unknown time) (disclosed for the first time in 30(b)(6) notices)
15. Comanche Peak Nuclear Power Plant – Glen Rose, TX (unknown time)
16. Ashtabula Power Plant – Ashtabula, OH (unknown time)
17. Crystal River Nuclear Power Plant – Crystal River, FL (unknown time)

Below are summaries of the sites at which the evidence shows a potential Covil connection.

Kimberly Clark (Beech Island, SC)

Plaintiff alleges that Mr. Archer worked at a Kimberly Clark facility in Beech Island, SC, at an unknown time period, for an unknown duration.

Injury reports in Covil's personnel files show that Covil employees were injured at this site in April and May 1971. See Bates Nos. 080534, 080536, 112692. The job number for the project was 412. Bates No. 080535. One employee was injured when he jumped off a scaffold to the floor. A list within another employee's personnel file appears to reference materials for a Kimberly Clark project at Beech Island that includes pipe insulation and asbestos cement. Bates No. 025755. The document appears to have been created in 1968. Finally, an undated Covil personnel record appears to reference Covil business for Kimberly Clark at Beech Island through Daniel Construction. Bates No. 022721.

We have no further information on Covil's involvement at this site.

DuPont Savannah River Plant (Aiken, SC)

Plaintiff alleges that Mr. Archer worked at the Savannah River Plant from 1989 to 1995. As mentioned above, however, during the deposition of coworker Bobby Crawley on July 13–14, 2020, Plaintiff's counsel confirmed on the record that Plaintiff will not seek to

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recover for any alleged asbestos exposures at this site. This is because the Savannah River Plant is owned by the U.S. Department of Energy. In an attempt to prevent removal of the case to federal court, paragraph 16 of Plaintiff's Amended Complaint disclaims "each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiff's presence on or at any federal enclave."

Below is an overview of this site and Covil's connections to the site.

The Savannah River Plant is a huge facility located near Aiken, South Carolina, and extending to Augusta, Georgia. It is referred to as the "bomb plant" by locals because after its construction in the late 1940s, fuel for atomic weapons was manufactured there. The facility is owned by the Atomic Energy Commission, now known as the Department of Energy. The Department of Energy historically contracted for the operation of the facility through DuPont and Westinghouse. There are hundreds of buildings throughout the plant complex, which is larger than some counties in South Carolina. Buildings were constantly being built, remodeled, and renovated. This resulted in piping constantly being removed, installed, and insulated.

Covil was never a regular insulation contractor at the Savannah River Plant. It did, however, periodically sell products to other insulation contractors, and was occasionally hired to do an odd job. This is consistent, for example, with former Covil employee Dwaine Waters's testimony that he worked for Covil at the Savannah River Plant for one week around the mid-1970s, during which time he said that Covil also provided the insulation material.

A memo from Covil's long-time former counsel, Danny White, explains that the principal insulation contractor at the Savannah River Plant beginning in the late 1960s was North Brothers. Covil and North Brothers were competitors, and Covil almost never supplied products directly to North Brothers.

Covil historical records show that Covil provided materials to this site at least from 1989 to 1991—long after Covil stopped supplying asbestos-containing products.

Former Vice President of Operations for Covil, Machen Carpenter, testified that one of Covil's specialties in "FOB sales was to go after multi-year contracts with the big boys," including the Savannah River site. Carpenter Dep. 102:6–11, May 27, 2004. He testified that Covil would go after multi-year contracts and bid on them against other bidders for multi-year sole source distributions. *Id.* at 102:11–13. Mr. Carpenter recalled visiting the "bomb plant" in Aiken "many, many, many, many, many times." *Id.* at 57:9–13. He recalled systems at the plant with "huge pipes that run for miles that . . . absolutely must be insulated in a very specific manner." *Id.* at 58:2–6. The Savannah River Plant required that all insulation boxes be labeled to specify the exact location for installation within "a hundred mile radius" at the plant." *Id.* at 58:21–59:6. The Nuclear Regulatory Commission required insulation manufacturers to acquire NRC certification before they provided the materials to Covil. *See id.* at 59:9–15. The manufacturers would identify all boxes according to date of batch and date of production, then ship to Covil. *Id.* Covil

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

would then document each box according to the “foot of what line it went on” and send to the plant. *Id.* at 59:15–20.

In our December 2019 interview with former Covil executive Charles McWhorter, Mr. McWhorter recalled Covil bidding on a pipe project but losing the bid to another outfit.

While it is unlikely that Mr. Archer was exposed to asbestos at the Savannah River Plant, given the time period, there is a weak connection between Covil and this site. Covil did perform odd jobs and supply material to the plant from time to time.

To date, these are the only records that we have found linking Covil to this job site.

D. DIAGNOSIS

Asbestos-Related Disease: Pleural Mesothelioma

Date of Diagnosis: May 16, 2018

Doctor Making Diagnosis: Dr. Darryl L. McLeod of Self Regional Medical Care in Greenwood, South Carolina

Defendant’s Medical Review and/or Confirmation: Covil has been offered a co-retention of Dr. Victor Roggli to confirm the diagnosis in this case. A response is due by July 29, 2020.

Defendant’s Experts: Covil has retained industrial hygienist Dr. Bryan Hardin.

E. LITIGATION

Suit Name: Kayla Keith, Individually and as Personal Representative of the Estate of Jerry Wayne Archer, Sr. v. Air & Liquid Systems Corp., et al.

Plaintiff’s Attorneys and Phone: Jonathan Holder
Dean Omar Branham Shirley, LLP
(214) 722-5990

Theile McVey
Kassel McVey, Attorneys at Law
(803) 256-4242

**Co-defendant(s) / Counter or Cross-Defendant(s) / Third Party Defendant(s)
(excludes settled and dismissed parties):**

- Air & Liquid Systems Corporation
- Armstrong International, Inc.
- Bechtel Corporation
- Berkshire Hathaway, Inc.

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- BW/IP, Inc.
- Carboline Company
- Circor Instrumentation Technologies, Inc.
- Copes-Vulcan, Inc.
- Crosby Valve, LLC
- Daniel International Corporation
- Fluor Constructors International, Inc.
- Fluor Daniel Services Corporation
- Fluor Enterprises, Inc.
- Duke Energy Carolinas, LLC
- FirstEnergy Corp.
- Flowserve Corporation
- Flowserve US Inc.
- Foster Wheeler Energy Corporation
- General Electric Company
- Goodyear Tire & Rubber Company
- Goulds Pumps, Incorporated
- Grinnell, LLC
- Hobart Brothers LLC
- Howden North America, Inc.
- IMO Industries, Inc.
- Ingersoll-Rand Company
- Lincoln Electric Company
- Newco Valves, LLC
- Orlando Utilities Commission
- Riley Power, Inc.
- Savannah River Nuclear Solutions LLC
- Sequoia Ventures, Inc.
- Southern Insulation, Inc.
- Spirax Sarco, Inc.
- SPX Cooling Technologies, Inc.
- Starr Davis Company, Inc.
- Starr Davis Company of S.C., Inc.
- Sulzer Pumps (US), Inc.
- TECO Energy Inc.
- Vogt Valves Inc.
- Yuba Heat Transfer, LLC

DISCOVERY ACTIVITY

- Depositions completed
 - 06/24/20: Starr Davis entities
 - 07/13/20–07/14/20: Bobby Crawley (co-worker)
 - 07/21/20: Goodyear Tire 30(b)(6)
- Depositions noticed for next 30 days
 - 07/28/20: Southern Insulation 30(b)(6)
 - 07/28/20: Covil 30(b)(6)
 - 07/28/20: Bechtel/Sequoia 30(b)(6)
 - 07/29/20: Air & Liquid, CBS, Hobart Brothers 30(b)(6)
 - 07/30/20: Crosby Valve and Riley Power 30(b)(6)
 - 07/30/20: Dr. Brent Staggs (Plaintiff's expert)
 - 07/31/20: TECO Energy 30(b)(6)
 - 08/03/20: Daniel International 30(b)(6)
 - 08/03/20: Circor 30(b)(6)
 - 08/03/20: Sulzer Pumps 30(b)(6)
 - 08/04/20: Fluor Daniel entities 30(b)(6)
 - 08/04/20: Spirax Sarco 30(b)(6)
 - 08/04/20: Lincoln Electric 30(b)(6)
 - 08/05/20: Howden 30(b)(6)
 - 08/06/20: Charles Ay (Plaintiff's expert)
 - 08/07/20: Copes-Vulcan 30(b)(6)

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- 08/07/20: SPX Corp. 30(b)(6)
 - 08/07/20: Foster Wheeler 30(b)(6)
 - 08/07/20: Graver Water Systems 30(b)(6)
 - 08/10/20: Dr. James Crapo (expert for Crosby Controls)
 - 08/18/20: Jennifer Sahmel (expert for Crosby Controls)
 - 08/20/20: Kyle Dotson (expert for Daniel and Fluor entities)
 - 09/04/20: Dr. Edwin Holstein (Plaintiff's expert)
- Hearings attended
 - To date, there have been no hearings in this case.
- Hearings noticed
 - Hearing tentatively scheduled for September 9, 10, or 11, 2020 (pending confirmation from the Richland County Clerk of Court) (consolidated with *James Smith, White, D'Amico, and Aspray*)
- Motions filed
 - In April 2020, Covil joined other Defendants' motions opposing the consolidation of this case with four other cases for the September 2020 trial calendar.
- Motions to be filed
 - Covil will file a motion for summary judgment on or before the 7/28/20 deadline. Covil anticipates filing motions in limine and potentially other trial-related motions;
- Mediation scheduled
 - 8/24/20 (by Zoom, with *James Smith, White, D'Amico, Aspray, Knight, and Jolly* cases)
- Trial notice/trial date
 - 9/21/20

Plaintiff's Theory of Liability:

Plaintiff alleges that Mr. Archer was exposed to asbestos through his work as a pipefitter and welder from approximately 1963 to the 1980s or 1990s, which required him to remove and replace insulation. In connection with Mr. Archer's alleged asbestos exposure, Plaintiff asserts claims for negligence, strict product liability, breach of implied warranties, fraudulent misrepresentation, wrongful death, and survival.

Our Theory of Defense:

Covil will argue that there is insufficient evidence of Mr. Archer's exposure to asbestos-containing material supplied, installed, or disturbed by Covil. South Carolina recognizes the "frequency, regularity, and proximity" test, which requires "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to

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where the plaintiff actually worked.” *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007).

Covil’s documents and testimony do not establish that Covil performed insulation services and/or supplied materials at any of the sites at issue other than Savannah River and Kimberly Clark. These exposures did not coincide with Mr Archer’s alleged exposures. It is yet unknown whether Plaintiff’s counsel has records suggesting otherwise.

Covil will argue that it was not in a position to have knowledge of the risks of using asbestos-containing products. Covil was not a manufacturer of asbestos products and therefore should not be held to the level of an expert as to the risks incident to the use of asbestos-containing products. Covil’s main defense to liability is therefore a “state of the art” defense. Covil’s workers were exposed to the same asbestos-containing products to which Mr. Archer would have been exposed, and Covil certainly would not have exposed its workers to this danger if it was aware of it. Significantly, two of Covil’s principals, Palmer Covil and Russell Johnson, both died of mesothelioma, which makes this argument more compelling. Covil will contend that it was legal to sell and install asbestos thermal-insulation products up until the products were banned in 1975. Covil will also contend that it complied with the workplace engineering controls for asbestos work when those regulations were adopted by OSHA.

Co-defendant / counter-defendant / third-party defendant theories of liability and defense:

Several of the codefendants in this case are manufacturers of pumps and valves that require the use of gaskets and packing. Most of the packing and gaskets were made of chrysotile asbestos until most companies discontinued them around 1986. These pump and valve manufacturers have experts who will testify that working around pumps and valves involved a very low level of exposure to asbestos fibers. In fact, many will say that this low-level exposure is barely above the background level of asbestos in ambient air. Moreover, the experts for the pump and valve manufacturers will testify that the gaskets and packing of the pumps and valve manufacturers was composed of chrysotile asbestos and that chrysotile asbestos does not cause mesothelioma.

Plaintiff’s ad damnum as prayed for in the complaint:

1. For Mr. Archer’s actual damages according to proof, including Mr. Archer’s pain and suffering, mental distress, and medical, surgery, and hospital bills;
2. For Mr. Archer’s loss of income or earnings according to proof;
3. For loss of care, comfort, and society of Mr. Archer;

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4. For pecuniary loss of the beneficiaries/heirs, including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heirs, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of Mr. Archer's companionship, and deprivation of the use and comfort of Mr. Archer's experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries;
5. For punitive damages according to proof;
6. For Plaintiff's costs of suit;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for breach of implied warranty according to proof;
9. All economic and non-economic damages allowed under the Survival and Wrongful Death Act; and
10. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

F. INJURIES/DAMAGES

Plaintiff's Alleged Injuries: Mesothelioma and death

Amount of past medical bills: To date, we have the following information regarding Mr. Archer's medical bills:

Total Amount Billed	Amount paid by Medicare	Insurance Payments	Medicare Adjustment	Balance
\$ [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Anticipated amount of future medical care: N/A

Occupation at time of occurrence: Retired

Dates of related unemployment: N/A

Amount of past lost wages: N/A

Anticipated future lost wages: N/A

Other claimed damages and amounts:

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In connection with Mr. Archer's alleged asbestos exposure, Plaintiff asserts claims for negligence, strict product liability, breach of implied warranties, fraudulent misrepresentation, wrongful death, and survival. Plaintiff seeks recovery for Mr. Archer's pain and suffering, medical bills, loss of earnings, and loss of care, comfort, and society. She also seeks punitive damages and costs, to the extent recoverable.

Do any liens exist (Y/N)? If so, how much and to whom: Unknown at this time.

G. CASE ASSESSMENT

Chief Justice Toal:

Chief Justice Toal's rulings have changed the landscape of asbestos litigation in South Carolina. A first example is summary judgment. A win at the summary-judgment stage has become nearly impossible for defendants. Starting with the *Taylor* case in spring 2017, Chief Justice Toal has consistently stated during defense arguments that if a defendant's products were in the plant where the plaintiff worked, even if sold to the location decades beforehand without any evidence they still remain, this is a scintilla of evidence to defeat summary judgment. These holdings seem to be at odds with the Supreme Court of South Carolina's ruling in *Henderson*, a mesothelioma case in which the court expressly adopted the federal *Lohrmann* "frequency, regularity, and proximity test." Under *Lohrmann*, "to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." Another common refrain during argument is that the use of asbestos gaskets to attach pumps and valves to piping systems is enough to make the pump and valve manufacturers liable, even though the pump and valve manufacturers did not sell or provide the asbestos gaskets for use at the site at issue.

A second example relates to motions in limine. Plaintiffs now have a database of prior rulings that they select from and rely on to support their arguments in case after case before Chief Justice Toal. Relevant to Covil, Chief Justice Toal has ruled on several occasions that the jury cannot be informed that a defendant is defunct or no longer in business because it raises the concept of insurance. Introducing such evidence also opens the door to introduction of evidence regarding insurance. Chief Justice Toal also prevents defendants from mentioning or acknowledging before the jury other defendants that are no longer in the case.

Finally, there is a pattern of sanctions awards during discovery and trial. Chief Justice Toal has found sanctionable what previously had been the accepted practice of the defense bar in asbestos cases, from pleadings through discovery. Sanctions have included the exclusion of experts of witnesses and the striking of pleadings. As we have seen recently with frequent co-defendant Lincoln Electric, Chief Justice Toal has made it nearly impossible for Covil not to be sanctioned in every case in which a Rule 30(b)(6) deposition of Covil has been requested. Most recently, Chief Justice Toal granted the plaintiff in *Crawford* a new trial, citing multiple discovery abuses by Covil, including

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extrinsic fraud based on the discovery of a data tape that had not been specifically identified for plaintiffs' counsel during discovery. Unless we are eventually able to extract what is on that tape and prove that the contents are irrelevant, this will be another basis for future spoliation motions against Covil.

Assessment of our insured's percentage of liability in relation to that of plaintiff and other parties (include % of each):

There are a number of defendants still in this case; however, the pace of dismissals is starting to rapidly increase. Covil would be entitled to a set-off for all amounts that Plaintiff has received in settlement or actually received from bankruptcy trusts. Unfortunately, we are not at this time aware of the specific amount of set-off that might be available, since Plaintiff has not disclosed that information.

There are two potential exposure sites tied to Covil in this case.

Total verdict potential:

In 2012, in the *Garvin* case, a jury in Richland County, South Carolina, awarded a verdict of \$38 million to a living plaintiff diagnosed with testicular mesothelioma. The three defendants were pump and valve companies (Crane Co., Byron Jackson, and Duriron). The lawyer in *Garvin* who obtained that verdict is Jessica Dean, who at that time was with the Texas firm of Simon Greenstone. Jessica Dean is now a partner with Dean Omar Branham & Shirley.

In October 2015, a jury in Spartanburg County, South Carolina, awarded \$14 million to a Hoechst Celanese mechanic who was in the vicinity of insulation workers in the Hoechst Plant in Spartanburg, South Carolina. Simon Greenstone represented the plaintiff in that case.

In July 2017, the *Jolly* case was tried in Spartanburg County and resulted in a plaintiff's verdict. In *Jolly*, the jury found for the plaintiffs on the negligence and breach of implied warranty causes of action, and for the defendants on the strict liability cause of action. The jury awarded actual damages of \$300,000 and no punitive damages. Justice Toal subsequently granted the plaintiff's motion for new trial *nisi additur*, raising the total verdict to \$1,870,000. The defendants appealed, and their appeal is currently pending before the South Carolina Court of Appeals. Dean Omar Branham & Shirley represented the plaintiffs in *Jolly*. The *Crawford* case was tried in 2018 to a defense verdict that is now on appeal after a similar situation ensued.

In early 2019, the *Rita Glenn* case was tried by Jessica Dean against a sole defendant, Fisher Controls. Justice Toal invoked the thirteenth-juror doctrine to unhang the jury, which resulted in a total verdict of \$4,125,000. Each of the defendant's post-trial motions was denied by Justice Toal in June 2019.

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The *Johnson* case was tried before Justice Toal in May 2019 to a defense verdict for Johnson & Johnson. Chris Swett of Motley Rice represented the plaintiff in this talc case. Plaintiff's post-trial motions were heard in July 2019 and denied.

In this case, while Covil's connections to the job sites at issue are minimal, the fact that it will be tried alongside cases where Covil has more connections to the sites at issue during the September 2020 trial block makes it significantly more dangerous for Covil. Aside from the consolidation factor, we would expect any verdict for this case to fall within the ranges indicated below:

Low : \$ [REDACTED] Medium : \$ [REDACTED] High: \$ [REDACTED]

History of plaintiff's settlement demand(s) and any offers we extended: There have been no settlement demands or offers extended in this case.

Settlement authority: Not yet known. We anticipate a settlement range of between \$ [REDACTED] for Covil if the case is resolved before mediation.

Settlement authority approved by:

Name	Title	Date

Other comments/factors to consider in negotiations: None.

H. TRIAL

Name of trial attorney: Leslie Packer
Ashley Brathwaite

Anticipated length of trial (in days): 10–14 days due to consolidation with four other cases.

For the Plaintiff: The following fact witnesses were identified in Plaintiff's discovery responses:

- Kayla Keith (Plaintiff)
- Harriet Archer (Mr. Archer's ex-spouse)
- Jerry Archer, Jr. (Mr. Archer's son)
- Michelle Spicer (Mr. Archer's daughter)
- Maxine Mann (Mr. Archer's sister)
- Gerald Flournoy (Mr. Archer's cousin)
- Clyde Price (co-worker)
- Bobby Crawley (co-worker)

For Covil:

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- Palmer Covil (by deposition)
- James Covil (by deposition)
- Russell Johnson (by deposition)
- Robert Glenn (corporate representative)
- Bryan D. Hardin, Ph.D, A.T.S.

Other parties: Deadlines related to witness disclosures have not yet passed.

Anticipated trial date and location: September 21, 2020, in Richland County, SC.

Identify the expert witnesses you intend to call to testify:

1. Dr. Bryan Hardin

Covil has retained Dr. Bryan Hardin, who is a toxicologist and a certified industrial hygienist. Dr. Hardin will testify that asbestos exposure at certain concentration levels can cause disease and that the levels that have been considered acceptable in the workplace have changed over time as the scientific community's knowledge about asbestos has evolved. He will explain that as of 1976, there were only 37 published case reports worldwide looking at mesothelioma in family members of heavily exposed asbestos factory workers or insulators. This was one year after the ban of asbestos in thermal insulation.

Dr. Hardin will also testify that Covil acted appropriately and responsibly in light of the information and knowledge available to it, the government, and the scientific community over time. Based on the state of the medical and scientific literature at relevant times, Covil could reasonably conclude that the sale and use of asbestos-containing products could be done safely, if appropriate precautionary measures were taken, and would not pose a risk of disease to individuals such as Mr. Archer. Dr. Hardin will explain that it was not until 1995 that NIOSH officially reported that family members of heavily exposed asbestos workers were at risk for asbestos-related diseases.

Do you foresee any problems concerning the availability of witnesses, the introduction or barring of evidence, or other issues that may affect the presentation of plaintiff's case, our defense, or the theories asserted by other parties? If so, please identify the problem and briefly describe its impact on the case:

We do not currently foresee any issues with witness availability. However, we anticipate that Plaintiff will continue their recent practice of filing a motion in limine to preclude Covil's (and other defendants') corporate representative from testifying about Covil's knowledge on the ground that the corporate representative lacks personal knowledge. This is particularly problematic for Covil, since most of the company's employees are no longer living, and Covil's current corporate representative, Robert Glenn, did not work for Covil while it was in business. If this motion is granted, Covil would be precluded from affirmatively presenting

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some, but not all, of Mr. Glenn's testimony. This type of motion has a high likelihood of being granted in this jurisdiction and might limit Covil's ability to tell its story at trial.

With this report please submit a uniform task based billing budget for the legal fees and expenses you anticipate will be incurred from now through trial.

A budget and trial plan will be submitted separate from this report due to the number of cases being tried in September in three separate venues.

Prepared by: Leslie C. Packer; Ashley K. Brathwaite **Date:** July 24, 2020

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Last revised 7/22/2021

COVIL CORPORATION – INITIAL REPORT
NICHOLAS LEON MURPHY

CASE MATTER DATA

Plaintiff information – Marian Murphy Dudley, as Executor of the Estate of Nicholas Leon Murphy (deceased; mesothelioma), and Doris Anne Murphy, individually.

Venue (where, describe impact) – Richland County, South Carolina, Court of Common Pleas Richland County. This venue traditionally has been a plaintiff-friendly venue irrespective of which member of the South Carolina judiciary is hearing cases there.

Judge (who, describe impact) – The Honorable Jean Hoefer Toal is the lead judge overseeing the administration of the cases in the South Carolina asbestos docket.

Plaintiff's Counsel (who, describe impact) – Plaintiffs' counsel is Theile B. McVey of Kassel McVey out of Columbia, SC, as local counsel, and attorneys from Dean Omar Branham Shirley LLP out of Dallas, TX. Both firms are well known to the asbestos bar in South Carolina and North Carolina. Chief Justice Toal works closely with and relies on Theile McVey to assist with the coordination of the asbestos docket. Ms. McVey is a past President of the South Carolina Advocates for Justice, which is the lead organization in the state for lawyers representing personal injury plaintiffs.

Parties to Suit (who, role and describe impact):

Plaintiffs:

- Marian Murphy Dudley – Mr. Murphy's daughter and Executor of Mr. Murphy's Estate.
- Doris Anne Murphy – Mr. Murphy's wife and loss-of-consortium Plaintiff.

Defendants (excludes known dismissed/settled defendants):

Premises, Contractor, or Insulation Defendants*	Product Defendants*
• 4520 Corp., Inc. • A. Lynn Thomas Company, Inc. • AMEC Foster Wheeler USA Corp. • Covil Corporation • Daniel International Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc. • Flame Refractories, Inc. • Joe Moore & Company, Inc. • New-Indy Catawba LLC / New-Indy Containerboard LLC • Presnell Insulation Co., Inc.	• ABB Inc. • Air & Liquid Systems Corp. • Anchor Darling Valve Company • Armstrong International, Inc. • Aurora Pump Company • BW/IP Inc. • Carboline Company • Carver Pump Company • Circor Instrumentation Technologies, Inc. • Consolidated Electrical Distributors, Inc. • Crane Co.

PLAINTIFF'S
EXHIBIT

87

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

ATTORNEY WORK PRODUCT

Last revised 7/22/2021

• Resolute FP US Inc. • Southern Insulation, Inc. • Starr Davis Company, Inc. / Starr Davis Company of S.C., Inc. • Topbuild Corp. • United Subcontractors, Inc. • Unitherm, Inc. • Vistra Intermediate Company, LLC • Weyerhaeuser Company • Wood Environment & Infrastructure Solutions, Inc.	• Crosby Valve, LLC • Eaton Corp. • Fisher Controls International LLC • Flowserve Corp. • Flowserve US, Inc. • Gardner Denver, Inc. • General Electric Company • Goodyear Tire & Rubber Co. • Gould Electronics, Inc. • Goulds Pumps, Inc. • Grinnell LLC • Howden North America, Inc. • IMO Industries, Inc. • Ingersoll-Rand Co. • ITT LLC • Morse Tec LLC • Riley Power Inc. • Schneider Electric USA, Inc. • Spirax Sarco, Inc. • SPX Cooling Technologies, Inc. • Trane U.S. Inc. • ViacomCBS Inc. • Viad Corp. • Viking Pump, Inc. • Weir Valves & Controls USA, Inc. • The William Powell Company • Yuba Heat Transfer, LLC

*Based on allegations and discovery to date.

United States Fidelity & Guaranty Co. is the only remaining alter-ego defendant.

FACTS & ISSUES/LIABILITY

Outline the Summary of Facts known to date: work history, alleged exposure

Alter Ego

This lawsuit contains both liability and alter-ego claims. The alter-ego claims allege that from or after 1991, Covil's insurers and previous counsel acted as the company's alter ego. As defense counsel retained to represent Covil, we are addressing in this report only the asbestos defense and are not commenting on or evaluating the effect of the alter-ego claims.

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ATTORNEY WORK PRODUCT
Last revised 7/22/2021

Exposure Sites and Background

Nicholas Leon Murphy was born on [REDACTED]. He completed high school through the ninth grade at Brinson Memorial in New Bern, North Carolina, and then joined the Army. Other than his time in the Army, Mr. Murphy lived in New Bern his entire life.

Mr. Murphy and his wife, Plaintiff Doris Murphy, were married for 59 years. They have four children, eight grandchildren, and several great-grandchildren.

Mr. Murphy was diagnosed with malignant pleural mesothelioma on September 24, 2019, by Dr. Keith Bennert at CarolinaEast Medical Center, and died on [REDACTED], at age [REDACTED]. Mr. Murphy testified that he did not know about the dangers of asbestos until his diagnosis. Mr. Murphy smoked cigarettes (one pack a day) and drank alcohol on a daily basis from age 18 until roughly 2009 (over 50 years).

Mr. Murphy was deposed over six days in April and May 2020. He did not mention or identify Covil during his deposition. His wife, Doris Murphy, was deposed on July 10, 2020. One of Mr. Murphy's coworkers at the Weyerhaeuser Pulp Mill in New Bern, North Carolina, Danny Harrison, testified in this case in January 2021. Mr. Harrison did not identify or mention Covil during that deposition.

Mr. Murphy's work history is summarized below.

1. United States Army (1Q 1958–4Q 1960). Mr. Murphy entered the U.S. Army in January 1958. Mr. Murphy attended basic training in Fort Jackson, South Carolina. He served for approximately one year in Korea as part of the Third Armored Division as a security guard assigned to guard the Honest John missile sites. After his service in Korea, Mr. Murphy was assigned to Fort Meade in Maryland for tank school. He was discharged in 1960.
2. Farmer – New Bern, NC (1960–1970). Mr. Murphy worked on his parents' farm as a full-time farmer.
3. Hatteras Yachts Shipyard – New Bern, NC (early 1970s). Plaintiffs allege that Mr. Murphy worked as a welder for approximately six to seven months during the early 1970s.
4. Barbour Boatworks – New Bern, NC (3Q 1965). Mr. Murphy worked at this site for approximately three months.
5. New Bern Shipyard – New Bern, NC (1Q 1966). Mr. Murphy worked as a welder at this site for approximately six to seven months.
6. Brown & Root, Inc./Texasgulf, Inc. (Brown & Root: 1Q–3Q 1965, 2Q 1966; Texasgulf: 2Q 1966–3Q 1968)

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ATTORNEY WORK PRODUCT
Last revised 7/22/2021

- a. Texasgulf Aurora Phosphate Plant – Aurora, NC. Mr. Murphy worked as an operator on a seven-to-eight-year-long project for Brown & Root to build the Texas Gulf Aurora phosphate plant in Aurora, North Carolina. Mr. Murphy first worked for Brown & Root and then later worked for Texasgulf.
7. Newport News Shipyard – Newport News, VA (1972–1974). Mr. Murphy worked as a welder at this site.
8. Daniel Construction Company (1Q 1969–3Q 1970, 1Q–3Q 1971, 4Q 1974–1Q 1976); Brown & Root (1Q 1973–3Q 1974, 2Q–3Q 1976). From approximately 1969 to 1976, Mr. Murphy worked as a welder for Daniel Construction and Brown & Root. Plaintiffs have not provided specific dates for Mr. Murphy’s work at any of the sites listed below.
 - a. Weyerhaeuser Mill – New Bern, NC.
 - b. Bowater Paper Mill – Catawba, SC.
9. Daniel Construction Company; Brown & Root (1978–1980s). From approximately 1978 through the 1980s, Mr. Murphy worked for Daniel Construction and Brown & Root. Plaintiffs have not provided specific dates for Mr. Murphy’s work at any of these sites. Mr. Murphy’s Social Security records do not reflect employment with either Daniel or Brown & Root after 1976.
 - a. Bowater Paper Mill – Catawba, SC.
 - b. Duke Sutton Steam Plant – Wilmington, NC.
10. Arthur Farms – New Bern, NC (1976–1991, 1993–1995, 2002, 2004–2006). Plaintiffs allege that in approximately the late 1980s, Mr. Murphy returned to farming and worked on this 5,000-acre farm as a welder and maintenance man, and that from approximately 1994 to his retirement, Mr. Murphy drove a truck for Arthur Farms as an independent operator. His Social Security records, however, show that he was employed by Arthur Farms in 1976–1991, 1993–1995, 2002, and 2004–2006.

Below is a summary of the evidence that links Covil to the job sites listed above.

Bowater Paper Mill (Catawba, SC)

Plaintiffs allege that Mr. Murphy worked at this site as a welder for Daniel Construction and Brown & Root at some point between 1974 and 1978, and again during shutdowns from 1978 “through the 1980s.” As noted above, however, Mr. Murphy’s Social Security do not reflect employment with either Daniel or Brown & Root after the third quarter of 1976. In his

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ATTORNEY WORK PRODUCT
Last revised 7/22/2021

deposition, Mr. Murphy testified that he worked at Bowater a maximum of four weekends, or eight days. This site is Mr. Murphy's only connection to South Carolina.

Mr. Murphy testified that he did mostly welding, pipefitting, and putting in steel beams at Bowater. He recalled removing insulation from old pipe. He later testified, however, that he performed insulation removal during only one of the four weekends that he worked at Bowater. He worked around the pulp machine. He recalled working on the No. 1 paper machine, and either the No. 2 or No. 3 paper machine (his testimony is conflicting on this point). Mr. Murphy testified that the insulation that he removed at Bowater during shutdowns was asbestos-containing. He did not know who supplied or distributed the insulation that was used at Bowater. He recalled attending a safety meeting during each shutdown that he worked at the plant.

Covil's Connections

As early as the 1950s, Covil retained important insulation and materials contracts with Bowater Carolina Company. Testimony and documentation suggest that Covil supplied materials for use at Bowater's Catawba facility as early as the 1950s. Covil was a regular supplier to Daniel Construction at that time. Daniel contracted with Bowater in the 1950s to build the mill. Invoices retrieved from the files of the law firm Gallivan White & Boyd provide evidence of Kaylo sales to Covil in care of Daniel Construction at this facility from 1958 to 1960, 1965, and 1968.

Both documents and deposition testimony also offer evidence of Covil contracting at Bowater. Two former Covil employees (James Craig and James Twitty) testified to contracting at Bowater in the early 1960s. Resolute (Bowater) production documents also show that Covil participated in insulating Bowater's Number Two Recovery Boiler in the fall of 1965, as corroborated by personnel records of two Covil employees in the 1965-1966 timeframe. Daniel records also list Covil as the insulation contractor for Recovery Boiler Number Two in 1965.

In 1974, Covil listed a Bowater Carolina job within its list of "Tax Exempt Jobs." A Covil Resume of Work also lists two insulation services projects in the 1980s at the Bowater Catawba site, both for pipe and tank insulation. Certain purchasing records and "Job Return For Credit" records provide evidence of Covil supplying materials for these jobs. Covil personnel records also document employment of Covil contractors working at Bowater between 1986 and 1988 for new construction involving non-asbestos insulation. Witness testimony further suggests that Covil might have provided insulation contractors to the Bowater site at certain points in the '70s and early '90s.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

Weyerhaeuser Pulp Mill (New Bern, NC)

This plant is a paper mill that was built in 1970. Plaintiffs allege that Mr. Murphy worked at this plant as a welder for Daniel Construction and Brown & Root between 1974 and 1978. As noted

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ATTORNEY WORK PRODUCT
Last revised 7/22/2021

above, however, Mr. Murphy's Social Security records do not reflect employment with either Daniel or Brown & Root after the third quarter of 1976.

In his deposition, Mr. Murphy testified to working at this facility every day for approximately four years as a welder. He also returned to work shutdowns at the plant. Later, he described working for the initial construction of the facility and returning on two occasions. He worked for Brown & Root for the initial construction of the plant (about three and a half years). Over 50% of his work at the plant was performed outside.

As a welder, he also did certain pipefitting and applied insulation to pipes. This process involved using a hammer to beat new insulation onto the pipe. Mr. Murphy first testified that he had never removed old pipe insulation at the Weyerhaeuser plant, but later recalled removing old insulation when doing general maintenance there. He later admitted that when he took off the old insulation, he could not tell if it had previously been replaced. He could not tell if insulation he removed was original to the plant. Mr. Murphy also recalled other workers removing old pipe insulation and creating dust in the process. He recalled certain clean-up at the plant, where he used a broom or sometimes an air hose to clean up dust that had fallen. Mr. Murphy testified to removing and installing asbestos-containing insulation.

Mr. Murphy also testified to seeing trucks of pipe insulation delivered to the facility and recalled unloading them from tractor trailers. He could not remember brand names on his own but recalled Johns-Manville insulation upon suggestion. He did not recall seeing "asbestos-free" marked on the boxes. Brown & Root employees unloaded this new insulation from the truck.

A coworker of Mr. Murphy's at Weyerhaeuser named Danny Harrison testified in this case. Mr. Harrison, however, did not find out until after Mr. Murphy finished working at the plant that the two worked there at the same time. He testified that he has no personal knowledge of Mr. Murphy's work at the plant. Mr. Harrison did not identify or mention Covil in his deposition.

Covil Connections

There is limited evidence linking Covil to the Weyerhaeuser mill in New Bern.

One employee termination notice reflects that Covil performed certain insulation contracting at the Weyerhaeuser mill in New Bern around December 1973. *See* Bates No. 079257.

Former Daniel employee Ty Annas testified that Covil supplied the "whole job for insulation" installed by Daniel during his time at Weyerhaeuser. *See* Annas Dep. 97:9-19, June 24, 1996. Some of the boiler insulation came separately. *See id.* For example, pipe insulation from Baldwin Hill "came with the package" for the boiler. *Id.* at 100:14-19. To his knowledge, Covil provided all the pipe insulation that was used at the New Bern facility. *Id.* at 97:20-22. He recalled that "Mr. Covil would bring in whatever he could get sometimes. You know, business was big then." *Id.* at 100:11-13.

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ATTORNEY WORK PRODUCT
Last revised 7/22/2021

- Mr. Annas's title at the Weyerhaeuser job was general foreman. *Id.* at 18:25–19:7. He worked there for 42 weeks for Daniel. *Id.* at 19:17–18. By this point, “a whole lot” of the plant had already been constructed. *Id.* at 80:10–16.
- He did not remember any subcontractors at this job, as it was all Daniel in-house work. *Id.* at 38:25–39:4. As he explained, “We always looked after our own job. And that was our number one enemy, subcontractors.” *Id.* at 37:20–22. When asked specifically about outside insulation contractors at Weyerhaeuser, Mr. Annas could not recall any. *Id.* at 108:11–14. His team from Daniel Construction did the insulation work. *Id.* at 38:13–17. The insulators were the ones using asbestos-containing materials at the Weyerhaeuser job. *Id.* at 40:18–20.
 - Mr. Annas recalled a deep freeze one winter during the Weyerhaeuser job, which destroyed some of the insulation materials. *Id.* at 49:11–15. He recalled that “Mr. Covil had to bring in enough to take care of the job” as a result. *Id.* at 49:16–19. He testified that about half of the insulation to reinstall after the freeze was manufactured by Owens-Corning. *Id.* at 50:19–51:3.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to various Weyerhaeuser plants.

CP&L / Duke Power Sutton Steam Plant (Wilmington, NC)

The Sutton Steam Plant was built by Carolina Power & Light in 1954. The plant did not become a Duke Power plant until Duke Power merged with Progress Energy in 2012.

Plaintiffs allege that Mr. Murphy worked at this site for Daniel Construction and Brown & Root during shutdowns from 1978 “through the 1980s.” As noted above, however, Mr. Murphy's Social Security records do not reflect employment with either Daniel or Brown & Root after the third quarter of 1976.

In his deposition, Mr. Murphy testified that he worked at the Sutton Plant for about six to eight months on one job while employed by Brown & Root. It was a shutdown job that involved rebuilding portions of the plant, including replacing old pipes and insulation. Mr. Murphy worked as both a welder and a pipefitter. He recalled working around insulators. He said that the insulators were employees of Daniel and Brown & Root. He also worked two weekend shutdowns. Mr. Murphy could not identify the names of any companies that supplied or distributed insulation to the plant.

Covil Connections

Covil records show certain contract work at the Sutton Steam Plant in the 1970s and 1980s. One document from July 1974 lists Sutton Steam Unit One on a list of Covil's tax-exempt jobs. Four personnel records place Covil contractors at the site in 1973 and in 1983, when the plant was still owned by Carolina Power & Light.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

ATTORNEY WORK PRODUCT

Last revised 7/22/2021

More specifically, the following evidence researched to-date shows Covil's connections with the Sutton Steam Plant:

- An injury record shows that Covil employee Willie McCutcheon was injured at the Sutton Steam Station in Wilmington on September 29, 1973. Foreign matter flew in his eye while "supervising men installing flashings on duct." One record adds that "CP&L [e]mployees [were] cleaning out precipitator." Bates Nos. 061697-99.
- An injury record for Covil employee Eugene Anders shows that he was injured at the Sutton Plant (Wilmington) on September 25, 1973. He bruised his spine when his foot slipped while he "was removing metal so inspector could check insulation." Bates No. 103320-22.
- A Covil record from July 1974 of "Tax Exempt Jobs" includes an entry for Sutton Unit Number One, job number 5377. COV_008791.
- A Covil termination notice shows that employee Dock Nance finished a job for Covil at Sutton Plant in May 1983. Bates No. 098031.
- A Covil termination notice shows that employee Gary Parker finished a job for Covil at CP&L Wilmington in June 1983. Bates No. 101539.
- A Covil record of "Material Sales Contracts for Large Industrial Plants" lists a contract with a Carolina Power & Light fossil plant in Wilmington, NC. *E.g.*, COV_008860, COV_008862, COV_008864, COV_008871, COV_008875, COV_008881, COV_008950. Because of the reference to "Celanese Fibers" in this document, we know that the document was created sometime between 1984 and 1989.

U.S. Army – Fort Jackson, SC

Mr. Murphy completed his basic training at Ft. Jackson in 1958. Covil historical records indicate that Covil performed work at Ft. Jackson in 1969, 1970, and 1974. This was long after Mr. Murphy's basic training—which likely would not have involved any exposure to asbestos in the first place.

Our Theory of Defense

We will argue that Covil was not in a position to have knowledge of the risks of use of asbestos-containing products. Covil was not a manufacturer of asbestos products and therefore will not be held to the level of an expert as to the risks incident to the use of asbestos-containing products. Covil's main defense to liability is therefore a "state of the art" defense. Covil's workers were exposed to the same asbestos-containing products to which Mr. Murphy would have been exposed, and Covil certainly would not have exposed its workers to this danger if it had been aware of it. Significantly, two of Covil's principals, Palmer Covil and Russell Johnson, both

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 7/22/2021

died of mesothelioma, which makes this argument more compelling. Covil will contend that it was legal to sell and install asbestos thermal-insulation products up until the products were banned in 1975. Covil will also contend that it complied with the workplace engineering controls for asbestos work when those regulations were adopted by OSHA.

Covil also will argue that there is insufficient evidence that Covil exposed Mr. Murphy to asbestos, given that he did not identify Covil during six days of deposition. South Carolina recognizes the “frequency, regularity and proximity” test, which requires “evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.” *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). In South Carolina cases where the burden of proof is a preponderance of evidence, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Toal, J.). The following section from the South Carolina Bench Book provided to South Carolina trial court judges as a reference also is instructive:

In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is a drastic remedy and should be granted only upon clear and convincing evidence. Additionally, even where there is no dispute as to the evidentiary facts, but only as to the conclusions are inferences to be drawn from them, summary judgment should not be granted. *Hamilton v. Miller*, 301 S.C. 45, 389 S.E.2d 652 (1990).

Many defendants in this case will have strong summary judgment motions due to being incorporated outside of South Carolina. The foreign defendants will move for summary judgment on the ground that South Carolina’s door-closing statute prevents Plaintiffs, as North Carolina residents, from suing them in South Carolina courts. See S.C. Code § 15-5-150(2) (allowing a non-resident to sue a foreign corporation in South Carolina circuit court only “when the cause of action shall have arisen or the subject of the action shall be situated within this State”). In asbestos cases, South Carolina courts have interpreted this statute to allow non-resident plaintiffs to sue foreign corporations in South Carolina when the defendant’s acts exposed the plaintiff to asbestos in South Carolina. See, e.g., *Henderson*, 373 S.C. at 184–85, 644 S.E.2d at 727; *Murphy v. Owens-Corning Fiberglas Corp.*, 356 S.C. 592, 598, 590 S.E.2d 479, 482 (2003). If the foreign defendants are dismissed, Covil could find itself on a short list of remaining defendants prior to trial (other defendants in this situation include Daniel Construction, Southern Insulation, and Starr Davis, among others). With that said, Justice Toal might defer making any summary judgment rulings until as late as possible to encourage settlement by the foreign defendants.

Given that documentary evidence and deposition testimony show that Covil supplied, and perhaps installed, insulation at three of Mr. Murphy’s job sites, it is unlikely that Covil will obtain summary judgment—at least in this particular jurisdiction.

Effect of Chief Justice Toal

Chief Justice Toal's rulings have changed the landscape of asbestos litigation in South Carolina. A first example is summary judgment. A win at the summary-judgment stage has become nearly impossible for defendants. Starting with the *Taylor* case in spring 2017, Chief Justice Toal has consistently stated during defense arguments that if a defendant's products were in the plant where the plaintiff worked, even if sold to the location decades beforehand without any evidence they still remain, this is a scintilla of evidence to defeat summary judgment. These holdings seem to be at odds with the Supreme Court of South Carolina's ruling in *Henderson*, a mesothelioma case in which the court expressly adopted the federal *Lohrmann* "frequency, regularity, and proximity test." Under *Lohrmann*, "to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." Another common refrain during argument is that the use of asbestos gaskets to attach pumps and valves to piping systems is enough to make the pump and valve manufacturers liable, even though the pump and valve manufacturers did not sell or provide the asbestos gaskets for use at the site at issue. Anecdotally, counsel is aware that Chief Justice Toal has granted roughly two defendants' motions for summary judgment in the three years prior to this report. Both involved defendants rarely seen in the South Carolina asbestos docket and with unique procedural postures.

A second example relates to motions in limine. Plaintiffs now have a database of prior rulings that they select from and rely on to support their arguments in case after case before Chief Justice Toal. Relevant to Covil, Chief Justice Toal has ruled on several occasions that the jury cannot be informed that a defendant is defunct or no longer in business because it raises the concept of insurance. Introducing such evidence also opens the door to introduction of evidence regarding insurance. Chief Justice Toal also prevents defendants from mentioning or acknowledging before the jury other defendants that are no longer in the case.

Third and finally, there is a pattern of sanctions awards during discovery and trial. Chief Justice Toal has found sanctionable what previously had been the accepted practice of the defense bar in asbestos cases, from pleadings through discovery. Sanctions have included the exclusion of experts, exclusion of corporate representatives without personal knowledge, and the striking of pleadings. COVID-19 prevented any trials from going forward in this docket in 2020. Therefore, the most recent decision of note from Chief Justice Toal was in November 2019 when she granted the *Crawford* plaintiff a new trial, citing multiple discovery abuses by Covil, including extrinsic fraud based on the discovery of a data tape that had not been specifically identified for plaintiffs' counsel during discovery. Unless we are eventually able to extract what is on that tape and prove that the contents are irrelevant, this will be another basis for future spoliation motions against Covil. Both the initial award of a new trial in 2018 and this most recent Rule 60 ruling from 2019 are fully briefed and awaiting oral argument at the South Carolina Court of Appeals.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 7/22/2021

DAMAGES

As it pertains to each Plaintiff involved, provide a description of the injury/damage claimed including economic damages known to date along with any likely anticipated future economic or general damages.

The total amount of medical expenses for which Plaintiffs have provided bills so far is \$[REDACTED]. In addition to medical expenses, Plaintiffs are claiming \$[REDACTED] for funeral and burial expenses.

Through their claims for negligence, strict product liability, breach of implied warranties, and fraudulent misrepresentation, Plaintiffs seek to recover for Mr. Murphy's wrongful death, pain and suffering, medical bills, loss of earnings, and loss of care, comfort, and society. Plaintiff Doris Murphy also alleges a claim for loss of consortium. Plaintiffs also seek punitive damages and costs, to the extent recoverable.

DISCOVERY PLAN

Covil will focus its efforts on forcing Plaintiffs to identify specific evidence linking Covil to the sites at issue.

DISCOVERY ACTIVITY

- Depositions completed
 - 04/28/2020-05/01/2020, 05/07/2020-05/08/2020: Nicholas Leon Murphy (decedent)
 - 07/10/2020: Doris Murphy (spouse/loss-of-consortium plaintiff)
 - 01/07/2021: George Harrison (coworker at Weyerhaeuser)
 - 02/17/2021: Yuba Heat 30(b)(6)
- Depositions noticed for next 30 days
 - 08/12/2021: Weyerhaeuser 30(b)(6)
 - 11/05/2021: Joseph Green (expert for Schneider/Square D)
- Hearings attended
 - To date, there have been no hearings in this case.
- Hearings noticed
 - N/A
- Motions filed
 - N/A
- Motions to be filed
 - Covil will file motions for summary judgment and motions in limine.

- Mediation scheduled
 - No mediation has been scheduled at this time.
- Trial notice/trial date
 - 12/6/2021 (first on trial calendar)

EXPERTS

Identify Plaintiff's expert, if known/when applicable, and describe their area of expertise and potential impact.

Plaintiffs have provided a master list of experts but have not yet identified which expert witnesses they will use in this case.

Identify Defense expert, if known/when applicable, and describe their area of expertise and potential impact

1. Dr. Bryan Hardin

Covil has retained toxicologist Dr. Bryan Hardin. If called, Dr. Hardin will testify that asbestos exposure at certain concentration levels can cause disease and that the levels that have been considered acceptable in the workplace have changed over time as the scientific community's knowledge about asbestos has evolved.

Dr. Hardin will also testify that Covil acted appropriately and responsibly in light of the information and knowledge available to it, the government, and the scientific community over time. Based on the state of the medical and scientific literature at relevant times, Covil could reasonably conclude that the sale and use of asbestos-containing products could be done safely, if appropriate precautionary measures were taken, and would not pose a risk of disease to individuals such as Mr. Murphy.

2. Dr. Earl Gregory

Covil will retain Dr. Earl Gregory as its industrial-hygiene expert. Dr. Gregory will testify that asbestos exposure at certain concentration levels can cause disease and that the levels that have been considered acceptable in the workplace have changed over time as the scientific community's knowledge about asbestos has evolved.

Dr. Gregory will also testify that Covil acted appropriately and responsibly in light of the information and knowledge available to it, the government, and the scientific community over time. Based on the state of the medical and scientific literature at relevant times, Covil could reasonably conclude that the sale and use of asbestos-containing products could be done safely, if appropriate precautionary measures were taken, and would not pose a risk of disease to individuals such as Mr. Murphy. Moreover, Dr. Gregory will opine that bystanders like Mr. Murphy would have been exposed to only a fraction of the levels that insulators would have been exposed to.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 7/22/2021

TIMELINE

- 09/28/2021: Deadline to complete fact witness depositions
- 10/13/2021: Deadline to file and serve dispositive motions
- 10/23/2021: Deadline to complete Plaintiffs' expert depositions and Defendants' 30(b)(6) depositions
- 11/06/2021: Deadline to complete all discovery; deadline to mediate
- 11/17/2021: Deadline to file and serve reply to Plaintiff's response to dispositive motions
- 11/23/2021: Deadline to exchange final trial-witness lists
- 11/30/2021: Deadline to exchange final exhibit lists and page/line designations; deadline to file motions in limine
- 12/02/2021: Deadline to exchange objections and counter page/line designations
- 12/04/2021: Deadline to exchange objections to counter page/line designations and final counter-designations

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

COVIL CORPORATION – INITIAL REPORT

TOMMY D. WANNAMAKER

CASE MATTER DATA

Plaintiff information – Dale J. Wannamaker, individually and as Personal Representative of the Estate of Tommy D. Wannamaker (deceased; mesothelioma)

Venue (where, describe impact) – Orangeburg County, South Carolina, Court of Common Pleas. Orangeburg County is between Charleston and Columbia and is largely rural. Orangeburg juries have historically favored the plaintiff over a corporate defendant. In 2019, an Orangeburg jury awarded a father and son \$35 million in a trucking accident case.

Judge (who, describe impact) – The Honorable Jean Hoefer Toal is the lead judge overseeing the administration of the cases in the South Carolina asbestos docket.

Plaintiff's Counsel (who, describe impact) – Plaintiff's counsel is Theile B. McVey of Kassel McVey out of Columbia, SC, as local counsel, and Ben Braly of Dean Omar Branham Shirley LLP out of Dallas, TX. Both firms are well known to the asbestos bar in South Carolina and North Carolina. Chief Justice Toal works closely with and relies on Theile McVey to assist with the coordination of the asbestos docket. Ms. McVey is a past president of the South Carolina Advocates for Justice, which is the lead organization in the state for lawyers representing personal injury plaintiffs.

Parties to Suit (who, role and describe impact):

Plaintiff:

- Dale J. Wannamaker (Mr. Wannamaker's wife)

Defendants (excludes known dismissed/settled defendants*):

Premises, Contractor, or Insulation Defendants	Product Defendants
• 4520 Corp. • Advansix, Inc. • Aecom Energy & Construction, Inc. • Anheuser-Busch Companies, LLC • AT&T Corp. • Bahnson, Inc. • Bonitz, Inc. • Covil Corporation • Daniel International Corporation; - Fluor Constructors International, Inc.; - Fluor Daniel Services Corporation; - Fluor Enterprises, Inc.	• Armstrong International, Inc. • Blackmer Pump Company • Cleaver-Brooks, Inc. • Crane Instrumentation & Sampling, Inc. • Flowserve Corp. • Flowserve US Inc. • General Electric Company • Goulds Pumps, Inc. • IMO Industries, Inc. • ITT LLC • Met-Pro Technologies, LLC

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

• E.I. du Pont de Nemours & Co. • Eastman Chemical Co. / Eastman Kodak Co. • Ethyl Corporation • Great Barrier Insulation Co. • HOK Group, Inc. • Honeywell International, Inc. • J & L Insulation, Inc. • Nassau Metals Corporation • Nokia of America Corporation • Rust Engineering & Construction, Inc. / Rust International Inc. • SI Group, Inc. • South Carolina Public Service Authority • Southern Insulation, Inc. • SPI LLC • Starr Davis Company, Inc. / Starr Davis Company of S.C., Inc. • Vistra Corp. / Vistra Intermediate Company, LLC	• Riley Power, Inc. • Weir Valves & Controls USA, Inc. • William Powell Company • Yuba Heat Transfer, LLC • Zurn Industries, LLC

* Based on allegations and discovery to date.

FACTS & ISSUES/LIABILITY

Outline the Summary of Facts known to date: work history, alleged exposure

Tommy Dan Wannamaker was born on [REDACTED], and died on [REDACTED], at age [REDACTED]. He had been married to plaintiff Dale Wannamaker since [REDACTED].

Mr. Wannamaker was diagnosed with mesothelioma on or around August 15, 2019. His medical records note that he was a lifelong non-smoker with no history of known asbestos exposure. Plaintiff's discovery responses note that Mr. Wannamaker occasionally used chewing tobacco.

Mr. Wannamaker graduated from high school in 1964 and began a steamfitter apprenticeship. He served in the United States Navy Reserve for one year. Plaintiff alleges that Mr. Wannamaker was exposed to asbestos during his work as a pipefitter, steamfitter, insulator, and welder between 1964 and 2014. Mr. Wannamaker was deposed over three days in this case in 2021. He did not identify or mention Covil during his deposition.

Based on Plaintiff's discovery responses and Mr. Wannamaker's Social Security records and work resumes, Mr. Wannamaker worked at the following jobs (listed by employer and corresponding jobsite):

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

1. S.C. Department of Transportation – Columbia, SC (July 1964–Feb. 1965)
2. Huggins Transport Company – Columbia, SC (Mar.–Nov. 1965)
3. W.O. Blackstone & Co. (Dec. 1965–Nov. 1967)
4. U.S. Naval Reserves
 - a. USS Gilmore – Charleston, SC (Nov. 1967–Nov. 1968)
5. W.O. Blackstone & Co. (Nov. 1968–Oct. 1974)
 - a. **University of South Carolina**
 - b. Dreher High School
 - c. Olympia High School
 - d. Finley House
6. Johansen Co.
 - a. **Allied Chemical** – Hopewell, VA (Oct. 1974– May 1975)
7. Daniel Construction
 - a. **Carolina Eastman** – Columbia, SC (May 1975–June 1976)
8. Arthur G. McKee & Co.
 - a. **Columbia Nitrogen Co.** – Augusta, GA (July–Sept. 1976)
9. ANSCO / Anco Insulations Inc.
 - a. **Columbia Nitrogen Co.** – Augusta, GA (Sept.–Oct. 1976)
10. Metric Constructors Inc.
 - a. **AT&T Nassau Metals Recycling** – Gaston, SC (Feb.–Apr. 1977)
11. C.F. Braun & Co.
 - a. **Columbia Nitrogen Co.** – Augusta, GA (May 1977)

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

12. B.F. Shaw Co.
 - a. **DuPont Savannah River Plant – Augusta, GA (May 1977–Feb. 1979)**
13. Anheuser-Busch – Albany, GA (Feb.–Aug. 1979)
14. ITT Grinnell Co.
 - a. **S.C. Public Service Authority Winyah Power Plant – Georgetown, SC (Aug. 1979–Mar. 1980)**
15. Yeargin Construction Co.
 - a. **AT&T Nassau Metals Recycling – Gaston, SC (Mar. 1980–May 1982)**
16. Harrison Construction Co.
 - a. **Carolina Eastman – Columbia, SC (May–Nov. 1982)**
17. Yeargin Construction Co.
 - a. **Carolina Eastman – Columbia, SC (Nov.–Dec. 1982)**
18. B.F. Shaw Co.
 - a. **DuPont Savannah River Plant –Augusta, GA (June 1983–Sept. 1987)**
19. M.K. Ferguson Co.
 - a. **DuPont Savannah River Plant –Augusta, GA (Sept. 1987–Jan. 1991)**
20. Applied Engineering Co. – Orangeburg, SC (welding job in downtown Orangeburg) (Feb.–May 1991)
21. Fluor Daniel
 - a. **DuPont Cooper River Facility – Monck’s Corner, SC (Aug.–Dec. 1991)**
22. Applied Engineering Co. – Orangeburg, SC (welding job in downtown Orangeburg) (Jan.–Feb. 1992)
23. Other miscellaneous jobs between 1992–2014:

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

- a. **Albemarle Chemical Plant** – Orangeburg, SC (employer unknown)
- b. The Industrial Company
 - i. Cross Generating Station – Pineville, SC (2007–2008)
- c. **Carolina Eastman** – Columbia, SC (employer unknown)
- d. **DuPont Cooper River Facility** – Moncks Corner, SC (employer unknown)
- e. Guimarin Construction (1997)
 - i. Alvin Glenn Detention Center – Columbia, SC
 - ii. Brass plant (name not known) – near Aiken, SC
- f. International Paper – Sumter, SC (employer unknown)

Below are summaries of the sites to which Covil has a potential connection.

University of South Carolina (Columbia, SC)

Mr. Wannamaker worked on jobs at the University of South Carolina (USC) at certain times while he was employed by W.O. Blackstone between November 1968 and October 1974. Mr. Wannamaker was a pipefitter for W.O. Blackstone. He helped to install a piping system at USC in “early ’72,” but he could not recall the specific building where he performed the work. Wannamaker Dep. vol. 1, 84:4–22, Apr. 1, 2021. Mr. Wannamaker was not involved with removing old piping at USC. *Id.* at 86:9–11.

Covil historical records indicate that Covil provided certain contracting to various buildings at USC in Columbia in 1975, 1977, and 1986—after Mr. Wannamaker worked at this site.

A former Covil employee, Jerry Hagan, recalled working for Covil at USC in Spartanburg around late 1968 for about one year. J. Hagan Dep. 52:19–53:4, Mar. 29, 2001. This appears to refer to a different school or campus, however (USC is located in Columbia, not Spartanburg).

Carolina Eastman (Columbia, SC)

Mr. Wannamaker worked at the Carolina Eastman polymer plant in Columbia, South Carolina, on multiple occasions while employed by the following employers:

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

- Daniel Construction (May 1975–June 1976). Mr. Wannamaker worked as a pipefitter.
- Harrison Construction Company (May–Nov. 1982). Mr. Wannamaker worked as a pipefitter and a welder.
- Yeargin Construction Company (Nov.–Dec. 1982). Mr. Wannamaker worked as a welder.

Plaintiff also claims that Mr. Wannamaker worked at the plant as a pipefitter at certain times between 1992 and 2014.

Eastman Kodak records show materials sales orders between Daniel Construction and Covil for materials, including Kaylo and One-Shot cement, in 1966 and 1967. Carolina Eastman also ordered insulation directly from Covil at certain points in 1970. Eastman records further demonstrate that Carolina Eastman ordered insulation material from Covil's competitors from 1968 through the 1970s. During that time, Covil maintained certain business with Carolina Eastman, including some insulation contracting.

Covil's historical documents provide evidence of material sales and insulation subcontracting at Carolina Eastman in the mid-to-late 1980s. As shown below, undated records list Carolina Eastman as a one of Covil's "major" industrial contracts for material supply. A Covil record of "Major Projects Performed" also points to a \$600,000 project through Daniel Construction at Carolina Eastman for pipe and tank insulation. Personnel and financial records suggest that this contract work took place from 1986 to 1987. Other records demonstrate further contracting at Carolina Eastman in 1988, which is consistent with the recollections of Rick Link, Covil's President in the late 1980s. Mr. Link recalls Daniel Construction hanging the pipes in the phase of the plant construction that occurred in the late 1980s. Covil was the insulator and was fined if work was not done by target dates. A dispute erupted between Daniel and Covil between 1988 and 1989 because Covil could not meet its deadlines unless/until Daniel's pipe work was completed. Daniel represented to Covil that they "would square up in the end." Covil eventually sued Daniel because the job cost \$3 million to complete and the contract was for only \$2 million. This litigation was settled; however, Mr. Link considers the resulting lost revenue and loss of future work from Daniel as causing Covil's demise two years later.

The following documents produced by Eastman show a connection between Covil and this site:

- Documents produced by Eastman show insulation materials orders from Daniel to Covil for a Carolina Eastman project in Cayce, SC, in 1966 and 1967. (The Cayce plant is likely the same location as the Columbia plant, given proximity in distance.) Change Orders from Daniel Construction request Kaylo pipe insulation, one-shot cement, asbestos cement, and asbestos cloth, and other

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

materials from Covil for the Carolina Eastman project in Cayce, South Carolina, in October 1966, December 1966, March 1967, June 1967, and July 1967. See Eastman_Knight_001221, Eastman_Knight_001223–24, Eastman_Knight_001225, Eastman_Knight_001233–34, Eastman_Knight_001235–38, Eastman_Knight_001239, Eastman_Knight_001240, Eastman_Knight_001243, Eastman_Knight_001247–48.

