STATE OF SOUTH CAROLINA
In the Court of Appeals

ON APPEAL FROM RICHLAND AND YORK COUNTIES
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2020-000845

Circuit Court Case Nos. 2015-CP-46-02155 (*Smith*), 2015-CP-46-03456 (*Howe*), 2019-CP-40-00076 (*Hopper*), 2018-CP-40-04680 (*Hill*), and 2018-CP-40-04940 (*Taylor*)

Ex Parte: United States Fidelity and Guaranty Company..... Appellant,

v.

Peter D. Protopapas, in his capacity as Receiver of Covil Corporation..... Respondent,

In Re:

Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith ..... Plaintiffs,

v.

CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CNA Holdings, Inc., f/k/a Hoechst Celanese Corporation; Celanese Corporation f/k/a Hoechst Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc., f/k/a Daniel Construction Company, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; MP Supply, Inc. f/k/a Mill-Power Supply Co. and Mill-Power Supply Company; Resolute FP US, Inc.; Union Carbide Corporation; United States Fidelity and Guaranty Company; Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; and United Conveyor Corporation ..... Defendants,

and

Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, Deceased, and Jeannette Howe ..... Plaintiffs,

v.

Air & Liquid Systems Corp., Individually and as Successor-in-Interest to Buffalo Pumps, Inc; Airco, Inc.; Airgas USA, LLC, f/ka National Welding Supply, Inc.; Albany International Corp.; Asten-Johnson, Inc.; Aurora

Pump Company; A.W. Chesterton Company; Beloit Corporation; Black Clawson Converting Machinery, LLC, Individually and as a Subsidiary of Davis-Standard LLC; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CGR Productions, Inc., f/k/a Carolina Gasket and Rubber Company; CNA Holdings, Inc., f/k/a Hoechst Celanese Corporation; Celanese Corporation f/k/a Hoechst Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.; Covil Corporation; Crane Co.; Crown Cork & Seal Company, Inc.; Daniel International Corporation; Davis-Standard Corporation, LLC; Dezurik, Inc. d/b/a Dezurik-Apco Williamette Eagle, Inc.; Fisher-Klosterman, Inc., as Successor-in-Interest to Buell Engineering Co.; Flowserve Corporation, Individually and as Successor-in-Interest to Durco Pumps; Fluor Enterprises, Inc., f/k/a Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll-Rand Company; Linde, LLC f/k/a The Boc Group, Inc., f/k/a Airco, Inc.; Marsulex Environmental Technologies Corporation, Individually and as Successor-in-Interest to Buell Engineering Co.; Marsulex Environmental Technologies, LLC, as Successor-in-Interest to Buell Engineering Co.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Peerless Pump Company; Presnell Insulation, Inc.; Riley Power, Inc., Individually and as Successor-in-Interest to Babock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco Corporation; SPX Cooling Technologies, Inc., f/k/a Marley Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Co.; Sterling Fluid Systems (USA) LLC; Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company; Union Carbide Corporation; Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; United Conveyor Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; and Zurn Industries ..... Defendants,

and

Charles T. Hopper and Rebecca Hopper..... Plaintiffs,

v.

Air & Liquid Systems Corp.; 3M Company; Advance Auto Parts, Inc.; Armstrong International, Inc.; Blackmer Pump Company; BW/IP, Inc.; CBS Corporation; CNA Holdings, LLC; Carrier Corporation; Circor Instrumentation Technologies, Inc.; Continental Tire the Americas, LLC; Covil Corporation; Crane Co.; Crosby Valve, LLC; Daniel International Corporation; E.I. du Pont de Nemours and Company; Fisher Controls International, LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Flour Constructors International, Inc.; Fluor Daniel Services Corporation; Flour Enterprises, Inc.; FMC Corporation;

Ford Motor Company; Foster Wheeler Energy Corporation; Gardner Denver, Inc.; General Electric Company; Genuine Parts Company; Georgia Power Company; Goodrich Corporation; Gorman-Rupp Company; Goulds Pumps, Incorporated; Grinnell, LLC; Hobart Brothers LLC; Honeywell International, Inc.; IMO Industries, Inc.; Ingersoll-Rand Company; International Paper Company; ITT LLC; The Lincoln Electric Company; Metropolitan Life Insurance Company; Miller Electric Mfg., LLC; National Automotive Parts Association; Newco Valves, LLC; O'Reilly Auto Enterprises, LLC; O'Reilly Automotive Stores, Inc.; Resolute FP US Inc.; Shell Oil Company; South Carolina Electric & Gas Company; South Carolina Public Service Authority; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc.; Southern Insulation, Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Trane U.S.; Uniroyal Holding Inc.; Viking Pump, Inc.; Weir Valves & Controls USA, Inc.; The William Powell Company; Yeargin Potter Smith Construction, Inc.; Yuba Heat Transfer Corporation; and Zurn Industries ..... Defendants,

and

James Michael Hill, Jr., as Executor of the Estate of James Michael Hill ... Plaintiff,

v.

Advance Auto Parts, Inc.; 4520 Corp., Inc., successor-in-interest to Benjamin F. Shaw Company; Air & Liquid Systems Corporation, individually and as successor-in-interest to Buffalo Pumps; Alcoa, Inc., successor to Reynolds Metals Company; Aurora Pump Company; BW/IP, Inc., individually and as successor-in-interest to Byron Jackson Pumps; CB&I Group Inc., individually and as successor-in-interest to The Shaw Group, successor to Benjamin F. Shaw Company; CB&I Laurens, Inc., f/k/a B.F. Shaw, Inc.; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; Celanese Corporation; CNA Holdings, LLC, f/k/a Celanese Corporation f/k/a Hoechst Celanese Corporation, sued individually and as successor-in-interest to Fiber Industries, Inc.; Circor Instrumentation Technologies, Inc., individualy and f/k/a Hoke Inc.; Cleaver Brooks, Inc., f/k/a Aqua-Chem, Inc., d/b/a Cleaver-Brooks Division; Covil Corporation; Crane Co.; Crosby Valve, LLC; Dana Companies LLC; Daniel International Corporation; The Dow Chemical Company; Federal-Mogul Asbestos Personal Injury Trust, sued as successor to Felt-Products Manufacturing Co.; Fisher-Controls International, LLC, wholly owned subsidiary of Emerson Electric Company; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; Foster Wheeler Energy Corporation; General Electric Company; Genuine Parts Company, d/b/a Rayloc, a/k/a NAPA; The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Gorman-Rupp Company; Hollingsworth & Vose Company; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to

Bendix Corporation; Imerys Talc America, Inc., f/k/a Luzernac America, Inc., individually and as successor-in-interest to United Sierra Division of Cyprus Mines, Cyprus Industrial Minerals Company and Windsor Minerals, LLC; Ingersoll-Rand Company; International Paper Company; ITT LLC, f/k/a ITT Corporation, ITT Industries, Inc., individually and as successor to ITT Fluid Products Corp., ITT Hoffman ITT Bell & Gossett Company and ITT Marlow; Johnson & Johnson; Johnson & Johnson Consumer Companies LLC, a subsidiary of Johnson & Johnson; Mallinckrodt LLC; Maremont Corporation; McDermott International, Inc., individually and as successor-in-interest to The Shaw Group, successor to Benjamin F. Shaw Company; McNeil (Ohio) Corporation; McNeil & NRM, Inc.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Mine Safety Appliances Company, LLC; National Automotive Parts Association; OfficeMax, Incorporated, f/k/a Boise Cascade Corporation; Pneumo Abex, LLC, individually, and as successor-in-interest to Abex Corporation; R.J. Reynolds Tobacco Company, individually and as successor-by-merger to Lorillard Tobacco Company LLC, f/k/a Lorillard Tobacco Company; Resolute FP US Inc., individually and successor-in-interest to Bowater, Inc.; Reynolds American, Inc., individually, and as successor-by-merger to Brown & Williamson Tobacco Corporation, successor-by-merger to The American Tobacco Company; Riley Power, Inc., f/k/a Riley Stoker Corporation and D.B. Riley, Inc.; Spence Engineering Company, Inc.; Spriax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and successor-in-interest to Marley Cooling Towers Co.; Union Carbide Corporation; United Conveyor Corporation; The William Powell Company; and Zurn Industries, LLC, individually and as successor-in-interest to Zurn Industries, Inc. ..... Defendants,

and

Denver D. Taylor and Janice Taylor..... Plaintiffs,

v.

Air & Liquid Systems Corporation; Aurora Pump Company; BASF Catalyst LLC; BASF Corporation; Borgwarner Morse Tec, LLC; CBS Corporation; CNA Holdings, LLC; Cameron International Corporation; Carrier Corporation; Carver Pump Company; Caterpillar, Inc.; Celanese Corporation; Cleaver-Brooks, Inc.; Continental Tire The Americas, LLC; Covil Corporation; Crane Co.; Daniel International Corporation; Fisher Controls International, LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Frito-Lay, Inc.; Gardner Denver, Inc.; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Grinnell, LLC; Hobart Brothers LLC; Ingersoll-Rand Company; International Paper Company; ITT LLC; John Crane, Inc.; The Lincoln Electric Company; Linde, LLC; McNeil (Ohio) Corporation; McNeil & NRM, Inc.; McWane, Inc.; Metropolitan Life

Insurance Company; Resolute FP US Inc.; Riley Power, Inc.; Spriax Sarco, Inc.; SPX Cooling Technologies, Inc.; Springs Global US, Inc.; Trane US, Inc.; Viking Pump, Inc.; Warren Pumps, LLC; Weir Valves & Controls USA, Inc.; York International Corporation; and Zurn Industries, LLC ..... Defendants.

APPENDIX ACCOMPANYING USF&G'S RETURN IN OPPOSITION TO MOTION TO DISMISS APPEAL

VOLUME III

WOMBLE BOND DICKINSON (US) LLP

Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Bryant S. Caldwell
S.C. Bar No. 102206
bryant.caldwell@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

BAKER, RAVENEL & BENDER, L.L.P.

William P. Davis
S.C. Bar No. 1585
wdavis@brblegal.com
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091

SIMPSON THACHER & BARTLETT LLP

Mary Beth Forshaw*
mforshaw@stblaw.com
(212) 455-2846
Andrew T. Frankel**
afrankel@stblaw.com
(212) 455-3073
425 Lexington Avenue
New York, NY 10017-3954

* Pro Hac Vice admitted – *Hopper*, 2019-CP-40-00076
** Pro Hac Vice admitted - *Roxanne Falls*, 2015-CP-46-02155

Attorneys for Appellant United States Fidelity and Guaranty Company

RIKARD & PROTOPAPAS, LLC

Robert G. Rikard
rgr@rplegalgroup.com
Jescelyn Tillman Spitz
jspitz@rplegalgroup.com
1329 Blanding Street
Columbia, SC 29201
(803) 978-6111

SMITH ROBINSON HOLLER DUBOSE AND MORGAN, LLC

G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
Jonathan M. Robinson
jon@smithrobinsonlaw.com
Shanon N. Peake
shanonp@smithrobinsonlaw.com
2530 Devine Street, Suite 1B
Columbia, SC 29205
(803) 254-5445

Attorneys for Respondent Peter D. Protopapas, in his capacity as Receiver of Covil Corporation

APPENDIX
TABLE OF CONTENTS

Volume 3

South Carolina Federal Court

Other Citations

Pro Hac Vice Admissions

EXHIBIT 47

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
CASE NUMBER: 1:18-CV-932

ZURICH AMERICAN INSURANCE COMPANY, *Plaintiff,* vs. COVIL CORPORATION, *et al.*, *Defendants*.	**COVIL CORPORATION AND THE INDIVIDUAL ASBESTOS PLAINTIFFS' JOINT RESPONSE BRIEF REGARDING TRUSTGARD**

This Court requested briefing in light of the recent authoritative decision by the United States Court of Appeals for the Fourth Circuit in *Trustgard Ins. Co. v. Collins*, 942 F.3d 195 (4th Cir. 2019). In its most straightforward terms, the holding of *Trustgard* is that this Court has jurisdiction over the responsibility to pay for *Finch* – which was adjudicated by this Court and which Court determined the insured's liability – but it only has the discretion to exercise jurisdiction over the remainder of this action. The insured ("Covil"), in a brief joined by the Underlying Asbestos Plaintiffs,[1] respectfully submits that the four discretionary factors identified in *Trustgard* do not weigh in favor of exercising jurisdiction. Each of these factors is discussed below. However, it must be emphasized

[1] The following parties are referred to collectively as the "Underlying Asbestos Plaintiffs": Ann Finch, as Executrix of the Estate of Franklin Delenor Finch, Darrell A. Connor, as Executrix of the Estate of Charles Franklin Connor, Robert Joseph Ellis, and Sharon Whitehead, as Executrix of the Estate of James T. Whitehead. These parties agree that this Court should retain jurisdiction only over issues related to *Finch*.

immediately that two critical *Trustgard* factors completely undermine the Insurers'[2] basis for asserting jurisdiction, specifically, the inaccurate claims that (1) "South Carolina has no compelling interest" in the Covil insurance coverage and that (2) "the Insurers have engaged in no forum shopping here." ECF 257 at 4.

Quite simply, this case invokes important principles of South Carolina law, a South Carolina contract, and a South Carolina company; and, aside from the *Finch* aspects, it is the product of forum shopping that cannot be disguised, no matter how it is dressed up.[3]

Covil is and has always been a South Carolina corporation. It is involved in receivership proceedings in the state courts of South Carolina; its Receiver is an officer appointed by the Richland County Court in Columbia, South Carolina. The Receiver resides in South Carolina. The Covil insurance contracts were issued to Covil in South Carolina, and they are governed by South Carolina law. Covil's insurance coverage is its most significant asset. The Receiver was appointed on November 2, 2018. Zurich did not contact or consult with the Receiver, its insured, or the Receivership Court before suing in this Court. Rather, it raced to this courthouse and filed this case before the Receiver ever had counsel. Zurich then tried to shoehorn jurisdiction in this Court by suing fellow insurers – all of which, except USF&G, have no relevance to *Finch* – and by joining some

[2] "Insurers" refers to Zurich American Insurance Company ("Zurich"), United States Fidelity and Guaranty Company ("USF&G"), and Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), which was not involved with *Finch*. Zurich also sued Hartford, TIG, and Sentry, but those insurers have resolved their disputes with Covil and did not join in the Insurers' brief.

[3] As this Court is aware, Zurich brought this action against Covil four days after the Receiver's appointment.

other underlying case plaintiffs who have no cognizable dispute with Zurich. As to *Finch*, only Zurich and USF&G are responsible. Zurich pieced together the non-*Finch* aspects of this lawsuit to target this forum in an attempt to wipe out Covil's coverage, rather than let a South Carolina court deal with those issues. But this Court should exercise its discretion and decline jurisdiction over the aspects of this case that were stitched together solely for the purpose of establishing its chosen forum for hypothetical disputes unrelated to the *Finch* case, thereby avoiding South Carolina law and adjudication.

This Court has jurisdiction over the insurers' responsibility for *Finch*, where Covil's liability has been determined. This Court should proceed to adjudicate the *Finch* dispute. But this Court should decline to assert jurisdiction over the other aspects of a case that was put together solely for the purposes of grabbing a chosen forum for hypothetical disputes, avoiding South Carolina law and adjudication, and adversely affecting the Receiver's ability to administer Covil, as required under the South Carolina court's order.

I. This Court Should Only Retain Jurisdiction Over the Insurers' Responsibility for *Finch*.

Trustgard teaches that federal courts should not adjudicate hypothetical potential future issues, especially when no factor weighs in favor of discretionary jurisdiction. In their brief, the three remaining insurers, one of which has itself vigorously contested this Court's jurisdiction,[4] concede that the issues before this Court relating to *Finch* both are unique to *Finch* and do not implicate broader insurance coverage issues:

[4] Penn National has resisted jurisdiction. *See* ECF 170.

- Zurich and USF&G decided not to settle *Finch*;
- *Finch* involves the aggregated "completed operations" coverage part and, accordingly, this Court need not decide any issue regarding the scope or burden applicable to the unaggregated "operations" coverage part of the policies;
- *Finch* involves extracontractual claims; and
- *Finch* is based on a unique set of facts, not applicable to declaratory judgment issues for other underlying asbestos suits.

These issues properly are before this Court.

II. The Trustgard Factors Do Not Weigh in Favor of Discretionary Jurisdiction Over Non-Finch Issues; The Insurers' Reliance on Pre-Trustgard Cases Is Also Misplaced.

Very simply, in its non-*Finch* causes of action, the Insurers ask this Court to declare that it has no further obligation to indemnify Covil in any action. Thus, the declaratory judgment issues relate only to the Insurers' duty to indemnify Covil. *Trustgard* cautions, "[S]uits about the duty to indemnify—unlike the duty-to-defend suits—would ordinarily be advisory when the insured's liability remains undetermined." 942 F.3d at 200. Despite this caution, the Insurers insist that this Court decide issues of indemnification, even though the South Carolina courts are working through litigation that directly impacts the same issues. Covil and the Underlying Asbestos Plaintiffs respectfully request that this Court heed *Trustgard's* analysis and dismiss the declaratory judgment issues. As the Fourth Circuit points out, "just because a federal court *could* exercise jurisdiction under the Declaratory Judgment Act does not mean that it *should*." *Id.* at 204.

In their effort to avoid the impact of *Trustgard*, the Insurers rely principally on case authority that predates *Trustgard* and is readily distinguishable.

First, the Insurers cite the Fourth Circuit opinion in *Travelers Indemnity Co. v. Miller Building Corp.*, 221 F. App'x 265 (4th Cir. 2007), a case which already had reached the Fourth Circuit in duty-to-defend litigation, and in which the North Carolina Court of Appeals already had "further clarified the coverage question" and "provided further guidance to the parties and the district court as to what the coverage limitations were in similar circumstances for the type of damages here alleged." *Id.* at 268. "Consequently, at the time the district court made its ruling, the law controlling the insurance dispute . . . was fairly well defined." *Id.* These unique facts, including (1) more full development of the underlying case due to the duty-to-defend issues and (2) the state court's prior rulings on the issues, made *Travelers* an exception to the general rule. Here, where no party has litigated a duty-to-defend case, and South Carolina law is not yet defined, *Trustgard's* general rule must apply.

Also distinguishable, the court in *Hanover Insurance Company v. Castle Hill Studios, LLC*, No. 3:18-cv-0072, 2019 WL 302510 (W.D. Va. Jan. 23, 2019), denied a motion to stay in a case with underlying *federal court* litigation, not a state court case. *Id.* at *4 n. 5 (noting the *Nautilus* factors for abstention do not apply because "the Underlying Action is pending in federal court."). Further, the court was not asked to resolve issues of state law. Indeed, the court reasoned "by [the insured's] own admission at oral argument, the Court need not await the resolution of any 'necessary facts' in the Underlying Action to decide whether [the insurer] must indemnify [the insured]." *Id.* at *5. The insured's

"primary argument in favor of a stay" was that the policy exclusions should be read within the context of the full policy. *Id.* The Court held that "there is nothing unusual about this holistic approach to contract interpretation, and this fact alone does not outweigh [the insurer's] interest in determining its coverage limits under the businessowners policies." *Id.*

Finally, the Insurers cite *Nautilus Insurance Co. v. Winchester Homes, Inc.*, 15 F.3d 371, 375 (4th Cir. 1994), for the proposition that the Fourth Circuit has "frequently approved" declaratory judgment actions to resolve liability insurance coverage disputes in advance of a judgment in the underlying case. For that proposition, *Nautilus* cites three exceptions to the general rule. First, *Stout v. Grain Dealers Mutual Insurance Co.*, 307 F.2d 521 (4th Cir. 1962), resolved a duty-to-defend action, which *Trustgard* agrees is distinct from a duty-to-indemnify action. Second, *Farm Bureau Mutual Automobile Insurance Co. v. Daniel*, 92 F.2d 838 (4th Cir. 1937), does not appear to have addressed the issue of justiciability, and significantly predates *Trustgard*. Third, *White v. National Union Fire Insurance Co.*, 913 F.2d 165 (4th Cir. 1990), is not procedurally analogous to this case. *White* involved an analysis of uninsured motorist coverage, and it was decided in advance of the underlying New Jersey state court case. However, unlike the active asbestos personal injury litigation here, the underlying tort case was stayed pending the outcome of the insurance recovery action. *See id.* at 166.

There are exceptions to every rule. But the facts of this case do not fit within the exceptions in the Insurers' cited cases. The declaratory judgment claims here involve previously undecided issues of South Carolina law on the duty to indemnify, and the many

underlying state-court asbestos bodily injury claims are unique and are still pending. The Insurers request that this Court issue an order following *Wallace & Gale* in a vacuum, without reference to the facts of any underlying asbestos bodily injury case, and without allowing the South Carolina appellate courts an opportunity to consider Justice Toal's Order.

This Court should heed *Trustgard*'s caution that in ordinary cases – where extraordinary facts are not presented – declaratory judgments on the duty to indemnify will "be advisory when the insured's liability remains undetermined." *Trustgard*, 942 F.3d at 200.

III. South Carolina Has a Compelling Interest in this Receivership and in Covil's Coverage; the Declaratory Judgment Issues are the Subject of a State Court Order, Motions for Reconsideration, and Potential Appeals. All are Pending in South Carolina.

The Insurers cannot have their cake and eat it too. In their brief, the Insurers argue that Justice Toal's January 8, 2020 Order only was a "discovery sanction," while, at the same time, they also acknowledge that "the order is subject to pending motions to stay and for reconsideration, and, if not reconsidered, will be appealed." ECF 257 at 14-15. The Insurers' brief also argues that Justice Toal's ability to enter these sanctions, not the insurance law issues, will be on appeal. *Id.* at 15. A South Carolina appellate court should hear this argument – not a North Carolina federal district court. The Supreme Court has explained, "lower federal courts possess *no power whatever* to sit in direct review of state court decisions." *Atl. Coast Line R.R. v. Locomotive Eng'rs*, 398 U.S. 281, 296 (1970) (emphasis added); *see also id.* at 286 ("While the lower federal courts were given certain

powers in the 1789 Act, they were not given any power to review directly cases from state courts, and they have not been given such powers since that time. Only the Supreme Court was authorized to review on direct appeal the decisions of state courts.").

One manifestation of this principle is the *Rooker-Feldman* doctrine, under which "lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006). The doctrine prevents a party from "in effect seek[ing] to take an appeal of an unfavorable state-court decision to a lower federal court." *Id.* at 466. This is essentially the same situation as presented by the insurers' brief. The Insurers believe they are aggrieved by Justice Toal's order in the state court litigation and wish to (in effect) appeal that order to this Court and have it reversed.

Justice Toal properly requested proposed orders from all parties in open court after a Rule to Show Cause hearing on November 12, 2019. Zurich, USF&G, and Covil each issued competing proposed orders on November 22, 2019. The parties each had the opportunity to brief their positions on one another's proposed orders. After the issues were fully briefed, Justice Toal signed a revised version of the proposed order the Receiver submitted. This is a proper, recognized procedure under South Carolina law. *See* ECF 271 at 2-3.

Justice Toal had authority to proclaim the law of South Carolina in her Order. Courts throughout the United States, including those within the Fourth Circuit, are empowered to issue a host of substantive sanctions, including dismissals, defaults, and other terminating orders, when a party violates orders. *See, e.g., Anderson v. Found. for*

Advancement, Educ. & Emp't of Am. Indians, 155 F.3d 500 (4th Cir. 1998); *see also Felman Prod., Inc. v. Indus. Risk Insurers*, No. 3:09-0481, 2011 WL 4547012, at *17 (S.D. W. Va. Sept. 29, 2011) (partial dismissal granted because of plaintiff's evidence spoliation *and* discovery orders violation).

