STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Opinion No. 6110 (S.C. Ct. App. filed May 14, 2025)

Peter D. Protopapas, as Receiver for Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc..... Respondents,

v.

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company; The Standard Fire Insurance Company; St. Paul Fire and Marine Insurance Company; The Employers' Fire Insurance Company; Southeastern Agency Group and M.I.A. Company, Inc. individually and as successors to or f/k/a Merrimon Insurance Agency, Inc.; Robert E. Aspray; Nell Ashworth, individually and as personal representative of the Estate of Robert J. Ashworth; Betty C. D'Amico, individually and as Executor of the Estate of Julian D'Amico, Jr.; Kayla Keith, individually and as the personal representative of the Estate of Jerry W. Archer, Sr.; Richard L. Knight II, as personal representative of the Estate of Teddy L. Knight, Sr., and Linda Knight, individually; David D. Rollins; James W. Smith and Frances R. Smith; and Linda J. White, individually and as personal representative of the Estate of Lubert R. White, Jr.,..... Defendants,

of which

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company and The Standard Fire Insurance Company are the ..... Petitioners.

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

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July 21, 2025

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QUESTIONS PRESENTED FOR REVIEW

This Petition respectfully requests that the Court review numerous errors of South Carolina substantive and procedural law, including one that arises from an opinion from this Court that was issued after the Court of Appeals issued the opinion for review:

1. **Void Due to *Welch*:** This case involves a receiver operating outside of the case in which he was appointed and attempting to marshal assets on behalf of an undefined group, but not on behalf of the creditor responsible for the receivership appointment, as required by this Court's recent opinion in *Welch v. Advance Auto Parts, Inc.* Op. No. 28284 (S.C.Sup.Ct. filed May 21, 2025) (Howard Adv.Sh. No. 19 at 12). Were the rulings below void and entered without subject matter jurisdiction in light of this Court's intervening *Welch* decision?

2. ***Crossmann* Misapplied:** In *Crossmann Communities of North Carolina, Inc. v. Harleysville Mutual Insurance Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), this Court required pro-rata, time-on-the-risk allocation for progressive injury claims, including asbestos claims, regardless of an insured's financial condition or the absence of insurance for certain periods of time. The Court of Appeals rejected that allocation model in this case and, instead, adopted an "all sums" allocation model for progressive injury claims, including asbestos claims, citing both missing policy periods and Starr Davis's insolvency as a basis for its rejection of *Crossmann*'s guidelines. Was that ruling in error, given *Crossmann*'s clear directive?

3. **Separate Agreement Ignored Below:** In 1985, Travelers and Starr Davis executed an agreement regarding their insurance relationship, including binding agreements that preclude aspects of the rulings below. The Court of Appeals disregarded that contract when making coverage rulings. Did the Court of Appeals err by disregarding a contract between these parties?

4. **"Completed Operations" Provision Misconstrued:** The Court of Appeals interpreted the "Completed Operations" hazard provisions of the parties' insurance policies as having no effect on limits applicable to asbestos-related injuries. Did the Court of Appeals err by disregarding the policies' plain language and forcing a restrictive reading of the policies?

5. **"Occurrence" Misconstrued:** Did the Court of Appeals err in treating multiple unspecified asbestos-related bodily injury claims as separate occurrences rather than a single occurrence, contrary to the unambiguous policy language and South Carolina causation principles?

6. **Improper Burden-Shifting:** Did the Court of Appeals err in affirming the circuit court's finding that Travelers bears the burden of proving the application of aggregate limits, thereby improperly shifting the burden of proof to Travelers and relieving Starr Davis of its obligation to prove essential coverage terms?

7. **Evidence Not In Record:** The circuit court issued sweeping declarations concerning decades of insurance policies without those policies being in the record. After the circuit court entered the summary judgment order challenged on appeal, the Receiver apparently

sent copies of many of those not-in-the-record policies to the circuit judge's house and did so without notice to Travelers. Did the Court of Appeals err when affirming the summary judgment order against that procedural background?

8. **"Charts" Without a Foundation:** Did the Court of Appeals violate evidentiary standards by relying on inadmissible, counsel-created "demonstrative charts" instead of competent evidence of the alleged policies and related policy-negotiation materials?

9. **Summary Judgment Premature:** Did the Court of Appeals err in affirming a premature summary judgment decision granted before discovery was complete, despite Travelers filing a detailed Rule 56(f) affidavit identifying outstanding discovery needs and unresolved material facts?

STATEMENT OF THE CASE

This case arises from a declaratory judgment action filed by the purported Receiver for Starr Davis Company, Inc. and Starr Davis Company of South Carolina, Inc. (collectively, "Starr Davis"), dissolved companies based in North Carolina and South Carolina, respectively. (R. p. 71.) In the infancy of discovery, the Receiver filed a motion for summary judgment that sought sweeping judicial declarations regarding dozens of insurance policies allegedly issued annually by Travelers to Starr Davis between 1946 and 1986, and how those alleged policies apply to unspecified asbestos-related bodily injury claims against Starr Davis. (R. p. 354.)

Although Travelers located and produced more than 20 policies to the Receiver, the Receiver opted to submit only two partial policies to the circuit court in support of his summary judgment motion. Travelers submitted two additional partial policies with its opposition, bringing the total to just four partial policies in the summary judgment record. (R. pp. 415, 449, 751, 762.)

Despite the absence of evidence in the record and the incomplete state of discovery (as attested to in a Rule 56(f) affidavit accompanying Travelers' opposition), the circuit court orally granted the Receiver's motion on January 25, 2021 (R. pp. 228–29), and signed a written decision on March 3, 2021 (R. p. 1.), declaring Travelers issued policies to Starr Davis for 40 consecutive years and purporting to interpret the terms of all such policies—despite the complete absence of

policy documentation in the record to substantiate those declarations. During the appeal below, Travelers learned that the Receiver delivered additional policy documents to the circuit court judge at her home ***after*** the judge had already entered the written summary judgment order. (Travelers' Mot. to Strike (filed with the Court of Appeals on Nov. 9, 2021).) These documents were submitted *ex parte*—they were not served on Travelers and were not part of the summary judgment record.[1]

Construction of an insurance policy—a contract—begins with the policy's actual language. Yet, without competent evidence beyond four incomplete policies, the circuit court declared rights and obligations under dozens of alleged policies that weren't before the circuit court. (R. pp. 10–33.) The circuit court attempted to declare the meaning of policy language that was not even before it, and then it disregarded an additional contract entered between Travelers and Starr Davis in 1985 that reset and restated their insurance relationship and how claims would be handled. (R. pp. 7–8.)