- Eastman records also demonstrate that Carolina Eastman ordered pipe insulation and asbestos cement directly from Covil in 1970.
 - Purchase Orders from Carolina Eastman to Covil show orders for Hydrous Calcium Silicate or Expanded Silica pipe insulation and other products in June 1970. Eastman_Knight_001270–72 (no asbestos-free specification).
 - A Purchase Order from Carolina Eastman shows an order to Covil for asbestos cement (blue mud) and gray Vimasco in August 1970. Eastman_Knight_001333.
 - A Purchase Order from Carolina Eastman to Covil shows request for one-shot insulating cement and grey asbestos cement, among other materials, in September 1970. Eastman_Knight_001293–94.
- Carolina Eastman records also indicate purchases of insulation from Covil competitors like North Brothers starting around 1968 into the mid-to-late 1970s. See, e.g., Eastman_Knight_001212–15 (purchase order from Carolina Eastman to J.R. Deans Co. requesting hydrous calcium-silicate pipe insulation); Eastman_Knight_001216 (purchase order from Carolina Eastman to J.R. Deans Co. requesting Thermobestos “Kaylo klad” pipe insulation in July 1968); Eastman_Knight_001334–37 (showing that Carolina Eastman purchased blue mud asbestos cement from North Brothers in July and August 1970); Eastman_Knight_001305–306 (showing that Carolina Eastman purchased asbestos cement from North Brothers in January 1971); Eastman_Knight_001299–300 (purchase order from Carolina Eastman showing a request to order asbestos cloth from North Brothers in March 1971); Eastman_Knight_001311–13 (showing that Carolina Eastman purchased asbestos cement from North Brothers in May 1971); Eastman_Knight_001261 (purchase order from Carolina Eastman to North Brothers shows request for asbestos cloth in August 1973);

The following evidence from Covil records further demonstrates Covil connections with Carolina Eastman in Columbia. Contextual evidence suggests that these documents were created in the mid-1980s:

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

ATTORNEY WORK PRODUCT

Last revised 5/5/2022

- An undated Covil record of “Major Material Contracts (Industrial)” includes an entry for Carolina Eastman in Columbia (SC), contract of \$200,000 for fiberglass pipe covering and accessories. COV_008005.
- An undated Covil record of “Material References” lists Carolina Eastman in Columbia (SC). *E.g.*, COV_008006, COV_017666.
- An undated Covil record of “Major Projects Performed” lists a project with Carolina Eastman, Zimmer Plant, subcontracted through Daniel Construction for \$600,000 for pipe and tank insulation. COV_009137.
- An undated Covil record of customers lists Carolina Eastman Company as customer number 04338. RP_037023, COV_008122.
- An undated handwritten note indicates details related to cost, profit, completion percent, and other contract details regarding Covil’s business with Carolina Zimmer. RP_029305.
- An April 1986 invoice from Conklin Metal Industries indicates a Covil purchase for material shipped to Carolina Eastman “Zimmer Project.” COV_005194.
- A December 1986 record from Daniel to Covil Corporation attests that Daniel will pay Covil for “all substantiated material and labor costs” for the Zimmer/Carolina Eastman project. RP_030093.
- A Covil accounts receivable document records more than thirty business transactions with Carolina Eastman, customer numbers 104338 and 104337, in February and March 1986 (site location not listed). COV_016048.
- A Covil accounts receivable document records more than eighty business transactions with Carolina Eastman, customer numbers 104338 and 104337, from May, August, and September 1986 (site location not listed). RP_029053.
- Covil personnel records demonstrate Covil’s presence at the Carolina Eastman and/or Zimmer location from approximately June 1986 to February 1987 and again in March 1988. *E.g.*, Bates No. 041436, Bates No. 000359, Bates No. 008095, Bates No. 005308, Bates No. 004183, Bates No. 001265, Bates No. 078688. (These records are only a sample of the more than twenty-five Covil personnel records from work at the Carolina Eastman and/or Zimmer plant.)
- A Covil record of inventory instructions for nine months ending September 1986 show inventory checks of Covil inventory at locations including Carolina Eastman. RP_030137.

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ATTORNEY WORK PRODUCT

Last revised 5/5/2022

- A handwritten note details Covil “projects with [retainages] due as of September 30, 1986,” including for Zimmer, job number 2606 for \$28,935.00. RP_030094.
- A Covil record from February 1987 explains potential loss from work through Daniel Construction at Carolina Eastman (site location not provided). COV_021378.
- A Covil note from August 1988 discusses “wrap-around insurance” for Covil’s Carolina Eastman job (site location not listed). COV_008187.
- A Covil financial record shows seventeen invoice balances for Carolina Eastman business between June and September 1988. COV_016282.
- The personnel record of Covil VP of Contracts Charles McWhorter includes an overview of discussions from July 1988 with Mr. McWhorter regarding closure of the Covil contracting department. It mentions ongoing contracting work at Carolina Eastman. Bates Nos. 057466–67.
- A Covil payroll summary record from August 1988 shows eighteen Covil employees on the payroll for a Carolina Eastman “Equipment” job, number 028110 (site location not listed). COV_008334.
- A Covil financial record from May 1989 shows an account balance for Carolina Eastman, customer number 4338. COV_021667.
- A Covil financial record from December 1989 lists a balance owed by Carolina Eastman Company, customer number 04338 (site location not listed). COV_021619.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to the Carolina Eastman Plant in Columbia.

Columbia Nitrogen (Augusta, GA)

Mr. Wannamaker worked at Columbia Nitrogen in Augusta, Georgia, for the following employers during the following time periods:

- Arthur G. McKee & Co. (July–Sept. 1976). Mr. Wannamaker worked as a pipefitter.
- Anco (or ANSCO) Insulation. (Sept.–Oct. 1976). Mr. Wannamaker worked as an insulator.
- C.F. Braun & Co. (May 1977). Mr. Wannamaker worked as a welder.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

Mr. Wannamaker testified that he insulated “90-degree elbow” pipe at the job. Wannamaker Dep. vol. 3, 192:25–193:2, Apr. 13, 2021. He did not know whether the insulation contained asbestos. *Id.* at 193:21.

Covil’s historical records indicate that Covil provided limited insulation contracting to Columbia Nitrogen in Augusta in 1965, 1966, 1976, and 1984. The 1976 and 1984 jobs consisted at least in part of installing spray-foam glass.

The following records are most relevant to Mr. Wannamaker’s alleged exposures in this case:

- An injury record for Covil employee Tony Seagraves shows that Mr. Seagraves was injured at Columbia Nitrogen in Augusta, Georgia, in May 1965 while sawing insulation material on a bandsaw. Bates No. 043212.
- An injury report for Covil employee Troy Brumley shows that Mr. Brumley was injured at Columbia Nitrogen in Augusta, Georgia, in October 1965 while crawling down a pipe rack. Bates No. 091747, Bates No. 091750.
- A Covil application for a North Carolina contractors license dated June 1966 lists a \$331,000 contract with Columbia Nitrogen in August, completed March 1966. COV_013349 (BEGDOC: COV_013338).
- Covil had a maintenance contract with Columbia Nipro (a sister company of Columbia Nitrogen) in Augusta at least as of October 1966. Bates No. 21221.
- An injury record for Covil employee Jimmy Livingston shows that Mr. Livingston was hurt at Columbia Nitrogen in Augusta, Georgia, in August 1976 while “applying foamglas on a tank.” Bates No. 012321–23.
- An injury record for Covil employee Chris Lominick shows that Mr. Lominick was injured at Columbia Nitrogen in Augusta, Georgia, in August 1976 while “applying foamglas on a tank.” Bates No. 060142–44.

The exposure report that we have prepared for this site includes a complete list of the records that link Covil to the Columbia Nitrogen plant.

Winyah Power Plant (Georgetown, SC)

Mr. Wannamaker worked at the South Carolina Service Authority’s Winyah Power Plant in Georgetown, South Carolina, as a welder while employed by ITT Grinnell Company from May 1977 through February 1979.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

Documentary evidence shows that Covil provided materials and performed insulation contracting for various jobs at the Winyah Bay Power Plant's Units Two through Four during the late 1970s and early 1980s. Multiple copies of Covil's "Resume of Work" show that Covil completed an insulation contracting project at Winyah Unit Two in 1977. Later correspondence with General Electric and contractor Burns & Roe demonstrates that Covil obtained other contracts for Units Three and Four. A Covil "Work in Progress" also shows that Covil worked with the site as late as February 1982.

Personnel records further clarify that Covil likely worked on all four Winyah generating units, starting possibly in the early 1970s. The Winyah plant was a coal-fired power station that first began operation of Unit One in 1975, adding on later units through 1981. A resume of Covil supervisor Alvin McKenzie states that he worked on Units One and Two and provided turbine insulation on Units Two through Four.

The following documents from Covil's historical records are most relevant to Mr. Wannamaker's work from May 1977 through February 1979:

- A Covil record from January 1977 provides new job numbers for jobs transferred from "Branch #1" to "Corporate #10." Georgetown Unit Two transferred from job number 1604 to 10704. Georgetown Extra transferred from job number 16446 to 10705. COV_016151. [Note that Covil's records often refer to Winyah Unit 2, for example, as Georgetown Unit 2.]
- A USF&G status of contracts for Covil Corporation lists a \$263,229 contract for Georgetown Two in Georgetown, NC (NC here is likely a typo).
- A Covil termination notice for employee Marvin McClellan shows that Mr. McClellan ended Covil work at "Georgetown #2" in November 1976. Bates No. 061316.
- A Covil termination notice for employee Lee Hart shows that Mr. Hart quit Covil work at "Georgetown #2" in January 1977. Bates No. 032761.
- A Covil termination notice for employee Alton Canham shows that Mr. Canham quit Covil work at "Georgetown #2" in February 1977. Bates No. 106992.
- A Covil termination notice for employee John Lambert shows that Mr. Lambert completed work at "Georgetown #2" in March 1977. Bates No. 009365
- A Covil "Resume of Work" from February 1979 lists a project for Santee Cooper (Winyah Unit Two) for insulation work through Burns & Roe, Inc. in Georgetown, completed in 1977. COV_005756; *see also* COV_005765, COV_005784, COV_005785.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to the Winyah Power Plant.

Allied Chemical (Hopewell, VA)

Mr. Wannamaker worked for Johansen Co. at the Allied Chemical facility in Hopewell, Virginia, as a pipefitter from October 1974 to May 1975. Mr. Wannamaker testified that the Allied Chemical work was a union job. Wannamaker Dep. vol. 4, 240:14–17, Apr. 14, 2021. The work included installing new pipe in an existing building. *Id.* at 243:6–17. Mr. Wannamaker testified that he did not remember the specifics of the job but did recall burning his face on a steam line. *Id.* at 252:14–15.

While we have not located any documentary evidence that connects Covil to the Allied Chemical facility in Hopewell, one former Covil employee has testified about his work for Covil at this site. Former Covil employee James Michael Hill testified that he worked at the Allied Chemical plant in Hopewell for approximately three months between 1976 and 1978. J. M. Hill Dep. vol. 1, 156:19–157:6, Nov. 1, 2018. He testified that the work at Hopewell was “patch and repair” work, not new insulation work. J. M. Hill Dep. 71:20–72:4, Oct. 29, 2018. He recalled “insulating hot stuff” there. J. M. Hill Dep. vol. 1, 157:11–16, Nov. 1, 2018. He testified (in response to a leading question from his attorney) that Covil also supplied the insulation at the site. *Id.* at 159:8–15. He recalled daily Covil team meetings at the plant. *Id.* at 162:5–8.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to Allied Chemical plants.

DuPont Savannah River Plant (Augusta, GA)¹

Mr. Wannamaker worked at the Savannah River Plant in Augusta, Georgia, for the following employers during the following time periods:

- B. F. Shaw Co. (May 1977–Feb. 1979). Mr. Wannamaker worked as a welder.
- B. F. Shaw Co. (June 1983–Sept. 1987). Mr. Wannamaker’s job responsibilities included welding and assisting with pipe fabrication.

¹ In previous cases (e.g., *Archer*), plaintiffs’ counsel has not sought to recover for any alleged asbestos exposures at this site. This is because the Savannah River Plant is owned by the U.S. Department of Energy. In an attempt to prevent removal of the case to federal court, plaintiffs typically disclaim “each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiff’s presence on or at any federal enclave.” Paragraph 20 of Plaintiff’s third amended complaint in this case includes that disclaimer. We are including the Savannah River Plant as an exposure site in an abundance of caution, since Plaintiff’s counsel has not confirmed whether he will pursue recovery for Mr. Wannamaker’s alleged exposure at the plant.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

- M. K. Ferguson Co. (Sept. 1987–Jan. 1991). Mr. Wannamaker’s job responsibilities included welding and assisting with pipe fabrication.

The Savannah River Plant is a huge facility located near Aiken, South Carolina, and extending to Augusta, Georgia. It is referred to as the “bomb plant” by locals because after its construction in the late 1940s, fuel for atomic weapons was manufactured there. The facility is owned by the Atomic Energy Commission, now known as the Department of Energy. The Department of Energy historically contracted for the operation of the facility through DuPont and Westinghouse. There are hundreds of buildings throughout the plant complex, which is larger than some counties in South Carolina. Buildings were constantly being built, remodeled, and renovated. This resulted in piping constantly being removed, installed, and insulated.

Covil was never a regular insulation contractor at the Savannah River Plant. It did, however, periodically sell products to other insulation contractors, and was occasionally hired to do an odd job. This is consistent, for example, with former Covil employee Dwaine Waters’s testimony that he worked for Covil at the Savannah River Plant for one week around the mid-1970s, during which time he said that Covil also provided the insulation material. It is also consistent with a single Owens-Corning invoice dated July 1968 to Covil for Kaylo pipe covering for the DuPont facility in Dunbarton, South Carolina, `GWB_COV_156_0001427–30` (BEGDOC: `GWB_COV_156_0001386`), and one Covil termination notice from September 1974 indicating that a Covil employee worked on a job at DuPont in Augusta, Georgia, Bates No. 115976. (Both Dunbarton and Augusta likely refer to the Savannah River Plant.)

A memo from Covil’s long-time former counsel, Danny White, explains that the principal insulation contractor at the Savannah River Plant beginning in the late 1960s was North Brothers. Covil and North Brothers were competitors, and Covil almost never supplied products directly to North Brothers.

Covil historical records show that Covil provided materials to the plant at least from 1989 to 1991—long after Covil stopped supplying asbestos-containing products.

Former Vice President of Operations for Covil, Machen Carpenter, testified that one of Covil’s specialties in “FOB sales was to go after multi-year contracts with the big boys,” including the Savannah River site. Carpenter Dep. 102:6–11, May 27, 2004. He testified that Covil would go after multi-year contracts and bid on them against other bidders for multi-year sole source distributions. *Id.* at 102:11–13. Mr. Carpenter recalled visiting the “bomb plant” in Aiken “many, many, many, many, many times.” *Id.* at 57:9–13. He recalled systems at the plant with “huge pipes that run for miles that . . . absolutely must be insulated in a very specific manner.” *Id.* at 58:2–6. The Savannah River Plant required that all insulation boxes be labeled to specify the exact location for installation within “a hundred mile radius” at the plant.” *Id.* at 58:21–59:6. The Nuclear Regulatory Commission required insulation manufacturers to acquire NRC certification before they provided the materials to Covil. *See id.* at 59:9–15. The manufacturers would identify all boxes according to date of batch and date of production, then

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

ship to Covil. *Id.* Covil would then document each box according to the “foot of what line it went on” and send to the plant. *Id.* at 59:15–20.

In our December 2019 interview with former Covil executive Charles McWhorter, Mr. McWhorter recalled Covil bidding on a pipe project but losing the bid to another outfit.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to the Savannah River Plant.

DuPont Cooper River Facility (Monck’s Corner, SC)

Mr. Wannamaker worked at this plant (referred to by Plaintiff as the DuPont plant in Goose Creek) for Fluor Daniel from August to December of 1991. According to a work history resume, Mr. Wannamaker’s job responsibilities included welding, assisting with pipe fabrication, and plant maintenance work.

Covil records provide no direct evidence of a business relationship with DuPont at the Cooper River Facility. Covil’s founder Palmer Covil testified, however, that Covil sold insulation materials to DuPont Cooper River from 1975 to 1976. P. Covil Dep. vol. 3, 394:13–17, 395:21–22, July 15, 1977. Mr. Covil testified that Covil was not a contractor at this site. *Id.* at 341:14–16. By 1975, the materials that Covil sold to this plant should have been asbestos-free.

DuPont’s corporate representative testified in this case that Cooper River was intended to be asbestos-free. Although abatement records later revealed the presence of certain nonfriable gasket-related material, as well as mastic and transite interspersed, no evidence pointed to asbestos-containing insulation onsite.

The exposure report that we have prepared for this site includes additional information that we have compiled on this site.

Albemarle Chemical Plant (f/k/a Ethyl Corporation) (Orangeburg, SC)

Plaintiff alleges that Mr. Wannamaker worked at Albemarle in Orangeburg, South Carolina, “repeatedly between 1992 and his retirement in 2014.”

Deposition testimony and Covil’s historical records and indicate that Covil performed contract work at the Ethyl Corporation/Albemarle Chemical Plant in the late 1960s and in the late 1970s.

- Personnel records place Covil workers on site in August and September 1969. See Bates No. 072641 (Covil injury report dated 09/1969); Bates No. 067645 (former Covil employee termination notice dated 09/1969); Bates No. 077133 (former Covil employee termination notice date 08/1969).

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

- A Covil termination notice shows that employee Daniel Cooper ended his work for Covil at Ethyl Corporation in December 1976. Bates No. 111849.
- A personnel record for Covil employee James Metts itemizes his time at various locations, including Ethyl Corporation in Orangeburg in February–March 1977. Bates No. 088043–44.
- A Covil termination notice shows that employee Larry Hope ended his work for Covil at Ethyl Corporation in Orangeburg in June 1977. Bates No. 094038.
- In his August 1977 deposition, former Covil executive Russell Johnson testified that Covil had done some work for Ethyl (misspelled Ethel) Corporation in Orangeburg. Mr. Johnson said that Covil had worked “in and out of there for the past eight or ten years.” Johnson Dep. 76:24–77:2, Aug. 28, 1977.

By the time that Mr. Wannamaker worked at this site in 1992, the company would have had extensive protocols in place for handling any asbestos-containing materials.

AT&T Nassau Metals Recycling (Gaston, SC)

Mr. Wannamaker worked at the AT&T Nassau Metals Recycling facility in Gaston, South Carolina, for Metric Constructors from February to April 1977, and for Yeargin Construction from March 1980 through May 1982. His job responsibilities included welding pipe, structural steel, carbon, and stainless steel. He also did pipefitting, plumbing, soldering, and insulating, and ran fire mains.

Covil’s only potential connection to this site is an undated record listing AT&T Nassau Metals as customer number 00122.

Our Theory of Defense

Our defense will focus on the late time period of Mr. Wannamaker’s alleged exposures and companies like Carolina Eastman’s and DuPont’s elaborate safety protocols at the relevant plants during that period. By the late 1970s or earlier, those companies had begun to implement elaborate safety programs for the handling of asbestos-containing materials at their facilities. Any abatement of asbestos-containing materials during that period or later should have been under controlled conditions. If not, that was a result of the employers’ failure to follow their own policies.

Covil will argue that there is insufficient evidence of Mr. Wannamaker’s exposure to asbestos-containing material supplied, installed, or disturbed by Covil. South Carolina recognizes the “frequency, regularity, and proximity” test, which requires “evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

the plaintiff actually worked.” *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). The Carolina Eastman invoices from the 1960s and early 1970s, combined with evidence of Covil’s early involvement at sites like Columbia Nitrogen and Winyah Power Plant, will prevent Covil from prevailing on a summary judgment. Moreover, based on the quantity of documents from the relevant time period linking Covil to Carolina Eastman, in particular, in addition to the number of undated documents indicating a close business relationship between them, it is likely that Covil performed work at Carolina Eastman during Mr. Wannamaker’s employment—even though most of those documents are dated from the 1980s, long after Covil stopped distributing and installing asbestos-containing products.

Covil will also argue that it was not in a position to have knowledge of the risks of use of asbestos-containing products as to any work that it performed at Mr. Wannamaker’s jobsites before he worked there. Covil was not a manufacturer of asbestos products and therefore should not be held to the level of an expert as to the risks incident to the use of asbestos-containing products. Covil therefore has a “state of the art” defense. Covil’s workers were exposed to the same asbestos-containing products to which Mr. Wannamaker would have been exposed, and Covil certainly would not have exposed its workers to this danger if it was aware of it. Significantly, two of Covil’s principals, Palmer Covil and Russell Johnson, both died of mesothelioma, which makes this argument more compelling. Covil will contend that it was legal to sell and install asbestos thermal-insulation products up until the products were banned in 1975. Covil will also contend that it complied with the workplace engineering controls for asbestos work when those regulations were adopted by OSHA.

We believe that premises defendants like DuPont, Eastman, and Anheuser-Busch are the target defendants in this lawsuit. Nonetheless, because there is evidence linking Covil to multiple sites, including Carolina Eastman and the related litigation between Daniel and Covil, Plaintiff will view this as a significant case against Covil.

Effect of Chief Justice Toal

Chief Justice Toal’s rulings have changed the landscape of asbestos litigation in South Carolina. A first example is summary judgment. A win at the summary-judgment stage has become nearly impossible for defendants. Starting with the *Denver Taylor* case in spring 2017, Chief Justice Toal has consistently stated during defense arguments that if a defendant’s products were in the plant where the plaintiff worked, even if sold to the location decades beforehand without any evidence they still remain, this is a scintilla of evidence to defeat summary judgment. These holdings seem to be at odds with the Supreme Court of South Carolina’s ruling in *Henderson*, a mesothelioma case in which the court expressly adopted the federal *Lohrmann* “frequency, regularity, and proximity test.” Under *Lohrmann*, “to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.” Another common refrain during argument is that the use of asbestos gaskets to attach pumps and valves to piping systems is enough to make the pump and valve manufacturers liable, even though the pump and valve manufacturers did not sell or provide the

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

asbestos gaskets for use at the site at issue. Anecdotally, counsel is aware that Chief Justice Toal has granted roughly two defendants' motions for summary judgment in the three years prior to this report. Both involved defendants rarely seen in the South Carolina asbestos docket and with unique procedural postures.

A second example relates to motions in limine. Plaintiffs now have a database of prior rulings that they select from and rely on to support their arguments in case after case before Chief Justice Toal. Relevant to Covil, Chief Justice Toal has ruled on several occasions that the jury cannot be informed that a defendant is defunct or no longer in business because it raises the concept of insurance. Introducing such evidence also opens the door to introduction of evidence regarding insurance. Chief Justice Toal also prevents defendants from mentioning or acknowledging before the jury other defendants that are no longer in the case.

Finally, there is a pattern of sanctions awards during discovery and trial. Chief Justice Toal has found sanctionable what previously had been the accepted practice of the defense bar in asbestos cases, from pleadings through discovery. Sanctions have included the exclusion of experts of witnesses and the striking of pleadings. As we have seen with frequent co-defendant Lincoln Electric and, more recently, Chromalox, Chief Justice Toal has made it nearly impossible for Covil not to be sanctioned in every case in which a Rule 30(b)(6) deposition of Covil has been requested. Chief Justice Toal granted the plaintiff in *Crawford* a new trial, citing multiple discovery abuses by Covil, including extrinsic fraud based on the discovery of a data tape that had been made available but had not been specifically identified for plaintiffs' counsel during discovery. Unless we are eventually able to extract what is on that tape and prove that the contents are irrelevant, this could serve as another basis for future spoliation motions against Covil.

DAMAGES

As it pertains to each Plaintiff involved, provide a description of the injury/damage claimed including economic damages known to date along with any likely anticipated future economic or general damages.

Plaintiff has not yet produced medical bills or provided a total amount of expenses claimed in this lawsuit.

Through her claims for negligence, negligence per se, strict product liability, breach of implied warranties, fraudulent misrepresentation, loss of consortium, wrongful death, and survival, Plaintiff seeks to recover for Mr. Wannamaker's pain and suffering, medical bills, loss of earnings, and loss of care, comfort, and society. Plaintiff seeks punitive damages and costs, to the extent recoverable.

DISCOVERY PLAN

Covil will focus its efforts on forcing Plaintiff to identify specific evidence linking Covil to the sites at issue.

DISCOVERY ACTIVITY

- Depositions completed
 - 04/01/2021, 04/13–04/14/2021: Tommy Wannamaker (decedent)
 - 10/19/2021: Armstrong 30(b)(6)
 - 12/07/2021: Southern Insulation 30(b)(6)
 - 12/14/2021: SPI LLC 30(b)(6)
 - 01/13/2022: Cleaver-Brooks 30(b)(6)
 - 01/13/2022: Eastman Kodak/Eastman Chemicals 30(b)(6)
 - 01/21/2022: AECOM 30(b)(6)
 - 01/25/2022: DuPont 30(b)(6)
 - 02/11/2022: DuPont 30(b)(6)
 - 02/23/2022: Yuba Heat 30(b)(6)
 - 03/02/2022: Flowserve 30(b)(6)
 - 03/30/2022: Bahnson 30(b)(6)
 - 04/20/2022: S.C. Public Service Authority 30(b)(6)
 - 04/22/2022: DuPont 30(b)(6)
 - 04/29/2022: DuPont 30(b)(6)
- Depositions noticed for next 30 days
 - 05/05/2022: Advansix/Honeywell 30(b)(6)
 - 05/10/2022: Molson Coors 30(b)(6)
 - 05/10/2022: Anheuser-Busch 30(b)(6)
 - 05/10/2022: S.C. Public Service Authority 30(b)(6) (day 2)
 - 05/12/2022: R.L. Cassidy (coworker)
 - 05/18/2022: Riley Power 30(b)(6)
 - 05/20/2022: 4520 Corp. 30(b)(6)
 - 05/31/2022: Vistra 30(b)(6)
- Hearings attended
 - There have been no hearings in this case.
- Hearings noticed
 - Pretrial hearing: 6/6/2022
- Motions filed
 - Covil filed a motion for summary judgment on 4/19/2022.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 5/5/2022

- Motions to be filed
 - Covil will file motions in limine in advance of trial.
- Mediation scheduled
 - 5/24/2022
- Trial notice/trial date
 - 6/13/2022

EXPERTS

Identify Plaintiff's expert, if known/when applicable, and describe their area of expertise and potential impact.

Plaintiff has not yet identified which experts she has retained in this case.

Identify Defense expert, if known/when applicable, and describe their area of expertise and potential impact

1. Dr. Earl Gregory

Covil has retained Dr. Earl Gregory as its industrial-hygiene expert. Dr. Gregory will testify that asbestos exposure at certain concentration levels can cause disease and that the levels that have been considered acceptable in the workplace have changed over time as the scientific community's knowledge about asbestos has evolved.

Dr. Gregory will also testify that Covil acted appropriately and responsibly in light of the information and knowledge available to it, the government, and the scientific community over time. Based on the state of the medical and scientific literature at relevant times, Covil could reasonably conclude that the sale and use of asbestos-containing products could be done safely, if appropriate precautionary measures were taken, and would not pose a risk of disease to individuals such as Mr. Wannamaker. Moreover, Dr. Gregory will opine that bystanders like Mr. Wannamaker would have been exposed to only a fraction of the levels that insulators would have been exposed to.

Dr. Gregory will also testify about the obligations of Mr. Wannamaker's employers.

TIMELINE

- 5/30/2022: Deadline to file motions in limine and exchange final trial witness lists
- 6/06/2022: Deadline to exchange final exhibit lists and serve page/line designations
- 6/13/2022: Trial (1 of 1 on trial calendar)

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 2/9/2022

COVIL CORPORATION – INITIAL REPORT

WAYMON F. SIMS, JR.

CASE MATTER DATA

Plaintiff information – Eunice H. Sims, individually and as Personal Representative of the Estate of Waymon F. Sims, Jr. (deceased; lung cancer)

Venue (where, describe impact) – Richland County, South Carolina, Court of Common Pleas Richland County. This venue traditionally has been a plaintiff-friendly venue irrespective of which member of the South Carolina judiciary is hearing cases there.

Judge (who, describe impact) – The Honorable Jean Hoefer Toal is the lead judge overseeing the administration of the cases in the South Carolina asbestos docket.

Plaintiff's Counsel (who, describe impact) – Plaintiff's counsel is Theile B. McVey of Kassel McVey out of Columbia, SC, as local counsel, and Shawna Forbes-King and Trey Branham of Dean Omar Branham Shirley LLP out of Dallas, TX. Both firms are well known to the asbestos bar in South Carolina and North Carolina. Chief Justice Toal works closely with and relies on Theile McVey to assist with the coordination of the asbestos docket. Ms. McVey is a past president of the South Carolina Advocates for Justice, which is the lead organization in the state for lawyers representing personal injury plaintiffs.

Parties to Suit (who, role and describe impact):

Plaintiff:

- Eunice H. Sims (Mr. Sims's wife)

Defendants (excludes known dismissed/settled defendants):

Premises, Contractor, or Insulation Defendants*	Product Defendants*
• Bahnson, Inc. • Bayer CropScience Inc. • Covil Corporation • Daniel International Corporation; Fluor Constructors International, Inc.; - Fluor Daniel Services Corporation; - Fluor Enterprises, Inc. • IES Holdings, Inc. • Jacobs Engineering Group Inc. • Rust Engineering & Construction, Inc. / Rust International Inc. • Southern Insulation, Inc. • Starr Davis Company, Inc. / Starr	• 3M Company • Air & Liquid Systems Corp. • Anchor Darling Valve Company • Arkema Inc. • Armstrong International, Inc. • A.R. Wilfley & Sons, Inc. • AWT Air Co. • Chalmers & Kubeck, Inc. • Crane Co. • Crosby Valve, Inc. • Emerson Electric Co. • Fisher Controls International LLC • Flowserve US Inc.

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
Last revised 2/9/2022

Davis Company of S.C., Inc. • Tutor Perini Corporation • Vistra Intermediate Company, LLC	• Formosa Plastics Corp., USA • General Electric Company • GG of Florida, Inc. • Goulds Pumps, Inc. • Grinnell LLC • Hamon Research-Cottrell, Inc. • Henry Company • Henry Pratt Co., LLC • Honeywell International, Inc. • ITT LLC • Kimray Inc. • Spirax Sarco, Inc. • Sterling Fluid Systems (USA) LLC • ViacomCBS Inc. • Viking Pump, Inc. • William Powell Company • Xylem, Inc.

*Based on allegations and discovery to date.

United States Fidelity & Guaranty Co. is the only remaining alter-ego defendant.

FACTS & ISSUES/LIABILITY

Outline the Summary of Facts known to date: work history, alleged exposure

Alter Ego

This lawsuit contains both liability and alter-ego claims. The alter-ego claims allege that from or after 1991, Covil's insurers and previous counsel acted as the company's alter ego. As defense counsel retained to represent Covil, we are addressing in this report only the asbestos defense and are not commenting on or evaluating the effect of the alter-ego claims.

Exposure Sites and Background

Waymon F. Sims, Jr. was born on [REDACTED]. He was diagnosed with lung cancer on November 26, 2018, and died six days later on [REDACTED], at age [REDACTED]. He was previously diagnosed with asbestosis in October 1996. Mr. Sims had been married to his wife, plaintiff Eunice Sims, since [REDACTED].

Plaintiff's exposure allegations in this lawsuit relate to Mr. Sims's work for the Badische Corporation at the Dow Badische plant in Anderson, South Carolina, and Duke Energy's Lee Steam Station in Pelzer, South Carolina. Mr. Sims worked at the Dow Badische plant as a thread-machine operator from the third quarter of 1973 through 1978. He worked at the Lee Steam Station as a coal handler/helper from 1979 to 1997.

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In 1997, Mr. Sims filed a worker's compensation claim against Duke Energy for his asbestosis diagnosis. Mr. Sims was a plaintiff in two seemingly related lawsuits in South Carolina state court for his asbestosis claim. The first case, *McCall v. AC&S, Inc.* (C/A No. 98-CP-23-2632), was filed in Greenville County, South Carolina, in 1998. Mr. Sims and his wife were two of multiple plaintiffs. The second case, *Sims v. AC&S, Inc.* (C/A No. 99-CP-23-457), was filed in Greenville County in 1999. Mr. Sims and his wife were the only plaintiffs. Covil was named as a defendant in both lawsuits. Wallace & Graham represented Mr. and Mrs. Sims in all three actions. To our knowledge, Mr. Sims was never deposed. We do not know whether Covil paid a settlement in the South Carolina cases or if it was voluntarily dismissed without payment.

Mr. Sims was a lifelong non-smoker. Covil and several other defendants in this case co-retained pathologist Dr. Victor Roggli from Duke University to conduct a tissue analysis. Dr. Roggli concluded that although Mr. Sims was previously diagnosed with asbestosis, there was no evidence of pleural calcification on imaging studies. According to Dr. Roggli, there is no evidence of for asbestosis or an elevated tissue asbestos content. Dr. Roggli is unable to relate Mr. Sims's adenocarcinoma to any prior history of asbestos exposure.

Mr. Sims's work at the Dow Badische plant and Lee Steam Station is described more fully below, along with a summary of the evidence that links Covil to those jobsites.

Dow Badische/BASF (Anderson, SC)

Mr. Sims worked for the Badische Corporation at the Dow Badische plant in Anderson, South Carolina, as a thread-machine operator from the third quarter of 1973 through 1978. The Dow Badische plant is a manufacturing plant for nylon and polyester products that was built in 1967.

Significant documentary evidence shows that Covil sold materials and/or performed insulation contracting work at the Dow Badische plant in Anderson from the late 1960s to the early 1990s. It is likely that Covil insulated the plant as new construction for Daniel Construction and then continued working at the facility as a maintenance contractor and insulation supplier through at least 1982.

The exposure report that we have prepared for this site includes a complete summary of the records and deposition testimony that link Covil to the Dow Badische plant. The following points provide a high-level overview of Covil's involvement with the site:

- A Covil "Resume of Work" indicates that Covil installed insulation at the facility as a subcontractor for Daniel Construction, complete by 1968.
- More than 100 personnel records place Covil employees at Dow Badische from November 1967 to April 1982, many indicating maintenance work at the facility.

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Last revised 2/9/2022

- Records retrieved from Gallivan White & Boyd's litigation files provide evidence of Owens-Corning material sales in 1967 and 1968. Further records of "Work in Progress" indicate time and materials jobs in 1981, also labeled by Covil as a "major project" for maintenance insulation.
- Former Covil employees Dwaine Waters and John Arrowood both testified to performing maintenance insulation work for Covil at Dow Badische in Anderson. Mr. Waters testified to working there in 1974 and again from 1975 to 1980. Mr. Arrowood testified that he worked there from 1969 to 1970 and again in 1974. Mr. Waters also alleged that Covil provided asbestos-containing insulation to the site in boxes labeled asbestos-free in 1974.

Duke Power Lee Steam Station (Pelzer, SC)

Mr. Sims worked for Duke Energy at the Lee Steam Station in Pelzer, South Carolina, as a coal handler/helper from 1979 through 1997.

The Lee Steam Station began as a coal-fired steam station in the 1950s or 1960s. Duke purchased three combustion turbine units for the plant from Westinghouse in 1967. Two of those units were retired in 2014 and replaced, another converted to natural gas. Today, the station operates as a combined-cycle natural gas plant. *W.S. Lee Station*, Duke Energy, <https://www.duke-energy.com/our-company/about-us/power-plants/w-s-lee-station>. By the time that Mr. Sims started working at the plant in 1979, Duke Power had begun to develop and implement elaborate safety procedures for the handling of asbestos-containing materials.

Covil conducted business with Duke Power at the Lee Steam facility by providing materials and at least some contracting services. Duke records indicate Covil's sale of heat insulation materials for this facility as early as 1966. Covil listed Lee Steam Station as one of its "Tax Exempt Jobs" in July 1974. Corporate records created sometime between 1984 and 1989 show that Covil provided material to the plant, among other Duke facilities. Covil invoices and related materials produced by Duke Power also indicate material sales for this facility in 1975, 1977, 1981, 1985, and 1986. Purchase orders and other records also show that Covil provided materials to the plant in the early 1990s.

Evidence suggests that Covil provided a certain degree of contracting work at the plant. Personnel records show Covil as a contractor at the Lee Plant in 1973. Former Covil employee Dwaine Waters also testified to working there for Covil for two days in 1973. Deposition testimony from former Covil employee Machen Lee Carpenter could suggest broader involvement by Covil at the plant. Mr. Carpenter testified that Covil had supplied or installed products for the Lee Steam Station.

Corporate representative for Daniel Construction, Don Buck, recalled that Daniel used both Covil and Starr Davis to supply insulation for Daniel jobs in North and South Carolina. Exhibits to Mr. Buck's deposition show Daniel's significant presence at the Lee Station and

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Last revised 2/9/2022

other Duke facilities in the 1970s and '80s. Mr. Buck also testified to Covil being the exclusive insulation contractor to Duke Power facilities at one time.

The exposure report that we have prepared for this site includes a complete list of the records and deposition testimony that link Covil to this site.

Our Theory of Defense

Covil will argue that there is insufficient evidence of Mr. Sims's exposure to asbestos-containing material supplied, installed, or disturbed by Covil. South Carolina recognizes the "frequency, regularity, and proximity" test, which requires "evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). While there is evidence that Covil performed work or supplied materials to Mr. Sims's jobsites, there is no evidence that Mr. Sims, who worked as a thread-machine operator and a coal handler, worked around any Covil employees or Covil-supplied materials.

Our defense also will focus on the late time periods of Mr. Sims's alleged exposures. Mr. Sims's earliest alleged exposure is the third quarter of 1973. By that time, asbestos-containing thermal insulation had just been banned, and any insulation that Covil installed or supplied would have been asbestos-free. Moreover, by 1975, the premises owners like Duke had begun to implement elaborate safety programs for the handling of asbestos-containing materials at their facilities. Any abatement of asbestos-containing materials during this period should have been under controlled conditions. If not, that was a result of the premise owners' failure to follow their own policies. Nonetheless, because of Covil's connections to the two sites at issue, combined with the venue, Plaintiff's counsel will view this as a strong case for Plaintiff. Covil will nonetheless argue that there is insufficient evidence of Mr. Sims's exposure to *asbestos-containing* material supplied, installed, or disturbed by Covil.

We will also argue that Covil was not in a position to have knowledge of the risks associated with using asbestos-containing products. Covil was not a manufacturer of asbestos products and therefore will not be held to the level of an expert as to the risks incident to the use of asbestos-containing products. Covil thus will assert a "state of the art" defense. Covil's workers were exposed to the same asbestos-containing products to which Mr. Sims would have been exposed, and Covil certainly would not have exposed its workers to this danger if it had been aware of it. Significantly, two of Covil's principals, Palmer Covil and Russell Johnson, both died of mesothelioma, which makes this argument more compelling. Covil will contend that it was legal to sell and install asbestos thermal-insulation products up until the products were banned in 1975.

Finally, Dr. Roggli's report supports an argument that Mr. Sims's lung cancer is not asbestos-related. This opinion supports an argument that Mr. Sims's illness and subsequent death were not caused by exposure to asbestos.

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In sum, although Plaintiff has presented no evidence that Mr. Sims worked around Covil insulators or Covil-supplied product at either of his jobsites, in this particular jurisdiction, the court is likely to find Covil's connections to the jobsites sufficient to avoid summary judgment.

Effect of Chief Justice Toal

Chief Justice Toal's rulings have changed the landscape of asbestos litigation in South Carolina. A first example is summary judgment. A win at the summary-judgment stage has become nearly impossible for defendants. Starting with the *Denver Taylor* case in spring 2017, Chief Justice Toal has consistently stated during defense arguments that if a defendant's products were in the plant where the plaintiff worked, even if sold to the location decades beforehand without any evidence they still remain, this is a scintilla of evidence to defeat summary judgment. These holdings seem to be at odds with the Supreme Court of South Carolina's ruling in *Henderson*, a mesothelioma case in which the court expressly adopted the federal *Lohrmann* "frequency, regularity, and proximity test." Under *Lohrmann*, "to support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked." Another common refrain during argument is that the use of asbestos gaskets to attach pumps and valves to piping systems is enough to make the pump and valve manufacturers liable, even though the pump and valve manufacturers did not sell or provide the asbestos gaskets for use at the site at issue. Anecdotally, counsel is aware that Chief Justice Toal has granted roughly two defendants' motions for summary judgment in the three years prior to this report. Both involved defendants rarely seen in the South Carolina asbestos docket and with unique procedural postures.

A second example relates to motions in limine. Plaintiffs now have a database of prior rulings that they select from and rely on to support their arguments in case after case before Chief Justice Toal. Relevant to Covil, Chief Justice Toal has ruled on several occasions that the jury cannot be informed that a defendant is defunct or no longer in business because it raises the concept of insurance. Introducing such evidence also opens the door to introduction of evidence regarding insurance. Chief Justice Toal also prevents defendants from mentioning or acknowledging before the jury other defendants that are no longer in the case.

Finally, there is a pattern of sanctions awards during discovery and trial. Chief Justice Toal has found sanctionable what previously had been the accepted practice of the defense bar in asbestos cases, from pleadings through discovery. Sanctions have included the exclusion of experts of witnesses and the striking of pleadings. As we have seen with frequent co-defendant Lincoln Electric and, more recently, Chromalox, Chief Justice Toal has made it nearly impossible for Covil not to be sanctioned in every case in which a Rule 30(b)(6) deposition of Covil has been requested. Chief Justice Toal granted the plaintiff in *Crawford* a new trial, citing multiple discovery abuses by Covil, including extrinsic fraud based on the discovery of a data tape that had been made available but had not been specifically identified for plaintiffs' counsel during discovery. Unless we are eventually able to extract what is on that tape and prove that the contents are irrelevant, this could serve as another basis for future spoliation motions against Covil.

DAMAGES

As it pertains to each Plaintiff involved, provide a description of the injury/damage claimed including economic damages known to date along with any likely anticipated future economic or general damages.

Plaintiff has not yet produced medical bills or provided a total amount of expenses claimed in this lawsuit.

Through her claims for negligence, strict product liability, breach of implied warranties, fraudulent misrepresentation, loss of consortium, wrongful death, and survival, Plaintiff seeks to recover for Mr. Sims's pain and suffering, medical bills, loss of earnings, and loss of care, comfort, and society. Plaintiff seeks punitive damages and costs, to the extent recoverable.

DISCOVERY PLAN

Covil will focus its efforts on forcing Plaintiff to identify specific evidence linking Covil to the sites at issue.

DISCOVERY ACTIVITY

- Depositions completed
 - 02/01/2022: Larry Davenport (coworker)
- Depositions noticed for next 30 days
 - 2/17/2022: Leslie Holiday (co-worker)
 - 2/21/2022: L.C. Ellis (co-worker)
 - 2/21/2022: Covil 30(b)(6) (we are working with Plaintiff's counsel to remove this from the calendar)
 - Several 30(b)(6) depositions have been noticed for this month. So far, none of the depositions have gone forward.
- Hearings attended
 - There have been no hearings in this case.
- Hearings noticed
 - N/A
- Motions filed
 - N/A
- Motions to be filed
 - Covil will file motions for summary judgment and motions in limine.
- Mediation scheduled

- 4/7/2022
- Trial notice/trial date
 - 4/18/2022

EXPERTS

Identify Plaintiff's expert, if known/when applicable, and describe their area of expertise and potential impact.

Plaintiff has not yet identified which experts she has retained in this case.

Identify Defense expert, if known/when applicable, and describe their area of expertise and potential impact

1. Dr. Earl Gregory

Covil has retained Dr. Earl Gregory as its industrial-hygiene expert. Dr. Gregory will testify that asbestos exposure at certain concentration levels can cause disease and that the levels that have been considered acceptable in the workplace have changed over time as the scientific community's knowledge about asbestos has evolved.

Dr. Gregory will also testify that Covil acted appropriately and responsibly in light of the information and knowledge available to it, the government, and the scientific community over time. Based on the state of the medical and scientific literature at relevant times, Covil could reasonably conclude that the sale and use of asbestos-containing products could be done safely, if appropriate precautionary measures were taken, and would not pose a risk of disease to individuals such as Mr. Sims. Moreover, Dr. Gregory will opine that bystanders like Mr. Sims would have been exposed to only a fraction of the levels that insulators would have been exposed to.

Dr. Gregory will also testify about Duke Energy's and Badische Corporation's obligations as employers.

2. Victor L. Roggli, M.D.

Covil and several co-defendants in this case retained pathologist Dr. Victor Roggli from Duke University to conduct a tissue analysis. Dr. Roggli concluded that although Mr. Sims was previously diagnosed with asbestosis, there was no evidence of pleural calcification on imaging studies. According to Dr. Roggli, there is no evidence in this case for asbestosis or an elevated tissue asbestos content. Dr. Roggli is unable to relate Mr. Sims's adenocarcinoma to any prior history of asbestos exposure. He explained that dendriform pulmonary ossification may present with increased interstitial markings on imaging studies. This is a rare entity and may be confused with diffuse pulmonary fibrosis based on imaging studies alone. According to Dr. Roggli, nearly all asbestosis cases display pleural plaques; Mr. Sims did not.

TIMELINE

- 2/22/2022: Deadline to file dispositive motions
- 3/04/2022: Deadline to complete expert depositions and 30(b)(6) depositions
- 4/04/2022: Deadline to exchange final trial-witness lists
- 4/11/2022: Deadline to file motions in limine, exchange final exhibit lists, and serve page/line designations
- 4/18/2022: Trial (3 of 6 on trial calendar)

ORIGINAL ON FILE IN THIS OFFICE

Jun 04 2019

REFERENCE ID: 342107

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

DEPARTMENT OF STATE
COLUMBIA, SOUTH CAROLINA

CERTIFICATE OF REVOCATION OF AUTHORITY

COVIL CORPORATION
PO BOX 1804
GREENVILLE SC

29602

20055344-5

Whereas, Section 33-15-300, of the 1976 Code of Laws of S.C., as amended, provides for the Revocation of Foreign Corporation's Authority in The State of South Carolina if the corporation fails to:

- (1) File its annual report within the time required by Code or
- (2) Pay its franchise tax on or before the date on which such franchise tax is due and payable, or
- (3) Appoint and maintain a registered agent in this state, or
- (4) Notify the office of The Secretary of State of a change in its registered agent or registered office.

AND WHEREAS, IT APPEARS FROM THE RECORDS IN THIS OFFICE, THAT THE ABOVE NAMED CORPORATION, AFTER DUE NOTICE, HAS FAILED TO MEET REQUIREMENTS OF NOS. 1 AND/OR 2 ABOVE SET FORTH.

NOW THEREFORE, UNDER THE AUTHORITY OF SAID ACT, THE AUTHORITY OF THE ABOVE CORPORATION IS HEREBY DECLARED FOREFITED AND REVOKED THIS ³⁰ DAY OF JULY, 19⁹³.

Jim Miles
Secretary of State

Inquires concerning this administrative revocation should be directed to the SC Tax Commission,
P.O. Box 125, Columbia, SC 29214, Attn: Corporate Section.

SOS-4 (Rev. 11/80) 317

93-01 3835 BC

PLAINTIFF'S
EXHIBIT

90

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ZURICH AMERICAN INSURANCE)
COMPANY,)

Plaintiff,)

v.)

1:18-CV-932

HARTFORD ACCIDENT AND)
INDEMNITY COMPANY, et al.,)

Defendant and Third-Party)
Plaintiff,)

v.)

PENN NATIONAL SECURITY)
INSURANCE COMPANY,)

Third-Party Defendant.)

ORDER

Penn National has moved to dismiss Hartford's Third-Party Complaint and Covil's Third Party Demand, based both on lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6).

To the extent Hartford's and Covil's claims against Penn National arise out of the claim and judgment entered in *Ann Finch v. Covil Corp.*, No. 1:16-CV-01077, the motions to dismiss will be denied. There is an actual controversy appropriate for resolution by declaratory judgment, and Hartford and Covil have alleged facts sufficient to state a plausible claim that Penn National may have coverage for some or all of Covil's

PLAINTIFF'S
EXHIBIT

91

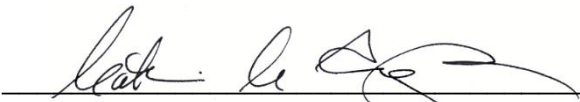
loss. Penn National's arguments about notice and defense costs may be raised at summary judgment or trial.

To the extent Penn National's motions to dismiss are directed at coverage for other "underlying lawsuits," the motions remain under advisement. The Court shares Penn National's jurisdictional concerns and by separate order has instructed all parties to address whether the Court has subject matter jurisdiction over claims about underlying cases that are not specifically identified in the relevant pleadings or where there is not yet a judgment.

It is **ORDERED** that Penn National's motion to dismiss Hartford's third-party complaint, Doc. 132, and Penn National's motion to dismiss Covil's third-party demand, Doc. 170, are **DENIED in part** to the extent insurance coverage for the judgment in *Ann Finch v. Covil Corp.*, No. 1:16-CV-01077, is in dispute. The motions otherwise remain under advisement.

Discovery may proceed against and by Penn National immediately, if it has not already begun.

This the 24th day of February, 2020.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ZURICH AMERICAN INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:18-CV-932
	)	
COVIL CORPORATION, et al.,	)	
	)	
Defendants.	)	

ORDER

Penn National has moved to dismiss Hartford's Third-Party Complaint and Covil's Third Party Demand, based both on lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). The Court previously denied the motion in part and withheld ruling in part. *See* Doc. 227.

Since that time, Hartford has taken a voluntary dismissal of its claims against Penn National. Doc. 264. Those claims having already been dismissed, Penn National's motion to dismiss Hartford's third-party complaint will be denied as moot.

Also after the Court's original order, Covil has stipulated that there are no issues related to insurance coverage by Penn National for the judgment in the case of *Finch v. Covil*, No. 1:16-CV-1077, Doc. 283, and Covil has taken the position that the Court should decline to exercise subject matter jurisdiction to resolve any coverage issues beyond those arising from the *Finch* judgment. *See* Doc. 256 at 4–5. Upon consideration, the Court agrees, in the exercise of its discretion, that it would be inappropriate to exercise subject matter jurisdiction over the hypothetical cover

PLAINTIFF'S
EXHIBIT

92

disputes between Covil and Penn National. Neither party has explained to the Court how any coverage dispute would affect any particular case, and both parties agree that this Court should not decide the coverage disputes. Therefore, Penn National's motion to dismiss the third-party claims against Penn National will be granted pursuant to Federal Rule of Civil Procedure 12(b)(1), and those claims will be dismissed without prejudice.

Covil and Penn National recently filed a joint motion for clarification. Doc. 294. In view of the Court's rulings on the pending motions, that motion is now moot. To the extent Covil needs information from Penn National to pursue claims and defenses in this case against other parties, it will need to seek it in the same way it would obtain such information from any non-party. While the Court does not approve of Penn National's unilateral refusal to participate in mediation during a time when it was undoubtedly a party to this litigation, a refusal which is in violation of the Court's Local Rules, the Court will not impose any sanction in view of the Court's understanding that Penn National is or will be subject to mediation orders in any pending state cases in South Carolina where its coverage is at issue.

It is **ORDERED** that:

1. The joint motion for clarification by the Receiver for Covil Corporation and Penn National, Doc. 294, is **DENIED as moot**.
2. Penn National's motion to dismiss Covil's third-party demand, Doc. 170, is **GRANTED** and Covil's claims against Penn National are **DISMISSED without prejudice**.

3. Penn National's motion to dismiss Hartford's third-party claims, Doc. 132, is **DENIED as moot.**
4. The Clerk shall terminate this case as to Penn National. If Penn National seeks immediate entry of judgment, it may submit a proposed judgment to the Court's case manager, after consulting with counsel for Hartford and for Covil as to form and conveying any disagreements, should there be any.

This the 22nd day of April, 2020.



UNITED STATES DISTRICT JUDGE

Covil Trial Exhibit 93

Duplicative of 2021.12.07 Interim Report

See R. pp. 409-411

Covil Trial Exhibit 94

Duplicative of Penn National Trial Exhibit 39 pp. 234-248

See R. pp. 12304-12318

CV

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EIN: 94-3335685

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Claims Handling, Insurance Coverage,
Insurance Company Organization and Operations

The Insurance Law Center

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- Extensive experience in testifying on insurance industry claims practices.
- Experience in testifying on insurance policy interpretation based on insurance industry publications.
- An extensive and unique library on insurance industry claims practices and policy interpretations that provide a sound basis for expert opinions.
- A one of its kind data base of well over one million pages of insurance company documents, depositions, manuals and policies and procedures that can be used in discovery as well as the basis for expert opinions.
- See attached for complete list of Insurance Law Center Services.

Experience:

Mr. Miller was employed by Fireman's Fund Insurance Company for eighteen years in insurance claims. Mr. Miller has held several insurance claims positions, including senior adjuster, branch office general adjuster, and claims manager. Mr. Miller also managed an asbestos claims facility and a nationwide major claims unit. Mr. Miller has practiced insurance law since 1990. Mr. Miller has extensive experience with the interpretation and application of first- and third-party insurance policy forms.

Since 1997, Mr. Miller has been retained in over 200 cases in at least fifteen states and territories (federal and state courts) as an expert on insurance coverage and claims handling, including cases concerning construction defects, first-party fire and water losses, disability claims, automobile liability including underinsured and uninsured motorist claims, professional liability claims, claims under various automobile insurance policies, comprehensive commercial liability policies, and excess and umbrella policies. Mr. Miller has been retained in both federal and state courts, including those in Arizona, California, Idaho, Nevada, New Mexico, South Carolina, Pennsylvania, Florida, the U.S. Virgin Islands, Washington, Oregon, Utah, Arkansas, Missouri, Mississippi, South Carolina, Louisiana, Massachusetts, West Virginia, and Toronto, Ontario, Canada. Mr. Miller has been qualified as an expert on insurance industry claims handling standards and practices in Arizona, Nevada, Arkansas, Idaho, Florida, Colorado, Hawaii, New Mexico, Ohio, Missouri, Louisiana, Washington, Kansas, Texas, South Carolina, West Virginia, and California.

Insurance Industry Experience:

1972-1980

- Held several positions at Fireman's Fund Insurance Company, including Senior and Branch Office General Adjuster.
- Experienced in the handling of first-party claims, including claims arising out of collision losses, theft losses, residential fires, and burglaries from commercial establishments.
- Experienced in handling a wide variety of commercial and personal liability claims, including construction and auto accidents, underinsured and uninsured motorist claims, environmental claims, construction defects, and personal injury claims.
- Responsible for the management and supervision of litigation.

1980-1986

- Managed insurance company asbestosis claims facility. Responsible for the supervision of litigation, investigation, and evaluation of over 600 claims for asbestosis-related injuries.
- Continued responsibility for the handling, investigation, and resolution of both third- and first-party claims as Branch Office General Adjuster.

1986-1990

- Managed insurance company major claims unit.
- Responsible for nationwide management of a variety of specialized claims, including construction defect, investment advisors professional liability, and sexual discrimination and harassment.
- Responsibilities included interpretation of insurance policy provisions and management of insurance coverage declaratory relief actions brought by either the policyholder or the company.

Legal Practice:

2004-Present	Insurance Law Center, Berkeley, California
2000-2004	Special Counsel, Wendel Rosen Black & Dean, Oakland, California.
1998-2000	Law Office of Charles M. Miller, San Francisco, California
1995-1998	Associate, Gray Cary Ware & Freidenrich. Practice in Insurance Litigation
1992-1995	Associate, Pettit & Martin
1990-1992	Associate, Heller, Ehrman, White & McAuliff

Education:

University of San Francisco	1990 J.D. (Magna Cum Laude) Law Review
Western Washington University	1970-1971 Masters Studies Political Science
Western Washington University	1970 B.A. Political Science (President's List)

Insurance Training:

Insurance Institute of America, Associate in Claims

Attendance at seminars, conventions, and other programs put on by insurance industry organizations covering a variety of topics related to insurance claims handling and insurance policy interpretation and application.

Teaching and Presentations:

"Insurance Issues and COVID-19 Part III," Trial Guides Webinar, July 31, 2020.

"Post Loss Duties," AAJ Annual Meeting, July 14, 2020.

"Insurance Issues and COVID-19," Trial Guides Webinar, May 27, 2020.

"Corona Virus And Insurance Coverage," New Mexico TLA Webinar, May 8, 2020

"COVID-19 and Insurance Business Interruption Claims," Colorado TLA Webinar, April 27, 2020.

"Insurance Issues and COVID-19," Trial Guides Webinar, April 1, 2020.

First Party Claims Conference, FPCC, "Handling The Insurance Claim Prior to Litigation," October 2019, Providence, RI.

First Party Claims Conference, FPCC, "Addressing Policyholders Claims in an Ethical Manner with Insureds and Insurance Companies when Experts are Involved," March, 27, 2019, Marina De Rey, CA.

Back to School in Insurance Law Seminar, NM TLA, "Insurance Industry Practices in Handling First Party Claims," and "Use of Experts in Support of Claim Denials," Feb. 22, 2019, Albuquerque, NM.

Oct. 2018, "Insurer's Use of Experts in First Party Claims," First Party Claim Conference, Providence, RI.

March 2017, "Developing the UM/UIM Claim," New Mexico TLA Annual Insurance Law Seminar

August 2016, "Discovery in Bad Faith Cases," and "Institutional Bad Faith," Montana TLA, Missoula, Mt.

August 2016, "Institutional Bad Faith," AAJ Convention, Los Angeles.

First Party Claims Conference, FPCC , March 2016, "Anatomy of a Bad Faith Case."

February 2016, "Discovery in Bad Faith Cases," and "Institutional Bad Faith," New Mexico TLA Annual Insurance Law Seminar.

January 2016, "Institutional Bad Faith," Washington State AJ annual insurance law seminars, Seattle and Spokane, WA.

June 10, 2014, Farmers Organization and Claims Operation, Farmers Annual Agent's Association Meeting, Las Vegas, NV.

October 2013, "Use of Experts in Insurance Bad Faith Cases," First Party Claim Conference, Providence, RI.

April 2013, "Use of Experts in Insurance Bad Faith Cases," North Carolina Bar Association program, "Why Do We Call It 'Bad Faith'?", Charlotte, NC.

March 2013, NAPIA/CAPIA Conference, "The Wear and Tear and Similar Exclusions in Wind and Water Damage Claims."

April 2012, "Bad Faith Issues In Business Interruption Claims," ABA Property Insurance Law Section, Los Angeles, CA.

September 2012, "Use of Experts in Insurance Bad Faith Cases," UTAH TLA, Salt Lake City, UT.

August 2011, "Developments In Insurance Claims Practices," AAJ, New York, NY.

August 2009, "Insurance Bad Faith and Settlement Institute," Advocacy Institute, Las Vegas, NV.

December 2009, "Insurance Coverage for Chinese Drywall Claims," Testimony before the NAIC Catastrophe Insurance Working Group, San Francisco, CA.

May 2009, "Presenting the Coherent Case," Claims Practices Seminar, Miami, FL.

October 2008, "Issues in Insurance Claims Practices," Claims Practices Seminar, Reno, NV.

September 2008, Presentations on Ethics and Claims Adjusting, Western Regional PLRB Convention, Sacramento, CA.

May 2008, Presentations on Ethics and Claims Adjusting, Eastern Regional PLRB Convention, Tampa, FL.

November 2007, "Issues in Insurance Claims Practices," Claims Practices Seminar, Reno, NV.

October 2006, "Issues in Insurance Claims Practices," Claims Practices Seminar, Deadwood, SD.

June 2006, "Discovery in Insurance Bad Faith Cases and Related Issues," Mississippi TLA, Memphis, TN.

April 2006, "Insurance Industry Claims Practices," Claims Practices Seminar, Reno NV.

April 2006, "Institutional Bad Faith Issues and Pay for Performance in the Insurance Industry," Ontario TLA, Toronto, Ontario, Canada.

May 2005, "Discovery in Insurance Bad Faith Cases and Related Issues," North Dakota TLA, Fargo, ND.

November 2004, "Insurance Industry Claims Practices," Claims Practices Seminar, Reno, NV.

September 2004, "Discovery in Insurance Bad Faith Cases and Related Issues," Utah TLA, Salt Lake City, UT.

September 2004, "Institutional Bad Faith Issues and Pay for Performance in the Insurance Industry," New Mexico TLA, Albuquerque, NM.

July 2004, "Incentive Pay's Effect on Claim Practices," Claims Practices Seminar, Reno, NV.

May 2004, "Recognizing Improper Claim Practices," Claims Practices Seminar, Deadwood, SD.

April 2004, "Discovery in Insurance Bad Faith Cases and Related Issues," Arkansas TLA, Little Rock, AR.

February 2004, "Incentive-Driven Claim Practices," Claims Practices Workshop, Reno, NV.

December 2003, "Non-Rate Action Plans," Claims Practices Workshop, Reno, NV.

June 2003, "Claim Practices Cases – Looking Ahead," Claims Practices Workshop, Reno, NV.

March 2003, "Claim Practices in Non-Rate Marketing Actions," Claim Practices Workshop, Reno, NV.

January 2003, "Farmers Ins. Group Corporate Organization and Operations," WTLA, Seattle, WA.

November 2002, "The Effects of Performance-Based Pay for Adjusters," Claim Practices Workshop, Reno, NV.

May 2002, "SFXOL – Settle for X or Less," Property-Casualty Claim Practices Workshop, Reno, NV.

December 2001, "A de novo Review of Claim Practices," Property-Casualty Claim Practices Workshop, Reno, NV.

1993-1996, Presented updates on Environmental Insurance Law at Santa Clara County Annual Environmental Law Update Conferences.

1992-1995, Presentations on environmental and insurance law issues at Federal Publications Seminars in Los Angeles, Phoenix, San Francisco, and Sacramento.

1972-1990, During employment in the insurance industry, responsible for the presentation of several courses and lectures on various aspects of insurance claims handling.

Organizations:

California Bar Association

American Bar Association

San Francisco Bar Association

American Association for Justice

Consumer Attorneys of California

Alameda Bar Association

San Francisco Trial Lawyers Association

Publications:

"Cleanup Claim," *San Francisco Daily Journal*, October 19, 1998

"Just The Facts, Just the Facts: Discovery in Insurance Bad Faith Cases" *Forum*, May 2005.

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"The Cooperation Clause: When Is There Cooperation and When Is There Not?", IRMI, April 2012

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"Evaluating Serious Injury Claims Under Personal Lines Policies," IRMI, 2012

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Opinions Cited In:

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Recommendations:

Provided upon request.

Covil Trial Exhibit 96

Duplicative of Penn National Trial Exhibit 39 pp. 1-233

See R. pp. 12071-12303

1 STATE OF SOUTH CAROLINA : IN THE COURT OF
2 COUNTY OF RICHLAND : COMMON PLEAS
3 : FOR THE FIFTH
4 : JUDICIAL CIRCUIT
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Covil Corporation, by and :
through its duly appointed :
Receiver Peter D. :
Protopapas, :
Plaintiff, :
VS. : Civil Action No.
2019-CP-40-2098
Pennsylvania National :
Mutual Casualty Insurance :
Co.; Sam J. Crain & Co., :
Inc.; and South Carolina :
Property and Casualty :
Insurance Guaranty :
Association, :
Defendants. :

Monday, November 21, 2022

Videotaped Deposition of SCOTT MAIER,
held at the Hilton Harrisburg Hotel, located at
One North 2nd Street, Harrisburg, Pennsylvania,
commencing approximately at 9:06 a.m. on the above
date before Holly J. Cross, a Registered
Professional Reporter and Notary Public.

PLAINTIFF'S
EXHIBIT

97

A P P E A R A N C E S:

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Pennsylvania National Mutual Casualty Insurance
Company

ALSO PRESENT:

Bob Irvin, Videographer

I N D E X

- - -

Testimony of: SCOTT MAIER

By Ms. Patterson.....5

By Mr. Yntema.....176

- - -

E X H I B I T S

- - -

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Notice of Videotaped Deposition of Scott Maier	8
Exhibit 2	Notice of Videotaped Deposition Pursuant to S.C.R.C.P. 30(b)(6)	8
Exhibit 3	Litigation Hold Procedure, Policy Number LE-0006, Bates PNI-1159 through 1161	34
Exhibit 4	12/17/21 email from Scott Maier to Brent Reifsnyder	82
Exhibit 5	Records Retention Policy Manual, Bates PNI-0598 through 1161	70
Exhibit 6	Subpoena	123
Exhibit 7	11/5/21 Discovery Order Granting Covil Corporation's Motions To Compel Penn National	171
Exhibit 8	5/5/22 Order on Discovery Motions	171

1 THE VIDEOGRAPHER: Good morning. We are
2 going on the record at 9:06 a.m. on November 21st,
3 2022.

4 This is media unit one of the video
5 recorded deposition of Scott Maier taken by counsel
6 for Plaintiff in the matter of Covil Corporation, by
7 and through its appointed Receiver Peter D.
8 Protopapas versus Pennsylvania National Mutual
9 Casualty Insurance Company, et al., filed in the
10 Court of Common Pleas for the Fifth Judicial
11 District, State of California (sic), County of
12 Richland, Case Number 2019-CP-40-2098. The location
13 of this deposition is One North 2nd Street,
14 Harrisburg, Pennsylvania.

