

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

RICKY DEAN FLYNN, as the Executor of  
the Estate of JERRY KAY FLYNN,  
Deceased,

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

Plaintiff,

v.

3M COMPANY *et al.*,

C.A. No. 2023-CP-40-00633

Defendants.

**ON REMAND FROM THE SOUTH  
CAROLINA SUPREME COURT**

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

**ORDER OF THE CIRCUIT COURT  
GRANTING CONSENT MOTION TO  
APPROVE SETTLEMENT BETWEEN  
THIRD-PARTY PLAINTIFF, THE  
RECEIVER FOR COVIL  
CORPORATION, AND THIRD-PARTY  
DEFENDANT, PENNSYLVANIA  
NATIONAL MUTUAL CASUALTY  
INSURANCE COMPANY**

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

TERRY L. GREEN, as the Personal  
Representative of the Estate of Robert J.  
Green, Deceased, and EVELYN V. GREEN,  
individually,

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

Plaintiffs,

v.

COVIL CORPORATION *et al.*,

C.A. No. 2022-CP-40-06627

Defendants.

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**RECEIVED**

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S.C. SUPREME COURT

COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

KENNETH JOHNSON and PATRICIA  
JOHNSON,

Plaintiffs,

v.

COVIL CORPORATION *et al.*,

Defendants.

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

THEODORE L. KELLY SR. and BERNICE  
M. KELLY,

Plaintiffs,

v.

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

C.A. No. 2022-CP-40-05808

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

COVIL CORPORATION *et al.*,

Defendants.

C.A. No. 2022-CP-40-06035

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

LARRY MCLEOD,

Plaintiff,

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

v.

COVIL CORPORATION *et al.*,

Defendants.

C.A. No. 2023-CP-40-01652

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

TED EVERETTE MITCHELL, Individually,  
and as Executor of the Estate of PATSY ANN  
MITCHELL,

Plaintiffs,

v.

COVIL CORPORATION *et al.*,

Defendants.

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

C.A. No. 2022-CP-40-02979

BRADLEY D. TAYLOR and SANDRA  
TAYLOR,

Plaintiffs,

v.

COVIL CORPORATION *et al.*,

Defendants.

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

C.A. No. 2021-CP-40-06228

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

JOHN A. TIBBS and MARGARET B.  
TIBBS,

Plaintiffs,

v.

COVIL CORPORATION *et al.*,

Defendants.

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COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

In re: Asbestos Personal Injury Litigation  
Coordinated Docket

C.A. No. 2023-CP-40-01759

ROGER WIDNER and DEBORAH  
WIDNER,

Plaintiffs,

v.

COVIL CORPORATION *et al.*,

Defendants.

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In re: Asbestos Personal Injury Litigation  
Coordinated Docket

C.A. No. 2022-CP-40-06712

COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Third Party Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Third Party Defendant.

COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Defendant.

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

C.A. No.: 2024-CP-40-03014

COVIL CORPORATION, by and through its  
duly appointed Receiver, Peter D. Protopapas,

Plaintiff,

v.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Defendant.

In Re:  
Asbestos Personal Injury Litigation  
Coordinated Docket

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

**FINAL ORDER GRANTING MOTION TO APPROVE A SETTLEMENT  
BETWEEN THE RECEIVER FOR COVIL CORPORATION AND  
PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY**

This matter comes before this Court on the unopposed motion of Peter D. Protopapas, as Receiver for Covil Corporation (the “Receiver”), to approve a settlement between the Receiver and Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) (collectively, the “Settling Parties”). Penn National also moves this Court for an order vacating the final judgment entered in this matter on March 1, 2024. Having considered the motions, together with the exhibits submitted with the motions, this Court hereby decides the matter on the filings and rules as follows:

**I. PROCEDURAL BACKGROUND**

The proposed settlement agreement marks the resolution of over five years of complex insurance coverage litigation between the parties in numerous lawsuits (discussed below), which generated a bench trial and multiple appeals in the Court of Appeals and in the Supreme Court, regarding: (1) the existence, terms, conditions, and limits of Covil’s historic comprehensive general liability insurance policies issued by Penn National, (2) requests for critical interpretations regarding the meaning and application of those policies with respect to asbestos bodily injury claims asserted against Covil, and (3) extensive litigation related to the Receiver’s breach of contract and tort claims against Penn National, which was set for a jury trial starting on March 31, 2025.