Justice Toal found that the Insurers violated her orders, and concluded that USF&G spoliated evidence. *See* ECF 176 Ex. 1 at 12. South Carolina permits sanctions "in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights." *McNair v. Fairfield Cnty.*, 665 S.E.2d 830, 832 (S.C. Ct. App. 2008). "[S]anctions for discovery abuse are left to the sound discretion of the trial court." *Id*.

On appeal, the South Carolina appellate court will decide all issues before it, which will include the substance of Justice Toal's Order, in addition to the issues that the Insurers intend to raise. The Insurers cannot limit the issues on appeal simply by deciding that on their end, they do not intend to present particular issues to an appellate court. Thus, this Court should allow the South Carolina courts to decide the outcome of one of their own decisions.

IV. The Insurers' Analysis of the *Trustgard* Factors Is Both Flawed and Stale.

As the Insurers point out, this Court denied Covil's initial motion to dismiss or stay. ECF 67, 84. Now, however, both the facts and the law have evolved. *Trustgard* considered four factors to determine that dismissal of the duty-to-indemnify action was warranted: "(1) the state's interest in having its own courts decide the issue; (2) the state courts' ability to resolve the issues more efficiently than the federal courts; (3) the potential for unnecessary

entanglement between the state and federal courts based on overlapping issues of fact or law; and (4) whether the federal action is mere forum-shopping." *Trustgard*, 942 F.3d at 202. The Insurers' argument that these factors weigh against dismissal is misplaced.

First, having pronounced the state law of South Carolina as to these insurance issues, Justice Toal has demonstrated the state's interest in having its own courts decide the issue. The Receivership is also pending in South Carolina, involving a South Carolina corporation that began operating in 1954, in which the insurance policies and rights of Covil are the principal assets that the Receiver has been appointed to administer. South Carolina, its courts and its court-appointed officer have a compelling interest in the outcome of the declaratory judgment issues.

Second, the Receivership Court will resolve this case more efficiently than this Court. There are undoubtedly "practical benefits to the parties in the state-court litigation of knowing the extent of the available money to satisfy any judgment." *Trustgard*, 942 F.3d at 204. As the United States Court of Appeals for the Second Circuit noted in an abstention analysis, "The experience of our own federal bankruptcy courts evidences the importance of consolidating all of the assets of an insolvent company and gathering all those who have claims against those assets in a single forum." *Levy v. Lewis*, 635 F.2d 960, 964 (2d Cir. 1980). That is true here, too. Justice Toal has already issued rulings about the meaning of the insurance policies at issue and how they apply to the asbestos litigation against Covil. The state court will be focused on assessing the extent of the coverage issued by the Insurers so that their value can be determined and ultimately distributed to injured plaintiffs and their families.

Third, the *Trustgard* court, Covil, and the Underlying Asbestos Plaintiffs all have discussed the issue of entanglement at length. "[C]ourts may abstain from exercising jurisdiction under certain circumstances that may intrude on the prerogative of state courts." *Trustgard*, 942 F.3d at 201. At this point, no court has determined Covil's ultimate liability in a case since *Finch*. This Court's involvement in the questions of South Carolina insurance law are likely to "lead to confusion and unnecessary entanglement with the [pending] state-court lawsuit[s]." *Id.* at 202. Each underlying case on the South Carolina asbestos docket (and its responsive insurance) turns on complex issues of state law, and a South Carolina state court has already opined on many important issues of first impression. Thus "[c]onsiderations of comity and judicial efficiency weigh strongly in favor of permitting the state court" to resolve the underlying issues. *Id.* at 204.

Fourth, as to the issue of forum shopping, Zurich, of course, denies that. However, Zurich cannot deny that it attacked the Receiver four days after his appointment—before the Receiver had counsel—to try to wipe out Covil's insurance assets and Zurich's responsibility. Zurich manufactured a purported case against three insurers that have no responsibility for *Finch* and aligned them improperly as adverse parties. Zurich then identified and named in this action six asbestos personal injury plaintiffs, almost all of whom reside in the Middle District of North Carolina, ignoring the overwhelming number of such claims in South Carolina. But the existence of those claims, and of the Receivership Court, in South Carolina cannot be ignored. Justice Toal has been appointed the South Carolina asbestos judge, and she also is the receivership court for the Covil receivership. She is intimately familiar with the Covil situation. Zurich's disdain for Justice Toal is no

secret, as evidenced in its recent Motion to Recuse. *See* Exhibit 1. As to non-*Finch* issues, this case is a product of Zurich's forum shopping.

CONCLUSION

Accordingly, Covil, with consent of the Underlying Asbestos Plaintiffs respectfully requests that this Court dismiss the claims seeking declaratory judgments for future, unknown asbestos bodily injury judgments against Covil, and retain jurisdiction only over issues related to *Finch*.

Dated: March 25, 2020

/s/ *Brady Edwards*
Paul Anton Zevnik
Brady Edwards
Nancy Patterson
W. Brad Nes
Jeffrey Raskin
Michel Horton
Lauren McCulloch Semlinger
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
T: (202) 739-3000

William K. Davis
N.C. State Bar No. 1117
BELL, DAVIS & PITT, P.A.
P.O. Box 21029
Winston Salem, North Carolina 27120-1029
(336) 714-4146
wdavis@belldavispitt.com

Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation

/s/ *Jessica M. Dean*
Jessica M. Dean
Charles W. Branham, III
Jonathan M. Holder
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
jdean@dobslegal.com
tbranham@dobslegal.com

/s/ *William M. Graham*
William M. Graham (NC Bar No. 17972)
WALLACE & GRAHAM, P.A.
525 North Main Street
Salisbury, North Carolina 28144
T: 704-633-5244
F: 704-633-9434
bgraham@wallaceandgraham.com

Attorneys for Ann Finch, Darrell A. Connor, Robert Joseph Ellis, and Sharon Whitehead

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served via the Court's CM/ECF system on March 25, 2020. A copy of the foregoing document also has been served on counsel for Insurers via electronic mail.

/s/ Brady Edwards
Brady Edwards

WORD COUNT CERTIFICATION

Pursuant to Local Rule 7.3(d)(1), I hereby certify that the foregoing memorandum of law is less than 3,125 words (excluding caption and certificates of counsel) as reported by the word-processing software.

/s/ Brady Edwards
Brady Edwards

EXHIBIT 48

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Covil Corporation By Its Duly Appointed, Receiver, Peter D. Protopapas, Plaintiff, vs. Zurich American Insurance Company; Sentry Casualty Company; United States Fidelity and Guaranty Company; TIG Insurance Company, As Successor in Interest to Fairmont Specialty Insurance Company, F/K/A Ranger Insurance Company; Hartford Accident And Indemnity Company; First State Insurance Company; Timothy W. Howe, Personal Representative Of Wayne Erwin Howe; Jeannette Howe; Jerry Crawford; Denver Taylor And Janice Taylor; and James Coleman Sizemore, Personal Representative Of James Calvin Sizemore, Defendants.	Civil Action No. 7:18-3291-BHH **OPINION AND ORDER**

This matter is before the Court for review of Defendant Sentry Insurance a Mutual Company's (incorrectly identified as "Sentry Casualty Company;" hereinafter, "Sentry") Motion to Realign the Co-Defendants (ECF No. 4), and Plaintiff Covil Corporation's (hereinafter, "Covil") Motion to Remand (ECF No. 12). For the reasons set forth in this Order, Sentry's Motion to Realign is granted, and Covil's Motion to Remand is denied.

BACKGROUND

On November 27, 2018, Covil, by its duly appointed receiver, Peter D. Protopapas

("Receiver"), filed a Complaint against Sentry, Zurich American Insurance Company ("Zurich"), United States Fidelity and Guaranty Company ("USF&G"), TIG Insurance Company ("TIG"), Hartford Accident and Indemnity Company ("Hartford"), and First State Insurance Company ("First State") (collectively "Carrier Defendants"), seeking declaratory relief in the Spartanburg County Court of Common Pleas. Covil, a now defunct company, alleges that it is the subject of multiple claims and/or law suits arising out of its role as an installer of thermal insulation which contained asbestos, such installations having taken place from approximately 1964 until 1986. (Compl. ¶ 1, ECF Nos. 1-1 & 1-2.) Count I of the Complaint alleges a breach of contract against Zurich, Sentry, and USF&G—which collectively controlled Covil's defense in an underlying wrongful death suit ("*Finch* suit")—for their declination to resolve the suit within policy limits, despite the opportunity to do so, resulting in a verdict entered against Covil in October 2018 in the amount of $32,700,000, plus $5,633,358.89 in pre-judgment interest. (*Id.* ¶¶ 43–50.) Count II alleges bad faith against Zurich and USF&G for failing or refusing to resolve the *Finch* suit within their policy limits, for allowing Covil to receive an adverse verdict of $32,700,000 in the *Finch* suit, and for failing to protect the interests of Covil and its claimants and creditors. (*Id.* ¶¶ 51–54.) Count III seeks declaratory judgments against Sentry, Zurich, USF&G, TIG and Hartford, that their relevant general liability and umbrella policies ("Covil Insurance Policies") provide coverage for the respective policy periods, and that such coverage encompasses all asbestos suits against Covil that allege bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during the policy periods, including both a duty to defend and a duty to indemnify. (*Id.* ¶¶ 55–66.) Count IV seeks declaratory judgments against Timothy W. Howe, personal

representative of Wayne Erwin Howe, Jeannette Howe, Jerry Crawford, Denver and Janice Taylor, and James Coleman Sizemore, personal representative of James Calvin Sizemore (collectively, "Individual Defendants" or "Non-Diverse Defendants"), each of whom had or have asbestos related claims against Covil ("underlying actions"). (*Id.* ¶¶ 67–70.) In light of the $32,700,000 verdict in the *Finch* suit, and in light of the fact that the Covil Insurance Policies allegedly are the only assets of Covil available to pay for asbestos suits, Covil seeks a declaration and order:

> [T]hat certain rights and interests of the individually-named defendants be limited and curtailed as follows: (i) that any judgment obtained against Covil in a Covil asbestos suit be limited to all sums that may be collected from defendants Zurich, Sentry, USF&G, TIG and Hartford, individually or collectively; (ii) that punitive or exemplary damages are not awardable against the Receiver or the Receiver acting on behalf of Covil pursuant to South Carolina Code § 15-65-10; and (iii) that any judgment obtained against Covil that is or may be subject to an aggregate limit of any insurance policy or policies issued to Covil must fairly and equitably take into account such other judgments that may be outstanding at the time of such judgment.

(*Id.* ¶ 70.) Count V seeks an anti-suit injunction against Zurich, which brought a parallel declaratory judgment action in United States District Court for the Middle District of North Carolina. (*Id.* ¶¶ 71–76.) Covil alleges that Zurich brought the parallel action in an effort to truncate and limit the rights and powers of the Receiver, and to impair or impede the rights of the Individual Defendants and all other claimants, known and unknown, against Covil, as well as the rights of the Receiver. (*Id.* ¶ 72.) Covil further asserts that the issuance of an antisuit injunction is necessary and appropriate so that Covil may ascertain the parties' rights and obligations under the Covil Insurance Policies in this action, which is more comprehensive than the parallel action, and in order to obviate a multiplicity of actions which would otherwise result from allowing duplicative litigation involving the same issues and the same parties to proceed simultaneously. (*Id.* ¶¶ 73–76.)

Sentry removed the action to this Court on December 6, 2018. (ECF No. 1.) In its contemporaneously filed Motion to Realign the Co-Defendants, Sentry petitions the Court to realign the Non-Diverse Defendants with Covil as plaintiffs in this action, which would leave only the Carrier Defendants as defendants to the action, thereby creating complete diversity. (*See* ECF No. 4.) On December 20, 2018, Covil filed an Opposition to the Motion to Realign (ECF No. 11) and a Motion to Remand (ECF No. 12) the matter to state court. The Individual Defendants filed Oppositions to the Motion to Realign (ECF Nos. 21, 22, 23) on December 26, 2018. Sentry and Zurich filed Replies in Support of the Motion to Realign (ECF Nos. 25 & 26) on January 7, 2019. On January 14, 2019, Sentry and Zurich/TIG filed Oppositions to the Motion to Remand (ECF Nos. 32 & 33). On January 22 and 24, 2019 respectively, Covil and the Individual Defendants filed Replies in Support of the Motion to Remand (ECF Nos. 45 & 49). Both motions are ripe for consideration and the Court now issues the following ruling.

DISCUSSION

A. Motion to Realign Co-Defendants

The United States Supreme Court has stated, with regard to realignment of parties in a diversity action:

> To sustain diversity jurisdiction there must exist an actual, substantial controversy between citizens of different states, all of whom on one side of the controversy are citizens of different states from all parties on the other side. Diversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are plaintiffs and who defendants. It is our duty, as it is that of the lower federal courts, to look beyond the pleadings and arrange the parties according to their sides in the dispute. Litigation is the pursuit of practical ends, not a game of chess. Whether the necessary collision of interests exists, is therefore not to be determined by mechanical rules. It must be ascertained from the *principal purpose* of the suit and the primary and controlling matter in dispute.

Indianapolis v. Chase Nat'l Bank, 314 U.S. 63, 69 (1941) (emphasis added) (citations and internal quotation marks omitted). The Fourth Circuit has adopted the "principal purpose test" for evaluating how parties should be aligned:

> Application of the principal purpose test entails two steps. First, the court must determine the primary issue in the controversy. Next, the court should align the parties according to their positions with respect to the primary issue. If the alignment differs from that in the complaint, the court must determine whether complete diversity continues to exist.

U.S. Fid. & Guar. Co. v. A & S Mfg. Co., 48 F.3d 131, 133 (4th Cir. 1995).

Sentry argues that (1) the primary issue in the controversy is whether the Carrier Defendants' policies provide coverage to Covil for the claims asserted by the Non-Diverse Defendants in the underlying actions, and (2) the Non-Diverse Defendants share Covil's position with respect to whether insurance coverage for any judgment entered in Non-Diverse Defendants' favor should apply—to wit, they desire liability coverage to apply. (ECF No. 4-1 at 3–6.) Accordingly, Sentry requests that the Court realign the Non-Diverse Defendants as plaintiffs in this declaratory judgment action. Moreover, Sentry asserts that once the Non-Diverse Defendants are properly realigned as plaintiffs, complete diversity exists between Covil and Non-Diverse Defendants on the one hand—all South Carolina citizens—and the Carrier Defendants on the other—Wisconsin, California, New York, and Connecticut corporations with their principal places of business in Wisconsin, Illinois, Connecticut, and New Hampshire, respectively. (*Id.* at 6.)

Covil argues that the Individual Defendants should not be realigned as plaintiffs because their interests are not aligned with the Receiver in this declaratory judgment action or in the underlying actions. (ECF No. 11 at 4.) Covil argues that, "based on the four corners of the [C]omplaint, the primary purpose of this lawsuit is the fulfillment of the

Covil Receiver's statutory functions under South Carolina law, as ordered by the Honorable Jean H. Toal." (*Id.* at 6; *see also* ECF No. 1-1 at 3–4 ("By this action, Covil seeks to administer its known assets, specifically including its known insurance assets, in a manner that is fair and equitable to Covil's known and unknown creditors and claimants in this jurisdiction and otherwise.").) Specifically, the Receiver is tasked with the duty to fully administer all assets of Covil. (ECF No. 11 at 6 (citing Order Appointing A Receiver for Covil Corporation, Case No. 2018-CP-40-0490 ("Receiver Order," ECF No. 11-1)).) To that end, and as detailed in the explanation of Counts I through V *supra*, Covil's Complaint seeks declarations against the Carrier Defendants, as well as "separate and distinct declarations against the underlying asbestos claimants." (*Id.* at 7.) Covil points to Count IV of the Complaint—which petitions the Court to declare that certain rights and interests of the Individual Defendants are limited and curtailed, by limiting any judgment(s) obtained against Covil in an asbestos lawsuit to the amount recoverable from the Carrier Defendants, and by prohibiting punitive or exemplary damages against the Receiver or the Receiver acting on behalf of Covil (*see* Compl. ¶70)—as evidence that Covil and its Receiver's interests, as against the Individual Defendants' interests, are irreducibly adverse. (*See* ECF No. 11 at 7–8.)

The Individual Defendants oppose realignment on similar grounds. In their own response to the Motion to Realign, they point out that Covil seeks to limit their recovery in the underlying actions to the amount recoverable from the Carrier Defendants, and to limit the amount of any judgment obtained against Covil to an "aggregate limit" that "fairly and equitably takes into account such other judgments that may be outstanding at the time of such judgment." (*See* ECF No. 21 at 2–3 (citing Compl. ¶ 11, ECF No. 1-1).) The

Individual Defendants argue that Covil, in essence, "seeks to determine the [Individual Defendants] rights as they relate to currently unknown parties in order to determine how funds should be allocated, pre-liability, to the [Individual Defendants] and those unknown future claimants." (*Id.* at 3.) They assert, "It is difficult to imagine a more adversarial position between parties. Nevertheless, Sentry and the other insurance carriers removed this action and Sentry now claim that the [Individual Defendants] and Covil are somehow 'aligned' against it and the other carriers." (*Id.*)

The parties' disagreement with respect to the first prong of the principal purpose test—to wit, the primary issue in controversy—is one of scope. Sentry defines the primary issue *narrowly*, averring that the parties' proper alignment is a function of whether they desire insurance coverage to apply to the underlying asbestos actions. (*See* ECF No. 4-1.) Plaintiff defines the primary issue *broadly*, as invoking the Receiver's statutory and court-appointed functions to properly administer Covil's assets, pitting Covil on one side of the dispute, with asbestos claimants seeking to maximize their recoveries and insurance carriers seeking to limit or preclude coverage on the other side. (*See* ECF No. 11 at 7.) As more fully explained below, the Court agrees with Sentry that the scope of the primary issue in this declaratory judgment action is narrow, and that the parties are rightly aligned by their respective positions on whether they desire insurance coverage to apply *vel non* to any judgments resulting from the underlying asbestos actions.

While it is true that Covil's Complaint includes a claim (Count IV) seeking declarations that would purport to limit the Individual Defendants' ability to recover from Covil's assets to any recovery they could make from the Covil Insurance Policies, it is equally true—by the terms of Covil's own Complaint—that the insurance policies are

Covil's only assets. (*See* Compl. ¶ 69, ECF No. 1-2 ("The Covil Insurance Policies are the only assets of Covil available to pay for Covil asbestos suits.").) Thus, whatever clash of interests exists between Covil and the Individual Defendants *within the instant declaratory judgment action*, is ancillary to the primary issue in the case, which is whether insurance coverage exists to satisfy any judgments the Individual Defendants may obtain against Covil in the underlying asbestos actions.

Indeed, the Receiver was appointed by way of the Honorable Jean H. Toal granting the motion of Denver and Janice Taylor, two of the Individual Defendants in this matter, who specifically argued for the necessity of a receiver because all that remains of Covil, which was dissolved in 1991, is its insurance coverage. (*See* ECF No. 25-1 at 2–3 ("Covil is not, as a normal corporation would be, controlled by its shareholders or management, but rather its insurance carriers through its lawyers."); ECF No. 11-1 ("This matter comes before the Court by way of [Denver and Janice Taylor's Motion for Appointment of a Receiver . . . . This Court finds that the application is meritorious under the applicable statute because Covil Corporation has dissolved.").) The supposed limitation that Count IV of the Complaint seeks to place upon the Individual Defendants recovery is illusory, because any recovery they make is *de facto* limited to the amount of applicable coverage. That the Individual Defendants' interests are antithetical to Covil's interests in the underlying actions themselves is immaterial. The principal purpose test must be decided based upon the *primary issue in the instant case*—whether the Covil Insurance Policies provide coverage for the asbestos actions, and if so how much. *See Marsh v. Cincinnati Ins. Co.*, 2008 WL 4614289, *2 (Oct. 15, 2008) (granting insurers motion to realign injured tort claimants from defendants to plaintiffs in coverage action filed by purported insured

against insurer; stating, "The relevant inquiry is to determine the parties' positions with respect to the primary issue *in this case*, not whether the parties are adversaries in another pending before another court." (emphasis in original)). Accordingly, the Court finds that the Individual/Non-Diverse Defendants should be realigned as plaintiffs in this action because their position regarding the primary issue is aligned with Covil's, and the Motion to Realign is granted.

The parties having been realigned, diversity jurisdiction now exists in this case. *See* 28 U.S.C. § 1332. All Plaintiffs are citizens of South Carolina, and all Defendants are out-of-state corporations with their principle places of business also out-of-state. It is undisputed that the amount in controversy is well over the minimum jurisdictional amount of $75,000. Therefore, the Court finds that it has subject matter jurisdiction over this case.

B. Motion to Remand

Covil's Motion to Remand is premised upon the assertions that complete diversity does not exist among the parties, and that Sentry's request to realign the parties was made for the sole purpose of manufacturing diversity where none exists. (*See* ECF No. 12 at 2.) The Court's findings regarding the Motion to Realign, and realignment of the Individual Defendants as Plaintiffs, obviously undermine these premises. Accordingly, no further discussion of the Motion to Remand is necessary. Moreover, the Court need not reach the question of whether Count V of the Complaint, which seeks an anti-suit injunction against Zurich to enjoin the parallel declaratory judgment action in the United States District Court for the Middle District of North Carolina, invokes federal question jurisdiction (*see* Mot. to Remand, ECF No. 12 at 9–12 (arguing that federal question jurisdiction does not exist); Opp. to Remand, ECF No. 32 at 6–8 (arguing that Covil's

request for an anti-suit injunction turns on a question of federal law—namely, whether a state court has the authority to enjoin the prosecution of a case in federal court—thus invoking federal question jurisdiction)), because the Court has already found that it possesses diversity jurisdiction over this case.

CONCLUSION

For the reasons stated above, Defendant Sentry's Motion to Realign the Co-Defendants (ECF No. 4) is GRANTED, and Plaintiff Covil's Motion to Remand (ECF No. 12) is DENIED.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

June 14, 2019
Greenville, South Carolina

EXHIBIT 49

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Peter D. Protopapas, as Receiver for Covil Corporation, *Plaintiff*, v. Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; and Zurich American Insurance Company, *Defendants*.	CASE NUMBER: 3:19-cv-01635-BHH

THE RECEIVER OF COVIL CORPORATION'S MOTION TO REMAND AND MEMORANDUM OF LAW IN SUPPORT

Peter D. Protopapas, as the duly appointed Receiver for Covil Corporation ("Covil"), a dissolved South Carolina corporation, moves this Court for an order remanding this case to the Court of Common Pleas, Fifth Judicial Circuit, County of Richland, South Carolina, pursuant to 28 U.S.C. §§ 1332, 1446, and 1447.

INTRODUCTION

On April 24, 2019, the Receiver filed this lawsuit in the South Carolina Court of Common Pleas, against Sentry Casualty Company ("Sentry"), United States Fidelity and Guaranty Company ("USF&G"), Zurich American Insurance Company ("Zurich") (collectively, Covil's "Insurers"), and Wall, Templeton & Haldrup, P.A. ("WTH").[1] [2] On June 6, 2019, USF&G removed the case to this Court.[3]

[1] ECF 1-2.
[2] Sentry, USF&G, Zurich, and WTH will be referred to collectively as "Defendants."
[3] ECF 1.