15 My name is Robert Irvin, representing
16 Veritext Legal Solutions, and I am the videographer.
17 The court reporter is Holly Cross also from the firm
18 of Veritext Legal Solutions.

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 MS. PATTERSON: Good morning. My name is
24 Nancy Patterson with Morgan Lewis. I represent the
25 Receiver for Covil Corporation.

1 MR. YNTEMA: Good morning. I'm Brady
2 Yntema. I'm with the law firm of Goldberg Segalla,
3 and I represent Defendant Pennsylvania National
4 Mutual Casualty Insurance Company.

5 THE VIDEOGRAPHER: Will the court
6 reporter please swear in the witness? Then counsel
7 may proceed.

8 - - -

9 SCOTT MAIER, having been duly sworn, was
10 examined and testified as follows:

11 - - -

12 EXAMINATION

13 BY MS. PATTERSON:

14 Q Good morning, Mr. Maier. How are you?

15 A Good morning. I'm well.

16 Q As I just indicated on the record, my
17 name is Nancy Patterson. I'm an attorney with
18 Morgan Lewis, and I'm here representing the Receiver
19 for Covil Corporation in the matter that the
20 videographer just referenced on the record, and
21 we're here today to take your deposition in
22 connection with that matter. Do you understand
23 that?

24 A I do.

25 Q All right. Could you please state your

1 full name for the record?

2 A Scott Eric Maier.

3 Q Mr. Maier, how are you currently
4 employed?

5 A I'm employed with Penn National
6 Insurance.

7 Q And how long have you been employed with
8 Penn National Insurance?

9 A 21 years. I was hired in June of 2001.

10 Q Okay. And we'll talk about your
11 employment with Penn National here in a minute.
12 What is your current position?

13 A I'm associate general counsel.

14 Q And how long have you held that position?

15 A Since May of this year, so just over six
16 months.

17 Q You're an attorney, I take it?

18 A I am.

19 Q How long have you been licensed to
20 practice law?

21 A In Georgia since 1999 and in Pennsylvania
22 2001.

23 Q Where did you attend law school?

24 A Widener University in Wilmington,
25 Delaware.

1 Q And when did graduate from law school?

2 A 1998.

3 Q And where did you obtain your
4 undergraduate degree?

5 A Moravian College, now Moravian
6 University.

7 Q In what year?

8 A Graduated in 1992.

9 Q And I assume your Pennsylvania law
10 license is still active?

11 A It is.

12 Q Is your Georgia license still active?

13 A No, it's inactive.

14 Q How long has that one been inactive?

15 A Since 2001.

16 Q All right. Do you understand, sir, that
17 we're here today to conduct your deposition in
18 connection with the Covil/Penn National lawsuit
19 pending in Richland County, South Carolina?

20 A I do.

21 Q And you're represented by Mr. Yntema for
22 purposes of this deposition; is that correct?

23 A Correct.

24 Q Do you understand that you'll be
25 testifying here today both in your individual

1 capacity as a fact witness and also on certain
2 topics as a 30(b)(6) corporate representative?

3 A I do.

4 MS. PATTERSON: All right. Let me hand
5 you a couple of documents just to get started.

6 (Exhibit 1 was marked for
7 identification.)

8 BY MS. PATTERSON:

9 Q First of all, what I've marked as Exhibit
10 Number 1, that's a copy of the Notice of Deposition
11 scheduling your deposition in your individual
12 capacity as a fact witness. Have you seen that
13 document before?

14 A I believe I have.

15 Q When did you first learn that a request
16 had been made by the Receiver to conduct your
17 deposition as a fact witness?

18 A Yeah, that's a good question. It would
19 have to have been, I think, early in 2022.

20 MS. PATTERSON: Okay. I'll hand you
21 Exhibit Number 2.

22 (Exhibit 2 was marked for
23 identification.)

24 BY MS. PATTERSON:

25 Q And let me ask you -- well, I'll state

1 for the record. This is the Receiver for Covil
2 Corporation's --

3 MS. PATTERSON: Hold on one second.
4 We're going to get a delivery here.

5 All right. We'll start again.

6 BY MS. PATTERSON:

7 Q I've handed you Exhibit Number 2,
8 Mr. Maier, which is the Receiver for Covil
9 Corporation's Third Amended Notice of Videotaped
10 Deposition of Pennsylvania National Mutual Casualty
11 Insurance Company pursuant to S.C.R.C.P. 30(b)(6).
12 Have you seen that document before?

13 A Yes, I believe I have.

14 Q And when did you first see this
15 deposition notice?

16 A It's dated November 3rd, but I -- this
17 particular one I think I saw subsequent to that.

18 Q When did you first learn you'd be
19 testifying as a corporate representative?

20 A Yeah, I'm not quite certain, but I would
21 say early in the summer of 2022.

22 Q Did you see a 30(b)(6) Deposition Notice
23 prior to the version that you are looking at here as
24 Exhibit Number 2, an earlier version?

25 A I believe I did, yeah.

1 Q Okay. But this will be the first time
2 you're testifying in a deposition in connection with
3 this case; correct?

4 A That is correct.

5 Q All right. Taking a real quick look at
6 page 2 of Exhibit 2, there's a section up at the top
7 entitled Definitions. Do you see that?

8 A I do.

9 Q And the first definition defines the
10 terms Penn National, you, and your to mean
11 Pennsylvania National Mutual Casualty Insurance
12 Company. Do you see that?

13 A I do.

14 Q And is that your current employer?

15 A It is.

16 Q All right. And can we just have an
17 agreement today when I refer to Penn National that
18 I'm referring to Pennsylvania National Mutual
19 Casualty Insurance Company?

20 A Yes.

21 Q All right. Very good. The next
22 definition on the Deposition Notice, Number 2,
23 defines, quote, Covil Litigation, close quote. Did
24 you review that definition in connection with your
25 preparation for today's deposition?

1 A I did.

2 Q Okay. Are you familiar with the various
3 matters that are referenced in the definition of
4 Covil Litigation?

5 A I am not.

6 Q Do you know what the Covil Corporation
7 versus Penn National matter ending in 1226 is?

8 A No, not as I sit here.

9 Q Okay.

10 A I don't know what that references to.

11 Q Do you know what the Covil Corporation
12 versus Penn National matter ending in 2098 is?

13 A No.

14 Q Okay. The definition goes on to say that
15 the meaning of Covil Litigation for the purposes of
16 this Deposition Notice includes subpoenas served on
17 Penn National in the Hopper, Pavlish, and Finch
18 matters related to Covil Corporation. Are you
19 familiar, sir, with any of those matters that are
20 referenced there: Hopper, Pavlish, or Finch?

21 A Vaguely. I think one of them references
22 a North Carolina litigation.

23 Q Are you aware that that's the Finch
24 matter?

25 A I believe that is the Finch matter.

1 Q What do you know about the Finch matter?

2 A Not much.

3 Q Tell me what you do know about it.

4 A That there was litigation in North
5 Carolina and a subpoena was issued.

6 Q Okay. A subpoena was issued to Penn
7 National.

8 A Correct.

9 Q Do you know when that subpoena was issued
10 to Penn National?

11 A I do not.

12 Q Do you know what that subpoena requested?

13 A No.

14 Q Have you ever reviewed that subpoena?

15 A No.

16 Q And do you have any idea about what the
17 Hopper or Pavlish matters pertained to?

18 A I do not.

19 Q Do you know when they were filed?

20 A I do not.

21 Q Where they were pending?

22 A I do not.

23 Q Okay. Did you do anything in preparation
24 for your deposition today as a corporate
25 representative to familiarize yourself with the

1 Covil Litigation as it's defined in definition
2 number 2?

3 A I reviewed the Notice of Deposition, the
4 Complaint, and some orders.

5 Q So the Notice of Deposition is this
6 document --

7 A Correct.

8 Q -- you're looking at, Exhibit 2. Okay.
9 What Complaint did you review?

10 A The Covil Complaint against Penn National
11 Insurance and the Crain Insurance Agency.

12 Q Okay. And that's the case that we're
13 here about today, which is -- has the caption number
14 ending in 2098? Is that the Complaint that you
15 reviewed?

16 A Yes.

17 Q Have you reviewed any other complaints
18 involving the Covil Corporation or the Covil
19 Corporation and Penn National?

20 A Could you repeat the question?

21 Q Sure. Other than the Complaint in this
22 case, which ends in 2098, have you reviewed any
23 other complaints -- be it direct complaints or
24 third-party complaints -- involving Covil and/or
25 Penn National?

1 A No.

2 MS. PATTERSON: Okay. My
3 understanding -- and we'll just get this confirmed
4 on the record before we go any further -- is that
5 you have been designated to testify as a corporate
6 representative on topics 1, 2, 3, 4, 5, 7, 8, 13,
7 14, and 15.

8 Is that accurate, Mr. Yntema?

9 MR. YNTEMA: That's accurate, yes. Thank
10 you.

11 BY MS. PATTERSON:

12 Q Do you understand that you're being --

13 A I do.

14 Q -- designated to testify on those topics,
15 Mr. Maier?

16 A Correct.

17 Q All right. Have you ever been deposed
18 before?

19 A I have not.

20 Q Have you ever taken a deposition before?

21 A I don't believe I've taken a deposition.
22 I've assisted with the preparation for a deposition.

23 Q You do understand you're under oath today
24 and here to tell the truth just as if you were in a
25 court; correct?

1 A I do.

2 Q All right. You understand that this case
3 is set for trial on the Receiver's declaratory
4 judgment action beginning December the 12th in
5 Richland County, South Carolina?

6 MR. YNTEMA: Objection to form.

7 You can answer.

8 THE WITNESS: I do.

9 BY MS. PATTERSON:

10 Q All right. And you understand that the
11 testimony you're giving here today both in your
12 individual capacity and as a corporate
13 representative for Penn National can be used in
14 connection with that trial or any motions or
15 requests the parties may make to the Court?

16 A I do.

17 Q All right. Are you currently planning to
18 appear live to testify at the trial in
19 South Carolina in December?

20 A No, I'm not planning on attending in
21 person.

22 Q All right. I know you're an attorney,
23 and you're familiar with the deposition process,
24 Mr. Maier. Let me just go over a few standard, I
25 guess, rules if I could.

1 If I ask you a question at any point in
2 time today that you don't understand for any reason,
3 please ask me to repeat it for you or clarify it for
4 you, and I'll be happy to do so. Is that agreeable?

5 A Yes.

6 Q All right. If you need to take a break
7 at any point in time, please just let me know. This
8 is not an endurance contest, and I certainly don't
9 think we're going to be here all day, but do let me
10 know if you need a break. All right?

11 A Okay.

12 Q Okay. If you would do me the favor of
13 allowing me to finish my question before you begin
14 to answer, I'll certainly try to do you the favor of
15 letting you complete your answer before we go onto
16 the next question. All right?

17 A Okay.

18 Q And, also, we're fortunate enough to have
19 the court reporter here in the room with us again.
20 We're not on a Zoom deposition. Nevertheless, if
21 you could give a verbal answer -- yes or no or
22 whatever explanation you want to give -- rather than
23 an uh-huh or uh-uh, that would help the court
24 reporter and provide us with a more readable
25 transcript. Is that agreeable?

1 A It is.

2 Q All right. Are you experiencing any
3 illness today, Mr. Maier, which you believe would
4 prevent you from providing full and complete
5 testimony here today?

6 A No.

7 Q Have you taken any medications in the
8 last 24 hours that you believe would prevent you
9 from providing full and complete testimony --

10 A No.

11 Q -- here today?

12 A Sorry. No.

13 Q Is there anything preventing you from
14 giving full and complete testimony today?

15 A No.

16 Q Okay. Have you ever testified in a
17 trial?

18 A No.

19 Q Let's talk a little bit about your
20 background. Do you live here in Harrisburg?

21 A No.

22 Q Where do you live?

23 A Outside of Carlisle, Pennsylvania.

24 Q Okay. What's your business address?

25 A Two North 2nd Street, Harrisburg,

1 Pennsylvania 17101.

2 Q And is that the Penn National
3 headquarters?

4 A It is.

5 Q Where are you from originally?

6 A At what state of my life are you
7 referring to?

8 Q Where were you born?

9 A Philadelphia, Pennsylvania.

10 Q All right. And how long have you lived
11 in the Harrisburg area?

12 A We moved here in 2001.

13 Q Okay. I'm just curious: Do you know how
14 many people currently are employed by Penn National?

15 A Not precisely, no.

16 Q Can you give me a range or an estimate?

17 A About 800.

18 Q And are most of those 800 folks here in
19 the Harrisburg area?

20 A Yes. There's a majority of the employees
21 work out of the Harrisburg office.

22 Q And when you talk about the Harrisburg
23 office, are you talking about the North 2nd Street
24 address?

25 A That's correct.

1 Q All right. Does Penn National maintain
2 any other physical office locations in the
3 Harrisburg area?

4 A No.

5 Q You told me earlier, I believe, that you
6 graduated from law school in 1998; is that correct?

7 A Correct.

8 Q Okay. I just want to get a little bit
9 more information on your background. Were you
10 employed as an attorney subsequent or -- immediately
11 subsequent to graduating from law school?

12 A I wouldn't say immediately. I think I
13 started working in 1999 in Columbus, Georgia.

14 Q And what were you doing? What was your
15 first job after law school?

16 A I was in private practice.

17 Q With a firm?

18 A Correct.

19 Q What firm?

20 A Armour & Cielinski.

21 Q And how long were you with that firm?

22 A I think just short of three years.

23 Q And what kind of law did you practice?

24 A Creditors' rights, bankruptcy, a variety.
25 It was a small law firm.

1 Q When you say small law firm, about how
2 many people? How many lawyers?

3 A Three lawyers and I think three staff.

4 Q What was your next position as an
5 attorney after you left that firm?

6 A It was in-house counsel at Penn National
7 Insurance. My title was assistant counsel.

8 Q So that's when you moved to Pennsylvania?

9 A Correct.

10 Q How big was the Penn National legal
11 department when you joined the company in 2001?

12 A Including its general counsel, there was
13 four attorneys, including myself when I joined.

14 Q And have you been in the legal department
15 your entire career with Penn National?

16 A I have, yes.

17 Q How many people are employed -- how many
18 attorneys -- let me ask you that to begin with --
19 are employed currently in the Penn National legal
20 department?

21 A Currently there are four attorneys,
22 including myself.

23 Q And who are the other attorneys in the
24 legal department?

25 A Karen Yarrish, Erin Pence, and Shaivya

1 Singh.

2 Q You're probably going to have to spell
3 that last name.

4 A Shaivya is S-H-A-I-V-Y-A. Singh is
5 S-I-N-G-H.

6 THE COURT REPORTER: Can I just ask: Was
7 that Erin with an --

8 THE WITNESS: Erin, E, Erin, E --

9 BY MS. PATTERSON:

10 Q Okay. And who do you report to
11 currently?

12 A Karen Yarrish.

13 Q Is she the general counsel?

14 A She is.

15 Q How long has she been with Penn National,
16 if you know?

17 A I do not know precisely, but I believe it
18 was in the early 1990s.

19 Q So she's been there longer than you have?

20 A She has.

21 Q Okay. What about the other two
22 individuals you mentioned? How long have they been
23 with Penn National?

24 A I believe Erin Pence joined Penn National
25 in 2016, and Shaivya Singh joined Penn National in

1 August of this year.

2 Q You said you began at Penn National in
3 the position of assistant counsel; right?

4 A Correct.

5 Q Okay. What other positions have you held
6 with Penn National other than assistant counsel and
7 then, of course, your current position? If you
8 could, just sort of run through those with me with
9 an approximate time period that you held the
10 positions.

11 A Yeah. I think I was promoted to
12 associate counsel three or four years after joining
13 and then was promoted to associate counsel and
14 director of corporate insurance 2009.

15 Q Okay. Let me get that one down.
16 Associate counsel -- what was the rest of it?

17 A Director of corporate insurance.

18 Q And that was 2009?

19 A Correct.

20 Q Okay. Go ahead with the --

21 A And then in 2015, I was promoted to
22 senior corporate counsel about that time.

23 Q Okay. And does that take us up to your
24 promotion earlier this year to associate general
25 counsel?

1 A It does.

2 Q Okay. As associate counsel when you
3 first joined the company, who did you report to?

4 A It was assistant counsel, and I reported
5 to Karen Yarrish.

6 Q Assistant counsel. Thank you. And what
7 were your job duties as assistant counsel?

8 A Supporting legal function of the
9 organization, researching, reviewing documents,
10 general legal support.

11 Q You said researching and reviewing
12 documents. What kind of documents are you talking
13 about?

14 A Contracts.

15 Q Okay.

16 A Stat sheets, research of legal issues.

17 Q Okay. You were then appointed -- I'm
18 sorry -- promoted to associate counsel. What were
19 your job responsibilities in that position?

20 A Very similar, just added responsibilities
21 of managing litigation more and involved in more
22 proactive legal service.

23 Q Okay. What do you mean when you say
24 proactive legal services?

25 A Assisting on project work.

1 Q Can you give me an example of the types
2 of projects?

3 A Yeah, like implementing a new software,
4 enterprise-wide software package.

5 Q What was that enterprise-wide software
6 package?

7 A One of them was HR-implemented software
8 called PeopleSoft and the financial department.

9 Q Did the financial department have another
10 software that they implemented, or are you still
11 referring to PeopleSoft?

12 A PeopleSoft, yeah.

13 Q PeopleSoft. Okay. Have you been
14 involved at any point in your career with Penn
15 National in the implementation of other software
16 systems other than the PeopleSoft system?

17 A Yes, I have. In my career?

18 Q Yeah.

19 A Yeah, yeah, it's --

20 Q What other software programs have you
21 been involved in the implementation of?

22 A Duck Creek software, which is our policy
23 administration system.

24 Q Okay. Any other software programs or
25 platforms that you've been involved with the

1 implementation of?

2 A Not that I can think of off the top of my
3 head. That's not to say I didn't review software
4 licenses and agreements, but --

5 Q Right. Okay. Does the PeopleSoft
6 software that you just referenced have any function
7 that relates to the issuance or monitoring of
8 litigation holds?

9 A No.

10 Q What about the Creek software?

11 A Duck Creek, no.

12 Q You said one of your responsibilities
13 that was added when you became associate counsel was
14 managing litigation. What did you -- again, just
15 very generally speaking, what did you do in terms of
16 managing litigation when you took on that role?

17 A Yeah. So the legal department does not
18 manage claims litigation. It manages litigation
19 against the organization. And one of the examples
20 would be employment actions, where we would work
21 with outside counsel, manage outside counsel, and
22 assist with that litigation with the HR department.

23 Q Okay. When you say claims litigation,
24 what do you mean by claims litigation?

25 A Claims litigation, claims made under our

1 insurance policies.

2 Q Okay. Are you familiar with the term
3 coverage litigation?

4 A I am.

5 Q Is claims litigation something different
6 than coverage litigation?

7 A It can be, sure.

8 Q Okay. What do you consider this case to
9 be?

10 A A claims litigation.

11 Q This is claims litigation. Okay.

12 A Well, a dec action would be essentially
13 coverage.

14 Q So it's a coverage action?

15 A Under an insurance policy --

16 Q Got it.

17 A -- correct.

18 Q I'm just trying to figure out how you use
19 the term, so --

20 A Right.

21 Q -- it's a coverage action, but would you
22 at Penn National also consider this to be claims
23 litigation, the case that we're here about today?

24 A Well, I guess one goes into the other.
25 If there's coverage imposed, then there's

1 potentially claims that would be made under that
2 policy.

3 Q Okay. So it starts with a coverage
4 action, or it can start with a coverage action --

5 A It can.

6 Q -- and then it goes to a claims
7 litigation.

8 A It could, correct.

9 Q Okay. Very good. So you said a minute
10 ago the legal department doesn't manage claims
11 litigation. Did I understand that correctly?

12 A You did.

13 Q Okay. What department within Penn
14 National manages the claims litigation?

15 A The claims department.

16 Q Okay. So the claims department is
17 managing this litigation?

18 A That's correct.

19 Q All right. You said you held the
20 associate counsel position for three to four years,
21 and then in approximately 2009, your position -- you
22 were promoted to the position of associate counsel,
23 director of corporate insurance. Can you tell me
24 what your duties were in that position?

25 A Yeah, essentially I worked with our

1 insurance brokers to procure corporate insurance for
2 the organization. That's workers' comp, fleet auto,
3 executive liability, and other coverages necessary
4 for the organization.

5 Q So coverage that would insure Penn
6 National against a risk.

7 A That's correct.

8 Q Okay. Are you aware of any coverage that
9 insures Penn National against the claims being made
10 in this litigation?

11 MR. YNTEMA: Objection to form.

12 THE WITNESS: Potentially, I guess, under
13 the executive liability.

14 BY MS. PATTERSON:

15 Q Under the executive liability, is it a
16 policy or a program of a number of policies, or do
17 you know?

18 A I do know. It's a policy. It's commonly
19 referred to as D&O coverage.

20 Q And who is Penn National's D&O carrier?

21 MR. YNTEMA: Objection to form.

22 THE WITNESS: Yeah, I don't manage the
23 program anymore, so I'm not positive on who it is.
24 I believe it -- I don't know.

25 BY MS. PATTERSON:

1 Q Who would know, do you think?

2 A Mark Ewert is the director of --

3 Q And could you spell his last name?

4 A Ewert is E-W-E-R-T.

5 Q And what is his position?

6 A I believe he's the director of vendor
7 management and corporate insurance.

8 Q And he works here in Harrisburg?

9 A No. He works in Waukesha, Wisconsin.

10 Q Penn National has an office in Waukesha;
11 is that correct?

12 A We have an affiliate, Partners Mutual
13 Insurance Company in Waukesha.

14 Q Is Mr. Ewert employed by Penn National?

15 A He is.

16 Q Okay. Do you know if this lawsuit that
17 we're here to talk about today has been tendered by
18 Penn National to any executive liability or D&O
19 carrier?

20 MR. YNTEMA: Objection to form.

21 THE WITNESS: I don't believe it has.

22 BY MS. PATTERSON:

23 Q How long has Mr. Ewert been in charge of
24 executive liability or D&O coverage for Penn
25 National?

1 MR. YNTEMA: Objection to form.

2 THE WITNESS: I want to say he took over
3 that responsibility in 2018, but I'm not certain.

4 BY MS. PATTERSON:

5 Q Okay. Were there any other additional
6 duties that you took on when you became associate
7 counsel and director of corporate insurance in 2009
8 other than what we've just talked about?

9 A Not that I can recall precisely.

10 Q And then in 2015, you were promoted to
11 senior corporate counsel. What were your duties in
12 that position?

13 A Pretty much the same with the exception
14 of the director of corporate insurance moved.

15 Q To another person.

16 A Correct.

17 Q Right.

18 A Those responsibilities.

19 Q And who did that move to at that time?

20 A At the time it was a woman by the name of
21 Sharon Lane.

22 Q Okay. As associate counsel and director
23 of corporate insurance, who did you report to?

24 A I reported to Karen Yarrish.

25 Q As senior corporate counsel, did you also

1 report to Ms. Yarrish?

2 A I did.

3 Q Did you have any responsibility during
4 your time as senior corporate counsel for managing
5 litigation?

6 A Yes.

7 Q But just not claims litigation; right?

8 A Yes, that's correct.

9 Q So these would be again litigation
10 matters directly against the company like employment
11 matters or things of that nature; correct?

12 A That's correct.

13 Q Okay. Did you have anybody reporting to
14 you during the period of time you were senior
15 corporate counsel?

16 A No, no, not reporting to me.

17 Q And just so I get my dates straight, you
18 became senior corporate counsel sometime in 2015 and
19 held that position until May of this year.

20 A That's correct.

21 Q Okay. And then -- so I would be correct
22 that during the years 2018 through 2021 you reported
23 to Ms. Yarrish.

24 A Correct.

25 Q And during those years you did not have

1 any direct reports?

2 A That's correct.

3 Q Okay. In your lengthy period of time
4 with Penn National in the legal department, have you
5 ever had any involvement in drafting policies or
6 procedures for the company? When I say policy, I'm
7 not talking about insurance policies. I'm talking
8 about policies or procedures that are in effect or
9 have been in effect in the past for the company.

10 A I have.

11 Q Okay. What policies or procedures have
12 you had involvement in drafting during your tenure?

13 A I know I drafted the bankruptcy policy
14 and procedure. Let me just say that any legal
15 department policy and procedure is a collaborative
16 effort, and everybody contributes to the drafting of
17 that.

18 Q Okay. Fair enough. What other ones have
19 you had involvement in other than the bankruptcy
20 policy and procedure?

21 A The litigation hold policy; legal review
22 policy, although that existed prior to my joining
23 the company. So I would say those two primarily are
24 the ones that I initiated the drafting.

25 Q So you initiated the drafting of the

1 litigation hold policy and the legal review policy?

2 A That's correct.

3 Q Okay. What about the bankruptcy policy?
4 Did you initiate the --

5 A Oh, I'm sorry. I misunderstood. I
6 answered too quickly.

7 Q Okay.

8 A Litigation hold and the bankruptcy; not
9 the legal review.

10 Q Okay. Let me make sure I get it clear.
11 So you initiated the drafting of the bankruptcy
12 policy and the litigation hold policy; correct?

13 A That is correct.

14 Q And the legal review policy existed
15 before you joined the company.

16 A That's correct.

17 Q Have you had involvement in revising that
18 policy?

19 A Yes, I have.

20 Q All right.

21 A Essentially all the policies in the legal
22 department.

23 Q You've been involved with revising.

24 A Correct.

25 Q Okay. When did you initiate the drafting

1 of the litigation hold policy?

2 A I'd say about 2006, maybe a little bit
3 earlier.

4 MS. PATTERSON: Okay. I'll show you what
5 I've marked as Exhibit Number 3.

6 (Exhibit 3 was marked for
7 identification.)

8 BY MS. PATTERSON:

9 Q Mr. Maier, is that the litigation hold
10 policy that you initiated the drafting of in
11 approximately 2006?

12 A Yeah, that looks -- this is the current
13 version. This looks fairly similar to what was
14 originally drafted, yeah.

15 Q Okay. Does the original version of the
16 litigation hold policy still exist somewhere, either
17 in electronic or paper form at Penn National?

18 A Yeah, I don't know if it does.

19 Q Have you looked to see whether it still
20 exists in connection --

21 A I have not.

22 Q -- in connection with your preparation
23 for this deposition?

24 A No.

25 Q In connection with this litigation, from

1 the beginning of this litigation, have you made any
2 effort to search to determine whether or not the
3 original litigation hold policy still exists?

4 A I have not.

5 Q Okay. I notice Exhibit 3 -- again, this
6 was a document that was produced to us by Penn
7 National's counsel, and it's got some Bates numbers
8 on the bottom, PNI-1159 through PNI-1161. Do you
9 see the Bates numbers?

10 A I do.

11 Q At the top this is entitled, "Litigation
12 Hold Procedure." Do you see that?

13 A Correct.

14 Q Okay. It's not entitled litigation hold
15 policy, but you've referred to this as the
16 litigation hold policy; correct?

17 A I did.

18 Q Does Penn National use the terms
19 procedure and policy interchangeably?

20 A I don't know if Penn National does. I
21 just did.

22 Q Okay. Is there a document somewhere that
23 Penn National has ever created or had in force known
24 as a litigation hold policy?

25 A Yeah, that's a good question. I don't

1 know if it originally was drafted as litigation hold
2 policy and that's why I referred to it as such.

3 Q Well, let me make -- let me just kind
4 of --

5 A I do not know the answer to that
6 question.

7 Q Okay. Well, one more follow up. Let me
8 make sure we're clear on this. Is Exhibit
9 Number 3 -- and I'm asking you this as the corporate
10 representative for Penn National. Is Exhibit
11 Number 3 the current litigation hold policy in
12 effect at Penn National?

13 A Yes.

14 Q Is there currently any other litigation
15 hold policy or procedure in effect at Penn National
16 other than Exhibit Number 3?

17 A As the policy -- or the procedure says,
18 there is a litigation hold process in the claims
19 department that is outside of this policy or
20 procedure.

21 Q Where does it say that?

22 A I believe it says -- Procedure Number 1,
23 bottom of the paragraph, "It is important to note
24 that this policy does not apply to litigation
25 involving a claim handled by the Claims Division.

1 Such litigation is governed by that division's
2 internal reporting and retention protocols."

3 Q So are you telling me that the claims
4 department has a separate litigation hold policy or
5 procedure?

6 A Yes.

7 Q And is that written somewhere or on
8 paper?

9 A That I don't know.

10 Q Is it electronically available?

11 A That I don't know.

12 Q Who would know that, Mr. Maier?

13 A I believe Adam Parsons would probably
14 know.

15 Q And who is Adam Parsons?

16 A He's the technical director of our claims
17 department.

18 Q The technical director of the claims
19 department, what does -- what does that job entail?

20 A I don't know.

21 Q Have you had any communications with
22 Mr. Parson in order to prepare for your deposition
23 here today as the corporate representative?

24 A I have.

25 Q Okay. We'll come back to that in a

1 minute. So it's your understanding that in addition
2 to Exhibit 3, which is a litigation hold policy,
3 there is another litigation hold policy that exists
4 within the claims department; is that correct?

5 A That is correct. I think there's
6 protocols and processes in the claims department.

7 Q Okay. Is a protocol and a process the
8 same as a policy?

9 A Well, I think a policy is a more
10 formalized version of protocols and process.

11 Q Is there a formal litigation hold policy
12 or procedure in the claims department that is
13 written down somewhere or available to be viewed
14 electronically?

15 A That I don't know.

16 Q But you do believe the claims department
17 has protocols and processes that pertain to
18 litigation holds; correct?

19 A Yes, I do.

20 Q Have you ever reviewed anything in
21 writing about the protocols and processes regarding
22 litigation holds in the claims department?

23 A No, I have not.

24 Q Do you know anything about the claims
25 department's protocols and processes for litigation

1 holds?

2 A Other than confirming that they exist,
3 no.

4 Q Okay. And when did you confirm that
5 there exists within the claims departments protocols
6 and processes regarding litigation holds?

7 MR. YNTEMA: Objection. If I can cite to
8 the extent that he was certainly as in-house for
9 Penn National in providing advice, I would ask him
10 not to answer that question. But if you can re-ask
11 it again, I'd appreciate it.

12 MS. PATTERSON: Sure.

13 BY MS. PATTERSON:

14 Q I'm trying to determine how many
15 litigation hold policies or procedures Penn National
16 has. Do you understand that?

17 A I do.

18 Q All right. And the only document that we
19 have been provided that says Litigation Hold
20 Procedure is the one that I've marked as Exhibit
21 Number 3. Do you understand that?

22 A I do.

23 Q Okay. We've never been given a document
24 that says litigation hold policy. Do you understand
25 that?

1 A I don't know that.

2 Q Okay. Are you aware of any document that
3 exists at Penn National or has ever existed at Penn
4 National entitled, "Litigation Hold Policy"?

5 A Not for certain. I could have initially
6 drafted this as a litigation hold policy and we
7 changed the nomenclature subsequent for a variety of
8 reasons. It's housed in the Policies and Procedures
9 section on our intranet.

10 Q Okay. And I was going to ask you about
11 that. We'll come back to that in a minute. But as
12 the corporate representative -- well, strike that.

13 Exhibit Number 3, the Litigation Hold
14 Procedure, which you have referred to as the
15 litigation hold policy, is -- has a policy number of
16 LE, dash, 0006. Do you see that?

17 A I do.

18 MR. YNTEMA: Objection to form.

19 BY MS. PATTERSON:

20 Q What does the LE stand for?

21 A Legal.

22 Q So is this a policy issued by the legal
23 department?

24 A Yes.

25 Q Does the legal department have the

1 responsibility for overseeing and implementing the
2 Litigation Hold Procedure, which is Policy Number
3 LE-0006?

4 A It does.

5 Q Does Policy Number LE-0006, Exhibit
6 Number 3, apply to Penn National as an organization?

7 A It does except for the claims department.

8 Q So LE-0006 does not apply to the claims
9 department; is that correct?

10 A That is correct.

11 Q Okay.

12 A Well, let me clarify. It could depending
13 on what the litigation involves. If it involves
14 enterprise-wide implications, then something that
15 emanates out of the claims department could trigger
16 the litigation hold.

17 Q I need you to explain that to me a little
18 bit. I'm not sure what you're talking about. What
19 do you mean by that, enterprise-wide and emanates
20 out of --

21 A Well, for example, this litigation
22 started off as a claims matter. It got to a point
23 where it impacted or implicated other areas within
24 the organization outside of the claims department,
25 therefore this Litigation Hold Procedure was

1 implemented.

2 Q So you say this matter started off as a
3 claims matter. What matter are you talking about?

4 A The Covil litigation.

5 Q Dating back to the Finch case?

6 A No.

7 Q Okay. When did the Covil litigation
8 begin as you understand it?

9 MR. YNTEMA: Individually?

10 MS. PATTERSON: Yeah.

11 MR. YNTEMA: In his individual capacity?

12 Thank you.

13 THE WITNESS: I believe in 2020. I
14 believe that's when the Complaint was filed.

15 BY MS. PATTERSON:

16 Q When the Complaint in the 2098 case was
17 filed?

18 MR. YNTEMA: Meaning the case he's
19 appearing on for today.

20 BY MS. PATTERSON:

21 Q Yeah, the case you're appearing on today.

22 A Yeah, that's correct.

23 Q Okay. Are you aware of Penn National
24 being a party to any litigation that involved the
25 Covil Corporation prior to 2020?

1 A As I sit here now?

2 Q Uh-huh.

3 A Yeah, I -- no, no. I think there was
4 some subpoenas, but not in the North Carolina
5 litigation. I don't know if Penn National was a
6 party to that litigation.

7 Q Well, there are -- just to give you a
8 little information, the Finch case was in
9 North Carolina, the underlying asbestos case, and
10 subsequent to that case there was a coverage action
11 filed in Federal Court in North Carolina in 2019.
12 Do you have any information or knowledge about that
13 case?

14 A No, not precisely.

15 Q As an individual -- I'm not asking you as
16 a corporate rep, but in your individual capacity,
17 are you aware of whether or not Penn National was
18 named as a third-party defendant in connection with
19 a coverage action in North Carolina in 2019?

20 A Well, this is where we're starting to get
21 into a little murky area. I learn things as an
22 attorney for the organization. I thought I was here
23 for -- as a 30(b)(6) for the record retention policy
24 and then --

25 Q Go ahead.

1 A -- a fact witness for the litigation
2 hold. So what I know about my client in other
3 aspects, I don't know if that's attorney-client
4 privileged or not.

5 Q I'm just asking if you know whether or
6 not Penn National was named as a party in any
7 coverage-related matter filed in North Carolina in
8 2019.

9 A As I sit here now, I do know that they
10 were, yes.

11 Q Okay. Is that because I just told you?

12 A No.

13 MR. YNTEMA: Objection.

14 BY MS. PATTERSON:

15 Q Okay. So let's go back to the Litigation
16 Hold Policy Number LE-0006. This policy applied to
17 all of Penn National except to the claims
18 department; is that your testimony?

19 A It is.

20 Q And is there a separate policy or
21 procedure or protocol that we could look at, that
22 you could look at that would describe the claims
23 department's litigation hold policy or protocol?

24 MR. YNTEMA: Objection to form.

25 THE WITNESS: I don't know the answer to

1 that.

2 BY MS. PATTERSON:

3 Q Do you know if the claims department has
4 a separate litigation hold policy or procedure?

5 MR. YNTEMA: Objection to form.

6 THE WITNESS: I've been advised they do.

7 BY MS. PATTERSON:

8 Q Okay. And were you advised of that by
9 Mr. Parson?

10 A I was.

11 Q And is it P-A-R-S-O-N?

12 A Correct.

13 Q Okay. Did you speak with Mr. Parson or
14 communicate with him in connection with your
15 preparation for this deposition as a corporate
16 representative?

17 A I did.

18 Q When did you speak with Mr. Parson or
19 communicate with him in connection with your
20 preparation for this deposition?

21 A I'd say about a week ago.

22 Q And is he located here in Harrisburg?

23 A He is.

24 Q How many times have you communicated with
25 Mr. Parson in connection with your preparation for

1 this deposition?

2 A Probably two or three times.

3 Q And what information did you gather or
4 gain from Mr. Parson in connection with your
5 preparation for this deposition?

6 A Mostly the discussions were related to
7 scheduling and appearances by Brent Reifsnyder.

8 Q Okay. Scheduling Mr. Reifsnyder's
9 deposition?

10 A That and mine.

11 Q Okay. So why did you have to talk to
12 Mr. Parson about scheduling your deposition?

13 MR. YNTEMA: Objection to the extent it
14 calls for attorney-client privilege.

15 MS. PATTERSON: Okay. I'm not asking for
16 attorney-client.

17 BY MS. PATTERSON:

18 Q I mean, you've told me that you spoke to
19 Mr. Parson in connection with your preparation for
20 this deposition. I want to know what you discussed
21 with him regarding your efforts to prepare for the
22 30(b)(6) topics you're here to testify about.

23 A I talked to him about Mr. Reifsnyder
24 testifying and the scheduling of my deposition, and
25 I can't think of anything else.

1 Q Mr. Maier, didn't you just tell me that
2 you talked to Mr. Parson about the fact that there
3 is a litigation hold policy or a procedure or a
4 protocol within the claims department that is
5 different from LE-0006?

6 A I did.

7 Q Okay. Well, that's what I want to know
8 about, so tell me what you discussed and --

9 A We didn't discuss that.

10 Q Oh, you didn't discuss that?

11 A No.

12 Q I thought -- well, so when did Mr. Parson
13 confirm to you that there is a separate policy or
14 procedure or protocol that the claims department
15 utilizes when it comes to litigation hold?

16 A In the drafting of this policy, I
17 conferred with Mr. Parsons to make sure that the
18 claims department did have a process and on repeated
19 occasions have confirmed that the policy and
20 procedure existed.

21 Q And when you say in the drafting of this
22 policy, you're talking about Exhibit Number 3.

23 A That is correct.

24 Q So you consulted with Mr. Parson back in
25 2006 or 2007 about the claims department's

1 litigation hold policy?

2 A That's correct.

3 Q And he assured you back in 2006 or 2007
4 that the claims department has its own litigation
5 hold policy or procedure?

6 A Yes, he did.

7 Q And in subsequent years he's reconfirmed
8 to you that the claims department has its own
9 separate litigation hold policy or procedure.

10 MR. YNTEMA: Objection to form.

11 BY MS. PATTERSON:

12 Q Is that right?

13 A That's correct.

14 Q And you've never asked to see the claims
15 department's policy or procedure or protocol?

16 A I have not.

17 Q And you don't know if it exists in
18 writing?

19 A I do not.

20 Q You don't know if it exists
21 electronically?

22 A I do not.

23 Q Have you ever asked Mr. Parson to
24 describe for you at any point in time what the
25 claims department's litigation hold policy,

1 protocol, or procedure entails?

2 A I have, and he's verbalized that -- a
3 high level view of what that process entails.

4 Q And when did he verbalize the high level
5 view of the claims department's litigation hold
6 process?

7 A In the drafting of this policy and
8 subsequent conversations.

9 Q And tell me: From your conversations
10 with Mr. Parson, what did he tell you was the high
11 level view of the claims department's litigation
12 hold policy?

13 A Well, essentially if a complaint was
14 brought against the policy, they would secure the
15 claim file and not purge anything related to the
16 claim file.

17 Q Does a claim file include a copy of the
18 applicable policy?

19 MR. YNTEMA: Objection to form.

20 BY MS. PATTERSON:

21 Q Insurance policy.

22 MR. YNTEMA: In his individual capacity?

23 MS. PATTERSON: I'm trying to find out
24 about -- no, this is in his individual capacity and
25 in his corporate representative capacity, because

1 I'm trying to find out about the litigation hold
2 practices and policies of Penn National, and I'm now
3 learning that there is a separate litigation hold
4 policy or protocol separate from the one that has
5 been provided to us, which I've marked as Exhibit
6 Number 3.

7 THE WITNESS: Well, with all due respect,
8 counselor, it's stated right there in the policy.

9 BY MS. PATTERSON:

10 Q What's stated right there in the policy?

11 A That they have a separate policy.

12 Q Well, with all due respect, Mr. Maier, it
13 hasn't been produced to us, and we've asked for it.

14 MR. YNTEMA: Objection to form.

15 BY MS. PATTERSON:

16 Q So can you tell me -- let's go back to my
17 question. You said from a high level view
18 Mr. Parson has informed you that the claims
19 department's litigation hold policy requires that
20 once a complaint is made -- well, let me ask you
21 that: What do you mean, a complaint? What kind of
22 a complaint?

23 A A claim on the policy.

24 Q Okay. So Mr. Parson has told you that
25 once a claim has been made on an insurance policy

1 issued by Penn National, the claims department has a
2 litigation hold process that applies to any claim
3 files related to that policy; correct?

4 A That's correct.

5 Q So if an insured makes a claim on a
6 policy, once that insured makes that claim -- and I
7 guess that would include just tendering a claim to
8 the company; correct?

9 MR. YNTEMA: Objection to form.

10 THE WITNESS: Correct.

11 BY MS. PATTERSON:

12 Q Okay. So if an insured tenders a claim
13 to Penn National on a policy, the claims
14 department's litigation hold procedures kick into
15 effect; is that right?

16 MR. YNTEMA: Objection to form. In his
17 individual capacity?

18 MS. PATTERSON: No. I'm asking him as a
19 representative and as --

20 MR. YNTEMA: I don't see how that
21 pertains to the topics he's designated here on
22 today.

23 MS. PATTERSON: He's designated here to
24 talk about litigation hold notices that you,
25 Pennsylvania National, issued related to the Covil

1 litigation. That's topic number 1. It's not
2 limited to litigation hold policies issued by the
3 legal department. It's litigation hold policies
4 issued by Penn National.

5 MR. YNTEMA: Objection to form.

6 BY MS. PATTERSON:

7 Q Okay. So let's start over, Mr. Maier, on
8 that line of questioning.

9 If an insured tenders a claim to Penn
10 National under let's just say a liability policy,
11 does the claims department's litigation hold process
12 or policy kick in?

13 A I don't know. I would need to talk to
14 the claims department on exactly how their policy
15 or -- it kicks in.

16 Q Okay. So you don't know what triggers
17 the litigation hold policy that's maintained or
18 overseen by the claims department, do you?

19 A That's correct.

20 Q Okay. But Mr. Parson told you that
21 regardless of whatever triggers it, once the claims
22 department implements a litigation hold, that means
23 that everything related to that claim or claims file
24 is held and retained; correct?

25 MR. YNTEMA: Objection to form.

1 THE WITNESS: That's correct. That's my
2 understanding.

3 BY MS. PATTERSON:

4 Q In other words, once a claim has been
5 made against a policy by a policyholder, Penn
6 National's claims department Litigation Hold
7 Procedure would prevent Penn National from
8 destroying any documents related to that claim?

9 MR. YNTEMA: Objection to form.

10 THE WITNESS: That's my knowledge,
11 correct.

12 BY MS. PATTERSON:

13 Q And documents related to that claim would
14 include the policy on which that claim is made;
15 correct?

16 MR. YNTEMA: Objection to form.

17 THE WITNESS: That's my understanding,
18 correct.

19 BY MS. PATTERSON:

20 Q What else have you discussed with
21 Mr. Parson about -- at any time about the claims
22 department's litigation hold policy and procedures?

23 MR. YNTEMA: Objection to the extent that
24 it's calling for attorney-client privilege
25 communications between in-house counsel and

1 Mr. Parsons.

2 MS. PATTERSON: Well, are you instructing
3 him not to answer?

4 MR. YNTEMA: Well, let me hear your
5 question again, ma'am.

6 MS. PATTERSON: Can you repeat the
7 question?

8 (The record was read by the
9 reporter.)

10 MR. YNTEMA: Are you asking him what
11 Mr. Parson has told him, or are you asking him --
12 I'm not sure of your question.

13 MS. PATTERSON: That's fine.

14 BY MS. PATTERSON:

15 Q Other than this high level view where he
16 told you that once a litigation hold kicks in under
17 the claims department's procedures that they
18 maintain documents related to the claims file, has
19 Mr. Parson described any other aspect about the
20 claims department's Litigation Hold Procedure?

21 A No, not extensively, no.

22 Q Well, extensively or generally, is it --

23 A Generally they don't purge anything in
24 the claim file.

25 Q Okay. What does a claim file include?

1 MR. YNTEMA: Objection to form. In his
2 individual capacity, I don't see anything in here
3 about what a claim -- as far as topics, what a claim
4 file -- that he should know of what a claim
5 file would include.

6 MS. PATTERSON: Well, we're talking about
7 litigation hold policies.

8 BY MS. PATTERSON:

9 Q Can you answer the question?

10 A No, not precisely. There's a variety of
11 type -- different types of claims. Different claim
12 files have different contents.

13 Q Do you know if the claims department at
14 Penn National has ever issued a litigation hold
15 under its policy and practice related to any of the
16 Covil litigation as that term is defined in the
17 30(b)(6) Notice?

18 A No, I do not have knowledge of that.

19 Q Did you do anything in preparation for
20 today's deposition to determine whether or not the
21 claims department at Penn National pursuant to its
22 litigation hold policies or procedures had ever
23 issued a litigation hold in connection with any of
24 the Covil litigation as defined in the 30(b)(6)
25 Notice?

1 A Did I do anything?

2 Q Yeah. Did you seek out any information?

3 Did you try --

4 A I did; I did.

5 Q -- to educate yourself?

6 A I did. I spoke with --

7 Q Tell me what you did.

8 A -- Adam Parsons, and he confirmed that

9 the process was followed, and none of the

10 information in the claim file was purged.

11 Q He confirmed that the process was

12 followed. What process?

13 A His process, the claims department

14 process of not purging.

15 Q Okay. When -- did Mr. Parson confirm to

16 you that a Litigation Hold Notice had been issued by

17 the claims department in connection with any of the

18 Covil litigation?

19 A He did not confirm a notice went out, no.

20 Q As the corporate representative for Penn

21 National, can you tell me whether the claims

22 department ever issued a Litigation Hold Notice

23 under its policies or procedures related to any of

24 the Covil litigation as that term is defined in the

25 30(b)(6) Notice?

1 A I cannot.

2 Q Did you ask Mr. Parson that question
3 specifically: Was a Litigation Hold Notice ever
4 issued by the claims department in connection with
5 the Covil litigation?

6 MR. YNTEMA: Objection to form.

7 THE WITNESS: Yeah, I don't think I
8 phrased it that way. I just said -- I asked if all
9 the documents were preserved and not purged.

10 BY MS. PATTERSON:

11 Q But you didn't ask him if a Litigation
12 Hold Notice had been issued by the claims department
13 at any time, did you?

14 MR. YNTEMA: Objection to form.

15 THE WITNESS: I did not, no.

16 BY MS. PATTERSON:

17 Q And as corporate representative for Penn
18 National sitting here today, you don't know whether
19 the claims department at Penn National issued a
20 Litigation Hold Notice under its policies and
21 practices at any time, do you?

22 MR. YNTEMA: Objection to form.

23 THE WITNESS: That's correct.

24 BY MS. PATTERSON:

25 Q You're certainly not aware of one having

1 been issued?

2 A No.

3 Q You've never seen any emails or documents
4 that would confirm or evidence the issuance of a
5 Litigation Hold Notice by the claims department in
6 connection with any of the Covil litigation, have
7 you?

8 MR. YNTEMA: Objection to form.

9 THE WITNESS: Yeah, that's correct. I
10 have not.

11 BY MS. PATTERSON:

12 Q How long has Mr. Parson been the
13 technical director of the claims department?

14 A And I might have gotten the title
15 inverted. It may be director of technical
16 operations in the claims department. I'm trying to
17 recall. I think his predecessor passed away in
18 2018, maybe '17.

19 Q So since that time he's been the person
20 in charge of litigation holds and the litigation
21 hold process within the claims department?

22 MR. YNTEMA: Objection to form.

23 THE WITNESS: I don't know if he's the
24 person responsible, but he's certainly the person I
25 conferred with.

1 BY MS. PATTERSON:

2 Q But you don't know who's responsible for
3 that process within the claims department?

4 A Well, I would imagine ultimately the vice
5 president of the claims department is responsible
6 for that.

7 Q As the corporate representative for Penn
8 National here today, let me ask you this: If I
9 wanted to find out whether or not the claims
10 department has ever issued a litigation hold in
11 connection with the Covil litigation, as that term
12 is defined, would Mr. Parsons be the person I should
13 talk to?

14 A Perhaps, yeah.

15 Q Is there anyone else you think who would
16 be more knowledgeable and able to answer that
17 question other than Mr. Parsons?

18 A No.

19 Q You made a comment a little bit earlier
20 about this case, and you said it started out as a
21 claims matter, and then it -- and I think I wrote
22 this down correctly. You said it got to a point
23 where it impacted areas outside of claims. Do you
24 recall that testimony?

25 A I do.

1 Q At what point did this matter begin to
2 impact areas outside of claims?

3 A When I was made aware of it in 2021,
4 December of 2021.

5 Q When you were made aware of what?

6 A This litigation.

7 Q Okay. And when you refer -- just to be
8 clear for the record, when you refer to this
9 litigation, you're talking about the case that
10 you're here about -- here to testify about today,
11 which is the matter pending in Richland County with
12 the Civil Action Number 2019-CP-40-2098.

13 A That's correct.

14 Q You were first made aware of that -- of
15 this litigation in December of 2021; correct?

16 A That's correct.

17 Q And who made you aware of this litigation
18 in December of 2021?

19 A I'd say Brent Reifsnyder mentioned this
20 litigation in early December.

21 Q Is the claims department still currently
22 managing this litigation?

23 A It is.

24 Q Do you know who in the claims department
25 is managing this litigation?

1 A I believe the claim handler is Boyd
2 Wright.

3 Q So when you were made aware of this
4 litigation in December of 2021, it was at that point
5 that the matter impacted areas outside of the claims
6 department?

7 A I don't know if I would have phrased it
8 that way. I was made aware that there was vendors
9 at our warehouse where we store policy records.

10 Q And who made you aware of that?

11 A Brent Reifsnyder.

12 Q What vendors were at your warehouse?

13 A I believe it's the Wright and Ellis
14 Company.

15 Q Ellis & Winters?

16 A Ellis & Winters, that's it.

17 Q It's a law firm. So Mr. Reifsnyder made
18 you aware that Ellis & Winters was at your
19 warehouse?

20 A I don't think he used the name Ellis &
21 Winter. I think he just said he's been dealing with
22 a vendor at Iron Mountain.

23 Q Okay. And upon learning about that --
24 well, strike that.

25 Did you do anything after you were made

1 aware of this litigation in December of 2021?

2 A I did not. It was a conversation in
3 passing. It was more of how things are going kind
4 of conversation rather than for me to take action.

5 Q Do you deal with Mr. Reifsnyder regularly
6 in your position?

7 A I deal with Mr. Reifsnyder on a variety
8 of issues, yes.

9 Q But December of 2021 was the first time
10 he mentioned anything to you related to Covil
11 Corporation --

12 MR. YNTEMA: Objection --

13 BY MS. PATTERSON:

14 Q -- or litigation with Covil Corporation;
15 is that right?

16 MR. YNTEMA: Objection to form.

17 THE WITNESS: Yes, that's correct.

18 BY MS. PATTERSON:

19 Q Prior to December of 2021, were you aware
20 that Penn National was involved in a lawsuit, a
21 declaratory judgment action, in South Carolina
22 brought by Covil Corporation's Receiver?

23 A No, I was not aware of that.

24 Q Were you aware of any pending legal
25 action brought by Covil or its Receiver against Penn

1 National prior to December of 2021?

2 A Not that I can recall.

3 Q So when Mr. Reifsnyder mentioned to you
4 in passing that there were vendors at Iron Mountain,
5 did he mention that it had something to do with
6 Covil?

7 A He did. Yeah, he did. He mentioned the
8 name Covil. That's probably the first time I heard
9 the name.

10 Q And you did nothing in response to that
11 reference. You didn't take any action.

12 MR. YNTEMA: Objection to form.

13 THE WITNESS: That's correct.

14 BY MS. PATTERSON:

15 Q Okay. Let's -- does Penn National
16 maintain policies like Exhibit Number 3 on an
17 internal intranet or electronic system of some kind?

18 A It does.

19 Q It does?

20 A Yes.

21 Q Okay. Is it -- do you call it an
22 intranet or --

23 A I call it an intranet. I don't know if
24 that's the proper name for it.

25 Q So if someone in the company wanted to go

1 look up all of the LE policies, which are policies
2 issued by the legal department, there's someplace
3 they could go and do that.

4 A That's correct.

5 Q All right. And are other policies issued
6 by other departments also maintained on that same
7 intranet?

8 A There is.

9 Q Is the claims department's policy or
10 procedure regarding litigation holds maintained on
11 the intranet to your knowledge?

12 A Not to my knowledge, no.

13 Q Have you checked?

14 A I have not.

15 MS. PATTERSON: Tell you what, why don't
16 we take a break, about a five-minute break, if I can
17 get these documents out of here and --

18 Go off the record.

19 THE VIDEOGRAPHER: We're going off the
20 video record. The time is 10:15.

21 (A recess was taken.)

22 THE VIDEOGRAPHER: We're back on the
23 video record.

24 BY MS. PATTERSON:

25 Q Mr. Maier --

1 THE VIDEOGRAPHER: The time is 10:24.

2 I'm sorry.

3 BY MS. PATTERSON:

4 Q Mr. Maier, when did you begin to prepare
5 for your deposition as a corporate representative?

6 A A couple of weeks ago.

7 Q What did you do to prepare for your
8 deposition as a corporate representative on the
9 topics we identified earlier?

10 A I reviewed files in the legal department
11 on record retention, and I spoke with several
12 employees of the company.

13 Q What files in the legal department did
14 you review on record retention?

15 A A file called record retention.

16 Q It's a file?

17 A Correct.

18 Q What's in that file?

19 A The history of the creation of the
20 policy, efforts to gain information, research, and
21 then periodic articles and correspondence within the
22 organization.

23 Q Okay. Are there any other files or
24 documents that you reviewed other than the legal
25 department's record retention file in connection

1 with your preparation for today's deposition as a
2 corporate rep?

3 A No.

4 Q For example, did you review the
5 Litigation Hold Procedure that we marked earlier as
6 Exhibit Number 3?

7 A I did, actually, yes. So if you meant
8 policies and procedures, included -- like our record
9 retention policy, the litigation hold policy, I did
10 review those.

11 Q Let me be clear. I'm asking you about
12 everything you reviewed to get ready for this
13 deposition as a corporate rep.

14 A Okay.

15 Q So far you've told me you reviewed a
16 record retention file in the legal department, and
17 you've described some of its content. Now do I
18 understand you also reviewed Exhibit Number 3, which
19 is the legal department Litigation Hold Procedure?

20 A Yes.

21 Q Okay. Are there any other documents of
22 any kind, whether in hard copy form or
23 electronically, that you reviewed in order to
24 prepare for this deposition?

25 A There are.

1 Q What else?

2 A The Record Retention Policy, I reviewed.

3 Q Okay.

4 A And then I reviewed emails.

5 Q How big is the record retention file that
6 you referred to?

7 A That's a good question. It's actually
8 two files, accordion folders, and it's about -- I
9 don't know -- 12 inches total.

10 Q And that's a file -- it's a hard copy
11 file of documents.

12 A Correct.

13 Q Maintained in the legal department.

14 A Correct.

15 Q And it's called the record -- the legal
16 department's record retention file.

17 A Correct.

18 Q All right. And does it include any
19 policies within it?

20 A Yes.

21 Q Okay.

22 A Drafts of some policies.

23 Q Does it include a copy of the current
24 Litigation Hold Procedure, which we marked earlier
25 as Exhibit 3?

1 A I don't believe it does. That's
2 separate. It might. It might.

3 Q Okay. You said it includes some
4 articles?

5 A Correct.

6 Q Okay. Articles about what?

7 A Record retention.

8 Q Okay. Anything else you can recall
9 that's included in that record retention file
10 maintained in the legal department?

11 A Oh, yeah, there's a slew of documents
12 related to the creation of the policy,
13 correspondence with other insurers, the trades,
14 reinsurers, outside counsel, yeah.

15 Q Okay. Did you know where to go to find
16 that file, or did you have to get someone or ask
17 someone to get it for you?

18 A No, I knew where to get it.

19 Q Okay. Had you ever reviewed anything in
20 that record retention file prior to looking at it to
21 prepare for the deposition today?

22 A Yes.

23 Q Okay. Do you personally maintain that
24 file?

25 A No.

1 Q But someone in the legal department does.

2 A Correct.

3 Q All right. You said you also reviewed in
4 preparation for today's deposition the Record
5 Retention Policy. Are you talking about the Record
6 Retention Policy of Penn National?

7 A Correct, the one posted.

8 Q And who issues that policy? What
9 department?

10 A The legal department.

11 Q Okay. And how big is that policy?

12 A It's an electronic form.

13 Q I'm sorry?

14 A It's an electronic form. It's in an
15 electronic form.

16 Q Okay.

17 A So it's currently now in a spreadsheet
18 format. It wasn't always that way, and I'd have to
19 count the number, but there's a spreadsheet tab for
20 each department.

21 MS. PATTERSON: Okay. And this -- well,
22 let's do this -- and I'll just go ahead and hand
23 this to you. I marked this as Exhibit 5, so we're
24 going to kind of go out of order here on the exhibit
25 numbers.

1 (Exhibit 5 was marked for
2 identification.)

3 BY MS. PATTERSON:

4 Q Exhibit 5, which is a notebook I've just
5 handed you, Mr. Maier, is something that was
6 produced to us in connection with this litigation,
7 produced to the Receiver. Do you recognize Exhibit
8 Number 5?

9 A I do.

10 Q Okay. What is Exhibit Number 5?

11 A It's titled, "Record Retention Policy
12 Manual Recipients." It's a memo for the
13 distribution of -- the subject matter is
14 distribution of the Record Retention Policy Manual.

15 Q And if you go to the next page, the
16 second page of Exhibit 5, which is Bates numbered
17 PNI-0599, do you see a document that's entitled,
18 "Record Retention Policy," that's three pages long?

19 A I do.

20 Q Okay. Is that the Record Retention
21 Policy that you reviewed in connection with your
22 preparation for this deposition?

23 A This is in the record retention file, the
24 hard copy. The Record Retention Policy is an
25 electronic version that is different from this.

1 Q Okay. Can you print the electronic
2 version of the Record Retention Policy that you're
3 referring to?

4 A Yes.

5 MS. PATTERSON: Okay. I don't believe
6 we've been provided that, Brady.

7 MR. YNTEMA: I think -- well, off the
8 record.

9 THE VIDEOGRAPHER: Going off the video
10 record. The time is 10:32.

11 MS. PATTERSON: Stay on the steno.

12 MR. YNTEMA: I think this is all versions
13 of the Record Retention Policy, and it also includes
14 the printout of what's now online unless you --

15 MS. PATTERSON: Tell you what, let me ask
16 him some questions. Let's go back on the record,
17 please.

18 MR. YNTEMA: Well, if he can just review
19 it --

20 MS. PATTERSON: Yeah, of course. I'm
21 going to let him --

22 Yeah, you can take as much time as you
23 need to review it.

24 Let's go ahead and go back on.

25 THE VIDEOGRAPHER: Back on the video

1 record. The time is 10:32.

2 BY MS. PATTERSON:

3 Q Okay. Mr. Maier, take as much time as
4 you need to look at Exhibit 5. That's what was
5 produced to us. I'm trying to find out if Exhibit
6 Number 5 includes the Record Retention Policy that
7 you reviewed in preparation for your deposition.

8 A It appears to be close, but I would want
9 to verify it as compared to what's posted. I don't
10 know when this was produced, the timing, but from
11 Bates stamp PNI-1048 to 1157 -- 1158, it looks to be
12 the current version, although I think one might
13 have -- not positive. I'm not positive, but it
14 looks to be the most current version.

15 Q Okay. So I want to make sure I
16 understand. You think PNI-1048 to 1158 is the most
17 current version of the Penn National Record
18 Retention Policy?

19 A Yeah. Of course, I'd want to validate
20 that.

21 Q When you were preparing for your
22 deposition, did you review the most current version
23 of the Penn National Record Retention Policy?

24 A I did.

25 Q Okay. Because that one is available to

1 you electronically on your intranet.

2 A Correct.

3 Q Okay. And I'll just again represent to
4 you what you have in front of you is what we have
5 been produced, and I understand you would want to go
6 back and compare it to the electronic version that
7 you reviewed, but your best testimony today is that
8 PNI-1049 to 1158 is the current Record Retention
9 Policy?

10 A Yes.

11 Q And who was that policy issued by? The
12 legal department?

13 A Correct.

14 Q And does that Record Retention Policy
15 issued by the legal department apply to all of Penn
16 National, including the claims department?

17 A It does.

18 Q Do you see something in the paper
19 documents that I've given you and that are marked as
20 Exhibit 5 that resembles the spreadsheet you were
21 referring to? Is that part of what you're looking
22 at at 1048 to 1158?

23 A It does.

24 Q Okay.

25 A Yep.

1 Q All right. Did you review any -- to your
2 knowledge in preparation for this deposition, did
3 you review any of the other parts or pages that are
4 included in Exhibit Number 5?

5 A I did.

6 Q Okay.

7 A Yeah.

8 Q And Exhibit Number 5 among other things
9 includes, as you noted earlier, a May 28th, 1996,
10 memo to Records Retention Policy Manual Recipients
11 regarding the Records Retention Policy Manual
12 Distribution, and it contains some other versions of
13 the Records Retention Policy, the manual, and
14 various other documents, which show different types
15 of documents and when they can be destroyed or how
16 long they have to be retained, I guess is a better
17 way of putting it; correct?

18 A Correct.

19 Q Okay. If I could ask you, on page -- the
20 second page of Exhibit 5, which again is PNI-0599
21 through 0601, do you know when that version of the
22 Record Retention Policy was issued?

23 A You're talking about 2 --

24 Q Well, it's the Bates numbered page
25 PNI-0599.

1 A Correct. Yeah, I would -- can't say for
2 certain, but I would suspect that it's 1996.

3 Q Okay. In the version that you think is
4 the current version -- again, understanding you
5 would want to double check it, but the one that
6 begins at PNI-1048 through 1158, when was that
7 version of the Record Retention Policy issued?

8 A Yeah, it looks like it was last updated
9 in 2020, but there is a -- yeah, 2020.

10 Q Okay. And does that version, the one
11 that's last updated in 2020, contain an LE number
12 like the LE policy number we saw on the Litigation
13 Hold Procedure?

14 MR. YNTEMA: Objection to form.

15 THE WITNESS: It does, but I don't know
16 if that can be printed out. It's a link to the
17 spreadsheets. It's a link to the spreadsheets, so
18 an employee would click on LE-004 and link to the
19 spreadsheets that have the record retention periods.
20 BY MS. PATTERSON:

21 Q Okay. So the legal department's Record
22 Retention Policy is Policy Number LE-0004; correct?

23 A Correct.

24 Q Okay. And you think -- again, subject to
25 wanting to double check it against the electronic

1 version, you think that PNI-1048 through 1158 is the
2 current version of LE-0004?