By way of background, Peter D. Protopapas was appointed by this Court in 2018 as the Receiver for Covil, a defunct South Carolina corporate entity. Covil engaged in the business of installing, removing and sometimes selling insulation made with asbestos materials in the State of South Carolina and in other places in the Southeast for many years between the 1960s and the

1990s. Covil has been sued in many asbestos lawsuits. This Court was appointed to manage the asbestos docket at the direction of the Chief Justice of the Supreme Court of South Carolina.

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

This Court appointed a receiver to marshal and manage Covil's assets. Specifically, this Court tasked the Receiver with "the right and obligation to administer any insurance assets of Covil Corporation as well as any claim related to the actions or failure to act of Covil's insurance carriers."<sup>1</sup> The only assets Covil had at that time, and has to this day, are the coverages provided by the "legacy" "occurrence-based" general liability insurance policies covering Covil that were issued during the time it was an active asbestos insulation company. This Court therefore charged the Receiver with marshaling Covil's assets, including all "occurrence-based" liability insurance policies, that may respond to the asbestos suits pending against Covil.

To fulfill his obligations to this Court, the Receiver obtained information and documents from multiple insurance companies regarding the insurance coverage it issued to Covil first via subpoena, then through the institution of multiple lawsuits. As recognized by this Court in its May 5, 2022 Order on Discovery, Covil has "diligently pursued discovery of all insurance policies issued . . . that cover Covil, in any way, through written requests for information as well as multiple depositions."<sup>2</sup>

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<sup>1</sup> November 2, 2018 Receivership Order.

<sup>2</sup> May 5, 2022 Discovery Order at 5.

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

Penn National first came to this Court’s attention in connection with the *Finch* case, which was an asbestos case tried in federal court in North Carolina resulting in a \$32.7 million judgment against Covil. Certain general liability insurance policies issued by Penn National that covered Covil were located by Penn National in response to an asbestos claimant subpoena in the *Finch* case that provided specific policy numbers for certain policies issued by Penn National to Covil. After his appointment, the Receiver subsequently requested insurance policy information from Penn National via subpoena and insurance coverage litigation in federal and state courts in North Carolina and South Carolina. In doing so, the parties engaged in significant discovery, motions practice, briefing, oral argument, trial preparation, trial, and appeal, as described below:

**A. The Finch Coverage Action.** In October 2019, Penn National was named as a defendant in the Covil coverage litigation in the Middle District of North Carolina (the “Finch Coverage Action”).<sup>3</sup> In connection with that action, the Receiver sought documents and

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<sup>3</sup> On October 2, 2019, another of Covil’s historical insurers named Penn National as a third-party defendant in the first Covil insurance coverage action, filed in the Middle District of North Carolina. *See Zurich Am. Ins. Co. v. Covil Corp.*, No. 1:18-cv-932 (M.D.N.C. Oct. 2, 2019), ECF 104. On November 20, 2019, Covil amended its Answer to include a third-party action against Penn National. *See id.*, ECF 131.

(Continued)

information regarding insurance policies that Penn National issued to, or otherwise covered, Covil as either a named insured or as an additional insured potentially responsive to asbestos liabilities.

**B. The Rollins Coverage Action.** In February 2020, the Receiver filed suit against Penn National in this Court (the “Rollins Coverage Action”).<sup>4</sup> The Receiver served Penn National with discovery requesting all insurance policies issued by Penn National that covered Covil as an insured. In that action, the Receiver also filed a motion for partial summary judgment against Penn National, seeking coverage for the underlying Rollins asbestos bodily injury case under Penn National’s insurance coverage issued to Covil. This Court granted Covil’s motion for partial summary judgment and Penn National appealed to the Court of Appeals of South Carolina and then to the Supreme Court of South Carolina. Both the Court of Appeals and the Supreme Court affirmed this Court’s order granting Covil’s motion for partial summary judgment.