The Receiver moves to remand this case to state court because it is undisputed that the parties are not completely diverse. USF&G claims removal is proper because the Receiver fraudulently joined WTH to defeat diversity. USF&G, however, cannot meet its "heavy burden" to demonstrate fraudulent joinder for at least four reasons:

- Covil can establish its professional negligence and other claims against WTH because WTH—acting as Covil's attorneys—were on notice that Covil had been served with asbestos lawsuits but chose not to investigate or answer those complaints. WTH thus proximately caused monetary damages to Covil through the depletion of Covil's insurance assets. In fact, USF&G—the party removing this case—has now asserted exhaustion of its limits and has refused to provide coverage to Covil for outstanding claims as a direct result of the payments it made to resolve the cases that are the subject of WTH's professional negligence.[4]

- Covil has been damaged by the professional negligence of WTH and the acquiescence or complicity of the Insurers in the complained-of conduct, such that there is a dispute between Covil and all of the Defendants as to the responsibility for the damages suffered by Covil, and as to the right of Covil to recover from the Defendants, jointly or severally, for its damages.[5]

- Covil incurred out-of-pocket expenses as a direct and proximate result of WTH's conduct. Such expenses constitute compensatory damages, which Covil may recover under South Carolina law.

- The Receiver did not breach any agreement to cooperate by filing this lawsuit. USF&G cannot rely on a confidential and privileged email labeled "Absolute Mediation Privilege" to show otherwise. In any event, that email is not evidence of the Receiver's breach of any agreement.[6]

If this were not enough, this case must be remanded for another reason. USF&G removed this case to federal court[7] without first obtaining the consent of WTH. WTH has now missed its deadline to consent to or join the removal, so the Court must remand the case to the

[4] Exhibit 1, April 24, 2019 Letter from Travelers to the Receiver, at 1–2.
[5] The insurance contracts were all issued to Covil in South Carolina and are governed by South Carolina law, as determined by the state courts of South Carolina. There are important substantive state law issues that should be decided by the South Carolina courts, on remand or otherwise.
[6] The only effective way to determine and vindicate all claimed rights against WTH is to have a lawsuit with all parties present, including the Receiver, Insurers, and WTH.
[7] ECF 1.

South Carolina Court of Common Pleas.

NATURE OF THE CASE

Covil, through its Receiver, seeks monetary damages proximately caused by the Defendants because they received notice of an asbestos complaint filed against Covil but decided not to investigate or file an answer on Covil's behalf.

FACTUAL BACKGROUND

Covil was an installer of thermal insulation materials.[8] Asbestos claimants have alleged that during the conduct of Covil's operations, *i.e.*, in connection with the installation, repair, replacement, removal, or disturbance of thermal insulation materials, they were exposed to asbestos, thereby suffering bodily injuries.[9] These asbestos claimants have sued Covil and are seeking to recover for their bodily injuries.[10]

Covil ceased its operations in 1991 and forfeited its corporate authority to transact business in 1993.[11] After 1991, Covil's primary Insurers controlled the defense of all asbestos claims filed against Covil.[12] Covil's Insurers conducted all of Covil's affairs, including the disposition of Covil's insurance assets.[13] Covil's Insurers engaged WTH to defend Covil in South Carolina lawsuits seeking recovery for asbestos-related injuries,[14] including *James Michael Hill, Jr. et al. v. Advance Auto Parts, Inc. et al.*, No. 2018-CP-40-04680 ("*Hill*"), and *Denver D. Taylor et al. v. Air & Liquid Systems Corp. et al.*, No. 2018-CP-40-0490 ("*Taylor*").[15]

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[8] ECF 1-2 at 5.
[9] *Id.* at 6.
[10] *Id.*
[11] *Id.* at 5.
[12] *Id.* at 6.
[13] *Id.*
[14] ECF 1-2 at 8–9; ECF 1 at 5.
[15] ECF 1-2 at 8; ECF 1 at 5.

WTH and Covil's Insurers received notice of the existence of the *Hill* and *Taylor* cases because the plaintiffs' attorney contacted WTH asking about the past due answers.[16] Instead of investigating the issue and filing answers on behalf of Covil, the Defendants simply decided not to answer.[17] As a result, the South Carolina Court of Common Pleas entered defaults against Covil in both cases on November 2, 2018.[18] That same day, the South Carolina court also appointed the Receiver, pursuant to South Carolina Code § 15-65-10.[19] The court gave the Receiver the "power and authority to fully administer all assets of Covil" and "the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers."[20]

On March 20, 2019, the South Carolina court denied Covil's motion to set aside the defaults.[21] The Insurers were forced to settle the cases at this point for increased amounts.[22] On April 24, 2019, the Receiver filed this lawsuit in the South Carolina Court of Common Pleas against Covil's Insurers and WTH.[23] The Receiver asserts causes of action against WTH and Covil's Insurers stemming from the damages suffered by Covil as a result of the Defendants' decisions to ignore the plaintiffs' attorney's email regarding service and not file an answer to the *Hill* complaint.[24] On June 6, 2019, USF&G removed this case to the United States District Court for the District of South Carolina, Columbia Division.[25]

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[16] ECF 1-2 at 10–14.
[17] *Id.* at 10–11.
[18] *Id.* at 10, 22, 34; ECF 1 at 5.
[19] Exhibit 2, Order Appointing Receiver.
[20] *Id.*
[21] Exhibit 3, Order Denying Covil's Motion to Lift Entry of Default.
[22] ECF 1-2 at 15.
[23] *Id.* at 1.
[24] *Id.* at 14–25.
[25] ECF 1.

REMOVAL STANDARD FOR DIVERSITY JURISDICTION

Federal district courts "have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332. Complete diversity "mean[s] a plaintiff cannot be a citizen of the same state as any defendant." *Johnson v. Am. Towers, LLC*, 781 F.3d 693, 704 (4th Cir. 2015). In fact, if "at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Courts must strictly construe the removal statutes and "resolve all doubts about the propriety of removal in favor of retained state court jurisdiction." *Marshall v. Manville Sales Corp.,* 6 F.3d 229, 232 (4th Cir. 1993); *see also Dixon v. Coburg Diary*, 369 F.3d 811 (4th Cir. 2004) (en banc) ("We are obliged to construe removal jurisdiction strictly because of the 'significant federalism concerns' implicated. Therefore, '[i]f federal jurisdiction is doubtful, a remand [to state court] is necessary.'" (alterations in original) (citations omitted)).

ARGUMENT

I. Remand is proper because complete diversity does not exist among the parties.

To establish diversity jurisdiction, USF&G must demonstrate that all of the plaintiffs are citizens of different states than all of the defendants. *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). Here, it is uncontested that the plaintiff Receiver is a South Carolina resident operating under the authority of the South Carolina Court of Common Pleas.[26] Similarly, plaintiff Covil was incorporated in the State of South Carolina and therefore is considered a citizen of South Carolina for the purposes of determining whether it is diverse from opposing

[26] ECF 1-2 at 4.

parties.[27] Meanwhile, defendant WTH—a South Carolina professional association with its principal place of business in South Carolina—is also a citizen of South Carolina.[28] Accordingly, this Court lacks subject matter jurisdiction and must remand this case to the South Carolina Court of Common Pleas.

II. The Receiver did not fraudulently join WTH as a defendant in this case.

USF&G now claims exhaustion of limits through payments made in *Hill* and *Taylor*.[29] It is also claiming the right to recover from WTH amounts it paid, and asserts that Covil (through the Receiver) has no interest in the exercise of the right to recover from WTH because *Hill* and *Taylor* were settled. This is nonsense. If there is a recovery from WTH, the Receiver has an interest in assuring that Covil recovers damages for ***all*** of the injuries caused by WTH's malpractice. Covil's damages include the out-of-pocket expenses that Covil was forced to incur as a result of WTH's conduct, as well as the restoration of any limits improperly impaired or exhausted as a result of the *Hill* settlement.[30] The only way to assure that this is accomplished is by joining all of the affected parties in the same suit. Pretending that the Receiver can receive full relief without having all of the defendants in one case in South Carolina state court is wrong. As shown below, USF&G cannot meet its burden to show otherwise.

A. USF&G must show either outright fraud or no possibility of a viable claim to remove this case.

A defendant that removes a case based on the doctrine of fraudulent joinder "bears a heavy burden—it must show that the plaintiff cannot establish a claim even after resolving all issues of law and fact in the plaintiff's favor." *Johnson*, 781 F.3d at 704 (quoting *Hartley v. CSX*

[27] *Id.*
[28] *Id.*
[29] Exhibit 1, April 24, 2019 Letter from Travelers to the Receiver, at 1–2.
[30] There are over thirty cases pending against Covil, including a judgment in excess of $30 million on appeal to the Fourth Circuit (*Finch v. BASF Catalysts LLC, et al.*, No. 1:16-cv-01077 (M.D.N.C.)).

Transp., Inc., 187 F.3d 422, 424 (4th Cir. 1999)). The applicable standard "is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss." *Hartley*, 187 F.3d at 424. Indeed, the removing party must show either "outright fraud in the plaintiff's pleading of jurisdictional facts or that there is *no possibility* that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." *Johnson*, 781 F.3d at 704 (quoting *Hartley*, 187 F.3d at 424) (emphasis in original). To defeat an allegation of fraudulent joinder, a plaintiff need only show a slight possibility of a right to relief, which the Fourth Circuit has characterized as a "glimmer of hope." *Johnson*, 781 F.3d at 704; *Mayes v. Rapoport*, 198 F.3d 457, 466 (4th Cir. 1999). "Once the court identifies this glimmer of hope for the plaintiff, the jurisdictional inquiry ends." *Hartley v. CSX Transp., Inc.*, 187 F.3d 422, 426 (4th Cir. 1999). As the Fourth Circuit has noted:

> Jurisdictional rules direct judicial traffic. They function to steer litigation to the proper forum with a minimum of preliminary fuss. The best way to advance this objective is to accept the parties joined on the face of the complaint unless joinder is clearly improper. To permit extensive litigation of the merits of a case while determining jurisdiction thwarts the purpose of jurisdictional rules.

Id. at 425. In determining whether an attempted joinder is fraudulent, the Court is not bound by the allegations in the pleadings, but may instead consider the entire record, and determine the basis of joinder by any means available. *Mayes*, 198 F.3d at 464.

B. The Receiver did not fraudulently join WTH.

USF&G does not assert that the Receiver's claims consist of "outright fraud." *Johnson*, 781 F.3d at 704. Instead, USF&G claims that WTH was fraudulently joined because there is "no possibility" or "glimmer of hope" that the Receiver could establish a viable professional negligence claim against WTH.[31] *Id.* USF&G challenges only two of the four elements of the

[31] ECF 1 at 7.

Receiver's claim: proximate causation and damages.[32] USF&G's argument fails because, after "resolving all issues of law and fact in the plaintiff's favor," it is clear that the Receiver has pled a viable professional negligence claim against WTH because WTH's malpractice proximately caused Covil to suffer damages consisting of (1) the depletion of insurance assets needed for ongoing asbestos litigation, and (2) out-of-pocket expenses incurred by Covil as a proximate result of the default.

1. Covil's insurance policies were depleted.

The Insurers claim that they, "not Covil, sustained the injury and resulting damages from any malpractice by Wall Templeton" because they funded the *Hill* settlement and no default judgment was entered against Covil.[33] But USF&G's reliance on *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 426 S.C. 154, 826 S.E.2d 270 (2019), is misplaced.[34] *Sentry* holds, "When an insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured—his client. Pursuant to that relationship, ***the attorney owes the client—not the insurer—a fiduciary duty.***" *Id.* at 271 (emphasis added). And while "an insurer may bring a direct malpractice action against counsel hired to represent its insured[,] . . . ***[i]f the interests of the client are the slightest bit inconsistent with the insurer's interests, there can be no liability of the attorney to the insurer***." *Id.* at 272 (emphasis added). That is true here. As pled by the Receiver, all of the "Defendants acted in concert when deciding not to

[32] *Id.* at 5.
[33] *Id.* at 6-7. USF&G claims *Brandt v. Gooding*, 368 S.C. 618, 630 S.E.2d 259 (2006) supports its assertion that "[a] client who, like Covil, has been released from personal liability cannot prove injury or damages." In *Brandt*, however, the plaintiff "could not show damages. To the contrary, Brandt *profited* from the sale." 368 S.C. 618, 627, 630 S.E.2d 259, 263. In contrast here, Covil did not profit; instead, its insurance assets were depleted.
[34] ECF 1 at 7.

answer the *Hill* case and without any input from an independent Covil."[35] Because the Receiver alleges that the Insurers and WTH are co-conspirators and co-tortfeasors, Covil's interests are certainly inconsistent with the Insurers' interests.[36] *Id.* Under *Sentry*, Covil (the insured), not the Insurers, has a claim against its own attorneys (WTH).

For the same reasons, the Receiver does not believe the Insurers have actionable claims in this dispute if the Insurers are co-conspirators or tortfeasors. However, if a court finds the Insurers indeed have rights in this context, as the *Sentry* court stated: "there may be no double recovery[,]" and "[i]f a danger of double recovery arises, we are confident our trial courts can handle it." *Id.* at 273.

Moreover, and especially when this Court resolves all issues of law and fact in the Receiver's favor, the record shows that WTH has proximately caused Covil damages as follows:

- The defaults increased the settlement value of *Hill*, and Covil's Insurers paid increased amounts to settle both *Hill* and *Taylor*. USF&G itself admits it paid an "amount that greatly exceeds $75,000" to settle the lawsuits.[37]
- The plaintiff's personal injury claims in the *Hill* case were subject to South Carolina's Workers' Compensation Act, which means that Mr. Hill's asbestos claims against Covil were barred.[38] *See Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 136, 417 S.E.2d 538, 540 (1992) ("Recovery under the Act is the exclusive means of settling personal injury claims which come under the Act."). If WTH and the Insurers had not allowed Mr. Hill to take a default against Covil, the Insurers should have been able to obtain a dismissal of his claims without making any settlement payment.

[35] ECF 1-2 at 14.
[36] Covil was unable to voice its opposition to the Insurers' and WTH's decision not to answer the *Hill* complaint because WTH had failed to institute appropriate procedures to make this possible. ECF 1-2 at 9.
[37] ECF 1 at 5.
[38] Exhibit 4, Covil's Motion for Relief from Entry of Default Pursuant to Rule 55(c), at 21–22.

The *Hill* settlement proximately caused Covil's damages by eroding Covil's insurance assets more than they otherwise would have been eroded had there been no default.[39] Covil will no longer have the ability to compensate asbestos claimants injured by its operations once its insurance policies are exhausted.[40] Thus, WTH's malpractice injured Covil because the defaults increased the settlement value of *Hill*, which caused unnecessary erosion of Covil's insurance assets when Covil's Insurers settled the cases. For these reasons, USF&G's statement that there is "no expense to Covil" is disingenuous, at best.[41]

Accordingly, USF&G's contention that the Receiver cannot establish any of its claims against WTH is unfounded. The Receiver has successfully pled, with much more than the required "glimmer of hope"—professional negligence, breach of fiduciary duty, and negligence claims.[42] And USF&G has cited no authority that shows any of these claims fail.[43] Thus, because USF&G has failed to carry its "heavy burden" of demonstrating that the Receiver "cannot establish a claim even after resolving all issues of law and fact in the [Receiver's] favor[,]" the Court should remand this case to the South Carolina Court of Common Pleas. *Johnson*, 781 F.3d at 704.

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[39] This assumes that Covil's Insurers can prove that *Hill* and *Taylor* were either "products" claims or "completed operations" claims, as Covil's insurance policies define those terms. ECF 1-2 at 24. Covil's insurance policies contain no aggregate limits for "operations" claims. *See Covil Corp. v. Zurich Am. Ins. Co., et al.*, No. 7:18-cv-03291-BHH, ECF 1-1 at 17–22 (D.S.C.).
[40] *Covil Corp. v. Zurich Am. Ins. Co., et al.*, No. 7:18-cv-03291-BHH, ECF 1-2 at 1 (D.S.C.).
[41] ECF 1 at 7.
[42] ECF 1-2 at 14–17, 22.
[43] *RFT Mgt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 336-37, 732 S.E.2d 166, 173 (S.C. 2012), cited by USF&G at ECF 1 at 7, only holds that where a plaintiff failed to establish its attorney malpractice claim, the plaintiff's fiduciary duty claim based on the same attorney-client relationship and same facts also fails. That is not the case here.

2. Covil incurred out-of-pocket expenses that were proximately caused by the *Hill* default.

The *Hill* default required Covil to incur out-of-pocket expenses—composed primarily of attorneys' fees billed by the Receiver and his attorneys—in seeking to overturn the default, and in participating in the settlement negotiations that followed the *Hill* default. USF&G admits this in its Notice of Removal: "After the Insurers retained new counsel to represent it, Covil moved to alter or amend the order denying the default on April 1, 2019, attaching affidavits from Plaintiff, from Mark Wall, Esquire of Wall Templeton, and from Jim Covil."[44] Out-of-pocket expenses—such as those incurred by Covil in litigating and settling *Hill*—constitute actual damages (sometimes referred to as compensatory damages), which the Receiver requested in his complaint,[45] and which are recoverable under South Carolina law.[46] *See Collins Entm't, Inc. v. White*, 363 S.C. 546, 558–59, 611 S.E.2d 262, 268 (Ct. App. 2005) (breach of contract); *Payne v. Bouharoun*, 292 S.C. 390, 391, 356 S.E.2d 438, 439 (Ct. App. 1987) (negligence).

C. The Receiver's joinder of WTH does not violate any agreement to cooperate with the Insurers and is, in any event, not relevant to the fraudulent joinder analysis.

USF&G apparently contends that the Receiver's lawsuit (1) violates the Receiver's agreement to cooperate with the Insurers in pursuing WTH for any damages,[47] and (2) demonstrates that the Receiver's joinder of WTH as a defendant in this case was for the sole

[44] ECF 1 at 5.
[45] ECF 1-2 at 14–16, 22.
[46] *See* 3 Ronald E. Mallen & Allison Martin Rhodes, Legal Malpractice § 21:18 (2019 ed.) ("A client may incur attorneys' fees and litigation expenses in attempting to avoid, minimize or reduce the damage caused by attorneys' wrongful conduct. Those may be the only damages. Although there are jurisdictional variations, the principal focus is on rules of causation and reasonableness of the efforts and expenses.").
[47] ECF 1 at 5–7.

purpose of defeating diversity jurisdiction.[48] USF&G, however, has not met its "heavy burden" to show there was a breach of any cooperation agreement, let alone a breach that leaves the Receiver with "no possibility" of pursuing its claims. *Johnson*, 781 F.3d at 704. In fact, USF&G cannot even show that the purported agreement is relevant to the fraudulent joinder analysis.

First, USF&G's claim that the Receiver has violated the parties' cooperation agreement is based on Covil's settlement negotiations with USF&G, which are, in part, contained in an email clearly labeled "Absolute Mediation Privilege." It is therefore not admissible into evidence, nor may it be used for any purpose. Fed. R. Evid 408; Local Civ. Rule 16.08(C) (D.S.C.); S.C. R. ADR Rule 8; S.C. R. Evid. 408. Covil therefore objects to this email.

Moreover, USF&G did not submit the email in support of its Notice of Removal. USF&G's conclusory description of an alleged breach of the agreement certainly does not meet its "heavy burden" of proof. USF&G has subsequently asked to file Covil's email under seal in support of its Motion to Dismiss.[49] Covil will file additional objections to this inadmissible evidence when it responds to USF&G's motion to dismiss.

Even if this Court considers the email when ruling on this motion, the email does not show the Receiver breached the parties' cooperation agreement. In fact, USF&G's characterization of the purported breach cannot be reconciled with the Receiver's court-ordered duties. The South Carolina Court of Common Pleas appointed the Receiver "to fully administer all assets of Covil" including "any claims related to the actions or failure to act of Covil's insurance carriers."[50] The Receiver is therefore obligated to pursue claims against WTH and the

[48] *Id.* at 7.
[49] ECF 10-1 at 7, 9; ECF 11.
[50] Exhibit 2, Order Appointing Receiver.

Insurers on Covil's behalf.

In any event, USF&G does not explain how any alleged breach of the parties' agreement affects the viability of Covil's claims against WTH. Thus, "after resolving all issues of law and fact in the plaintiff's favor," USF&G's conclusory claim regarding the Receiver's purported breach of an agreement fails to prove that "there is *no possibility* that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." *Johnson*, 781 F.3d at 704.

III. In addition, remand is necessary because USF&G failed to obtain the timely consent of WTH.

"[T]he deadline for indicating consent of co-defendants is the later of when the notice of removal is due or within thirty days of when the consenting defendant was first served." *Gates at Williams-Brice Condo. Ass'n & Katherine Swinson v. Quality Built, LLC*, No. 3:16-CV-02022-CMC, 2016 WL 4646258, at *7 (D.S.C. Sept. 7, 2016) (citing *Moore v. Svehlak*, No. ELH-12-2727, 2018 WL 3683838, at *13-14 (D. Md. July 11, 2013)). If a removing defendant fails to obtain the consent of all other defendants before the deadline, the court must remand the case to state court. *BRAVO! Facility Serv., Inc. v. Kaiser Found. Health Plan of Mid-Atl. States, Inc.*, 256 F. Supp. 3d 653, 656, 658 (E.D. Va. 2017); *Gates*, 2016 WL 4646258, at *8 (remanding case). Defendants have missed this deadline because WTH has not given consent (timely or untimely) to the removal.

Plaintiff served the summons and complaint on USFG's statutory agent for service on May 7, 2019, and USF&G states it received the documents on May 8, 2019.[51] A defendant must file its notice of removal within 30 days of receipt of the initial pleading setting forth the

[51] ECF 1 at 2.

plaintiff's claim for relief. 28 U.S.C. § 1446(b)(1). USF&G's removal deadline was June 7, at the latest, and it removed this case to this Court on June 6, 2019.[52]

"[A]ll defendants who have been properly joined and served must join in or consent to the removal of the action." 28 U.S.C. § 1446(b)(2)(A). USF&G's Notice of Removal states that "USF&G has received the express written consent of Sentry and Zurich to the removal of this action."[53] Zurich and Sentry also filed consents to removal on May 6, 2019 and June 6, 2019, respectively.[54] USF&G's Notice of Removal does not state that WTH consented to the removal, nor has WTH ever filed a document expressing its consent or joining the removal.

Meanwhile, the Receiver served his original complaint and a summons on WTH on May 3, 2019.[55] Thus, the Defendants have missed the deadline for obtaining WTH's consent to the removal of this action because (1) US&F's notice of removal was due, at the latest, on June 7, 2019, and (2) it has been more than 30 days since WTH was served. *See Gates*, 2016 WL 4646258, at *7. Because the Receiver asserted viable claims against WTH and properly joined WTH as a defendant in this action, USF&G's attempted removal without obtaining WTH's consent was procedurally deficient. *See BRAVO!*, 256 F. Supp. 3d at 656, 658 ("Because the consent of these three defendants is untimely, removal is procedurally deficient and remand is required."); *Gates*, 2016 WL 4646258, at *8 ("For the reasons set forth above, the court finds that there is no flexibility in the time allowed for consent so long as the party seeking remand raises the deficiency within thirty days of removal."). This Court must therefore remand to the South Carolina Court of Common Pleas for this additional reason.

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[52] *Id.* at 1.
[53] *Id.* at 3.
[54] ECF 2 & 3.
[55] Exhibit 5, Return of Service (WTH).

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that this Court remand this case to the South Carolina Court of Common Pleas, Fifth Judicial Circuit, County of Richland, for further proceedings.