3 A Yeah.

4 Q Okay.

5 A I mean, it's a matter of timing of when
6 this was produced. We are constantly updating the
7 policy, so I would just want to make sure that it's
8 consistent.

9 Q When was the last time the Record
10 Retention Policy was updated?

11 A We're in the process right now of
12 updating the Record Retention Policy. It's biannual
13 reviews, and that process is currently going.

14 Q Who is in charge of that process?

15 A Attorney Erin Pence.

16 Q Do you have any involvement in that
17 process?

18 A Other than reviewing the legal
19 department's policies.

20 Q What do you mean by that? Oh, you mean
21 the legal department's -- the policies for --

22 A Correct.

23 Q I understand what you're saying. Okay.
24 So just to be clear on the record, the policy has a
25 two-page -- well, the beginning of the policy is two

1 pages starting at 1048, and, again, we think -- we
2 think this is the current policy. It says, "Records
3 Retention Policy, Purpose of the Records Retention
4 Policy," then there's a section on steps for
5 evaluating whether to retain or destroy documents;
6 right?

7 A I'm sorry. Can you refer --

8 Q Sure.

9 A What Bates stamp are you looking at?

10 Q Page 1048, Bates numbered page 1048.

11 A Yes.

12 Q Okay. There's a section called, "Purpose
13 of the Record Retention Policy," and then the next
14 section is, "Steps for evaluating whether to retain
15 or destroy documents." Correct?

16 A Correct.

17 Q And then the next section is, "Electronic
18 document purging." Correct?

19 A Correct.

20 Q And the next section is, "Who is
21 Responsible," and then there's a section on
22 Questions. Correct?

23 A Correct.

24 Q And then after that what we see are a
25 number of charts, for lack of a better term, that

1 apply to various different departments within Penn
2 National; correct?

3 A Correct.

4 Q Okay. And within those departments
5 there's a column for the Record or Document by
6 Category, the Retention Period, the Reason for the
7 Retention, Current Industry Practice, et cetera;
8 correct?

9 A Correct.

10 Q Okay. So you reviewed that in
11 preparation for today. You also said that you
12 reviewed some emails in preparation for your
13 testimony as a corporate representative today?

14 A That's correct.

15 Q What emails did you review?

16 A I reviewed the email that I sent to Brent
17 Reifsnyder putting a litigation hold in place.

18 Q Okay. Any other emails that you
19 reviewed?

20 MR. YNTEMA: I would just lodge an
21 objection, except for emails with counsel.

22 BY MS. PATTERSON:

23 Q I'm not asking -- yeah. I'll make it
24 clear. I'm not asking --

25 A Right.

1 Q -- about emails with counsel. I just
2 want to know if there are any other substantive
3 emails that you reviewed in order to prepare for the
4 topics you've been presented to testify on today
5 other than the December email that you sent to
6 Mr. Reifsnyder?

7 A Yeah, there was an email with Brandon
8 Danner putting the litigation hold in place as a
9 result of my email to Brent Reifsnyder. I believe
10 there was an email to the IT department to
11 confirm -- or to initiate the litigation hold for
12 Mr. Reifsnyder's emails. And why I'm pausing is
13 because of the Record Retention Policy files contain
14 emails where there are instances where the business
15 unit will be asking for guidance, legal guidance on
16 the Record Retention Policy, so they're printed-off
17 versions.

18 Q But those emails are in the record
19 retention --

20 A Correct.

21 Q -- file you told me about earlier.

22 A Correct.

23 Q Separate from emails in the record
24 retention file, did you review any other emails to
25 prepare for your deposition today other than the

1 email from December of 2021 to Mr. Reifsnyder, an
2 email to Mr. Danner, and an email or some emails
3 with the IT department?

4 A To my knowledge, no. I will put a caveat
5 that we are in the process of producing documents as
6 a result of a request for production of documents,
7 which I'm in the process of reviewing information,
8 too.

9 Q Do those -- okay. Do those documents
10 that you're in the process of reviewing have
11 anything to do with the company's litigation hold or
12 record retention process?

13 A Yeah. The request for production of
14 documents mirrors the subjects of this deposition.

15 Q Right. So do you believe that there are
16 documents that are subject to that request for
17 production related to litigation hold and records
18 retention that have not yet been produced?

19 A Maybe I'm not understanding the question.

20 Q Okay.

21 A The request for production of documents
22 asks for evidence of certain activity.

23 Q Right.

24 A Which is part of the litigation -- or
25 excuse me -- the Record Retention Policy.

1 Q Right. I'm just telling you -- I'm
2 trying to figure out if there are documents -- look,
3 let me cut to the chase. We've been given what you
4 have in front of you as Exhibit 5. We've been given
5 Exhibit 3. I certainly have Mister -- the email you
6 sent to Mr. Reifsnyder, which I'm going to show you
7 here in a minute.

8 A Right.

9 Q I'm just curious if there are other
10 emails or documents that you believe are responsive
11 and related to the litigation hold process or the
12 Record Retention Policy that haven't yet been
13 produced.

14 MR. YNTEMA: If I can put some clarity to
15 this --

16 MS. PATTERSON: Yes.

17 MR. YNTEMA: -- there's a fourth request
18 for production of documents that we're putting
19 together right now to be responsive before
20 December 1st.

21 MS. PATTERSON: Okay.

22 MR. YNTEMA: Because that's what he's
23 likely referencing.

24 MS. PATTERSON: Okay. Well, the -- okay.
25 Well, maybe you and I can talk about that offline.

1 Let's do this.

2 (Exhibit 4 was marked for
3 identification.)

4 BY MS. PATTERSON:

5 Q I'm going to go ahead and hand you what
6 I've marked earlier as Exhibit 4. Exhibit 4 is, I
7 believe, the email that you referenced a few minutes
8 ago that you sent to Mr. Reifsnyder in December of
9 2021; correct?

10 A That's correct.

11 Q And is Exhibit Number 4 a Litigation Hold
12 Notice?

13 A Yes, it is.

14 MS. PATTERSON: Mr. Yntema, could you
15 provide the witness back the copy of the 30(b)(6)
16 Notice so he has that in front of him?

17 BY MS. PATTERSON:

18 Q If I could direct your attention,
19 Mr. Maier, to topic number 1 on the 30(b)(6) Notice,
20 for which you've been designated, and the topic is,
21 "All litigation hold notices that you" -- meaning
22 Penn National -- "issued related to the Covil
23 Litigation, including but not limited to the
24 existence, contents, recipients and timing of any
25 litigation holds."

1 Do you see that?

2 A I do.

3 Q Okay. Are you aware of any litigation
4 hold notices that were issued by Penn National
5 related to the Covil litigation other than what
6 we've marked as Exhibit Number 4, which is your
7 December 17, 2021, email to Mr. Reifsnyder?

8 A I am not.

9 Q Have you done anything in connection with
10 your preparation for today's deposition as a
11 corporate representative to determine whether or not
12 Penn National at any time before or after
13 December 17th, 2021, issued any other litigation
14 hold notices related to the Covil litigation?

15 A Yeah. As I testified earlier, I spoke
16 with Adam Parsons, and he confirmed that the files
17 related to the claim were preserved.

18 Q Okay. The files related to what claim?

19 A The Covil litigation.

20 Q How do you define Covil litigation as you
21 just used that term?

22 A The litigation filed -- the dec action
23 filed in South Carolina.

24 Q Okay. So Mr. Parson confirmed to you
25 that files related to the claim, being the dec

1 action filed by the Receiver in South Carolina, have
2 been preserved?

3 A Correct, have not been purged.

4 Q Did Mr. Parsons advise you at any time
5 that a Litigation Hold Notice has been issued by the
6 claims department regarding Covil or Covil
7 litigation?

8 A He did not use that terminology, no.

9 Q Okay. Do you know if any other
10 litigation hold -- and I'm asking you as the
11 corporate representative for Penn National. Are you
12 aware of whether or not any Litigation Hold Notice
13 has been issued related to the Covil litigation as
14 defined in the Deposition Notice other than Exhibit
15 Number 4?

16 MR. YNTEMA: Objection to form.

17 THE WITNESS: Yeah, to my knowledge
18 there's no notice of litigation hold sent other than
19 the one I sent.

20 BY MS. PATTERSON:

21 Q Okay. Did Mr. Parsons advise you in your
22 communications with him of what, if anything, the
23 claims department did to ensure that files related
24 to this claim, the declaratory judgment case in
25 South Carolina, to confirm that those files have not

1 been purged?

2 MR. YNTEMA: Objection to form.

3 THE WITNESS: Other than to say that the
4 claim files have been preserved.

5 BY MS. PATTERSON:

6 Q Okay. Do you know what the claims
7 department has done to preserve the claim files
8 related to this claim?

9 A What they have done?

10 Q Yeah. What steps have been taken to
11 preserve those files by the claims department?

12 A Well, they're active claim --

13 MR. YNTEMA: Objection to form.

14 THE WITNESS: They're active claim files,
15 so they're not purged.

16 BY MS. PATTERSON:

17 Q Okay. What do you mean, active claim
18 files?

19 A They are an open claim file.

20 Q Okay. I think we're talking past each
21 other --

22 A Yeah, I think so, too.

23 Q -- Mr. Maier, so let's -- let me try this
24 again.

25 A Okay.

1 Q Okay. Exhibit 4 is a Litigation Hold
2 Notice; right?

3 A Correct.

4 Q You've not seen any other Litigation Hold
5 Notice that's been sent to anyone within the
6 organization instructing them to maintain documents
7 related to the Covil Corporation, have you?

8 A I have not.

9 Q All right. And you're not aware of any
10 other Litigation Hold Notice. You as the corporate
11 representative of Penn National are not aware of any
12 other Litigation Hold Notice that has ever been
13 issued by anyone within the Penn National
14 organization related to Covil litigation other than
15 Exhibit 4; correct?

16 A That is correct. I am not aware of any
17 other Litigation Hold Notice.

18 Q All right. Does -- to your knowledge,
19 does the claims department from time to time,
20 generally speaking, issue litigation hold notices?

21 A I do not know if that's their protocol.

22 Q Does the claims department -- I'll strike
23 that.

24 Does the legal department maintain a list
25 electronically or in hard copy of the litigation

1 hold notices that are issued by the legal
2 department?

3 A We do.

4 Q Okay. So if you wanted to go look up,
5 for example, how many litigation hold notices were
6 issued by the legal department in 2021, you could do
7 that?

8 A Yes.

9 Q Okay. Do you happen to know how many
10 litigation hold notices were issued by your legal
11 department in 2021?

12 MR. YNTEMA: Objection to form.

13 THE WITNESS: I don't. I want to say
14 it's a handful each year.

15 BY MS. PATTERSON:

16 Q Okay. A handful being less than 10
17 maybe?

18 A Yes.

19 Q Okay. And do the litigation hold notices
20 issued by the legal department at Penn National
21 generally take the form that we see here in Exhibit
22 Number 4? In other words, it's an email from you or
23 someone in the legal department to individuals who
24 you have determined need to be put on notice?

25 A That's correct.

1 Q Okay. There's not some other kind of
2 form that you require other than something similar
3 to what we see in Exhibit 4.

4 A That's correct.

5 Q Okay. Does the claims department at Penn
6 National have the responsibility to maintain
7 historical insurance policies?

8 MR. YNTEMA: Objection to form.

9 THE WITNESS: Insomuch as they're
10 embodied in the claim file.

11 BY MS. PATTERSON:

12 Q Okay.

13 A But --

14 Q Go ahead.

15 A No, it's not their responsibility to
16 preserve the policy that is issued by the
17 organization.

18 Q What department has the responsibility to
19 maintain the actual policy documents that were
20 issued by the organization at any point in time?

21 A The underwriting department has
22 responsibility for the policies for a certain period
23 of time, and then they are transferred over to the
24 warehouse, which would then transfer responsibility
25 to a certain extent to administrative services or

1 now corporate services.

2 Q And administrative services or corporate
3 services is Mr. Reifsnyder's area; correct?

4 A Correct.

5 Q Does the underwriting department to your
6 knowledge have its own litigation hold policy or
7 procedure?

8 A No.

9 Q The underwriting department would be
10 subject to the litigation hold policy and procedure
11 we marked as Exhibit 3; is that correct?

12 A That's correct.

13 Q Okay. And the administrative services or
14 corporate services department that is headed up by
15 Mr. Reifsnyder is also subject to the litigation
16 hold policy or procedure that we marked as
17 Exhibit 3; correct?

18 A That's correct.

19 Q All right. We were talking about emails
20 that you reviewed in connection with your
21 preparation for this deposition, and you mentioned
22 an email with, I think -- I think the name was
23 Brennan Danner?

24 A Brandon Danner, yeah.

25 Q Brendan?

1 A Brandon, Brandon.

2 Q Brandon Danner. Who is Mr. Danner?

3 A He's in our IT department and -- I'm not
4 sure of his title right now, but he -- I think he
5 just got promoted.

6 Q Did you have some communications with
7 Mr. Danner regarding the Litigation Hold Notice sent
8 to Mr. Reifsnyder in December of 2021?

9 A Yes.

10 Q Okay. Tell me about the communications
11 you had with Mr. Danner.

12 A Mr. Danner confirmed that the litigation
13 hold policy would be applied to the historical
14 records and policies related to this litigation in
15 ImageRight, which was the software application that
16 would -- that housed the historic records.

17 Q Okay. Let's break that down. So you
18 said you reviewed an email with Mr. Danner. Was
19 that -- did you email him about -- to request
20 information to prepare for your deposition?

21 A Did I email him? No.

22 Q Okay. And, again, I'm just going back to
23 your testimony a minute ago.

24 A Yeah.

25 Q You said you reviewed an email with

1 Mr. Danner, I think you said, putting the litigation
2 hold in place. Tell me about --

3 A Correct.

4 Q When did that email exchange happen?

5 A Yeah, that happened on the 17th. After I
6 emailed Brent Reifsnyder, we spoke, and he indicated
7 that he would be reaching out to Brandon Danner to
8 make sure the litigation hold was applied to the
9 ImageRight system, and that is the email that I
10 reviewed, the confirmation that that conversation
11 had -- or that communication had occurred.

12 Q Okay. Let me make sure I get this -- so
13 after you sent Mr. Maier Exhibit Number 4, which is
14 the December 17th, 2021, email, then you spoke to
15 Mr. Reifsnyder.

16 MR. YNTEMA: Objection. I think your
17 question is kind of getting -- you said to
18 Mr. Maier, so --

19 MS. PATTERSON: I'm sorry.

20 MR. YNTEMA: You might want to rephrase
21 that.

22 MS. PATTERSON: Let me start over.

23 MR. YNTEMA: No problem.

24 BY MS. PATTERSON:

25 Q After you sent Mr. Reifsnyder the

1 December 17th, 2021, litigation hold --

2 A Yeah.

3 Q -- you then spoke with him --

4 A I did.

5 Q -- about the hold?

6 A Yeah, either before or after I sent it,
7 but I definitely spoke with him.

8 Q Okay. And tell me what you recall about
9 that discussion.

10 A We talked about the order and the need to
11 put an enterprise-wide litigation hold in place for
12 historic records and policies. I asked him where
13 those policies were housed. He told me they were at
14 the Iron Mountain warehouse or in ImageRight.

15 Q And what is ImageRight?

16 A It's an indexing software for images and
17 scanned documents.

18 Q Is it something different than microfiche
19 or microfilm?

20 A Yes.

21 Q Okay. So was it your understanding based
22 on this conversation with Mr. Reifsnyder back in
23 2021 in December that policy documents related to
24 Covil Corporation might be contained in ImageRight?

25 A That's right.

1 Q Okay. And it was also your understanding
2 that policy documents relating to Covil might be
3 present or it might exist at the Iron Mountain
4 warehouse based on this conversation.

5 A Correct.

6 Q Okay. What else do you recall about the
7 discussion you had with Mr. Reifsnnyder back in
8 December of 2021?

9 A That's pretty much it, that he would
10 notify Mr. Danner to not purge any documents in
11 ImageRight.

12 Q Do you know if ImageRight is a searchable
13 database?

14 A It is.

15 Q Do you know if it is possible to search
16 for historical insurance policies in the ImageRight
17 database by insured name or policyholder name?

18 A It is, yeah.

19 Q And does the ImageRight database contain
20 all historical policies related to a particular
21 insured? And when I say all, I mean liability,
22 property, auto -- I mean all types of insurance --

23 MR. YNTEMA: Objection.

24 BY MS. PATTERSON:

25 Q -- or does it just contain certain types

1 of policies?

2 A I don't know the breadth of what policies
3 were scanned into ImageRight, but it started in
4 1992.

5 Q Is there some protocol or procedure that
6 you're aware of that dictates what policies are
7 scanned into ImageRight?

8 A Yeah, and let me be clear: The policies
9 that were scanned in in 1992 were not scanned into
10 ImageRight.

11 Q Okay.

12 A They were scanned into a software -- I
13 want to say ECHO. I'm not positive, but starting in
14 '92 there was a short period of time, a few years,
15 where we were scanning policies into that system.
16 We didn't resume scanning or imaging documents, I
17 think, until 2001, 2002.

18 Q What do you mean, resumed? You started
19 in '92, and then did you stop?

20 A We did.

21 Q Okay. So you started in '92 --

22 A Yeah, '94, '95, I believe, but
23 Mr. Reifsnyder could certainly speak to that more
24 specifically than I can.

25 Q But is there a protocol that you're aware

1 of -- and I'm not asking you for the details of it,
2 but do you know if there is a protocol that sets out
3 what types of policies are scanned into the
4 ImageRight system?

5 MR. YNTEMA: Objection to form.

6 THE WITNESS: Yeah, I think there is a
7 protocol, but I don't know it.

8 BY MS. PATTERSON:

9 Q Okay.

10 A I would have to inquire about what that
11 process is currently.

12 Q Okay. So subsequent to this discussion
13 with Mr. Reifsnyder, you had some confirmation by
14 email Mr. Danner in the IT department that he had,
15 in fact, done something to make sure the ImageRight
16 system would not delete or destroy documents related
17 to Covil?

18 MR. YNTEMA: Objection to form.

19 THE WITNESS: Yeah, that's correct.

20 BY MS. PATTERSON:

21 Q And do you still have a copy of that
22 email from Mr. Danner?

23 A I'm sure I do, yeah.

24 Q Well, didn't you tell me you reviewed it
25 in preparation --

1 A Yeah, exactly.

2 Q Let me finish the question -- you
3 reviewed it in preparation for this deposition?

4 A Correct.

5 Q Okay. Is there any other information in
6 that email from Mr. Danner other than him confirming
7 to you and Mr. Reifsnnyder that he had taken whatever
8 steps were necessary to make sure nothing related to
9 Covil was destroyed or purged from the ImageRight
10 system?

11 A Yeah, I think he actually went further
12 than specific to Covil. He basically confirmed all
13 purging would cease immediately on all claim files,
14 policy files, and our subsidiary Inservco's files
15 that are all housed in ImageRight, so it was a do
16 not purge across the enterprise of that system.

17 Q Okay. Related just to Covil or to
18 everything?

19 A To everything.

20 Q Okay. And that directive or whatever
21 Mr. Danner did to make sure that purging would cease
22 enterprise-wide as to all items in those systems you
23 just mentioned, is that directive still in place?

24 A Yes.

25 Q All right. You also mentioned that in

1 preparing for this deposition you reviewed an email
2 with the IT department to initiate the litigation
3 hold for Mr. Reifsnyder's emails. Is that a
4 separate email that you looked at?

5 A It is.

6 Q And who is that email with?

7 A That email is sent to a person named John
8 Nagengast.

9 Q Can you spell that for the court
10 reporter?

11 A I believe it's spelled N-A-G-E-N-G-A-S-T,
12 just kind of like it sounds.

13 Q And what is Mr. Nagengast's position
14 within the company?

15 A Yeah, I'm not sure exactly his title, but
16 he took over the responsibilities of putting
17 litigation holds in place for our network and
18 emails.

19 Q Okay. You say he took it over. When did
20 that happen?

21 A A couple of -- I'd say a few years ago
22 when that process was handled by Tom Mealy, who was
23 in charge of our information security.

24 Q But Mr. Nagengast was the person
25 responsible for taking steps to preserve email

1 communications pursuant to litigation holds back in
2 December of 2021.

3 A That's correct.

4 Q Okay. And so you have some documentation
5 via email that Mr. Nagengast took whatever steps
6 needed to be taken to preserve Mr. Reifsnyder's
7 emails?

8 A That's correct.

9 Q All of Mr. Reifsnyder's emails or only a
10 certain subset of emails?

11 A All of his emails.

12 Q And is that hold or directive still in
13 place?

14 A It is.

15 Q Okay. Are there any other emails that
16 you reviewed in order to prepare for the deposition
17 today?

18 A Again, I've reviewed a lot of emails in
19 relation for the request for production of documents
20 and this deposition, some seeking legal advice.

21 Q Okay. Other than the ones that you told
22 me about or emails related to legal advice, is there
23 anything else you can recall having reviewed?

24 A Not that I can recall, no.

25 Q You said you communicated with or spoke

1 to a number of people in order to prepare for this
2 deposition today?

3 A I did.

4 Q All right. We talked about Mr. Parson.
5 You spoke to him?

6 A I did.

7 Q All right. And who else did you speak to
8 or communicate with?

9 A I spoke with members of the legal
10 department. I spoke with members of IT, as I
11 mentioned. I spoke with members of the underwriting
12 department.

13 Q How much time did you spend roughly
14 preparing for your corporate representative
15 deposition?

16 A Yeah, that's where it gets fuzzy, because
17 again there's some overlap in some of the requests
18 for production of documents, but I would -- I would
19 say probably 10 to 12 hours reviewing information.

20 Q Okay. And that included the review of
21 the legal department's record retention file, the
22 review of the Record Retention Policy, the review of
23 the emails that you've mentioned, and the review --
24 I'm sorry -- and the discussions with various
25 individuals?

1 A Yes.

2 Q Okay.

3 A And in consultation with counsel.

4 Q Right, of course. Let's talk about who
5 in the legal department you consulted with or
6 communicated with to prepare for your deposition.

7 A Yeah, I spoke with my boss, Karen
8 Yarrish, Erin Pence, and Dana Shanaberger.

9 Q What is -- is it --

10 A Shanaberger.

11 Q Shanaberger. What does Ms. Shanaberger
12 do?

13 A She's a paralegal in our legal
14 department.

15 Q What information did you receive from
16 Ms. Yanish in order to help prepare you for your
17 deposition on the 30(b)(6) topics today?

18 A Ms. Yarrish, with a Y, is helping me get
19 context of how the policy was developed, reminded me
20 of the Record Retention Policy, and the current
21 process.

22 Q And when you say she helped you get
23 context of how the policy was developed, are you
24 talking about the Record Retention Policy?

25 A That's correct.

1 Q Okay. How it was developed and -- I'm
2 sorry. What was the last part of what you said?
3 And how it's currently --

4 A Administered, I think.

5 Q Okay. And what did she tell you about
6 how it was developed?

7 A Well, she just talked about how it was a
8 tremendous effort undertaken, the timing of our
9 initiation of the Record Retention Policy, and
10 moving to our current location. That's -- pretty
11 much.

12 Q What did she tell you if you recall about
13 how it's currently administered?

14 A It's currently administered on a biannual
15 basis. We go out to the business units and ask them
16 to review the Record Retention Policy periods,
17 documents that the departments have, and to update
18 accordingly.

19 Q And so when you say to review the period,
20 you're talking about the time periods for which
21 documents should be maintained?

22 A No.

23 Q Okay. So what -- you said -- well, you
24 have the departments look at the policy biannually.

25 A Correct.

1 Q For what purpose?

2 A Oh, I'm -- yes, to look at the record
3 periods.

4 Q Okay.

5 A And the documents that they have in their
6 area that -- are in their possession and whether
7 they should be updated.

8 Q Okay. So, for example, if it's a
9 document category, you ask the claims department,
10 for example, to look at the period of time that the
11 policy requires that particular category to be
12 maintained and determine if they think that period
13 of time is still the correct period of time.

14 A That's correct.

15 Q All right. And -- okay. Anything else
16 that you discussed with Ms. Yarrish in order to
17 prepare for today's deposition?

18 A Not that I can recall.

19 Q Okay. What did you discuss with Ms. Erin
20 Pence?

21 A How she administers that process and the
22 process of going out biannually and what type of
23 feedback she gets and recording of where those
24 documents are stored.

25 Q Okay. And has she been the person in

1 recent years who's responsible for that biannual --

2 A That's correct.

3 Q -- overseeing the biannual review?

4 A That's correct.

5 Q So she interacts with various departments
6 within the company?

7 A Not exactly. Actually, it's Dana
8 Shanaberger, the paralegal, will send out the
9 initial email, I believe, and gather information for
10 her to confer with Erin.

11 Q Okay. Anything else that you spoke with
12 Ms. Pence about?

13 A No, that's pretty much it.

14 Q And then were your conversations or
15 communications with Dana Shanaberger also related to
16 the biannual reviews of the retention policy?

17 A That's correct.

18 Q Anything else?

19 A Not really.

20 Q Who did you speak to in the IT department
21 to prepare for the depo?

22 A Brandon Danner, Julie Nolan, and Eric
23 Houston.

24 Q Did you talk with Mr. Danner about
25 anything other than what was contained in his

1 December 2021 email that we talked about earlier?

2 A Yes. I actually talked a little bit
3 about when the purging process started for
4 ImageRight and some of the parameters that were
5 created to do that and that process.

6 Q Which is not being done anymore; correct?

7 A Not with this litigation. A hold is in
8 place, correct.

9 Q Right. What else did you discuss with
10 Mr. Danner?

11 A That's pretty much it as I can recall.

12 Q And what's Ms. Nolan's position?

13 A I don't know her title, but she works in
14 IT on systems and the Record Retention Policy.

15 Q What did you discuss with her in order to
16 prepare for your depo?

17 A Yeah, just general locations of
18 information.

19 Q What kind of information?

20 A Policy management information.

21 Q You're talking about insurance policies?

22 A No, systems.

23 Q Systems. Okay.

24 A Yeah.

25 Q And then you mentioned a third person, I

1 think, and I --

2 A Yeah, Eric Houston, who has now taken
3 over Julie Nolan's role, and it was essentially the
4 same conversation, but just confirming.

5 Q Did Mr. Houston or Ms. Nolan provide you
6 any information specifically related to the Covil
7 litigation, or were you just talking in the more
8 generally --

9 A More generally.

10 Q -- about the policy?

11 A More general.

12 Q Okay. Then you said you spoke to some
13 folks in the underwriting department in order to
14 prepare for the deposition. Can you tell me who
15 those individuals were?

16 A Yes. The head of the commercial lines
17 department is Randy Mancini, and I just talked to
18 him about the Record Retention Policy and how it's
19 implemented in his area.

20 Q Well, what did he tell you about that?

21 A That he shares with his direct reports to
22 administer the Record Retention Policy and update it
23 accordingly.

24 Q Okay. Did you have any specific
25 conversations with Mr. Mancini about Covil

1 Corporation or the Covil litigation as it's defined
2 in the depo notice?

3 A No.

4 Q Is there anyone else you spoke to in
5 order to prepare for the deposition, other than
6 counsel and the folks you listed for me?

7 A No, and I mentioned Brent Reifsnyder
8 and --

9 Q Well, I don't think you mentioned
10 Mr. Reifsnyder -- and maybe you did -- in the
11 context of preparing for the depo, but --

12 A Right.

13 Q -- let me just ask you: Did you talk
14 with or communicate with him in connection with your
15 preparation for the depo?

16 A Yes.

17 Q Okay. And what did you and
18 Mr. Reifsnyder discuss in that regard?

19 A Specifically for the litigation hold,
20 that it was still in place and a little bit about
21 the 30(b)(6) of the purging process of the historic
22 files.

23 Q Did Mr. Reifsnyder inform you that
24 documents from the historic files that his
25 department has responsibility for were purged in

1 2019, 2019 --

2 MR. YNTEMA: Objection to form.

3 BY MS. PATTERSON:

4 Q -- and possibly 2020?

5 MR. YNTEMA: Objection to form.

6 THE WITNESS: I think he confirmed that
7 the purging process was -- did continue until 2021.

8 BY MS. PATTERSON:

9 Q Until he received your email; correct?

10 A Correct.

11 MR. YNTEMA: Objection.

12 BY MS. PATTERSON:

13 Q Now, is there anything else you recall
14 discussing specifically with Mr. Reifsnyder in
15 preparation for this deposition?

16 A Not that I can specifically recall.

17 Q Did you review Mr. Reifsnyder's
18 deposition that was taken recently as a 30(b)(6)
19 witness?

20 A I did not.

21 Q Okay. And he was deposed a year or so
22 ago, also. Did you review that depo?

23 A I did not.

24 Q Have you reviewed any depositions taken
25 in connection with the Covil litigation?

1 A I have not.

2 Q Okay. Did you have any communications in
3 preparation for this deposition with Boyd Wright?

4 A In preparation for this litigation -- or
5 this deposition? No.

6 Q Okay. If you take the Deposition Notice
7 again and let's just look at page 2. Some of these
8 topics -- I've sort of divided them up, and I'll ask
9 them about you with -- in groups. Some of the
10 topics specifically talk about litigation hold
11 notices, some of the topics talk about the Record
12 Retention Policy, and some of the topics talk about
13 orders or directives that have been issued by the
14 Court in this case.

15 So we'll start with number 1, which we
16 talked about a minute ago, "All litigation hold
17 notices that you" -- being Penn National -- "issued
18 related to the Covil Litigation, including but
19 not limited to the existence, contents and
20 recipients and timing."

21 You've told me previously that Exhibit
22 Number 4, which is your December 17th, 2021, email
23 to Mr. Reifsnyder, is the only Litigation Hold
24 Notice that Pennsylvania National Insurance Company
25 has issued in connection with the Covil litigation;

1 correct?

2 A To my knowledge, correct.

3 Q And you're here as the corporate
4 representative for Penn National on that topic. So
5 as the corporate representative, Exhibit Number 4 is
6 the only Litigation Hold Notice that has been issued
7 by the company in connection with the Covil
8 litigation at any time; correct?

9 MR. YNTEMA: Objection to form.

10 THE WITNESS: Yes, that's correct.

11 BY MS. PATTERSON:

12 Q And the Litigation Hold Notice issued by
13 Penn National -- the one and only litigation hold
14 issued by Penn National, which was issued in
15 December of 2021, was issued only to Mr. Brent
16 Reifsnyder; correct?

17 MR. YNTEMA: Objection to form.

18 THE WITNESS: That's correct.

19 BY MS. PATTERSON:

20 Q And the contents of the Litigation Hold
21 Notice issued by Penn National in connection with
22 the Covil litigation is what we see in Exhibit
23 Number 4. There's not any other document that was
24 attached to Exhibit Number 4 when you sent it to
25 Mr. Reifsnyder, was there?

1 A No, that's correct.

2 Q Okay. Did Mr. Reifsnyder suggest to you
3 at any time verbally or via email or any other form
4 of communication that the Litigation Hold Notice
5 should be expanded to include any other individuals
6 or departments?

7 A Other than when I testified that Brandon
8 Danner should be alerted that there's a litigation
9 hold and he would communicate to Brandon Danner,
10 which he did.

11 Q Okay. Was this litigation hold ever
12 expanded to any other individual within the
13 organization beyond Mr. Reifsnyder?

14 A No.

15 MR. YNTEMA: Objection to form.

16 BY MS. PATTERSON:

17 Q I'd like you to look at -- well, before
18 we go to the next topic, let's take a minute and
19 look at Exhibit 4.

20 MR. YNTEMA: Ms. Patterson, I don't know
21 if -- are you good to go? I mean -- do you need a
22 break or anything?

23 MS. PATTERSON: We can take a break.

24 MR. YNTEMA: We've just been going over
25 an hour. I just didn't know --

1 MS. PATTERSON: We can take a five-minute
2 break. I'm getting ready to go -- kind of change
3 directions. Yeah, let's take a five-minute break.

4 THE VIDEOGRAPHER: Off the video record.
5 The time is 11:24.

6 (A recess was taken.)

7 THE VIDEOGRAPHER: We're back on the
8 video record. The time is 11:31.

9 BY MS. PATTERSON:

10 Q Mr. Maier, again, referring to the
11 30(b)(6) Deposition Notice topics, I'd like to take
12 you to topic number 2 --

13 A Okay.

14 Q -- which says, "All steps taken by
15 you" -- Penn National -- "to preserve information
16 and documents after any litigation hold
17 notice was issued related to the Covil Litigation."

18 Do you see that?

19 A I do.

20 Q So because we know from your prior
21 testimony that the only litigation notice which has
22 been issued by Penn National related to the Covil
23 litigation is the December 17th, 2021, email, this
24 topic is asking about what steps have been taken by
25 Penn National after that date to preserve

1 information and documents. Do you understand that?

2 A I do.

3 Q Okay. You've told me about the
4 communications with the IT department in December of
5 2021 regarding maintaining -- not purging
6 information from the ImageRight system. Are there
7 any other steps that were taken by Penn National to
8 preserve information and documents after
9 December 17th, 2021?

10 A Were there other steps other than
11 confirming that the litigation hold was received and
12 followed? No.

13 Q Well, that's not really my question.

14 A Okay.

15 Q Let me ask it differently. We know you
16 sent a litigation hold on December 17th. My
17 question is: What steps were taken by Penn National
18 to preserve information and documents after that
19 litigation hold was sent? That's topic number 2.

20 A Yeah.

21 Q So can you tell me what steps were taken
22 after December 17th, 2021, to preserve information
23 and documents related to the Covil litigation?

24 A Steps confirming that the litigation hold
25 was received and is being followed.

1 Q Okay. Well, you confirmed it was
2 received, because you talked to Mr. Reifsnyder about
3 it.

4 A Correct.

5 Q Okay.

6 A And there were subsequent discussions
7 with Brandon Danner and Brent Reifsnyder that the
8 hold was still in place.

9 Q Right.

10 A So there's no purging. I'm not following
11 what other steps --

12 Q Okay.

13 A Yeah.

14 Q I'm just asking if there's anything else.

15 A Yeah, yes, other than periodically
16 confirming that it was in place and that documents
17 were not being purged.

18 Q Okay. And do you have any --

19 A In addition to -- in addition with the
20 claims department maintaining that they are
21 preserving all claim files.

22 Q Okay. Well, the claims department is a
23 different story, because the claims department has
24 never received a Litigation Hold Notice regarding
25 Covil, has it?

1 A It has not to my knowledge received a
2 Litigation Hold Notice. That is not to say that
3 they are not preserving the records. The records
4 are being preserved, and that was confirmed.

5 Q When did the claims department begin to
6 preserve records related to the Covil litigation?

7 A I think as soon as they opened the claim
8 file.

9 Q When was that?

10 A Whenever they opened up the claim file.

11 Q When was that?

12 A I don't know.

13 Q Okay. And when you say the claim file,
14 you're talking about the file that pertains to the
15 filing of this lawsuit in South Carolina?

16 A Or any related claim file.

17 Q Okay. What do you mean by any related
18 claim file?

19 A Well, there was a North Carolina
20 litigation. They could have opened up a claim file
21 for that.

22 Q But you don't know if they did.

23 A I do not.

24 Q Okay. So to the extent the claims
25 department has -- again, based on your earlier

1 testimony -- has not been purging documents related
2 to Covil, you don't know when that began. In other
3 words, you don't know when they stopped purging
4 documents related to Covil, do you?

5 A The claims department?

6 Q Uh-huh.

7 A Correct.

8 Q You don't know, do you?

9 A No, I do not.

10 Q Okay.

11 A If it ever began.

12 Q If what ever began?

13 A Purging. You're saying they stopped
14 purging. If it never started purging, then all
15 those records are in existence.

16 Q Well, I think you're the one that said
17 they stopped purging, but maybe I'm -- we can look
18 at whatever your testimony says. My question is
19 only -- again, I'm focusing on litigation holds for
20 the moment, and you've told me a couple of times
21 today that the only litigation hold that was ever
22 issued by Penn National is the December 2021
23 litigation hold. So there was never a litigation
24 hold, never has been a litigation hold issued to the
25 claims department at Penn National related to Covil

1 Corporation; correct?

2 A To my knowledge, correct.

3 Q Okay. And you're the person here for
4 Penn National to testify about all litigation holds
5 issued. All right? You understand that?

6 A I do.

7 Q Okay. Now, let's go back to topic
8 number 2. It specifically talks about litigation
9 holds. Okay? So are there any other steps that you
10 are aware of that Penn National has taken to
11 preserve documents and information after the one and
12 only litigation hold was issued in December of 2021?

13 A No, other than confirming that that was
14 being followed.

15 Q Okay. Confirming with IT --

16 A And Brent, correct.

17 Q -- and Mr. Reifsnyder.

18 A And the claims department that they were
19 not purging.

20 Q Okay. But no one in the claims
21 department has told you when they stopped purging
22 documents related to Penn National, have they?

23 A Brandon Danner testified -- or told me --
24 not testified -- told me that the claim files would
25 cease being purged on December 2021.

1 Q Okay. So as far as you know, sitting
2 here today as the corporate representative for Penn
3 National, claim files maintained by the claims
4 department related to Covil Corporation could have
5 been purged or destroyed prior to December 17th,
6 2021; correct?

7 MR. YNTEMA: Objection to form.

8 THE WITNESS: I would have to investigate
9 that. I don't know what they purged prior to 2021.

10 BY MS. PATTERSON:

11 Q Okay. And you didn't look into what the
12 claims department purged related to the Covil
13 Corporation in preparation for today's deposition,
14 did you?

15 MR. YNTEMA: Object to form.

16 THE WITNESS: Can you repeat the
17 question?

18 MS. PATTERSON: Can you please read the
19 question back?

20 (The record was read by the
21 reporter.)

22 THE WITNESS: I did. I asked Brandon
23 Danner whether the litigation hold was put in place
24 for the claim files in ImageRight.

25 BY MS. PATTERSON:

1 Q Okay. But now you're just talking about
2 ImageRight, so I -- this is a bigger question,
3 because you keep going back to the claims
4 department. Okay? ImageRight is a software
5 program. And as I understand what you've told me,
6 that after December the 17th, 2021, you confirmed
7 with Mr. Danner and Mr. Reifsnyder that a hold had
8 been put in place such that going forward nothing
9 would be purged from the ImageRight system; correct?

10 A Correct.

11 Q Okay. My next question is: With regard
12 to the claims department and whatever claims files
13 it may maintain in whatever form they are
14 maintained, do you know what documents related to
15 the Covil Corporation the claims department may have
16 destroyed or purged prior to December 17th of 2021?

17 MR. YNTEMA: Objection to form.

18 THE WITNESS: Other than the conversation
19 I had with Adam that all -- Parsons -- that all
20 claim files have not been purged.

21 BY MS. PATTERSON:

22 Q Okay. When did you have that
23 conversation?

24 A When we met on December 17th.

25 Q Of 2021.

1 A Correct.

2 Q Okay. Did Mister -- so Mr. Parson told
3 you on December 17th, 2021, that the claims
4 department of Penn National had never, ever purged
5 any claim files related to the Covil Corporation?

6 MR. YNTEMA: Objection to form.

7 THE WITNESS: Yes, essentially.

8 BY MS. PATTERSON:

9 Q What do you mean, essentially?

10 A Well, he said, "We've preserved all the
11 claim files."

12 Q Okay. Going back how far?

13 A I didn't ask.

14 Q Okay. Do you know as Penn National's
15 representative here today whether or not the claims
16 department at Penn National has ever destroyed or
17 purged any claims files related to Covil
18 Corporation?

19 MR. YNTEMA: Object to form.

20 THE WITNESS: I do not.

21 BY MS. PATTERSON:

22 Q Do you know sitting here today as the
23 corporate representative for Penn National whether
24 or not the company has ever purged or destroyed
25 historical policy documents related to Covil

1 Corporation regardless of whether they are
2 retained or -- sorry -- regardless of whether -- let
3 me start over.

4 As the corporate representative for Penn
5 National here today, do you know whether Penn
6 National has ever destroyed or purged any historical
7 policy documents related to Covil Corporation?

8 A I do not.

9 Q It is possible that the company has, in
10 fact, purged or destroyed historical policy
11 documents related to Penn -- to Covil Corporation;
12 correct?

13 MR. YNTEMA: Objection to form.

14 THE WITNESS: It is possible; just as
15 possible that we have everything historically
16 preserved.

17 BY MS. PATTERSON:

18 Q But certainly prior to the litigation
19 hold that was issued on December 17th, 2021, it is
20 possible that historical policy documents or images
21 of policy documents were destroyed?

22 MR. YNTEMA: Objection to form.

23 THE WITNESS: It is possible; just as
24 possible that they are preserved.

25 BY MS. PATTERSON:

1 Q But you don't know one way or the other?

2 A I do not.

3 Q And there's no way to determine one way
4 or the other, is there?

5 A Not that I'm aware of, but there possibly
6 could be a way to determine that.

7 Q Well, how would we do that?

8 A Look through the policy records.

9 Q What policy records?

10 A That we have in our possession.

11 Q You mean the hundreds of boxes of policy
12 records and microfiche images?

13 A Yes.

14 Q Okay. So if one were to manually go
15 through the boxes of hard copy files and documents
16 and the microfiche and microfilm records, one could
17 determine whether or not all Covil historical
18 policies still exist?

19 A Possibly, yeah.

20 Q But you're not sure?

21 A I am not.

22 Q Because going through the policy records
23 and documents manually would show us what's there,
24 but it won't show us what has been destroyed, will
25 it?

1 MR. YNTEMA: Objection to form.

2 THE WITNESS: Possibly, yeah.

3 BY MS. PATTERSON:

4 Q Do you agree with me?

5 A Perhaps. There could be records of what
6 was purged.

7 Q But you don't know that, do you?

8 A Not that -- no, I do not.

9 Q Okay. And you've not personally made a
10 manual review or a search of the policy records, the
11 historical documents, the boxes and the microfiche
12 and the microfilm that Mr. Reifsnyder has
13 responsibility for maintaining, have you?

14 A Have I personally gone through them? No,
15 I have not.

16 Q Have you tasked anyone with doing that?

17 A No.

18 Q Let's go to topic number 3. I'm sorry.
19 Let's -- well, let's go to topic number 3 on the
20 Deposition Notice. It says, "All automatic,
21 routine, or otherwise systematic destruction or
22 purging of your insurance policy information,
23 including but not limited to your insurance
24 policies, which has taken place since June 2018."

25 Do you see that?

1 A I do.

2 Q Do you know the significance of the June
3 2018 date?

4 A I do.

5 Q What is it?

6 A I believe a subpoena was served on Penn
7 National.

8 Q Okay. And do you recall that was the
9 subpoena that was served in connection with the
10 Finch matter? Is that what you recall?

11 A I believe that's the name, yeah, the
12 Finch matter.

13 MS. PATTERSON: Let me show you what I've
14 marked as Exhibit Number 6, Mr. Maier.

15 (Exhibit 6 was marked for
16 identification.)

17 MR. YNTEMA: Did you --

18 MS. PATTERSON: That's a sticker from
19 last time around.

20 BY MS. PATTERSON:

21 Q All right. I've handed you what I've
22 marked for purposes of this deposition as Exhibit
23 Number 6, Mr. Maier. This is a copy of a subpoena
24 that was issued in the Finch matter, which was
25 pending in the Middle District of North Carolina.

1 If you look down there on the left-hand side, it
2 looks like it was issued in May of 2018, and I'll
3 represent to you that Penn National responded to
4 this subpoena in June of 2018. Is that your
5 understanding?

6 A No. I don't have any understanding of
7 that, no.

8 Q Have you ever seen this subpoena before?

9 A No.

10 Q Okay. Well, you were somehow aware that
11 there was a subpoena issued in June of 2018 when I
12 asked you a minute ago. How did you come to know
13 that?

14 A I believe it was in the motion to quash.
15 There was reference to it.

16 Q Okay.

17 A To quash this 30(b)(6).

18 Q Okay. But you've never reviewed this
19 subpoena or any of the attachments to it.

20 A That's correct.

21 Q Okay. When was the first time you became
22 aware of the fact that a subpoena was issued to Penn
23 National in June 2018 for records related to Covil?

24 A I want to say a couple of weeks ago when
25 I conferred with counsel in preparation for this.

1 Q Okay. As a corporate representative for
2 Penn National -- again, I'm taking you back to topic
3 number 3 -- do you know what insurance policy
4 information related to Covil Corporation may have
5 been automatically, routinely, or otherwise
6 systematically destroyed or purged since the date
7 June 2018?

8 A I do not.

9 Q Let me ask you this --

10 MR. YNTEMA: If I can say for the record,
11 Mr. Reifsnyder was also designated on this topic,
12 too, so sometimes it's a hybrid between legal and
13 document custodian, so --

14 MS. PATTERSON: Understand.

15 MR. YNTEMA: Thank you.

16 MS. PATTERSON: I'm just asking what he
17 knows.

18 MR. YNTEMA: Certainly. I appreciate
19 that. Thank you.

20 BY MS. PATTERSON:

21 Q The matter -- the underlying matter, the
22 Finch matter, did you -- well, I know you didn't
23 know about this at the time, but do you now
24 understand that the underlying case filed by Ann
25 Finch was a case alleging illness or injury related

1 to asbestos exposure?

2 A No, I did not.

3 Q Okay. So you don't know anything about
4 the underlying claims in the Finch case?

5 A I do not.

6 Q Okay. When a subpoena like this one
7 comes in to Penn National seeking -- and I'll just
8 have you -- if you want to refer back to -- there's
9 an Exhibit A to the subpoena. If you look behind
10 Exhibit A, you'll see there are three categories of
11 information that are being sought. The first one
12 being, "Copies of all liability insurance policies
13 and endorsements issued to Covil between 1969 and
14 1995, including, without limitation, commercial
15 general liability, umbrella, or other liability
16 policies."

17 When a subpoena comes in to Penn National
18 making a request like that, what department is it
19 handled by?

20 A The claims department.

21 Q The legal department doesn't get involved
22 in subpoenas such as this one, do they?

23 A That's correct.

24 Q Okay. Do you know if the claims
25 department litigation hold process or policy goes

1 into effect or is triggered by the receipt of a
2 subpoena, such as the subpoena that I marked as
3 Exhibit Number 6?

4 A I do not.

5 Q You don't know?

6 A I do not know.

7 Q Okay. Let's look at exhibit -- I'm
8 sorry. Not exhibit. Let's look at topic number 4
9 on the Deposition Notice. "All correspondence
10 regarding the litigation hold notices that you" --
11 being Penn National -- "issued related to the Covil
12 Litigation."

13 Do you see that?

14 A I do.

15 Q Okay. So clearly we have the Litigation
16 Hold Notice itself, which has already been marked,
17 and you've told me about, I believe, email
18 communications you had with Mr. Danner in the IT
19 department confirming that the steps had been taken
20 to cease purging from the ImageRight system, and I
21 think you also said there was an email communication
22 with Mr. Nagengast about emails. Are you aware of
23 any other correspondence regarding the one and only
24 litigation hold that was issued with respect to
25 Covil Corporation?

1 A Just to clarify, my email was to Brent
2 Reifsnyder. Brent Reifsnyder sent an email to
3 Brandon Danner, and I was copied on that, I believe.
4 So I didn't send it to Brandon Danner, but other
5 than that --

6 Q Right. I'm asking you, as the corporate
7 representative, are you -- is Penn National aware of
8 any other correspondence, email or otherwise,
9 regarding the December 17th, 2021, litigation hold
10 other than the hold itself and I think you mentioned
11 some email communications with those two individuals
12 in IT?

13 A I am not aware of any other. I was just
14 clarifying. I think you misspoke about who sent
15 what.

16 Q Okay.

17 A In any event, they are the email
18 correspondence related to the litigation holds that
19 I'm aware of.

20 Q Okay. As to topic number 5, have you
21 already told me, Mr. Maier, everything that Penn
22 National did to implement the December 17th, 2021,
23 litigation hold with respect to Covil litigation?

24 A Can you repeat the question?

25 Q Sure. Topic 5 --

1 A Yes.

2 Q -- says, "How your litigation hold
3 notices were implemented with respect to the Covil
4 Litigation." Okay?

5 Now, first of all, we know there was only
6 one notice that you are aware of. So the question
7 is: How was this one notice in December of 2021
8 implemented? And you've told me about your
9 discussion with Mr. Reifsnyder and the
10 communications with the two individuals that you're
11 aware of in the IT department and your discussion
12 with Mr. Parson back in 2021. Is there anything
13 else that has been done by Penn National to
14 implement the litigation hold?

15 A Other than what I've described, no.

16 Q Okay.

17 A No, not that I'm aware of.

18 Q Okay. If you would take out, please,
19 Exhibit Number 3, which is the litigation hold
20 policy itself. I think you told me at the beginning
21 of the day today that you were the individual who
22 initiated the drafting of this policy; correct?

23 A That's correct.

24 Q Prior to December 1, 2007, am I correct
25 in understanding that Penn National did not have a

1 litigation hold policy in place?

2 A It didn't have a formal policy. It had a
3 general approach towards securing documents relevant
4 to litigation, and this was the first formal policy
5 or procedure that was created.

6 Q Okay. Was that general approach that was
7 in -- that was followed prior to December 1, 2007,
8 in writing anywhere?

9 A Not to my knowledge, no.

10 Q Okay. What prompted you to initiate a
11 litigation hold, a formal litigation hold policy?

12 A Yeah, that was around the time of
13 Zublakey (ph.) versus USB, and there was lots of
14 discussion in the industry about the need to
15 formalize the process.

16 Q And when you say the industry, the
17 insurance industry?

18 A Insurance industry, corporate America.

19 Q Did you attend any CLE programs or other
20 seminars or educational programs that included
21 topics about litigation hold?

22 A I'm sure I have.

23 Q Okay. By the way, does Penn National
24 utilize any automated system or software program as
25 a part of its litigation hold process?

1 A I know that the Microsoft Exchange server
2 has an archival function. Once we notify IT that
3 certain users' email need to be preserved, there's a
4 process that occurs that those emails are
5 immediately copied and put onto an archival server
6 for preservation purposes.

7 Q But that just relates to emails.

8 A Correct.

9 Q Okay. Let me ask my question a little
10 bit differently. Are you aware generally that there
11 are software programs out there that can be
12 purchased whereby you can automate litigation
13 notices and acknowledgements that are sent to people
14 within an organization?

15 A I am, yes.

16 Q Okay. Penn National doesn't have or
17 utilize any system like that, does it?

18 A No.

19 Q All right. Going back to the policy
20 itself, would it be fair to say that you were the
21 principal drafter of the current policy and the
22 prior versions of the policy?

23 A Was I the primary drafter of this policy
24 in 2007?

25 Q Yeah. Well, let's start with that. Were

1 you the primary director --

2 A Yes, yeah, I think I was.

3 Q Okay.

4 A And -- and then revisions were
5 collaborative. I mean --

6 Q Okay.

7 A Yeah.

8 Q But in terms of the person who has had
9 the most involvement and responsibility for this
10 policy since its implementation, that would be you?

11 A I don't think that's a fair assessment.
12 Everybody in the legal department is responsible for
13 this policy and administering that policy. So if
14 another member of the legal department were to
15 initiate a litigation hold, that would be outside of
16 my involvement.

17 Q Okay. Say that again. If another --

18 A If another member of the legal department
19 initiated a litigation hold --

20 Q Okay.

21 A -- I would not be involved in that
22 process.

23 Q Okay. But I'm really just talking about
24 the policy itself. Okay. But now you've made --
25 now you've made me think of another question. Does

1 anyone in the legal department have the authority to
2 issue a litigation hold?

3 A Yes.

4 Q Okay.

5 A Attorneys in the legal department.

6 Q Okay. Right.

7 A Not support staff.

8 Q All right. Let's look at the policy
9 itself. And, again, we're looking at the current
10 version, Number -- Exhibit 3. First thing you have
11 there is the purpose. It says, "To provide guidance
12 to employees when receiving notice to hold and
13 preserve information in relation to actual or
14 potential litigation."

15 Did I read that correctly?

16 A Yes.

17 Q Okay. Is there someplace in this
18 document that perhaps I'm missing or in some other
19 document or policy which sets out when a Litigation
20 Hold Notice should be issued as opposed to what an
21 employee who receives such a notice is supposed to
22 do?

23 A No, not that I'm aware of any other
24 written document, no.

25 Q Okay. As a corporate representative for

1 Penn National, let me ask you: Under what
2 circumstances does the legal department issue a
3 litigation hold?

4 A We review the facts and make a
5 determination whether a litigation hold is
6 warranted.

7 Q Review the facts of what?

8 A Any issue brought by an employee or that
9 we're made aware of directly.

10 Q Okay.

11 A Outside of the claims department.

12 Q Because if it's a set of facts only known
13 to the claims department that's not brought to the
14 legal department's attention, it's incumbent on the
15 claims department to determine whether or not they
16 want to do anything to preserve documents or issue a
17 hold; correct?

18 A Correct.

19 Q But you certainly understand, as the
20 legal department's litigation hold policy indicates,
21 that a Litigation Hold Notice can be appropriately
22 issued not only where there's actual litigation but
23 also where there's potential litigation against the
24 company; correct?

25 A Correct.

1 Q Okay.

2 A Reasonably likely.

3 Q Or reasonably likely.

4 A Correct.

5 Q Okay. In fact, the purpose as stated in
6 this policy goes on to say that Penn National has an
7 affirmative duty to preserve all material that may
8 be discoverable in litigation. Do you see that?

9 A I do.

10 Q And what does the policy mean with the
11 term affirmative duty?

12 A We should take steps to preserve.

13 Q And does that affirmative duty to take
14 steps to preserve documents via a litigation hold,
15 is that triggered not only when there is a potential
16 litigation against Penn National, the company, but
17 also when there's a potential of litigation against
18 one of Penn National's policyholders?

19 A I would defer to the claims department on
20 whether that would be an appropriate time.

21 Q But you would certainly agree with me
22 that the affirmative duty to preserve documents is
23 triggered when there is potential litigation against
24 Penn National?

25 A No, I would not agree with that. I said

1 when it's reasonably likely.

2 Q Okay. You would agree with me that the
3 litigation hold process is triggered when it is
4 reasonably likely that there will be potential
5 litigation against Penn National; is that your
6 statement?

7 A That's correct.

8 Q Okay. And what do you mean when you say
9 reasonably likely?

10 A When I look at a set of facts and
11 determine whether in my judgment as a legal
12 professional that litigation is likely.

13 Q Do you know why there was no litigation
14 hold issued in May or June of 2018 following the
15 receipt of the subpoena for records in connection
16 with the Finch litigation?

17 A I do not. I don't know if one was
18 merited or not, if any analysis was done. I do not.

19 Q Okay. And that's not something you
20 looked into in connection with preparing for your
21 testimony today as a corporate rep, is it?

22 A No, that is not.

23 Q I mentioned to you earlier today that
24 there was a litigation matter that was pending in
25 North Carolina after the Finch case that involved

1 several insurance companies, and I'm going to give
2 you the exact date. This was a matter that was
3 pending in the Middle District of North Carolina,
4 Civil Case Number 1, colon, 18, dash, CV, dash, 932.
5 And in that case, which was styled Zurich American
6 Insurance Company versus Covil Corporation, in
7 October of 2019, the Hartford filed a third-party
8 action against Penn National. Are you aware of
9 that?

10 A I am not.

11 Q Do you know why a litigation hold was not
12 issued following the filing of that third-party case
13 against Penn National?

14 A I do not. I will say that they have
15 their own processes; and if they are confident that
16 everything would be preserved, there's no need to
17 put a Litigation Hold Notice out.

18 Q And when you're talking about they,
19 you're talking about the claims department?

20 A Correct.

21 Q Okay. But you've not had any
22 communications with anyone in the claims department
23 in preparation for this deposition to determine
24 whether or not that department issued any kind of
25 Litigation Hold Notice in connection with the

1 third-party action filed against Penn National in
2 2019?

3 A That's correct. In preparation for this
4 deposition I did not ask, other than the
5 conversation I had with Adam Parsons that all Covil
6 claim files were preserved.

7 MS. PATTERSON: Okay. Objection;
8 nonresponsive.

9 BY MS. PATTERSON:

10 Q Can you answer my question?

11 A I forgot -- I think I did. You can
12 repeat it.

13 MS. PATTERSON: I'll have her read it
14 back.

15 (The record was read by the
16 reporter.)

17 BY MS. PATTERSON:

18 Q You didn't talk with Adam Parson about
19 any third-party action in 2019, did you?

20 A I did not.

21 Q Okay. Is it your testimony, Mr. Maier,
22 that the filing of a complaint or third-party action
23 against Penn National seeking to declare that Penn
24 National has coverage obligations under a policy
25 does not necessarily trigger a litigation hold to be

1 issued by the legal department?

2 A By the legal department?

3 Q Yeah.

4 A If it's a claim matter, the legal
5 department wouldn't be involved.

6 Q Okay. So a coverage action filed by
7 another carrier or by a policyholder claiming that
8 Penn National is responsible for coverage under a
9 particular policy, the filing of that case where
10 Penn National is named as a defendant only triggers
11 the issuance of a litigation hold if the claims
12 department decides it's warranted?

13 MR. YNTEMA: Objection to form.

14 THE WITNESS: Yeah, I don't know if
15 your -- that matter would be handled by the claims
16 department, as we discussed before.

17 BY MS. PATTERSON:

18 Q Right.

19 A The issuance of a Litigation Hold Notice
20 is a formal process that -- they might not issue
21 litigation hold notices, per se, ever, and just
22 preserve documents. That's not to say that
23 documents aren't preserved.

24 Q Right, I know. But, again, you don't
25 know what documents are -- you as Scott Maier and as

1 the corporate rep for Penn National sitting here
2 today don't know what documents were or were not
3 preserved related to Covil prior to December of
4 2021, do you?

5 A Can you repeat the question?

6 Q Sure. You do not know what documents
7 related to the Covil Corporation were or were not
8 preserved prior to 2021, December of 2021, do you?

9 A What documents were preserved?

10 Q Okay. Let me -- it's a bad question.
11 Let me try it again. Okay?

12 A Okay.

13 Q I'm going to ask you a different
14 question.

15 As I've indicated to you, Penn National
16 was named as a third-party defendant by another
17 insurance company in October of 2019 in an actual
18 lawsuit in Federal Court in North Carolina. The
19 determination of whether to issue a Litigation Hold
20 Notice as a result of the filing of that lawsuit was
21 the responsibility of the claims department, not the
22 legal department; correct?

23 A Yeah. And, again, not to get caught up
24 on semantics, but a Litigation Hold Notice is a
25 process. That is not to say that the claim files

1 weren't preserved or any documents relevant to that
2 claim were preserved.

3 Q That's not my question.

4 A I understand.

5 Q And I'm going to move to strike. So can
6 you answer my question?

7 A Okay.

8 MS. PATTERSON: Okay. Could you please
9 repeat the question again?

10 (The record was read by the
11 reporter.)

12 THE WITNESS: And I think I answered
13 correct.

14 BY MS. PATTERSON:

15 Q Thank you. All right. Going back to the
16 policy itself, I just had a couple of more questions
17 about it. On page 1 of Exhibit 3, there's a section
18 there that says, "Last Reviewed," and the date is
19 October the 27th, 2021.

20 MR. YNTEMA: I'm sorry. What page are
21 you on?

22 MS. PATTERSON: The first page of
23 Exhibit 3.

24 MR. YNTEMA: Thank you.

25 MS. PATTERSON: Toward the top.

1 BY MS. PATTERSON:

2 Q Who would have been the person or persons
3 who last reviewed this policy in October of 2021?

4 A It's the members of the legal department.

5 Q Do you know what revisions were made in
6 October of 2021?

7 A I don't, not off the top of my head.

8 Q Okay. Next section there refers to
9 Related Policies. We've already talked about
10 LE-0004, which you've told me is contained in the
11 big notebook you have in front of you, the Record
12 Retention Policy. I want to ask you about LE, dash,
13 0010, the Legal Review Guidelines. What are those?

14 A That's just a set of criteria for members
15 of the organization to make a request to review a
16 legal matter or when they should be prompted for
17 review.

18 Q Okay. Is that a policy that you were
19 involved in drafting?

20 A No. That existed prior to me joining the
21 organization.

22 Q So I guess I'm trying to understand it
23 since I haven't seen this. It provides guidance to
24 people outside the legal department as to when they
25 should contact the legal department?

1 A Correct.

2 Q Okay. Is there anything in that policy
3 that talks about litigation hold notices, document
4 retention, or document destruction?

5 A No, because it's for all legal matters.

6 Q Okay. Does the Legal Review Guidelines
7 policy discuss different types of litigation that
8 might be brought against the company?

9 A No.

10 Q Okay. So, for example, if I were a
11 member of the claims department and the claims
12 department became aware of a coverage action against
13 Penn National, would the Legal Review Guidelines
14 provide me any guidance on what to do or who to tell
15 about that within the organization?

16 A I don't believe so. I think there's a
17 specific carve out for claims made against the
18 insurance policies issued by Penn National to be
19 handled by the claims department.

20 Q Okay. So similar to the litigation hold
21 policy, the Legal Review Guidelines policy allows
22 the claims department to dictate what's going to be
23 done with a coverage case?

24 MR. YNTEMA: Objection to form.

25 BY MS. PATTERSON:

1 Q That was a terrible question. I'm just
2 having a hard time not knowing what the policy says,
3 because I haven't seen it, so does the Legal -- do
4 the Legal Review Guidelines provide any guidance to
5 the claims department in performing any of its
6 functions?

7 A Sure. Yeah, there's -- there's a myriad
8 of issues that the claims department outside of
9 claims handling will bring issues. Contract
10 reviews, employee matters, employment matters could
11 come to a legal review through HR, so --

12 Q Okay.

13 A But anything handling of the insurance
14 policy claims made against those policies are
15 held -- managed within the claims department.

16 Q Okay. And that would include something
17 like we're dealing with here, which is a declaratory
18 judgment action filed by a policyholder regarding
19 the terms or conditions of a policy. That's all
20 handled by the claims department; correct?

21 MR. YNTEMA: Objection to form.

22 THE WITNESS: Yes.

23 BY MS. PATTERSON:

24 Q Okay. Let's go to Policy, the next
25 section. It says, "Penn National Insurance is

1 committed to fully complying with its discovery
2 obligations."

3 Do you see that?

4 A I do.

5 Q All right. As a representative for Penn
6 National on matters pertaining to the Records
7 Retention Policy -- well, strike that. Let me ask
8 this differently.

9 Flip over with me, if you would, to the
10 Deposition Notice to topic number 15.

11 A Okay.

12 Q Which says, "Your Records Retention
13 Policies produced in the Covil Litigation, including
14 but not limited to," and then it has several subsets
15 down there.