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[1] Unfortunately, Travelers just recently learned of what appears to be an additional *ex parte* communication regarding receiverships in the circuit court, though it was not sent by the Receiver or his counsel. On Friday, July 18, 2025, Travelers learned that plaintiffs' counsel in at least one "PFAS" case appears to have sent a letter to Judge Toal on July 10, 2025, titled "Receiverships in South Carolina Litigation." In that letter, counsel encouraged Judge Toal to ignore this Court's limiting principles in *Welch* and *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423 *et al.* (June 26, 2025), that a receiver's work must be cabined to the case in which he or she is appointed and must relate to securing assets to pay claims owed to the party responsible for the appointment.

Notably, that letter appears to have been sent the day after Judge Brown noticed a hearing in *Burlington Industries Inc. v. Continental Casualty Co.*, Case No. 7:25-cv-1706-DCC-WSB (D.S.C.), during which the same scope-of-receivership issues decided by *Welch* and *Tibbs* will be argued to Judge Brown in PFAS-related litigation before the federal court. On July 9, 2025, Judge Brown noticed that hearing for July 23, 2025. (Dkt. No. 96.) Counsel's letter to Judge Toal is dated July 10, 2025—the day after Judge Brown noticed the *Burlington* hearing. The circuit court then set a hearing to address these issues in *Tibbs* for July 22, 2025—the day before Judge Brown's hearing involving receiverships in PFAS litigation.

A copy of this correspondence is attached. The July 10th letter was not filed in *Burlington* or any other PFAS or asbestos case (to below-signed counsel's knowledge) until a different plaintiffs' counsel filed it on July 18, 2025, with the circuit court in the very *Tibbs* case this Court remanded with instructions to follow its guidance in *Welch*. This apparent *ex parte* letter appears to be improper, and, respectfully, it underscores the scrutiny this Court should apply to this Petition.

Those declarations—of policy language that wasn't before the trial court while ignoring contract language that actually was before the court—are directly at odds with South Carolina law, including binding precedent from this Court. Specifically, the summary judgment decision contains fundamental legal errors regarding: (i) the allocation of damages; (ii) application of aggregate limits for "completed operations" injuries as defined in the policies; (iii) the burden of proof associated with completed operations injuries; and (iv) the "number of occurrences" that give rise to the alleged injuries.

Among the more straightforward legal errors, the circuit court abandoned this Court's mandate in *Crossmann*, which requires pro-rata, time-on-the-risk allocation for progressive injury claims. Instead, it adopted the "all sums" allocation model that this Court considered and squarely rejected in *Crossmann*. (R. pp. 31–32.) The circuit court's other declarations similarly conflict with South Carolina law; misinterpret the record evidence; and rely on irrelevant, inadmissible, or speculative assumptions, all while disregarding the policies' plain language.

Travelers appealed the summary judgment ruling. (R. p. 1881.) The Court of Appeals affirmed it in whole, finding, among other things, that *Crossmann*'s time-on-the-risk allocation formula does not apply to progressive injuries arising from asbestos exposure. Respectfully, this is squarely at odds with this Court's pronouncement in *Crossmann* that specifically holds the time-on-the-risk formula applies to "progressive injuries," which this Court explained means "an injury that results from an event or set of conditions that occurs repeatedly or continuously over time, ***such as long-term exposure to asbestos fibers*** or the continual intrusion of water into a building." 395 S.C. at 51 n.8, 717 S.E.2d at 595 n.8 (emphasis added).

Travelers timely moved for rehearing, which the Court of Appeals denied. This Petition follows, and two other points bear noting for the Court's awareness as it considers this Petition.

First, after the Court of Appeals issued its opinion affirming the summary judgment order, this Court issued its opinion in *Welch*. There, this Court reversed in part an appointment order that authorized the Receiver to secure assets beyond only those insurance policies having the "potential to cover Mr. Welch's injuries." Adv.Sh. No. 19, at 30; *see also id.* ("However, we hold that power [to appoint a receiver] does not properly extend to reach every claim relating to Atlas Turner's assets and business activities."). The Court recently reiterated this same limiting principle in its June 26, 2025 Order in *Tibbs v. 3M Co.*, Appellate Case Nos. 2024-001423, *et al.*: "The receiver is not to be authorized to conduct work as to a case in which no receiver appointment order has been filed." The *Tibbs* Order also followed the Court of Appeals' opinion in this case.

This limiting principle from *Welch* and *Tibbs* should now end this case. The Starr Davis receivership was created on February 22, 2019, on motion by the plaintiffs in *Hopper v. Air & Liquid Systems Corp.*, Case No. 2019-CP-40-00076. On April 27, 2020, the *Hopper* plaintiffs dismissed their claims against both Starr Davis entities with prejudice. (Ex. A, Stipulation of Dismissal with Prejudice as to Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. (filed Apr. 27, 2020 in 2019-CP-40-00076).)[2] But the operative complaint in this case was not filed until August 6, 2020—several months after the *Hopper* plaintiffs ceased to have a claim against either Starr Davis entity. To be sure, the pleadings in this case have nothing to do with the Hoppers, who were responsible for the receivership appointment order.

Accordingly, based on *Welch*'s and *Tibbs*'s limiting principles, this case should be declared void *ab initio*, as the Receiver's work has been exclusively in a case "in which no receiver appointment order has been filed" and to secure insurance policies and declarations that have no

[2] The Court can, of course, take judicial notice of the public filings attached to this Petition. *See* Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

"potential to cover [the Hoppers'] injuries." The Receiver thus lacks standing, this case has been void from the start, and the orders below should be vacated for lack of jurisdiction. *See Hamilton v. Fulgham (In re Nov. 4, 2008, Bluffton Town Council Election)*, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) ("Issues related to subject matter jurisdiction may be raised at any time. The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."); *see also Anders v. S.C. Parole & Comm. Corr. Bd.*, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983) (reversing rulings below due to the absence of subject matter jurisdiction because "the plaintiffs lacked standing to bring this action"); *Morgan v. S.C. DOR*, Case No. 2012-CP-40-07331, 2013 S.C. C.P. LEXIS 2, at *10 (S.C. C.P. Feb. 27, 2013) ("A keystone of any court's subject matter jurisdiction is that there must be an ongoing controversy between the parties, as courts are forbidden from ruling on 'academic questions' or from 'making an adjudication where there remains no actual controversy.'" (quoting *Fabian's Uptown Charleston, Inc. v. S.C. Tax Comm'n*, 247 S.C. 164, 166, 146 S.E.2d 608, 608 (1966))) (cleaned up).