**C. The Declaratory Judgment Action.** In April 2020, the Receiver filed suit against Penn National in this Court (the “Declaratory Judgment Action”).<sup>5</sup> The Receiver sought resolution of insurance coverage issues not raised in the Rollins Coverage Action that went before the Supreme Court. Specifically, the Receiver sought declarations regarding (1) allocation, (2) trigger of coverage, (3) number of occurrences, and (4) applicability of the aggregate limit.

The parties engaged in extensive discovery in the declaratory judgment action, exchanging hundreds of thousands of pages of documents. The Receiver served four sets of requests for production, two sets of interrogatories, and a set of requests for admission. Penn National also served requests for production, interrogatories, and requests for admission. Moreover, the parties retained and utilized multiple expert witnesses. The parties further conducted at least twelve

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<sup>4</sup> *Covil Corp. v. Pa. Nat’l Mut. Cas. Ins. Co.*, C.A. No. 2020-CP-40-01226.

<sup>5</sup> *Covil Corp. v. Pa. Nat’l Mut. Cas. Ins. Co.*, No. 2020-CP-40-02098.

depositions in the declaratory judgment action in preparation for trial. The parties also appeared for hearings before this court on at least eight occasions related to a range of motions practice, including multiple motions to compel, motion to challenge confidentiality, motion to quash depositions, motion to enforce discovery orders, motion for attorneys' fees and costs, two pretrial hearings, and a motion for summary judgment. Penn National also filed an interlocutory appeal of this Court's mode of trial order. Penn National's interlocutory appeal was denied by the Court of Appeals and the Supreme Court.

After a multi-day non-jury trial in November 2023, this court granted Covil the declaratory relief requested by the Receiver in a 100-plus page order, dated March 1, 2024 ("Trial Order"). The Trial Order provides a comprehensive analysis of "rules of the road" regarding the application of historic, "occurrence-based" CGL coverage for long-tail asbestos claims under South Carolina law. This Court also issued a spoliation order and accompanying penalties against Penn National.

Penn National appealed this Court's Trial Order to the Court of Appeals. This appeal was subsequently transferred to the Supreme Court. On March 17, 2025, at the request of the parties, the Supreme Court remanded this case to this Court to allow it to consider whether or not to approve the parties' proposed settlement agreement.

**D. The Bad Faith Actions.** Beginning in 2023, the Receiver filed a series of additional lawsuits against Penn National in this Court, asserting claims for breach of contract and bad faith claims handling practices, and seeking compensatory and punitive damages.<sup>6</sup> This Court subsequently consolidated these "bad faith" actions.

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<sup>6</sup> *Covil Corp. v. Pa. Nat'l Mut. Cas. Ins. Co.*, No. 2024-CP-40-03014; *Flynn v. Covil Corp.*, No. 2023-CP-40-00633; *Green v. Covil Corp.*, No. 2022-CP-40-06627; *Johnson v. Covil Corp.*, No. 2022-CP-40-05808; *Kelly v. Covil Corp.*, No. 2022-CP-40-06035; *McLeod v. Covil Corp.*, No. 2023-CP-40-01652; *Mitchell v. Covil Corp.*, No. 2022-CP-40-02979; *Taylor v. Covil Corp.*, No. 2021-CP-40-06228; *Tibbs v. Covil Corp.*, No. 2023-CP-40-01759; *Widner v. Covil Corp.*, No. 2022-CP-40-06712.

The parties, once again, engaged in extensive discovery in the bad faith actions over two years, exchanging tens of thousands of pages of documents, multiple rounds of requests for production and interrogatories, numerous depositions of fact witnesses, retention, disclosure, and preparation of five expert witnesses, filing of multiple dispositive and discovery motions and at least one hearing. This Court set a jury trial to commence in the consolidated bad faith actions on March 31, 2025.

On March 14, 2025, the Receiver filed an unopposed motion to approve the settlement agreement between the Receiver and Penn National. As noted above, on March 17, 2025, the parties petitioned the South Carolina Supreme Court to remand this case to this Court for consideration of the parties' proposed settlement. On March 18, 2025, Penn National filed a separate consent motion requesting this Court consider vacating its final judgment entered on March 1, 2024. This Court received the remand from the Supreme Court on March 18, 2025, giving it jurisdiction to consider the parties' proposed order approving settlement.