Dated: June 21, 2019

/s/ *Jescelyn Tillman Spitz*
Jescelyn Tillman Spitz, Esquire
S.C. Bar No. 101880
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Post Office Box 5640 (29250)
Telephone: (803)978-6111
Facsimile: (803) 978-6112
Email: jspitz@rpleqalqroup.com

Mark W. Hardee, Esquire
S.C. Bar No. 7857
The Hardee Law Firm
2231 Devine Street, Suite 202
Columbia, South Carolina 29205
Telephone: (803)799-0905

G. Murrell Smith, Jr.
S.C. Bar No. 66263
Jonathan M. Robinson
S.C. Bar No. 68285
Smith, Robinson, Holler, Dubose & Morgan LLC
2530 Devine Street 1B
Columbia, South Carolina 29205
Telephone: (803) 254-5445

MORGAN, LEWIS & BOCKIUS LLP
Paul Anton Zevnik (Pro Hac Forthcoming)
Brady Edwards (Pro Hac Forthcoming)
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 739-3000

Attorneys for the Receiver of Covil Corporation

EXHIBIT 50

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Covil Corporation By Its Duly Appointed, Receiver, Peter D. Protopapas, Plaintiff, vs. Zurich American Insurance Company; Sentry Casualty Company; United States Fidelity and Guaranty Company; TIG Insurance Company, As Successor in Interest to Fairmont Specialty Insurance Company, F/K/A Ranger Insurance Company; Hartford Accident And Indemnity Company; First State Insurance Company; Timothy W. Howe, Personal Representative Of Wayne Erwin Howe; Jeannette Howe; Jerry Crawford; Denver Taylor And Janice Taylor; and James Coleman Sizemore, Personal Representative Of James Calvin Sizemore, Defendants.	Civil Action No. 7:18-3291-BHH **OPINION AND ORDER**

This matter is before the Court on Hartford Accident and Indemnity Company ("Hartford") and First State Insurance Company's ("First State") (collectively "Hartford") motion for an order to enjoin Peter D. Protopapas, as duly appointed Receiver for the Covil Corporation ("Receiver") (ECF No. 69); Zurich American Insurance Company ("Zurich"), Sentry Insurance a Mutual Company (occasionally erroneously referred to as Sentry Casualty Company) ("Sentry"), and United States Fidelity and Guaranty Company ("USF&G") (collectively "Primary Insurers") motion for joinder in Hartford's motion to

enjoin the Receiver (ECF No. 73); and USF&G's motion for joinder (ECF No. 87) in Hartford's memorandum in further support of its motion to enjoin the Receiver (ECF No 86). For the reasons set forth in this Order, the motions are granted in part.

BACKGROUND

This is an insurance coverage action in which the parties dispute the relative rights and obligations of Covil Corporation ("Covil"), its Receiver, and certain of Covil's insurers under policies issued or allegedly issued to Covil. Among other issues, the parties dispute the manner in which it should be determined whether injuries in underlying asbestos actions are within the products and completed operations hazard of the policies—rendering them subject to an aggregate limit, or outside the products and completed operations hazard—in which case no aggregate limit would apply, as well as the proper method for allocating injury across multiple policy years. (*See generally* Compl., ECF Nos. 1-1 & 1-2; Countercl., ECF No. 10.)

Peter D. Protopapas was appointed by the Honorable Jean H. Toal (Chief Justice Ret.) ("Justice Toal"), pursuant to South Carolina Code § 15-65-10, as Receiver for Covil Corporation, a dissolved South Carolina Corporation, on November 2, 2018. (ECF No. 80-1.) The order of appointment stated that the Receiver was vested with "the power and authority to fully administer all assets of Covil Corporation," including "the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers." (*Id.* at 1.)

The Court is informed that there are more than twenty-five (25) underlying asbestos actions pending in South Carolina state courts against Covil. (*See* ECF No. 80 at 2.) There are related declaratory judgment actions and other insurance-related cases

pending in the United States District Court for the Middle District of North Carolina (*Zurich Am. Ins. Co. v. Covil Corporation*, No. 1:18-cv-932) and in this Court (*Covil Corporation v. Zurich Am. Ins. Co., et al.*, No. 7:18-cv-3291; *Protopapas v. Wall Templeton & Haldrup PA et al.*, No. 3:19-cv-01635; *Finch v. Sentry Casualty Co., et al.*, No. 3:19-cv-1827).

On June 14, 2019, in the instant case, this Court granted Sentry's motion to realign co-defendants, thus confirming diversity jurisdiction over the matter, and denied Covil's motion to remand. (*See* ECF No. 67.) On June 18, 2019, the Receiver filed a motion for status conference in five underlying asbestos actions in order to address issues related to pending claims against Covil and the Receiver's ability to administer Covil's assets in accordance with his duly appointed responsibilities. (*See* ECF No. 74-6.) Justice Toal first stated her intent to grant the request for a status conference by way of an email from her law clerk to all counsel dated June 21, 2019 (ECF No. 80-3 at 13), then issued a formal order granting the Receiver's motion for status conference on July 5, 2019, indicating that the status conference would convene at the Richland County Courthouse on July 11, 2019 at 10:00 a.m., and requiring the attendance of Zurich, Sentry, USF&G, TIG Insurance Company ("TIG"), Hartford, First State (collectively "Insurers"), and Wall Templeton & Haldrup, PA ("WT&H") (*see* ECF No. 80-2). Justice Toal found that "the status conference [was] necessary due to the issues affecting the Receiver's abilities to perform his duties as previously ordered by this [c]ourt." (*Id.* at 3.)

On July 2, 2019, Hartford filed a motion for an order enjoining the Receiver from pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued by Hartford to Covil. (ECF No. 69.) On July 3, 2019, Zurich, Sentry, and USF&G ("Primary Insurers") filed for joinder

in Hartford's motion to enjoin the Receiver. (ECF No. 73.) The Receiver filed an opposition to Hartford's motion to enjoin and to the Primary Insurers joinder in the motion. (ECF No. 74.)

On July 10, 2019, Hartford filed a reply in support of its motion to enjoin the Receiver. (ECF No. 75.) The Primary Insurers filed a reply memorandum joining in Hartford's reply and, given Hartford's unique position from the Primary Insurers, submitting additional arguments in support of the motion to enjoin the Receiver. (ECF No. 77.) On July 11, 2019, this Court entered a Text Order denying in part and reserving ruling in part on Hartford's motion for a permanent injunction. (ECF No. 78.) The Court stated, "To the extent Defendants' motion seeks to use the power of this Court to prevent a duly noticed status conference set by Justice Jean Toal in a parallel State court action, the motion is denied." (*Id.*) However, the Court reserved ruling on the remainder of Defendants' motion. (*Id.*) Justice Toal convened the status conference as scheduled on July 11, 2019.

On July 29, 2019, Hartford filed a memorandum in further support of its motion to enjoin the Receiver, attaching a transcript of the July 11, 2019 status conference. (ECF Nos. 86 & 86-1.) USF&G filed for joinder in Hartford's memorandum and submitted its own supplementary arguments in support of the requested injunction. (ECF Nos. 87 & 88.) On August 2, 2019, Sentry and Zurich filed for joinder in Hartford's memorandum, in USF&G's joinder and supplement thereto, and submitted their own supplementary arguments in support of the requested injunction. (ECF No. 89.) The Receiver next filed a memorandum in opposition to the motion and joinders seeking a permanent injunction on August 13, 2019. (ECF Nos. 90 & 92.) On August 20, 2019, USF&G filed a reply to

the Receiver's memorandum. (ECF No. 93.) Hartford (ECF No. 94) and Sentry and Zurich (ECF No. 95) also filed replies on the same day.

On October 1, 2019, Hartford filed a memorandum in support of its "second renewed motion to enjoin [the Receiver]" (ECF No. 97), by which title Hartford is apparently referring to its July 29, 2019 filing (the "renewed motion") (ECF No. 86). The Receiver filed a memorandum in opposition to Hartford's renewed motion on October 14, 2019. (ECF No. 98.) Hartford filed a reply in support of its renewed motion on October 21, 2019. (ECF No. 99.)

Next, on October 24, 2019, Hartford filed a "notice of supplemental authority" related to its renewed motion to enjoin the Receiver. (ECF No. 100.) The Receiver responded to this notice on October 29, 2019. (ECF No. 101.) On November 15, 2019, the Receiver filed a notice of settlement in principle with Hartford, First State, and TIG. (ECF No. 102.) Although Hartford has apparently reached a settlement with Covil in this matter, the vast majority of arguments in its multitudinous filings apply with equal force to its Co-Defendant Insurers, and those Insurers have sought joinder in all of Hartford's relevant filings pertaining to the injunction request. Accordingly, in ruling on the above matters the Court will consider Hartford's filings and arguments as they apply to all the Insurers, though the filings might otherwise be moot due to the settlement.

LEGAL STANDARD

The All-Writs Act authorizes district courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Such "writs" include injunctions against State court proceedings. This authority, however, is limited by the Anti-Injunction Act, which provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. These two statutes "act in concert, and if an injunction falls within one of the Anti-Injunction Act's three exceptions, the All-Writs Act provides the positive authority for federal courts to issue injunctions of state court proceedings." *In re Diet Drugs (Phentermine/Fenfluramine/ Dexfenfluramine) Prod. Liab. Litig.*, 369 F.3d 293, 305 (3d Cir. 2004) (internal citations, modifications, and quotation marks omitted).

An injunction is "expressly authorized by an Act of Congress" if the Act "creat[es] a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding." *Mitchum v. Foster*, 407 U.S. 225, 237 (1972). The U.S. Supreme Court has held that the statute governing removal proceedings, 28 U.S.C. § 1446, provides express authorization to enjoin state proceedings in removed cases under the Anti-Injunction Act. *Id.* at 234 & n.12; *see also Kansas Pub. Employees Retirement Sys. v. Reimer & Koger Assoc. Inc.,* 77 F.3d 1063, 1069 (8th Cir. 1996) ("Although the removal statute only commands the state court to stay the case that was actually removed, it has been interpreted to authorize courts to enjoin later filed state cases that were filed for the purpose of subverting federal removal jurisdiction.").

DISCUSSION

Mindful of the fact that it has already summarized the procedural history leading up to this ruling (*supra* at 2–5), the Court must now summarize the content of the parties' *extensive*, often repetitive, briefing on the Insurers' request that the Receiver be enjoined

from seeking in underlying State court tort suits judicial determinations regarding the coverage issues currently pending before the undersigned. In its initial motion for an injunction, Hartford notes the ironic fact that the Receiver filed this action in State court for the express purpose of avoiding "*seriatim* litigation and a multiplicity of actions" over insurance coverage issues for Covil. (ECF No. 69-1 at 2.) Thereafter, the Insurers removed the case (ECF No. 1) and the Court denied the Receiver's motion to remand (ECF No. 67). Hartford asserts that the Receiver was attempting to circumvent this Court's jurisdiction by asking the Receivership Court to order non-party Insurers to appear in the underlying State court tort actions for the purpose of addressing the Insurers' insurance coverage obligations in those actions. (ECF No. 69-1 at 2.) Hartford argues both that: (1) an injunction is expressly permitted by an act of Congress because the Receiver is trying to subvert federal removal jurisdiction (*id.* at 4–8); and (2) an injunction is necessary in aid of this Court's jurisdiction because the Receiver is trying to circumvent this Court's authority under the removal statute (*id.* at 8–9). Hartford points out that the parties and counsel to the dispute are "the same" in federal and State court, and the issues are "the same," so the Receiver's motion for a status conference was nothing more than a thinly veiled attempt to subvert the removal statute, 28 U.S.C. § 1446. (*Id.* at 5–8.) Alternatively, Hartford argues that this Court should enjoin the Receiver's efforts to pursue in State court claims that are squarely at issue here because the Receiver is attempting to undermine this Court's jurisdiction under the removal statue and 28 U.S.C. § 1332 (granting district courts original jurisdiction over civil actions where there is diversity of citizenship and the amount in controversy exceeds $75,000). (*Id.* at 8–9.) Zurich, Sentry, and USF&G (the "Primary Insurers") filed for joinder in Hartford's motion to enjoin the

Receiver (ECF No. 73), and the Court hereby grants that joinder request, considering Hartford's arguments as broadly applicable to all Insurers in this action.

In his original opposition to the motion, the Receiver noted that the Receivership Court, Justice Toal presiding, ordered the Receiver, all Covil Insurers, and WT&H to come to the July 11, 2019 status conference prepared to "discuss their positions regarding their insurance policies, Covil's files, communications, claims handling and settlement of the defaults entered in *Taylor et al. v. Covil Corp.*, 2018-CP-40-0490, *Hill, et al. v. Covil Corp.*, 2018-CP-40-04680, and the settlement offers extended prior to judgment in *Finch et al. v. Covil Corporation*, 1:16-CV-01077-CCE-JEP (M.D.N.C.)." (ECF No. 74-1 at 4–5.) The Receiver contends that between Covil's dissolution in 1993 and the Receiver's appointment on November 2, 2018, the Primary Insurers controlled the defense and handling of the Covil asbestos suits, at relevant times through their counsel of choice—WT&H. (ECF No. 74 at 4.) The Receiver states:

> According to factual averments in pleadings filed with the Receivership Court, *Finch* could have been settled before trial for an amount within Covil's policy limits, thus avoiding a judgment of over $35,000,000; *Hill,* in which WTH allowed a default and which was later settled for a seven-figure amount, was fully defensible under the South Carolina Worker's Compensation Act; and *Taylor* was also settled for a seven-figure amount as a result of the default by WTH. USF&G claims exhaustion of its policies, while Zurich alleges that its total exposure for *Finch* is $250,000, and has sought to tender that amount in full satisfaction of the *Finch* judgment.

(ECF No. 74 at 5.) The Receiver asserts that in order to properly administer Covil's insurance assets, the Receiver and Receivership Court are entitled to inquire into the matters set forth in the July 5, 2019 order. (*Id.*) The Receiver argues that he was not, by way of the status conference, attempting to subvert this Court's jurisdiction by resolving in underlying state court tort suits the coverage issues raised here, but rather "seeking

information that he needs to discharge his duties to Covil and the court that appointed him to serve as Covil's Receiver." (ECF No. 74 at 6 (emphasis in original).) The Receiver asserts that the removal exception to the Anti-Injunction Act's general prohibition of federal courts from issuing injunctions to stay State court proceedings does not apply in this situation "because the [c]ourt that appointed the Receiver is ***not the same court*** in which the Receiver filed his insurance coverage action that was removed to this Court." (*Id.*) In other words, the removal statute "does not have any effect on the authority and jurisdiction of the court that appointed the Receiver." (*Id.*) Moreover, the Receiver contends that Covil's insurance assets are in *custodia legis* of the Receivership Court because that court was the first to exercise jurisdiction over the "*res*" at issue in the case—the insurance assets—and "where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same *res* to defeat or impair the state court's jurisdiction." (ECF No. 74 at 7 (quoting *Kline v. Burke Constr. Co.*, 260 U.S. 226, 229 (1922)).) The Receiver argues: (1) the Receivership Court rightfully appointed the Receiver to manage Covil's remaining assets—to wit, the Covil insurance policies; (2) the Receiver is not seeking from the Receivership Court an adjudication of any of the insurance coverage issues set forth in the Receiver's complaint in this case; (3) the jurisdiction of the Receivership Court attached to the *res* at issue before this Court's jurisdiction attached, and federal courts are precluded from exercising their jurisdiction over the same *res* to defeat or impair the state court's jurisdiction (*see Kline*, 260 U.S. at 229); (4) federal law, 28 U.S.C. § 2283, prohibits this Court from enjoining the Receivership Court from granting the relief requested in the Receiver's motion for status conference; (5) the removal exception to the Anti-Injunction Act, 28 U.S.C. § 1446(d),

does not apply here because the exception focuses *only* on the removed case and therefore restricts the State court's actions *only* as to that case (*see Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 250 (4th Cir. 2013) ("Section 1446(d), however, speaks only in terms of *the removed case*." (emphasis in original))). (*See* ECF No. 74 at 13–24.)

In reply, Hartford argues that federal cases have repeatedly and consistently rejected the Receiver's assertion that *Kline* prevents a federal court from exercising jurisdiction over a removed case involving a *res* merely because the State court's jurisdiction attached first. (ECF No. 75 at 7 (citing *Karl v. Quality Loan Service Corporation*, 759 F. Supp. 2d 1240, 1245 (D. Nev. 2010), *affd*, 553 Fed. Appx. 733 (9th Cir. 2014)).) Hartford notes that the situation in *Kline*, where there were two genuinely parallel actions, differs from the instant case, where "[t]he state proceeding no longer exists by virtue of the case's removal to federal court," and the federal court's "jurisdiction over the case therefore does not threaten the continuing jurisdiction of the state court over any *res*, because Congress has provided that removal divests the state court of jurisdiction." *Karl*, 759 F. Supp. 2d at 1244–45.

In their separately filed reply memorandum joining in Hartford's reply, the Primary Insurers submit additional arguments in support of the motion to enjoin the Receiver. (*See* ECF No. 77.) The Primary Insurers note that the Receiver moved for a rule to show cause in the Receivership Court asking Justice Toal to find that the Primary Insurers violated the Receivership Court's mediation order and generally applicable ADR rules by filing a confidential mediation communication, under seal, before *this* Court in an action removed to *this* Court. (*Id.* at 3.) The Primary Insurers argue that if the Receiver was not trying to circumvent this Court's jurisdiction, he would simply file a motion before this Court, where

the confidential document was filed and where jurisdiction over the matter rests subject to the removal statute. (*Id.*) Moreover, the Primary Insurers note that the Receivership Court ordered them to be prepared to discuss their respective positions regarding: (1) the settlement in the *Hill* matter, which falls squarely within the scope of the action that was removed to this Court; and (2) the settlement offers extended prior to the judgment in *Finch*, which is the topic of another case that is currently pending before this Court in *Finch v. Sentry Casualty Co., et al.*, No. 3:19-cv-1827 (removed to this Court on June 27, 2019). (ECF No. 77 at 4–5.) While the Receiver purports to have merely asked the State court to conduct an "informational" status conference, the Primary Insurers contend that the topics raised belie that representation.

The undersigned declined to enjoin the July 11, 2019 status conference, but reserved ruling on the broader question of whether the Receiver's conduct in State court should be enjoined. (*See* ECF No. 78.) The Court's review of the status conference transcript revealed the following relevant events. Counsel for the Receiver attempted to show that the Receiver does not know how the payments in the *Hill* and *Taylor* settlements were allocated among the settling insurance carriers (Zurich, Sentry, and Travelers), and Justice Toal stated:

> I don't care about that. I'm just trying to—and I don't care about anything about the details of that settlement. They're private unless the—the parties choose to reveal them, but I—I don't reveal them when I have anything to do with allocation issues. And I wouldn't have anything to do with this because these two were not tried. They were settled prior to trial. So that's all I need is that there were carriers that are involved in this whole thing who were involved in that and they settled.

(ECF No. 86-1 at 34.) When counsel for the Receiver re-raises the issue of the settlement amounts and their allocation, and states the Receiver is trying to discern how those

amounts are currently affecting Covil's policies, Justice Toal answers: "Yeah. But that's not in front of me right now. So I—I don't need to go there at the moment." (*Id.* at 34–35.) Counsel for the Receiver then attempts to raise the fact that although *Hill* and *Taylor* are settled, and although Justice Toal indicated she does not have anything to do with them after such settlement, that there are post-settlement motions pending, to which Justice Toal responds: "Well, I know. But I can't do that and get the status of them at the same time," and "I'm saying I'm not going there right now." (*Id.* at 36.) Counsel for the Receiver then describe for Justice Toal the coverage issues in the various cases—including Covil's positions and its understanding of the state of the law on those issues—all under the guise of "getting an accounting from the insurance carriers," in response to which Justice Toal repeatedly reminds counsel that her ability to direct inquiries into those matters depends on the limits of her jurisdiction and on the boundaries of their questions. (*See id.* at 46—65.) Counsel for the Receiver and counsel for WT&H in the malpractice action then address the details of what has and has not been produced by way of WT&H's files for its client, Covil, with respect to the *Hill* and *Taylor* matters and additional requests, and address whether a rule to show cause is required; Justice Toal repeatedly steers the parties away from inserting their positions regarding the merits of the malpractice action, and points out that it does not seem a rule to show cause is necessary given counsel for WT&H's good faith efforts to comply with the Receiver's requests. (*See id.* at 65–110.) Counsel for the Receiver and counsel for USF&G then discuss a proposed rule to show cause with respect to Travelers/USF&G's unauthorized disclosure of a confidential mediation communication in violation of the Receivership Court's mediation order and the ADR rules. (*See id.* at 110–125.) In response, Justice Toal states:

> [W]ith respect to the rules to show cause, I will deny at the moment a rule to show cause issued to Wall, Templeton with the caveat that we'll see how this production occurs. I think very good faith efforts are being made now that Mr. Warren Powell and his firm is in this case, and they are not being guided by the insurance companies. They are certainly cooperating with the insurance companies. They're keeping everyone fully apprised of what they're doing, and they're trying in every way to discharge what they see as their responsibilities to Covil and its receiver as their clients. And as long as that proceeds, I think we will be in good shape.

(*Id.* at 126.)

> With respect to a rule to show cause as to the carriers, that request has now been modified as a rule to show cause directed at Travelers/USF&G. I want a proposed order to be sent to me, and Mr. Smith, I will designate you as the chief person in charge and I'm sure there are others around here who can take care of the mechanics of it. . . . But what I want y'all to do is send me a proposed order, with a copy to the two counsel for USF&G for them to examine, as quickly as you can that issues a rule to show cause against the insurance company to—to show cause as to why th[ey] should not be held in contempt for failure to obey the order of the Court of March of this year and of the previous order directing the disclosure of the information you seek from them with respect to coverages, allocations, and matters of that type. In addition to that, the rule to show cause should direct that a hearing be held on the—on whether the insurance company should be held in contempt and be sanctioned for its failure to protect the confidentiality of the ADR communications in the face of the directive from the client Covil, through its receiver that the matter should not be disclosed.

(*Id.* at 128–29.) After counsel for the Receiver clarifies that the alleged ADR/confidentiality violation concentrated on Travelers/USF&G specifically, but that the Receiver desires the rule to show cause on disclosure of coverages, allocations, and related matters to apply to all the Insurers, Justice Toal responds:

> Exactly. And—and should. And I would—that ought to be a part of the proposed order—. . . .—and it ought to be sent to all companies affected. . . . But frankly, what I would do is put it in two phases so that you can go on and get the thing that is the most on top of the table, which is *Hill/Taylor*, moving forward and the information that's needed in *Hill/Taylor* from Travelers/USF&G. The other just put in an order that can be dealt with separately so that the insurance companies will all have a complete ability to respond and look at this thing and see what you think about it and whether there are dilemmas or problems. And again, it's the—this is to conduct a

> rule to show cause hearing. So this is not an order directing you to do anything yet. It is an order that would be [i]n aid of conducting a hearing about the coverage matters that have been ventilated by the Receiver, and when you get that, then you'll have the ability to respond.

(*Id.* at 130–31.) Counsel for Hartford then clarifies that by filing a written response to the Receiver's rule to show cause submission Hartford will not be deemed to have waived any arguments regarding a lack of jurisdiction, and Justice Toal states:

> [I]f they don't make that clear in the order, I'll revise it—or you will give me some revision that makes it clear. I don't intend to interfere with your ability to contend that the Federal court is the only one. They are asking for information—
> . . . .
> MR. RUGGERI: Correct. And—and it may be that there's a discussion of what an accounting means—
> THE COURT: Exactly.