Second, the incorrect declarations of South Carolina insurance law (such as rejecting *Crossmann* in the asbestos context) that the circuit court made here actually find their origin in a different order issued by the circuit court in a different asbestos receivership matter. In *Falls v. CBS Corp.*, Case Nos. 2015-CP-46-02155 *et al.*, the circuit court issued an "Order for Rule to Show Cause Hearing" that sanctioned United States Fidelity & Guaranty Co. and other insurance carriers for alleged discovery violations ***in cases to which they were not parties and in which they had never been served with a summons or a subpoena***. (R. p. 378.) That contempt order arose out of the Covil litigation, and—despite being an alleged discovery sanction—contains the exact same "declarations" of insurance law that are in dispute here. The circuit court issued that contempt

order on January 8, 2020, and it has been the subject of a still-pending Rule 59 motion ***since January 17, 2020***.

While the Rule 59 motion was pending, the Receiver presented that contempt order to a federal court as if it accurately stated South Carolina law, including with respect to *Crossmann*'s allocation formula for progressive injuries. In *Zurich American Insurance Co. v. Covil Corp.*, No. 1:18-CV-932, 2020 WL 4483236, at *9 (M.D.N.C. Aug. 4, 2020), Judge Eagles rejected the Receiver's attempt to rely on the *Covil* sanctions order and, instead, faithfully applied *Crossmann*'s time-on-the-risk formula for asbestos injuries, finding: "The Court is applying South Carolina law here, and the Supreme Court of South Carolina spoke directly to this situation—how to allocate a long-term loss over multiple insurance policy periods—in *Crossmann*."[3]

Having his efforts to use a non-final contempt ruling rebuffed by a federal court, it appears that the Receiver sought out the summary judgment ruling that is pending in this appeal in order to rehabilitate his once-rejected arguments.

ARGUMENT

In the event the Court finds that subject matter jurisdiction existed despite *Welch*'s and *Tibbs*'s limitations, this Petition presents significant questions of law that demand this Court's review and correction.

Under Rule 242(b), SCACR, certiorari should be granted for "special and important reasons," including when a decision conflicts with this Court's precedent or raises novel questions

[3] The Court will recall that in the Spring and Summer 2020, USF&G sought a petition for a writ of supersedeas from this Court to put an end to the Receiver's misuse of that contempt order while it was the subject of a Rule 59 motion. The Court denied that petition, stating it lacked authority to issue such a writ unless an appeal was pending. (Appellate Case No. 2020-000791.) Despite USF&G's repeated attempts to get a ruling on its Rule 59 motion that would allow for just such an appeal, that motion remains pending still today, over five and a half years after being served.

of law. Here, the decision below directly contradicts this Court's precedent—particularly *Crossmann*—and undermines established principles of contract interpretation, evidentiary standards, and procedural fairness. There are pervasive and impactful statewide issues regarding the handling of long-tail injury claims. The Court of Appeals' rejection of *Crossmann* introduces confusion and inconsistency into South Carolina's jurisprudence, jeopardizing uniformity and undermining this Court's clear directives. Certiorari review is essential to resolve these legal conflicts, restore fairness and consistency to South Carolina law, and ensure the uniform application of established legal standards across the state.

I. The Allocation Ruling Contravenes This Court's Decision in *Crossmann*

The circuit court's allocation ruling—affirmed by the Court of Appeals—directly contradicts this Court's binding decision in *Crossmann* and threatens to destabilize South Carolina's well-settled framework for allocating liability for progressive injury claims. This Court's intervention is critical to reaffirm the application of *Crossmann*'s time-on-the-risk allocation for all progressive injury claims, including asbestos-related bodily injury claims.

A. *Crossmann* Mandates Time-on-the-Risk Allocation for Progressive Injury Claims, Including Asbestos Claims

This Court's decision in *Crossmann* established a pro-rata, time-on-the-risk allocation methodology for progressive injury claims, ensuring that liability is apportioned proportionally among insurers based on their respective periods of coverage. *Crossmann*, 395 S.C. at 59. This approach adheres to the policy language, which limits coverage to injuries "during the policy period," and prevents an insurer from being held liable for damages occurring outside its contractual obligations.

As importantly, *Crossmann* explicitly rejected "all sums" allocation—the approach urged by the Receiver and adopted by the lower courts here—because it "ignores critical language

limiting the insurer's obligation to pay to sums that are attributable to property damage that occurred during the policy period." 395 S.C. at 60, 62 (citations omitted). Given that this Court made clear that the "critical language" (the same language that is in the Travelers policies) does not permit use of an "all sums" allocation, *Crossmann* leaves no room for exceptions based on the type of progressive injury or the nature of the claim. And the Court specifically identified "long-term exposure to asbestos fibers" as paradigmatic of the kinds of claims to which time-on-the-risk allocation applies, meaning *Crossmann* governs the asbestos bodily injury claims at issue here. *Id.* at 51–52 n.8.

This understanding of *Crossmann* is precisely what Judge Eagles ruled when rejecting the misstatements of South Carolina law that originated in the still-under-reconsideration *Covil* contempt order. *Zurich Am. Ins. Co.*, 2020 WL 4483236, at *9. Despite *Crossmann*'s express language and another court's application of that express language to reject this same Receiver's attempt to bypass *Crossmann* for asbestos claims, the lower courts here purported to create an asbestos exception to the time-on-the-risk allocation model.