## **II. ANALYSIS AND TREATMENT OF CONFIDENTIAL SETTLEMENT AGREEMENTS**

The Receiver and the Covil QSF have entered into a confidential settlement agreement with Penn National. The Receiver moves this Court to approve the settlement. The proposed settlement agreement provides that funds paid by Penn National as part of the settlement agreement will be deposited into the Covil QSF, a qualified settlement fund established pursuant to Treasury Regulation § 1.468B-1 for the defense of Covil asbestos bodily injury suits and payment of Covil asbestos bodily injury claims, with this Court retaining continuing jurisdiction over the Covil QSF. The Receiver has asked that the settlement agreement remain sealed.

This Court has thoroughly reviewed the settlement agreement. In weighing the factors outlined in Rule 41.1(c) of the South Carolina Rules of Civil Procedure, this Court, while mindful

of our state's public policy favoring the transparency of court proceedings, has reviewed the settlement agreement in detail *in camera* and all submissions related to this motion, and this Court finds the Receiver has met his burden to show sealing the settlement agreement is proper and necessary under Rule 41.1(c). Specifically, this Court finds that, although the litigation of asbestos suits is of great public importance, the specific terms of the liquidation of Receivership assets arising from a settlement between the Receiver and a settling insurance company does not have great public significance.

This Court agrees with the Receiver that the settlement agreement does not attempt to hide important or damaging information from the public and is only related to liquidating Receivership assets from Penn National, a settling insurer. This Court holds that sealing the settlement agreement is necessary and beneficial to the public to ensure the longevity of the Covil QSF and allow for the fair and just compensation of injured parties who may have legitimate future claims against Covil due to asbestos-related injuries. As noted above, this Court previously approved the establishment of the Covil QSF, retains continuing jurisdiction over the Covil QSF, and will be able to adjudicate any matter brought before this Court concerning this settlement and the transfer of funds to the Covil QSF.

The premature disclosure of the specific details of this settlement agreement could be misappropriated and could chill the Receiver's ability to equitably liquidate Receivership assets. Furthermore, the underlying asbestos litigation is still ongoing, and sealing this settlement agreement will allow these asbestos cases to continue forward in the same manner that other cases move forward. This Court further finds sealing the settlement agreement is the best way to balance the potential harm to the Settling Parties with the public interest, and there are no other alternatives in this case to protect the private interests of the Settling Parties.

### III. LIQUIDATION OF RECEIVERSHIP ASSETS AND APPROVAL OF SETTLEMENTS

A key provision of the parties' consent settlement agreement provides that Penn National will buy back its policies from Covil. These policies are the sole asset discovered by the Receiver in connection with its marshaling of the assets of Covil. "A sale of receivership property by the receiver, under an order of Court, is a judicial sale." *Hannon v. Mechanics Bldg. & Loan Ass'n of Spartanburg*, 177 S.C. 153, 159, 180 S.E. 873, 875 (1935).

The Courts of this State have uniformly exercised the power to order that a receiver, duly appointed, shall sell the real estate and other property of the person or corporation whose assets are in the hands of receivers, in order to distribute the proceeds among creditors, stockholders, and other parties interested, and to liquidate and wind up the affairs of such insolvent person or corporation.

*Id.* at 159, 180 S.E. at 876. Moreover, "it is often of great importance that such assets should be disposed of by a receiver . . . because of his special knowledge of such assets; and because the receiver . . . takes the manual possession and custody of the property for the purpose of disposing of it and distributing the proceeds." *Id.* Thus, when the Court deems it appropriate, it "may make an order to the receivers to sell at private sale, or the Court may accept an offer made directly to the Court, or may ratify a sale already made." *Id.* at 159-60, 180 S.E. at 876.

Like any contractual right, the insurance contracts at issue constitute property of Covil that may be liquidated by way of a sale. As part of the Settlement Agreement, Penn National has offered to buy back any policies that they may have sold to Covil. Doing so will allow the insurance assets to be liquidated for use in the administration of the Receivership, and by the Covil QSF for the defense of Covil asbestos bodily injury suits and the payment of Covil asbestos bodily injury claims.