16 Are you knowledgeable about the records
17 retention policies that have been produced in the
18 Covil litigation?

19 A I believe they're right there.

20 Q Okay. And are you knowledgeable about
21 those policies?

22 A Yes.

23 Q Okay. Going onto the second paragraph of
24 the Policy section on Exhibit 3, it says, "A
25 Litigation Hold shall override any other Company

1 policy or procedure that would normally require the
2 information to be purged or destroyed."

3 Do you see that?

4 A I do.

5 Q Okay. And would the litigation hold
6 issued by the legal department under this policy
7 override any policies or procedures for purging
8 documents that would be in place with the claims
9 department?

10 A It would.

11 Q Okay. And, again, going to the next
12 section on Procedure, item 1, the last two sentences
13 in that section 1 say, "It is important to note that
14 this policy does not apply to litigation involving a
15 claim handled by the Claims Division. Such
16 litigation is governed by that division's internal
17 reporting and retention protocols." Correct?

18 A Correct.

19 Q Okay. Is there some internal claims
20 division retention protocol different than what is
21 contained in the notebook, which is Exhibit 5?

22 A Not that I'm aware of.

23 Q Okay. Moving down to item 3 on the
24 Procedure end of the litigation policy, it says, "An
25 employee should promptly review and return an

1 acknowledgement stating the employee has received,
2 understands, and agrees to comply with the
3 Litigation Hold."

4 Do you see that?

5 A I do.

6 Q Okay. I know you've told me that you
7 spoke with Mr. Reifsnyder after you sent him the
8 December 17th, 2021, email. Did he provide you
9 anything in writing acknowledging the receipt?

10 A He did.

11 Q He did?

12 A Yes.

13 Q Okay. And is that part of the email
14 communication that included the IT folks?

15 A It could have been part of the string,
16 but he definitely sent an email acknowledging my
17 email to him.

18 Q Okay. And it would have been shortly
19 after you sent the litigation hold email to him?

20 A That's correct.

21 Q Do you still have a copy of that email?

22 A I do.

23 Q Okay. Do you know if that's being
24 produced in the next round of production?

25 A I believe it's already been produced.

1 Q Okay.

2 A If not, yes.

3 Q Okay. Going to the next page, item 5,
4 "The employee should provide a brief summary of the
5 location of information that would be covered by the
6 Litigation Hold."

7 Did Mr. Reifsnyder provide you such a
8 summary?

9 A He did.

10 Q And was that in an email as well?

11 A It was not. It was in the conversation I
12 had with him.

13 Q Okay. And what do you recall he told you
14 was the location of the information?

15 A Yeah, the location of the information was
16 at Iron Mountain or in ImageRight for these historic
17 records.

18 Q Okay. If you skip down to item 8 on the
19 policy, it says, "The employee may be asked to
20 participate in a custodial interview with a member
21 of the Legal Department and any outside counsel."

22 Do you see that?

23 A I do.

24 Q Do you consider the summary discussion
25 you had with him to have been the custodial

1 interview?

2 A I do in this instance. There can be
3 instances where we'll identify multiple custodians,
4 and those custodians will be interviewed one off
5 with outside counsel in preparation for litigation.

6 Q Okay. Were there custodial interviews
7 conducted with anyone other than Mr. Reifsnyder
8 regarding the December 17, 2021, litigation hold?

9 A There was a meeting with Brandon Danner
10 and myself and Brent Reifsnyder where we confirmed
11 that that litigation hold was implemented and
12 maintained.

13 Q And, again, that was all after
14 December 17th, 2021.

15 A Correct.

16 Q Okay. Moving down further on that same
17 page, there's a section called Policy Enforcement.
18 It says, "This policy will be enforced at all times
19 in accordance with the Standards of Conduct Policy,
20 HR, dash, 0002."

21 Have you reviewed that policy in
22 connection with preparing for today's deposition?

23 A Yeah, I -- I'm generally aware of it,
24 but, yes.

25 Q Okay. Is that just like a code of

1 conduct policy?

2 A Pretty much, yes.

3 Q Okay. And does that set forth types of
4 disciplinary action that can be taken?

5 A I think there's a comment that corrective
6 action can ensue for violation of the policy up and
7 to termination.

8 Q Has anyone at Penn National been subject
9 to any corrective action in connection with the
10 issuance or non-issuance of the Litigation Hold
11 Notice in connection with the Covil litigation?

12 A No.

13 Q Has there been any investigation by the
14 legal department or the HR department or any other
15 department of Penn National as to whether or not any
16 corrective action is appropriate in connection with
17 the issuance or non-issuance of litigation holds --

18 MR. YNTEMA: Objection to form.

19 BY MS. PATTERSON:

20 Q -- regarding Covil?

21 A Not to my knowledge.

22 Q Okay. Going down to Management, the
23 section there at the bottom. It says, "Divisional
24 Management is responsible for ensuring Employees
25 adhere to this policy."

1 So, for example, Mr. Reifsnyder would be
2 responsible for ensuring that he and his employees
3 in his department complied with the policy; correct?

4 A That's correct.

5 Q Okay. But since the claims department is
6 not -- does not operate under this policy -- well,
7 strike that.

8 Let me just again confirm. The claims
9 department doesn't have to follow the policy, which
10 we've marked as Number 3, does it?

11 A No, that's not correct.

12 Q Okay.

13 A I mean, they do have to follow -- if I
14 were to issue to the claims department or a member
15 of the claims department in an employment action,
16 they would have to follow this.

17 Q Okay.

18 A If an employee made an allegation of --

19 Q Okay. Like a discrimination claim or a
20 work termination claim.

21 A Discrimination -- right, yes.

22 Q Okay. But outside of that sort of a
23 claim, the claims department operates independently
24 in terms of when it determines whether or not a
25 litigation hold should be issued; correct?

1 A For a claim matter, correct.

2 Q Okay. Let's look at Exhibit Number 4,
3 the notice that you sent to Mr. Reifsnyder. Again,
4 you told me just a minute or two ago that you think
5 that there was an email acknowledgment you received
6 from Mr. Reifsnyder after you sent --

7 A That's correct, yep.

8 Q All right. And would that have been
9 filed somewhere?

10 A I don't know if -- what you mean by file
11 other than my email --

12 Q Right. Okay.

13 A Yeah.

14 Q But you think you still have it.

15 A Oh, I know I have it.

16 Q All right. Do you have any notes or
17 other records pertaining to the custodial interview
18 or the discussion you described to me earlier that
19 you had with Mr. Reifsnyder after he received this
20 Litigation Hold Notice?

21 A Well, I would deem that as work product
22 and all those notes that I make, but I do have notes
23 from the custodial interview.

24 Q Okay. And that would be the interview
25 that you conducted with him back in 2021.

1 A Correct.

2 Q Okay.

3 A I have some notes. I don't know if they
4 were memorialized from that conversation with Brent.

5 Q Okay. Now I'm confused. Do you have --
6 you told -- let me get the question on the record.

7 A Yeah.

8 Q We've talked about the conversation you
9 had with him where he gave you a brief summary of
10 what he had. I think you said that could be
11 characterized fairly as the custodial interview.

12 A Right.

13 Q Do you have notes of that discussion?

14 A I don't think so.

15 Q Okay.

16 A I do not believe I do.

17 Q But you think you have notes of other
18 discussions with Mr. Reifsnyder?

19 A Yes, or Adam Parsons.

20 Q Okay. And the notes that you think you
21 may have of your conversations with Adam Parsons
22 would be conversations you had with him back in the
23 late 2021 time period?

24 A Correct.

25 Q Okay.

1 A Yeah.

2 Q Pertaining to the claims department.

3 A Correct.

4 Q Okay. So going to Exhibit 4, is it
5 typical for you -- or for Penn National, I should
6 say, when it issues a Litigation Hold Notice, when
7 the legal department does that, to head those or
8 caption those as being attorney-client privilege
9 communications?

10 A I don't know if it's typical for the
11 department. It's certainly typical for when I sent
12 one out.

13 Q Okay. You begin your email to
14 Mr. Reifsnyder by saying, "As you know, Penn
15 National is involved in the above mentioned asbestos
16 litigation made under two policies," and you
17 referenced the litigation in your "re" line of your
18 email. How do you know that Mr. Reifsnyder was
19 already aware of that litigation?

20 A Because of the conversation I had with
21 him in -- about a week or so before.

22 Q The "in passing" conversation you
23 mentioned earlier?

24 A Correct.

25 Q Okay. You go on in the second paragraph

1 to say, "In another case, to which Penn National was
2 not a party, Covil requested policies and
3 policy-related documents from Penn National that
4 Covil believes may provide coverage for Covil."

5 Is that the Finch case that the subpoena
6 was issued in?

7 A Yeah. I believe that's what was
8 communicated to me.

9 Q And was that communicated to you also by
10 Mr. Reifsnyder?

11 A No. That was communicated to me by Adam
12 Parsons.

13 Q Okay. Did you have any conversations
14 back in December -- November or December of 2021
15 with Mr. Wright, Boyd Wright, regarding the issuance
16 of this Litigation Hold Notice?

17 A I don't believe so.

18 Q Have you ever had any conversations with
19 Mr. Wright about the issuance of a Litigation Hold
20 Notice related to Covil Corporation?

21 A I'm not certain. When I conversed with
22 Adam Parsons about this notice, I'm not sure if Boyd
23 was part of that conversation or not.

24 Q Okay. But you -- well, strike that.
25 Penn National has never issued a formal

1 Litigation Hold Notice to Boyd Wright, has it?

2 A The legal department has not issued a
3 Litigation Hold Notice to Boyd Wright; that's
4 correct.

5 Q Okay. You're not aware, as the corporate
6 representative for Penn National, if Penn National,
7 the organization, ever issuing a formal Litigation
8 Hold Notice to Mr. Wright, are you?

9 A Not a Litigation Hold Notice. But,
10 again, I did confer with Adam Parsons at the time of
11 this litigation hold going out that all claim files
12 related to Covil were preserved.

13 Q Okay. Have you followed up with
14 Mr. Wright to make sure that that's true?

15 A I believe I have, yeah.

16 Q Is that in writing?

17 A I don't think so.

18 Q Okay. But in terms of a formal notice,
19 you don't know if or when Mr. Wright ever received
20 one from the claims department, do you?

21 A No, I do not.

22 Q Moving on in this email, you say, third
23 paragraph, "These documents may consist of policies
24 and policy related documents that were generated
25 prior to 1992."

1 Where did you get that date?

2 A Yeah, I believe that was from Adam
3 Parsons.

4 Q Adam Parsons -- do you know what the
5 significance of the 1992 date is that you put in
6 your email?

7 A I think he said that the policies -- the
8 last time the Covil organization was operating was
9 1991.

10 Q Okay. And you don't know where
11 Mr. Parson got that information?

12 A Oh, I imagine he got it from --

13 Q Do you know?

14 A -- Boyd Wright.

15 Q Do you know?

16 A No, not for certain.

17 Q All right. So, "The documents may
18 consist of policies and policy related documents
19 generated prior to 1992, which may have been stored
20 in paper form or on microfiche."

21 Do you have any -- what is Penn
22 National's policy regarding the retention of policy
23 or policy-related documents in paper form?

24 A I believe for commercial lines policies
25 it's 25 years.

1 Q Okay. And is it the same period of time
2 for policy or policy-related information on
3 microfiche or microfilm?

4 A I believe so, and it depends what type of
5 policy.

6 Q Okay. Is that distinction made --

7 A Yes.

8 Q -- in the retention policy?

9 A Yes.

10 Q Okay. General liability policies, is it
11 your understanding that general liability policies
12 and policy-related documents are to be maintained
13 for at least 25 years?

14 A That is my understanding, correct.

15 Q Are you aware that Penn National in some
16 cases has maintained policy or policy-related
17 documents for longer than 25 years?

18 A I am aware of that, yes.

19 Q Do you know why that happens?

20 A For a variety of reasons, but some could
21 be included in a claim file or some simply not
22 purged as they were supposed to.

23 Q Okay. Now, going onto the next sentence
24 in the third paragraph, it says, "The Court in the
25 litigation involving Penn National Insurance ordered

1 Penn National Insurance to open its, quote,
2 repository of insurance policies and to facilitate a
3 review supervised and performed by Covil's
4 insurer-appointed defense counsel, Ellis &
5 Winters, LLP, close quote."

6 See that?

7 A I do.

8 Q Okay. Did you have a copy of the order
9 that you were quoting from there when you wrote this
10 email to Mr. Reifsnyder?

11 A I did.

12 Q And how did you get that?

13 A From Mr. Parsons.

14 Q Does Mr. Parson work for Mr. Wright?

15 A No.

16 Q Does Mr. Wright work for Mr. Parson?

17 A He does.

18 Q All right. And had you seen -- prior to
19 receiving that order from Mr. Parson, had you seen
20 any other orders issued by the Court in this action?

21 A I did not.

22 Q Did you receive that particular order
23 that's referenced in this litigation hold in
24 preparation for today's deposition as a corporate
25 rep?

1 A I did.

2 Q Okay. Did you review any other orders
3 issued by Chief Justice Toal in the pending
4 South Carolina lawsuit that we're here about today?

5 A I think I have. It mostly related to
6 discovery and this deposition, I think was what I --
7 I think that's what I saw. I know I saw that, the
8 briefing on that. Yeah, I think that's the extent
9 of it.

10 Q Okay. I'm not sure I'm clear, so --

11 A I can't recall if in the briefing that
12 was provided to me there was an order mandating that
13 this deposition go forward.

14 Q Okay. So you think you saw an order just
15 mandating that this deposition happen, and you also
16 saw the order that you quoted from in your email;
17 correct?

18 A Correct.

19 Q All right. And the reason I'm asking is
20 because if you look at the Deposition Notice for
21 today's deposition, if you look at item 8 --

22 A Yeah.

23 Q -- 13, and 14 --

24 A Yes.

25 Q -- each of those topics references orders

1 or directives issued by Chief Justice Jean Hoefer
2 Toal related to the Covil litigation, and I'm just
3 curious as to whether or not -- strike that.

4 I'm curious as to which of her orders and
5 directives you've actually reviewed in order to
6 prepare for today?

7 A Yeah, I'm pretty sure I did see the
8 November 5th order and the May 5th, 2022, orders.

9 Q All right. Let me ask you -- let's go
10 back to the -- let's go back to the Exhibit 4, the
11 Litigation Hold Notice. Again, same paragraph --

12 MR. YNTEMA: Same paragraph being?

13 MS. PATTERSON: I'm sorry. Paragraph 4.

14 BY MS. PATTERSON:

15 Q So in the preceding paragraph,
16 paragraph 3, you referenced the order. Okay? Which
17 is the November order. And then you say, "As such,
18 Penn National Insurance must now take immediate
19 steps to preserve and not purge any and all paper
20 policy and policy-related documents and microfiche
21 stored by Penn National Insurance."

22 So am I correct in understanding that
23 Penn National issued this Litigation Hold Notice in
24 response to the Court's order?

25 A Yes.

1 Q Okay. It is certainly not the case that
2 the Penn National legal department only issues
3 Litigation Hold Notices when there is a Court order,
4 is it?

5 A No.

6 Q Okay. In fact, would it be true that in
7 most cases in your experience where the legal
8 department has issued a Litigation Hold Notice,
9 regardless of the facts of the case, it typically is
10 not in response to a Court order; correct?

11 MR. YNTEMA: Objection to form.

12 THE WITNESS: That's correct.

13 BY MS. PATTERSON:

14 Q Okay. You go on in the next paragraph to
15 say, "You are receiving this notice because you have
16 been identified as a person who may have such
17 documents."

18 Based on what you've told me today,
19 Mr. Reifsnyder identified himself to you as someone
20 who would have documents related to the matter;
21 correct?

22 A No, not really. I think he told --
23 lamented about having to work with a vendor at the
24 warehouse, but he didn't really get into specificity
25 about that.

1 Q Okay. Did you receive a copy of the
2 order from Mr. Parson before or after you had this
3 passing conversation with Mr. Reifsnyder?

4 A It was after.

5 Q Okay. And am I correct that you've told
6 me everything that Penn National has done since you
7 sent this Litigation Hold Notice to preserve the
8 data, including the data that's outlined in
9 paragraph 5 here of the Litigation Hold Notice?

10 A That's correct, yeah. I believe we've
11 preserved all the documents related to this.

12 Q Okay. The next paragraph you make
13 reference to the Record Retention Policy, which is,
14 of course, contained in Exhibit 5 that we've talked
15 about a little bit already today. But you go on to
16 say, "As well as other preservation notices you may
17 have received."

18 Are you aware as we sit here today of any
19 other preservation notices that Mr. Reifsnyder
20 received?

21 A Yeah, I believe he's on a litigation hold
22 for some other litigation.

23 Q Unrelated to Covil.

24 A Correct.

25 Q Okay. But are you aware of any

1 preservation notices he received for Covil other
2 than Exhibit Number 4?

3 A Not that I'm aware of.

4 Q Okay. Do you have an understanding of
5 how Mr. Reifsnyder's department goes about purging
6 policy and policy-related documents? Just generally
7 speaking. I'm not talking about Covil. I'm just
8 talking about their general process.

9 MR. YNTEMA: Objection to form.

10 THE WITNESS: Generally, yeah. I think
11 they get lists of policies that are due to be
12 purged, and they work through the boxes and pull
13 those policies.

14 BY MS. PATTERSON:

15 Q Okay. Let's look at the Deposition
16 Notice again, and specifically I'll direct your
17 attention to item number 7, which is, "All steps
18 taken to suspend or modify your document retention
19 or destruction policy or policies in response to the
20 Covil Litigation."

21 Can you tell me what, if any, steps have
22 been taken by Penn National to suspend or modify the
23 document retention or destruction policy as a result
24 of this litigation, the Covil litigation, as defined
25 here?

1 A Yeah, the steps that I've already
2 mentioned, that Brent Reifsnyder is not to purge any
3 documents that are in physical form and confirmation
4 that the IT department will not purge any electronic
5 information stored in ImageRight.

6 Q Okay. And I appreciate that answer.
7 That's really a bit of an answer to a different
8 question. That's really -- you're answering to me
9 what has been done since the litigation hold was
10 issued to preserve documents. This request is
11 asking about suspension or modification of the
12 policy itself. So have any steps been taken to
13 suspend or modify the document retention policy?

14 A Yes, the policies has a purging schedule.

15 Q Okay.

16 A So...

17 Q Okay. I see what you're saying. I
18 understand what you're saying. By the way, has
19 the -- if we look at the purging schedule -- and you
20 mentioned the 25-year period of time earlier. To
21 your knowledge has the 25-year period of time always
22 been the period of time applicable to commercial
23 liability policies since the Record Retention Policy
24 has been in existence?

25 A No. I think initially it was 20 years

1 and then it was increased to 25 years shortly
2 thereafter. I can't find exactly the precise time.

3 Q Okay. And remind me again: When do you
4 think the Record Retention Policy first went into
5 place?

6 A 1996.

7 Q Okay. The date on that memo that we
8 looked at. Okay. And while we're on that, if
9 you'll take a look at topic -- let's go to topic 15
10 and specifically 15.1. Hang on one second.

11 I think if you look at the Retention
12 Policy in the notebook in front of you, you'll see
13 that it sets out several steps. I think that was at
14 page -- or Bates number 14098. Am I right? 14 --
15 I'm sorry. PNI-1048 and continuing onto the next
16 page, there's a step 7 -- do you see there? --
17 talking about the random reviews conducted by Penn
18 National --

19 A I do.

20 Q -- and scheduled reviews?

21 A I do.

22 Q And do you understand that you've been
23 designated on topics 15.1 and 15.2 about those
24 random and scheduled reviews?

25 A I do.

1 Q All right. And who have you -- what have
2 you done to prepare yourself to testify on those two
3 particular subtopics?

4 A Yeah, so I spoke with my boss, Karen
5 Yarrish.

6 Q Okay.

7 A And Erin Pence and Dana Shanaberger, and
8 I also reviewed our record retention file.

9 Q Okay. So the scheduled reviews, which is
10 topic 15.2, are the biannual reviews that you
11 mentioned earlier; correct?

12 A That is correct.

13 Q Okay. What random reviews are conducted
14 by Penn National or have been conducted since 2010
15 as required by step 7?

16 A Yeah, I don't know if random is the best
17 word. When it was originally implemented, it might
18 have made sense. The way we view random reviews is
19 that the business unit is charged with constantly
20 maintaining a vigilance about record retention and
21 will periodically ask that the purge period be
22 changed in between the biannual period, so those
23 random -- if there's case law, if there's
24 legislation that comes up that would cause the
25 business unit to be concerned about retaining

1 documents or the period to retain them, those are
2 the type of random, periodic,
3 in-between-the-schedule reviews that we will review
4 those requests and implement those requests, if
5 appropriate.

6 Q So a random review it sounds like can be
7 triggered by the legal department if there's some
8 new legal authority, or it can be triggered by the
9 particular business unit based on operational
10 concerns or other issues like that; correct?

11 A That's right.

12 Q Okay. Have any random reviews since
13 2010, to your knowledge, implicated any concerns
14 about the destruction of documents pertaining to
15 Covil Corporation?

16 A Not to my knowledge about Covil
17 Corporation.

18 Q Okay. Have any scheduled reviews
19 conducted by Penn National from 2010 to the present
20 implicated or raised any issues about whether to
21 retain or destroy documents related to Covil?

22 A Related to Covil, no.

23 Q Okay. Let's go back to questions --
24 topics 8, 13, and 14, and I'll just run through
25 these quickly.

1 Has Penn National taken any steps to
2 suspend or modify its document retention or
3 destruction policy in response to any and all orders
4 issued by Chief Justice Toal related to Covil other
5 than your issuance of the Litigation Hold Notice on
6 December 17th, 2021?

7 A Correct, that it -- that Litigation Hold
8 Notice suspended all purging.

9 Q Okay. And that Litigation Hold Notice
10 was issued in response to and as a result of the
11 order entered by Chief Justice Toal in November of
12 2021; correct?

13 A Correct.

14 Q Okay. Had the Court not entered that
15 order, no Litigation Hold Notice was likely to have
16 been issued regarding Covil --

17 MR. YNTEMA: Objection.

18 BY MS. PATTERSON:

19 Q -- litigation; correct?

20 MR. YNTEMA: Objection to form.

21 THE WITNESS: I can't speak to that,
22 speculating on what would happen.

23 BY MS. PATTERSON:

24 Q Okay. That's fair. Let's go to
25 topic 13. Has Penn National issued or submitted any

1 interim reports in response to the directives from
2 Chief Justice Toal related to Covil?

3 A I believe our counsel has, yes.

4 Q Okay. Were you involved in the
5 preparation of those interim reports?

6 A I was not.

7 Q Have you reviewed those interim reports
8 to the Court in connection with your preparation for
9 today's deposition?

10 A I don't believe I have.

11 Q Are you able to testify about the interim
12 reports that are referenced in this topic?

13 A I am not.

14 Q Okay. So you're really not the right
15 person to talk about those reports or really
16 anything in topic 13; correct?

17 A Correct.

18 Q Okay. As it relates to topic 14, "All
19 steps taken in response to and/or to comply with the
20 directives issued by Chief Justice Toal related to
21 Covil," have you already told me about what has been
22 done in that regard and specifically the issuance of
23 a litigation hold in 2021 December and the follow-up
24 with the IT department and the claims department on
25 that; correct?

1 A Correct.

2 Q Okay. Have you either in your capacity
3 as a representative of the legal department
4 responsible for the Record Retention Policy or in
5 preparation for today's deposition as a corporate
6 rep, have you done any review of the claims
7 department's files or records related to Covil or
8 the Covil litigation?

9 A I have not.

10 MS. PATTERSON: Okay. Tell you what,
11 let's take about a five-minute break to look at my
12 notes.

13 THE VIDEOGRAPHER: We're going off the
14 video record. The time is 12:48.

15 (A recess was taken.)

16 (Exhibit 7 and Exhibit 8 were marked
17 for identification.)

18 THE VIDEOGRAPHER: We're back on the
19 video record. The time is 1:02.

20 BY MS. PATTERSON:

21 Q Just real quick, I've marked two
22 additional documents just for the record. Exhibit 7
23 is the November 5, 2021, order issued by Chief
24 Justice Toal, and November 8 -- I'm sorry --
25 Exhibit 8 is the May 5, 2022, order issued by Chief

1 Justice Toal. Are those the two orders that you
2 believe you reviewed --

3 A Yeah.

4 Q -- in preparation for this deposition?

5 A I do.

6 Q Are there any other orders or directives
7 from the Court that you have reviewed in connection
8 with your preparation for this deposition?

9 A Not that I can recall off the top of my
10 head. I might have in relation to some of the
11 production requests, but I think this is it.

12 Q Okay. And you have been, it sounds like,
13 involved -- I don't want to know the details, but
14 you have been involved in some of the discovery
15 responses.

16 A Correct.

17 Q Okay.

18 A Related to these topics.

19 Q And the reason I ask is because you said
20 earlier that the claims department manages claims or
21 coverage litigation like this litigation, but
22 nevertheless the legal department has become
23 involved. Is that only since the time the legal
24 department issued the Litigation Hold Notice in
25 December 2021?

1 A Yes, in the sense our involvement really
2 wasn't that much with the discovery until recently.

3 Q Okay. We talked a little bit earlier
4 about Mr. Reifsnyder's emails and that those would
5 have been automatically retained as a result of the
6 issuance of the litigation hold in December 2021.
7 Have you at any time in preparation for this
8 deposition or otherwise gone back and pulled and
9 looked at the emails that might have been -- the
10 emails that were retained subject to the litigation
11 hold?

12 A I have not, no.

13 Q But you would be able to do that if you
14 wanted to?

15 A Yes.

16 Q And you would just contact HR? I'm
17 sorry. Not HR. IT?

18 A Correct.

19 Q And they could provide you with whatever
20 had been saved.

21 A Correct.

22 Q And so are they saving all of
23 Mr. Reifsnyder's emails or only emails that pertain
24 to Covil?

25 A All the emails.

1 Q Okay. Have you ever heard of something
2 called the 2K10 Database?

3 A In consultation in preparation for
4 this --

5 Q And I'm not -- I'm not trying to --

6 A Yeah.

7 Q -- your discussions with counsel. I'll
8 just be --

9 A Yeah, not before this deposition,
10 that's -- no, I have not prior to this deposition
11 preparation.

12 Q Okay. So outside of what you may have
13 learned from counsel in preparation for this
14 deposition, you don't know anything about the 2K10
15 Database, what it contains, who created it, what
16 it's used for, do you?

17 A Outside of preparation --

18 Q Outside of counsel.

19 A No.

20 Q Okay.

21 A That's correct.

22 Q And have you -- I'll represent to you
23 that Mr. Wright has submitted some affidavits to the
24 Court throughout -- or during the course of this
25 litigation. Have you reviewed any of those in

1 preparation for your deposition today?

2 A I have not.

3 Q Had you reviewed any of them prior to
4 when you began to prepare for this deposition?

5 A I don't believe so.

6 Q Okay. Can you think of any other
7 instance when Penn National -- other than this
8 case -- when Penn National has issued a Litigation
9 Hold Notice via the legal department's policy in a
10 coverage action?

11 MR. YNTEMA: Objection to form.

12 THE WITNESS: No.

13 BY MS. PATTERSON:

14 Q But you are aware that Penn National is
15 named from time to time as a party in coverage
16 actions; correct?

17 A Oh, yeah, absolutely.

18 Q Okay. And aside from this case where a
19 formal Litigation Hold Notice was issued under the
20 legal department's policies, typically the legal
21 department does not issue hold notices in coverage
22 cases.

23 A That's correct.

24 MS. PATTERSON: Okay. I think that's all
25 I have, Mr. Maier. Thank you.

1 I'll pass the witness.

2 MR. YNTEMA: Yes, I just have mainly one
3 clarification.

4 EXAMINATION

5 BY MR. YNTEMA:

6 Q At the beginning of this deposition this
7 morning, counsel asked if you were going to be in
8 attendance at trial. I know that probably isn't
9 something you're looking forward to, but I'd like to
10 ask you again and just clarify: Will you be
11 attending or may -- is there a circumstance where
12 you may be in attendance at trial and provide
13 testimony to the Court?

14 A Yes, of course. I would go attend the
15 trial if need be. The way I responded earlier today
16 was I have not booked a plane ticket to attend, but
17 I would be more than willing to appear.

18 Q And at other times during your testimony
19 today you mentioned Iron Mountain. Yes?

20 A Correct, yes.

21 Q And is that your -- is Iron Mountain --
22 to your understanding, is Iron Mountain the facility
23 or a company that retains certain archived paper
24 policy-related documents for Penn National?

25 A That's correct.

1 Q And are you aware that there are
2 microfiche that are held at Penn National? They
3 contain paper -- I mean contain policy-related
4 documents?

5 A At Penn National across the street or at
6 Iron Mountain?

7 Q At Penn National headquarters.

8 A Yes.

9 MR. YNTEMA: Okay. That's all the
10 questions I have. Thank you.

11 MS. PATTERSON: Hope to see you in South
12 Carolina, Mr. Maier.

13 THE WITNESS: No offense, Nancy, I hope
14 not to.

15 MR. YNTEMA: Are we off the record?
16 We're off the record.

17 THE VIDEOGRAPHER: This concludes the
18 deposition of Scott Maier. The time is 1:08.

19 - - -

20 (The witness was excused.)

21 - - -

22 (The videotaped deposition concluded
23 at 1:08 p.m.)

24

25

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing; that the aforesaid testimony was taken before me at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the deponent; that a review of the transcript by the deponent was not requested; and that I am neither of counsel nor kin to any party in said action nor interested in the outcome thereof.

I declare under penalty of perjury that the foregoing is true and correct. Dated this 28th day of November, 2022.



Holly J. Cross
Notary Public

&	1158 72:11,16 73:8,22 75:6 76:1 1159 3:15 35:8 1161 3:15,18 35:8 1194 178:18 11:24 111:5 11:31 111:8 12 67:9 99:19 12/17/21 3:16 1226 11:7 123 3:19 12:48 171:14 12th 15:4 13 14:6 160:23 168:24 169:25 170:16 14 14:7 160:23 166:14 168:24 170:18 14098 166:14 15 14:7 145:10 166:9 15.1 166:23 15.1. 166:10 15.2 166:23 167:10 17 58:18 83:7 149:8 171 3:22,23 17101 18:1 176 3:5 17th 83:13 91:5 91:14 92:1 108:22 111:23 112:9,16,22 117:5 118:6,16	118:24 119:3 120:19 128:9,22 147:8 149:14 169:6 18 137:4 1969 126:13 1990s 21:18 1991 157:9 1992 7:8 94:4,9 156:25 157:5,19 1995 126:14 1996 74:9 75:2 166:6 1998 7:2 19:6 1999 6:21 19:13 1:02 171:19 1:08 177:18,23 1st 81:20	2010 167:14 168:13,19 2015 22:21 30:10 31:18 2016 21:25 2018 30:3 31:22 58:18 122:24 123:3 124:2,4,11 124:23 125:7 136:14 2019 1:7 4:12 43:11,19 44:8 60:12 107:1,1 137:7 138:2,19 140:17 2020 42:13,25 75:9,9,11 107:4 2021 31:22 60:3 60:4,15,18 61:4 62:1,9,19 63:1 80:1 82:9 83:7 83:13 87:6,11 90:8 91:14 92:1 92:23 93:8 98:2 104:1 107:7 108:22 109:15 111:23 112:5,9 112:22 115:22 116:12,25 117:6 117:9 118:6,16 118:25 119:3 120:19 128:9,22 129:7,12 140:4,8 140:8 141:19 142:3,6 147:8 149:8,14 152:25 153:23 155:14 169:6,12 170:23	
& 1:9 2:3 19:20 61:15,16,18,20 159:4				
0				
0002 149:20 0004 75:22 76:2 142:10 0006 3:14 40:16 41:3,5,8 44:16 47:5 0010 142:13 004 75:18 0598 3:18 0599 70:17 74:20 74:25 0601 74:21				
1		2		
1 3:10 8:6,10 14:6 36:22 52:1 82:19 108:15 129:24 130:7 137:4 141:17 146:12,13 10 87:16 99:19 1000 2:4 1048 72:11,16 73:22 75:6 76:1 77:1,10,10 166:15 1049 73:8 10:15 64:20 10:24 65:1 10:32 71:10 72:1 11/5/21 3:20 1157 72:11		2 3:12 8:21,22 9:7,24 10:6,6,22 13:2,8 14:6 74:23 108:7 111:12 112:19 116:8 20 165:25 2001 6:9,22 7:15 18:12 20:11 94:17 2002 94:17 2006 34:2,11 47:25 48:3 2007 47:25 48:3 129:24 130:7 131:24 2009 22:14,18 27:21 30:7		

171:23 172:25 173:6 2022 1:15 4:3 8:19 9:21 161:8 171:25 178:12 2098 11:12 13:14 13:22 42:16 21 1:15 6:9 21st 4:2 24 17:8 25 157:25 158:13 158:17 165:20 165:21 166:1 27408 2:9 27th 141:19 28th 74:9 178:12 2k10 174:2,14 2nd 1:18 4:13 17:25 18:23	100:17 106:21 107:18 111:11 124:17 310 2:9 336 2:10 34 3:15 3rd 9:16	100:17 106:21 107:18 111:11 123:14,15,23 124:17 127:3	acknowledge... 147:1 acknowledge... 131:13 acknowledging 147:9,16 acknowledgm... 152:5 action 1:7 15:4 26:12,14,21 27:4 27:4 43:10,19 60:12 62:4,21,25 63:11 83:22 84:1 137:8 138:1,19,22 139:6 143:12 144:18 150:4,6,9 150:16 151:15 159:20 175:10 178:10
3	4	7	acknowledgm... 152:5 action 1:7 15:4 26:12,14,21 27:4 27:4 43:10,19 60:12 62:4,21,25 63:11 83:22 84:1 137:8 138:1,19,22 139:6 143:12 144:18 150:4,6,9 150:16 151:15 159:20 175:10 178:10
3 3:14 14:6 34:5 34:6 35:5 36:9 36:11,16 38:2 39:21 40:13 41:6 47:22 50:6 63:16 66:6,18 67:25 81:5 89:11,17 122:18 122:19 125:3 129:19 133:10 141:17,23 145:24 146:23 151:10 161:16 30 3:13 8:2 9:11 9:22 43:23 46:22 55:17,24 56:25 82:15,19	40-2098 1:7 4:12 60:12 4000 2:4 419-4904 2:10	70 3:18 701 2:9 713 2:5 77002 2:4	acknowledgm... 152:5 action 1:7 15:4 26:12,14,21 27:4 27:4 43:10,19 60:12 62:4,21,25 63:11 83:22 84:1 137:8 138:1,19,22 139:6 143:12 144:18 150:4,6,9 150:16 151:15 159:20 175:10 178:10
3	4	8	actions 25:20 175:16 active 7:10,12 85:12,14,17 activity 80:22 actual 88:19 133:13 134:22 140:17 adam 37:13,15 56:8 83:16 118:19 138:5,18 153:19,21 155:11,22 156:10 157:2,4 added 23:20 25:13 addition 38:1 113:19,19
3 3:14 14:6 34:5 34:6 35:5 36:9 36:11,16 38:2 39:21 40:13 41:6 47:22 50:6 63:16 66:6,18 67:25 81:5 89:11,17 122:18 122:19 125:3 129:19 133:10 141:17,23 145:24 146:23 151:10 161:16 30 3:13 8:2 9:11 9:22 43:23 46:22 55:17,24 56:25 82:15,19	4000 2:4 419-4904 2:10	800 18:17,18 82 3:16 890-5195 2:5	actions 25:20 175:16 active 7:10,12 85:12,14,17 activity 80:22 actual 88:19 133:13 134:22 140:17 adam 37:13,15 56:8 83:16 118:19 138:5,18 153:19,21 155:11,22 156:10 157:2,4 added 23:20 25:13 addition 38:1 113:19,19
3	5	9	active 7:10,12 85:12,14,17 activity 80:22 actual 88:19 133:13 134:22 140:17 adam 37:13,15 56:8 83:16 118:19 138:5,18 153:19,21 155:11,22 156:10 157:2,4 added 23:20 25:13 addition 38:1 113:19,19
3 3:14 14:6 34:5 34:6 35:5 36:9 36:11,16 38:2 39:21 40:13 41:6 47:22 50:6 63:16 66:6,18 67:25 81:5 89:11,17 122:18 122:19 125:3 129:19 133:10 141:17,23 145:24 146:23 151:10 161:16 30 3:13 8:2 9:11 9:22 43:23 46:22 55:17,24 56:25 82:15,19	5 3:4,17 14:6 69:23 70:1,4,8 70:10,16 72:4,6 73:20 74:4,8,20 81:4 128:20,25 146:21 148:3 163:9,14 171:23 171:25 5/5/22 3:23 5th 161:8,8	92 94:14,19,21 932 137:4 94 94:22 95 94:22 9:06 1:18 4:2	active 7:10,12 85:12,14,17 activity 80:22 actual 88:19 133:13 134:22 140:17 adam 37:13,15 56:8 83:16 118:19 138:5,18 153:19,21 155:11,22 156:10 157:2,4 added 23:20 25:13 addition 38:1 113:19,19
3 3:14 14:6 34:5 34:6 35:5 36:9 36:11,16 38:2 39:21 40:13 41:6 47:22 50:6 63:16 66:6,18 67:25 81:5 89:11,17 122:18 122:19 125:3 129:19 133:10 141:17,23 145:24 146:23 151:10 161:16 30 3:13 8:2 9:11 9:22 43:23 46:22 55:17,24 56:25 82:15,19	6	a	active 7:10,12 85:12,14,17 activity 80:22 actual 88:19 133:13 134:22 140:17 adam 37:13,15 56:8 83:16 118:19 138:5,18 153:19,21 155:11,22 156:10 157:2,4 added 23:20 25:13 addition 38:1 113:19,19
3 3:14 14:6 34:5 34:6 35:5 36:9 36:11,16 38:2 39:21 40:13 41:6 47:22 50:6 63:16 66:6,18 67:25 81:5 89:11,17 122:18 122:19 125:3 129:19 133:10 141:17,23 145:24 146:23 151:10 161:16 30 3:13 8:2 9:11 9:22 43:23 46:22 55:17,24 56:25 82:15,19	6 3:13,19 8:2 9:11,22 43:23 46:22 55:17,24 56:25 82:15,19	a.m. 1:18 4:2 able 59:16 170:11 173:13 absolutely 175:17 accordion 67:8 accurate 14:8,9	active 7:10,12 85:12,14,17 activity 80:22 actual 88:19 133:13 134:22 140:17 adam 37:13,15 56:8 83:16 118:19 138:5,18 153:19,21 155:11,22 156:10 157:2,4 added 23:20 25:13 addition 38:1 113:19,19

additional 30:5 171:22 address 17:24 18:24 adhere 150:25 administer 105:22 administered 101:4,13,14 administering 132:13 administers 102:21 administration 24:23 administrative 88:25 89:2,13 advice 39:9 98:20,22 advise 84:4,21 advised 45:6,8 affidavits 174:23 affiliate 29:12 affiliations 4:21 affirmative 135:7,11,13,22 aforesaid 178:4 agency 13:11 ago 27:10 45:21 65:6 82:8 90:23 97:21 107:22 108:16 124:12 124:24 152:4 agree 122:4 135:21,25 136:2 agreeable 16:4 16:25	agreement 10:17 agreements 25:4 agrees 147:2 ahead 22:20 43:25 69:22 71:24 82:5 88:14 aided 178:8 al 4:9 alerted 110:8 allegation 151:18 alleging 125:25 allowing 16:13 allows 143:21 amended 9:9 america 130:18 american 137:5 analysis 136:18 ann 125:24 answer 15:7 16:14,15,21 36:5 39:10 44:25 54:3 55:9 59:16 138:10 141:6 165:6,7 answered 33:6 141:12 answering 165:8 anybody 31:13 anymore 28:23 104:6 appear 15:18 176:17 appearances 4:20 46:7 appearing 42:19 42:21	appears 72:8 applicable 49:18 165:22 application 90:15 applied 44:16 90:13 91:8 applies 51:2 apply 36:24 41:6 41:8 73:15 78:1 146:14 appointed 1:4 4:7 23:17 159:4 appreciate 39:11 125:18 165:6 approach 130:3 130:6 appropriate 135:20 150:16 168:5 appropriately 134:21 approximate 22:9 approximately 1:18 27:21 34:11 archival 131:2,5 archived 176:23 area 18:11,19 19:3 43:21 89:3 102:6 105:19 areas 41:23 59:23 60:2 61:5 armour 19:20 articles 65:21 68:4,6	asbestos 43:9 126:1 154:15 aside 175:18 asked 48:14,23 50:13 57:8 92:12 117:22 124:12 148:19 176:7 asking 36:9 43:15 44:5 46:15 51:18 54:10,11 66:11 78:23,24 79:15 84:10 95:1 111:24 113:14 125:16 128:6 160:19 165:11 asks 80:22 aspect 54:19 aspects 44:3 assessment 132:11 assist 25:22 assistant 20:7 22:3,6 23:4,6,7 assisted 14:22 assisting 23:25 associate 6:13 22:12,13,16,24 23:2,18 25:13 27:20,22 30:6,22 association 1:11 assume 7:9 assured 48:3 attached 109:24 attachments 124:19

attend 6:23 130:19 176:14 176:16 attendance 176:8,12 attending 15:20 176:11 attention 82:18 134:14 164:17 attorney 4:22 5:17 6:17 15:22 19:10 20:5 43:22 44:3 46:14,16 53:24 76:15 154:8 attorneys 20:13 20:18,21,23 133:5 august 22:1 authority 133:1 168:8 auto 28:2 93:22 automate 131:12 automated 130:24 automatic 122:20 automatically 125:5 173:5 available 37:10 38:13 72:25 aware 11:23 28:8 40:2 42:23 43:17 57:25 60:3,5,14,17 61:3,8,10,18 62:1,19,23,24 83:3 84:12 86:9	86:11,16 94:6,25 116:10 121:5 124:10,22 127:22 128:7,13 128:19 129:6,11 129:17 131:10 133:23 134:9 137:8 143:12 146:22 149:23 154:19 156:5 158:15,18 163:18,25 164:3 175:14 177:1 b b 3:8,13 8:2 9:11 9:22 43:23 46:22 55:17,24 56:25 82:15,19 100:17 106:21 107:18 111:11 124:17 back 37:25 40:11 42:5 44:15 47:24 48:3 50:16 64:22 71:16,24 71:25 73:6 82:15 90:22 92:22 93:7 98:1 111:7 116:7 117:19 118:3 119:12 125:2 126:8 129:12 131:19 138:14 141:15 152:25 153:22 155:14 161:10,10	168:23 171:18 173:8 background 17:20 19:9 bad 140:10 bankruptcy 19:24 32:13,19 33:3,8,11 based 92:21 93:4 114:25 162:18 168:9 basically 96:12 basis 101:15 bates 3:15,18 35:7,9 70:16 72:11 74:24 77:9,10 166:14 began 22:2 115:2,11,12 175:4 beginning 4:21 15:4 35:1 76:25 129:20 176:6 begins 75:6 believe 8:14 9:13 9:25 11:25 14:21 17:3,8 19:5 21:17,24 28:24 29:6,21 36:22 37:13 38:16 42:13,14 61:1,13 68:1 71:5 79:9 80:15 81:10 82:7 94:22 97:11 103:9 123:6,11 124:14 127:17 128:3 143:16	145:19 147:25 153:16 155:7,17 156:15 157:2,24 158:4 163:10,21 170:3,10 172:2 175:5 believes 155:4 best 73:7 167:16 better 74:16 77:25 beyond 110:13 biannual 76:12 101:14 103:1,3 103:16 167:10 167:22 biannually 101:24 102:22 big 20:10 67:5 69:11 142:11 bigger 118:2 bit 17:19 19:8 34:2 41:18 59:19 104:2 106:20 131:10 163:15 165:7 173:3 bob 2:15 booked 176:16 born 18:8 boss 100:7 167:4 bottom 35:8 36:23 150:23 boxes 121:11,15 122:11 164:12 boyd 61:1 108:3 155:15,22 156:1 156:3 157:14

brady 2:8 5:1 71:6 brandon 79:7 89:24 90:1,1,2 91:7 103:22 110:7,9 113:7 116:23 117:22 128:3,4 149:9 breadth 94:2 break 16:6,10 64:16,16 90:17 110:22,23 111:2 111:3 171:11 brendan 89:25 brennan 89:23 brent 3:16 46:7 60:19 61:11 78:16 79:9 91:6 106:7 109:15 113:7 116:16 128:1,2 149:10 153:4 165:2 brief 148:4 153:9 briefing 160:8 160:11 bring 144:9 brockius 2:3 brokers 28:1 brought 49:14 62:22,25 134:8 134:13 143:8 business 17:24 79:14 101:15 167:19,25 168:9 byntema 2:10	c c 2:1 178:1,1 california 4:11 call 63:21,23 called 24:8 65:15 67:15 77:12 149:17 174:2 calling 53:24 calls 46:14 capacity 8:1,12 15:12 42:11 43:16 49:22,24 49:25 51:17 55:2 171:2 caption 13:13 154:8 career 20:15 24:14,17 carlisle 17:23 carolina 1:1,10 7:19 11:22 12:5 15:5,19 43:4,9 43:11,19 44:7 62:21 83:23 84:1,25 114:15 114:19 123:25 136:25 137:3 140:18 160:4 177:12 carrier 28:20 29:19 139:7 carve 143:17 case 4:12 10:3 13:12,22 15:2 26:8,23 42:5,16 42:18,21 43:8,9 43:10,13 59:20 60:9 84:24	108:14 125:24 125:25 126:4 136:25 137:4,5 137:12 139:9 143:23 155:1,5 162:1,9 167:23 175:8,18 cases 158:16 162:7 175:22 casualty 1:9,10 2:11 4:9 5:4 9:10 10:11,19 categories 126:10 category 78:6 102:9,11 caught 140:23 cause 167:24 caveat 80:4 cease 96:13,21 116:25 127:20 certain 8:1 9:20 30:3 40:5 75:2 80:22 88:22,25 93:25 98:10 131:3 155:21 157:16 176:23 certainly 16:8,14 39:8 57:25 58:24 81:5 94:23 120:18 125:18 134:19 135:21 154:11 162:1 certify 178:4 cetera 78:7 change 111:2	changed 40:7 167:22 characterized 153:11 charge 29:23 58:20 76:14 97:23 charged 167:19 charts 77:25 chase 81:3 check 75:5,25 checked 64:13 chief 160:3 161:1 169:4,11 170:2,20 171:23 171:25 cielinski 19:20 circuit 1:2 circumstance 176:11 circumstances 134:2 cite 39:7 civil 1:7 60:12 137:4 claim 36:25 49:15,16,17 50:23,25 51:2,5 51:6,7,12 52:9 52:23 53:4,8,13 53:14 54:24,25 55:3,3,4,11 56:10 61:1 83:17,18,25 84:24 85:4,7,8 85:12,14,17,19 88:10 96:13 113:21 114:7,10

114:13,16,18,20 116:24 117:3,24 118:20 119:5,11 138:6 139:4 140:25 141:2 146:15 151:19 151:20,23 152:1 156:11 158:21 claiming 139:7 claims 25:18,23 25:24,25,25 26:5 26:10,11,22 27:1 27:6,10,14,15,16 28:9 31:7 36:18 36:25 37:3,16,18 38:4,6,12,16,22 38:24 39:5 41:7 41:8,15,22,24 42:3 44:17,22 45:3 47:4,14,18 47:25 48:4,8,14 48:25 49:5,11 50:18 51:1,13 52:11,14,18,21 52:23 53:6,21 54:17,18,20 55:11,13,21 56:13,17,21 57:4 57:12,19 58:5,13 58:16,21 59:3,5 59:9,21,23 60:2 60:21,24 61:5 64:9 73:16 84:6 84:23 85:6,11 86:19,22 88:5 102:9 113:20,22 113:23 114:5,24 115:5,25 116:18	116:20 117:3,12 118:3,12,12,15 119:3,15,17 126:4,20,24 134:11,13,15 135:19 137:19 137:22 139:11 139:15 140:21 143:11,11,17,19 143:22 144:5,8,9 144:14,15,20 146:8,15,19 151:5,8,14,15,23 154:2 156:20 170:24 171:6 172:20,20 clarification 176:3 clarify 16:3 41:12 128:1 176:10 clarifying 128:14 clarity 81:14 cle 130:19 clear 33:10 36:8 60:8 66:11 76:24 78:24 94:8 160:10 clearly 127:15 click 75:18 client 44:2,3 46:14,16 53:24 154:8 close 10:23 72:8 159:5 code 149:25	collaborative 32:15 132:5 college 7:5 colon 137:4 columbus 19:13 column 78:5 come 37:25 40:11 124:12 144:11 comes 47:15 126:7,17 167:24 commencing 1:18 comment 59:19 150:5 commercial 105:16 126:14 157:24 165:22 committed 145:1 common 1:1 4:10 commonly 28:18 communicate 45:14,19 99:8 106:14 110:9 communicated 45:24 98:25 100:6 155:8,9,11 communication 91:11 110:4 127:21 147:14 communications 37:21 53:25 84:22 90:6,10 98:1 103:15 108:2 112:4 127:18 128:11 129:10 137:22	154:9 comp 28:2 companies 137:1 company 2:12 4:9 5:4 9:11 10:12,19 20:11 23:3 29:13 31:10 32:6,9,23 33:15 51:8 61:14 63:25 65:12 97:14 103:6 108:24 109:7 119:24 120:9 134:24 135:16 137:6 140:17 143:8 145:25 176:23 company's 80:11 compare 73:6 compared 72:9 compel 3:21 complaint 13:4,9 13:10,14,21 42:14,16 49:13 50:20,21,22 138:22 complaints 13:17,23,23,24 complete 16:15 17:4,9,14 complied 151:3 comply 147:2 170:19 complying 145:1 computer 178:8 concerned 167:25

concerns 168:10 168:13 concluded 177:22 concludes 177:17 conditions 144:19 conduct 7:17 8:16 149:19 150:1 conducted 149:7 152:25 166:17 167:13,14 168:19 confer 103:10 156:10 conferred 47:17 58:25 124:25 confident 137:15 confirm 39:4 47:13 56:15,19 58:4 79:11 84:25 151:8 confirmation 91:10 95:13 165:3 confirmed 14:3 47:19 56:8,11 83:16,24 90:12 96:12 107:6 113:1 114:4 118:6 149:10 confirming 39:2 96:6 105:4 112:11,24 113:16 116:13 116:15 127:19	confused 153:5 connection 5:22 7:18 10:2,24 15:14 34:20,22 34:25 43:18 45:14,19,25 46:4 46:19 55:23 56:17 57:4 58:6 59:11 65:25 70:6,21 83:9 89:20 106:14 107:25 108:25 109:7,21 123:9 136:15,20 137:25 149:22 150:9,11,16 170:8 172:7 consider 26:8,22 148:24 consist 156:23 157:18 consistent 76:8 constantly 76:6 167:19 consultation 100:3 174:3 consulted 47:24 100:5 contact 142:25 173:16 contain 75:11 79:13 93:19,25 177:3,3 contained 92:24 103:25 142:10 146:21 163:14 contains 74:12 174:15	content 66:17 contents 55:12 82:24 108:19 109:20 contest 16:8 context 100:19 100:23 106:11 continue 107:7 continuing 166:15 contract 144:9 contracts 23:14 contributes 32:16 conversation 62:2,4 91:10 92:22 93:4 105:4 118:18,23 138:5 148:11 153:4,8 154:20 154:22 155:23 163:3 conversations 49:8,9 103:14 105:25 153:21 153:22 155:13 155:18 conversed 155:21 copied 128:3 131:5 copies 126:12 copy 8:10 49:17 66:22 67:10,23 70:24 82:15 86:25 95:21 121:15 123:23 147:21 159:8	163:1 corporate 8:2 9:19 12:24 14:5 15:12 22:14,17 22:22 27:23 28:1 29:7 30:7 30:11,14,23,25 31:4,15,18 36:9 37:23 40:12 43:16 45:15 49:25 56:20 57:17 59:7 65:5 65:8 66:2,13 78:13 83:11 84:11 86:10 89:1,2,14 99:14 109:3,5 117:2 119:23 120:4 125:1 128:6 130:18 133:25 136:21 140:1 156:5 159:24 171:5 corporation 1:4 4:6,25 5:19 11:6 11:11,18 13:18 13:19 42:25 62:11,14 86:7 92:24 106:1 116:1 117:4,13 118:15 119:5,18 120:1,7,11 125:4 127:25 137:6 140:7 155:20 168:15,17 corporation's 3:21 9:2,9 62:22

correct 7:22,23 10:3,4 12:8 13:7 14:16,25 18:25 19:6,7,18 20:9 22:4,19 26:17 27:8,18 28:7 29:11 30:16 31:8,11,12,20,21 31:24 32:2 33:2 33:12,13,16,24 35:13,16 38:4,5 38:18 41:9,10 42:22 45:12 47:23 48:2,13 51:3,4,8,10 52:19,24 53:1,11 53:15,18 57:23 58:9 60:13,15,16 62:17 63:13 64:4 65:17 67:12,14,17 68:5 69:2,7 73:2,13 74:17,18 75:1,22 75:23 76:22 77:15,16,18,19 77:22,23 78:2,3 78:8,9,14 79:20 79:22 82:9,10 84:3 86:3,15,16 87:25 88:4 89:3 89:4,11,12,17,18 91:3 93:5 95:19 96:4 98:3,8 100:25 101:25 102:13,14 103:2 103:4,17 104:6,8 107:9,10 109:1,2 109:8,10,16,18	110:1 113:4 115:7 116:1,2,16 117:6 118:9,10 119:1 120:12 124:20 126:23 129:22,23,24 131:8 134:17,18 134:24,25 135:4 136:7 137:20 138:3 140:22 141:13 143:1 144:20 146:17 146:18 147:20 149:15 151:3,4 151:11,25 152:1 152:7 153:1,24 154:3,24 156:4 158:14 160:17 160:18 161:22 162:10,12,21 163:5,10,24 167:11,12 168:10 169:7,12 169:13,19 170:16,17,25 171:1 172:16 173:18,21 174:21 175:16 175:23 176:20 176:25 178:8,12 corrective 150:5 150:9,16 correctly 27:11 59:22 133:15 178:7 correspondence 65:21 68:13 127:9,23 128:8	128:18 counsel 2:6,11 4:5,19 5:6 6:13 20:6,7,12 21:13 22:3,6,12,13,16 22:22,25 23:2,4 23:6,7,18 25:13 25:21,21 27:20 27:22 30:7,11,22 30:25 31:4,15,18 35:7 53:25 68:14 78:21 79:1 100:3 106:6 124:25 148:21 149:5 159:4 170:3 174:7,13,18 176:7 178:10 counselor 50:8 count 69:19 county 1:2 4:11 7:19 15:5 60:11 couple 8:5 65:6 97:21 115:20 124:24 141:16 course 22:7 71:20 72:19 100:4 163:14 174:24 176:14 court 1:1 4:10,17 5:5 14:25 15:15 16:19,23 21:6 43:11 97:9 108:14 140:18 158:24 159:20 162:3,10 169:14 170:8 172:7 174:24 176:13	court's 161:24 coverage 26:3,6 26:13,14,21,25 27:3,4 28:5,8,19 29:24 43:10,19 44:7 138:24 139:6,8 143:12 143:23 155:4 172:21 175:10 175:15,21 coverages 28:3 covered 148:5 covil 1:4 3:21 4:6,25 5:19 7:18 9:1,8 10:23 11:4 11:6,11,15,18 13:1,10,18,18,24 42:4,7,25 51:25 55:16,24 56:18 56:24 57:5 58:6 59:11 62:10,14 62:22,25 63:6,8 82:22 83:5,14,19 83:20 84:6,6,13 86:7,14 92:24 93:2 95:17 96:9 96:12,17 105:6 105:25 106:1 107:25 108:18 108:25 109:7,22 111:17,22 112:23 113:25 114:6 115:2,4,25 117:4,12 118:15 119:5,17,25 120:7,11 121:17 124:23 125:4 126:13 127:11

127:25 128:23 129:3 137:6 138:5 140:3,7 145:13,18 150:11,20 155:2 155:4,4,20 156:12 157:8 161:2 163:23 164:1,7,20,24 168:15,16,21,22 169:4,16 170:2 170:21 171:7,8 173:24 covil's 159:3 cp 1:7 4:12 60:12 crain 1:9 13:11 created 35:23 104:5 130:5 174:15 creation 65:19 68:12 creditors 19:24 creek 24:22 25:10,11 criteria 142:14 cross 1:19 4:17 178:18 curious 18:13 81:9 161:3,4 current 6:12 10:14 22:7 34:12 36:11 67:23 72:12,14 72:17,22 73:8 75:4 76:2 77:2 78:7 100:20 101:10 131:21	133:9 currently 6:3 15:17 18:14 20:19,21 21:11 36:14 60:21 69:17 76:13 95:11 101:3,13 101:14 custodial 148:20 148:25 149:6 152:17,23 153:11 custodian 125:13 custodians 149:3 149:4 cut 81:3 cv 137:4 d d 1:5 3:1 4:7 d&o 28:19,20 29:18,24 dana 100:8 103:7,15 167:7 danner 79:8 80:2 89:23,24 90:2,2,7,11,12 90:18 91:1,7 93:10 95:14,22 96:6,21 103:22 103:24 104:10 110:8,9 113:7 116:23 117:23 118:7 127:18 128:3,4 149:9 dash 40:16 137:4 137:4 142:12	149:20 data 163:8,8 database 93:13 93:17,19 174:2 174:15 date 1:19 111:25 123:3 125:6 137:2 141:18 157:1,5 166:7 dated 9:16 178:12 dates 31:17 dating 42:5 day 16:9 129:21 178:12 deal 62:5,7 dealing 61:21 144:17 dec 26:12 83:22 83:25 december 15:4 15:19 60:4,15,18 60:20 61:4 62:1 62:9,19 63:1 79:5 80:1 81:20 82:8 83:7,13 90:8 91:14 92:1 92:23 93:8 98:2 104:1 108:22 109:15 111:23 112:4,9,16,22 115:22 116:12 116:25 117:5 118:6,16,24 119:3 120:19 128:9,22 129:7 129:24 130:7 140:3,8 147:8	149:8,14 155:14 155:14 169:6 170:23 172:25 173:6 decides 139:12 declaratory 15:3 62:21 84:24 144:17 declare 138:23 178:11 deem 152:21 defendant 2:11 5:3 43:18 139:10 140:16 defendants 1:12 defense 159:4 defer 135:19 define 83:20 defined 13:1 55:16,24 56:24 59:12 84:14 106:1 164:24 defines 10:9,23 definitely 92:7 147:16 definition 10:9 10:22,24 11:3,14 13:1 definitions 10:7 degree 7:4 delaware 6:25 delete 95:16 delivery 9:4 department 20:11,14,20,24 24:8,9 25:17,22 27:10,13,15,16 32:4,15 33:22

36:19 37:4,17,19 38:4,6,12,16,22 40:23,25 41:7,9 41:15,24 44:18 45:3 47:4,14,18 48:4,8 51:1 52:3 52:14,18,22 53:6 55:13,21 56:13 56:17,22 57:4,12 57:19 58:5,13,16 58:21 59:3,5,10 60:21,24 61:6 64:2 65:10,13 66:16,19 67:13 68:10 69:1,9,10 69:20 73:12,15 73:16 79:10 80:3 84:6,23 85:7,11 86:19,22 86:24 87:2,6,11 87:20,23 88:5,18 88:21 89:5,9,14 90:3 95:14 97:2 99:10,12 100:5 100:14 102:9 103:20 105:13 105:17 106:25 112:4 113:20,22 113:23 114:5,25 115:5,25 116:18 116:21 117:4,12 118:4,12,15 119:4,16 126:18 126:20,21,25 127:19 129:11 132:12,14,18 133:1,5 134:2,11 134:13,15	135:19 137:19 137:22,24 139:1 139:2,5,12,16 140:21,22 142:4 142:24,25 143:11,12,19,22 144:5,8,15,20 146:6,9 148:21 150:14,14,15 151:3,5,9,14,15 151:23 154:2,7 154:11 156:2,20 162:2,8 164:5 165:4 168:7 170:24,24 171:3 172:20,22,24 175:21 department's 38:25 44:23 47:25 48:15,25 49:5,11 50:19 51:14 52:11 53:22 54:17,20 64:9 65:25 67:16 75:21 76:19,21 99:21 134:14,20 171:7 175:9,20 departments 39:5 64:6 78:1,4 101:17,24 103:5 110:6 depending 41:12 depends 158:4 depo 103:21 104:16 106:2,11 106:15 107:22	deponent 178:5 178:6,9,9 deposed 14:17 107:21 deposition 1:17 3:11,12 4:5,13 5:21 7:17,22 8:10,11,17 9:10 9:15,22 10:2,22 10:25 11:16 12:24 13:3,5 14:20,21,22 15:23 16:20 34:23 37:22 45:15,20 46:1,5 46:9,12,20,24 55:20 65:5,8 66:1,13,24 68:21 69:4 70:22 72:7 72:22 74:2 79:25 80:14 83:10 84:14 89:21 90:20 96:3 97:1 98:16 98:20 99:2,15 100:6,17 102:17 105:14 106:5 107:15,18 108:3 108:5,6 111:11 117:13 122:20 123:22 127:9 137:23 138:4 145:10 149:22 159:24 160:6,13 160:15,20,21 164:15 170:9 171:5 172:4,8 173:8 174:9,10	174:14 175:1,4 176:6 177:18,22 178:8 depositions 107:24 describe 44:22 48:24 described 54:19 66:17 129:15 152:18 description 3:9 designated 14:5 14:14 51:21,23 82:20 125:11 166:23 destroy 77:5,15 95:16 168:21 destroyed 74:15 96:9 117:5 118:16 119:16 119:24 120:6,10 120:21 121:24 125:6 146:2 destroying 53:8 destruction 122:21 143:4 164:19,23 168:14 169:3 details 95:1 172:13 determination 134:5 140:19 determine 35:2 39:14 55:20 83:11 102:12 121:3,6,17 134:15 136:11 137:23

determined 87:24	discoverable 135:8	35:22 39:18,23 40:2 70:17	156:23,24 157:17,18,23
determines 151:24	discovery 3:20 3:23 145:1	77:18 78:5 102:9 109:23	158:12,17 161:20 162:17
developed 100:19,23 101:1 101:6	160:6 172:14 173:2	125:13 133:18 133:19,24 143:3	162:20 163:11 164:6 165:3,10
dictate 143:22	discrimination 151:19,21	143:4 164:18,23 165:13 169:2	168:1,14,21 171:22 176:24
dictates 94:6	discuss 47:9,10 102:19 104:9,15	documentation 98:4	177:4 doing 19:14
different 26:5 47:5 55:11,11,12 70:25 74:14	106:18 143:7 discussed 46:20 47:8 53:20	documents 8:5 23:9,12,12 53:8	122:16 double 75:5,25
78:1 92:18 113:23 140:13 143:7 146:20 165:7	102:16 139:16 discussing 107:14	53:13 54:18 57:9 58:3 64:17	drafted 32:13 34:14 36:1 40:6
differently 112:15 131:10 145:8	discussion 92:9 93:7 95:12 129:9,11 130:14	65:24 66:21 67:11 68:11	drafter 131:21 131:23
direct 13:23 32:1 82:18 105:21 164:16	148:24 152:18 153:13	73:19 74:14,15 77:5,15 80:5,6,9	drafting 32:5,12 32:16,24,25
directions 111:3	discussions 46:6 99:24 113:6	80:14,16,21 81:2 81:10,18 86:6	33:11,25 34:10 47:16,21 49:7
directive 96:20 96:23 98:12	153:18 174:7 distinction 158:6	88:19 92:17,23 93:2,10 94:16	129:22 142:19 drafts 67:22
directives 108:13 161:1,5 170:1,20 172:6	distribution 70:13,14 74:12	95:16 98:19 99:18 101:17,21	duck 24:22 25:11
directly 31:10 134:9	district 4:11 123:25 137:3	102:5,24 106:24 111:16 112:1,8	due 50:7,12 164:11
director 22:14 22:17 27:23	divided 108:8 division 36:25 146:15,20	112:18,23 113:16 115:1,4	duly 1:4 5:9 178:5
29:2,6 30:7,14 30:22 37:16,18 58:13,15 132:1	division's 37:1 146:16 divisional 150:23	116:11,22 118:14 119:25	duties 23:7 27:24 30:6,11
disciplinary 150:4	document 8:13 9:12 13:6 35:6	120:7,11,20,21 121:15,23 122:11 130:3	duty 135:7,11,13 135:22
		134:16 135:14 135:22 139:22 139:23,25 140:2 140:6,9 141:1 146:8 155:3	e e 2:1,1 3:1,8 21:8 21:8 29:4,4 97:11 178:1,1