There is simply no lawful basis to exclude asbestos claims from the time-on-the-risk allocation rule. *Crossmann* leaves no room for contrived exceptions from this baseline rule based on one type of progressive injury as compared to any other. *Crossmann* expressly confines any permissible adjustments to modifications within the pro-rata, time-on-the-risk framework—stating unequivocally that the "all sums" approach remains off-limits. 395 S.C. at 65-66. To be sure, *Crossmann* allows some flexibility, but "the flexibility applies to the formula itself, not the overall approach in allocating risk," which "must remain within the bounds" of a pro-rata, "time-on-the-risk" approach. *Zurich Am. Ins. Co.*, 2020 WL 4483236, at *11 (quoting *Crossmann*). By

embracing an entirely different allocation model untethered to the boundaries of pro-rata allocation, the Court of Appeals clearly erred and its ruling should be reversed.

B. There is No "Unavailability" Exception

The lower courts' rejection of *Crossmann* does not end with the allocation formula. The circuit court held and the Court of Appeals agreed that Travelers should be forced to insure a larger portion of Starr Davis's potential liability than Travelers contracted to cover by creating an "unavailability" exception to time-on-the-risk allocation—a concept *Crossmann* explicitly considered and rejected. The circuit court declared that time-on-the-risk allocation does not apply "to policy years after 1986, when Starr Davis does not have any available or responsive coverage" (R. p. 32), and the Court of Appeals affirmed this holding based on its sense of fairness.

But equity follows the law, and the law is clear: In *Crossmann*, this Court rejected the "unavailability" exception. Specifically, it held that "[a]lterations" to the time-on-the-risk framework based on the absence of insurance during certain injury years "would exceed the trial court's authority, as the effect is to shift losses from one policy period to another in order to create coverage where none was purchased," thereby "effectively provid[ing] insurance where insurers made the calculated decision not to assume risk and not to accept premiums." 395 S.C. at 66 n.16 (cleaned up). There is no way to reconcile this holding with the Court of Appeals' decision.

Under South Carolina law, policyholders are responsible for uninsured periods, regardless of why coverage was unavailable. The time-on-the-risk allocation method ensures proportionate liability across covered and uncovered periods, preserving fairness and the integrity of the rule. Federal courts have likewise rejected the "unavailability" exception for asbestos claims. *Zurich Am. Ins. Co.*, 2020 WL 4483236, at *10–12. Allowing Starr Davis to avoid its uninsured

obligations unfairly shifts the burden to Travelers, undermining the proportionality principles at the heart of *Crossmann*.

C. Policyholder Insolvency Cannot Justify a Departure from Time-on-the-Risk Allocation

Equally flawed is the Court of Appeals' reliance on Starr Davis's insolvency to justify abandoning time-on-the-risk allocation. In *Crossmann*, this Court unequivocally held that liability must remain proportional to the coverage periods purchased by an insured, regardless of the policyholder's financial condition. *Crossmann*, 395 S.C. at 66 n.16. Insolvency cannot be used to expand an insurer's obligations or require it to assume liability for periods outside of the injury years for which it accepted risk and collected premiums. *Id.*

This principle was reaffirmed in *Harleysville Group Insurance v. Heritage Communities, Inc.*, 420 S.C. 321, 330, 348 & n.4 (2017), where this Court upheld time-on-the-risk allocation despite the policyholder's insolvency. Similarly, the Fourth Circuit has rejected attempts to use a policyholder's insolvency as a basis for deviating from pro-rata allocation, holding that insolvency does not alter an insurer's obligations under its contracts. *See In re Wallace & Gale Co.*, 385 F.3d 820, 833 (4th Cir. 2004) ("it is neither equitable nor fair to require an insurance company to pay for coverage during a period for which no effective coverage is in force"). A federal court applying South Carolina law reached the same conclusion in a case involving this very Receiver. *Zurich Am. Ins. Co.*, 2020 WL 4483236, at *11 (finding insured remains responsible for uninsured periods even if insolvent and rejecting the Receiver's argument that "applying the default rule in *Crossmann* would be unfair here because Covil—as 'a defunct company in receivership'—lacks funds to absorb any of its asbestos liability").

Allowing policyholder insolvency to override time-on-the-risk allocation effectively rewrites insurance policies to impose liabilities to which the parties never agreed. Equitable

considerations cannot override or expand contractual terms. *See, e.g.*, *S.C. Ins. Co. v. White*, 301 S.C. 133, 137, 390 S.E.2d 471, 747 (1990); *Fried v. N. River Ins. Co.*, 710 F.2d 1022, 1025-26 (4th Cir. 1983) ("[E]quitable considerations will not be employed to rewrite the terms of [an insurance] policy." (citation omitted)). Again, "it is neither equitable nor fair to require an insurance company to pay for coverage during a period for which no effective coverage is in force." *Wallace & Gale*, 385 F.3d at 833.

The Court of Appeals' reliance on Starr Davis's financial condition to expand Travelers' liability is another impermissible departure from *Crossmann* and this settled principle.

* * * * *

The lower courts' adoption of an expansive "all sums" model, creation of an unauthorized "unavailability" exception, and reliance on policyholder insolvency to override contractual terms all mark a clear departure from *Crossmann*. These departures undermine fairness, proportionality, and predictability in the allocation of liability for progressive injury claims. *Crossmann* mandates the application of the time-on-the-risk allocation model to all progressive injury claims; there is no asbestos-specific exception. Because the rulings below directly conflict with *Crossmann*, certiorari review is necessary.

II. The Lower Courts Failed to Consider the Parties' 1985 Interim Agreement

In addition to disregarding *Crossmann* to expand Travelers' coverage obligations to Starr Davis, the lower courts also ignored or disregarded a binding, negotiated claims handling contract the parties entered into in 1985 that directly addresses key issues and conclusively resolves any dispute about the years of coverage and allocation methodology, among other things (the "Agreement" or "1985 Agreement"). (R. p. 658.)

While the Agreement restricts the parties from using it to support their positions on the "meaning, intent, or construction" of the individual policies themselves, it does not preclude its use for other purposes, such as ***enforcing its own terms*** or establishing critical factual issues, including the existence and scope of the policies and how claims should be handled, including specifically asbestos claims. (R. p. 658.) The Receiver's motion for summary judgment essentially sought to reopen disputes that the parties themselves resolved decades ago.