(*Id.* at 135–36.)

After the July 11, 2019 status conference, Hartford filed its renewed motion to enjoin the Receiver. (ECF No. 86.) Hartford does not dispute that Justice Toal has the ability to appoint a Receiver to "administer" Covil's estate and that the Receiver has the right to perform an accounting of the assets of the estate. However, Hartford asserts that the Receiver may not ask the Insurers to concede legal positions or mixed questions of law and fact, or request that the Receivership Court resolve substantively disputed insurance coverage issues. (*Id.* at 2.) Hartford argues that the events at the July 11, 2019 status conference and events since that time demonstrate the Receiver is indeed asking Justice Toal to resolve disputed insurance coverage issues under the cover of seeking an "accounting." (*See id.* at 4–6.) Hartford cites various passages from the status conference transcript as evidence of the Receiver's intent:

> You have jurisdiction over all the carriers who attended that mediation. They've all signed the mediation agreement and you have jurisdiction to

> bring them in here to discuss with them the policies as it relates to those -- specifically those -- the *Hill* and *Taylor* -- and -- and again, they paid money . . . they -- they have submitted themselves to your jurisdiction by virtue of their violation of your order, the rules, and mediation agreement. (Tr. 52:7-15.)
>
> We take the position that the only way for the Receiver to act on those policies is to have an accounting of what they are. And so we're asking you, in a status conference, to ask them what -- what -- what -- what does Mr. Protopappas have available next month in the trial that's coming up . . . So you [Judge Toal] certainly have the ability, as the [R]eceiver Court, to determine the amounts available on the policy, how much has been exhausted, who authorized the exhaustion of those policies. (Tr. 55:9-12.)
>
> Covil has operations coverage from 1964 until 1985, and the operations limits is 46.9 million dollars per occurrence, each and every occurrence with no limit to the number of occurrences. Now, South Carolina law has not decided the issue of asbestos coverage for operations claims, and South Carolina law has not decided the issue of what constitutes an occurrence for purposes of these policies. Is it each claimant? Is it the job site? Those are issues that are going to be critical in any determination of what these limits are and available for each and every case. There is no South Carolina law on this issue. There is a Fourth Circuit decision, [*In re Wallace & Gale Co.*, 385 F.3d 820, 823 (4th Cir. 2004), *as amended* (Nov. 15, 2004),] and that is why every time that there's anything that goes on in South Carolina, the insurance companies are desperate to remove the case to a Federal court. (Tr. 57:12-22.)
>
> [T]here are several issues that are not decided under South Carolina law. One is, is operations coverage part issue, the other is how many occurrences there are, whether it's the operations at the job site, etcetera. There's also the issue of how a policy is triggered for coverage in South Carolina. That has not been resolved by a case in South Carolina. These are all issues that make it very important for us to know how did the insurance companies treat those claims prior to the involvement of the Receiver and, in fact, how did the insurance companies treat those claims for trigger of coverage purposes after the Receiver was appointed? We don't know those questions either. And that's why we've asked this Court for an accounting, [n]ot so we can interfere with other litigation, wherever that may be, but more importantly so that we can know how we can operate on a daily basis and satisfy this Court, satisfy our responsibilities, and try to deal, as counsel has said before, with the cases that are pending in this Court and the demands that are made." (Tr. 60:12-61:7.)

(ECF No. 86-1.) In particular, Hartford points to a passage from the proposed order that

the Receiver submitted for Justice Toal's consideration, which states the Insurers

> must be prepared to discuss by policy and annual period or portion thereof the original and remaining limits of Covil's insurance policies under all applicable coverage parts, including separately as to the product liability/completed operations coverage part and the operations/premises coverage part and to provide an accounting of the amounts paid in settlement for each claim paid or settled, who authorized payment, under what coverage parts of the policies settlements or judgments were paid, documentation or other evidence supporting the analysis and characterization of claims as products/completed operations or operations/premises claims, method of allocation of settlements or judgments paid among Insurers, policies and policy years and if no payment was made because of a denial of coverage, the stated basis at the time of settlement for such denial.

(ECF No. 86-2 at 12.) Hartford contends that the Receiver is fully aware that Hartford has already provided the policies it issued to Covil and the Receiver knows that Hartford has paid nothing under those policies. As such, Hartford argues "[t]he Receiver is seeking this information because of disagreements over substantive coverage issues under policies Hartford issued to Covil with the hope of getting Justice Toal to rule on the disputed issues." (ECF No. 86 at 4–5.) Hartford renews its request for the Court to rule on the issue it reserved in its July 11, 2019 Text Order and to enjoin the Receiver from surreptitiously seeking judicial determinations regarding coverage issues in State court. (*Id.* at 6.)

USF&G filed for joinder in Hartford's renewed motion and submitted its own supplementary arguments in support of the injunction. (ECF No. 87.) Specifically, USF&G asserts the Receiver went well beyond the parameters of a true status conference at the July 11, 2019 proceeding and instead "argued his claims against the [I]nsurers, sought and received show cause orders, and continued an apparent effort to coerce the insurers into litigating in [S]tate court the coverage issues currently before this Court." (*Id.* at 2.) Like Hartford, USF&G took aim at the Receiver's proposed order, stating it "would have

the [I]nsurers appear in [S]tate court to discuss their analysis and characterization of injury during their policy periods, the very issue that is central to the coverage litigation pending before this Court." (*Id.* at 4.) USF&G argues that the Receiver's efforts are problematic for three reasons: (1) the Insurers are not parties to any of the State court tort actions and thus could not be subjected in those actions to the affirmative relief sought by the Receiver; (2) the proposed order would require the Insurers to show cause why they should not produce coverage information with respect to *all* actions against Covil, not just the five cases in which the status conference was held—demonstrating that the relief requested seeks information beyond the status of coverage for the five cases in which the status conference was noticed; and (3) the proposed order requires the Insurers to provide discovery concerning *Finch*, which is not one of the cases in which the status conference was held, and the result of which is at issue in a coverage action pending before *this* Court. (*Id.* at 5.)

Sentry and Zurich also filed for joinder in Hartford's renewed motion and submitted their own supplementary arguments. (ECF No. 89.) Sentry and Zurich note that the Receiver's proposed order would direct the Insurers to "show cause why they should not be held in contempt for failing to provide information concerning their positions regarding their insurance policies, Covil's files, communications, claims handling and settlement of the defaults entered in *Taylor* and *Hill*, and the settlement offers extended prior to judgment in *Finch* as ordered by the Court on July 5, 2019." (ECF No. 86-2 at 13.) Sentry and Zurich argue that, "Providing 'positions' as to these issues is equivalent to litigating these issues, and/or being compelled to provide discovery with regard to them, in a court that has no jurisdiction over Sentry or Zurich, and that has no case pending in which those

issues are properly before it." (ECF No. 89 at 2.)

The Receiver filed a memorandum in opposition to Hartford's renewed motion and joinders thereto. (ECF No. 90.) Therein, the Receiver reiterates his position that the Insurers have ongoing obligations under the policies to Covil, their insured, and therefore to the Receiver. Likewise, the Receiver asserts, he has an ongoing duty to "administer" the policies, irrespective of any coverage litigation in this Court. (*Id.* at 2.) "Among other things, the [I]nsurers have ongoing obligations to defend and indemnify Covil in dozens of underlying cases pending before Chief Justice Toal and other courts in South Carolina." (*Id.*) The Receiver insists that his efforts "are not an 'end run' around the coverage litigation, but, rather, solely an effort to obtain the documents and information necessary to defend the cases brought against Covil and to administer Covil's policies while the coverage litigation proceeds." (*Id.* at 3.) The Receiver argues that contrary to their duty under the implied covenant of good faith and fair dealing incorporated in the policies, the moving Insurers are engaged in efforts to impair Covil's rights to receive benefits under the insurance contracts—namely, by continuing to withhold information relevant to a full understanding of how these Insurers have allocated almost 30 years of asbestos-related settlements under their policies, and to withhold a full accounting of the amounts paid by the Insurers under the policies and for what claims, under which coverage parts of the policies. (*Id.* at 8.) The Receiver contends that the moving Insurers perceive their role as adversarial, rather than collaborative, with Covil in the coordination of its underlying defense; instead of providing information regarding the policies and their administration to Covil, as required by the policies themselves, the Insurers instituted a coverage action (in the Middle District of North Carolina) and have repeatedly sought to enjoin the

Receiver from obtaining the information he needs to administer Covil's insurance policies. (*Id.* at 9.)

The Court could go on and on in the attempt to summarize all of the parties' briefing on the injunction issue—for example, USF&G's reply to the Receiver's memorandum in opposition to Hartford's renewed motion (ECF No. 93), Hartford's reply to the Receiver's memorandum (ECF No. 94), Sentry and Zurich's reply to the Receiver's memorandum (ECF No. 95), Hartford's memorandum in support of its renewed motion (ECF No. 97), the Receiver's additional memorandum in opposition to Hartford's renewed motion (ECF No. 98), Hartford's reply in support of its renewed motion (ECF No. 99), Hartford's notice of supplemental authority related to its renewed motion (ECF No. 100), and the Receiver's response to Hartford's notice of supplemental authority (ECF No. 101), all remain undiscussed—but further summary would be superfluous. Suffice it to say, USF&G, Hartford, Sentry, and Zurich all maintain that they have provided, in good faith, the basic policy information the Receiver has requested, including loss runs where applicable. (*See* ECF Nos. 93, 94, 95.) The Insurers also contend that developments in the Receiver's pursuit of certain relief from the Receivership Court at a September 13, 2019 hearing, and by way of another proposed order that was subsequently adopted by the Receivership Court without modification, leave no doubt that the Receiver is asking the State court to rule on disputed coverage issues. (*See, e.g.*, ECF No. 97 at 3–4.) For example, the proposed/adopted order authorizes discovery in support of "[a]n inquiry into the insurance coverage of Covil Corporation . . . to fully determine the amount of authority available for settlement of asbestos personal injury actions filed against Covil." (ECF No. 97-2 at 6.) At the September 13, 2019 hearing, the Receiver represented that he needs

this information in order to "analyze what exposure [he] think[s] a carrier may have in [a] certain piece of litigation." (Tr. 10:24-25, ECF No. 97-1 at 11.) With respect to policies that the Receiver asserts are missing or incomplete, and which the Receiver was attempting to subpoena, the Receiver further stated:

> And if the Rule to Show Cause hearing – if it does take place, I would want a witness. And I will be specific in the subpoena to [the Insurers], so they can have them prepared to answer our questions regarding what policies they have, and what efforts they've done to locate them. And how they ran Covil for thirty years and what decisions they made. The impact, the limits of the policies when [sic] appear at mediation in *Hopper*, *Rollins* and other cases.

(Tr. 87:9-16, *Id.* at 88.) Justice Toal responded:

> Mr. Protopapas, all right, you know they contend that because they're not a party any of these cases, that you can't just subpoena them. Might be able to use discovery. But they say the discovery tool is used to get to admissible evidence, and the coverage issues are not admissible evidence.
>
> So the subpoena is not available to you. What is available to you, is a Rule to Show Cause in connection with your administration of the Receivership. And the documents you've just shown me is a pretty straight forward request that because they are not – because you do not understand how you can have full authority for claims mediation without knowing the policies and insurance coverage that you are requesting that they give you all this stuff.
>
> *This may be the very stuff you're also litigating in Federal Court*. All right. They sometimes say that that litigation precludes this, and they sometimes say differently.

(Tr. 87:10-88:9, *Id.* at 88–89.) The Receiver continues to assert that all the actions that the Insurers seek to enjoin are solely an effort to obtain the information necessary to defend the asbestos actions brought against Covil and to administer Covil's assets in accordance with the Receivership Court's order. (*See* ECF No. 98.)

As is often the case with hotly contested litigation, the answer to the issue under consideration lies somewhere *between* the parties' polarized characterizations of what is the case. The Insurers assert the Receiver is deliberately attempting to subvert federal

removal and supplant this Court's authority with State court proceedings. The Receiver contends he is merely trying to fulfill his court-appointed duties, all while being hampered at every step by the Insurers' unwillingness to fulfill ongoing obligations to their insured—Covil.

The Supreme Court, has cautioned lower courts regarding the exceptions to the Anti-Injunction Act:

> [S]ince the statutory prohibition against [injunctions of State court proceedings] in part rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction. Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court.

Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers, 398 U.S. 281, 287 (1970). Nevertheless, courts have held that the removal exception to the Anti-Injunction Act permits a federal court to enjoin a State court proceeding other than the case that was actually removed, where that secondary proceeding would infringe upon federal removal jurisdiction. In *Kansas Pub. Employees Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 77 F.3d 1063 (8th Cir. 1996), the Eighth Circuit Court of Appeals stated, "Although the removal statute only commands the state court to stay the case that was actually removed, it has been interpreted to authorize courts to enjoin later filed state cases that were filed for the purpose of subverting federal removal jurisdiction." *Id.* at 1069. The Receiver argues that *Kansas Pub. Employees* is inapposite here because the cases pending before the Receivership Court, specifically *Hill* and *Taylor*, are not "later filed state cases that were filed for the purpose of subverting federal removal jurisdiction." (*See* ECF No. 74 at 24.) Rather, the Receiver notes, the *Hill* and *Taylor* asbestos actions were

filed long before the Receiver filed the coverage action that was removed to this Court. (*Id.*) The Court disagrees and finds that federal courts retain authority to enjoin State court proceedings, regardless of label, that risk "subverting federal removal jurisdiction," *see Kansas Pub. Employees*, 77 F.3d at 1069, whether or not those proceedings come in the form of "later filed cases." In other words, the reasoning that supports application of the removal exception to the Anti-Injunction Act—to wit, preservation of federal removal jurisdiction itself—applies with equal force whether the State court proceeding that threatens to undermine federal jurisdiction is a later filed case, a status conference in a preexisting case, the adoption of a proposed order in a preexisting case, or any other "proceeding" that one might imagine. It is the nexus between the substantive issues pending in federal court and the issues sought to be adjudicated in State court that controls, not the label placed on, or timing of, the State court proceeding.

Even accounting for the fact that the Insurers are not party to the cases pending in the Receivership Court, it may well be true that the Receiver is entitled to additional policy-related documents and information from the Insurers in order to faithfully perform his court-appointed duties in that forum. (*See* ECF No. 97-2 (setting forth an itemized list of documents and information sought).) This is why, to the extent the Insurers are asking for it, the Court declines to issue a broad moratorium on further proceedings that implicate the Insurers in the Receivership Court, because to do so would constitute overreach of this Court's equitable powers. Thus, the motion and joinders seeking an injunction against the Receiver will be granted only in part. The Court also declines to descend into the particulars of precisely which documents and what information, if any, the Insurers have improperly withheld from the Receiver, because those particulars are squarely the

province of Justice Toal in asbestos actions over which this Court has no jurisdiction.

However, the Receiver *cannot* use the Receivership Court as a mechanism to indirectly force the Insurers to stake out litigation positions integral to coverage issues pending before the undersigned and to indirectly coerce the production of discovery information relevant to issues pending here but not in the Receivership Court. The Court finds that the Receiver's efforts in this regard have indeed threatened to undermine the Court's removal jurisdiction. Those efforts include, but are not limited to: (1) attempting to force the Insurers, by way of a proposed order submitted to the Receivership Court, to discuss, document, and produce evidence supporting their analysis and characterization of underlying asbestos claims as products/completed operations or operations/premises claims (*see* ECF No. 86-2 at 12); (2) seeking to require the Insurers, by way of a rule to show cause, to provide their positions regarding their insurance policies, Covil's files, communications, claims handling, and settlement of the defaults entered in *Taylor* and *Hill* (*id.* at 13); and (3) seeking to require the Insurers, by way of a rule to show cause, to provide discovery in *Finch*, which is not one of the cases in which the status conference was held, but which is the subject of a coverage action pending before this Court (*id.*). Neither the Court, nor the Insurers need speculate about the Receiver's desire for the State courts to adjudicate the substantive coverage issues; in his October 21, 2019 petition for a counter-writ of certiorari filed with the Supreme Court of South Carolina the Receiver states:

> *Rather than looking to federal courts* or the law of other states *to decide these critical issues*, the Supreme Court of South Carolina should take this opportunity to decide these important issues itself, *or direct the Receiver court to use its in rem jurisdiction to determine*:
>
> 1. Trigger of Coverage. For suits alleging bodily injury and/or wrongful death

> as a result of exposure to asbestos, what is the "trigger of coverage" under the "occurrence-based" primary, umbrella and excess general liability insurance policies at issue in this case?
>
> 2. "Completed Operations": When an insurance policy contains aggregate limits that apply only to third party claimant injury resulting from the insured's "completed operations," what is the proper interpretation of "completed operations"? Do the aggregate limits apply only if the third party claimant is exposed to asbestos *after* the insured completes its operations at a particular location where the claimant alleges asbestos exposure?
>
> 3. Burden of Proof: Do the insurers have the burden to show the applicability of the aggregate limits of liability to a particular claim of asbestos injury or death?
>
> 4. Occurrences: Do only the "per occurrence" limits apply if the third-party claimant is exposed to asbestos *during* the operations of the insured? If so, can the "per occurrence" limits be used repeatedly by Covil for each and every "occurrence" to pay claims of bodily injury and/or wrongful death resulting from exposure to asbestos during Covil's operations?
>
> 5. Allocation. When multiple "occurrence"-based insurance policies are triggered because asbestos injury to a third party claimant takes place during each policy's term, must each insurer indemnify the insured in full, for "all sums" the insured must pay the asbestos claimant, subject to policy limits, and later rights to seek reimbursement from other insurers with triggered policies, or must each insurer pay only a "pro rata" share of the insured's total liabilities, calculated based on each insurer's time on the risk relative to the claimant's total injury allocable to the time a particular policy was in force? If the insurers are not required to pay "all sums," is the insured required to absorb the shares of insurers that are insolvent or liquidated or otherwise unavailable or unable to pay and when the insured is a dissolved South Carolina corporation, must other solvent insurers "pick up" the shares of insolvent insurers?

(ECF No. 100-1 at 18–19.) The Receiver's subjective motives are immaterial, and the Court finds that these threats to its removal jurisdiction are most likely the natural consequence of zealous advocacy on the Receiver's part. It is further abundantly clear to this Court that Justice Toal, for whom the undersigned has the *highest* respect, has done and is doing her best to keep the underlying state tort suits moving forward appropriately *without* interfering with the coverage issues pending here. (*See generally* ECF Nos. 86-1

& 97-1.) Nonetheless, the Court finds it proper, as both expressly authorized by an Act of Congress and necessary in aid of its jurisdiction, to enjoin the Receiver from further pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued to Covil by the Insurers.

CONCLUSION

For the reasons stated, Hartford's motion to enjoin the Receiver (ECF No. 69), the Primary Insurers' motion for joinder thereto (ECF No. 73), and USF&G's motion for joinder (ECF No. 87) in Hartford's memorandum in further support of its motion to enjoin the Receiver are all GRANTED IN PART, as more fully described above.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

February 27, 2020
Greenville, South Carolina

EXHIBIT 51

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

COVIL CORPORATION by its Duly Appointed Receiver, PETER D. PROTOPAPAS, *Plaintiff*, v. ZURICH AMERICAN INSURANCE COMPANY; SENTRY CASUALTY COMPANY; UNITED STATES FIDELITY AND GUARANTY COMPANY; TIG INSURANCE COMPANY, as successor in interest to Fairmont Specialty Insurance Company, F/K/A Ranger Insurance Company; HARTFORD ACCIDENT AND INDEMNITY COMPANY; FIRST STATE INSURANCE COMPANY; TIMOTHY W. HOWE, personal representative of Wayne Erwin Howe; JEANNETTE HOWE; JERRY CRAWFORD; DENVER TAYLOR AND JANICE TAYLOR; and JAMES COLEMAN SIZEMORE, personal representative of James Calvin Sizemore, *Defendants*.	§	NO. 7:18-cv-03291-BHH

MOTION FOR CLARIFICATION AND/OR RECONSIDERATION

Covil Corporation, by its duly appointed Receiver, Peter D. Protopapas (the "Receiver"), respectfully moves for clarification and/or reconsideration of this Court's Opinion and Order issued February 27, 2020.

I. INTRODUCTION AND SUMMARY

A. Background Information and Update on Recent Events

Since the briefing closed on the motion to enjoin the Receiver, Justice Toal issued an order on January 8, 2020 in the South Carolina state receivership court based on her prior litigation

experience with Covil's insurers United States Fidelity and Guaranty Company ("USF&G") and Zurich American Insurance Company ("Zurich") in that court. A true and correct copy of this State Court Order is attached hereto as Exhibit A. The findings of fact and conclusions of law in the State Court Order bear on this motion for clarification and/or reconsideration, and the Receiver has filed it herewith to bring it to this Court's attention. This State Court Order also reflects months of dealings with Zurich and USF&G in the administration of dozens of underlying tort suits brought against Covil, including cases in which these insurers allowed defaults to be taken against their insured.

Additionally, the Receiver executed a comprehensive settlement agreement with defendants Hartford Accident and Indemnity Company and First State Insurance Company ("Hartford") on February 7, 2020. Shortly thereafter, the Receiver fully executed a comprehensive settlement agreement with TIG Insurance Company (sued herein as TIG Insurance Company as successor in interest to Fairmont Specialty Insurance Company f/k/a Ranger Insurance Company) on February 11, 2020. Finally, the Receiver also has reached a settlement in principle with Sentry Insurance and expects to sign a comprehensive settlement agreement with Sentry in the next few days. After these settlements have been finalized, Zurich and USF&G will be the only remaining insurer defendants in this case. A true and correct copy of the Joint Motion to Establish a Qualified Settlement Fund in the Receivership Court has been attached hereto as Exhibit B.

B. Summary of Legal Arguments

In moving for clarification and/or reconsideration, the Receiver notes that "[t]he [Anti-Injunction] Act's core message is one of respect for state courts." *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011). It broadly commands that state tribunals "shall remain free from interference by federal courts." *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 282 (1970). Any exception should be "narrow", *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988),

and "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Atlantic Coast*, 398 U.S. at 297. The injunction against the Receiver erroneously expands the statutory exceptions to the Act.

First, there is no "express authorization" because the authorization to enjoin state cases under Section 1446(d) applies only to (1) a removed case and (2) to "separate 'copycat' actions—actions involving essentially the same parties and claims that are filed in state court after removal of the original action." *Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 250-51 (4th Cir. 2013).

Second, the "in aid of its jurisdiction" exception does not apply because parallel suits may proceed in both state and federal court, even though one may affect the other. *Atlantic Coast*, 398 U.S. at 295-96. In other words, it takes more than a "nexus" between issues in different cases before the Anti-Injunction Act applies. The purpose of the Anti-Injunction Act is to prevent federal courts from enjoining state courts merely because the same issues are presented in both. ECF 105 at 22. This Court should also reconsider the injunction in light of both Fourth Circuit precedent and the state court's recent ruling on insurance issues. *See Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 204 (4th Cir. 2019).

II. REQUEST FOR CLARIFICATION

This Court's Opinion and Order

> enjoin[s] the Receiver from further pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued to Covil by the Insurers.

ECF 105 at 25. There are currently multiple suits pending in the courts of the State of South Carolina in which the Receiver has been sued as a defendant, allegedly liable to the underlying

state court plaintiffs for asbestos-related bodily injury.[1] In many of these suits, one or more insurance companies issuing policies to Covil have also been sued. Indeed, certain Covil insurers have been sued by the plaintiffs in underlying tort suits as the "alter ego" of Covil, based on findings made by a South Carolina state court that, for the quarter century between 1991 (when Covil ceased to operate), and November 2, 2018, when the Receiver was appointed, Covil's affairs were managed by Covil's primary insurers, Zurich and USF&G.[2] A true and correct copy of one of these lawsuits is attached hereto as Exhibit C. The underlying asbestos plaintiffs in these state court asbestos suits are not before this Court. Additional similar state tort suits will likely be brought in the future.