The Receiver is seeking approval to sell the Receivership's property. Specifically, the Receiver seeks approval to sell the insurance policies issued by Penn National back to Penn National to fund the Covil QSF. This Court has jurisdiction over the assets of Covil through its

un-appealed and unchallenged Order appointing the Receiver, dated November 2, 2018. Furthermore, South Carolina law vests this Court with discretion to dispose of the Receivership's assets and direct disposition of those assets.<sup>7</sup> This Court is further retaining continuing jurisdiction over the Covil QSF and all of its assets.

#### IV. FINDINGS

##### A. Approval of Settlement Agreement

1. The Receiver and Penn National have entered into a final comprehensive settlement agreement titled "Confidential Settlement Agreement and Release" ("Settlement Agreement"). The Settlement Agreement provides for the buyback of insurance policies issued by Penn National to Covil and resolves all disputes between the Settling Parties under the insurance policies Penn National issued to Covil.

2. This Court is convinced the terms of the Settlement Agreement are fair, reasonable, and the result of substantial arm's-length, good faith negotiations between the Settling Parties.

3. Permitting the sale of the insurance policies is an appropriate and efficient method of liquidating the insurance policy assets of the Receivership. The buyback will allow this Court, through the Receiver, to more easily manage Covil's assets and garner those assets for the defense and resolution of future Covil asbestos bodily injury suits.

4. Likewise, to the extent Covil has any claims, causes of action, or chose-in actions against Penn National, whether in tort, contract, law, or equity, the release of any and all such claims

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<sup>7</sup> It is clear that this Court's jurisdiction extends over Covil's assets, which include its insurance policies. *See Buist v. Merchant's & Planter's Bank*, 65 S.C. 487, 489, 43 S.E. 958, 959 (1903) (Receiver can liquidate property under Court supervision); *Clyburn v. Reynolds*, 31 S.C. 91, 105, 9 S.E. 973, 975 (1889) (Court can empower receivers to sell the assets of the receivership); *Montgomery & Crawford v. Arcadia Mills*, 173 S.C. 464, 490, 176 S.E. 589, 599 (1934) (Receivership Court has the power to liquidate the rights of creditors pursuant to their priorities); *In re State ex rel Hutchinson*, 182 S.C. 369, 375, 189 S.E. 475, 477-78 (1937) (holding the power to appoint a receiver is vested in every circuit court of the State, and nowhere in the body of the law is there any limitation upon this authority); *Truesdell v. Johnson*, 144 S.C. 188, 197, 142 S.E. 343, 345 (1928) (holding the effect of the appointment of the receiver is to take property and place it in the hands of a third party pending litigation); S.C. Code Ann. § 15-65-10.

as part of the Settlement Agreement is an efficient means of liquidating those assets so that they may be properly managed under the Receivership. Upon the tender by Penn National to Covil of its settlement payment, Penn National's insurance policies issued to Covil or under which Covil is entitled to benefits from Penn National are deemed forever extinguished and all insurance coverage potentially available under the policies are fully exhausted such that no further insurance coverage will be available under the policies, and Penn National shall have no obligation to make any other payment of any type whatsoever under the policies, including no obligation to make any payments for Covil asbestos bodily injury suits in the form of defense, indemnity, or otherwise.

5. This Court approves the buyback of the Penn National insurance policies and authorizes the Receiver to execute whatever documents are necessary to complete the sale of the policies back to Penn National, thereby forever extinguishing any contractual obligations that Penn National may have owed to Covil under the insurance policies. The settlement payment made by Penn National shall be deposited into the Covil QSF.

6. Upon Penn National's tender of its settlement payment, Penn National is forever relieved of any and all obligations it may owe in connection with Covil, other than as set forth in the Settling Parties' written Settlement Agreement. Penn National will also be allowed to allocate the payment made under the Settlement Agreement in the fashion that it wants among the various asbestos claims against Covil.