To be clear: Travelers did not rely on the Agreement to interpret preexisting policies. Instead, Travelers invoked the Agreement's own terms, which govern the handling, allocation, and payment of asbestos claims. For example, the parties agreed to limit coverage to the 1959 to 1985 period. (R. p. 658.) Despite this unambiguous agreement between the parties themselves, the circuit court declared that Travelers maintained an "uninterrupted" insuring relationship with Starr Davis spanning from 1946 to 1986, a conclusion directly at odds with the terms of the Agreement. There is certainly no basis for a court to ignore a controlling contract entered between the parties, and this is particularly so at the summary judgment stage, where Travelers (as the nonmovant) was entitled to all reasonable inferences arising from the evidence presented. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002).

Notably, it was the Receiver himself that added the Agreement to the summary judgment record. While the circuit court chastised Travelers for mentioning the Agreement, it allowed the Receiver to rely on the Agreement "as evidence of the existence of the insurance policies," calling that "an appropriate use" of the Agreement. (R. pp. 7–8.) Travelers' use of the Agreement—including as evidence of the parties' compromise concerning the span of years over which coverage was and was not provided—is no different.

Courts are required to enforce contracts as written. *S.C. DOT v. M&T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) ("A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." (citation omitted)). Disregarding this binding Agreement undermined the parties' negotiated expectations (from 40 years ago) and created a legal fiction untethered to their agreed rights and obligations. Certiorari is necessary to correct this error and to enforce the parties' contract.

III. The Court of Appeals Misconstrued Key Terms of the Insurance Policies

While ignoring the parties' 1985 Agreement, the lower courts made rulings regarding certain terms of the incomplete insurance policies that were presented: "completed operations" and "occurrence." In both instances, they misconstrued these terms inconsistent with their plain language and governing law, and in so doing vastly expanded Travelers' coverage obligations far beyond any agreement it had with Starr Davis.

A. The Court of Appeals Erred in Affirming the Circuit Court's "Completed Operations" Ruling

The Court of Appeals' affirmation of the circuit court's misinterpretation of Travelers "Completed Operations" provisions effectively nullifies the aggregate liability limits in Travelers policies and improperly exposes Travelers to unlimited liability. This is obviously not an agreement any insurer would make. The lower courts erroneously reasoned that an injury qualifies as a "Completed Operations" claim only if all asbestos-related injuries—including those occurring before and after the policy period—arose solely after operations were completed. (Decision at 26.) This reasoning is contrary to the plain language of the policies and settled legal principles, as it disregards the progressive and latent nature of asbestos-related injuries that develop over time and often implicate both ongoing and completed operations hazards within different policy periods.

Travelers policies unambiguously provide that injuries fall under the "Completed Operations" hazard—and are therefore subject to aggregate liability caps—if the injury occurs (1) after operations are completed and (2) during the policy period. The policies define "bodily injury" as an injury that "occurs during the policy period," and a "Completed Operations" claim is one that arises after operations have been completed or abandoned. (R. pp. 421, 755.) The timing of the injury relative to both the completed operations and the policy period is critical to determining whether aggregate limits apply. By adopting a "once an operations claim, always an operations claim" framework, the decision below disregards the policies' plain terms.

This Court has long held that insurance policies must be interpreted and enforced according to their plain, unambiguous language. *Crossmann*, 395 S.C. at 52–53. The lower courts ignored this mandate, allowing speculative causation factors, such as when exposure may have begun, to override the policies' focus on the timing of injuries. Courts interpreting materially identical "Completed Operations" provisions have consistently rejected this approach.

For example, in *Wallace & Gale Co.*, the Fourth Circuit made clear that aggregate liability limits apply to policies covering injuries occurring after operations are completed, regardless of when exposure began. 385 F.3d at 834. Similarly, in *General Insurance Co. of America v. U.S. Fire Insurance Co.*, 886 F.3d 346, 355 (4th Cir. 2018), the Fourth Circuit reaffirmed that the timing of the injury relative to operations is what matters for determining aggregate limits. Other courts agree. *See, e.g.*, *Plant Insulation Co. v. Fireman's Fund Ins. Co.*, 2013 WL 3286410, at *6, 11 (Cal. Super. Ct. Apr. 8, 2013) (explaining that "[t]he source or cause of the injury is irrelevant to the analysis," instead "what matters is the timing of the bodily injury during the policy period"); *Schrillo Co. v. Hartford Acc. & Indemn. Co.*, 181 Cal. App. 3d 766, 775–78 (1986) (similar). These cases make clear that policies covering injuries after operations are completed are subject to

aggregate caps because liability is tied to injuries sustained during the applicable policy period—precisely what Travelers policies mandate.

The lower courts also disregarded evidence that nearly all asbestos-related claims against Starr Davis stem from products or completed operations. Starr Davis ceased asbestos-related contracting by 1972, meaning most potential claims arose after its operations ended. (R. pp. 1897, 1909, 1914.) Also, 90% of Starr Davis's business involved sales and distribution rather than actual contracting work, underscoring that nearly all potential claims will derive from products. (R. pp. 1897, 1904, 1909, 1914.) At a minimum, genuine issues of material fact exist.

Instead of addressing this evidence, the lower courts relied on unsupported generalizations, including factual conclusions borrowed wholesale from the *Covil* sanctions order. This was legal error, as the Receiver provided no evidence whatsoever concerning the nature of the underlying claims, let alone evidence that the claims involve active operations rather than completed work. Certiorari is required to reaffirm that insurance policies must be interpreted as written and that injuries occurring after operations are completed fall under aggregate caps, regardless of when exposure began. *Wallace & Gale* correctly reflects South Carolina principles: if exposure to an injurious condition begins during an insured's operations and continues post-completion, the aggregate limits of policies in effect during active operations do not apply, but the aggregate limits of policies in effect after operations were completed do apply.

B. The Court of Appeals Erred in Affirming the Circuit Court's "Number of Occurrences" Ruling

The lower courts also misconstrued the term "occurrence" in the policies and, in so doing, misapplied the plain language of the policies, disregarded South Carolina's "cause test," and improperly relied on speculative assumptions while ignoring evidence suggesting repeated and substantially identical exposure conditions.

Travelers policies define an "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury . . . ." (R. p. 766.) The policies further specify that "all bodily injury . . . arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence." (R. p. 759.) This language mandates a causation analysis, grouping injuries resulting from common exposure conditions into a single occurrence. The circuit court ignored this causation standard, summarily concluding—without any fact-based inquiry—that each claim arose from separate occurrences because they were tied to "operations" rather than "products." This conclusion, also borrowed from the *Covil* contempt order, is untethered to the policy language, which focuses on whether the injuries resulted from "substantially the same general conditions."