In many of these asbestos personal injury cases—which are "underlying state tort suits" within the meaning of this Court's Opinion and Order—Covil is a party defendant, together with insurers Zurich and USF&G. Covil has asserted cross-claims against Zurich and USF&G in all of these underlying state court asbestos-tort suits. These cross-claims assert that the insurers are responsible for any liability that Covil might have in the underlying tort suits and other claims that Covil has against the defendant insurers, including alter ego claims.

The Receiver has been charged with the responsibility to administer Covil's assets, including its insurance policies and rights arising under the insurance policies and their implementation and use. The Receiver, in administering Covil's assets, is complying with and implementing an order issued by a state court in South Carolina.

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[1] There are also from time-to-time underlying tort suits pending in the state courts of other states, and in federal courts, such as the United States District Court for the Middle District of North Carolina and this Court.

[2] USF&G is also known as Travelers.

In the relevant underlying suits, the Receiver has asserted at least the following cross-claims against at least Zurich and USF&G:

- That either or both of Zurich and USF&G is responsible for indemnifying Covil if and to the extent Covil is found to be liable for the plaintiff's injury;
- That either or both of Zurich and USF&G is Covil's alter ego for events or happenings prior to the Receiver's appointment; and
- That either or both of Zurich and USF&G is responsible for any destruction of documents or spoliation of evidence prior to the Receiver's appointment.

In the underlying asbestos tort suits, discovery, pre-trial and trial proceedings and mandatory mediations are also routinely conducted. In this discovery, pre-trial and trial proceedings and in mediations, the Receiver must respond, including as to motions seeking evidentiary and substantive determinations, some of which could be construed to implicate "insurance coverage issues arising from policies issued or allegedly issued to Covil."

Furthermore, in the defense of each of these underlying tort suits, insurance coverage issues arise on a regular basis. These issues include the responsibility for the payment or apportionment among insurers of defense and expert witness costs, and whether the Receiver is responsible for any portion of these costs, all of which fall within the ambit of the Receiver's administration of Covil's assets. There are currently unresolved disputes between and among Covil, Zurich, and Travelers over the apportionment and responsibility for defense costs, the impact of that dispute on access to defense counsel's work product, and over non-payment of defense costs by Travelers.

The Receiver did not file these underlying state asbestos suits. The underlying state asbestos plaintiffs are not parties before this Court. The Receiver must defend Covil in these underlying state asbestos suits. The Receiver must also protect Covil's insurance assets—which

he is charged with administering—by timely asserting claims, by answering discovery, and if necessary by going to trial. The Receiver cannot leave Covil's insurance assets in the hands of individual plaintiffs—since there are dozens if not hundreds of future claimants also entitled to these insurance assets, and because the Receiver, not the underlying case plaintiffs or the insurers, is charged with their administration. Nor can the Receiver default or fail to respond to allegations, claims, defenses, or judicial determinations sought by Covil's insurers or by the underlying claimants.

Accordingly, the Receiver seeks clarification that the Opinion and Order does not preclude the Receiver from undertaking any of the following actions in any state or federal suit in which Covil or the Receiver is a party:

- Propounding or responding to discovery requests, including discovery requests seeking insurance-related facts or contentions;
- Asserting or defending claims and cross-claims in responsive pleadings, and, if necessary, proceeding to trial on these claims and cross-claims;
- Attending mediations and settlement conferences and expressing the Receiver's position on and responsibility for resolution of underlying asbestos suits pending in state or federal court;
- Administering Covil's defense, including selection of defense counsel and apportionment of responsibility for the payment of defense fees and costs (including seeking determinations regarding the propriety or impact of any insurer's refusal to participate);

- Participating in motion practice, including oral argument, including motions which may have implications for the responsiveness of insurance policies or coverage parts; or
- Preserving or enforcing insurer rights of subrogation and contribution to which Covil has succeeded.

These clarifications are necessary in order to permit the Receiver to defend Covil's interests and administer Covil's assets. To the extent necessary or appropriate, the Receiver alternatively seeks reconsideration in order to obtain relief from the Opinion and Order so that the Receiver may perform his court-ordered duties as Receiver.

III. MOTION FOR RECONSIDERATION

Covil also respectfully, and in the alternative, moves for reconsideration of the Opinion and Order enjoining the Receiver, and the Receiver alone, from participating in underlying state court litigation where insurance issues have been raised. There are three practical reasons for Covil's request for reconsideration:

- Covil's insurance policies, the nature of its coverage, and the conduct of its insurers have been, and are, properly before the state courts of South Carolina, are governed by South Carolina law decided by South Carolina state courts, and the Receiver is appointed by and reports to a South Carolina state court;
- There is active state court litigation between and among the Receiver, Covil's insurers and underlying tort plaintiffs, such that barring solely the Receiver from "pursuing judicial determinations" is neither fair nor sustainable under the Anti-Injunction Act; and

- A federal court sitting in diversity does not need "aid in its jurisdiction," since, under *Trustgard Ins. Co. v. Collins,* 942 F.3d 195 (4th Cir 2019), on declaratory judgment issues, South Carolina state courts have been, and are, the appropriate arbiters.

It is important to put this matter in its proper factual context.

Covil was a South Carolina insulation contractor that operated from 1954 to 1991. Covil was incorporated in South Carolina and headquartered in South Carolina. All of its insurance policies were issued in South Carolina. All of its insurance policies are governed by South Carolina law, which is determined by the state courts of South Carolina. Covil's insurers have done everything they could think of to avoid South Carolina state court.

Before the Receiver was appointed, Zurich sued Covil and some of Covil's other insurers in the United States District Court for the Middle District of North Carolina. *See Zurich American Insurance Co. v. Covil Corp., et al.,* Middle District of North Carolina, 1:18-cv-932. The North Carolina federal action is pending.[3] Over a year ago, Covil brought two suits in state court in South Carolina, one of which involves professional negligence by a South Carolina law firm hired and directed by Zurich and USF&G. Both of these suits were removed to this Court; a motion to remand the second suit remains pending. *See* Peter D. Protopapas as Receiver for Covil Corporation v. Wall, Templeton & Haldrup, P.A., et al., District of South Carolina, 3:19-cv-01635.

In the meantime, approximately two dozen underlying asbestos tort suits against Covil have been brought in state courts in South Carolina. Dozens of suits pending in state courts South Carolina have proceeded to mediation and toward trial. During the adjudication or administration

[3] The North Carolina federal action also involves responsibility for the *Finch* verdict in *Finch v. BASF Catalysts LLC, et al.,* Middle District of North Carolina, 1:16-cv-01077, which was tried before the North Carolina federal court.

of these suits by the state courts in South Carolina, the state courts in South Carolina had to get involved in dealing with Covil's insurers, including in cases in which certain of Covil's insurers, acting through their retained counsel, knowingly allowed default judgments to be entered against their insured. (These insurers were consequently subject to Covil's suit originally filed in South Carolina state court.) The South Carolina state courts have properly exercised their jurisdiction over these underlying tort suits.

Although this Court is familiar with much of the background, there have been developments that have taken place after the parties' earlier briefing regarding the anti-suit injunction request.

As set forth in the introduction of this motion, on January 8, 2020, the South Carolina state receivership court issued an Order For Rule To Show Cause Hearing based on its prior dealings with USF&G and Zurich. *See* Exhibit A. The State Court Order is important here for several reasons. First, the state court found that certain of Covil's primary insurers "were operating an otherwise defunct Covil for purposes of managing Covil's asbestos litigation . . . For over two decades, these primary Insurers pretended to be Covil." *See* State Court Order at 3. As a result, "Covil's Insurers would not willingly cooperate with the Receiver. *Id.* And "after months of work by th[e] Court and its Receiver, it appears to th[e] Court that these Insurers have refused to provide complete policy limits and settlement authority information to their insured's Receiver." *Id.* at 5. The Court warned that "[t]hese Insurers cannot continue to plead ignorance in order to avoid the consequences of their own conduct and prolong the much-needed resolution of pending asbestos cases." *Id.* at 6.

Second, the state court discovered during the show cause process that USF&G has been unable to locate Covil insurance policies because the company "undertook a systemic corporate

program to destroy or discard its historical insurance policies," including those of Covil. *Id.* at 7. The state court found that "[i]n short, the evidence shows that USF&G plainly undertook its purge of policy-related materials in anticipation of litigation." *Id.* at 10. The state court determined that "had USF&G not destroyed its historical policies, it would have been able to locate coverage it issued to Covil." *Id.* at 11. The court ultimately concluded that "[b]y destroying relevant evidence, USF&G has succeeded in hiding significant evidence of its insurance coverage." *Id.* at 13. As a result, the court found "that USF&G spoliated relevant evidence and will issue an appropriate sanction to deter such conduct in the future and attempt to re-level the now uneven playing field." *Id.*

Finally, the state court was left to "reconstruct[ ] the nature and scope of Covil's historical insurance program (without the cooperation of the Insurers) so as to facilitate the management of the South Carolina asbestos docket." *Id.* at 14. To do this, the Court explained and "appl[ied] the following principles of South Carolina insurance law": (1) "Trigger of Coverage"; (2) The Distinction Between "Operations" and "Completed Operations"; (3) Burden of Proof; (4) Occurrences; and (5) Allocation of Losses to Covil's Policies. *Id.* at 14-20. The court also forwarded the State Court Order to the South Carolina Attorney General and the South Carolina Department of Insurance for possible investigation into the conduct of the Insurers. *Id.* at 20.

Given these developments, this Court's injunction is not fair or sustainable under the Anti-Injunction Act. Insurers Zurich and USF&G are parties in underlying state tort suits in which insurance coverage-related issues have been pleaded and are currently being adjudicated. Yet the Court's injunction runs only against the Receiver, a court-appointed officer. Nothing would prevent any party other than the Receiver to adjudicate coverage issues related to Covil in South Carolina state court, a scenario which is likely since these issues are all pleaded in multiple pending

state court suits. The unfairness of prohibiting the insured from participating in the construction of its own policies in the courts of its own state, whose law must be applied to the policies, is obvious. Accordingly, for this practical reason, the Receiver respectfully requests that the Opinion and Order be reconsidered and the injunction dissolved or withdrawn.

A. There is No Applicable Exception to the Anti-Injunction Act

"[T]he [Anti-Injunction] Act's core message is one of respect for state courts." *Smith*, 564 U.S. at 306. It broadly commands that state tribunals "shall remain free from interference by federal courts." *Atlantic Coast*, 398 U.S. at 282. Any exception should be "narrow", *Chick Kam Choo*, 486 U.S. at 146, and "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed." *Atlantic Coast*, 398 U.S. at 297. The injunction against the Receiver erroneously expands the statutory exceptions to the Act. [4]

First, there is no "express authorization" because the authorization to enjoin state cases under Section 1446(d) applies only to (1) a removed case and (2) "separate 'copycat' actions—actions involving essentially the same parties and claims that are filed in state court after removal of the original action." *Ackerman*, 734 F.3d at 250-51.

[4] Because the injunction is appealable, the order constitutes a "judgment" under Rule 54(a), and this motion constitutes a motion to alter or amend a judgment under Rule 59(e). *See, e.g.*, *Centennial Broad., LLC v. Burns*, 433 F. Supp. 2d 730, 733 (W.D. Va. 2006). A court may grant a motion for reconsideration under Rule 59(e) "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007). "Thus, the rule permits a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation and internal quotation marks omitted).

Second, the "in aid of its jurisdiction" exception does not apply because parallel suits may proceed in both state and federal court, even though one may affect the other. *Atlantic Coast*, 398 U.S. at 295-96. In other words, it takes more than a "nexus" between issues in different cases before the Anti-Injunction Act drops out. The purpose of the Anti-Injunction Act is to prevent federal courts from enjoining state courts merely because the same issues are presented in both. ECF 105 at 22.

The Anti-Injunction Act "is an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of [the] three specifically defined exceptions." *Ackerman*, 734 F.3d at 250. These limited exceptions are (1) "as expressly authorized by Act of Congress"; (2) "where necessary in aid of its jurisdiction"; and (3) "to protect or effectuate its judgments." 28 U.S.C. § 2283. In its Order, this Court stated it was relying on the first two exceptions. ECF 105 at 25. Because neither of those avenues applies in this case, the blanket injunction against the Receiver carrying out his duties in State court violates the Act.

Courts that have previously permitted anti-suit injunctions after removal have relied on the first exception, but the injunction entered here is not "expressly authorized by an Act of Congress." The removal statute, 28 U.S.C. § 1446, provides that the state shall not proceed further in a removed case. This "has been considered express authorization to stay state court proceedings . . . within the first exception to the Anti–Injunction Act." *Kansas Pub. Employees Ret. Sys. v. Reimer & Koger Associates, Inc.*, 77 F.3d 1063, 1069 (8th Cir. 1996).

Courts have interpreted the authorization under Section 1446 to extend to "copycat" actions filed in state court after removal. *Koger*, 77 F.3d at 1069 ("It would be of little value to enjoin continuance of a state case after removal and then permit the refiling of essentially the same suit in state court." (quoting *Frith v. Blazon–Flexible Flyer, Inc.*, 512 F.2d 899 (5th Cir. 1975) (per

curiam)). But the Fourth Circuit has explained that this exception would extend only to "separate 'copycat' actions—actions involving essentially the same parties and claims that are filed in state court after removal of the original action." *Ackerman*, 734 F.3d at 250–51; *see also id.* at 251 ("[a] second state court suit is fraudulently filed in an attempt to subvert the removal of a prior case").

The injunction issued here far exceeds these bounds. It does not involve a case "filed in state court after removal of the original action"—the receivership was initiated *before* the removed proceeding. It is also not limited to a fraudulent situation involving a specific "'copycat' action"—the injunction extends to *all* state proceedings. ECF 105 at 22.

This Court relied on references in the cases to "subverting federal removal jurisdiction," but this phrase explains why Section 1446(d) should be read to permit injunction of "copycat" lawsuits—no court has treated it as an independent basis for entry of an anti-suit injunction.

This Court's reasoning appears to rest also, at least in part, on the second exception to the Anti-Injunction Act—in aid of jurisdiction—suggesting that a "nexus between the substantive *issues* pending in federal court and the *issues* sought to be adjudicated in State court" threatens its jurisdiction. ECF 105 at 22. Overwhelming authority rejects this analysis.

Overlapping jurisdiction, sometimes in virtually identical cases, has long been the accepted practice: "Despite what may appear to result in a duplication of judicial resources, the rule is well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *McLaughlin v. United Va. Bank*, 955 F.2d 930, 934 (4th Cir. 1992) (internal quotation marks and alteration omitted). The Supreme Court has expressly held that "parallel *in personam* actions" do not "interfer[e] with the jurisdiction of either court." *Vendo Co. v. Lektro–Vend Corp.*, 433 U.S. 623, 642 (1977) (plurality opinion) (quoting *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922)). For instance, in *Kline*,

the Supreme Court approved of parallel litigation in state and federal court when "the two cases presented substantially the same issues, the only differences being those resulting from the addition of [defendant parties] in the [state-court] equity suit." 260 U.S. at 228. In other words, the *cases* were different but the *issues* were the same. A similar situation arose in *Atlantic Coast*, yet "the state and federal courts had concurrent jurisdiction in th[at] case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts." 398 U.S. at 294-97.

This Court's analysis—that a nexus of issues poses a threat to its jurisdiction that falls within an exception to the anti-injunction act—cannot be harmonized with these cases. The insurance companies stress that they could lose the ability to litigate certain claims in this Court if the related cases are allowed to continue in State Court—but that is beside the point. The Supreme Court rejected an even stronger version of this precise argument in *Kline*. It was contended there that if a "suit may be prosecuted so as to secure an adjudication in a state court before the action of the federal court can be adjudicated, then the federal court's adjudication would be made futile because before it is rendered the controversy will have become res adjudicata by the adjudication of the state court." *Kline*, 260 U.S. at 233. Nevertheless, the Court held that both courts have the duty to proceed to judgment. *Id.* at 233. Unless the case involves *in rem* jurisdiction over a particular *res*—in which case it stays with the first court (here, the State Court)—parallel actions are to be expected and will proceed in tandem. *Id.* at 232 ("[T]he rule [i]s firmly established that the pendency in a federal court of an action in personam [i]s neither ground for abating a subsequent action in a state court nor for the issuance of an injunction against its prosecution.").

If virtually identical cases may proceed in both state and federal court, the Act must ensure that merely related state court cases should continue unabated by a federal court—even if the result in one court will affect the other. *See also Adkins v. Nestle Purina PetCare Co.*, 779 F.3d 481,

484 (7th Cir. 2015) ("Parallel state and federal litigation is common. The first to reach final decision can affect the other, either through rules of claim and issue preclusion (res judicata and collateral estoppel) or through effects such as reducing the scope of a class from 50 to 49 states. Yet the potential effect of one suit on the other does not justify an injunction."). The insurers' fear that a decision here will be affected by state-court litigation in other cases is thus no basis for invocation of the Anti-Injunction Act's exceptions.

To be sure, a state court may not "seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast*, 398 U.S. at 295. But that does not include situations where there is merely a "nexus" between facts and arguments in the two cases. *Atlantic Coast* dealt with a situation where the state and federal cases were parallel occurrences of the same suit. Even so, the Supreme Court held that "the state and federal courts had concurrent jurisdiction in th[e] case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts." *Id.* at 294–97. To use *Atlantic Coast*'s concern with a "flexibility and authority to decide the *case*" to support an anti-suit injunction based on a mere nexus between the *issues* in federal case and the *issues* in a different state case turns *Atlantic Coast*'s holding on its head. *Id.* at 295.

Enjoining a state proceeding because of a "nexus between the substantive issues pending in federal court and the issues sought to be adjudicated in state court" violates the Act. So long as it is not the same case that has been removed, (or a copycat of it involving the relitigation of the same case), the overlap of issues does not qualify as an exception to the Act. When all of this is combined with the Supreme Court's strong presumption against anti-suit injunctions, this Court should reconsider the injunction issued here and withdraw it.

B. This Court Should Also Reconsider the Injunction in Light of the Recent *Trustgard* Case Decided by the Fourth Circuit

Moreover, this Court should reconsider the injunction in light of both Fourth Circuit precedent and the state court's recent ruling on insurance issues. In *Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 204 (4th Cir. 2019), the United States Court of Appeals for the Fourth Circuit rejected the district court's exercise of jurisdiction under the Declaratory Judgment Act in circumstances directly analogous to those here.

In *Trustgard*, the parties sought a declaratory judgment regarding insurance policies while the same issue was pending in state court. The Fourth Circuit rejected the federal court's exercise of jurisdiction under the Declaratory Judgment Act, noting that the district court should have "consider[ed] whether 'federalism, efficiency, and comity' counsel[ed] against exercising jurisdiction when an ongoing proceeding in state court overlap[ed] with the federal case." *Id.* at 202 (quoting *Penn-Am. Ins. Co. v. Coffey*, 368 F.3d 409, 412 (4th Cir. 2004)). After all, "[a]bstention helps avoid duplicative litigation and interference with state-court proceedings." *Id*. Before granting the declaratory judgment, the district court thus should have "look[ed] to (1) the state's interest in having its own courts decide the issue; (2) the state courts' ability to resolve the issues more efficiently than the federal courts; (3) the potential for unnecessary entanglement between the state and federal courts based on overlapping issues of fact or law; and (4) whether the federal action is mere forum-shopping." *Id.*

South Carolina has a strong interest in resolving the underlying issues—especially in light of the need to carry out the Receivership Court's recent ruling and to ensure that its large asbestos docket is managed efficiently and according to South Carolina law. The South Carolina state court is in a better position to understand South Carolina insurance law (rather than needing to make an *Erie* guess) and can thus resolve the issues more efficiently than this Court. The state court has

already gone a long way to resolving those issues—thus increasing the potential for unnecessary entanglement between this Court and the Receivership Court. Finally, this case involves forum shopping by the Insurers. State Court Order at 15-16 ("This Court is aware that, in seeking to limit their obligations to Covil, the insurers would prefer to rely exclusively on federal decisions attempting to 'guess' the view the Maryland Court of Appeals would take if the issue of interpreting the 'completed operations' provisions of the polices were presented to it. The insurers take the position that the Fourth Circuit has 'spoken' definitively on this issue. However, this Court finds that federal decisions attempting to predict the interpretation of policy language under Maryland law are not pertinent to the determination of South Carolina law. This Court specifically finds that *In re Wallace & Gale Co.*, 385 F.3d 820 (4th Cir. 2004) is not the law of South Carolina."). The potential entanglement between this Court and the state court over issues of law and fact is now at its zenith, and this Court should decline to extend its jurisdiction further through the injunction. *Trustgard*, 942 F.3d at 202-04.

The United States Supreme Court has held that the duty to exercise jurisdiction is not absolute, especially "where denying a federal forum would clearly serve an important countervailing interest." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). Among these countervailing interests are "ongoing, parallel state proceedings in cases where 'considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation' clearly favor abstention." *Ackerman*, 734 F.3d at 248 (citation omitted) (quoting *Colorado River Water Cons. Dist. v. U.S.*, 424 U.S. 800, 817 (1976)). *Ackerman* also noted that the Supreme Court "has identified various circumstances where abstention may be warranted, including . . . cases involving complex state administrative procedures." 734 F.3d at 248 (citing *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)). Although the

State Court action here is not purely administrative, the Receivership Court is in charge of an obviously complex docket that relies on Chief Justice Toal's expertise in the area for efficient administration of the many claims before it.

"[E]ven where jurisdiction is not discretionary, courts may abstain from exercising jurisdiction under certain circumstances that may intrude on the prerogative of state courts." *Trustgard*, 942 F.3d at 201. At this point, this Court's involvement in the questions of South Carolina insurance law will only "lead to confusion and unnecessary entanglement with the state-court lawsuit[s]." *Id.* at 202. Each underlying case on the South Carolina asbestos docket turns on complex issues of State law, and the State Court has now opined on those issues. Thus "[c]onsiderations of comity and judicial efficiency weigh strongly in favor of permitting the state court" to resolve the underlying issues—not to enjoin that very thing from happening. *Id.* Indeed, the overlap between the issues and the entanglement over the issue preclusion question alone makes exercising jurisdiction in this case an abuse of discretion. *Id.* ("[T]he factual uncertainties in the record before us and the likelihood of entanglement with the state-court lawsuit compel us to dismiss the case.").

Finally, as seen in the State Court Order, the Insurers have created significant difficulties for the State Court—through secretly operating Covil as an alter ego without the knowledge of the courts in order to (deficiently) control the asbestos litigation and through undertaking sanctionable conduct to spoilate evidence. When those actions are laid on top of this case, the Insurers' conduct should foreclose any equitable remedy (such as having this Court enjoin the State Court from proceeding against them with regard to the issue sanction USF&G received). *See, e.g.*, *Lyon v. Campbell*, 33 Fed. Appx. 659, 665 (4th Cir. 2002) ("[T]he doctrine of unclean hands permits a court to withhold equitable relief from a party who is guilty of 'willful wrongdoing in relation to

the controversy before it'"). This, too, counsels in favor of this Court reconsidering its injunction.

CONCLUSION

The Court's Opinion and Order instituting an injunction against the Receiver should be clarified or, alternatively, reconsidered and the injunction dissolved or withdrawn.