**B. CONTRACTS WITH ATTORNEYS**

1. In its capacity as the Receivership Court, this Court has directed the Receiver to marshal the assets of Covil to make such assets available to meet the costs and expenses of Covil's asbestos bodily injury suits, including Covil's insurance policies and proceeds. Further, in the order appointing the Receiver, this Court authorized the Receiver to "hire any person or company

necessary to accomplish any right or power under this Order.” This Court finds that the Receiver has been diligent in carrying out these duties.

2. Immediately following his appointment as the Receiver for Covil, Mr. Protopapas retained a team of well-regarded law firms to locate and secure insurance coverage for the Covil asbestos bodily injury suits. Given Covil’s complete lack of financial resources, each of these law firms agreed to assume the significant risk of undertaking this representation on the basis of contingent fee contracts.

3. The Receiver entered into contingent fee contracts with the following highly qualified law firms: Morgan, Lewis & Bockius LLP (“Morgan Lewis”); Smith Robinson Holler DuBose Morgan, LLC (“Smith Robinson”); John B. White Jr., P.A. (“JBWPA”); and Rikard & Protopapas, LLC (“Rikard Protopapas”). Morgan Lewis is a global law firm and is highly skilled and experienced in asbestos litigation and in complex insurance coverage litigation. The Receiver also engaged lawyers from Smith Robinson and JBWPA, as well as from his own firm, Rikard Protopapas, who are experienced in engaging in complex litigation and insurance coverage litigation.

4. Each of the law firms has fully performed its services, and accordingly, the Receiver seeks this Court’s approval of the attorneys’ contingency fee of forty percent (40%) of the gross settlement amount between Covil and Penn National and approval of reimbursement costs incurred by the law firms to date. The Settlement Agreement marks the conclusion of yearslong complex insurance litigation between the Receiver and Penn National. The Receiver and his counsel engaged in significant, extensive discovery, motion practice, briefing, and arguments, at both the trial court and appellate court levels. These litigation efforts were undertaken at significant time, expense, and risk for the Receiver and his counsel, without any certainty of

success.

5. “The award of attorney fees and costs is a matter within the sound discretion of the trial judge.” *Taylor v. Taylor*, 333 S.C. 209, 215, 508 S.E.2d 50, 54 (Ct. App. 1998). When a recovery results in a common fund that benefits others, attorney’s fees may be appropriately awarded based on a percentage of the fund. *See Sullivan v. Brown (In re Estate of Kay)*, 423 S.C. 476, 489, 816 S.E.2d 542, 549 (2018); *In re Crum*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941). Here, the Settlement Agreement has resulted in a pool of funds that will ultimately benefit Covil asbestos claimants, and an award of attorney’s fees based on a percentage of that fund is appropriate and reasonable. Additionally, this Court has considered the factors set forth in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), and finds that the Receiver and his counsel have devoted significant time, resources, and efforts litigating against Penn National. As a result of these efforts and the Settlement Agreement, future asbestos tort victims will benefit from the pool of funds in the Covil QSF, and the requested attorney’s fees and costs properly reflect these efforts.

6. This Court therefore approves the attorneys’ fee contracts and the Receiver’s request for attorney’s fees in the amount of forty percent (40%) of the gross settlement amount between Covil and Penn National, as well as the reimbursement of all costs and expenses incurred by the law firms in litigating against Penn National and obtaining the recovery. In light of the attorney’s fee awarded, in part, to the Receiver’s law firm, that fee will be in lieu of any Receiver fee for the Receiver’s work to date.

## V. ORDER

1. This Court finds the terms of the Settlement Agreement are the result of substantial arm's-length, good faith negotiations between the settling parties.

2. Having found the sale of the insurance policies is an appropriate and efficient method of liquidating the insurance policy assets, this Court approves the sale. The buyback will allow this Court, through the Receiver, to more easily manage Covil's assets and garner those assets for the defense and resolution of future Covil asbestos bodily injury suits.

3. Likewise, to the extent Covil has any chose-in actions against Penn National, whether in tort, contract, law, or equity, this Court approves the release of any and all such claims as part of the Settlement Agreement. This Court finds that this sale and buyback is an efficient means of liquidating those assets so that they may be properly managed under the receivership.