The number of occurrences is decided by use of a fact-based "cause test," which "asks if there was but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage." *Liberty Mut. Ins. Co. v. Treesdale, Inc.*, 418 F.3d 330, 334 (3d Cir. 2005). Under this test, causation—not the number of claimants or injuries—is dispositive. This Court has applied the "cause test" to find a single occurrence where injuries to multiple claimants over time arose from a common act—placing a defective product into the stream of commerce. *Owners Ins. Co. v. Salmonsen*, 366 S.C. 336, 338–39, 622 S.E.2d 525, 526 (2005). Asbestos claims similarly often originate from repetitive exposure to materials under substantially identical conditions.

While Court of Appeals acknowledged the "cause test," it neither adopted nor rejected its application in this case. (Decision at 29.) Instead, it endorsed the circuit court's blanket conclusion that each asbestos claim arose from separate occurrences, ignoring evidence that injuries stemmed from substantially identical conditions related to Starr Davis's decades-long asbestos-related distribution and contracting. Importantly, Starr Davis ceased asbestos contracting operations in

1972, meaning most potential claims likely stem from completed work or distributed products—scenarios involving uniform exposure conditions rather than distinct causal events.

The lower courts disregarded this evidence and relied instead on generalized, unsupported assumptions borrowed from the *Covil* sanctions order. Neither court examined the underlying claims—nor could they—because the record lacks evidence about the claimants' exposure circumstances.[4] Moreover, unrebutted evidence established that the vast majority of Starr Davis's business involved distribution rather than contracting, with identical asbestos-containing products being consistently handled and sold. This further underscores that the injuries arose from repeated and uniform exposure conditions, not distinct operations or events.

By fragmenting these claims into multiple occurrences without evaluating the causal factors, the lower courts improperly inflated Travelers' liability far beyond the aggregate limits set forth in its policies. This fragmented approach disregarded the "cause test" and contradicted Travelers' policy language. The distinction between contracting activities and distribution is critical because product-related exposures are inherently repeated and uniform, stemming from identical materials distributed to customers, not unique operational events. Yet the lower courts ignored this distinction, further compounding the error. Certiorari review is therefore essential.

IV. The Summary Judgment Order is Riddled with Procedural Errors

Along with ignoring *Crossmann*, the parties' 1985 Agreement, and the plain language and controlling law regarding the policy terms "completed operations" and "occurrence," the circuit court committed numerous procedural errors when granting summary judgment, all of which were improperly excused by the Court of Appeals.

[4] These generalizations and speculation that is not tied to any actual claims reinforce why the orders below should be vacated as being contrary to the limiting principles of *Welch* and *Tibbs*.

A. The Court of Appeals Improperly Shifted the Burden of Proof

First, the circuit court improperly shifted the burden of proof onto Travelers to disprove claims concerning the application and exhaustion of aggregate limits, relieving Starr Davis of its obligation to substantiate its entitlement to coverage. The Court of Appeals affirmed this burden-shifting based on: (i) speculative allegations that "certain insurers in the asbestos coverage arena historically destroyed coverage documentation;" (ii) an erroneous characterization of aggregate limits as exclusions rather than core coverage terms; and (iii) vague concerns about "impractical results." (Decision at 26-27.) These findings are legally and factually flawed.

South Carolina law requires policyholders to prove the core terms of coverage, including the scope, application, and exhaustion of aggregate liability limits. Aggregate limits, like hazard classifications (*e.g.*, "Completed Operations" or "Products"), are not exclusions but instead are integral terms that define the extent of an insurer's obligations. *See Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) ("the burden [is] upon the [insured] to prove the contract, its breach, and the damages caused by such breach"); *Gaskins v. Firemen's Ins. Co. of Newark, N.J.*, 206 S.C. 213, 217, 33 S.E.2d 498, 499 (1945) (describing the "necessary terms" of a policy as including, among other things, "the amount of insurance"). Courts routinely reaffirm this principle, recognizing that classification and limits are coverage terms the insured must prove. *See, e.g.*, *Nat'l Union Fire Ins. Co. v. Porter Hayden Co.*, 2012 WL 734170, at *2 (D. Md. Mar. 6, 2012) (policyholder "bears the burden of showing when the operations hazard applied to a claim," because "[c]lassification of a claim . . . is a matter of showing ***entitlement*** to coverage—not a defense or limitation thereto.") (emphasis in original); *Gen. Ins. Co. of Am.*, 886 F.3d at 356 (insured "bears the burden of proving that a bodily injury arose from asbestos exposure during [an] operation that was ongoing ***during*** the policy's policy period") (emphasis in original).

The Court of Appeals improperly endorsed a framework that excuses Starr Davis from proving these core coverage elements and instead shifted the burden of "disproof" to Travelers. It attempted to justify this misapplication of the burden of proof by relying on irrelevant and unsupported assumptions. For example, it speculated that "certain insurers in the asbestos coverage arena historically destroyed coverage documentation" (Decision at 27), despite undisputed evidence showing that Starr Davis, not Travelers, destroyed its own policy records. (R. pp. 876, 893, 935.) Travelers, by contrast, conducted exhaustive searches and produced substantial documentation, including hundreds of pages of policy records the Receiver failed to include with his motion. By shifting the burden to Travelers—based on a baseless assumption about the retention of historic records of "certain insurers"—the Court of Appeals penalized Travelers for the Receiver's incomplete evidentiary presentation. That's unfair and improper.

The Court further cited concerns about "impractical results" if Starr Davis were required to meet its evidentiary burden. (Decision at 27.) But Starr Davis is the plaintiff here, and South Carolina law already balances fairness by adhering to the standard burden of proof, which protects the expectations and rights of insurers and policyholders alike. Abandoning this framework risks encouraging speculative and unsupported claims, particularly where, as here, evidentiary gaps were caused by the insured's own conduct.