[earlier - excused]

Page 12

earlier 9:24 19:5 22:24 34:3 59:19 65:9 66:5 67:24 74:9 79:21 82:6 83:15 104:1 114:25 136:23 152:18 154:23 165:20 167:11 172:20 173:3 176:15 early 8:19 9:21 21:18 60:20 echo 94:13 educate 56:5 educational 130:20 effect 32:8,9 36:12,15 51:15 127:1 effort 32:16 35:2 101:8 efforts 46:21 65:20 either 34:16 92:6 171:2 electronic 34:17 63:17 69:12,14 69:15 70:25 71:1 73:6 75:25 77:17 165:4 electronically 37:10 38:14 48:21 66:23 73:1 86:25 ellis 61:13,15,16 61:18,20 159:4	email 3:16 78:16 79:5,7,9,10 80:1 80:2,2 81:5 82:7 83:7 87:22 89:22 90:18,19 90:21,25 91:4,9 91:14 95:14,22 96:6 97:1,4,6,7 97:25 98:5 103:9 104:1 107:9 108:22 110:3 111:23 127:17,21 128:1 128:2,8,11,17 131:3 147:8,13 147:16,17,19,21 148:10 152:5,11 154:13,18 156:22 157:6 159:10 160:16 emailed 91:6 emails 58:3 67:4 78:12,15,18,21 79:1,3,12,14,18 79:23,24 80:2 81:10 89:19 97:3,18 98:7,9 98:10,11,15,18 98:22 99:23 127:22 131:4,7 173:4,9,10,23,23 173:25 emanates 41:15 41:19 embodied 88:10 employed 6:4,5 6:7 18:14 19:10 20:17,19 29:14	employee 75:18 133:21 134:8 144:10 146:25 147:1 148:4,19 151:18 employees 18:20 65:12 133:12 150:24 151:2 employer 10:14 employment 6:11 25:20 31:10 144:10 151:15 endorsements 126:13 ends 13:22 endurance 16:8 enforced 149:18 enforcement 149:17 ensue 150:6 ensure 84:23 ensuring 150:24 151:2 entail 37:19 entails 49:1,3 entered 169:11 169:14 enterprise 24:4 24:5 41:14,19 92:11 96:16,22 entire 20:15 entitled 10:7 35:11,14 40:4 70:17 eric 6:2 103:22 105:2	erin 20:25 21:7,8 21:8,24 76:15 100:8 102:19 103:10 167:7 esquire 2:3,8 essentially 26:12 27:25 33:21 49:13 105:3 119:7,9 estimate 18:16 et 4:9 78:7 evaluating 77:5 77:14 event 128:17 everybody 32:16 132:12 evidence 58:4 80:22 ewert 29:2,4,14 29:23 exact 137:2 exactly 52:14 96:1 97:15 103:7 166:2 examination 5:12 176:4 examined 5:10 example 24:1 41:21 66:4 87:5 102:8,10 143:10 151:1 examples 25:19 exception 30:13 exchange 91:4 131:1 excuse 80:25 excused 177:20

executive 28:3 28:13,15 29:18 29:24 exhibit 3:10,12 3:14,16,17,19,20 3:23 8:6,9,21,22 9:7,24 10:6 13:8 34:5,6 35:5 36:8 36:10,16 38:2 39:20 40:13 41:5 47:22 50:5 63:16 66:6,18 67:25 69:23,24 70:1,4,7,10,16 72:4,5 73:20 74:4,8,20 81:4,5 82:2,6,6,11 83:6 84:14 86:1,15 87:21 88:3 89:11,17 91:13 108:21 109:5,22 109:24 110:19 123:14,15,22 126:9,10 127:3,7 127:8 129:19 133:10 141:17 141:23 145:24 146:21 152:2 154:4 161:10 163:14 164:2 171:16,16,22,25 exist 34:16 39:2 93:3 121:18 existed 32:22 33:14 40:3 47:20 142:20 existence 82:24 108:19 115:15	165:24 exists 34:20 35:3 38:3 39:5 40:3 48:17,20 expanded 110:5 110:12 experience 162:7 experiencing 17:2 explain 41:17 explanation 16:22 exposure 126:1 extensively 54:21,22 extent 39:8 46:13 53:23 88:25 114:24 160:8 f f 178:1 facilitate 159:2 facility 176:22 fact 8:1,12,17 44:1 47:2 95:15 120:10 124:22 135:5 162:6 facts 134:4,7,12 136:10 162:9 fair 32:18 131:20 132:11 169:24 fairly 34:13 153:11 familiar 11:2,19 15:23 26:2	familiarize 12:25 far 55:3 66:15 117:1 119:12 favor 16:12,14 federal 43:11 140:18 feedback 102:23 fifth 1:2 4:10 figure 26:18 81:2 file 49:15,16,17 52:23 54:18,24 54:25 55:4,5 56:10 65:15,16 65:18,25 66:16 67:5,10,11,16 68:9,16,20,24 70:23 79:21,24 85:19 88:10 99:21 114:8,10 114:13,14,16,18 114:20 152:10 158:21 167:8 filed 4:9 12:19 42:14,17 43:11 44:7 83:22,23 84:1 125:24 137:7 138:1 139:6 144:18 152:9 files 51:3 55:12 65:10,13,23 67:8 79:13 83:16,18 83:25 84:23,25 85:4,7,11,14,18 96:13,14,14 106:22,24	113:21 116:24 117:3,24 118:12 118:20 119:5,11 119:17 121:15 138:6 140:25 156:11 171:7 filing 114:15 137:12 138:22 139:9 140:20 financial 24:8,9 finch 11:17,20 11:23,25 12:1 42:5 43:8 123:10,12,24 125:22,25 126:4 136:16,25 155:5 find 49:23 50:1 59:9 68:15 72:5 166:2 fine 54:13 finish 16:13 96:2 firm 4:17 5:2 19:17,19,21,25 20:1,5 61:17 first 8:9,15 9:14 9:18 10:1,9 19:15 23:3 60:14 62:9 63:8 124:21 126:11 129:5 130:4 133:10 141:22 166:4 five 64:16 111:1 111:3 171:11 fleet 28:2 flip 145:9 focusing 115:19

folders 67:8	139:13 143:24	general 6:13	160:13 161:9,10
folks 18:18	144:21 150:18	20:12 21:13	162:14 163:15
105:13 106:6	157:20,23	22:24 23:10	166:9 168:23
147:14	162:11 164:9	104:17 105:11	169:24 176:14
follow 36:7	165:3 169:20	126:15 130:3,6	goes 11:14 26:24
151:9,13,16	175:11	158:10,11 164:8	27:6 126:25
170:23	formal 38:11	generally 25:15	135:6 164:5
followed 56:9,12	130:2,4,11	54:22,23 86:20	going 4:2 9:4
112:12,25	139:20 155:25	87:21 105:8,9	16:9 21:2 40:10
116:14 130:7	156:7,18 175:19	131:10 149:23	62:3 64:19
156:13	formalize 130:15	164:6,10	69:24 71:9,21
following 113:10	formalized	generated	76:13 81:6 82:5
136:14 137:12	38:10	156:24 157:19	90:22 102:22
follows 5:10	format 69:18	georgia 6:21	110:24 118:3,8
force 35:23	forth 150:3	7:12 19:13	119:12 121:22
foregoing	fortunate 16:18	getting 91:17	131:19 137:1
178:12	forward 118:8	111:2	140:13 141:5,15
forgot 138:11	160:13 176:9	give 16:21,22	143:22 145:23
form 15:6 28:11	four 20:13,21	18:16 24:1 43:7	146:11 148:3
28:21 29:20	22:12 27:20	137:1	150:22 154:4
30:1 34:17	fourth 81:17	given 39:23	156:11 158:23
40:18 44:24	front 73:4 81:4	73:19 81:3,4	171:13 176:7
45:5 48:10	82:16 142:11	178:8	goldberg 2:8 5:2
49:19 50:14	166:12	giving 15:11	goldbergsegall...
51:9,16 52:5,25	full 6:1 17:4,9,14	17:14	2:10
53:9,16 55:1	fully 145:1	go 14:4 15:24	good 4:1,23 5:1
57:6,14,22 58:8	function 23:8	16:15 22:20	5:14,15 8:18
58:22 62:16	25:6 131:2	43:25 44:15	10:21 27:9
63:12 66:22	functions 144:6	50:16 63:25	35:25 67:7
69:12,14,15	further 14:4	64:3,18 68:15	110:21 178:4
75:14 84:16	96:11 149:16	69:22,24 70:15	gotten 58:14
85:2,13 87:12,21	fuzzy 99:16	71:16,24,24 73:5	governed 37:1
88:2,8 95:5,18	g	82:5 87:4 88:14	146:16
107:2,5 109:9,17	g 21:5 97:11,11	101:15 110:18	graduate 7:1
110:3,15 117:7	gain 46:4 65:20	110:21 111:2	graduated 7:8
117:15 118:13	gather 46:3	116:7 121:14	19:6
118:17 119:6,19	103:9	122:18,19	graduating
120:13,22 122:1		144:24 154:25	19:11

[granting - hold]

Page 15

granting 3:21 green 2:9 greensboro 2:9 groups 108:9 guaranty 1:11 guess 15:25 26:24 28:12 51:7 74:16 142:22 guidance 79:15 79:15 133:11 142:23 143:14 144:4 guidelines 142:13 143:6,13 143:21 144:4	happened 91:5 happens 158:19 happy 16:4 hard 66:22 67:10 70:24 86:25 121:15 144:2 harrisburg 1:17 1:18 4:14 17:20 17:25 18:11,19 18:21,22 19:3 29:8 45:22 hartford 137:7 head 25:3 105:16 142:7 154:7 172:10 headed 89:14 headquarters 18:3 177:7 hear 54:4 heard 63:8 174:1 held 1:17 6:14 22:5,9 27:19 31:19 52:24 144:15 177:2 help 16:23 100:16 helped 100:22 helping 100:18 high 49:3,4,10 50:17 54:15 hilton 1:17 hired 6:9 historic 90:16 92:12 106:21,24 148:16 historical 88:7 90:13 93:16,20	119:25 120:6,10 120:20 121:17 122:11 historically 120:15 history 65:19 hoefer 161:1 hold 3:14 9:3 32:21 33:1,8,12 34:1,9,16 35:3 35:12,14,16,24 36:1,11,15,18 37:4 38:2,3,11 39:15,19,24 40:4 40:6,13,15 41:2 41:16,25 44:2,16 44:23 45:4 47:3 47:15 48:1,5,9 48:25 49:5,12 50:1,3,19 51:2 51:14,24 52:2,3 52:11,17,22 53:6 53:22 54:16,20 55:7,14,22,23 56:16,22 57:3,12 57:20 58:5,21 59:10 66:5,9,19 67:24 75:13 78:17 79:8,11 80:11,17 81:11 82:11,21 83:4,14 84:5,10,12,18 86:1,4,10,12,17 86:20 87:1,5,10 87:19 89:6,10,16 90:7,13 91:2,8 92:1,5,11 97:3 98:12 104:7	106:19 108:10 108:16,23 109:6 109:12,13,20 110:4,9,11 111:16 112:11 112:16,19,24 113:8,24 114:2 115:21,23,24,24 116:12 117:23 118:7 120:19 126:25 127:10 127:16,24 128:9 128:10,23 129:2 129:14,19 130:1 130:11,11,21,25 132:15,19 133:2 133:12,20 134:3 134:5,17,20,21 135:14 136:3,14 137:11,17,25 138:25 139:11 139:19,21 140:19,24 143:3 143:20 145:25 146:5 147:3,19 148:6 149:8,11 150:10 151:25 152:20 154:6 155:16,19 156:1 156:3,8,9,11 159:23 161:11 161:23 162:3,8 163:7,9,21 165:9 169:5,7,9,15 170:23 172:24 173:6,11 175:9 175:19,21
h			
h 3:8 21:4,5 hand 8:4,20 69:22 82:5 124:1 handed 9:7 70:5 123:21 handful 87:14 87:16 handled 36:25 97:22 126:19 139:15 143:19 144:20 146:15 handler 61:1 handling 144:9 144:13 hang 166:10 happen 87:9 91:4 97:20 160:15 169:22			

holds 25:8 38:18 38:22 39:1,6 58:20 64:10 82:25 97:17 98:1 115:19 116:4,9 128:18 150:17 holly 1:19 4:17 178:18 hope 177:11,13 hopper 11:17,20 12:17 hotel 1:17 hour 110:25 hours 17:8 99:19 house 20:6 39:8 53:25 housed 40:8 90:16 92:13 96:15 houston 2:4 103:23 105:2,5 hr 24:7 25:22 144:11 149:20 150:14 173:16 173:17 huh 16:23 43:2 115:6 hundreds 121:11 hybrid 125:12	identified 65:9 162:16,19 identify 149:3 illness 17:3 125:25 imageright 90:15 91:9 92:14,15,24 93:11,12,16,19 94:3,7,10 95:4 95:15 96:9,15 104:4 112:6 117:24 118:2,4,9 127:20 148:16 165:5 images 92:16 120:20 121:12 imagine 59:4 157:12 imaging 94:16 immediate 161:18 immediately 19:10,12 96:13 131:5 impact 60:2 impacted 41:23 59:23 61:5 implement 128:22 129:14 168:4 implementation 24:15,21 25:1 132:10 implemented 24:7,10 42:1 105:19 129:3,8 149:11 167:17	implementing 24:3 41:1 implements 52:22 implicated 41:23 168:13,20 implications 41:14 important 36:23 146:13 imposed 26:25 inactive 7:13,14 inches 67:9 include 49:17 51:7 53:14 54:25 55:5 67:18,23 110:5 144:16 included 66:8 68:9 74:4 99:20 130:20 147:14 158:21 includes 11:16 68:3 71:13 72:6 74:9 including 4:19 20:12,13,22 73:16 82:23 108:18 122:23 126:14 145:13 163:8 increased 166:1 incumbent 134:14 independently 151:23 indexing 92:16	indicated 5:16 91:6 140:15 178:5 indicates 134:20 individual 7:25 8:11 15:12 42:11 43:15,16 49:22,24 51:17 55:2 110:12 129:21 individually 42:9 individuals 21:22 87:23 99:25 105:15 110:5 128:11 129:10 industry 78:7 130:14,16,17,18 inform 106:23 information 19:9 43:8,12 46:3 56:2,10 65:20 80:7 90:20 96:5 97:23 99:19 100:15 103:9 104:18,19,20 105:6 111:15 112:1,6,8,18,22 116:11 122:22 125:4 126:11 133:13 146:2 148:5,14,15 157:11 158:2 165:5 informed 50:18
i			
idea 12:16 identification 8:7,23 34:7 70:2 82:3 123:16 171:17			

initial 103:9 initially 40:5 165:25 initiate 33:4,25 79:11 97:2 130:10 132:15 initiated 32:24 32:25 33:11 34:10 129:22 132:19 initiation 101:9 injury 125:25 inquire 95:10 inservco's 96:14 insomuch 88:9 instance 149:2 175:7 instances 79:14 149:3 instructing 54:2 86:6 insurance 1:9,11 2:11 4:9 5:4 6:6 6:8 9:11 10:11 10:19 13:11,11 20:7 22:14,17 26:1,15 27:23 28:1,1 29:7,13 30:7,14,23 32:7 49:21 50:25 88:7 93:16,22 104:21 108:24 122:22,23 125:3 126:12 130:17 130:18 137:1,6 140:17 143:18 144:13,25 158:25 159:1,2	161:18,21 insure 28:5 insured 51:5,6 51:12 52:9 93:17,21 insurer 159:4 insurers 68:13 insures 28:9 interacts 103:5 interchangeably 35:19 interested 178:10 interim 170:1,5 170:7,11 internal 37:2 63:17 146:16,19 interview 148:20 149:1 152:17,23 152:24 153:11 interviewed 149:4 interviews 149:6 intranet 40:9 63:17,22,23 64:7 64:11 73:1 inverted 58:15 investigate 117:8 investigation 150:13 involved 23:21 24:14,21,25 33:23 42:24 62:20 126:21 132:21 136:25 139:5 142:19 154:15 170:4	172:13,14,23 involvement 32:5,12,19 33:17 76:16 132:9,16 173:1 involves 41:13 41:13 involving 13:18 13:24 36:25 146:14 158:25 iron 61:22 63:4 92:14 93:3 148:16 176:19 176:21,22 177:6 irvin 2:15 4:15 issuance 25:7 58:4 139:11,19 150:10,10,17,17 155:15,19 169:5 170:22 173:6 issue 86:20 133:2 134:2,8,16 139:20 140:19 151:14 175:21 issued 12:5,6,9 40:22 51:1,25 52:2,4 55:14,23 56:16,22 57:4,12 57:19 58:1 59:10 64:2,5 73:11,15 74:22 75:7 82:22 83:4 83:13 84:5,13 86:13 87:1,6,10 87:20 88:16,20 108:13,17,25 109:6,12,14,14 109:15,21	111:17,22 115:22,24 116:5 116:12 120:19 123:24 124:2,11 124:22 126:13 127:11,24 133:20 134:22 136:14 137:12 137:24 139:1 143:18 146:6 151:25 155:6,25 156:2 159:20 160:3 161:1,23 162:8 165:10 169:4,10,16,25 170:20 171:23 171:25 172:24 175:8,19 issues 23:16 62:8 69:8 144:8,9 154:6 162:2 168:10,20 issuing 156:7 item 146:12,23 148:3,18 160:21 164:17 items 96:22
j			
j 1:9,19 178:18 jean 161:1 job 19:15 23:7 23:19 37:19 john 97:7 joined 20:11,13 21:24,25 23:3 33:15			

joining 22:12 32:22 142:20 judgment 15:4 62:21 84:24 136:11 144:18 judicial 1:2 4:10 julie 103:22 105:3 june 6:9 122:24 123:2 124:4,11 124:23 125:7 136:14 justice 160:3 161:1 169:4,11 170:2,20 171:24 172:1	18:13 21:16,17 28:17,18,24 29:1 29:16 32:13 34:18 35:20 36:1,5 37:9,11 37:12,14,20 38:15,24 40:1 43:5 44:2,3,5,9 44:25 45:3 46:20 47:7 48:17,20 52:13 52:16 55:13 57:18 58:23 59:2 60:24 61:7 63:23 67:9 68:15 72:10 74:21 75:15 79:2 84:9 85:6 86:21 87:9 93:12,15 94:2 95:2,7 104:13 110:20,25 111:20 112:15 114:12,22 115:2 115:3,8 117:1,9 118:14 119:14 119:22 120:5 121:1 122:7 123:2 124:12 125:3,22,23 126:3,24 127:5,6 129:5 131:1 136:13,17 137:11 139:14 139:24,25 140:2 140:6 142:5 147:6,23 152:10 152:15 153:3	154:10,14,18 156:19 157:4,10 157:13,15 158:19 160:7 167:16 172:13 174:14 176:8 knowing 144:2 knowledge 43:12 53:10 55:4,18 64:11,12 74:2 80:4 84:17 86:18 89:6 109:2 114:1 116:2 130:9 150:21 165:21 168:13,16 knowledgeable 59:16 145:16,20 known 35:23 134:12 knows 125:17	le 3:14 40:16,20 41:3,5,8 44:16 47:5 64:1 75:11 75:12,18,22 76:2 142:10,12 learn 8:15 9:18 43:21 learned 174:13 learning 50:3 61:23 left 20:5 124:1 legal 4:16,18 20:10,14,19,24 23:8,10,16,22,24 25:17 27:10 32:4,14,21 33:1 33:9,14,21 40:21 40:22,25 52:3 62:24 64:2 65:10,13,24 66:16,19 67:13 67:15 68:10 69:1,10 73:12,15 75:21 76:18,21 79:15 86:24 87:1,6,10,20,23 98:20,22 99:9,21 100:5,13 125:12 126:21 132:12 132:14,18 133:1 133:5 134:2,14 134:20 136:11 139:1,2,4 140:22 142:4,13,16,24 142:25 143:5,6 143:13,21 144:3 144:4,11 146:6 148:21 150:14
k			
karen 20:25 21:12 23:5 30:24 100:7 167:4 keep 118:3 kick 51:14 52:12 kicks 52:15 54:16 kin 178:10 kind 19:23 23:12 36:3 50:21 62:3 63:17 66:22 69:24 88:1 91:17 97:12 104:19 111:2 137:24 knew 68:18 know 11:6,10,11 12:1,3,9,12,19 15:22 16:7,10		l l 2:3 lack 77:25 lamented 162:23 lane 30:21 late 153:23 law 5:2 6:20,23 7:1,9 19:6,11,15 19:23,25 20:1 61:17 167:23 lawsuit 7:18 29:16 62:20 114:15 140:18 140:20 160:4 lawyers 20:2,3	

154:7 156:2	25:22,23,24,25	84:10,12,13,18	143:7,20 145:13
162:2,7 168:7,8	26:3,5,6,10,11	86:1,4,10,12,14	145:18,25 146:5
171:3 172:22,23	26:23 27:7,11,14	86:17,20,25 87:5	146:14,16,24
175:9,20,20	27:17 28:10	87:10,19 89:6,10	147:3,19 148:6
legislation	31:5,7,9 32:21	89:15 90:7,12,14	149:5,8,11
167:24	33:1,8,12 34:1,9	91:1,8 92:1,11	150:10,11,17
lengthy 32:3	34:16,25 35:1,3	97:2,17 98:1	151:25 152:20
letting 16:15	35:11,14,16,24	104:7 105:7	154:6,16,17,19
level 49:3,4,11	36:1,11,14,18,24	106:1,19 107:25	155:16,19 156:1
50:17 54:15	37:1,4 38:2,3,11	108:4,10,16,18	156:3,7,9,11
lewis 2:3 4:24	38:18,22,25 39:6	108:23,25 109:6	158:25 159:23
5:18	39:15,19,24 40:4	109:8,12,13,20	161:2,11,23
liability 28:3,13	40:6,13,15 41:2	109:22 110:4,8	162:3,8 163:7,9
28:15 29:18,24	41:13,16,21,25	110:11 111:16	163:21,22
52:10 93:21	42:4,7,24 43:5,6	111:17,21,23	164:20,24,24
126:12,15,15	44:1,15,23 45:4	112:11,16,19,23	165:9 169:5,7,9
158:10,11	47:3,15 48:1,4,9	112:24 113:24	169:15,19
165:23	48:25 49:5,11	114:2,6,20	170:23 171:8
license 7:10,12	50:1,3,19 51:2	115:19,21,23,23	172:21,21,24
licensed 6:19	51:14,24 52:1,2	115:24 116:4,8	173:6,10 174:25
licenses 25:4	52:3,11,17,22	116:12 117:23	175:8,19
life 18:6	53:6,22 54:16,20	120:18 126:25	little 17:19 19:8
limitation	55:7,14,16,22,23	127:10,12,15,24	34:2 41:17 43:8
126:14	55:24 56:16,18	128:9,18,23,23	43:21 59:19
limited 52:2	56:22,24 57:3,5	129:2,4,14,19	104:2 106:20
82:23 108:19	57:11,20 58:5,6	130:1,4,11,11,21	131:9 163:15
122:23 145:14	58:20,20 59:10	130:25 131:12	173:3
line 52:8 154:17	59:11 60:6,9,15	132:15,19 133:2	live 15:18 17:20
lines 105:16	60:17,20,22,25	133:14,19 134:3	17:22
157:24	61:4 62:1,14	134:5,20,21,22	lived 18:10
link 75:16,17,18	64:10 66:5,9,19	134:23 135:8,14	llp 2:3 159:5
list 86:24	67:24 70:6	135:16,17,23	located 1:17
listed 106:6	75:12 78:17	136:3,5,12,13,16	45:22
lists 164:11	79:8,11 80:11,17	136:24 137:11	location 4:12
litigation 3:14	80:24 81:11	137:17,25	101:10 148:5,14
10:23 11:4,15,22	82:11,21,23,25	138:25 139:11	148:15
12:4 13:1 23:21	83:3,5,13,14,19	139:19,21	locations 19:2
25:8,14,16,18,18	83:20,22 84:5,7	140:19,24 143:3	104:17

lodge 78:20 long 6:7,14,19 7:14 18:10 19:21 21:15,22 29:23 58:12 70:18 74:16 longer 21:19 158:17 look 10:5 44:21 44:22 64:1 72:4 81:2 87:4 101:24 102:2,10 108:7 110:17,19 115:17 117:11 121:8 124:1 126:9 127:7,8 133:8 136:10 152:2 160:20,21 164:15 165:19 166:9,11 171:11 looked 34:19 97:4 136:20 166:8 173:9 looking 9:23 13:8 68:20 73:21 77:9 133:9 176:9 looks 34:12,13 72:11,14 75:8 124:2 lot 98:18 lots 130:13 louisiana 2:4	maier 1:17 3:3 3:11,16 4:5 5:9 5:14 6:2,3 9:8 14:15 15:24 17:3 34:9 37:12 47:1 50:12 52:7 64:25 65:4 70:5 72:3 82:19 85:23 91:13,18 111:10 123:14 123:23 128:21 138:21 139:25 175:25 177:12 177:18 maintain 19:1 54:18 63:16 68:23 86:6,24 88:6,19 118:13 maintained 52:17 64:6,10 67:13 68:10 101:21 102:12 117:3 118:14 149:12 158:12 158:16 maintaining 112:5 113:20 122:13 167:20 majority 18:20 making 126:18 manage 25:18 25:21 27:10 28:22 managed 144:15 management 29:7 104:20 150:22,24	manages 25:18 27:14 172:20 managing 23:21 25:14,16 27:17 31:4 60:22,25 mancini 105:17 105:25 mandating 160:12,15 manual 3:18 70:12,14 74:10 74:11,13 122:10 manually 121:14 121:23 mark 29:2 marked 8:6,9,22 34:5,6 39:20 50:5 66:5 67:24 69:23 70:1 73:19 82:2,6 83:6 89:11,16 123:14,15,22 127:2,16 151:10 171:16,21 material 135:7 matter 4:6 5:19 5:22 11:7,12,24 11:25 12:1 41:22 42:2,3,3 44:7 59:21 60:1 60:11 61:5 70:13 76:5 123:10,12,24 125:21,21,22 136:24 137:2 139:4,15 142:16 152:1 162:20	matters 11:3,18 11:19 12:17 31:10,11 143:5 144:10,10 145:6 mealy 97:22 mean 10:10 23:23 25:24 41:19 46:18 50:21 76:5,20,20 85:17 93:21,22 94:18 110:21 114:17 119:9 121:11 132:5 135:10 136:8 151:13 152:10 177:3 meaning 11:15 42:18 82:21 means 52:22 meant 66:7 media 4:4 medications 17:7 meeting 149:9 member 132:14 132:18 143:11 148:20 151:14 members 99:9 99:10,11 142:4 142:14 memo 70:12 74:10 166:7 memorialized 153:4 mention 63:5 mentioned 21:22 60:19 62:10 63:3,7 89:21
m			
ma'am 54:5 machine 178:7			

[mentioned - national]

Page 21

96:23,25 99:11	modify 164:18	nagengast 97:8	44:6,17 50:2
99:23 104:25	164:22 165:13	97:24 98:5	51:1,13,25 52:4
106:7,9 128:10	169:2	127:22	52:10 53:7
136:23 154:15	moment 115:20	nagengast's	55:14,21 56:21
154:23 165:2,20	monday 1:15	97:13	57:18,19 59:8
167:11 176:19	monitoring 25:7	name 4:15,23	62:20 63:1,15
merited 136:18	months 6:16	5:17 6:1 21:3	69:6 72:17,23
met 118:24	moravian 7:5,5	29:3 30:20	73:16 78:2
microfiche 92:18	morgan 2:3 4:24	61:20 63:8,9,24	82:22 83:4,12
121:12,16	5:18	89:22 93:17,17	84:11 86:11,13
122:11 157:20	morganlewis.c...	123:11	87:20 88:6
158:3 161:20	2:5	named 43:18	108:17,24 109:4
177:2	morning 4:1,23	44:6 97:7	109:13,14,21
microfilm 92:19	5:1,14,15 176:7	139:10 140:16	111:15,22,25
121:16 122:12	motion 124:14	175:15	112:7,17 115:22
158:3	motions 3:21,23	nancy 2:3 4:24	115:25 116:4,10
microsoft 131:1	15:14	5:17 177:13	116:22 117:3
middle 123:25	mountain 61:22	nancy.patterson	119:4,16,23
137:3	63:4 92:14 93:3	2:5	120:5,6 123:7
mine 46:10	148:16 176:19	national 1:8 2:11	124:3,23 125:2
minute 6:11 27:9	176:21,22 177:6	3:22 4:8 5:3 6:5	126:7,17 127:11
38:1 40:11	move 30:19	6:8,11 7:18 9:10	128:7,22 129:13
64:16 81:7	141:5	10:10,11,17,18	129:25 130:23
90:23 108:16	moved 18:12	11:7,12,17 12:7	131:16 134:1
110:18 111:1,3	20:8 30:14	12:10 13:10,19	135:6,16,24
124:12 152:4	moving 101:10	13:25 15:13	136:5 137:8,13
171:11	146:23 149:16	18:2,14 19:1	138:1,23,24
minutes 82:7	156:22	20:6,10,15,19	139:8,10 140:1
mirrors 80:14	multiple 149:3	21:15,23,24,25	140:15 143:13
missing 133:18	murky 43:21	22:2,6 24:15	143:18 144:25
misspoke 128:14	mutual 1:9 2:11	26:22 27:14	145:6 150:8,15
mister 81:5	4:8 5:4 9:10	28:6,9 29:10,14	154:5,15 155:1,3
119:2	10:11,18 29:12	29:18,25 32:4	155:25 156:6,6
misunderstood	myriad 144:7	34:17 35:18,20	158:15,25 159:1
33:5	n	35:23 36:10,12	161:18,21,23
modification	n 2:1 3:1 21:5	36:15 39:9,15	162:2 163:6
165:11	45:11 97:11,11	40:3,4 41:6	164:22 166:18
		42:23 43:5,17	167:14 168:19

169:1,25 175:7,8 175:14 176:24 177:2,5,7 national's 28:20 35:7 53:6 119:14 135:18 157:22 nature 31:11 nc 2:9 necessarily 138:25 necessary 28:3 96:8 need 16:6,10 41:17 52:13 71:23 72:4 87:24 92:10 110:21 130:14 131:3 137:16 176:15 needed 98:6 neither 178:9 network 97:17 never 39:23 48:14 58:3 113:24 115:14 115:23,24 119:4 124:18 155:25 nevertheless 16:20 172:22 new 24:3 168:8 nolan 103:22 105:5 nolan's 104:12 105:3 nomenclature 40:7	non 150:10,17 nonresponsive 138:8 normally 146:1 north 1:18 4:13 11:22 12:4 17:25 18:23 43:4,9,11,19 44:7 114:19 123:25 136:25 137:3 140:18 notary 1:19 178:4,19 note 36:23 146:13 notebook 70:4 142:11 146:21 166:12 noted 74:9 notes 152:16,22 152:22 153:3,13 153:17,20 171:12 notice 3:10,12 8:10 9:9,15,22 10:22 11:16 13:3,5 35:5 55:17,25 56:16 56:19,22,25 57:3 57:12,20 58:5 82:12,16,19 84:5 84:12,14,18 86:2 86:5,10,12,17 87:24 90:7 106:2 108:6,24 109:6,12,21 110:4 111:11,17 111:21 113:24	114:2 122:20 127:9,16 129:6,7 133:12,20,21 134:21 137:17 137:25 139:19 140:20,24 145:10 150:11 152:3,20 154:6 155:16,20,22 156:1,3,8,9,18 160:20 161:11 161:23 162:8,15 163:7,9 164:16 169:5,8,9,15 172:24 175:9,19 notices 51:24 82:21 83:4,14 86:20 87:1,5,10 87:19 108:11,17 127:10 129:3 131:13 139:21 143:3 162:3 163:16,19 164:1 175:21 noticing 4:22 notify 93:10 131:2 november 1:15 4:2 9:16 155:14 161:8,17 169:11 171:23,24 178:12 number 3:9,14 4:12 8:10,21 9:7 9:24 10:22 13:2 13:13 28:16 34:5 36:9,11,16 36:22 39:21	40:13,15 41:2,5 41:6 44:16 47:22 50:6 52:1 60:12 63:16 66:6,18 69:19 70:8,10 72:6 74:4,8 75:11,12 75:22 77:25 82:11,19 83:6 84:15 87:22 91:13 99:1 108:15,22 109:5 109:23,24 111:12 112:19 116:8 122:18,19 123:14,23 125:3 127:3,8 128:20 129:19 133:10 137:4 145:10 151:10 152:2 164:2,17 166:14 numbered 70:16 74:24 77:10 numbers 35:7,9 69:25
			o
			o 45:11 oath 14:23 object 117:15 119:19 objection 15:6 28:11,21 29:20 30:1 39:7 40:18 44:13,24 45:5 46:13 48:10 49:19 50:14 51:9,16 52:5,25

[objection - open]

Page 23

53:9,16,23 55:1 57:6,14,22 58:8 58:22 62:12,16 63:12 75:14 78:21 84:16 85:2,13 87:12 88:8 91:16 93:23 95:5,18 107:2,5,11 109:9 109:17 110:15 117:7 118:17 119:6 120:13,22 122:1 138:7 139:13 143:24 144:21 150:18 162:11 164:9 169:17,20 175:11 obligations 138:24 145:2 obtain 7:3 occasions 47:19 occurred 91:11 occurs 131:4 october 137:7 140:17 141:19 142:3,6 offense 177:13 office 18:21,23 19:2 29:10 offline 81:25 oh 33:5 47:10 68:11 76:20 102:2 152:15 157:12 175:17 okay 6:10 8:20 10:1 11:2,9,14 12:6,23 13:8,12	14:2 16:11,12,17 17:16,24 18:13 19:8 21:10,21 22:5,15,20,23 23:2,15,17,23 24:13,24 25:5,23 26:2,8,11 27:3,9 27:13,16 28:8 29:16 30:5,22 31:13,21 32:3,11 32:18 33:3,7,10 33:25 34:4,15 35:5,14,22 36:7 37:25 38:7 39:4 39:23 40:2,10 41:11 42:7,23 44:11,15 45:8,13 46:8,11,15 47:7 50:24 51:12 52:7,16,20 54:25 56:15 60:7 61:23 63:15,21 65:23 66:14,21 67:3,21 68:3,6,8 68:15,19,23 69:11,16,21 70:10,20 71:1,5 72:3,15,25 73:3 73:24 74:6,19 75:3,10,21,24 76:4,23 77:12 78:4,10,18 80:9 80:20 81:21,24 81:24 83:3,18,24 84:9,21 85:6,17 85:20,25 86:1 87:4,9,16,19 88:1,5,12 89:13	90:10,17,22 91:12 92:8,21 93:1,6 94:11,21 95:9,12 96:5,17 96:20 97:19 98:4,15,21 99:20 100:2 101:1,5,23 102:4,8,15,19,25 103:11 104:23 105:12,24 106:17 107:21 108:2,6 110:2,11 111:13 112:3,14 113:1,5,12,18,22 114:13,17,24 115:10 116:3,7,9 116:15,20 117:1 117:11 118:1,4 118:11,22 119:2 119:12,14 121:14 122:9 123:8 124:10,16 124:18,21 125:1 126:3,6,24 127:7 127:15 128:16 128:20 129:4,16 129:18 130:6,10 130:23 131:9,16 132:3,6,17,20,23 132:24 133:4,6 133:17,25 134:10 135:1,5 136:2,8,19 137:21 138:7,21 139:6 140:10,11 140:12 141:7,8 142:8,18 143:2,6 143:10,20	144:12,16,24 145:11,20,23 146:5,11,19,23 147:6,13,18,23 148:1,3,13,18 149:6,16,25 150:3,22 151:5 151:12,17,19,22 152:2,12,24 153:2,5,15,20,25 154:4,13,25 155:13,24 156:5 156:13,18 157:10 158:1,6 158:10,23 159:8 160:2,10,14 161:16 162:1,6 162:14 163:1,5 163:12,25 164:4 164:15 165:6,15 165:17 166:3,7,8 167:6,9,13 168:12,18,23 169:9,14,24 170:4,14,18 171:2,10 172:12 172:17 173:3 174:1,12,20 175:6,18,24 177:9 once 50:20,25 51:6 52:21 53:4 54:16 131:2 ones 32:18,24 98:21 online 71:14 open 85:19 159:1

opened 114:7,10 114:20 operate 151:6 operates 151:23 operating 157:8 operational 168:9 operations 58:16 opposed 133:20 order 3:20,23 37:22 66:23 69:24 79:3 92:10 98:16 99:1 100:16 102:16 104:15 105:13 106:5 159:8,19,22 160:12,14,16 161:5,8,16,17,24 162:3,10 163:2 169:11,15 171:23,25 ordered 158:25 orders 13:4 108:13 159:20 160:2,25 161:4,8 169:3 172:1,6 organization 23:9 25:19 28:2 28:4 41:6,24 43:22 65:22 86:6,14 88:17,20 110:13 131:14 142:15,21 143:15 156:7 157:8 original 34:15 35:3	originally 18:5 34:14 36:1 167:17 outcome 178:10 outlined 163:8 outside 17:23 25:21,21 36:19 41:24 59:23 60:2 61:5 68:14 132:15 134:11 142:24 144:8 148:21 149:5 151:22 174:12 174:17,18 overlap 99:17 override 145:25 146:7 overseeing 41:1 103:3 overseen 52:18 p p 2:1,1 45:11 p.m. 177:23 package 24:4,6 page 3:9 10:6 70:15,16 74:19 74:20,24 76:25 77:10,10 108:7 141:17,20,22 148:3 149:17 166:14,16 pages 70:18 74:3 77:1 paper 34:17 37:8 73:18 157:20,23 161:19 176:23 177:3	paragraph 36:23 145:23 154:25 156:23 158:24 161:11,12,13,15 161:16 162:14 163:9,12 paralegal 100:13 103:8 parameters 104:4 parson 37:22 45:9,13,18,25 46:4,12,19 47:2 47:12,24 48:23 49:10 50:18,24 52:20 53:21 54:11,19 56:15 57:2 58:12 83:24 99:4 119:2 129:12 138:18 157:11 159:14,16,19 163:2 parsons 37:13 37:15 47:17 54:1 56:8 59:12 59:17 83:16 84:4,21 118:19 138:5 153:19,21 155:12,22 156:10 157:3,4 159:13 part 73:21 80:24 101:2 130:25 147:13,15 155:23 participate 148:20	particular 9:17 93:20 102:11 139:9 159:22 167:3 168:9 parties 15:15 partners 29:12 parts 74:3 party 13:24 42:24 43:6,18 44:6 137:7,12 138:1,19,22 140:16 155:2 175:15 178:10 pass 176:1 passed 58:17 passing 62:3 63:4 154:22 163:3 patterson 2:3 3:4 4:23,24 5:13 5:17 8:4,8,20,24 9:3,6 14:2,11 15:9 21:9 28:14 28:25 29:22 30:4 34:4,8 39:12,13 40:19 42:10,15,20 44:14 45:2,7 46:15,17 48:11 49:20,23 50:9,15 51:11,18,23 52:6 53:3,12,19 54:2 54:6,13,14 55:6 55:8 57:10,16,24 58:11 59:1 62:13,18 63:14 64:15,24 65:3 69:21 70:3 71:5

71:11,15,20 72:2 75:20 78:22 81:16,21,24 82:4 82:14,17 84:20 85:5,16 87:15 88:11 91:19,22 91:24 93:24 95:8,20 107:3,8 107:12 109:11 109:19 110:16 110:20,23 111:1 111:9 117:10,18 117:25 118:21 119:8,21 120:17 120:25 122:3 123:13,18,20 125:14,16,20 138:7,9,13,17 139:17 141:8,14 141:22,25 142:1 143:25 144:23 150:19 161:13 161:14 162:13 164:14 169:18 169:23 171:10 171:20 175:13 175:24 177:11 pausing 79:12 pavlish 11:17,20 12:17 penalty 178:11 pence 20:25 21:24 76:15 100:8 102:20 103:12 167:7 pending 7:19 12:21 60:11 62:24 123:25	136:24 137:3 160:3 penn 3:21 6:5,8 6:11 7:18 10:10 10:17 11:7,12,17 12:6,10 13:10,19 13:25 15:13 18:2,14 19:1 20:6,10,15,19 21:15,23,24,25 22:2,6 24:14 26:22 27:13 28:5,9,20 29:10 29:14,18,24 32:4 34:17 35:6,18,20 35:23 36:10,12 36:15 39:9,15 40:3,3 41:6 42:23 43:5,17 44:6,17 50:2 51:1,13 52:4,9 53:5,7 55:14,21 56:20 57:17,19 59:7 62:20,25 63:15 69:6 72:17,23 73:15 78:1 82:22 83:4 83:12 84:11 86:11,13 87:20 88:5 108:17 109:4,13,14,21 111:15,22,25 112:7,17 115:22 115:25 116:4,10 116:22 117:2 119:4,14,16,23 120:4,5,11 123:6 124:3,22 125:2	126:7,17 127:11 128:7,21 129:13 129:25 130:23 131:16 134:1 135:6,16,18,24 136:5 137:8,13 138:1,23,23 139:8,10 140:1 140:15 143:13 143:18 144:25 145:5 150:8,15 154:5,14 155:1,3 155:25 156:6,6 157:21 158:15 158:25 159:1 161:18,21,23 162:2 163:6 164:22 166:17 167:14 168:19 169:1,25 175:7,8 175:14 176:24 177:2,5,7 pennsylvania 1:8,18 2:11 4:8 4:14 5:3 6:21 7:9 9:10 10:11 10:18 17:23 18:1,9 20:8 51:25 108:24 people 18:14 20:2,17 99:1 131:13 142:24 peoplesoft 24:8 24:11,12,13,16 25:5 performed 159:3 performing 144:5	period 22:9 31:14 32:3 78:6 88:22 94:14 101:19 102:10 102:12,13 153:23 158:1 165:20,21,22 167:21,22 168:1 periodic 65:21 168:2 periodically 113:15 167:21 periods 75:19 101:16,20 102:3 perjury 178:11 person 15:21 30:15 58:19,24 58:24 59:12 97:7,24 102:25 104:25 116:3 132:8 142:2 162:16 170:15 personally 68:23 122:9,14 persons 142:2 pertain 38:17 173:23 pertained 12:17 pertaining 145:6 152:17 154:2 168:14 pertains 51:21 114:14 peter 1:5 4:7 ph 130:13 philadelphia 18:9

[phrased - possible]

Page 26

phrased 57:8 61:7 physical 19:2 165:3 place 78:17 79:8 91:2 92:11 96:23 97:17 98:13 104:8 106:20 113:8,16 117:23 118:8 122:24 130:1 146:8 166:5 178:5 plaintiff 1:6 2:6 4:6 plane 176:16 planning 15:17 15:20 platforms 24:25 pleas 1:1 4:10 please 5:6,25 16:3,7 71:17 117:18 129:18 141:8 pni 3:15,18 35:8 35:8 70:17 72:11,16 73:8 74:20,25 75:6 76:1 166:15 point 16:1,7 24:14 41:22 48:24 59:22 60:1 61:4 88:20 policies 26:1 28:16 32:5,7,8 32:11 33:21 39:15 40:8 50:2 52:2,3 55:7,22	56:23 57:20 63:16 64:1,1,5 66:8 67:19,22 76:19,21 88:7,22 90:14 92:12,13 93:16,20 94:1,2 94:6,8,15 95:3 104:21 121:18 122:24 126:12 126:16 142:9 143:18 144:14 145:13,17,21 146:7 154:16 155:2 156:23 157:7,18,24 158:10,11 159:2 164:11,13,19 165:14,23 175:20 policy 3:14,17 24:22 26:15 27:2 28:16,18 32:6,13,15,20,21 32:22 33:1,1,3 33:12,12,14,18 34:1,10,16 35:3 35:15,16,19,24 36:2,11,15,17,19 36:24 37:4 38:2 38:3,8,9,11 39:24 40:4,6,15 40:15,22 41:2,5 43:23 44:16,16 44:20,23 45:4 47:3,13,16,19,22 48:1,5,9,15,25 49:7,12,14,18,21 50:4,8,10,11,19	50:23,25 51:3,6 51:13 52:10,12 52:14,17 53:5,14 53:22 55:15 61:9 64:9 65:20 66:9,9 67:2 68:12 69:5,6,8 69:11 70:11,14 70:18,21,24 71:2 71:13 72:6,18,23 73:9,11,14 74:10 74:11,13,22 75:7 75:12,22,22 76:7 76:10,12,24,25 77:2,3,4,13 79:13,16 80:25 81:12 88:16,19 89:6,10,16 90:13 92:23 93:2 96:14 99:22 100:19,20,23,24 101:9,16,24 102:11 103:16 104:14,20 105:10,18,22 108:12 119:25 120:7,10,20,21 121:8,9,11,22 122:10,22 125:3 126:25 129:20 129:22 130:1,2,4 130:11 131:19 131:21,22,23 132:10,13,13,24 133:8,19 134:20 135:6,10 138:24 139:9 141:16 142:3,12,18	143:2,7,21,21 144:2,14,19,24 145:7,24 146:1,6 146:14,24 148:19 149:17 149:18,19,21 150:1,6,25 151:3 151:6,9 155:3 156:24 157:18 157:22,22,23 158:2,2,5,8,12 158:16,16 161:20,20 163:13 164:6,6 164:19,23 165:12,13,23 166:4,12 169:3 171:4 175:9 176:24 177:3 policyholder 53:5 93:17 139:7 144:18 policyholders 135:18 position 6:12,14 20:4 22:3,7 23:19 27:20,21 27:22,24 29:5 30:12 31:19 62:6 97:13 104:12 positions 22:5,10 positive 28:23 72:13,13 94:13 possession 102:6 121:10 possible 93:15 120:9,14,15,20

120:23,24 possibly 107:4 121:5,19 122:2 posted 69:7 72:9 potential 133:14 134:23 135:15 135:17,23 136:4 potentially 27:1 28:12 practice 6:20 19:16,23 55:15 78:7 practices 50:2 57:21 preceding 161:15 precise 166:2 precisely 18:15 21:17 30:9 43:14 55:10 predecessor 58:17 preparation 10:25 12:23 14:22 34:22 45:15,20,25 46:5 46:19 55:19 66:1 69:4 70:22 72:7 74:2 78:11 78:12 83:10 89:21 95:25 96:3 106:15 107:15 108:3,4 117:13 124:25 137:23 138:3 149:5 159:24 170:5,8 171:5 172:4,8 173:7	174:3,11,13,17 175:1 prepare 37:22 46:21 65:4,7 66:24 68:21 79:3,25 90:20 98:16 99:1 100:6,16 102:17 103:21 104:16 105:14 106:5 161:6 167:2 175:4 preparing 72:21 97:1 99:14 106:11 136:20 149:22 present 2:14 4:19 93:3 168:19 presented 79:4 preservation 131:6 163:16,19 164:1 preserve 85:7,11 88:16 97:25 98:6 111:15,25 112:8,18,22 114:6 116:11 133:13 134:16 135:7,12,14,22 139:22 161:19 163:7 165:10 preserved 57:9 83:17 84:2 85:4 114:4 119:10 120:16,24 131:3 137:16 138:6 139:23 140:3,8,9	141:1,2 156:12 163:11 preserving 113:21 114:3 president 59:5 pretty 30:13 93:9 101:10 103:13 104:11 150:2 161:7 prevent 17:4,8 53:7 preventing 17:13 previously 108:21 primarily 32:23 primary 131:23 132:1 principal 131:21 print 71:1 printed 75:16 79:16 printout 71:14 prior 9:23 32:22 42:25 62:19 63:1 68:20 111:20 117:5,9 118:16 120:18 129:24 130:7 131:22 140:3,8 142:20 156:25 157:19 159:18 174:10 175:3 private 19:16 privilege 46:14 53:24 154:8 privileged 44:4	proactive 23:22 23:24 probably 21:2 37:13 46:2 63:8 99:19 176:8 problem 91:23 procedure 3:14 32:14,15,20 35:12,19 36:15 36:17,20,22 37:5 38:12 39:20 40:14 41:2,25 44:21 45:4 47:3 47:14,20 48:5,9 48:15 49:1 53:7 54:20 64:10 66:5,19 67:24 75:13 89:7,10,16 94:5 130:5 146:1,12,24 procedures 32:6 32:8,11 39:15 40:8 51:14 53:22 54:17 55:22 56:23 66:8 146:7 proceed 5:7 process 15:23 36:18 38:7,10 47:18 49:3,6 51:2 52:11 56:9 56:11,12,13,14 58:21 59:3 76:11,13,14,17 80:5,7,10,12 81:11 95:11 97:22 100:21 102:21,22 104:3

104:5 106:21 107:7 126:25 130:15,25 131:4 132:22 136:3 139:20 140:25 164:8 processes 38:6 38:17,21,25 39:6 137:15 procure 28:1 produced 35:6 50:13 70:6,7 72:5,10 73:5 76:6 80:18 81:13 145:13,17 147:24,25 producing 80:5 product 152:21 production 80:6 80:13,17,21 81:18 98:19 99:18 147:24 172:11 professional 1:19 136:12 program 28:16 28:23 118:5 130:24 programs 24:20 24:24 130:19,20 131:11 project 23:25 projects 24:2 promoted 22:11 22:13,21 23:18 27:22 30:10 90:5	promotion 22:24 prompted 130:10 142:16 promptly 146:25 proper 63:24 property 1:10 93:22 protocol 38:7 44:21,23 47:4,14 48:15 49:1 50:4 86:21 94:5,25 95:2,7 146:20 protocols 37:2 38:6,10,17,21,25 39:5 146:17 protopapas 1:5 4:8 provide 16:24 82:15 105:5 133:11 143:14 144:4 147:8 148:4,7 155:4 173:19 176:12 provided 39:19 50:5 71:6 160:12 provides 142:23 providing 17:4,9 39:9 public 1:19 178:4,19 pull 164:12 pulled 173:8 purchased 131:12 purge 49:15 54:23 93:10 96:16 161:19	165:2,4 167:21 purged 56:10 57:9 84:3 85:1 85:15 96:9 106:25 113:17 116:25 117:5,9 117:12 118:9,16 118:20 119:4,17 119:24 120:6,10 122:6 125:6 146:2 158:22 164:12 purging 56:14 77:18 96:13,21 104:3 106:21 107:7 112:5 113:10 115:1,3 115:13,14,14,17 116:19,21 122:22 127:20 146:7 164:5 165:14,19 169:8 purpose 77:3,12 102:1 133:11 135:5 purposes 7:22 11:15 123:22 131:6 pursuant 3:12 9:11 55:21 98:1 put 80:4 81:14 87:24 92:11 117:23 118:8 131:5 137:17 157:5 putting 74:17 78:17 79:8 81:18 91:1	97:16 q quash 124:14,17 question 8:18 13:20 16:1,13,16 35:25 36:6 39:10 50:17 54:5,7,12 55:9 57:2 59:17 67:7 80:19 91:17 96:2 112:13,17 115:18 117:17 117:19 118:2,11 128:24 129:6 131:9 132:25 138:10 140:5,10 140:14 141:3,6,9 144:1 153:6 165:8 questioning 52:8 questions 71:16 77:22 141:16 168:23 177:10 quick 10:5 171:21 quickly 33:6 168:25 quite 9:20 quote 10:23,23 159:1,5 quoted 160:16 quoting 159:9 r r 2:1 29:4 45:11 178:1 raised 168:20

random 166:17 166:24 167:13 167:16,18,23 168:2,6,12 randy 105:17 range 18:16 reaching 91:7 read 54:8 117:18 117:20 133:15 138:13,15 141:10 readable 16:24 ready 66:12 111:2 real 10:5 171:21 really 103:19 112:13 132:23 162:22,24 165:7 165:8 170:14,15 173:1 reason 16:2 78:6 160:19 172:19 reasonably 135:2,3 136:1,4 136:9 reasons 40:8 158:20 recall 30:9 58:17 59:24 63:2 68:8 92:8 93:6 98:23 98:24 101:12 102:18 104:11 107:13,16 123:8 123:10 148:13 160:11 172:9 receipt 127:1 136:15 147:9	receive 100:15 159:22 163:1 received 107:9 112:11,25 113:2 113:24 114:1 147:1 152:5,19 156:19 163:17 163:20 164:1 receiver 1:5 4:7 4:25 5:18 8:16 9:1,8 62:22,25 70:7 84:1 receiver's 15:3 receives 133:21 receiving 133:12 159:19 162:15 recess 64:21 111:6 171:15 recipients 70:12 74:10 82:24 108:20 recognize 70:7 reconfirmed 48:7 record 4:2,21 5:16,20 6:1 9:1 14:4 43:23 54:8 60:8 64:18,20,23 65:11,14,15,25 66:8,16 67:2,5 67:15,16 68:7,9 68:20 69:4,5 70:11,14,18,20 70:23,24 71:2,8 71:10,13,16 72:1 72:6,17,23 73:8 73:14 74:22 75:7,19,21 76:9	76:12,24 77:13 78:5 79:13,16,18 79:23 80:12,25 81:12 99:21,22 100:20,24 101:9 101:16 102:2 104:14 105:18 105:22 108:11 111:4,8 117:20 125:10 138:15 141:10 142:11 153:6 163:13 165:23 166:4 167:8,20 171:4 171:14,19,22 177:15,16 178:8 recorded 4:5 178:7 recording 102:23 records 3:17 61:9 74:10,11,13 77:2,3 80:17 90:14,16 92:12 114:3,3,6 115:15 121:8,9,12,16,22 122:5,10 124:23 136:15 145:6,12 145:16 148:17 152:17 171:7 refer 10:17 60:7 60:8 77:7 126:8 reference 63:11 124:15 163:13 referenced 5:20 11:3,20 25:6 82:7 154:17 159:23 161:16	170:12 references 11:10 11:21 160:25 referencing 81:23 referred 28:19 35:15 36:2 40:14 67:6 referring 10:18 18:7 24:11 71:3 73:21 111:10 refers 142:8 regard 106:18 118:11 170:22 regarding 38:21 39:6 46:21 64:10 74:11 84:6 90:7 112:5 113:24 127:10 127:23 128:9 144:18 149:8 150:20 155:15 157:22 169:16 regardless 52:21 120:1,2 162:9 registered 1:19 regularly 62:5 reifsnyder 3:16 46:7,23 60:19 61:11,17 62:5,7 63:3 78:17 79:6 79:9 80:1 81:6 82:8 83:7 89:15 90:8 91:6,15,25 92:22 93:7 94:23 95:13 96:7 106:7,10,18 106:23 107:14

108:23 109:16	120:7,11 124:23	reported 23:4	81:17 90:19
109:25 110:2,13	125:4,25 127:11	30:24 31:22	98:19 126:18
113:2,7 116:17	128:18 140:3,7	reporter 1:19	142:15 165:10
118:7 122:12	142:9 155:3,20	4:17 5:6 16:19	requested 12:12
125:11 128:2,2	156:12,24	16:24 21:6 54:9	155:2 178:9
129:9 147:7	157:18,23 158:2	97:10 117:21	requests 15:15
148:7 149:7,10	158:12,16 160:5	138:16 141:11	99:17 168:4,4
151:1 152:3,6,19	161:2,20 162:20	reporting 31:13	172:11
153:18 154:14	163:11 164:6	31:16 37:2	require 88:2
154:18 155:10	168:21,22 169:4	146:17	146:1
159:10 162:19	170:2,20 171:7	reports 32:1	required 167:15
163:3,19 165:2	172:18 176:24	105:21 170:1,5,7	requires 50:19
reifsnyder's 46:8	177:3	170:12,15	102:11
79:12 89:3 97:3	relates 25:7	repository 159:2	research 23:16
98:6,9 107:17	131:7 170:18	represent 4:24	65:20
164:5 173:4,23	relating 93:2	5:3 73:3 124:3	researching 23:9
reinsurers 68:14	relation 98:19	174:22	23:11
related 11:18	133:13 172:10	representative	resembles 73:20
44:7 46:6 49:15	relevant 130:3	8:2 9:19 12:25	respect 50:7,12
51:3,25 52:23	141:1	14:6 15:13	127:24 128:23
53:8,13 54:18	remind 166:3	36:10 37:23	129:3
55:15 56:23	reminded	40:12 45:16	responded 124:3
62:10 68:12	100:19	49:25 51:19	176:15
80:17 81:11	remotely 4:20	56:20 57:17	response 63:10
82:22 83:5,14,17	rep 43:16 66:2	59:7 65:5,8	161:24 162:10
83:18,25 84:13	66:13 136:21	78:13 83:11	164:19 169:3,10
84:23 85:8 86:7	140:1 159:25	84:11 86:11	170:1,19
86:14 90:14	171:6	99:14 109:4,5	responses
92:23 93:20	repeat 13:20	117:2 119:15,23	172:15
95:16 96:8,17	16:3 54:6	120:4 125:1	responsibilities
98:22 103:15	117:16 128:24	128:7 133:25	23:19,20 25:12
105:6 108:18	138:12 140:5	145:5 156:6	30:18 97:16
111:17,22	141:9	171:3	responsibility
112:23 114:6,16	repeated 47:18	represented 7:21	30:3 31:3 41:1
114:17 115:1,4	rephrase 91:20	representing	88:6,15,18,22,24
115:25 116:22	report 21:10	4:15 5:18	106:25 122:13
117:4,12 118:14	23:3 30:23 31:1	request 8:15	132:9 140:21
119:5,17,25		80:6,13,16,21	

responsible 58:24 59:2,5 77:21 97:25 103:1 132:12 139:8 150:24 151:2 171:4	103:16 104:14 105:18,22 108:12 142:12 143:4 145:7,12 145:17 146:17 146:20 157:22 158:8 163:13 164:18,23 165:13,23 166:4 166:11 167:8,20 169:2 171:4	96:3 97:1 98:16 98:18,23 107:24 124:18 141:18 142:3 149:21 161:5 167:8 170:7 172:2,7 174:25 175:3	86:18 89:19 90:4 92:25 96:25 99:4,7 100:4 102:15 104:9 106:12 113:9 116:5 123:21 128:6 131:19 133:6,8 139:18,24 141:15 145:5,19 151:21 152:8,12 152:16 153:12 157:17 159:18 160:19 161:9 166:14 167:1 168:11 170:14
responsive 81:10 81:19	return 146:25	reviewing 23:9 23:11 76:18 80:7,10 99:19	
rest 22:16	review 10:24 13:9 25:3 32:21 33:1,9,14 65:14 66:4,10 71:18,23 72:22 74:1,3 78:15 79:24 99:20,22,22,23 101:16,19 103:3 107:17,22 122:10 134:4,7 142:13,15,17 143:6,13,21 144:4,11 146:25 159:3 160:2 168:3,6 171:6 178:9	reviews 76:13 103:16 144:10 166:17,20,24 167:9,10,13,18 168:3,12,18	
result 79:9 80:6 140:20 164:23 169:10 173:5		revising 33:17 33:23	
resume 94:16		revisions 132:4 142:5	rights 19:24
resumed 94:18		richland 1:2 4:12 7:19 15:5 60:11	risk 28:6
retain 77:5,14 168:1,21		right 5:25 7:16 8:4 9:5 10:5,16 10:21 14:17 15:2,10,17,22 16:6,10,16 17:2 18:10 19:1 22:3 25:5 26:20 27:19 30:17 31:7 33:20 39:18 48:12 50:8,10 51:15 62:15 64:5 67:18 69:3 74:1 76:11 77:6 78:25 80:15,23 81:1,8,19 86:2,9	road 2:9
retained 52:24 74:16 120:2 173:5,10			robert 4:15
retaining 167:25			role 25:16 105:3
retains 176:23			room 16:19
retention 3:17 37:2 43:23 65:11,14,15,25 66:9,16 67:2,5 67:16 68:7,9,20 69:5,6 70:11,14 70:18,20,23,24 71:2,13 72:6,18 72:23 73:8,14 74:10,11,13,22 75:7,19,22 76:10 76:12 77:3,3,13 78:6,7 79:13,16 79:19,24 80:12 80:18,25 81:12 99:21,22 100:20 100:24 101:9,16	reviewed 12:14 13:3,15,17,22 38:20 65:10,24 66:12,15,18,23 67:2,4 68:19 69:3 70:21 72:7 73:7 78:10,12,16 78:19 79:3 89:20 90:18,25 91:10 95:24		roughly 99:13 round 147:24 routine 122:21 routinely 125:5 rules 15:25 run 22:8 168:24
			s
			s 2:1 3:8 21:4,5 45:11 97:11 s.c.r.c.p. 3:13 9:11 sam 1:9 saved 173:20 saving 173:22

saw 9:17 75:12 160:7,7,14,16 saying 76:23 115:13 154:14 165:17,18 says 36:17,22 39:19,24 77:2 111:14 115:18 122:20 129:2 133:11 141:18 144:2,25 145:12 145:24 146:24 148:19 149:18 150:23 158:24 scanned 92:17 94:3,7,9,9,12 95:3 scanning 94:15 94:16 schedule 165:14 165:19 168:3 scheduled 166:20,24 167:9 168:18 scheduling 8:11 46:7,8,12,24 school 6:23 7:1 19:6,11,15 scott 1:17 3:3,11 3:16 4:5 5:9 6:2 139:25 177:18 se 139:21 search 35:2 93:15 122:10 searchable 93:12 second 9:3 70:16 74:20 145:23 154:25 166:10	section 10:6 40:9 77:4,12,14,17,20 77:21 141:17 142:8 144:25 145:24 146:12 146:13 149:17 150:23 secure 49:14 securing 130:3 security 97:23 see 9:14,22 10:7 10:12 34:19 35:9,12 40:16 48:14 51:20 55:2 70:17 73:18 77:24 83:1 87:21 88:3 109:22 111:18 122:25 126:10 127:13 135:8 145:3 146:3 147:4 148:22 159:6 161:7 165:17 166:12 166:16 177:11 seek 56:2 seeking 98:20 126:7 138:23 seen 8:12 9:12 58:3 86:4 124:8 142:23 144:3 159:18,19 segalla 2:8 5:2 semantics 140:24 seminars 130:20 send 103:8 128:4	senior 22:22 30:11,25 31:4,14 31:18 sense 167:18 173:1 sent 78:16 79:5 81:6 82:8 84:18 84:19 86:5 90:7 91:13,25 92:6 97:7 109:24 112:16,19 128:2 128:14 131:13 147:7,16,19 152:3,6 154:11 163:7 sentence 158:23 sentences 146:12 separate 37:4 44:20 45:4 47:13 48:9 50:3 50:4,11 68:2 79:23 97:4 served 11:16 123:6,9 server 131:1,5 service 23:22 services 23:24 88:25 89:1,2,3 89:13,14 set 15:3 134:12 136:10 142:14 150:3 sets 95:2 133:19 166:13 shaivya 20:25 21:4,25 shanaberger 100:8,10,11,11	103:8,15 167:7 shares 105:21 sharon 30:21 sheets 23:16 short 19:22 94:14 shorthand 178:7 shortly 147:18 166:1 show 34:4 74:14 81:6 121:23,24 123:13 sic 4:11 side 124:1 signature 178:18 significance 123:2 157:5 similar 23:20 34:13 88:2 143:20 simply 158:21 singh 21:1,4,25 sir 7:16 11:19 sit 11:8 43:1 44:9 163:18 sitting 57:18 117:1 119:22 140:1 six 6:15 skip 148:18 slew 68:11 small 19:25 20:1 software 24:3,4 24:5,7,10,15,20 24:22,24 25:3,6 25:10 90:15 92:16 94:12 118:4 130:24