Dated: March 11, 2020

Respectfully submitted,

/s/ *Jescelyn T. Spitz*
Jescelyn Tillman Spitz, Esquire
Fed. ID: 12159
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Post Office Box 5640 (29250)
PH: (803) 978-6111
FAX: (803) 978-6112
EMAIL: jspitz@rplegalgroup.com

Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation

G. Murrell Smith, Jr.
Fed. ID: 6120
Jonathan M. Robinson
Fed. ID: 7755
Smith, Robinson, Holler, DuBose & Morgan, LLC
2530 Devine Street St. 1B
Columbia, South Carolina 29205
PH: (803) 254-5445
FAX: (803) 254-5007
EMAIL: murrell@smithrobinsonlaw.com
EMAIL: jon@smithrobinsonlaw.com

Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation

Paul Anton Zevnik (Pro Hac Forthcoming)
Brady Edwards (Pro Hac Forthcoming)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
PH: (202) 739-3000
FAX: (202) 739-3001

Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2020, I caused a true and correct copy of the foregoing *Motion for Reconsideration of Order Enjoining Receiver* to be served on all counsel of record by email through the Court's CM/ECF system.

Dated: March 11, 2020

By: /s/ *Jescelyn T. Spitz*
Jescelyn Tillman Spitz, Esquire

EXHIBIT 52

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

COVIL CORPORATION by its Duly Appointed Receiver, PETER D. PROTOPAPAS, *Plaintiff*, v. ZURICH AMERICAN INSURANCE COMPANY; SENTRY CASUALTY COMPANY; UNITED STATES FIDELITY AND GUARANTY COMPANY; TIG INSURANCE COMPANY, as successor in interest to Fairmont Specialty Insurance Company, F/K/A Ranger Insurance Company; HARTFORD ACCIDENT AND INDEMNITY COMPANY; FIRST STATE INSURANCE COMPANY; TIMOTHY W. HOWE, personal representative of Wayne Erwin Howe; JEANNETTE HOWE; JERRY CRAWFORD; DENVER TAYLOR AND JANICE TAYLOR; and JAMES COLEMAN SIZEMORE, personal representative of James Calvin Sizemore, *Defendants*.	§	NO. 7:18-cv-03291-BHH

MOTION TO RECONSIDER ORDER DENYING REMAND TO STATE COURT

Covil Corporation, by its duly appointed Receiver, Peter D. Protopapas, respectfully requests that this Court reconsider its prior ruling denying remand to state court (ECF 67). After the case was removed from the state receivership court, this Court addressed whether it *could* exercise jurisdiction under the diversity principles of 28 U.S.C. § 1332. ECF 67. But this Court never addressed "whether jurisdiction *should* have been exercised," especially in light of new Fourth Circuit authority regarding abstention principles that counsels in favor of allowing the state-court process to run its course. *Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 201-04 (4th Cir. 2019).

When a case "clearly involves basic problems of [state] policy . . . equitable discretion should be exercised to give the [state] courts the first opportunity to consider them." *Burford v. Sun Oil Co.*, 319 U.S. 315, 332 (1943). Indeed, "[f]ew public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies." *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941). "[C]ases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion', restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary." *Id.* at 501. In so doing, the courts contribute to "furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers." *Id.*

Recent precedent from the Fourth Circuit—based on these abstention principles—demonstrates that, even assuming federal jurisdiction exists over the state-law claims at issue here, this Court should abstain in favor of permitting those claims to be heard by the state court. In *Trustgard*, the Fourth Circuit rejected the district court's exercise of jurisdiction under the Declaratory Judgment Act in circumstances directly analogous to those here. 942 F.3d at 204. The Fourth Circuit ruled abstention was appropriate because (1) the State had an interest in having its own courts decide the underlying issue; (2) the state courts could resolve the issue more efficiently than the federal court; and (3) there was significant potential for unnecessary entanglement between the state and federal courts. *Id.* at 202-04. Those circumstances exist here to an even greater degree—along with a potential forum-shopping issue that also counsels in favor of abstention, *id.* at 202—and thus the case should be remanded.

The Fourth Circuit also recognized that "even where jurisdiction is not discretionary [as it is under the Declaratory Judgment Act], courts may abstain from exercising jurisdiction under

certain circumstances that may intrude on the prerogative of state courts." *Id.* at 201. That principle applies to the two non-declaratory claims asserted in this case: breach of contract and bad faith. Those two claims are closely tied to the declaratory ones and are entirely dependent on the resolution of state law. The non-declaratory claims are parallel state law claims that the Supreme Court has said need not be adjudicated by a federal court because it will only create "interference with state-court proceedings." *Id.* at 202. The state-law claims in this case should be remanded and the state receivership court allowed to fulfill the duty entrusted to it by the South Carolina Supreme Court.

BACKGROUND

The South Carolina Supreme Court has established a state court specifically to handle the State's asbestos docket and appointed former Chief Justice Jean Toal to serve as "the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system." Exhibit A, Order For Rule To Show Cause Hearing, Asbestos Cases (*York v. CBS Corp.*), C/A No.: 2015-CP-46-02155 (Court of Common Pleas, Sixth Judicial Circuit, Jan. 8, 2020) ("State Court Order") at 2. In this role, Judge Toal oversees the "significant number of complex multi-party cases" on the asbestos docket in order to organize the "complicated statewide litigation into an orderly process." *Id.*

The Receiver first brought this case in that court to account for the assets Covil Corporation had available for paying asbestos claims. Complaint, ECF 1-1 at 3. Although Covil has been out of business for several decades, the company continues to be sued in asbestos cases and still has its insurance policies to pay those claims. State Court Order at 3. After Covil "inexplicably defaulted on two mesothelioma asbestos cases," the state court appointed a receiver tasked with determining the value of Covil's insurance policies and defending its asbestos claims. *Id.*

After the Receiver brought this suit against its insurance companies for declaratory relief concerning Covil's available coverage and asserted state-law claims for breach of contract and bad faith, the insurers removed the case to this Court. ECF 1. The Receiver moved to remand the case, but this Court denied that request. ECF 67. Additional legal and factual developments since the parties' initial briefing on the motion to remand warrant reconsideration of this denial.

On January 8, 2020—prior to this Court's injunction—the state receivership court issued an Order for Rule to Show Cause based on its prior dealings with some of Covil's insurers. *See* State Court Order. The findings of fact and conclusions of law in that Order bear directly on questions before this Court.[1]

First, the state court found that "Covil's primary insurers . . . were operating an otherwise defunct Covil for purposes of managing Covil's asbestos litigation . . . . For over two decades, these primary Insurers pretended to be Covil." State Court Order at 3. As a result, "Covil's Insurers would not willingly cooperate with the Receiver." *Id.* And "after months of work by

[1] The insurers have complained to this Court that the Order was drafted by the Receiver and merely adopted by the state receivership court. ECF 108-1 at 5. That charge misrepresents both the law and the facts. The insurers claim that the South Carolina Supreme Court has rejected the practice of parties drafting orders. But that court—in a case in which Justice Toal concurred—merely condemned *one-sided requests* for orders from a trial judge to a litigant. *Burgess v. Stern*, 428 S.E.2d 880, 883 (S.C. 1993). The court did not denigrate the practice of requesting competing orders in open court, nor could it have. After all, *Burgess* explicitly cited an opinion from the state Advisory Committee on Standards of Judicial Conduct that holds: "[A] judge may direct both counsel to prepare and serve on the other side a proposed order. He may then select the version, altered or unaltered, which he prefers." Exhibit B, ADVISORY COMMITTEE ON STANDARDS OF JUDICIAL CONDUCT, OP. NO. 2–1988, PROPRIETY OF A JUDGE REQUESTING ONE COUNSEL TO DRAFT THE REQUIRED ORDER IN A PARTICULAR CASE; PROPRIETY OF A JUDGE DISCUSSING THE ORDER TO BE DRAFTED WITH ONE COUNSEL OUTSIDE THE PRESENCE OF OPPOSING COUNSEL (Jan. 4, 1988), at 2. That is precisely what occurred in Chief Justice Toal's court. The Judge requested that the parties each submit proposed orders on November 22, 2019. Zurich, USF&G, and the Receiver complied with that request. Chief Justice Toal revised, and then signed, the order the Receiver submitted.

th[e] Court and its Receiver, it appear[ed] to th[e] Court that these Insurers have refused to provide complete policy limits and settlement authority information to their insured's Receiver." *Id.* at 5. The state court warned that "[t]hese Insurers cannot continue to plead ignorance in order to avoid the consequences of their own conduct and prolong the much-needed resolution of pending asbestos cases." *Id.* at 6.

Second, the state court discovered during the show cause process that USF&G, one of Covil's primary insurers, has been unable to locate Covil insurance policies because the company "undertook a systematic corporate program to destroy or discard its historical insurance policies," including those of Covil. *Id.* at 7. The court found that "[i]n short, the evidence shows that USF&G plainly undertook its purge of policy-related materials in anticipation of litigation." *Id.* at 10. "[H]ad USF&G not destroyed its historical policies, it would have been able to locate coverage it issued to Covil." *Id.* at 11. The state court ultimately concluded that "[b]y destroying relevant evidence, USF&G has succeeded in hiding significant evidence of its insurance coverage." *Id.* at 13. As a result, the court found "that USF&G spoliated relevant evidence and will issue an appropriate sanction to deter such conduct in the future and attempt to re-level the now uneven playing field." *Id.*

Finally, the state court was left to "reconstruct[] the nature and scope of Covil's historical insurance program (without the cooperation of the Insurers) so as to facilitate the management of the South Carolina asbestos docket." *Id.* at 14. To do this, the Court explained and "appl[ied] the following principles of South Carolina insurance law": (1) "Trigger of Coverage"; (2) The Distinction Between "Operations" and "Completed Operations"; (3) Burden of Proof; (4) Occurences; and (5) Allocation of Losses to Covil's Policies. *Id.* at 14-20. At the same time, the Receivership Court noted that the Fourth Circuit interpreted Maryland law as taking a different

approach to insurance law in *In re Wallace & Gale Co.*, 385 F.3d 820 (4th Cir. 2004). The state court noted that the insurers would, for that reason, want to pursue a federal venue but the Fourth Circuit's interpretation of Maryland law was not the law of South Carolina. State Court Order at 15-16. The Court also forwarded the Order to the South Carolina Attorney General and the South Carolina Department of Insurance for possible investigation into the conduct of the insurers. *Id.* at 20.

RELEVANT STANDARDS

"An order denying a motion to remand, standing alone, is obviously not final[.]" *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 74 (1996) (internal quotation marks and alterations omitted); *see also Awah v. TransUnion*, 649 F. App'x 310, 310 (4th Cir. 2016) (per curiam) (noting interlocutory nature of denial of remand). Under Rule 54(b), "[a]n interlocutory order is subject to reconsideration at any time prior to the entry of a final judgment." *Fayetteville Invs. v. Com. Builders, Inc.*, 936 F.2d 1462, 1469 (4th Cir. 1991); *United States v. Mallory*, No. 3:18-1289, 2019 WL 252530, at *2 (S.D. W. Va. Jan. 17, 2019). Review of such orders is "left within the plenary power of the Court that rendered them to afford such relief from them as justice requires." *Fayetteville Invs.*, 936 F.2d at 1473 (quoting 7 Moore's Federal Practice ¶ 60.20).

ARGUMENT AND AUTHORITIES

This case involves multiple claims for declarations of the parties' rights and responsibilities under South Carolina insurance law, as well as state-law claims for breach of contract and bad faith on the part of the insurers. When a lawsuit is entirely reliant on state law, the factors highlighted in *Trustgard* demonstrate that it is an abuse of discretion to maintain jurisdiction over the declaratory judgment claims. *Trustgard*, 942 F.3d at 202. Moreover, Supreme Court abstention doctrine also allows a federal court to abstain from exercising jurisdiction over any non-

discretionary claims in a case when the same considerations of comity and efficiency are at stake and the state court is resolving a complex issue of state law. *See, e.g., Burford*, 319 U.S. at 332. This is especially true when the issues involve unsettled law and the federal court will not merely be applying known precedent from the state. And even if this Court did not find abstention appropriate for the non-discretionary claims, *Trustgard* advises that the parties could always return after the state "court has a chance to settle . . . uncertainties" in the law so that this Court could "decide any remaining coverage questions." 942 F.3d at 204. The case should be remanded to state court.

I. Declaratory Claims that Overlap Significantly with State Court Issues Should Not Be Entertained by Federal Courts.

"In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995). Thus "'considerations of federalism, efficiency, and comity' should inform the district court's decision whether to exercise jurisdiction over a declaratory judgment action." *Penn-America Ins. Co. v. Coffey*, 368 F.3d 409, 412 (4th Cir. 2004) (quoting *Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 257 (4th Cir. 1996)).

The Fourth Circuit recently considered the exercise of jurisdiction under the Declaratory Judgment Act in circumstances similar to those here. *Trustgard*, 942 F.3d at 204. There, the parties sought a declaration regarding insurance policies—while the same issue was already pending in state court—and the district court granted the request. The Fourth Circuit rejected that exercise of jurisdiction, noting the district court should have "consider[ed] whether 'federalism, efficiency, and comity' counsel[ed] against exercising jurisdiction when an ongoing proceeding in state court overlap[ed] with the federal case." *Id.* at 202 (quoting *Penn-America*, 368 F.3d at 412). After all, "[a]bstention helps avoid duplicative litigation and interference with state-court

proceedings." *Id.* Before entertaining declaratory judgment claims, a district court should "look to (1) the state's interest in having its own courts decide the issue; (2) the state courts' ability to resolve the issues more efficiently than the federal courts; (3) the potential for unnecessary entanglement between the state and federal courts based on overlapping issues of fact or law; and (4) whether the federal action is mere forum-shopping." *Id.*

This Court should follow the analysis in *Trustgard* and decline to exercise jurisdiction over the claims presented here.

First, the State has a strong interest in resolving the underlying issues—especially in light of the need to carry out the Receivership Court's recent ruling and to ensure that its large asbestos docket is managed both efficiently and according to South Carolina law. As the Fourth Circuit explained in *New Wellington Financial Corp. v. Flagship Resort Development Corp.*, "[t]here exists an interest in having the most authoritative voice speak on the meaning of applicable law, and that voice belongs to the state courts when state law controls the resolution of the case." 416 F.3d 290, 297 (4th Cir. 2005) (quoting *Mitcheson v. Harris*, 955 F.2d 235, 237 (4th Cir. 1992)).

Here, "[t]he South Carolina Supreme court appointed [Chief Justice Toal] to serve as the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system." State Court Order at 2. Among her duties in that role is the supervision of the Covil receivership. The Receiver is vested with the "power and authority to fully administer all assets of Covil Corporation," which is "inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers." Exhibit C, Order Appointing a Receiver for Covil Corporation, *Taylor v. Air & Liquid Sys. Corp.*, No. 2018-CP-40-04940, at 1 (S.C. Cir. Ct. Nov. 2, 2018).

South Carolina and its courts have a strong interest in interpreting the South Carolina insurance law that applies to this particular dispute. The rulings on the declaratory judgment claims will affect plaintiffs, defendants, and insurers in countless asbestos cases in South Carolina because interpretation of these insurance provisions will arise again and again in South Carolina asbestos cases. *See Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 211 (4th Cir. 2006) (district courts may decline jurisdiction where there is an "unsettled" state-law question); *Wilton*, 515 U.S. at 288 n.2 ("We note that where the basis for declining to proceed is the pendency of a state proceeding, a stay will often be the preferable course, because it assures that the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the matter in controversy[.]"). Consistent South Carolina law—made by South Carolina courts—will yield more efficient and complete justice overall. These matters should thus be resolved in South Carolina state court.

Second, the state court is in a better position to understand South Carolina insurance law (rather than needing to make an *Erie* guess) and can thus resolve the issues more efficiently than this Court. Chief Justice Toal has already issued rulings about both the meaning of the insurance policies at issue and how they apply to the asbestos litigation against Covil (and the South Carolina Supreme Court will maintain review authority, of course, over the receivership court's ruling).

But the insurers would prefer that this Court make an *Erie* guess (relying principally on an earlier Fourth Circuit *Erie* guess regarding Maryland insurance law) rather than using the determination already set forth by an expert in South Carolina law—the State's former Chief Justice. *See* State Court Order at 15-16. Not only would this be inefficient, but it also would be more likely to introduce error. *See Pullman*, 312 U.S. at 499 ("But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a

determination."); *see also Burford*, 319 U.S. at 327 ("As a practical matter, the federal courts can make small contribution to the well organized system of regulation and review which the [state] statutes provide."). It will be more efficient—and more fair to all parties involved—to allow the assessment of the policies to occur in the "single forum" of the receivership, which can provide a definitive resolution of the South Carolina state law questions from the courts of that State.[2]

Third, because the state receivership court has already gone a long way toward resolving difficult issues of state insurance law, the potential for unnecessary entanglement between this Court and the state court on overlapping issues of fact or law has now materialized. *Cf. Burford*, 319 U.S. at 327-28 ("The most striking example of misunderstanding [state law and policy] has come where the federal court has flatly disagreed with the position later taken by a state court as to State law."). Indeed, the insurers have acknowledged the conflict by asking this Court to force the Receiver to seek vacatur of the State Court Order. ECF 108 at 1-2. This is precisely the sort of "[d]elay, misunderstanding of local law, and needless federal conflict with the State policy" that *Burford* sought to avoid. 319 U.S. at 327. Similar to the recent *Trustgard* decision, "[t]rying to resolve [insurers'] responsibility under the [policies in this action] would lead to confusion and unnecessary entanglement with the state-court lawsuit." 942 F.3d at 202.

Moving forward, the South Carolina state court will assess the parameters of each insurance policy. If this Court's rulings regarding policy interpretation conflict with that assessment, this Court's rulings will be "the epitome of an advisory opinion." *Id.* at 202; *see also Pullman*, 312 U.S. at 500 ("The reign of law is hardly promoted if an unnecessary ruling of a

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[2] Even more delay and inefficiency will be created if the Fourth Circuit is forced to certify questions to the South Carolina Supreme Court on the very issues that will be reviewed in the South Carolina court system anyway if the issues raised here are allowed to percolate through those courts rather than being plucked out of that system in favor of the foreign forum.

federal court is thus supplanted by a controlling decision of a state court."). But even if there is no direct conflict, this Court's rulings have "a serious potential to interfere with ongoing state proceedings." *Trustgard*, 942 F.3d at 204; *see also Alfa Laval, Inc. v. Travelers Cas. & Sur. Co.*, No. 3:09-cv-733, 2010 WL 2293195, at *4, (E.D. Va. June 3, 2010) (staying case because "[t]he potential exists for conflicting decisions with respect to not only scope of coverage and indemnity liability under the Travelers policy, but also the percentage of allocated obligation on the part of the other insurance carriers, individually and collectively"). This factor is especially important here because the insurers ask this Court for rulings that are the exact opposite of the state court's rulings—tellingly, in a case where there are no federal questions of law at issue. *Cf. Saint Paul Fire & Marine Ins. Co. v. Lumber Liquidators, Inc.*, No. 1:18-cv-2820, 2018 WL 6075486, at *3 (abstaining where there are no federal questions of law at issue). This Court should avoid such unnecessary entanglement with state law questions. *See Burford*, 319 U.S. at 334 ("Conflicts in the interpretation of state law, dangerous to the success of state policies, are almost certain to result from the intervention of the lower federal courts.").

Fourth, as noted by the state court, this case involves forum shopping by the insurers. State Court Order at 15-16 ("This Court is aware that, in seeking to limit their obligations to Covil, the insurers would prefer to rely exclusively on federal decisions attempting to 'guess' the view the Maryland Court of Appeals would take if the issue of interpreting the 'completed operations' provisions of the polices were presented to it. The insurers take the position that the Fourth Circuit has 'spoken' definitively on this issue. However, this Court finds that federal decisions attempting to predict the interpretation of policy language under Maryland law are not pertinent to the determination of South Carolina law. This Court specifically finds that *In re Wallace & Gale Co.*, 385 F.3d 820 (4th Cir. 2004) is not the law of South Carolina."). The potential entanglement

between this Court and the state court over issues of law and fact is now at its zenith, and this Court should decline to exercise jurisdiction. *Trustgard*, 942 F.3d at 202-04.

Under the Fourth Circuit's decision in *Trustgard*, this Court should remand the Declaratory Judgment Act claims to the state receivership court.

II. Abstention Doctrines Also Counsel in Favor of Foregoing Federal Resolution of the Non-Declaratory State-Law Claims at Issue Here.

This Court should also decline to exercise jurisdiction over the non-declaratory claims here because of their overlap with the claim under the Declaratory Judgment Act, over which *Trustgard* holds that this Court should not exercise jurisdiction. The Fourth Circuit also noted there that "even where jurisdiction is not discretionary, courts may abstain from exercising jurisdiction under certain circumstances that may intrude on the prerogative of state courts." 942 F.3d at 201. The issues involved in the non-declaratory claims—some of which have already been decided by the state court overseeing the *res* in what would be a parallel action, *see Kline v. Burke Constr. Co.*, 260 U.S. 226, 229-33 (1922)—are all related to the state court's administration of a complex and previously unsettled area of South Carolina law. The state court should be allowed to continue its resolution of the case uninterrupted under the circumstances here.

The Supreme Court has held that the duty to exercise jurisdiction is not absolute, especially "where denying a federal forum would clearly serve an important countervailing interest." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). Among these countervailing interests are "ongoing, parallel state proceedings in cases where 'considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation' clearly favor abstention." *Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 248 (4th Cir. 2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). *Ackerman* also noted that the Supreme Court "has

identified various circumstances where abstention may be warranted, including . . . cases involving complex state administrative procedures." *Id.* at 248 (citing *Burford*, 319 U.S. at 315). Although the state court action here is not purely administrative, it is a similar scenario in which the receivership court is in charge of a complex docket that relies on Chief Justice Toal's expertise for efficient administration of the many claims before it.

Alternatively, this Court could retain the non-declaratory claims in the case pending the outcome of the state court process. *See Trustgard*, 942 F.3d at 204 (allowing the federal court to "decide any remaining coverage questions" after the state "court has a chance to settle . . . uncertainties" in the law). The state court will be focused on assessing the extent of the coverage issued by the insurers so that policy values can be determined and monies ultimately distributed to injured plaintiffs and their families. Although it would simplify matters to remand the entire case, the state court need not adjudicate the non-declaratory (breach of contract and bad faith) relief claims that could remain before this Court.

At this point, this Court's involvement in the questions of South Carolina insurance law will only "lead to confusion and unnecessary entanglement with the state-court lawsuit[s]." *Id.* at 202. Each underlying case on the South Carolina asbestos docket turns on complex issues of state law, and the state court has now opined on those issues. Thus, "[c]onsiderations of comity and judicial efficiency weigh strongly in favor of permitting the state court" to resolve the underlying issues—not preventing that from happening. *Id.* ("[T]he factual uncertainties in the record before us and the likelihood of entanglement with the state-court lawsuit compel us to dismiss the case.").

CONCLUSION

The Court's Opinion and Order denying Covil's Motion to Remand (ECF 67) should be reconsidered and the case remanded to state court.