B. The Court of Appeals Erred in Affirming the Circuit Court's Order Despite the Absence of Numerous Policies from the Record

In a striking departure from evidentiary and procedural standards, the circuit court issued sweeping declarations about decades of alleged insurance coverage, despite the fact that the vast majority of the alleged policies were absent from the record. This approach violated the foundational principle that contract interpretation must be based on the actual terms of the policies. *See Crossmann*, 395 S.C. at 52-53. The circuit court declared that Travelers issued policies to Starr

Davis for forty consecutive years (1946–1986), even though only four incomplete policies were included in the record and, in the 1985 Agreement, the parties themselves specifically agreed that the coverage period was from 1959 to 1985. This evidentiary failure cannot stand.

Equally concerning, after the circuit court had already signed and entered the summary judgment order, the Receiver delivered additional documents directly to the judge's residence on an *ex parte* basis. These materials were never entered into the record, never filed with the court, and never served on Travelers. Travelers thus had no opportunity to review, challenge, or respond to them, and it only learned about them when compiling the Record on Appeal.

Against this backdrop, the Court of Appeals' statement that "the Receiver filed under seal other underlying documentation produced by Travelers" (Decision at 13 n.3) is not correct and, in any event, misses the point. The Receiver's *ex parte* delivery of materials to the circuit court judge's house occurred after the circuit court had entered the summary judgment order, making it impossible for those materials to have impacted the decision in any way. Because the Receiver failed to provide the circuit court with copies of the majority of the policies or even secondary evidence of their terms before the court issued its decision—despite possessing those materials—numerous alleged policies were not part of the summary judgment record, and the circuit court's order purporting to interpret them was improper.

South Carolina law makes clear that dispositive rulings, especially involving complex contractual relationships allegedly stretching decades, must be based on competent record evidence. Belated *ex parte* submissions cannot retroactively cure such deficiencies. Like any contract, the interpretation of an insurance policy must begin "with the language of the policies themselves." *Crossmann*, 395 S.C. at 52–53. Without the policies themselves in the summary

judgment record, there is no way the circuit court could legitimately claim to construe them. The Court should vacate the rulings below based on this seemingly unprecedented situation.

C. The Lower Courts Improperly Relied on "Demonstrative Charts" Instead of Admissible Evidence

In the absence of the actual policies, the circuit court improperly relied on counsel-prepared "demonstrative charts"—as the Receiver put it (Receiver's Br. at 12 (Mar. 24, 2022))—as the basis for its sweeping coverage declarations. These charts, created by the Receiver's counsel, did not contain any of the actual policy language the court purported to interpret and apply. A demonstrative chart is not evidence; it is an illustrative aid, and it cannot serve as a substitute for the policies themselves, particularly in a summary judgment proceeding. By relying on counsel-prepared demonstratives rather than admissible evidence, the circuit court and Court of Appeals violated Rule 1006, SCRE, and Travelers' due process rights.

Under Rule 1006, summaries of voluminous materials may be introduced to streamline proceedings only if strict evidentiary standards are met. The proponent of the summary must demonstrate that: (1) the underlying documents are admissible; (2) the documents are so voluminous that they cannot be conveniently reviewed by the court; (3) the summary fairly and accurately reflects the underlying data; and (4) the underlying documents were made reasonably available to the opposing party. *State v. Warner*, 430 S.C. 76, 95 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395 (2022).

The Receiver failed to satisfy any of these prerequisites. The underlying policy documents—save for just four incomplete policies—were absent from the record and were never authenticated or shown to be admissible. The Receiver offered no evidence that the policies were so voluminous that they could not be conveniently reviewed by the court and, in fact, his belated *ex parte* submission of the policy documents only highlights that they were manageable but

deliberately withheld. The charts were never verified or supported by an affidavit explaining their preparation or methodology, leaving their reliably unproven. And without such attestation, Travelers was left to speculate as to what materials the Receiver's counsel reviewed in drafting in his "demonstrative charts."

Demonstrative aids are illustrative tools, "distinguishable from exhibits that comprise 'real' or substantive evidence[.]" *Clark v. Cantrell*, 339 S.C. 369, 383 (2000). While a demonstrative may assist the court in understanding admitted evidence, it cannot stand on its own as proof or form the sole basis for resolving summary judgment, especially given the heightened burden of proof in this case—clear and convincing evidence. *See Estate of Mason v. Mason*, 289 S.C. 273, 277, 346 S.E.2d 28, 31 (Ct. App. 1986). By treating the demonstrative charts as substantive evidence, the circuit court improperly excused the Receiver from the burden of proving the existence and terms of the alleged policies.

In affirming, the Court of Appeals found that "additional evidence of insurance coverage was provided to the circuit court at a later date[,]" which "is precisely what Rule 1006 contemplates." (Decision at 14.) This conclusion fundamentally misapprehends Rule 1006. A post-decision, *ex parte* document dump never even served on Travelers is not at all consistent with the procedural safeguards envisioned by Rule 1006. And contrary to the Court of Appeals' suggestion that Travelers was not prejudiced because "Travelers had access to its own documents" (Decision at 14), portions of the Receiver's charts lack identifying details that would allow Travelers to identify and challenge all source documents independently. This is obvious error.

D. The Premature Closure of Discovery Violated Rule 56(f)

As a final procedural error, the circuit court prematurely granted summary judgment despite significant ongoing discovery efforts and unresolved factual disputes. Travelers submitted

a detailed Rule 56(f) affidavit that identified critical evidentiary issues and the need for further discovery to address material facts directly tied to the Receiver's requested coverage declarations. (R. p. 967.) However, the circuit abruptly closed discovery, violating South Carolina's longstanding principle that summary judgment is a "drastic remedy" that "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69 (2003).

Travelers' Rule 56(f) affidavit detailed multiple critical areas of discovery that remained incomplete, including with respect to the underlying claim facts, Starr Davis's operations and timing, missing policy documents, the policies' terms and conditions, choice-of-law issues, limits of liability, and hazard classifications. These factual disputes were central to determining whether and to what extent coverage should apply. Rather than cooperate in discovery, the Receiver blocked access to critical evidence, asserting an extraordinary claim of privilege over communications with asbestos plaintiffs—his and Starr Davis's litigation adversaries. (R. pp. 824–60, 880.) By cutting off discovery, the circuit court deprived Travelers of the opportunity to develop a full factual record, despite the complexity and multidecade scope of this case.

The Court of Appeals excused this by holding factual questions about Starr Davis's asbestos-related operations to be "inconsequential" and "immaterial." (Decision at 13.) But these facts directly affect the conclusions upon which the coverage declarations rest, as discussed above with respect to construing the policy terms "completed operations" and "occurrence."