4. Covil and Penn National agree that upon Penn National tendering its settlement payment, Penn National's policies issued to Covil or under which Covil is entitled to benefits from Penn National, are deemed forever extinguished, and all insurance coverage potentially available under the policies is fully exhausted such that no further insurance coverage will be available under the policies, and Penn National shall have no obligation to make any other payment of any type whatsoever under the policies, including no obligation to make any payments for Covil asbestos bodily injury suits in the form of defense, indemnity, or otherwise. This Court approves this tender and payment.

5. This Court approves the buyback of the policies and authorizes the Receiver to execute whatever documents are necessary to complete the sale of the policies back to Penn National, thereby forever extinguishing any contractual obligations Penn National may have owed to Covil under the insurance policies.

6. Covil, the Covil QSF, and Penn National agree that claims of any asbestos bodily injury claimants, other insurers, or any other party against Penn National for contribution, indemnification, subrogation, spoliation, bodily injury, or other claims, whether in law or equity, shall be barred and directed to the Covil QSF. The other parties to these cases, the underlying asbestos plaintiffs, do not object to this relief, and as a result this Court approves and ratifies this agreement in connection with future asbestos filings, as noted above. Further, this Court's approval is not the result of making any determination on such claims if ever made.

7. Covil and Penn National agree that upon funding of the settlement to the Covil QSF, Penn National is forever relieved of any and all obligations it may owe in connection with Covil. This Court approves this agreement.

8. Covil and Penn National agree that any and all claims against Penn National relating to obligations arising out of Covil's asbestos bodily injury suits or other bodily injury or property damage liabilities are forever ended, including any claims by any insurer of Covil asserting contribution, subrogation, indemnity, "other insurance," and similar rights and claims against Penn National. This Court approves this agreement.

9. The Receiver's Contracts with his lawyers and requested attorney's fees and reimbursement of costs and expenses are approved as set forth above.

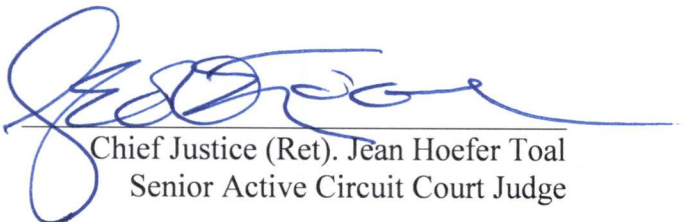
10. This Court retains continuing jurisdiction over the Covil QSF, in accordance with Income Tax Regulation § 1.468B-1(c)(1), and all matters related to this Order.

11. This Court further grants Penn National's consent motion to vacate this Court's March 1, 2024 Order and judgment in part, to allow a partial vacatur of any findings, conclusions, or orders as to Penn National's spoliation of documents, the existence of a Penn National policy for Covil with a policy period of March 31, 1985 to March 31, 1986, and any penalties, including

monetary sanctions or penalties awarded but not yet paid by Penn National relating to such findings, conclusions, or orders.

12. This matter has been one of the most complex and protracted cases over which this Court has presided. This Court takes specific note that the terms of the settlement are not conditioned on the vacatur of this Court's March 1, 2024 Order. That said, this partial vacatur is GRANTED as described above in the light of the high degree of professionalism and over one year of post-final Order negotiation by Counsel for the Defendant, Penn National, Kirby D. Shealy, III, David L. Brown, and Brady A. Yntema; the Receiver, Peter Protopapas; and by Counsel for the Receiver and for the Third-Party Plaintiff Covil, Jonathan M. Robinson, G. Murrell Smith, Jr., Shanon M. Peake, Christopher R. Jones, Marghretta H. Shisko W. Brad Nes, and Brady Edwards. These settlement negotiations took place while the matter was on appeal to the Court of Appeals and continued while the case was transferred to the Supreme Court. This Court singles out, particularly, Attorney Kirby D. Shealy, III, for commendation. His dedication to his client, his respectful treatment of his adversaries, and the successful resolution of this matter demonstrate why he is held in such high regard by his colleagues and this Court.

**AND IT IS SO ORDERED.**



Chief Justice (Ret). Jean Hoefer Toal  
Senior Active Circuit Court Judge

Columbia, SC  
April 2, 2025