131:11 solutions 4:16,18 someplace 64:2 133:17 soon 114:7 sorry 17:12 23:18 33:5 65:2 69:13 77:7 91:19 99:24 101:2 120:2 122:18 127:8 141:20 161:13 166:15 171:24 173:17 sort 22:8 108:8 151:22 sought 126:11 sounds 97:12 168:6 172:12 south 1:1,10 7:19 15:5,19 62:21 83:23 84:1,25 114:15 160:4 177:11 speak 45:13,18 94:23 99:7 103:20 169:21 speaking 25:15 86:20 164:7 specific 96:12 105:24 143:17 specifically 57:3 94:24 105:6 106:19 107:14 107:16 108:10 116:8 164:16 166:10 170:22	specificity 162:24 speculating 169:22 spell 21:2 29:3 97:9 spelled 97:11 spend 99:13 spoke 46:18 56:6 65:11 83:15 91:6,14 92:3,7 98:25 99:5,9,10 99:11 100:7 103:11 105:12 106:4 147:7 167:4 spreadsheet 69:17,19 73:20 spreadsheets 75:17,17,19 staff 20:3 133:7 stamp 72:11 77:9 stand 40:20 standard 15:24 standards 149:19 standing 178:4 start 9:5 27:4 52:7 91:22 108:15 120:3 131:25 started 8:5 19:13 41:22 42:2 59:20 94:3,18,21 104:3 115:14 starting 43:20 77:1 94:13	starts 27:3 stat 23:16 state 1:1 4:11,20 5:25 8:25 18:6 stated 50:8,10 135:5 statement 136:6 stating 147:1 stay 71:11 steno 71:11 step 166:16 167:15 steps 77:4,14 85:10 96:8 97:25 98:5 111:14,24 112:7 112:10,17,21,24 113:11 116:9 127:19 135:12 135:14 161:19 164:17,21 165:1 165:12 166:13 169:1 170:19 sticker 123:18 stop 94:19 stopped 115:3 115:13,17 116:21 store 61:9 stored 102:24 157:19 161:21 165:5 story 113:23 straight 31:17 street 1:18 2:4 4:13 17:25 18:23 177:5	strike 40:12 61:24 86:22 141:5 145:7 151:7 155:24 161:3 string 147:15 styled 137:5 subject 70:13 75:24 80:16 89:10,15 150:8 173:10 subjects 80:14 submitted 169:25 174:23 subpoena 3:19 12:5,6,9,12,14 123:6,9,23 124:4 124:8,11,19,22 126:6,9,17 127:2 127:2 136:15 155:5 subpoenas 11:16 43:4 126:22 subsequent 9:17 19:10,11 40:7 43:10 48:7 49:8 95:12 113:6 subset 98:10 subsets 145:14 subsidiary 96:14 substantive 79:2 subtopics 167:3 suggest 110:2 suite 2:4,9 summary 148:4 148:8,24 153:9 summer 9:21

supervised 159:3 supervision 178:7 support 23:10 133:7 supporting 23:8 supposed 133:21 158:22 sure 13:21 26:7 33:10 36:8 39:12 41:18 47:17 54:12 72:15 76:7 77:8 90:4 91:8,12 95:15,23 96:8,21 97:15 121:20 128:25 130:22 140:6 144:7 155:22 156:14 160:10 161:7 suspect 75:2 suspend 164:18 164:22 165:13 169:2 suspended 169:8 suspension 165:11 swear 5:6 sworn 5:9 178:5 system 24:16,23 63:17 91:9 94:15 95:4,16 96:10,16 112:6 118:9 127:20 130:24 131:17 systematic 122:21	systematically 125:6 systems 24:16 96:22 104:14,22 104:23 t t 3:8 29:4 97:11 178:1,1 tab 69:19 take 5:21 6:17 16:6 22:23 62:4 63:11 64:16 71:22 72:3 87:21 108:6 110:18,23 111:1 111:3,11 129:18 135:12,13 161:18 166:9 171:11 taken 4:5 14:20 14:21 17:7 64:21 85:10 96:7 98:6 105:2 107:18,24 111:6 111:14,24 112:7 112:17,21 116:10 122:24 127:19 150:4 164:18,22 165:12 169:1 170:19 171:15 178:5 talk 6:10 17:19 18:22 29:17 46:11 51:24 52:13 59:13 81:25 100:4	103:24 106:13 108:10,11,12 138:18 170:15 talked 30:8 46:23 47:2 92:10 99:4 101:7 104:1,2 105:17 108:16 113:2 142:9 153:8 163:14 173:3 talking 18:23 23:12 32:7,7 41:18 42:3 47:22 55:6 60:9 69:5 74:23 85:20 89:19 100:24 101:20 104:21 105:7 114:14 118:1 132:23 137:18 137:19 164:7,8 166:17 talks 116:8 143:3 tasked 122:16 technical 37:16 37:18 58:13,15 tell 12:3 14:24 27:23 47:1,8 49:9,10 50:16 56:7,21 64:15 71:15 90:10 91:2 92:8 95:24 101:5,12 105:14 105:20 112:21 143:14 164:21 171:10 178:6	telling 37:3 81:1 tendered 29:17 tendering 51:7 tenders 51:12 52:9 tenure 32:12 term 26:2,19 55:16 56:24 59:11 77:25 83:21 135:11 termination 150:7 151:20 terminology 84:8 terms 10:10 25:15 35:18 132:8 144:19 151:24 156:18 terrible 144:1 testified 5:10 17:16 83:15 110:7 116:23,24 testify 14:5,14 15:18 46:22 60:10 79:4 116:4 167:2 170:11 testifying 7:25 9:19 10:2 46:24 testimony 3:3 15:11 17:5,9,14 44:18 59:24 73:7 78:13 90:23 111:21 115:1,18 136:21 138:21 176:13 176:18 178:5,6,8

thank 14:9 23:6 42:12 125:15,19 141:15,24 175:25 177:10 thereof 178:10 thing 133:10 things 31:11 43:21 62:3 74:8 think 8:19 9:17 11:21 16:9 19:12,22 20:3 22:11 25:2 29:1 38:5,9 43:3 46:25 57:7 58:17 59:15,21 61:20,21 71:7,12 72:12,16 75:3,24 76:1 77:1,2 85:20,22 89:22 89:22 90:4 91:1 91:16 94:17 95:6 96:11 101:4 102:12 105:1 106:9 107:6 114:7 115:16 127:21 128:10,14 129:20 132:2,11 132:25 138:11 141:12 143:16 150:5 152:4,14 153:10,14,17,20 156:17 157:7 160:5,6,7,8,14 162:22 164:10 165:25 166:4,11 166:13 172:11 175:6,24	third 9:9 13:24 43:18 104:25 137:7,12 138:1 138:19,22 140:16 156:22 158:24 thought 43:22 47:12 three 19:22 20:3 20:3 22:12 27:20 46:2 70:18 126:10 ticket 176:16 time 10:1 16:2,7 22:9,22 30:19,20 31:4,14 32:3 48:24 53:21 57:13,21 58:19 62:9 63:8 64:20 65:1 71:10,22 72:1,3 76:9 83:12 84:4 86:19,19 88:20 88:23 94:14 99:13 101:20 102:10,13,13 109:8 110:3 111:5,8 123:19 124:21 125:23 130:12 135:20 144:2 153:23 156:10 157:8 158:1 165:20,21 165:22 166:2 171:14,19 172:23 173:7 175:15,15 177:18 178:5	times 45:24 46:2 115:20 149:18 176:18 timing 72:10 76:5 82:24 101:8 108:20 title 20:7 58:14 90:4 97:15 104:13 titled 70:11 total 160:3 161:2 169:4,11 170:2 170:20 171:24 172:1 today 5:21 7:17 7:25 10:17 12:24 13:13 14:23 15:11 16:2 17:3,5,11 17:14 26:23 29:17 37:23 42:19,21 51:22 57:18 59:8 60:10 68:21 73:7 78:11,13 79:4,25 98:17 99:2 100:17 115:21 117:2 119:15,22 120:5 129:21 136:21 136:23 140:2 160:4 161:6 162:18 163:15 163:18 175:1 176:15,19 today's 10:25 55:20 66:1 69:4 83:10 102:17	117:13 149:22 159:24 160:21 170:9 171:5 told 19:5 44:11 46:18 50:24 52:20 54:11,16 66:15 79:21 92:13 98:21 108:21 112:3 115:20 116:21 116:23,24 118:5 119:2 127:17 128:21 129:8,20 142:10 147:6 148:13 152:4 153:6 162:18,22 163:5 170:21 tom 97:22 top 10:6 25:2 35:11 141:25 142:7 172:9 topic 52:1 82:19 82:20 109:4 110:18 111:12 111:24 112:19 116:7 122:18,19 125:2,11 127:8 128:20,25 145:10 166:9,9 167:10 169:25 170:12,16,18 topics 8:2 14:6 14:14 46:22 51:21 55:3 65:9 79:4 100:17 108:8,10,11,12 111:11 130:21 160:25 166:23

168:24 172:18 total 67:9 trades 68:13 transcribed 178:7 transcript 16:25 178:9 transcription 178:8 transfer 88:24 transferred 88:23 tremendous 101:8 trial 15:3,14,18 17:17 176:8,12 176:15 trigger 41:15 138:25 triggered 127:1 135:15,23 136:3 168:7,8 triggers 52:16 52:21 139:10 true 156:14 162:6 178:8,12 truth 14:24 178:6,6,6 try 16:14 56:3 85:23 140:11 trying 26:18 39:14 49:23 50:1 58:16 72:5 81:2 142:22 174:5 two 17:25 21:21 32:23 46:2 67:8 76:25,25 128:11	129:10 146:12 152:4 154:16 167:2 171:21 172:1 tx 2:4 type 55:11 102:22 158:4 168:2 types 24:1 55:11 74:14 93:22,25 95:3 143:7 150:3 typical 154:5,10 154:11 typically 162:9 175:20	understanding 14:3 38:1 53:2 53:17 75:4 80:19 92:21 93:1 124:5,6 129:25 158:11 158:14 161:22 164:4 176:22 understands 147:2 undertaken 101:8 underwriting 88:21 89:5,9 99:11 105:13 unit 4:4 79:15 167:19,25 168:9 units 101:15 university 6:24 7:6 unrelated 163:23 update 101:17 105:22 updated 75:8,11 76:10 102:7 updating 76:6 76:12 usb 130:13 use 26:18 35:18 84:8 users 131:3 utilize 130:24 131:17 utilizes 47:15	v v 21:4 vaguely 11:21 validate 72:19 valley 2:9 variety 19:24 40:7 55:10 62:7 158:20 various 11:2 74:14 78:1 99:24 103:5 vendor 29:6 61:22 162:23 vendors 61:8,12 63:4 verbal 16:21 verbalize 49:4 verbalized 49:2 verbally 110:3 verify 72:9 veritext 4:16,18 version 9:23,24 34:13,15 38:10 70:25 71:2 72:12,14,17,22 73:6 74:21 75:3 75:4,7,10 76:1,2 133:10 versions 71:12 74:12 79:17 131:22 versus 4:8 11:7 11:12 130:13 137:6 vice 59:4 video 4:4 64:20 64:23 71:9,25 111:4,8 171:14
	u		
	uh 16:23,23,23 43:2 115:6 ultimately 59:4 umbrella 126:15 undergraduate 7:4 underlying 43:9 125:21,24 126:4 understand 5:22 7:16,24 14:12,23 15:2,10 16:2 27:11 39:16,21 39:24 42:8 66:18 72:16 73:5 76:23 112:1 116:5 118:5 125:14,24 134:19 141:4 142:22 165:18 166:22		

171:19 videographer 2:15 4:1,16 5:5 5:20 64:19,22 65:1 71:9,25 111:4,7 171:13 171:18 177:17 videotaped 1:17 3:10,12 9:9 177:22 view 49:3,5,11 50:17 54:15 167:18 viewed 38:13 vigilance 167:20 violation 150:6 vs 1:7	waukesha 29:9 29:10,13 way 57:8 61:8 69:18 74:17 121:1,3,3,6 130:23 165:18 167:18 176:15 we've 30:8 39:23 50:13 71:6 81:3 81:4 83:6 110:24 119:10 142:9 151:10 153:8 163:10,14 week 45:21 154:21 weeks 65:6 124:24 went 56:19 96:11 166:4 wide 24:4,5 41:14,19 92:11 96:22 widener 6:24 willing 176:17 wilmington 6:24 winter 61:21 winters 61:15,16 61:18 159:5 wisconsin 29:9 witness 5:6 8:1 8:12,17 15:8 21:8 28:12,22 29:21 30:2 42:13 44:1,25 45:6 50:7 51:10 53:1,10,17 57:7 57:15,23 58:9,23 62:17 63:13	75:15 82:15 84:17 85:3,14 87:13 88:9 95:6 95:19 107:6,19 109:10,18 117:8 117:16,22 118:18 119:7,20 120:14,23 122:2 139:14 141:12 144:22 162:12 164:10 169:21 175:12 176:1 177:13,20 woman 30:20 word 167:17 words 53:4 87:22 115:3 work 18:21 23:25 25:20 151:20 152:21 159:14,16 162:23 164:12 worked 27:25 workers 28:2 working 19:13 works 29:8,9 104:13 wright 61:2,13 108:3 155:15,15 155:19 156:1,3,8 156:14,19 157:14 159:14 159:16 174:23 writing 38:21 48:18 130:8 147:9 156:16 written 37:7 38:13 133:24	wrote 59:21 159:9 x x 3:1,8 y y 21:4 100:18 yanish 100:16 yarrish 20:25 21:12 23:5 30:24 31:1,23 100:8,18 102:16 167:5 yeah 8:18 9:20 9:25 22:11 24:3 24:12,18,19,19 25:17 27:25 28:22 34:12,14 34:18 35:25 42:10,21,22 43:3 56:2 57:7 58:9 59:14 63:7 68:11,14 71:20 71:22 72:19 74:7 75:1,8,9 76:3 78:23 79:7 80:13 83:15 84:17 85:10,22 89:24 90:24 91:5 92:2,6 93:18 94:8,22 95:6,19,23 96:1 96:11 97:15 99:16 100:7 104:17,24 105:2 111:3 112:20 113:13,15 121:19 122:2
w			
w 29:4 want 16:22 19:8 30:2 46:20 47:7 72:8,15,19 73:5 75:5 76:7 79:2 87:13 91:20 94:13 124:24 126:8 134:16 142:12 172:13 wanted 59:9 63:25 87:4 173:14 wanting 75:25 warehouse 61:9 61:12,19 88:24 92:14 93:4 162:24 warranted 134:6 139:12			

[yeah - zurich]

Page 38

123:11 130:12	63:12 71:7,12,18
131:25 132:2,7	75:14 78:20
139:3,14 140:23	81:14,17,22
144:7 148:15	82:14 84:16
149:23 152:13	85:2,13 87:12
153:7 154:1	88:8 91:16,20,23
155:7 156:15	93:23 95:5,18
157:2 160:8,22	107:2,5,11 109:9
161:7 163:10,21	109:17 110:15
164:10 165:1	110:20,24 117:7
167:4,16 172:3	117:15 118:17
174:6,9 175:17	119:6,19 120:13
year 6:15 7:7	120:22 122:1
22:1,24 31:19	123:17 125:10
87:14 107:21	125:15,18
165:20,21	139:13 141:20
years 6:9 19:22	141:24 143:24
22:12 27:20	144:21 150:18
31:22,25 48:7	161:12 162:11
94:14 97:21	164:9 169:17,20
103:1 157:25	175:11 176:2,5
158:13,17	177:9,15
165:25 166:1	z
yep 73:25 152:7	zoom 16:20
yntema 2:8 3:5	zublakey 130:13
5:1,2 7:21 14:8	zurich 137:5
14:9 15:6 28:11	
28:21 29:20	
30:1 39:7 40:18	
42:9,11,18 44:13	
44:24 45:5	
46:13 48:10	
49:19,22 50:14	
51:9,16,20 52:5	
52:25 53:9,16,23	
54:4,10 55:1	
57:6,14,22 58:8	
58:22 62:12,16	

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.

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.

Covil Trial Exhibit 98

Duplicative of Penn National Trial Exhibit 34 pp. 1-189

See R. pp. 10899-11087

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

Civil Action No. 2019-CP-40-2098

COVIL CORPORATION, by and)
through its duly appointed)
RECEIVER PETER D.)
PROTOPAPAS,)

Plaintiff,)

v.)

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

Defendants.)

DEPOSITION OF BOYD WRIGHT

(Taken by plaintiff.)

Greensboro, North Carolina

November 30, 2022, 10:03 a.m.

Reported By:
SUSAN GALLAGHER, CVR
Transcript produced by computer-aided transcription

PLAINTIFF'S
EXHIBIT

99

APPEARANCES

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Also present: David A. Cooper, CDVS, videographer

DEPOSITION OF BOYD WRIGHT, a witness called
before SUSAN GALLAGHER, CVR, a Notary Public in and for
the State of North Carolina, at 701 Green Valley Road,
Greensboro, North Carolina, on Wednesday the 30th of
November, 2022, commencing at 10:03 a.m.

EXAMINATION INDEX

Examination By Whom

Page

Mr. Nes

5

EXHIBIT INDEX

Exhibit

Description

Page

Exhibit 1 09/01/22 letter from Mr. Wright to Covil re asbestos litigation 10

Exhibit 2 03/31/86 to '87 policy issued to Covil 12

Exhibit 3 Policy Bates Penn National 000044 through 91 27

Exhibit 4 Penn National legal hold document 40

Exhibit 5 12/17/21 email from Mr. Maier 46

Exhibit 6 Deposition transcript, Edwin Rice 57

Greensboro, North Carolina

THE VIDEOGRAPHER: We are going on the record at 10:03:28 a.m., Wednesday, November 30, 2022. Please note that the microphones are sensitive and may pick up whispering and private conversations. Please turn off all cell phones or place them away from the microphones as they can interfere with the deposition audio.

Recording will continue until all parties agree to go off the record. This is Media Unit No. 1 of the video recorded deposition of Boyd Wright, taken by counsel for the plaintiff in the matter of Covil Corporation by and through its duly appointed receiver, Peter D. Protopapas versus Pennsylvania National Mutual Casualty Insurance Company; Sam J. Crain & Company, Inc.; and South Carolina Property and Casualty Insurance Guaranty Association in the Court of Common Pleas for the Fifth Judicial Circuit, State of South Carolina, County of Richland, Case No. 2019-CP-402098.

This video deposition is taking place at Goldberg Segalla, LLP, in the Piedmont Room, located at 701 Green Valley Road, Suite 310, Greensboro, North Carolina, 27408. My name is David Cooper. I'm the certified legal videographer with Veritext. I am not authorized to administer an oath. I am not related to

1 any party in this action, nor am I financially
2 interested in the outcome.

3 Counsel and all present will now state their
4 appearance and affiliation for the record. If there's
5 any objections to the proceeding, please state them at
6 the time of your appearance, beginning with the
7 noticing attorney.

8 MR. NES: Brad Nes of Morgan Lewis & Bockius for
9 the plaintiff receiver for Covil Corporation.

10 MR. YNTEMA: Brady Yntema of Goldberg Segalla
11 appearing for defendant Pennsylvania National Mutual
12 Casualty Insurance Company.

13 THE WITNESS: The court reporter, Susan Gallagher,
14 will now swear in the witness.

15 BOYD WRIGHT,

16 Having been first duly sworn, was examined and
17 testified as follows:

18 EXAMINATION

19 BY MR. NES:

20 Q Good morning. Could you state your name for
21 the record?

22 A Boyd Wright.

23 Q Mr. Wright, we've had an opportunity to speak
24 during depositions a couple of times so I won't give
25 you the full admonitions of deposition taking, but is

1 there any reason that you wouldn't be able to give full
2 and accurate testimony today?

3 A No.

4 Q And if you need a break at any time, as long as
5 a question is not pending, we can go off the record and
6 you can take a break. Okay?

7 A All right.

8 Q Mr. Wright, what is your current job title?

9 A Senior home office claim examiner.

10 Q And that was the same job title you've had in
11 the previous two times that we've spoken; is that
12 correct?

13 A Yes.

14 Q Who is your boss?

15 A Adam Parsons.

16 Q And what is Adam Parsons' job title?

17 A He's director of technical operations.

18 Q What are his job responsibilities?

19 A He oversees a number of technical things
20 relative to the entire claims division, but principally
21 he supervises the liability claims segment of financial
22 claims.

23 Q In preparation for your deposition today, did
24 you speak with Mr. Parsons?

25 A No.

1 Q Do you know if Mr. Parsons has a law degree or
2 not?

3 A Yes, he does.

4 Q Do you know if Mr. Parsons practiced law prior
5 to joining Penn National?

6 A Yes.

7 Q Did he practice law prior to working at Penn
8 National?

9 A Yes.

10 Q For how long?

11 A I don't know.

12 MR. YNTEMA: Again, Mr. Wright is testifying in his
13 individual capacity based on his own knowledge.

14 BY MR. NES:

15 Q How long did you work with Mr. Parsons?

16 A 18, 19 years.

17 Q You started working with Penn National in
18 approximately 2000; is that correct?

19 A I started with Penn National in June of 2002.

20 Q Has Mr. Parsons been your supervisor the entire
21 time you've been at Penn National?

22 A No.

23 Q How long has Mr. Parsons been your supervisor?

24 A I think since -- I'm not real sure. I think
25 it's either August 2016 or 2017.

1 Q Prior to Mr. Parsons, who was your supervisor?

2 A Tom Kline.

3 Q Is Mr. Kline still with Penn National?

4 A Mr. Kline is deceased.

5 Q In preparation for your deposition today, other
6 than outside counsel with Goldberg Segalla, did you
7 speak with anyone?

8 A No.

9 Q In adjusting the Covil claims, have you spoken
10 with Mr. Parsons?

11 A Yes, occasionally.

12 Q Generally, what do you recall about your
13 conversations with Mr. Parsons about the adjustment of
14 the Covil claims?

15 A Just principally filling him in on what I'm
16 doing, maybe how many pending cases there are for
17 workload issues and things like that.

18 Q Did you ever seek his advice or input into how
19 to adjust a claim?

20 A No.

21 Q Did you seek input or advice from anyone else
22 in how to adjust Covil's insurance claims?

23 A Yeah.

24 Q Who else?

25 A I talked to counsel at Goldberg Segalla early

1 on about what to expect and -- and -- in South
2 Carolina, and kind of help -- they helped me compose
3 some early correspondence to the receiver.

4 Q Other than outside counsel, did you speak with
5 anyone within Penn National to assist in adjusting the
6 claims for Covil?

7 A No.

8 Q Generally, what would you say your job
9 responsibilities are with respect to the Covil account?

10 A It's -- I basically manage the Penn National
11 side of the defense of the -- all the summons and
12 complaints that Covil receives overtime.

13 Q Do you make decisions as to whether or not
14 there is defense coverage for any particular asbestos
15 claim tendered by Penn National? Excuse me. Tendered
16 by Covil?

17 A Yes.

18 Q Do you make decisions as to whether or not
19 there is coverage for indemnification of settlements or
20 judgments tendered by Covil?

21 A Yes.

22 Q In determining whether there is coverage either
23 for defense or indemnification, other than consulting
24 with Goldberg Segalla, have you consulted with anyone
25 else?

1 A No. Well, maybe I -- I want to be sure I
2 understand your question. I mean, I do communicate
3 with the QSF and Travelers occasionally when settlement
4 numbers are being discussed and what amount the
5 different parties are willing to contribute, but that's
6 really not over the defense. It's kind of over who's
7 going to pay how much.

8 Q You're not consulting with Travelers or the QSF
9 about whether there is coverage or not; correct?

10 MR. YNTEMA: Objection to form.

11 THE WITNESS: Yeah. I'm not really -- I mean, if
12 there's any issue on whether or not Penn National
13 should participate in a settlement, I let them know
14 that -- on an individual case-by-case basis whether we
15 will or won't.

16 BY MR. NES:

17 Q Have you ever sought any other insurance
18 company's advice about whether or not Penn National's
19 coverage responds to a particular claim tendered by
20 Covil?

21 A No.

22 Q That's what I was getting at so I just wanted
23 to make it clear.

24 (Exhibit 1 marked for identification.)

25 BY MR. NES:

1 Q I'm showing you what will be marked as Exhibit

2 1. Do you recognize this document?

3 A Yes.

4 Q What is this document?

5 A This is a letter that I sent to the receiver
6 letting them know the individual claims that we've
7 issued payments on, how much, the total amount paid,
8 and the concern that there's limited coverage that may
9 impair the overall limit.

10 Q Did you seek anyone's input in drafting this
11 letter?

12 A No.

13 Q If you can turn to paragraph 2 of Exhibit 1, it
14 says, Penn National provided your office with the
15 general liability policies issued to Covil for the
16 policy periods of March 31, 1996 to 1987 and March 31,
17 1987 to 1988, two conservative years.

18 Do you see that?

19 A Yes.

20 Q And in the second sentence, "Each policy has a
21 \$1 million per occurrence aggregate policy limit
22 subject to the terms, conditions, and endorsements that
23 compose the entire policy."

24 Do you see that?

25 A Yes.

1 Q That last phrase, "subject to the terms,
2 conditions, and endorsements that compose the entire
3 policy," what do you mean by that?

4 A You take the policy as a whole, and there may
5 be items in there that are excluded, not afforded
6 coverage, all kinds of nature of what if an insured
7 refuses to cooperate. It's just -- it's the entire
8 policy is what we're looking at.

9 Q In preparing this letter, Exhibit 1, did you
10 rely on any internal manuals at Penn National with
11 respect to claims handling?

12 A No.

13 Q In drafting this letter, which is Exhibit 1,
14 did you rely on any other documents other than the
15 insurance policies?

16 A No. Well, obviously, the settlement amounts
17 and payments made, documentation along those lines,
18 but, no.

19 (Exhibit 2 marked for identification.)

20 BY MR. NES:

21 Q I'm showing you what's been marked as
22 Exhibit 2. Do you recognize this document?

23 A It appears to be the March 31, '86 to '87
24 policy that was issued to Covil.

25 (Reporter clarification.)

1 BY MR. NES:

2 Q And to the best of your understanding, is this
3 a complete copy of the 1986-1987 policy?

4 A I don't know.

5 Q And why don't you know?

6 A Because I did not reconstruct the policy or
7 construct the policy. The policy was put together with
8 the data we had, and there may be some forms of
9 endorsements that are not available any longer.

10 Q So sitting here today, just to be clear,
11 Exhibit 2 is a reconstruction of Penn National's
12 1986-1987 policy; is that correct?

13 A The policy documents that were available and
14 archived are not a complete policy. So what's most
15 critical to us is the policy documents, but the
16 declarations page that includes all the forms of
17 endorsements, which would, if available, provided the
18 structure for the policy at issue. So when the
19 documents were received from archive, I provide them to
20 underwriting and say, "I need a policy," and then they
21 provide as complete a policy as they can.

22 Q Who provided you the documents that are
23 Exhibit 2 in recreating the 1986-1987 policy?

24 A I don't know. I'd send it to underwriting, and
25 then they sent it back when it's done. I don't -- I

1 don't know who put it together.

2 Q Do you recall when you got the set of
3 documents, which is the 1986 policy that is Exhibit 2?

4 A I'm not sure what you mean. Do you mean from
5 our document repository or from -- back from
6 underwriting as this exhibit?

7 Q I'll be clear. So Penn National produced these
8 policy documents, which are Bates labeled 0001 through
9 000043.

10 A Okay.

11 Q And has represented that this is the 1986-1987
12 Penn National policy. Are you aware of that?

13 MR. YNTEMA: Objection to form.

14 THE WITNESS: I'm aware that this is the policy
15 document that was able to be provided for Covil based
16 on the information that we were able to put together,
17 yes.

18 BY MR. NES:

19 Q And you were the person who did the final
20 compilation of this; is that correct?

21 A No.

22 Q Who did the final compilation?

23 A I already answered. I don't know. I sent it
24 to underwriting. They then bring it back to me in this
25 form.

1 Q Who in underwriting did you send it to you?

2 A I don't know.

3 Q I'm not asking who responded. I'm just asking
4 who --

5 A I don't know. It's been a few years ago.
6 There's been changes of personnel. I don't know who I
7 sent it to.

8 Q How did you communicate with underwriting? Was
9 it by email?

10 A No. I would walk -- I would take the documents
11 I received from the document repository, and I would
12 find someone in underwriting, most often an
13 underwriting manager, whoever was available, and say,
14 "Here's what I've got. I need to you guys to provide a
15 policy," and they've got the paper, and they do
16 whatever it is they do.

17 Q Have you ever reconstructed an insurance policy
18 at Penn National?

19 A No.

20 Q Are you qualified to reconstruct an insurance
21 policy at Penn National?

22 A Yes. Well, I'm not -- it's an underwriting
23 responsibility. It's not a claims responsibility. I'm
24 sure that I could probably work my way through it, but
25 it's not something that I do, nor have I ever done.

1 Q You're not an underwriter; correct?

2 A Correct.

3 Q I'd like to turn back to the Exhibit 1 very
4 briefly. In Exhibit 1 there's a reference to a 1
5 million per occurrence aggregate policy limit. Do you
6 see that?

7 A Yes.

8 Q Where do you see that in Exhibit 2?

9 A On the declarations page.

10 Q And where on the declarations page?

11 A Right in the center where it says, Section -- I
12 can't -- it's kind of small. Section whatever,
13 liability coverages, and it shows \$1 million each
14 occurrence and 1 million aggregate.

15 Q Under the 1 million aggregate section -- strike
16 that.

17 In drafting this language in Exhibit 1 where
18 you're saying there's a 1 million per occurrence
19 aggregate policy limit, did you reference any other
20 terms, conditions, or endorsements in the policy other
21 than the declarations page?

22 A No.

23 Q And sitting here today, are you aware of any
24 other terms, conditions, or endorsements that compose
25 the entire '86-'87 policy that relate to the aggregate

1 policy limit on the declarations page?

2 A Well, I think that that's the issue. This
3 litigation is -- does the -- is there an aggregate
4 limit or not? And that's -- that's the -- in my
5 experience that \$1 million aggregate is exactly what it
6 says it is, and that's what we relied upon.

7 Now, this letter, of course, is an advisory
8 letter to the receiver simply because if I don't
9 provide him with this and financial is correct that
10 there's a \$1 million aggregate that we've never told
11 him, then there's a whole 'nother plethora of
12 litigation that goes on for failure to notify. So if
13 we're correct, he's on notice, and if we're not, then
14 at least he knows what we paid.

15 Q In referencing the \$1 million aggregate limit
16 in Exhibit 1, did you look at any other pages of the
17 Penn National policy documents to determine whether the
18 word aggregate is defined anywhere in the policy?

19 A No. I relied on the dec page because I knew
20 about the pending litigation and that that was the
21 issue -- one of the issues that was out there was
22 whether an aggregate limit applied.

23 Q Do you know whether the word "aggregate" is
24 defined anywhere in the Penn National policy, which is
25 Exhibit 2?

1 A On these old forms, I don't know.

2 Q What is your definition of "aggregate"?

3 A Total amount -- some total of all payments made
4 on that particular policy period.

5 Q So your understanding of the word "aggregate"
6 on the dec page is that's the total limit of liability
7 Penn National has to pay for all claims; is that
8 correct?

9 MR. YNTEMA: Objection to form.

10 THE WITNESS: That's my understanding.

11 BY MR. NES:

12 Q I'd like to turn back to Exhibit 2 -- I'm
13 sorry -- Exhibit 1, the letter dated September 1, 2022.
14 In the third paragraph it says, "During the course of
15 the defense of these actions, Penn National was called
16 upon to participate in the settlement of several
17 actions and made" several -- sorry -- "made settlement
18 payments totaling \$613,672.50 as follows."

19 Do you see that?

20 A Yes.

21 Q Why did you make the decision to contribute
22 this \$613,000 to settlements?

23 A They were cases that based upon the information
24 we had that would suggest potential covered exposure
25 under Covil's policy, and we participated in the

1 overall settlement of those individual actions.

2 Q In adjusting these 14 claims, you made the
3 decision that these were covered claims under the
4 policies, and, therefore, Penn National contribute to
5 settlement; is that correct?

6 A No.

7 Q Why is that wrong?

8 A Because there may have been some claims that
9 arguably were not covered, but it wasn't crystal clear,
10 and rather than take an adverse position at Covil, we
11 decided -- I decided to contribute to a settlement
12 because it was in the best interest of Covil and
13 arguably could be said that it was for the coverage.

14 Q Sitting here today, you wouldn't be able to
15 point to any particular claim that you would argue was
16 not covered; is that a fair statement?

17 MR. YNTEMA: Objection to form.

18 THE WITNESS: You mean the ones I've issued payment
19 on?

20 BY MR. NES:

21 Q Correct. The 14 claims that are in Exhibit 1,
22 are there any claims where you believe there was no
23 coverage?

24 A Not without looking at each individual claim
25 and revisiting it.

1 Q And I'm just asking you sitting here today,
2 there's not any particular claim listed here where you
3 would say that you know that it was not covered;
4 correct?

5 A No. There were some that, obviously, suspicion
6 that it may not have been, but we went ahead and
7 protected Covil like we were expected to.

8 Q Are you aware of the term "hazard" as used in
9 the Penn National policies?

10 A I suspect it probably is.

11 Q What's your understanding of what the word
12 "hazard" means?

13 A Well, what I understand it to be and what
14 perhaps the policy defines it as may be two different
15 things, and we would rely -- or I would rely on, in
16 dealing with a claim, what that language would be. But
17 as I said, some of this issue is part of this entire
18 litigation that is addressed by coverage counsel. So,
19 you know, hazard is something that creates exposure to
20 a particular party.

21 Q Are you aware of the term "a completed
22 operation hazard"?

23 A Yes.

24 Q What is your understanding of what a completed
25 operation hazard is?

1 A It's typically injury or damage that arises out
2 of work performed by an insured but occurs after the
3 insured's completed that work or is no longer at the
4 site or has relinquished whatever their
5 responsibilities were at that time.

6 Q Are you aware of the phrase "product hazard" in
7 the 1986 Penn National policy?

8 A No, not intimately, and these are -- these are
9 pretty old forms so we don't rely on them much, but my
10 understanding of a products hazard is injury or damage
11 that occurs because of failure of a -- or a condition
12 of the product that later causes that injury or damage
13 after -- it's resulting just from the product.

14 Q And what is a "premises operations hazard"?

15 A That's typically injury or damage that occurs
16 while the insured is actively engaged in whatever work
17 they're assigned to do at the site. So if they --
18 they're working and they drop a hammer that hits some
19 other person that's not employed by them, then you've
20 got an operations exposure.

21 Q You mentioned that these are old policy forms;
22 is that correct?

23 A Yeah. We don't see them very often.

24 Q How often do you adjust claims using historic
25 occurrence-based policies in your day-to-day job?

1 A Not -- not really often. I do have some claims
2 that involve older policies, but we're not required or
3 haven't been required to produce policies so -- on
4 those risks so it's not an issue of having to read them
5 or understand them. It's rare that something that's
6 40 -- 35, 40 years old comes across our desk.

7 Q And when you say "our desk," what do you mean
8 by that?

9 A The company, my desk.

10 Q Is there anyone else in the claims department
11 other than you who handles legacy liabilities related
12 to asbestos?

13 MR. YNTEMA: Object to form.

14 THE WITNESS: I'm the only one that handles
15 asbestos.

16 BY MR. NES:

17 Q How long have you been handling claims tendered
18 by policyholders for asbestos liabilities?

19 A With Penn National, 17 years.

20 Q In those 17 years -- strike that.

21 What percentage of your portfolio would you say
22 relates to asbestos adjustment?

23 A I'm not sure what you mean. You mean how many
24 of my -- like, my caseload relates to asbestos? Oh,
25 okay. Maybe a third.

1 Q Has that been true throughout the 17 years
2 you've been adjusting claims?

3 A With the 17 years of handling asbestos, no. I
4 think when I started, it was probably a greater
5 percentage because I assumed the workload of somebody
6 else, but over time it's decreased and continues to
7 decrease.

8 Q During that time frame in the 17 years you've
9 been handling asbestos liabilities for the adjustment
10 of claims related to asbestos liabilities, how often
11 have you used to the forms that are the 1986-1987
12 policy specifically?

13 A I have no idea. The claims that I inherited
14 when the prior fellow left, all the coverage issues and
15 discussion regarding whatever the form said was already
16 completed. So that wasn't an issue of my having to
17 reconstruct or trying to understand coverage. It was
18 already accomplished.

19 When I took over in about 2005, most of the
20 things that were coming in were stereotypically newly
21 filed cases, and most of it involves new risks on older
22 risks. You try to find the documents, and for us on
23 asbestos, it's usually a fairly simple process because
24 it's either -- you don't worry so much about the form,
25 but the endorsement, if there's an asbestos exclusion,

1 it solves the problem, and if there isn't, we know that
2 you now have a policy obligation.

3 Q Of the third of cases that you manage that
4 relate to asbestos liabilities, what percentage would
5 you say have an asbestos exclusion?

6 A Well, if they have an asbestos exclusion, then
7 often times, unless they have multiple policies, and
8 some do and some don't, there's no coverage, and so
9 it's a simple matter of advising the insured that they
10 have submitted an asbestos claim. There is an
11 exclusion, and then the file is closed. That's very
12 routine now.

13 When I started, it's hard to say. It depends
14 on the risk, but, like I said, you know, I don't know
15 percentages. It's not something I really track.

16 Q Before the Covil litigation, had you ever --
17 strike that.

18 Let's go back to Exhibit 1, which is the letter
19 you sent to Mr. Protopapas. Of the 14 claims
20 identified here, did you make any effort to categorize
21 these claims as either premises operation or completed
22 operation or product hazard claims?

23 A No. I take each case as it comes in and rely on
24 defense counsel's reporting, on the evidence and
25 testimony and so forth, and then make that decision on

1 a case-by-case basis.

2 Q So first with the Archer case, did you make a
3 determination as to whether that was an operations
4 hazard or a completed operations hazard?

5 A No. Archer was mediated. There was some -- I
6 think it was -- was it Archer? I can't -- no, I guess
7 not because I don't -- I don't -- I'd have to look at,
8 you know, the documents that I had and reporting and so
9 forth to really know. The names all start to run
10 together after a while.

11 Q Fair enough. So for the 14 claims that are
12 listed in Exhibit 1, though, you didn't create any type
13 of work product that categorized a particular claim as
14 a -- an operations claim versus a completed operation
15 versus a product claim? That's not something you did
16 as part of your adjustment; is that correct?

17 MR. YNTEMA: Objection.

18 THE WITNESS: No, I didn't.

19 BY MR. NES:

20 Q And why is it that you didn't categorize the
21 cases by whether they were a completed operation, a
22 product, or an operation claim?

23 A Well, when the complaints come in, their
24 nebulous as to a number of factors that would allow any
25 type of analysis to occur, other than there's clearly a

1 defense obligation owed to Covil. So we put it in that
2 process. It takes time for discovery to develop and
3 for defense counsel to obtain the discovery, report on
4 discovery, and provide us with the scope of what that
5 -- what that discovery revealed, and it's on those --
6 each individual case that I look at it and I evaluate,
7 does it appear to be a case that clearly is an
8 operation issue or is questionably or is absolutely
9 not. But I don't -- I don't go through and -- as it
10 were, and categorize these cases. I just wait for the
11 material to come in so that we can evaluate, do we have
12 an exposure that we need to participate in settlement
13 or not.

14 Q So turning back to the language of the
15 aggregate limit of \$1 million, do you see that in your
16 letter of Exhibit 1?

17 A In paragraph two?

18 Q Correct.

19 A Yes.

20 Q You -- in tabulating these amounts to apply to
21 the aggregate limit, you made no distinction between a
22 claim that was a premises operations hazard claim and a
23 completed operation or product hazard claim for
24 purposes of your applying the aggregate limit; correct?

25 A Right. These are just claims that we made

1 payment on.

2 Q We've been talking about the 1986-1987 policy.
3 I want to make sure I show you the other policy
4 referenced in that letter.

5 (Exhibit 3 marked for identification.)

6 BY MR. NES:

7 Q Do you recognize -- I'm handing you what's been
8 marked as Exhibit 3. This is a document Bates labeled
9 Penn National policy 000044 through 91. Do you
10 recognize this document?

11 A Yes.

12 Q What is this document?

13 A This is the policy we put together for the
14 March 31, '87 to March 31, '88 policy for Covil.

15 Q And when you say that "we put together," who
16 put this policy together specifically?

17 A Our underwriting department.

18 Q Did you have any role in putting this policy
19 together?

20 A Other than handing the archived material to
21 underwriting and saying, "I need you to give me these
22 documents."

23 Q Is there any way that you read the 1987-1988
24 policy differently than the 1986-1987 policy for
25 purposes of your adjustment of any of the Covil claims?

1 A No.

2 Q Did you -- in adjusting any of Covil's claims
3 that are listed in Exhibit 1, did you consult with any
4 case law research?

5 A No.

6 Q Do you have a law degree?

7 A No.

8 Q Did you seek any outside coverage opinions
9 related to any of the claims listed in Exhibit 1?

10 A No, not that I -- no.

11 Q Have you created a loss run for the 14 claims
12 that were adjusted in Exhibit 1?

13 A I'm not sure what you mean by "loss run," but
14 no. A loss run is typically some sort of agency
15 underwriting thing that goes on when they're trying to
16 evaluate a risk. These -- these are all payments made
17 on this specific claim number. That's how I know where
18 to find them.

19 Q In my experience, some insurance companies use
20 what they refer to as a "loss run" to identify all the
21 claims that have been paid that apply to the aggregate
22 limit. So my understanding is that you don't use that
23 term at Penn National to do what's being done in
24 Exhibit 1, which is just track the amounts that were
25 paid that are applied to the aggregate limit; is that

1 right?

2 A Yeah. I --

3 MR. YNTEMA: Objection form.

4 THE WITNESS: I'm not sure if I understand what
5 you're asking for. If there were any prior claims
6 before any -- before any of the current asbestos stuff
7 arose, like back in the '80s, maybe there was a slip
8 and fall or something at Covil, well, I don't have any
9 record of that. So the only thing that I have is
10 payments that we have made on these asbestos cases, and
11 that would be the only impairment to that aggregate sum
12 cited that I'm aware of.

13 BY MR. NES:

14 Q And then with respect to the impairments that
15 you've identified in Exhibit 1, do you have any
16 mechanism that you keep in record-keeping to track
17 exactly that, that these payments have been made and
18 they are impairing an aggregate limit? Is that in a
19 document or database somewhere?

20 A There's an electronic record of the payments I
21 made, but all I do is -- and I'm -- I mean, I'm the
22 only one handling it. I know exactly what the payments
23 are. So I don't really, I think, prepare anything. I
24 just go through the list and type out in the letter
25 what was paid.

1 Q Other than this letter, is there any other
2 place that someone else would go to double check your
3 work, for example? That there is a spreadsheet,
4 there's a database, something that someone else would
5 go to other than what you've created manually in this
6 letter?

7 A Like I said, there's a list of electronic
8 payments made on the file, and that's the only thing
9 I'm aware of that would demonstrate, you know, the
10 payments made, if somebody wanted to look.

11 Q In your practice, generally, you do not consult
12 with loss runs, though; is that right?

13 MR. YNTEMA: Objection. Form.

14 THE WITNESS: If -- I'm not too -- I'm not really
15 sure. I'm trying to think of, you know -- well, I
16 guess I'm trying to understand the question. If I get
17 a claim in and it ultimately appears like the policy
18 limits, the aggregate, may be impaired, then I may do
19 some research to determine is there something I need to
20 be concerned with. I can say with some degree of
21 certainty that probably 99 percent of what I handle
22 never gets there.

23 Most asbestos accounts, I'll have two, three, four
24 claims, and they go away. We were never an insurer of,
25 you know, megacorporations or anything like that. It

1 was always mom-and-pop type operations, and so the
2 possibility of that happening is very remote.

3 BY MR. NES:

4 Q The electronic database where you upload
5 information regarding your payments, describe what is
6 that database is.

7 A Is this -- this is my individual deposition;
8 right? Because I don't -- I don't -- it's not the
9 corporate; right?

10 Q I'm just asking you --
11 (Simultaneous speakers.)

12 BY MR. NES:

13 Q You're not testifying as to all of Penn
14 National, and, again, these are not -- I'm not trying
15 to ask any kind of a trick question here. What I'm
16 simply just trying to understand is, you've set out
17 these impairments in your letter, and is there any type
18 of aggregation of this anywhere other than in your own
19 work file, which is this letter? Is this on a computer
20 system that -- where someone else needed to come along
21 and say, "What was the impairment?"

22 Are they just looking at these letters? Are
23 they going to a computer system and they're pulling
24 that out? It's not a spreadsheet, but you could create
25 a spreadsheet out of it. That's all I'm trying to get

1 it.

2 A Okay. Yeah. The -- all our payments are
3 entered electronically, and, you know, you go put it
4 in, a check comes -- the check screen comes up; you
5 fill out all the fields; you hit "enter" and it goes
6 out, and that record of that electronic payment as to
7 the amount and who it was issued to is contained in the
8 claim file.

9 Q Does that database also contain what the
10 aggregate limit of liability is?

11 A No.

12 Q So there would be no way to determine, just
13 based on that computer system, whether the aggregate
14 limit had been hit, for example?

15 MR. YNTEMA: Again, his testimony is in his
16 individual capacity, what he has knowledge of.

17 MR. NES: Correct.

18 THE WITNESS: In my entire time with financial
19 experience, the responsibility to determine if a
20 particular file is going to hit and aggregate limit is
21 the responsibility of the claim handler or their
22 supervisor. There's not, like, a flag that pops up or
23 something that's not pure or anything like that.

24 BY MR. NES:

25 Q Have you done any written analysis of any of

1 the claims listed in Exhibit 1?

2 A No, not -- no, not that I'm aware of.

3 Q I'd like to give you a hypothetical. If an
4 asbestos claimant is exposed or alleges exposure to
5 asbestos in 1970 based on Covil's ongoing work, so
6 we're talking about 1970, they breathe in asbestos.
7 It's an ongoing operation. Would -- and it stops in
8 1970. So we're just talking about the 1970 here.
9 Would your 1986 policy trigger for coverage based on
10 that allegation?

11 MR. YNTEMA: Objection to form.

12 THE WITNESS: I don't believe so because the policy
13 does contain an endorsement that I rarely see, but it's
14 there, that excludes products and completed operations
15 coverage. So clearly the Covil operation was completed
16 in 1970, and now whatever injury is sustained later
17 during the '80s and Covil's policy with Penn National
18 would be a complete operation in my opinion.

19 BY MR. NES:

20 Q In making that determination, what specifically
21 would you be relying on?

22 A I rely on that -- well, there's several factors
23 I look at. I looked at where was the jobsite; was
24 Covil there and performing operations; was the
25 plaintiff there at the same time; and what, if any,

1 exposure occurred to Covil's work during that time
2 period. And then we look at the timing of --
3 obviously, it matters to decide -- or I do -- to decide
4 whether or not this would be something that we consider
5 based on that exclusion to be simply a products
6 exposure or completed operations exposure, which would
7 not be afforded indemnification.

8 Q Would you rely on the definition of "completed
9 operation" in the Penn National policy to determine
10 whether a claim is an operation or a completed
11 operation?

12 A That would be the easiest thing to do.

13 Q Is there any particular language in the
14 definition of "completed operation" as to why you
15 believe that an exposure while Covil was working in
16 1970 would not be an operations hazard for purposes of
17 the 1986 policy?

18 A Well, I think that that's part of the argument
19 that's going on in the current coverage litigation.
20 Like I said, my understanding is that the operation --
21 the injury needs to occur while Covil is involved in
22 with an ongoing operation, but that extended injury
23 that goes on for years, occurs during the policy
24 periods, is well after Covil has completed their work,
25 and that's a completed operation.

1 Q And when you say "extended injury," what do you
2 mean by that?

3 A Well, as we know in the asbestos litigation
4 world, it's accepted, for the most part, that
5 plaintiff's injury occurs when they're -- typically can
6 demonstrate their first exposure to asbestos, and, of
7 course, it may -- that exposure may be in several
8 different locales over a great period of time, and that
9 their injury is ongoing on an annual basis until such
10 time as it's diagnosed, which may be some decades.

11 So you have an individual who is, in your
12 example, subjected to exposure in 1970. Covil's work
13 on that project is completed, but that plaintiff's
14 injury has not occurred relative to the Covil policy
15 periods until we get to that point, and when we get to
16 that point, Covil has long completed their job. And
17 there's also the dynamic within the Covil arena as well
18 that arguably -- and there's two sides to that argument
19 -- that Covil was never installing asbestos products in
20 the late '80s. So there's always that dynamic kicking
21 around out there, that even someone in an operations
22 fashion that alleges exposure in a 1986 to '88 jobsite
23 maybe wasn't exposed to any asbestos by Covil.

24 Q In handling the Covil claims that are listed in
25 Exhibit 1, did you consult with any underwriting

1 materials to understand how to read the policies?

2 A No.

3 Q In your practice adjusting claims at Penn

4 National, do you ever review the underwriting files to
5 determine how to understand a policy?

6 A No.

7 Q In adjusting the claims that are in Exhibit 1

8 for Covil, did you consult with any other outside
9 written material other than the policy to determine how
10 to adjust the claim?

11 A No.

12 MR. NES: This might be a good time for a break.
13 We've been going almost an hour.

14 MR. YNTEMA: Okay. Sure.

15 THE VIDEOGRAPHER: The time is approximately
16 10:54:19 a.m. We are now off the record.

17 (Recess.)

18 THE VIDEOGRAPHER: The time is approximately
19 11:04:41 a.m. We are now on the record.

20 BY MR. NES:

21 Q Mr. Wright, if you could turn back to
22 Exhibit 1, which is your letter we were talking about
23 earlier. The payments that were made, the \$613,000
24 worth of payments, you applied them to the aggregate
25 limit, is that correct, of the two policies?

1 A Yes.

2 Q Are any of these claims that you've applied to
3 the aggregate limit products hazard or completed
4 operation hazard claims?

5 MR. YNTEMA: Objection to form.

6 THE WITNESS: It might be. It just depends on --
7 you know, we may have made a decision to pay a claim
8 because that evidence just wasn't crystal clear, and it
9 was in Covil's advantage for us to pay it.

10 BY MR. NES:

11 Q You've argued in -- or you've stated in
12 correspondence to both the receiver as well as other
13 entities that there are -- strike that.

14 You believe that, turning to Exhibit 2, there
15 is a product hazard and completed operations hazard
16 exclusion in the 1986 policy; correct?

17 A That's my understanding.

18 Q If there is a product hazard and completed
19 operations hazard exclusion in the 1986 policy, then
20 payments made that were excluded by that endorsement
21 would not count towards an aggregate limit, would they?

22 A If you don't make a payment, it doesn't bear an
23 aggregate limit.

24 Q But if you're paying for something that's not
25 covered, would that apply to an aggregate limit?

1 A I think the issue is if we cannot determine
2 whether the endorsement applies or not, we err on the
3 side of protecting Covil first by making a payment.

4 Q I'd like you to turn to Exhibit 2 with the page
5 Bates numbered Penn National policy's 000029. Have you
6 seen this page before?

7 A I don't remember if I've seen it.

8 Q In adjusting the claims that are at issue in
9 Exhibit 1, did you take into account this change
10 endorsement form?

11 A Like I said, I can't remember that I've seen
12 it.

13 Q And then turning the page to Penn National
14 policy's 000030, do you recognize this page?

15 A Yes.

16 Q And what is this?

17 A This is the -- a completed operations and
18 products exclusionary endorsement.

19 Q Do you know if this was part of the policy that
20 was issued to Covil?

21 A It's the material that was provided to me
22 through the archive of documents. It was attached. So
23 it would have been part of the policy produced to
24 Covil.

25 Q You have no personal knowledge that this

1 exclusion was part of the policy, though; is that
2 right?

3 A Yeah. My personal knowledge is is it was
4 provided to me when we requested the policy documents
5 that were in archive. It was with that material, and
6 when the -- when the policy materials were gathered
7 with all the available forms, it's there.

8 Q Let me ask it slightly differently. You were
9 not part of the underwriting of this 1986-1987 Penn
10 National policy; correct?

11 A No, I was not.

12 Q So at the time the '86-'87 policy was issued,
13 you don't know whether the exclusion was intended to be
14 part of the policy as firsthand knowledge; correct?

15 A No, I don't.

16 Q And in terms of your knowledge of this
17 exclusion being incorporated into the policy, you're
18 relying on the Penn National underwriting department;
19 correct?

20 A I'm relying on the documents that were part of
21 the historical record of policy information that Penn
22 National produced.

23 Q But you did not re-create Exhibit 2; correct?

24 A I didn't -- I did not put together the missing
25 policy forms that were applicable, but that endorsement

1 was with the historically archived materials.

2 Q And what historically archived materials are
3 you speaking of specifically?

4 A When the request came in on these -- or it was
5 -- when the request to search for these policy numbers
6 came in, we did that. That endorsement was -- and
7 there may have been a few other pages. I don't know
8 which ones, but I do know that that endorsement was
9 part of the documents that were in -- provided by the
10 records custodian, and it was those same documents that
11 we then sent on in answer to Dean Omar's subpoena for
12 policy information, as well as providing a copy to
13 defense counsel Bill Silverman.

14 Q I'd like to turn to the next exhibit, which I
15 will mark as Exhibit 4.

16 (Exhibit 4 marked for identification.)

17 BY MR. NES:

18 Q Do you recognize Exhibit 4?

19 A Yes.

20 Q What is this document?

21 A That's Penn National legal hold procedure
22 document.

23 Q In preparation for your deposition today, did
24 you review this document?

25 A No.

1 Q When was the last time you saw this document?

2 A When the legal hold was put in place by
3 corporate legal.

4 Q Which legal hold are you referring to?

5 A The one that Scott Maier instituted.

6 Q And at the time he issued that litigation hold,
7 you saw this document, which is Exhibit 4, as well?

8 A Right.

9 Q Did you receive a litigation hold for the Covil
10 litigation?

11 A When Scott presented this, yeah.

12 Q How did Scott -- strike that.

13 When you say "Scott," are you referring to
14 Scott Maier?

15 A Yes, Scott Maier, corporate counsel.

16 Q How did Mr. Maier present the litigation hold
17 to you?

18 A He sent an email out to a number of people that
19 advised it was a legal hold. I don't know if Scott
20 provided this specific document, but I went and pulled
21 it if he didn't, just, you know, so that I would have
22 it, from the center of my file.

23 Q We spoke earlier about a gentleman named Mr.
24 Parsons. Do you recall that?

25 A Yes.

1 Q Did you receive a litigation hold from Mr.
2 Parsons related to Covil litigation?

3 A No.

4 Q When you received the subpoena for the Finch
5 case in 2018 asking for Covil policy documents, you
6 were involved in the search for responsive documents;
7 is that right?

8 A Yes.

9 Q When you received that subpoena in 2018 and you
10 were preparing the responses, did you receive a
11 litigation hold from anyone within Penn National?

12 A No.

13 Q You were also involved in coverage litigation
14 with respect to Zürich bringing suit in the northern --
15 excuse me -- in the district of --

16 MR. YNTEMA: The Middle District of North Carolina.

17 MR. NES: I'll rephrase that. Too many federal
18 courts.

19 MR. YNTEMA: I understand.

20 MR. NES: I appreciate that.

21 BY MR. NES:

22 Q Zürich brought a coverage action in the Middle
23 District of North Carolina against various insurers
24 regarding Covil's coverage program; are you aware of
25 that litigation?

1 A Yes.

2 Q And as part of that litigation, Penn National
3 was served with discovery requests requesting
4 Covil-related documents. Do you recall that?

5 A Yes.

6 Q Were you involved in the search for documents
7 with respect to that Zürich coverage case?

8 A Yes.

9 Q Did you receive a litigation hold from anyone
10 at Penn National related to the Zürich coverage action?

11 A No.

12 Q Are you -- strike that.

13 Have you ever received a litigation hold from
14 anyone other than Scott Maier?

15 A No.

16 MR. YNTEMA: Objection to form. In this case.

17 MR. NES: We'll start with this case.

18 BY MR. NES:

19 Q Have you ever received a litigation hold from
20 anyone other than Scott Maier -- Maier -- Maier in this
21 case?

22 A No.

23 Q Then more broadly, have you ever received a
24 litigation hold in your time at the Penn National from
25 anyone other than Scott Maier?

1 A No.

2 Q Is it your understanding that the claims
3 department issues their own litigation hold separate
4 from Mr. Maier?

5 A Yes. I know that the -- of course, there was a
6 document retention policy that separate, but, yes, the
7 claims department, as I understand it, has their own
8 litigation hold.

9 Q Did you ever receive a litigation hold from
10 anyone in the claims department related to the Covil
11 litigation?

12 A What we would do is -- not from anyone in the
13 claims division, but when Scott Maier's litigation hold
14 comes out, we accept it for what it is and don't do
15 anything to violate that until he tells us otherwise.

16 Q So the first time you understood to start
17 preserving documents was when you received an email
18 from Scott Maier in December of 2021; is that correct?

19 MR. YNTEMA: Objection to form.

20 THE WITNESS: Yes, but we didn't destroy any
21 documents from the time we were first advised of a
22 Covil claim or issue. So, you know, litigation hold is
23 really kind of moot since nothing was ever aged enough
24 to consider destruction of from a claims perspective.

25 BY MR. NES:

1 Q Does the claims division manage the historic
2 claims handling files stored within Penn National?

3 A Yes. I guess, I need to qualify that. We do
4 for a period of time, and then they are moved to -- if
5 they're a paper file, of course, which we haven't had
6 for a long, long time, they're moved to the document
7 custodian, who then does whatever he does through his
8 processes.

9 Q You mentioned earlier -- we were talking about
10 the loss runs, and you mentioned an example of a
11 slip-and-fall case against Covil would have been an
12 example of a historic claim that could have been made
13 against Covil. Do you recall that testimony,
14 generally?

15 A Yes.

16 Q There are historic claim files related to
17 certain of Penn National's policyholders that Penn
18 National maintains; is that right?

19 A For a period of time, yes.

20 Q As part of your search for documents, did you
21 do any search to determine whether or not there were
22 any historic claim files related to Covil Corporation?

23 A Yes.

24 Q And what did you find?

25 A I found -- the only claims I found was a

1 workers' compensation claim that was reported in the, I
2 want to say, 2004, 2005. Other than that, I didn't
3 find -- other than a work comp claim, I didn't find
4 anything -- anything else, at least not -- nothing else
5 under any of the line of coverage.

6 Q Do you know who is responsible for purging
7 historic claims handling files that hit up against the
8 document retention policy?

9 A I believe that's administered by -- I forget
10 what Dean's title is. He's like director of claims IT,
11 but as I recall, Dean Kimball's responsible for that.

12 Q Do you know if Dean Kimball received a document
13 litigation hold related to Covil litigation in 2018?

14 A The only litigation hold I'm aware of is the
15 one issued by Scott Maier.

16 Q I'd like you to turn your attention to what
17 I'll mark as Exhibit 5.

18 (Exhibit 5 marked for identification.)

19 BY MR. NES:

20 Q Do you recognize this document?

21 A Not off hand. I don't know if I -- I'm not
22 copied on it, so. Yeah. To be honest with you, no. I
23 don't -- I mean, no, I don't -- I don't remember seeing
24 this.

25 Q You mentioned that you received a litigation

1 hold from Scott Maier. Was it by email?

2 A Yeah. It was just -- it was really short, that
3 litigation hold was being placed on all Penn National
4 documents in line with the LE double-0 06 document,
5 something like that, and like I said, I don't remember
6 if that document was attached or I would've pulled it
7 myself, but, like, okay.

8 Q Do you know whether or not Penn National has an
9 automatic email deletion function?

10 A You mean like do they age out and they're gone?
11 I don't have a clue.

12 Q Did you do anything to save all of your Covil
13 emails starting in 2018?

14 A Oh, yeah. Everything I've got on Covil since
15 the first issue, item, whatever it was came in is --
16 yeah. It's -- it's in the file.

17 Q Were you asked to collect that file as part of
18 this litigation?

19 A No. It might be helpful if you understood
20 what -- how my file is organized. Asbestos is a little
21 bit different item than, say, an auto accident. An
22 auto accident, if you get two or three injured people,
23 you handle them in one file. You track and settle and
24 do what you need to do.

25 With asbestos, every -- at least in my

1 experience, every company kind of handles it a little
2 differently. Some companies, every time a new
3 complaint comes in as to that insured, they open a new
4 claim file. If I did that, I'd have a couple of
5 thousand files, and so I handle everything related to
6 Covil in one claim file, and I can in that electronic
7 file, because all of our documents are imaged, I can --
8 I have a legal folder, and then I have legal --
9 addition -- I can designate multiple legal folders and
10 name them by plaintiff, and that's what I do.

11 So everything that came in on Covil is in that
12 one file, and that file is not subject to a claims
13 destruction issue until it's closed and then there's a
14 seven-year retention period. Now, on asbestos it's not
15 uncommon to have a -- maybe close a file for a risk and
16 a year or two later get a new claim in.