For example, while the Court of Appeals emphasized a document suggesting that "*Starr-Davis of South Carolina is involved primarily in installation and contract work*," (*id.* (emphasis in original)), that same document shows that Starr Davis is composed of two distinct entities, each with distinct operational risks and exposure profiles. As noted, Starr Davis ceased handling

asbestos in 1972, and record evidence shows that 90% of its business involved non-contracting activities. These fact-specific issues are critical to determining coverage, as well as whether claims arose from active or completed operations. Yet the Court of Appeals disregarded them, summarily concluding that most of Starr Davis's business was asbestos-related contracting work and that it did not matter whether bodily injury occurred before or after 1972. (Decision at 13.)

The circuit court deprived Travelers of necessary discovery, which undermined its ability to contest the Receiver's motion on a complete record. *Lanham*, 349 S.C. at 363. By affirming, the Court of Appeals committed legal error that should be corrected via certiorari review.

CONCLUSION

In light of this Court's recent pronouncements in *Welch* and *Tibbs*, Travelers submits that the lower courts' rulings should be vacated, as the Receiver has no standing to seek the declarations at issue in this appeal, and he never did, as the Hopper plaintiffs who sought his appointment had already dismissed their claims against Starr Davis with prejudice by the time the Receiver filed the complaint from which this case stems. Because he is not marshaling assets to help pay claims for the *Hopper* plaintiffs responsible for his appointment, but instead is "conduct[ing] work" in a case without an appointment order and without findings of fact sufficient to justify the extreme remedy of a receivership, this case should be deemed void *ab initio* for want of jurisdiction.

But if the Court disagrees and believes that jurisdiction somehow attaches here, it should grant this Petition and vacate the lower courts' rulings, which are directly contrary to *Crossmann*, the parties' actual contracts, and settled case law construing the relevant policy terms, and numerous procedural safeguards that ensure summary judgment is only granted on a complete evidentiary record after full discovery, and with all evidence and factual inferences construed in the light most favorable to the nonmovant.

Respectfully submitted,

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July 21, 2025

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Petitioners, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below by emailing them as the addresses below:

Pleading(s): Petition for a Writ of Certiorari

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By: /s/ M. Todd Carroll

July 21, 2025

Exhibit A to
Petition for a Writ of Certiorari

Stipulation of Dismissal with Prejudice as to Starr Davis in *Hopper* (April 27, 2020)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2019-CP-40-00076
	)	
REBECCA HOPPER, Individually and as Co-Personal Representative of the Estate of CHARLES T. HOPPER, and JEFFERY as Co-Personal Representative of the Estate Of CHARLES T. HOPPER,	)	
Plaintiffs,	)	
vs.	)	
AIR & LIQUID SYSTEMS CORP., et al.,	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE AS TO STARR DAVIS COMPANY, INC. AND STARR DAVIS COMPANY OF S.C., INC.

Pursuant to 41(a)(1)(B) of the SCRCP plaintiff, by and through undersigned counsel, and with the consent of Defendants Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc., stipulates and agrees to dismiss all claims against Starr Davis Company, Inc. and Starr Davis Company of S.C., Inc. in the above-captioned action with prejudice. It is further stipulated that each party will bear their own costs.

WE SO MOVE:

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April 27, 2020

Exhibit B to
Petition for a Writ of Certiorari

Letter from PFAS Plaintiffs' Counsel to Judge Toal (July 10, 2025)

RICHARDSON THOMAS

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July 10, 2025

VIA EMAIL
The Honorable Jean H. Toal

Re: **Receiverships in South Carolina Litigation**

Dear Chief Justice Toal:

This firm represents multiple South Carolina water utilities in ongoing PFAS[1] litigation. By way of short background, PFAS is a forever chemical that does not break down in nature and can continue to appear for years and even decades after it is released into our environment. The fix to remove PFAS from drinking water for a large portion of the population in South Carolina is extremely expensive. The purpose of our litigation is to ask that the polluters shoulder this cost rather than the South Carolina ratepayers. We anticipate that there are several defunct entities that are responsible, in part, to our clients and the damage to their water systems as a result of the PFAS pollution that occurred in past decades (in addition to ongoing pollution that continues to occur). Because the fix is so incredibly expensive, it is important that our clients have the ability to address past polluters. We also believe that there is insurance coverage available for many defunct companies to contribute to this cost that will otherwise be born by the people of South Carolina and currently viable South Carolian businesses. In other words, if we are unable to collect from past polluters via a receiver, the people and businesses of South Carolina will unfairly have to shoulder the burden of cleaning up the PFAS mess in this state.

Prior to our litigation, a receiver was appointed for some of the defunct entities, such as Burlington, to attempt to marshal the available insurance assets not just for our clients, but also for other creditors. The appointment was made pre-judgement under 15-65-10(4) which provides for the appointment of a receiver "When a corporation has been dissolved, is insolvent

[1] On April 19, 2024, the EPA announced its final rule designating two per- and polyfluoroalyl substances ("PFAS"), namely perfluorooctanoic acid ("PFOA") and perflourooctanesulfonic acid ("PFOS"), as hazardous substances under the Comprehensive Environmental Response, Compensationad n Liability Act. The EPA also established Maximum Contaminant Levels for six PFAS substances in drinking water: PFOA, PFOS, PFHxS, PFNA, and HFPO-DA.

or imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this state of foreign corporations."

The appointment of a Receiver would apply for the entity regardless of how many cases they are named in as a defendant. This allows the receiver to tender the case to the appropriate insurance carriers to defend the cases as they move forward. To attempt to tender these cases to an insurance company post judgment would violate the late notice provisions contained in virtually all insurance policies and therefore void any potential coverage. See *Covil Corp. v. Pa. Nat'l Mut. Cas. Ins. Co.*, 444 S.C. 117, 906 S.E.2d 558 (2024).

Further, if we were required to seek a receiver each time we sued a defunct company, we could be faced with a situation where there are competing receivers, which would be a logistical nightmare for all involved.

Please let me know if you have any questions or concerns.

Sincerely,

Amy L.B. Hill

cc: Terry Richardson
Will Lewis
Jeff Friedman
Jay Friedman