17 When that happens, I reopen that same file.
18 When it's closed, that seven-year window starts again.
19 So on Covil, understanding the nature of asbestos and
20 that claims get settled, new claims come in, I keep it
21 all in one file, and so anything related to Covil is
22 even subject to document retention policy, yet, simply
23 because the file is not closed.

24 So after every exposure with Covil is over with
25 or the policies are exhausted or whatever the issue may

1 be that allows for the file to be closed, then there's
2 a seven-year retention period after that. So we're not
3 even -- when it comes to litigation hold, there's
4 nothing -- we haven't deleted anything. It's all there
5 because it's just part of the ongoing file.

6 Q Do you put every single email that you send
7 within the company to opposing counsel, anything
8 related to Covil, into that file, or do you make
9 selections about what you think is substantive?

10 A I try to put everything in, but when you get
11 the -- you know, somebody asks for information. You
12 say, "Here's the stuff," and they write back and say,
13 "Thanks," I mean I put the "thanks" in there, but
14 the -- or if they request something and I send it back,
15 I'll document that I sent it to them. But, yeah. I
16 mean, it's -- that's what we're supposed to do is put
17 everything in the file.

18 Q So my question, though, is so you're making a
19 decision as to what would be substantive or not as to
20 what you upload into the database; correct?

21 MR. YNTEMA: Objection to form.

22 THE WITNESS: Well, I try to put everything in as
23 possible, and as I said, there may be an exception
24 where it's just a one statement "thanks." Okay. Fine.
25 They got it. Great. I've got my email that says I

1 sent it to them. That's all I need.

2 BY MR. NES:

3 Q Is the email that Mr. Maier sent to you
4 instructing you not to destroy any documents, did you
5 upload that email?

6 A As far as I know it's in my file, yes.

7 Q You mentioned that you believe that Mr. Maier
8 sent that email to several people; is that right?

9 A I think he sent it to -- across the company,
10 but, you know, I don't -- you know, I didn't look to
11 see who it was sent to. You know, it's coming to me.
12 What's it say?

13 Q Did you speak with Mr. Maier about the
14 litigation hold?

15 A I may have had a conversation or two with him.
16 I don't remember if I did. It may have been something
17 along the lines of "I understand we made need to" or
18 "I've heard we may need to," but I don't -- I don't
19 believe I've spoken to him, anything about it anyway,
20 after he put it out there.

21 Q Did you have a conversation with Mr. Maier
22 about how you were uploading documents into the system
23 to comply with the litigation hold?

24 A No. Scott can look at -- he's got access to my
25 file. He can just look at it and see what I'm doing.

1 He's never said anything, and like I said, my -- my
2 normal procedure is to put it all in there. So I think
3 that file -- my files -- there's been some recent stuff
4 going on, but it might be pushing 65,000 pages.

5 Q And what is included within that 65,000 pages,
6 generally?

7 A Well, obviously, all of the summons,
8 complaints, defense counsel reports, discovery, and so
9 forth that was provided by counsel. For each
10 individual claimant, there would be some -- there might
11 be some, very little probably, internal reporting.
12 There would be a general legal file, which would be
13 kind of back-and-forth email issues between myself and
14 defense counsel. There might be -- let's see. There
15 might be some emails that were generated between
16 insurers and the receiver leaving defense counsel out,
17 for obvious reasons.

18 There's probably some emails between carriers
19 and the QSF or maybe just myself and the QSF. There
20 would probably be any -- any correspondence that I
21 generated that went to the receiver or somebody else.

22 Q Do you have correspondence with your outside
23 counsel, Goldberg Segalla, in the claim file?

24 A No.

25 Q That's separate emails that you do?

1 A Anything pertaining to coverage is not part or
2 even -- I mean, obviously, the ultimate decision is
3 going to affect the claim file, but it doesn't affect
4 the total defense file. The total defense file is what
5 it is, and I make the decisions on payments and what
6 may or may not be covered.

7 Q What about responses to discovery? Any emails
8 that you create in searching for policies that are
9 responsive to a subpoena or a document request in
10 coverage litigation, do you keep those emails?

11 A Yeah.

12 (Simultaneous speakers.)

13 THE WITNESS: Unless it's -- if it's not related to
14 Covil, there's no reason to keep it. And, of course,
15 you know, some of the search stuff, the search stuff
16 that I did would have been early on to find information
17 down the road from that. So it's not -- it's kind of
18 like moved away from me to the document custodian in
19 corporate to deal with.

20 BY MR. NES:

21 Q I'd like you to turn back to Exhibit 5. I
22 believe you testified that this appears to be longer
23 than the letter that you received; is that right?

24 A You know, what I -- I mean, I remember seeing a
25 litigation hold notice from Scott Maier. I don't

1 recall it being a page and a half long, so. But, also,
2 when I start to read it and I see it involves Covil,
3 I'm like, okay, I know what the case is about, and I
4 know that, okay, big deal, a litigation hold. I'm not
5 destroying anything, not intending on destroying
6 anything. Everything's in my file, and it's a long way
7 from even being considered for destruction, so.

8 But, you know, I know that this document,
9 Exhibit 4, what I did was printed it and placed it in
10 my file so that when I open it, it's the first document
11 I see. I'm not going to be alive forever. Somebody
12 needs to know that's out there.

13 Q Do you have any subordinates that worked with
14 you on the Covil matter?

15 A No.

16 Q Other than Mr. Maier, did you speak with anyone
17 about a litigation hold in the Covil matters?

18 A I may have talked Adam. You know, "Hey, you
19 know, I saw this." You know, okay. You know. I
20 obviously talk to Adam all the time about a variety of
21 things, but I don't -- I can't narrow down one specific
22 issue where I talked about it. It's, yeah, you know,
23 that's out there. Deal with it.

24 Q And Adam is Adam Parsons; is that right?

25 A Yes.

1 Q Did you exchange any emails with Mr. Parsons
2 about the litigation hold?

3 A I don't believe I did.

4 Q Do you know if Mr. Parsons received a copy of
5 the litigation hold?

6 A Oh, I'm sure he did. I mean, as far as I know
7 or can remember or understand, it would be very common
8 for every division within the company to have been
9 notified and Adam certainly would have been notified if
10 there was a litigation hold. I mean, if he wasn't,
11 that's appalling.

12 Q You mentioned earlier -- we talked to some
13 extent about your file. Is your file entirely
14 electronic, or is it paper and electronic?

15 A No. It's entirely electronic, all PDFs. There
16 may be some JPEGs, but it's -- again, virtually
17 everything is PDF.

18 Q Are you aware that the Court in this coverage
19 action has ordered the production of claim files
20 related to Covil by tomorrow?

21 A I'm aware the Court's ordered that, and it's
22 been provided to counsel. It took a little bit of time
23 given the volume, the size of the file. Folks were
24 having a difficult time getting the -- and I'm not too
25 sure how this gets done, other than I don't know if

1 they had to do multiple links or combine them into one
2 or how exactly they were doing that, but it took a
3 little bit of time because it's a rather large file.

4 Q Understood. How often have you been deposed in
5 your role as a Penn National employee?

6 MR. YNTEMA: Objection to form.

7 THE WITNESS: I don't know. I don't know exactly.
8 Maybe eight to ten times, maybe a few more.

9 BY MR. NES:

10 Q I believe the last deposition we had in this
11 case was in August of 2021. Have you been deposed
12 since August of 2021?

13 A Yes.

14 Q Have you been deposed as an employee of Penn
15 National? In other words, not as an individual in some
16 car accident case or something but as an employee of
17 Penn National?

18 A Yes.

19 Q How many times have you been deposed?

20 A August of 2021? So we're talking roughly a
21 year. Once or twice, I think. I know once for sure,
22 maybe twice.

23 Q Were these all related to coverage litigation
24 of one type or another?

25 MR. YNTEMA: Objection to form. Objection to form

1 to this line of questioning, but.

2 THE WITNESS: I know once was. I'm not -- I -- I'm
3 not too sure. I know I was deposed once. I don't know
4 if it was -- I don't track them. But, yeah, the last
5 one I recall involved a general contractor who was
6 alleging they were an additional insured under a Penn
7 National policy, and I would have put the case and was
8 deposed, I believe it was a 30(b)(6).

9 BY MR. NES:

10 Q Have you testified in any other case other than
11 this case about the reconstruction of historic policies
12 for Penn National?

13 MR. YNTEMA: Objection.

14 THE WITNESS: I don't know for sure. There was one
15 case up in Maryland. I don't -- it was a -- it was a
16 loss or -- no one had any records of a policy, you want
17 to call it a loss policy, but nobody had any records,
18 and there was no way for anyone to find that there was
19 a policy issued. The Court ultimately ruled in our
20 favor that there was no policy.

21 I don't think that it had anything to do with
22 reconstructing a policy. You know, just sitting here
23 kind of mulling it over, I don't believe I ever have
24 on -- "Hey, we have some documents. Let's put a policy
25 together," and -- I've never testified on something

1 like that that I can remember.

2 (Exhibit 6 marked for identification.)

3 BY MR. NES:

4 Q I'm going to show you what's been marked as
5 Exhibit 6. This is a transcript of a deposition from a
6 gentleman named Erwin Rice --

7 A Edwin Rice.

8 Q Sorry. Edwin Rice on behalf of Penn National.
9 Have you seen this document before?

10 A Yes. It came up in the case in Maryland that I
11 mentioned.

12 Q What do you recall about this historic
13 deposition transcript from Penn National?

14 MR. YNTEMA: Objection to form.

15 THE WITNESS: I remember that this involved a risk
16 somewhere in the Midwest, and there was some issue
17 regarding the policy couldn't be located. I do know
18 that ultimately what was located was secondary evidence
19 of coverage, and ultimately the Court ruled that based
20 on that secondary evidence, Penn National had coverage.

21 I forget -- I think Mr. Rice was an underwriter,
22 but I don't -- I know that it was -- I think it was
23 used as an exhibit. I may have been asked some
24 questions, but I don't really remember which specific
25 portion.

1 BY MR. NES:

2 Q You didn't know Mr. Rice; is that correct?

3 A No, I didn't.

4 Q But you have no reason to believe that this was
5 not his 30(b)(6) deposition testimony on behalf of Penn
6 National; correct?

7 A The document is what it is, and I accept it at
8 face value.

9 Q When Mr. Reif Snyder was deposed, he described
10 a 2 -- I believe it's a Y2K 10 database system. Are
11 you familiar with that system?

12 A No, I'm not.

13 Q Did you have any role in creating the indexing
14 system as to how historic occurrence-based liabilities
15 would be stored or retrieved for Penn National?

16 A No, no, absolutely not.

17 Q In this case, Penn National -- this coverage
18 case, Penn National has designated two -- proffered two
19 experts, a Mr. Robertson and a Mr. Heinze. Have you
20 ever worked with either of those experts?

21 A I've never met either one of them.

22 Q Do you know if you've ever been involved in a
23 case where either of them were experts in the same case
24 you were involved in?

25 A The only -- I'm familiar with Bernie Heinze's

1 name. I have a case pending right now where he is a
2 plaintiff expert in a professional liability matter.
3 It -- his testimony does not affect -- or his report, I
4 guess, because he hasn't testified -- does not affect
5 the risk we insure. It's directed at another
6 defendant, so. But beyond that, no, I don't have any
7 involvement with him as an expert.

8 Q And your understanding is that Mr. Heinze is
9 Penn National's expert in that case; is that right?

10 MR. YNTEMA: Objection to form.

11 THE WITNESS: In that other case, no. He's a
12 plaintiff expert.

13 BY MR. NES:

14 Q When you say the "plaintiff," who is the
15 plaintiff?

16 A It's some company that's suing their insurer
17 and an insurance agent.

18 Q Have you ever spoken with Mr. Heinze?

19 A Never.

20 Q Have you spoken with Mr. Robinson?

21 A I don't know who he is. No.

22 Q In preparation for your deposition, did you
23 review any documents?

24 A No. I mean, you know, I know my claim file, I
25 guess, and that's, you know, what I was handling. So I

1 didn't really need to review it, per se. I kind of
2 know what's in it.

3 Q Have you read any of the deposition transcripts
4 of anyone taken in this case other than yourself?

5 A No.

6 Q You spoke with Mr. Reif Snyder regarding the
7 search for Covil-related documents and previously
8 testified at length to that. Do you recall that,
9 generally?

10 A Yes.

11 Q Since your deposition last summer, have you had
12 any further conversations with Mr. Reif Snyder about
13 that?

14 A About Covil? No. Well, I've asked him for --
15 to see if he has historical documents, other files.
16 He'll grumble about having to be deposed in Covil in
17 civil, but, no, not anything of any consequence and.

18 Q Thank you, Mr. Wright. I have no further
19 questions.

20 MR. NES: Pass the witness.

21 MR. YNTEMA: Thank you, Mr. Nes. I have no
22 questions. We reserve our right to ask the questions
23 at our trial.

24 THE VIDEOGRAPHER: This concludes the video
25 deposition of Boyd Wright, consisting of two media

1 units. The time is approximately 11:44:25 a.m. We are
2 now off the record.

3 (Deposition concluded at 11:44 a.m. Signature
4 reserved.)

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STATE OF NORTH CAROLINA

COUNTY OF ORANGE

CERTIFICATE OF REPORTER

I, SUSAN L. GALLAGHER, CVR, Notary Public do hereby certify that BOYD WRIGHT was duly sworn by me prior to the taking of the foregoing deposition, that said deposition was taken and transcribed under my supervision and direction; that the parties were present as stated; and that I am not of counsel for or in the employment of any of the parties to this action, nor am I financially or otherwise interested in the outcome of this action.

I do further certify that the foregoing 61 pages constitute a true and accurate transcript of the testimony, and that the witness is being given 30 days in which to affix his notarized signature to the testimony.

This the 30th day of November, 2022.



SUSAN L. GALLAGHER, CVR

Notary Public #20220500301

WITNESS CERTIFICATION

I, BOYD WRIGHT, hereby certify:

That I have read and examined the contents of the foregoing testimony as given by me on November 30, 2022, and that to the best of my knowledge and belief the foregoing pages are a complete and accurate record of the testimony given by me, except as noted on the attached Addendum A hereto.

I have ___ have not ___ made changes/corrections.

BOYD WRIGHT

I, _____, Notary Public for the County of _____, State of _____, hereby certify that the herein above-named appeared before me this the _____ day of _____, ____; and that I personally witnessed the execution of this document for the intents and purposes as herein above described.

Notary Public

(SEAL)

My Notary Seal Expires:

ADDENDUM A

Upon reading and examining my testimony as
herein transcribed, I make the following additions,
changes, and/or corrections with the accompanying and
corresponding reason(s) for the same:

Page	Line	Is Amended to Read
_____	_____	_____
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NOTE: Return completed Deponent's Certificate and
Errata Sheet within 30 days from receipt of testimony
to Veritext at CS-CAROLINAS@VERITEXT.COM.

BOYD WRIGHT

&	17 22:19,20 23:1	2021 44:18 55:11	6
& 1:10 2:3 4:15 5:8	23:3,8 1717 2:4 18 7:16 19 7:16 1970 33:5,6,8,8 33:16 34:16 35:12 1986 14:3 21:7 33:9 34:17 35:22 37:16,19 1986-1987 13:3 13:12,23 14:11 23:11 27:2,24 39:9 1987 11:16,17 1987-1988 27:23 1988 11:17 1996 11:16	55:12,20 2022 1:20 2:18 4:4 18:13 62:20 63:5 20220500301 62:23 21594 62:22 27 3:12 27408 2:9 4:23	6 3:16 56:8 57:2 57:5 58:5 61 62:15 613,000 18:22 36:23 613,672.50 18:18 65,000 51:4,5
0			7
000029 38:5 000030 38:14 000043 14:9 000044 3:12 27:9 0001 14:8 03/31/86 3:11 06 47:4 09/01/22 3:9		3	701 2:9,16 4:21 739-5779 2:5 75201 2:4
1		3 3:12 27:5,8 30 1:20 4:4 56:8 58:5 62:17 63:5 64:21 30th 2:17 62:20 31 11:16,16 12:23 27:14,14 310 2:9 4:22 320 2:4 336 2:10 35 22:6	8
1 3:9 4:10 10:24 11:2,13,21 12:9 12:13 16:3,4,4 16:13,14,15,17 16:18 17:5,10,15 17:16 18:13,13 19:21 24:18 25:12 26:15,16 28:3,9,12,24 29:15 33:1 35:25 36:7,22 38:9 10 3:9 58:10 10:03 1:20 2:18 10:03:28 4:4 10:54:19 36:16 11:04:41 36:19 11:44 61:3 11:44:25 61:1 12 3:11 12/17/21 3:15 14 19:2,21 24:19 25:11 28:11	2	4	80s 29:7 33:17 35:20 86 12:23 16:25 39:12 87 3:11 12:23 16:25 27:14 39:12 88 27:14 35:22
	2 3:11 11:13 12:19,22 13:11 13:23 14:3 16:8 17:25 18:12 37:14 38:4 39:23 58:10 2000 7:18 2002 7:19 2004 46:2 2005 23:19 46:2 2016 7:25 2017 7:25 2018 42:5,9 46:13 47:13 2019 1:3 4:19 202 2:5	5	9
		4 3:14 40:15,16 40:18 41:7 53:9 40 3:14 22:6,6 40-2098 1:3 402098 4:19 419-4900 2:10 46 3:15	91 3:13 27:9 99 30:21
			a
		5	a.m. 1:20 2:18 4:4 36:16,19 61:1,3 able 6:1 14:15 14:16 19:14 absolutely 26:8 58:16 accept 44:14 58:7 accepted 35:4
		5 3:4,15 46:17,18 52:21 57 3:16	

access 50:24 accident 47:21 47:22 55:16 accompanying 64:4 accomplished 23:18 account 9:9 38:9 accounts 30:23 accurate 6:2 62:16 63:6 action 1:3 5:1 42:22 43:10 54:19 62:12,14 actions 18:15,17 19:1 actively 21:16 adam 6:15,16 53:18,20,24,24 54:9 addendum 63:8 64:1 addition 48:9 additional 56:6 additions 64:3 addressed 20:18 adjust 8:19,22 21:24 36:10 adjusted 28:12 adjusting 8:9 9:5 19:2 23:2 28:2 36:3,7 38:8 adjustment 8:13 22:22 23:9 25:16 27:25 administer 4:25 administered 46:9	admonitions 5:25 advantage 37:9 adverse 19:10 advice 8:18,21 10:18 advised 41:19 44:21 advising 24:9 advisory 17:7 affect 52:3,3 59:3,4 affiliation 5:4 affix 62:18 afforded 12:5 34:7 age 47:10 aged 44:23 agency 28:14 agent 59:17 aggregate 11:21 16:5,14,15,19,25 17:3,5,10,15,18 17:22,23 18:2,5 26:15,21,24 28:21,25 29:11 29:18 30:18 32:10,13,20 36:24 37:3,21,23 37:25 aggregation 31:18 ago 15:5 agree 4:9 ahead 20:6 aided 1:25 alive 53:11	allegation 33:10 alleges 33:4 35:22 alleging 56:6 allow 25:24 allows 49:1 amended 64:6 amount 10:4 11:7 18:3 32:7 amounts 12:16 26:20 28:24 analysis 25:25 32:25 annual 35:9 answer 40:11 answered 14:23 anyone's 11:10 anyway 50:19 appalling 54:11 appear 26:7 appearance 5:4 5:6 appearances 2:1 appeared 63:17 appearing 5:11 appears 12:23 30:17 52:22 applicable 39:25 applied 17:22 28:25 36:24 37:2 applies 38:2 apply 26:20 28:21 37:25 applying 26:24 appointed 1:5 4:13	appreciate 42:20 approximately 7:18 36:15,18 61:1 archer 25:2,5,6 archive 13:19 38:22 39:5 archived 13:14 27:20 40:1,2 arena 35:17 arguably 19:9 19:13 35:18 argue 19:15 argued 37:11 argument 34:18 35:18 arises 21:1 arose 29:7 asbestos 3:10 9:14 22:12,15,18 22:22,24 23:3,9 23:10,23,25 24:4 24:5,6,10 29:6 29:10 30:23 33:4,5,6 35:3,6 35:19,23 47:20 47:25 48:14,19 asked 47:17 57:23 60:14 asking 15:3,3 20:1 29:5 31:10 42:5 asks 49:11 assigned 21:17 assist 9:5 association 1:12 4:17

assumed 23:5 attached 38:22 47:6 63:8 attention 46:16 attorney 5:7 audio 4:8 august 7:25 55:11,12,20 authorized 4:25 auto 47:21,22 automatic 47:9 available 13:9 13:13,17 15:13 39:7 aware 14:12,14 16:23 20:8,21 21:6 29:12 30:9 33:2 42:24 46:14 54:18,21	bear 37:22 beginning 5:6 behalf 57:8 58:5 belief 63:6 believe 19:22 33:12 34:15 37:14 46:9 50:7 50:19 52:22 54:3 55:10 56:8 56:23 58:4,10 bernie 58:25 best 13:2 19:12 63:5 beyond 59:6 big 53:4 bill 40:13 bit 47:21 54:22 55:3 bnes 2:5 bockius 2:3 5:8 boss 6:14 boyd 1:16 2:14 4:11 5:15,22 60:25 62:7 63:2 63:12 64:25 brad 2:3 5:8 brady 2:8 5:10 break 6:4,6 36:12 breathe 33:6 briefly 16:4 bring 14:24 bringing 42:14 broadly 43:23 brought 42:22 byntema 2:10	c call 56:17 called 2:14 18:15 capacity 7:13 32:16 car 55:16 carolina 1:1,11 1:18 2:9,16,17 4:1,16,19,23 9:2 42:16,23 62:1 carolinas 64:21 carriers 51:18 case 4:19 10:14 10:14 24:23 25:1,1,2 26:6,7 28:4 42:5 43:7 43:16,17,21 45:11 53:3 55:11,16 56:7,10 56:11,15 57:10 58:17,18,23,23 59:1,9,11 60:4 caseload 22:24 cases 8:16 18:23 23:21 24:3 25:21 26:10 29:10 casualty 1:10,11 4:15,16 5:12 categorize 24:20 25:20 26:10 categorized 25:13 causes 21:12 cdvs 2:12 cell 4:7 center 16:11 41:22	certain 45:17 certainly 54:9 certainty 30:21 certificate 62:4 64:20 certification 63:1 certified 4:24 certify 62:7,15 63:2,16 change 38:9 changes 15:6 63:10 64:4 check 30:2 32:4 32:4 circuit 1:2 4:18 cited 29:12 civil 1:3 60:17 claim 6:9 8:19 9:15 10:19 19:15,24 20:2,16 24:10 25:13,14 25:15,22 26:22 26:22,23 28:17 30:17 32:8,21 34:10 36:10 37:7 44:22 45:12,16,22 46:1 46:3 48:4,6,16 51:23 52:3 54:19 59:24 claimant 33:4 51:10 claims 6:20,21 6:22 8:9,14,22 9:6 11:6 12:11 15:23 18:7 19:2 19:3,8,21,22
b			
b 56:8 58:5 back 13:25 14:5 14:24 16:3 18:12 24:18 26:14 29:7 36:21 49:12,14 51:13 52:21 based 7:13 14:15 18:23 21:25 32:13 33:5,9 34:5 57:19 58:14 basically 9:10 basis 10:14 25:1 35:9 bates 3:12 14:8 27:8 38:5			

21:24 22:1,10,17 23:2,10,13 24:19 24:21,22 25:11 26:25 27:25 28:2,9,11,21 29:5 30:24 33:1 35:24 36:3,7 37:2,4 38:8 44:2 44:7,10,13,24 45:1,2,25 46:7 46:10 48:12,20 48:20 clarification 12:25 clear 10:23 13:10 14:7 19:9 37:8 clearly 25:25 26:7 33:15 close 48:15 closed 24:11 48:13,18,23 49:1 clue 47:11 collect 47:17 combine 55:1 come 25:23 26:11 31:20 48:20 comes 22:6 24:23 32:4,4 44:14 48:3 49:3 coming 23:20 50:11 commencing 2:18 common 1:1 4:17 54:7	communicate 10:2 15:8 comp 46:3 companies 28:19 48:2 company 4:15 4:15 5:12 22:9 48:1 49:7 50:9 54:8 59:16 company's 10:18 compensation 46:1 compilation 14:20,22 complaint 48:3 complaints 9:12 25:23 51:8 complete 13:3 13:14,21 33:18 63:6 completed 20:21 20:24 21:3 23:16 24:21 25:4,14,21 26:23 33:14,15 34:6,8 34:10,14,24,25 35:13,16 37:3,15 37:18 38:17 64:20 comply 50:23 compose 9:2 11:23 12:2 16:24 computer 1:25 31:19,23 32:13 concern 11:8 concerned 30:20	concluded 61:3 concludes 60:24 condition 21:11 conditions 11:22 12:2 16:20,24 consequence 60:17 conservative 11:17 consider 34:4 44:24 considered 53:7 consisting 60:25 constitute 62:16 construct 13:7 consult 28:3 30:11 35:25 36:8 consulted 9:24 consulting 9:23 10:8 contain 32:9 33:13 contained 32:7 contents 63:3 continue 4:9 continues 23:6 contractor 56:5 contribute 10:5 18:21 19:4,11 conversation 50:15,21 conversations 4:6 8:13 60:12 cooper 2:12 4:23 cooperate 12:7 copied 46:22	copy 13:3 40:12 54:4 corporate 31:9 41:3,15 52:19 corporation 1:5 4:13 5:9 45:22 correct 6:12 7:18 10:9 13:12 14:20 16:1,2 17:9,13 18:8 19:5,21 20:4 21:22 25:16 26:18,24 32:17 36:25 37:16 39:10,14,19,23 44:18 49:20 58:2,6 corrections 63:10 64:4 correspondence 9:3 37:12 51:20 51:22 corresponding 64:5 counsel 4:12 5:3 8:6,25 9:4 20:18 26:3 40:13 41:15 49:7 51:8 51:9,14,16,23 54:22 62:11 counsel's 24:24 count 37:21 county 1:2 4:19 62:2 63:15 couple 5:24 48:4 course 17:7 18:14 35:7 44:5 45:5 52:14

court 1:1 4:17 5:13 54:18 56:19 57:19 court's 54:21 courts 42:18 coverage 9:14,19 9:22 10:9,19 11:8 12:6 19:13 19:23 20:18 23:14,17 24:8 28:8 33:9,15 34:19 42:13,22 42:24 43:7,10 46:5 52:1,10 54:18 55:23 57:19,20 58:17 coverages 16:13 covered 18:24 19:3,9,16 20:3 37:25 52:6 covil 1:5 3:10,11 4:12 5:9 8:9,14 9:6,9,12,16,20 10:20 11:15 12:24 14:15 19:10,12 20:7 24:16 26:1 27:14,25 29:8 33:15,24 34:15 34:21,24 35:14 35:16,17,19,23 35:24 36:8 38:3 38:20,24 41:9 42:2,5 43:4 44:10,22 45:11 45:13,22 46:13 47:12,14 48:6,11 48:19,21,24 49:8	52:14 53:2,14,17 54:20 60:7,14,16 covil's 8:22 18:25 28:2 33:5 33:17 34:1 35:12 37:9 42:24 cp 1:3 4:19 crain 1:10 4:15 create 25:12 31:24 39:23 52:8 created 28:11 30:5 creates 20:19 creating 58:13 critical 13:15 crystal 19:9 37:8 cs 64:21 current 6:8 29:6 34:19 custodian 40:10 45:7 52:18 cvr 1:24 2:15 62:6,23	day 21:25,25 62:20 63:17 days 62:17 64:21 deal 52:19 53:4 53:23 dealing 20:16 dean 40:11 46:11,12 dean's 46:10 dec 17:19 18:6 decades 35:10 deceased 8:4 december 44:18 decide 34:3,3 decided 19:11,11 decision 18:21 19:3 24:25 37:7 49:19 52:2 decisions 9:13 9:18 52:5 declarations 13:16 16:9,10,21 17:1 decrease 23:7 decreased 23:6 defendant 5:11 59:6 defendants 1:13 2:7 defense 9:11,14 9:23 10:6 18:15 24:24 26:1,3 40:13 51:8,14,16 52:4,4 defined 17:18,24 defines 20:14 definition 18:2 34:8,14	degree 7:1 28:6 30:20 deleted 49:4 deletion 47:9 demonstrate 30:9 35:6 department 22:10 27:17 39:18 44:3,7,10 depends 24:13 37:6 deponent's 64:20 deposed 55:4,11 55:14,19 56:3,8 58:9 60:16 deposition 1:16 2:14 3:16 4:8,11 4:20 5:25 6:23 8:5 31:7 40:23 55:10 57:5,13 58:5 59:22 60:3 60:11,25 61:3 62:8,9 depositions 5:24 describe 31:5 described 58:9 63:20 description 3:8 designate 48:9 designated 58:18 desk 22:6,7,9 destroy 44:20 50:4 destroying 53:5 53:5 destruction 44:24 48:13
	d		
	d 1:6 4:14 dallas 2:4 damage 21:1,10 21:12,15 data 13:8 database 29:19 30:4 31:4,6 32:9 49:20 58:10 dated 18:13 david 2:12 4:23		

53:7 determination 25:3 33:20 determine 17:17 30:19 32:12,19 34:9 36:5,9 38:1 45:21 determining 9:22 develop 26:2 diagnosed 35:10 different 10:5 20:14 35:8 47:21 differently 27:24 39:8 48:2 difficult 54:24 directed 59:5 direction 62:10 director 6:17 46:10 discovery 26:2,3 26:4,5 43:3 51:8 52:7 discussed 10:4 discussion 23:15 distinction 26:21 district 42:15,16 42:23 division 6:20 44:13 45:1 54:8 document 3:14 11:2,4 12:22 14:5,15 15:11 27:8,10,12 29:19 40:20,22,24 41:1 41:7,20 44:6 45:6 46:8,12,20	47:4,6 48:22 49:15 52:9,18 53:8,10 57:9 58:7 63:19 documentation 12:17 documents 12:14 13:13,15 13:19,22 14:3,8 15:10 17:17 23:22 25:8 27:22 38:22 39:4,20 40:9,10 42:5,6 43:4,6 44:17,21 45:20 47:4 48:7 50:4 50:22 56:24 59:23 60:7,15 doing 8:16 50:25 55:2 double 30:2 47:4 drafting 11:10 12:13 16:17 drop 21:18 duly 1:5 4:13 5:16 62:7 dynamic 35:17 35:20	effort 24:20 eight 55:8 either 7:25 9:22 23:24 24:21 58:20,21,23 electronic 29:20 30:7 31:4 32:6 48:6 54:14,14,15 electronically 32:3 email 3:15 15:9 41:18 44:17 47:1,9 49:6,25 50:3,5,8 51:13 emails 47:13 51:15,18,25 52:7 52:10 54:1 employed 21:19 employee 55:5 55:14,16 employment 62:12 endorsement 23:25 33:13 37:20 38:2,10,18 39:25 40:6,8 endorsements 11:22 12:2 13:9 13:17 16:20,24 engaged 21:16 enter 32:5 entered 32:3 entire 6:20 7:20 11:23 12:2,7 16:25 20:17 32:18 entirely 54:13,15	entities 37:13 err 38:2 errata 64:21 erwin 57:6 esq 2:3,8 evaluate 26:6,11 28:16 everything's 53:6 evidence 24:24 37:8 57:18,20 exactly 17:5 29:17,22 55:2,7 examination 3:2 3:3 5:18 examined 5:16 63:3 examiner 6:9 examining 64:2 example 30:3 32:14 35:12 45:10,12 exception 49:23 exchange 54:1 excluded 12:5 37:20 excludes 33:14 exclusion 23:25 24:5,6,11 34:5 37:16,19 39:1,13 39:17 exclusionary 38:18 excuse 9:15 42:15 execution 63:19 exhausted 48:25
	e		
	earlier 36:23 41:23 45:9 54:12 early 8:25 9:3 52:16 easiest 34:12 edwin 3:16 57:7 57:8		

exhibit 3:7,8,9 3:11,12,14,15,16 10:24 11:1,13 12:9,13,19,22 13:11,23 14:3,6 16:3,4,8,17 17:16,25 18:12 18:13 19:21 24:18 25:12 26:16 27:5,8 28:3,9,12,24 29:15 33:1 35:25 36:7,22 37:14 38:4,9 39:23 40:14,15 40:16,18 41:7 46:17,18 52:21 53:9 57:2,5,23 expect 9:1 expected 20:7 experience 17:5 28:19 32:19 48:1 expert 59:2,7,9 59:12 experts 58:19,20 58:23 expires 63:24 exposed 33:4 35:23 exposure 18:24 20:19 21:20 26:12 33:4 34:1 34:6,6,15 35:6,7 35:12,22 48:24 extended 34:22 35:1	extent 54:13	filling 8:15 final 14:19,22 financial 6:21 17:9 32:18 financially 5:1 62:13 finch 42:4 find 15:12 23:22 28:18 45:24 46:3,3 52:16 56:18 fine 49:24 first 5:16 25:2 35:6 38:3 44:16 44:21 47:15 53:10 firsthand 39:14 flag 32:22 folder 48:8 folders 48:9 folks 54:23 following 64:3 follows 5:17 18:18 foregoing 62:8 62:15 63:4,6 forever 53:11 forget 46:9 57:21 form 10:10 14:13,25 18:9 19:17 22:13 23:15,24 29:3 30:13 33:11 37:5 38:10 43:16 44:19 49:21 55:6,25,25 57:14 59:10	forms 13:8,16 18:1 21:9,21 23:11 39:7,25 forth 24:25 25:9 51:9,13 found 45:25,25 four 30:23 frame 23:8 full 5:25 6:1 function 47:9 further 60:12,18 62:15
	f		
	face 58:8 factors 25:24 33:22 failure 17:12 21:11 fair 19:16 25:11 fairly 23:23 fall 29:8 45:11 familiar 58:11 58:25 far 50:6 54:6 fashion 35:22 favor 56:20 federal 42:17 fellow 23:14 fields 32:5 fifth 1:2 4:18 file 24:11 30:8 31:19 32:8,20 41:22 45:5 47:16,17,20,23 48:4,6,7,12,12 48:15,17,21,23 49:1,5,8,17 50:6 50:25 51:3,12,23 52:3,4,4 53:6,10 54:13,13,23 55:3 59:24 filed 23:21 files 36:4 45:2,16 45:22 46:7 48:5 51:3 54:19 60:15 fill 32:5		g
			gallagher 1:24 2:15 5:13 62:6 62:23 gathered 39:6 general 11:15 51:12 56:5 generally 8:12 9:8 30:11 45:14 51:6 60:9 generated 51:15 51:21 gentleman 41:23 57:6 getting 10:22 54:24 give 5:24 6:1 27:21 33:3 given 54:23 62:17 63:4,7 go 4:10 6:5 24:18 26:9 29:24 30:2,5,24 32:3

goes 17:12 28:15 32:5 34:23 going 4:3 10:7 31:23 32:20 34:19 36:13 51:4 52:3 53:11 57:4 goldberg 2:8 4:20 5:10 8:6,25 9:24 51:23 goldbergsegall... 2:10 good 5:20 36:12 great 35:8 49:25 greater 23:4 green 2:9,16 4:22 greensboro 1:18 2:9,17 4:1,22 grumble 60:16 guaranty 1:12 4:17 guess 25:6 30:16 45:3 59:4,25 guys 15:14	29:22 35:24 45:2 46:7 59:25 happening 31:2 happens 48:17 hard 24:13 hazard 20:8,12 20:19,22,25 21:6 21:10,14 24:22 25:4,4 26:22,23 34:16 37:3,4,15 37:15,18,19 he'll 60:16 heard 50:18 heinze 58:19 59:8,18 heinze's 58:25 help 9:2 helped 9:2 helpful 47:19 hereto 63:8 hey 53:18 56:24 historic 21:24 45:1,12,16,22 46:7 56:11 57:12 58:14 historical 39:21 60:15 historically 40:1 40:2 hit 32:5,14,20 46:7 hits 21:18 hold 3:14 40:21 41:2,4,6,9,16,19 42:1,11 43:9,13 43:19,24 44:3,8 44:9,13,22 46:13 46:14 47:1,3	49:3 50:14,23 52:25 53:4,17 54:2,5,10 home 6:9 honest 46:22 hour 36:13 hypothetical 33:3 i idea 23:13 identification 10:24 12:19 27:5 40:16 46:18 57:2 identified 24:20 29:15 identify 28:20 imaged 48:7 impair 11:9 impaired 30:18 impairing 29:18 impairment 29:11 31:21 impairments 29:14 31:17 included 51:5 includes 13:16 incorporated 39:17 indemnification 9:19,23 34:7 index 3:2,7 indexing 58:13 individual 7:13 10:14 11:6 19:1 19:24 26:6 31:7 32:16 35:11	51:10 55:15 information 14:16 18:23 31:5 39:21 40:12 49:11 52:16 inherited 23:13 injured 47:22 injury 21:1,10 21:12,15 33:16 34:21,22 35:1,5 35:9,14 input 8:18,21 11:10 installing 35:19 instituted 41:5 instructing 50:4 insurance 1:10 1:12 4:15,17 5:12 8:22 10:17 12:15 15:17,20 28:19 59:17 insure 59:5 insured 12:6 21:2,16 24:9 48:3 56:6 insured's 21:3 insurer 30:24 59:16 insurers 42:23 51:16 intended 39:13 intending 53:5 intents 63:19 interest 19:12 interested 5:2 62:13
h half 53:1 hammer 21:18 hand 46:21 handing 27:7,20 handle 30:21 47:23 48:5 handler 32:21 handles 22:11,14 48:1 handling 12:11 22:17 23:3,9			

interfere 4:8 internal 12:10 51:11 intimately 21:8 involve 22:2 involved 34:21 42:6,13 43:6 56:5 57:15 58:22,24 involvement 59:7 involves 23:21 53:2 issue 10:12 13:18 17:2,21 20:17 22:4 23:16 26:8 38:1 38:8 44:22 47:15 48:13,25 53:22 57:16 issued 3:11 11:7 11:15 12:24 19:18 32:7 38:20 39:12 41:6 46:15 56:19 issues 8:17 17:21 23:14 44:3 51:13 item 47:15,21 items 12:5	joining 7:5 jpegs 54:16 judgments 9:20 judicial 1:2 4:18 june 7:19	54:4,6,25 55:7,7 55:21 56:2,3,3 56:14,22 57:17 57:22 58:2,22 59:21,24,24,25 60:2	letters 31:22 letting 11:6 lewis 2:3 5:8 liabilities 22:11 22:18 23:9,10 24:4 58:14 liability 6:21 11:15 16:13 18:6 32:10 59:2 limit 11:9,21 16:5,19 17:1,4 17:15,22 18:6 26:15,21,24 28:22,25 29:18 32:10,14,20 36:25 37:3,21,23 37:25 limited 11:8 limits 30:18 line 46:5 47:4 56:1 64:6 lines 12:17 50:17 links 55:1 list 29:24 30:7 listed 20:2 25:12 28:3,9 33:1 35:24 litigation 3:10 17:3,12,20 20:18 24:16 34:19 35:3 41:6,9,10 41:16 42:1,2,11 42:13,25 43:2,9 43:13,19,24 44:3 44:8,9,11,13,22 46:13,13,14,25 47:3,18 49:3 50:14,23 52:10
	k	knowledge 7:13 32:16 38:25 39:3,14,16 63:5 knows 17:14	
	keep 29:16 48:20 52:10,14 keeping 29:16 kicking 35:20 kimball 46:12 kimball's 46:11 kind 9:2 10:6 16:12 31:15 44:23 48:1 51:13 52:17 56:23 60:1 kinds 12:6 kline 8:2,3,4 knew 17:19 know 7:1,4,11 10:13 11:6 13:4 13:5,24 14:1,23 15:2,5,6 17:23 18:1 20:3,19 24:1,14,14 25:8 25:9 28:17 29:22 30:9,15,25 32:3 35:3 37:7 38:19 39:13 40:7,8 41:19,21 44:5,22 46:6,12 46:21 47:8 49:11 50:6,10,10 50:11 52:15,24 53:3,4,8,8,12,18 53:19,19,19,22	l	
		l 62:6,23 labeled 14:8 27:8 language 16:17 20:16 26:14 34:13 large 55:3 late 35:20 law 7:1,4,7 28:4 28:6 le 47:4 leaving 51:16 left 23:14 legacy 22:11 legal 3:14 4:24 40:21 41:2,3,4 41:19 48:8,8,9 51:12 length 60:8 letter 3:9 11:5,11 12:9,13 17:7,8 18:13 24:18 26:16 27:4 29:24 30:1,6 31:17,19 36:22 52:23	
j 1:10 4:15 job 6:8,10,16,18 9:8 21:25 35:16 jobsite 33:23 35:22			

52:25 53:4,17 54:2,5,10 55:23 little 47:20 48:1 51:11 54:22 55:3 llp 2:3 4:21 locales 35:8 located 4:21 57:17,18 long 6:4 7:10,15 7:23 22:17 35:16 45:6,6 53:1,6 longer 13:9 21:3 52:22 look 17:16 25:7 26:6 30:10 33:23 34:2 50:10,24,25 looked 33:23 looking 12:8 19:24 31:22 loss 28:11,13,14 28:20 30:12 45:10 56:16,17	making 33:20 38:3 49:18 manage 9:10 24:3 45:1 manager 15:13 manually 30:5 manuals 12:10 march 11:16,16 12:23 27:14,14 mark 40:15 46:17 marked 10:24 11:1 12:19,21 27:5,8 40:16 46:18 57:2,4 maryland 56:15 57:10 material 26:11 27:20 36:9 38:21 39:5 materials 36:1 39:6 40:1,2 matter 4:12 24:9 53:14 59:2 matters 34:3 53:17 mean 10:2,11 12:3 14:4,4 19:18 22:7,23,23 28:13 29:21 35:2 46:23 47:10 49:13,16 52:2,24 54:6,10 59:24 means 20:12 mechanism 29:16	media 4:10 60:25 mediated 25:5 megacorporati... 30:25 mentioned 21:21 45:9,10 46:25 50:7 54:12 57:11 met 58:21 microphones 4:5 4:7 middle 42:16,22 midwest 57:16 million 11:21 16:5,13,14,15,18 17:5,10,15 26:15 missing 39:24 mom 31:1 moot 44:23 morgan 2:3 5:8 morganlewis.c... 2:5 morning 5:20 moved 45:4,6 52:18 mulling 56:23 multiple 24:7 48:9 55:1 mutual 1:10 4:14 5:11	names 25:9 narrow 53:21 national 1:9 3:12 3:14 4:14 5:11 7:5,8,17,19,21 8:3 9:5,10,15 10:12 11:14 12:10 14:7,12 15:18,21 17:17 17:24 18:7,15 19:4 20:9 21:7 22:19 27:9 28:23 31:14 33:17 34:9 36:4 38:5,13 39:10,18 39:22 40:21 42:11 43:2,10,24 45:2,18 47:3,8 55:5,15,17 56:7 56:12 57:8,13,20 58:6,15,17,18 national's 10:18 13:11 45:17 59:9 nature 12:6 48:19 nebulous 25:24 need 6:4 13:20 15:14 26:12 27:21 30:19 45:3 47:24 50:1 50:17,18 60:1 needed 31:20 needs 34:21 53:12 nes 2:3 3:4 5:8,8 5:19 7:14 10:16 10:25 12:20
m		n	
maier 3:15 41:5 41:14,15,16 43:14,20,20,20 43:25 44:4,18 46:15 47:1 50:3 50:7,13,21 52:25 53:16 maier's 44:13 main 2:4 maintains 45:18		name 4:23 5:20 48:10 59:1 named 41:23 57:6 63:17	

13:1 14:18 18:11 19:20 22:16 25:19 27:6 29:13 31:3 31:12 32:17,24 33:19 36:12,20 37:10 40:17 42:17,20,21 43:17,18 44:25 46:19 50:2 52:20 55:9 56:9 57:3 58:1 59:13 60:20,21 never 17:10 30:22,24 35:19 51:1 56:25 58:21 59:19 new 23:21 48:2,3 48:16,20 newly 23:20 normal 51:2 north 1:18 2:9 2:16,17 4:1,22 42:16,23 62:1 northern 42:14 notarized 62:18 notary 2:15 62:6 62:23 63:14,22 63:24 note 4:5 64:20 noted 63:7 nother 17:11 notice 17:13 52:25 noticing 5:7 notified 54:9,9 notify 17:12	november 1:20 2:18 4:4 62:20 63:4 number 6:19 25:24 28:17 41:18 numbered 38:5 numbers 10:4 40:5 o o 47:4 oath 4:25 object 22:13 objection 10:10 14:13 18:9 19:17 25:17 29:3 30:13 33:11 37:5 43:16 44:19 49:21 55:6,25,25 56:13 57:14 59:10 objections 5:5 obligation 24:2 26:1 obtain 26:3 obvious 51:17 obviously 12:16 20:5 34:3 51:7 52:2 53:20 occasionally 8:11 10:3 occur 25:25 34:21 occurred 34:1 35:14	occurrence 11:21 16:5,14,18 21:25 58:14 occurs 21:2,11 21:15 34:23 35:5 office 6:9 11:14 oh 22:24 47:14 54:6 okay 6:6 14:10 22:25 32:2 36:14 47:7 49:24 53:3,4,19 old 18:1 21:9,21 22:6 older 22:2 23:21 omar's 40:11 once 55:21,21 56:2,3 ones 19:18 40:8 ongoing 33:5,7 34:22 35:9 49:5 open 48:3 53:10 operation 20:22 20:25 24:21,22 25:14,21,22 26:8 26:23 33:7,15,18 34:9,10,11,14,20 34:22,25 37:4 operations 6:17 21:14,20 25:3,4 25:14 26:22 31:1 33:14,24 34:6,16 35:21 37:15,19 38:17 opinion 33:18 opinions 28:8	opportunity 5:23 opposing 49:7 orange 62:2 ordered 54:19 54:21 organized 47:20 outcome 5:2 62:14 outside 8:6 9:4 28:8 36:8 51:22 overall 11:9 19:1 oversees 6:19 overtime 9:12 owed 26:1 p page 3:3,8 13:16 16:9,10,21 17:1 17:19 18:6 38:4 38:6,13,14 53:1 64:6 pages 17:16 40:7 51:4,5 62:16 63:6 paid 11:7 17:14 28:21,25 29:25 paper 15:15 45:5 54:14 paragraph 11:13 18:14 26:17 parsons 6:15,16 6:24 7:1,4,15,20 7:23 8:1,10,13 41:24 42:2 53:24 54:1,4 part 20:17 25:16 34:18 35:4

38:19,23 39:1,9 39:14,20 40:9 43:2 45:20 47:17 49:5 52:1 participate 10:13 18:16 26:12 participated 18:25 particular 9:14 10:19 18:4 19:15 20:2,20 25:13 32:20 34:13 parties 4:9 10:5 62:10,12 party 5:1 20:20 pass 60:20 pay 10:7 18:7 37:7,9 paying 37:24 payment 19:18 27:1 32:6 37:22 38:3 payments 11:7 12:17 18:3,18 28:16 29:10,17 29:20,22 30:8,10 31:5 32:2 36:23 36:24 37:20 52:5 pdf 54:17 pdfs 54:15 pending 6:5 8:16 17:20 59:1 penn 3:12,14 7:5 7:7,17,19,21 8:3 9:5,10,15 10:12	10:18 11:14 12:10 13:11 14:7,12 15:18,21 17:17,24 18:7,15 19:4 20:9 21:7 22:19 27:9 28:23 31:13 33:17 34:9 36:3 38:5,13 39:9,18 39:21 40:21 42:11 43:2,10,24 45:2,17,17 47:3 47:8 55:5,14,17 56:6,12 57:8,13 57:20 58:5,15,17 58:18 59:9 pennsylvania 1:9 4:14 5:11 people 41:18 47:22 50:8 percent 30:21 percentage 22:21 23:5 24:4 percentages 24:15 performed 21:2 performing 33:24 period 18:4 34:2 35:8 45:4,19 48:14 49:2 periods 11:16 34:24 35:15 person 14:19 21:19 personal 38:25 39:3	personally 63:18 personnel 15:6 perspective 44:24 pertaining 52:1 peter 1:6 4:14 phones 4:7 phrase 12:1 21:6 pick 4:5 piedmont 4:21 place 4:7,20 30:2 41:2 placed 47:3 53:9 plaintiff 1:7,17 2:2 4:12 5:9 33:25 48:10 59:2,12,14,15 plaintiff's 35:5 35:13 pleas 1:2 4:18 please 4:4,6 5:5 plethora 17:11 point 19:15 35:15,16 policies 11:15 12:15 19:4 20:9 21:25 22:2,3 24:7 36:1,25 48:25 52:8 56:11 policy 3:11,12 11:16,20,21,23 12:3,4,8,24 13:3 13:6,7,7,12,13 13:14,15,18,20 13:21,23 14:3,8 14:12,14 15:15 15:17,21 16:5,19	16:20,25 17:1,17 17:18,24 18:4,25 20:14 21:7,21 23:12 24:2 27:2 27:3,9,13,14,16 27:18,24,24 30:17 33:9,12,17 34:9,17,23 35:14 36:5,9 37:16,19 38:19,23 39:1,4 39:6,10,12,14,17 39:21,25 40:5,12 42:5 44:6 46:8 48:22 56:7,16,17 56:19,20,22,24 57:17 policy's 38:5,14 policyholders 22:18 45:17 pop 31:1 pops 32:22 portfolio 22:21 portion 57:25 position 19:10 possibility 31:2 possible 49:23 potential 18:24 practice 7:7 30:11 36:3 practiced 7:4 premises 21:14 24:21 26:22 preparation 6:23 8:5 40:23 59:22 prepare 29:23 preparing 12:9 42:10

present 2:12 5:3 41:16 62:11 presented 41:11 preserving 44:17 pretty 21:9 previous 6:11 previously 60:7 principally 6:20 8:15 printed 53:9 prior 7:4,7 8:1 23:14 29:5 62:8 private 4:6 probably 15:24 20:10 23:4 30:21 51:11,18 51:20 problem 24:1 procedure 40:21 51:2 proceeding 5:5 process 23:23 26:2 processes 45:8 produce 22:3 produced 1:25 14:7 38:23 39:22 product 21:6,12 21:13 24:22 25:13,15,22 26:23 37:15,18 production 54:19 products 21:10 33:14 34:5 35:19 37:3 38:18	professional 59:2 proffered 58:18 program 42:24 project 35:13 property 1:11 4:16 protected 20:7 protecting 38:3 protopapas 1:6 4:14 24:19 provide 13:19,21 15:14 17:9 26:4 provided 11:14 13:17,22 14:15 38:21 39:4 40:9 41:20 51:9 54:22 providing 40:12 public 2:15 62:6 62:23 63:14,22 pulled 41:20 47:6 pulling 31:23 pure 32:23 purging 46:6 purposes 26:24 27:25 34:16 63:20 pushing 51:4 put 13:7 14:1,16 26:1 27:13,15,16 32:3 39:24 41:2 49:6,10,13,16,22 50:20 51:2 56:7 56:24 putting 27:18	q qsf 10:3,8 51:19 51:19 qualified 15:20 qualify 45:3 question 6:5 10:2 30:16 31:15 49:18 questionably 26:8 questioning 56:1 questions 57:24 60:19,22,22	received 13:19 15:11 42:4,9 43:13,19,23 44:17 46:12,25 52:23 54:4 receiver 1:6 4:13 5:9 9:3 11:5 17:8 37:12 51:16,21 receives 9:12 recess 36:17 recognize 11:2 12:22 27:7,10 38:14 40:18 46:20 reconstruct 13:6 15:20 23:17 reconstructed 15:17 reconstructing 56:22 reconstruction 13:11 56:11 record 4:3,10 5:4,21 6:5 29:9 29:16,20 32:6 36:16,19 39:21 61:2 63:7 recorded 4:11 recording 4:9 records 40:10 56:16,17 recreating 13:23 refer 28:20 reference 16:4 16:19 referenced 27:4
		r rare 22:5 rarely 33:13 read 22:4 27:23 36:1 53:2 60:3 63:3 64:6 reading 64:2 real 7:24 really 10:6,11 22:1 24:15 25:9 29:23 30:14 44:23 47:2 57:24 60:1 reason 6:1 52:14 58:4 64:5 reasons 51:17 recall 8:12 14:2 41:24 43:4 45:13 46:11 53:1 56:5 57:12 60:8 receipt 64:21 receive 41:9 42:1 42:10 43:9 44:9	

referencing 17:15 referring 41:4 41:13 refuses 12:7 regarding 23:15 31:5 42:24 57:17 60:6 reif 58:9 60:6,12 relate 16:25 24:4 related 4:25 22:11 23:10 28:9 42:2 43:4 43:10 44:10 45:16,22 46:13 48:5,21 49:8 52:13 54:20 55:23 60:7 relates 22:22,24 relative 6:20 35:14 relied 17:6,19 relinquished 21:4 rely 12:10,14 20:15,15 21:9 24:23 33:22 34:8 relying 33:21 39:18,20 remember 38:7 38:11 46:23 47:5 50:16 52:24 54:7 57:1 57:15,24 remote 31:2 reopen 48:17	rephrase 42:17 report 26:3 59:3 reported 1:24 46:1 reporter 5:13 12:25 62:4 reporting 24:24 25:8 51:11 reports 51:8 repository 14:5 15:11 represented 14:11 request 40:4,5 49:14 52:9 requested 39:4 requesting 43:3 requests 43:3 required 22:2,3 research 28:4 30:19 reserve 60:22 reserved 61:4 respect 9:9 12:11 29:14 42:14 43:7 responded 15:3 responds 10:19 responses 42:10 52:7 responsibilities 6:18 9:9 21:5 responsibility 15:23,23 32:19 32:21 responsible 46:6 46:11	responsive 42:6 52:9 resulting 21:13 retention 44:6 46:8 48:14,22 49:2 retrieved 58:15 return 64:20 revealed 26:5 review 36:4 40:24 59:23 60:1 revisiting 19:25 rice 3:16 57:6,7 57:8,21 58:2 richland 1:2 4:19 right 6:7 16:11 26:25 29:1 30:12 31:8,9 39:2 41:8 42:7 45:18 50:8 52:23 53:24 59:1,9 60:22 risk 24:14 28:16 48:15 57:15 59:5 risks 22:4 23:21 23:22 road 2:9,16 4:22 52:17 robertson 58:19 robinson 59:20 role 27:18 55:5 58:13 room 4:21 roughly 55:20	routine 24:12 ruled 56:19 57:19 run 25:9 28:11 28:13,14,20 runs 30:12 45:10 s s 64:5 sam 1:10 4:15 save 47:12 saw 41:1,7 53:19 saying 16:18 27:21 says 11:14 16:11 17:6 18:14 49:25 scope 26:4 scott 41:5,11,12 41:13,14,15,19 43:14,20,25 44:13,18 46:15 47:1 50:24 52:25 screen 32:4 se 60:1 seal 63:23,24 search 40:5 42:6 43:6 45:20,21 52:15,15 60:7 searching 52:8 second 11:20 secondary 57:18 57:20 section 16:11,12 16:15 see 11:18,24 16:6,8 18:19

21:23 26:15 33:13 50:11,25 51:14 53:2,11 60:15 seeing 46:23 52:24 seek 8:18,21 11:10 28:8 seen 38:6,7,11 57:9 segalla 2:8 4:21 5:10 8:6,25 9:24 51:23 segment 6:21 selections 49:9 send 13:24 15:1 49:6,14 senior 6:9 sensitive 4:5 sent 11:5 13:25 14:23 15:7 24:19 40:11 41:18 49:15 50:1,3,8,9,11 sentence 11:20 separate 44:3,6 51:25 september 18:13 served 43:3 set 14:2 31:16 settle 47:23 settled 48:20 settlement 10:3 10:13 12:16 18:16,17 19:1,5 19:11 26:12 settlements 9:19 18:22	seven 48:14,18 49:2 sheet 64:21 short 47:2 show 27:3 57:4 showing 11:1 12:21 shows 16:13 side 9:11 38:3 sides 35:18 signature 61:3 62:18,22 silverman 40:13 simple 23:23 24:9 simply 17:8 31:16 34:5 48:22 simultaneous 31:11 52:12 single 49:6 site 21:4,17 sitting 13:10 16:23 19:14 20:1 56:22 size 54:23 slightly 39:8 slip 29:7 45:11 small 16:12 snyder 58:9 60:6 60:12 solves 24:1 somebody 23:5 30:10 49:11 51:21 53:11 sorry 18:13,17 57:8	sort 28:14 sought 10:17 south 1:1,11 4:16,18 9:1 speak 5:23 6:24 8:7 9:4 50:13 53:16 speakers 31:11 52:12 speaking 40:3 specific 28:17 41:20 53:21 57:24 specifically 23:12 27:16 33:20 40:3 spoke 41:23 60:6 spoken 6:11 8:9 50:19 59:18,20 spreadsheet 30:3 31:24,25 start 25:9 43:17 44:16 53:2 started 7:17,19 23:4 24:13 starting 47:13 starts 48:18 state 1:1 2:16 4:18 5:3,5,20 62:1 63:15 stated 37:11 62:11 statement 19:16 49:24 stereotypically 23:20 stops 33:7	stored 45:2 58:15 street 2:4 strike 16:15 22:20 24:17 37:13 41:12 43:12 structure 13:18 stuff 29:6 49:12 51:3 52:15,15 subject 11:22 12:1 48:12,22 subjected 35:12 submitted 24:10 subordinates 53:13 subpoena 40:11 42:4,9 52:9 substantive 49:9 49:19 suggest 18:24 suing 59:16 suit 42:14 suite 2:4,9 4:22 sum 29:11 summer 60:11 summons 9:11 51:7 supervises 6:21 supervision 62:10 supervisor 7:20 7:23 8:1 32:22 supposed 49:16 sure 7:24 10:1 14:4 15:24 22:23 27:3 28:13 29:4

30:15 36:14 54:6,25 55:21 56:3,14 susan 1:24 2:15 5:13 62:6,23 suspect 20:10 suspicion 20:5 sustained 33:16 swear 5:14 sworn 5:16 62:7 system 31:20,23 32:13 50:22 58:10,11,14	terms 11:22 12:1 16:20,24 39:16 testified 5:17 52:22 56:10,25 59:4 60:8 testifying 7:12 31:13 testimony 6:2 24:25 32:15 45:13 58:5 59:3 62:17,19 63:4,7 64:2,21 texas 2:4 thank 60:18,21 thanks 49:13,13 49:24 thing 28:15 29:9 30:8 34:12 things 6:19 8:17 20:15 23:20 53:21 think 7:24,24 17:2 23:4 25:6 29:23 30:15 34:18 38:1 49:9 50:9 51:2 55:21 56:21 57:21,22 third 18:14 22:25 24:3 thousand 48:5 three 30:23 47:22 time 5:6 6:4 7:21 21:5 23:6,8 26:2 32:18 33:25 34:1 35:8,10 36:12,15,18 39:12 41:1,6	43:24 44:16,21 45:4,6,19 48:2 53:20 54:22,24 55:3 61:1 times 5:24 6:11 24:7 55:8,19 timing 34:2 title 6:8,10,16 46:10 today 6:2,23 8:5 13:10 16:23 19:14 20:1 40:23 told 17:10 tom 8:2 tomorrow 54:20 total 11:7 18:3,3 18:6 52:4,4 totaling 18:18 track 24:15 28:24 29:16 47:23 56:4 transcribed 62:9 64:3 transcript 1:25 3:16 57:5,13 62:16 transcription 1:25 transcripts 60:3 travelers 10:3,8 trial 60:23 trick 31:15 trigger 33:9 true 23:1 62:16 try 23:22 49:10 49:22	trying 23:17 28:15 30:15,16 31:14,16,25 turn 4:6 11:13 16:3 18:12 36:21 38:4 40:14 46:16 52:21 turning 26:14 37:14 38:13 twice 55:21,22 two 6:11 11:17 20:14 26:17 30:23 35:18 36:25 47:22 48:16 50:15 58:18,18 60:25 type 25:12,25 29:24 31:1,17 55:24 typically 21:1,15 28:14 35:5
t			u
tabulating 26:20 take 6:6 12:4 15:10 19:10 24:23 38:9 taken 1:17 4:11 60:4 62:9 takes 26:2 talk 53:20 talked 8:25 53:18,22 54:12 talking 27:2 33:6 33:8 36:22 45:9 55:20 technical 6:17 6:19 tells 44:15 ten 55:8 tendered 9:15,15 9:20 10:19 22:17 term 20:8,21 28:23			ultimate 52:2 ultimately 30:17 56:19 57:18,19 uncommon 48:15 understand 10:2 20:13 22:5 23:17 29:4 30:16 31:16 36:1,5 42:19 44:7 50:17 54:7 understanding 13:2 18:5,10 20:11,24 21:10

28:22 34:20 37:17 44:2 48:19 59:8 understood 44:16 47:19 55:4 underwriter 16:1 57:21 underwriting 13:20,24 14:6,24 15:1,8,12,13,22 27:17,21 28:15 35:25 36:4 39:9 39:18 unit 4:10 units 61:1 upload 31:4 49:20 50:5 uploading 50:22 use 28:19,22 usually 23:23	videographer 2:12 4:3,24 36:15,18 60:24 violate 44:15 virtually 54:16 volume 54:23	59:11 60:20 62:17 63:1 witnessed 63:18 word 17:18,23 18:5 20:11 words 55:15 work 7:15 15:24 21:2,3,16 25:13 30:3 31:19 33:5 34:1,24 35:12 46:3 worked 53:13 58:20 workers 46:1 working 7:7,17 21:18 34:15 workload 8:17 23:5 world 35:4 worry 23:24 worth 36:24 would've 47:6 wright 1:16 2:14 3:9 4:11 5:15,22 5:23 6:8 7:12 36:21 60:18,25 62:7 63:2,12 64:25 write 49:12 written 32:25 36:9 wrong 19:7	46:22 47:2,14,16 49:15 52:11 53:22 56:4 year 48:14,16,18 49:2 55:21 years 7:16 11:17 15:5 22:6,19,20 23:1,3,8 34:23 yntema 2:8 5:10 5:10 7:12 10:10 14:13 18:9 19:17 22:13 25:17 29:3 30:13 32:15 33:11 36:14 37:5 42:16,19 43:16 44:19 49:21 55:6,25 56:13 57:14 59:10 60:21
v	w		z
v 1:8 valley 2:9,16 4:22 value 58:8 variety 53:20 various 42:23 veritext 4:24 64:21 veritext.com. 64:21 versus 4:14 25:14,15 video 4:11,20 60:24	wednesday 2:17 4:4 went 20:6 41:20 51:21 whispering 4:6 willing 10:5 window 48:18 witness 2:14 5:13,14 10:11 14:14 18:10 19:18 22:14 25:18 29:4 30:14 32:18 33:12 37:6 44:20 49:22 52:13 55:7 56:2 56:14 57:15	y y2k 58:10 yeah 8:23 10:11 21:23 29:2 32:2 39:3 41:11	zürich 42:14,22 43:7,10