Dated: March 19, 2020

Respectfully submitted,

s/ John B. White, Jr.
John B. White, Jr. (Fed. ID No. 04619)
Marghretta H. Shisko (Fed. ID No. 11601)
HARRISON WHITE, P.C.
178 West Main Street
P.O. Box 3547 (29304)
Spartanburg, SC 29306
(864) 585-5100
jwhite@spartanlaw.com
mshisko@spartanlaw.com

/s/ *Jescelyn Tillman Spitz*
Jescelyn Tillman Spitz, Esquire
Fed. ID: 12159
RIKARD & PROTOPAPAS, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Post Office Box 5640 (29250)
PH: (803) 978-6111
FAX: (803) 978-6112
EMAIL: jspitz@rplegalgroup.com

Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2020, I caused a true and correct copy of the foregoing *Motion to Reconsider Order Denying Remand to State Court* to be served on all counsel of record by email through the Court's CM/ECF system.

Dated: March 19, 2020

By: */s/ John B. White, Jr.*
John B. White, Jr.

CERTIFICATE OF CONFERENCE

I hereby certify that on March 17-18, 2020, counsel for Covil Corporation conferred (or attempted to confer) with counsel for the insurers concerning the relief sought in this *Motion to Reconsider Order Denying Remand to State Court*. Covil has moved to dismiss Sentry and TIG additionally takes no position in light of its settlement. The other insurers have either not responded to communication from Covil or sought clarification on the motion but not consented—they are presumed to oppose the relief sought here.

Counsel for Covil Corporation also conferred with counsel for the Underlying Asbestos Claimant Defendants, and they support the relief sought by way of this motion.

Dated: March 19, 2020

By: */s/ John B. White, Jr.*
John B. White, Jr.

EXHIBIT 53

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Peter D. Protopapas as Receiver for Covil Corporation,	§	
Plaintiff,	§	Civil No: 3:19-cv-01635-BHH
v.	§	
Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; and Zurich American Insurance Company,	§	
Defendants.	§	

PLAINTIFF'S MOTION TO ABSTAIN

Covil Corporation, by its duly appointed Receiver, Peter D. Protopapas, respectfully files this Motion to Abstain. The Fourth Circuit's recent decision in *Trustgard Insurance Company v. Collins*, 942 F.3d 195 (4th Cir. 2019), demonstrates that even if federal jurisdiction exists over the state-law claims against the Insurers, this Court should abstain from exercising such jurisdiction in favor of permitting those claims to be heard by the state court.

ARGUMENT AND AUTHORITIES

The Receiver filed this suit in state court against Wall, Templeton & Haldrup, P.A. ("the Law Firm") and Sentry Casualty Company, United States Fidelity and Guaranty Company, and Zurich American Insurance Company ("the Insurers"). Although the Receiver and the Law Firm are both citizens of South Carolina for jurisdictional purposes, the Insurers removed this case to federal court, invoking this Court's diversity jurisdiction by arguing the Law Firm was fraudulently joined. The Receiver has moved to remand to state court. ECF 20. If this Court chooses not to remand this case for lack of subject matter jurisdiction, this Motion should be

granted. As *Trustgard* demonstrates, the Court should not exercise jurisdiction in this case but should, instead, remand or abstain. 942 F.3d at 201-04.

A. Declaratory Claims that Overlap Significantly with State Court Issues Should Not Be Entertained by Federal Courts.

"In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995). Thus "'considerations of federalism, efficiency, and comity' should inform the district court's decision whether to exercise jurisdiction over a declaratory judgment action." *Penn-America Ins. Co. v. Coffey*, 368 F.3d 409, 412 (4th Cir. 2004) (quoting *Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 257 (4th Cir. 1996)).

The Fourth Circuit recently considered the exercise of jurisdiction under the Declaratory Judgment Act in circumstances similar to those here. *See Trustgard*, 942 F.3d at 204. There, the parties sought a declaration regarding insurance policies while the same issue was pending in state court. The Fourth Circuit held that the district court should have "consider[ed] whether 'federalism, efficiency, and comity' counsel[ed] against exercising jurisdiction when an ongoing proceeding in state court overlap[ped] with the federal case." *Id.* at 202 (quoting *Penn-America*, 368 F.3d at 412). Before entertaining declaratory judgment claims under state law, a district court should "look to (1) the state's interest in having its own courts decide the issue; (2) the state courts' ability to resolve the issues more efficiently than the federal courts; (3) the potential for unnecessary entanglement between the state and federal courts based on overlapping issues of fact or law; and (4) whether the federal action is mere forum-shopping." *Id.*

Following *Trustgard*, this Court should decline to exercise jurisdiction over the claims presented here. First, the State has a strong interest in resolving the underlying issues—especially in light of the need to carry out the Receivership Court's recent ruling and to ensure that its large

asbestos docket is managed both efficiently and according to South Carolina law. *See* Exhibit A, Order For Rule To Show Cause Hearing, Asbestos Cases (*Falls v. CBS Corp.*), C/A No.: 2015-CP-46-02155 (Court of Common Pleas, Sixth Judicial Circuit, Jan. 8, 2020) ("State Court Order"). As the Fourth Circuit explained in *New Wellington Financial Corporation v. Flagship Resort Development Corporation*, "[t]here exists an interest in having the most authoritative voice speak on the meaning of applicable law, and that voice belongs to the state courts when state law controls the resolution of the case." 416 F.3d 290, 297 (4th Cir. 2005) (quoting *Mitcheson v. Harris*, 955 F.2d 235, 237 (4th Cir. 1992)).

Here, "[t]he South Carolina Supreme court appointed [Chief Justice Toal] to serve as the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system." State Court Order at 2. Among her duties in that role is the supervision of the Covil receivership. The Receiver is vested with the "power and authority to fully administer all assets of Covil Corporation," which is "inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers." Exhibit B, Order Appointing a Receiver for Covil Corporation, *Taylor v. Air & Liquid Sys. Corp.*, No. 2018-CP-40-04940, at 1 (S.C. Cir. Ct. Nov. 2, 2018).

South Carolina and its courts have a strong interest in interpreting the South Carolina insurance law that applies to the dispute between the Receiver and the Insurers. The rulings on the declaratory judgment claim here have the potential to affect asbestos cases in South Carolina, wherein these insurance provisions often arise. This unsettled state law weighs against federal jurisdiction. *See Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 211 (4th Cir. 2006) (noting district courts properly decline discretionary jurisdiction where there is an "unsettled" state-law question);

Wilton, 515 U.S. at 288 n.2 ("We note that where the basis for declining to proceed is the pendency of a state proceeding, a stay will often be the preferable course, because it assures that the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the matter in controversy[.]"). Consistent South Carolina law—made by South Carolina courts—will yield more efficient and complete justice overall.

Second, the state court is in a better position to understand South Carolina insurance law (rather than needing to make an *Erie* guess) and can thus resolve the issues more efficiently than this Court. Chief Justice Toal has already issued key rulings about South Carolina insurance law and how it applies to the asbestos litigation against Covil (and the South Carolina Supreme Court will maintain review authority, of course, over the receivership court's ruling). *See* State Court Order at 14-20.

Rather than this Court making an *Erie* guess, these issues of insurance law should be decided by the state courts. *See Pullman*, 312 U.S. at 499 ("But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination."); *see also Burford v. Sun Oil Co.*, 319 U.S. 315, 327 (1943) ("As a practical matter, the federal courts can make small contribution to the well organized system of regulation and review which the Texas statutes provide."). It will be more efficient—and more fair to all parties involved—to allow the assessment of the policies to occur in the "single forum" of the receivership, which can provide a definitive resolution of the South Carolina state law questions from the courts of that State.[1]

[1] Even more delay and inefficiency will be created if the Fourth Circuit is forced to certify questions to the South Carolina Supreme Court on the very issues that will nonetheless be reviewed in the South Carolina court system if the issues raised here are allowed to percolate through those courts rather than being plucked out of that system in favor of another forum.

Third, because the state receivership court has already gone a long way toward resolving difficult issues of state insurance law, *see* State Court Order at 14-20, the potential for unnecessary entanglement between this Court and the state court on overlapping issues of fact or law has now materialized. *Cf. Burford*, 319 U.S. at 327-28 ("The most striking example of misunderstanding [state law and policy] has come where the federal court has flatly disagreed with the position later taken by a state court as to State law."). Because of these state rulings, as in *Trustgard*, this Court "[t]rying to resolve [insurers'] responsibility under the [policies in this action] would lead to confusion and unnecessary entanglement with the state-court lawsuit." 942 F.3d at 202.

Moving forward, the South Carolina state court will continue to make rulings on South Carolina insurance law in the context of each individual case and its unique facts. If this Court's rulings regarding policy interpretation conflict with that assessment, this Court's rulings will be "the epitome of an advisory opinion." *Id.* at 202; *see also Pullman*, 312 U.S. at 500 ("The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court."). This Court should avoid such unnecessary entanglement with state-law questions. *See Burford*, 319 U.S. at 334 ("Conflicts in the interpretation of state law, dangerous to the success of state policies, are almost certain to result from the intervention of the lower federal courts.").

Fourth, the Insurers' zealous approach to removal implies forum shopping. As the state court has noted, the Insurers would prefer to have these claims adjudicated in federal court. *See* State Court Order at 15-16 ("This Court is aware that, in seeking to limit their obligations to Covil, the insurers would prefer to rely exclusively on federal decisions attempting to 'guess' the view the Maryland Court of Appeals would take if the issue of interpreting the 'completed operations' provisions of the polices were presented to it.").

Under the Fourth Circuit's decision in *Trustgard*, even if this Court has jurisdiction, it should decline to exercise jurisdiction over the claims asserted under the Declaratory Judgment Act.

B. Abstention Doctrines Also Counsel in Favor of Foregoing Federal Resolution of the Non-Declaratory State-Law Claims at Issue Here.

This Court should also decline to exercise jurisdiction over the other claims because of their overlap with the Declaratory Judgment Act claim. In *Trustgard*, the Fourth Circuit noted that "even where jurisdiction is not discretionary, courts may abstain from exercising jurisdiction under certain circumstances that may intrude on the prerogative of state courts." 942 F.3d at 201. The insurance law issues involved in the non-declaratory claims are all related to the state court's administration of a complex and previously unsettled area of South Carolina law. The state court should be allowed to continue its resolution of the case uninterrupted by the circumstances here.

The Supreme Court has held that the duty to exercise jurisdiction is not absolute, especially "where denying a federal forum would clearly serve an important countervailing interest." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). Among these countervailing interests are "ongoing, parallel state proceedings in cases where 'considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation' clearly favor abstention." *Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 248 (4th Cir. 2013) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). *Ackerman* also noted that the Supreme Court "has identified various circumstances where abstention may be warranted, including . . . cases involving complex state administrative procedures." *Id.* at 248 (citing *Burford*, 319 U.S. at 315). Although the state court action here is not purely administrative, it is a similar scenario in which the receivership court is in charge of a

complex docket that relies on Chief Justice Toal's expertise for efficient administration of the many claims before it.

Alternatively, this Court could retain the non-declaratory claims against the Insurers in the case pending the outcome of the state court process. *See Trustgard*, 942 F.3d at 204 (allowing the federal court to "decide any remaining coverage questions" after the state "court has a chance to settle . . . uncertainties" in the law). The state court will be focused on assessing the extent of the coverage issued by the insurers so that policy values can be determined and monies ultimately distributed to injured plaintiffs and their families. Even if this Court did not find remand of the entire case appropriate under the *Colorado River* analysis, *see Great American*, 468 F.3d at 211, the non-declaratory claims could remain before this Court and be decided after (and in light of) the resolution of any insurance issues by the state court.

Given the ongoing state proceedings involving the complex and unsettled issues of state insurance law, "[c]onsiderations of comity and judicial efficiency weigh strongly in favor of permitting the state court" to resolve the underlying issues. *Trustgard*, 942 F.3d at 204.

CONCLUSION

This Court should grant the Receiver's motion and decline to exercise jurisdiction over the claims asserted against the Insurers.

Dated: March 26, 2020

Respectfully submitted,

/s/ *John B. White, Jr.*

John B. White, Jr. (Fed. ID No. 04619)
Marghretta H. Shisko (Fed. ID No. 11601)
Harrison White, P.C.
178 West Main Street
Spartanburg, South Carolina 29306
Telephone: (864) 585-5100
Facsimile: (864) 542-2994
Email: jwhite@spartanlaw.com

Jescelyn Tillman Spitz, Esquire
S.C. Bar No. 101880
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Post Office Box 5640 (29250)
Telephone: (803)978-6111
Facsimile: (803) 978-6112
Email: jspitz@rpleqalqroup.com

Mark W. Hardee, Esquire
S.C. Bar No. 7857
The Hardee Law Firm
2231 Devine Street, Suite 202
Columbia, South Carolina 29205
Telephone: (803)799-0905

G. Murrell Smith, Jr.
S.C. Bar No. 66263
Jonathan M. Robinson
S.C. Bar No. 68285
Smith, Robinson, Holler, Dubose & Morgan LLC
2530 Devine Street 1B
Columbia, South Carolina 29205
Telephone: (803) 254-5445

MORGAN, LEWIS & BOCKIUS LLP
Paul Anton Zevnik (Pro Hac Forthcoming)
Brady Edwards (Pro Hac Forthcoming)
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 739-3000

Attorneys for the Receiver of Covil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2020, I caused a true and correct copy of the foregoing *Motion to Abstain* to be served on all counsel of record by email through the Court's CM/ECF system.

Dated: March 26, 2020

By: /s/ *John B. White, Jr.*
John B. White, Jr., Esquire

EXHIBIT 54

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

COVIL CORPORATION by its Duly Appointed Receiver, PETER D. PROTOPAPAS, *Plaintiff,* v. ZURICH AMERICAN INSURANCE COMPANY; SENTRY CASUALTY COMPANY; UNITED STATES FIDELITY AND GUARANTY COMPANY; TIG INSURANCE COMPANY, as successor in interest to Fairmont Specialty Insurance Company, F/K/A Ranger Insurance Company; HARTFORD ACCIDENT AND INDEMNITY COMPANY; FIRST STATE INSURANCE COMPANY; TIMOTHY W. HOWE, personal representative of Wayne Erwin Howe; JEANNETTE HOWE; JERRY CRAWFORD; DENVER TAYLOR AND JANICE TAYLOR; and JAMES COLEMAN SIZEMORE, personal representative of James Calvin Sizemore, *Defendants*.	§	NO. 7:18-cv-03291-BHH

REPLY TO ZURICH'S RESPONSE TO MOTION FOR CLARIFICATION AND/OR RECONSIDERATION OF ORDER ENJOINING RECEIVER

Covil Corporation, by its duly appointed Receiver, Peter D. Protopapas (the "Receiver"), respectfully files this reply in support of its motion for clarification and/or reconsideration of this Court's Opinion and Order issued February 27, 2020, in answer to the response filed by Defendant Zurich American Insurance Company ("Zurich") (ECF 131).

Zurich abandons the Insurers' arguments (which this Court adopted) that the injunction is permissible under the second exception to the Anti-Injunction Act, which permits a federal court

to enjoin a state proceeding "where necessary in aid of its jurisdiction," 28 U.S.C. § 2283. *Compare* Order at 7 (noting Harford's argument that an injunction "is necessary in aid of this Court's jurisdiction"), *and* Order at 25 (finding that the injunction is proper as "necessary in aid of [this Court's] jurisdiction"), *with* Zurich Resp. at 15-16 (admitting that this exception to the Anti-Injunction Act cannot justify the injunction). Although Zurich attempts to recharacterize this Court's reasoning, the plain text of the opinion is unambiguous, and even Zurich is unwilling to defend these erroneous arguments.

Zurich instead rests its defense of the injunction entirely on the first exception to the Anti-Injunction Act, which permits a federal court to enjoin a state proceeding when "expressly authorized by Act of Congress." 28 U.S.C. § 2283. But Zurich fails to quote any statute "expressly authorizing" this Court to enjoin the state proceeding. Standing alone, that failure requires reconsideration of the injunction as a clear error of law.

Zurich's theory is that the state proceeding can be enjoined because it "subvert[s] this Court's removal jurisdiction over the coverage issues." Zurich Resp. at 7. That argument contains numerous flaws. Removal jurisdiction extends over *cases*, not over *issues*. Not only is there no express authorization to enjoin any state proceeding that threatens removal jurisdiction, but it is a bedrock principle of law—not open to serious debate—that overlap between substantive issues pending in federal and state court does not threaten a federal court's jurisdiction, removal or otherwise. *E.g.*, *Vendo Co. v. Lektro–Vend Corp.*, 433 U.S. 623, 642 (1977); *Atl. Coast Line R.R. Co. v. Locomotive Eng'rs*, 398 U.S. 281, 294-97 (1970); *see also Adkins v. Nestle Purina PetCare Co.*, 779 F.3d 481, 485 (7th Cir. 2015) ("[T]he prospect of a state court reaching decision first, making federal decision unnecessary (or the federal case harder to adjudicate), does not justify a federal injunction against the state litigation.").

Zurich's arguments confirm that the injunction violates the Anti-Injunction Act and should be reconsidered.[1]

ARGUMENT

I. There Is No "Express Authorization" to Enjoin State-Court Proceedings that Have Issues Overlapping with a Removed Case.

Zurich's primary argument (at 11-15) is that the federal removal statute constitutes "express authorization" by Congress for entry of the injunction. Revealingly, Zurich never actually quotes the text of the statute that it relies on as expressly authorizing this Court with broad authority to enjoin state proceedings.

The federal removal statute provides only that once a case is removed to federal court, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C. § 1446(d). By the statute's terms, the state court must not act in "the case" that has been removed. Federal courts have interpreted this provision as expressly authorizing injunctions against further proceedings in the removed case—*i.e.*, the federal case.

The Fourth Circuit recognized the narrow scope of the express authorization, noting that Section 1446(d) "speaks only in terms of the removed case." *Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 250 (4th Cir. 2013). "Because the statute focuses only on the removed case, it . . . restricts the state court's actions only as to the removed case." *Id.* "There simply is no language in the statute that reasonably can be interpreted as constraining the state court's authority over any case other than the case that was removed to federal court." *Id.*

---

[1] The injunction is made more suspect because of questions surrounding the exercise of jurisdiction here in the first instance. *See Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 202-04 (4th Cir. 2019). That issue may be addressed here under the clear error exception to Rule 59. *Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007).

Although it acknowledges that the Fourth Circuit had not addressed the issue, *Ackerman* notes that other courts of appeals read the statute to authorize federal injunctions against "copycat" cases filed in state court—"actions involving essentially the same parties and claims that are filed in state court after removal of the original action." *Id.* at 251. Enjoining "copycat" actions is authorized because the cases are simply the removed case filed a second time in state court after removal. *Id.* (citing *Kan. Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 77 F.3d 1063, 1069 (8th Cir. 1996) ("[A]fter removal the plaintiff cannot file essentially the same case in a second state action[.]"); *Lou v. Belzberg*, 834 F.2d 730, 741 (9th Cir. 1987) (enjoining filing of "essentially the same suit")). The key to these cases is whether there is a subversion of removal by the fraudulent act of refiling the same case. *Davis Int'l, LLC v. New Start Grp. Corp.*, 488 F.3d 597, 605 (3d Cir. 2007); *Lou*, 834 F.2d at 741; *see also Frith v. Blazon–Flexible Flyer, Inc.*, 512 F.2d 899, 901 (5th Cir. 1975) (per curiam) ("[W]here no fraud is found, the second action brought in state court should not be enjoined."). But the extension to "copycat actions" is the outer bounds of any express authorization for injunctions under Section 1446(d).

Zurich's argument—that Section 1446(d) expressly authorizes federal courts to enjoin *any state proceeding* that addresses the same issues as a removed case—has no support in the statute's text, and the argument directly conflicts with the Fourth Circuit's holding in *Ackerman* that "[t]here simply is no language in the statute" limiting state authority in "any case other than the case that was removed." 734 F.3d at 250.

Zurich's only authority supporting its request for this Court to disregard the Fourth Circuit is a district court decision from Georgia, which involved abusive litigation tactics (such as not serving the defendant and seeking a fraudulent consent judgment) and a copycat, subsequently-

filed lawsuit. *Ware v. FleetBoston Fin. Corp.*, No. 1:05-CV-426-MHS, 2005 WL 8155079, at *2 (N.D. Ga. May 26, 2005). It offers no support to Zurich.

Because there is no express authorization to enjoin any case other than the removed case (or copycat actions filed after removal), the injunction ordered by this Court violates the Anti-Injunction Act. Zurich's argument confirms that the injunction is indefensible and should be reconsidered.

II. Parallel State Actions Do Not Subvert the Jurisdiction—Removal or Otherwise—of a Federal Court.

Even if the Fourth Circuit were wrong in *Ackerman* and Section 1446(d) expressly authorized federal courts to enjoin any state proceeding that threatened the court's removal jurisdiction, the injunction ordered by this Court would still violate the Anti-Injunction Act. It is well-established that parallel state and federal proceedings involving the same issues do not threaten a federal court's jurisdiction.

As an initial matter, Zurich misunderstands this Court's removal jurisdiction, suggesting that this Court has "removal jurisdiction over the coverage issues." Resp. at 7. This characterization is mistaken: federal courts have jurisdiction over *cases*, not *issues*. *See* U.S. Const. art. III, § 2 (providing jurisdiction over "cases" and "controversies").[2] And "a court's subject-matter jurisdiction defines its power to hear *cases*." *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 560 (2017) (emphasis added). Consistent with this rule, as a grant of subject matter jurisdiction, removal jurisdiction is the power of a federal court to hear and decide a *case* that has

[2] Although jurisdiction also exists to "controversies," the Supreme Court has noted that if that term is "distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239 (1937).

been removed from state to federal court. *See Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 641 (2006) (discussing "cases removed under the general removal statute").

When this case was removed to federal court, this Court acquired jurisdiction over the *case*; this Court did not—as Zurich suggests (at 7)—somehow acquire exclusive jurisdiction over the *issues* in the case. A state court proceeding involving the same issues does not threaten this Court's jurisdiction.

This proposition is not open to serious dispute. The Supreme Court and courts of appeals have explained time and again that a federal court's jurisdiction is not threatened merely because the same issues are pending before a state court: state and federal courts regularly exercise "concurrent jurisdiction," and "neither court [i]s free to prevent either party from simultaneously pursuing claims in both courts." *Atlantic Coast*, 398 U.S. at 295; *see also, e.g.*, *Vendo*, 433 U.S. at 642 ("We have never viewed parallel in personam actions as interfering with the jurisdiction of either court."); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 230 (1922) ("[A]n action brought to enforce such a [personal] liability does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending."); *Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1101 (9th Cir. 2008) (holding that the Anti-Injunction Act does "not authorize interference with parallel in personam state actions merely because the state courts might reach a conclusion before the district court does"); *Burr & Forman v. Blair*, 470 F.3d 1019, 1029 (11th Cir. 2006) ("Nor is an injunction necessary in aid of a federal court's jurisdiction when the same claim is being pursued simultaneously in a state court proceeding."); *Texas v. United States*, 837 F.2d 184, 186 n.4 (5th Cir. 1988) ("In no event may the 'aid of jurisdiction' exception be invoked merely because of the prospect that a concurrent state proceeding might result in a judgment inconsistent with the federal court's decision."); *Lou*, 834 F.2d at 740 ("The mere existence of a

parallel action in state court does not rise to the level of interference with federal jurisdiction necessary to permit injunctive relief under the 'necessary in aid of' exception."). Any number of cases could be cited for the same proposition: parallel issues pending in state and federal court do not threaten a federal court's jurisdiction.

Zurich's only response is that these cases do not involve *removal jurisdiction*. Zurich Resp. at 16. But this no answer. The Supreme Court (and courts of appeals) have unequivocally held that parallel litigation does not threaten a federal court's *jurisdiction*, removal or otherwise. Zurich argues precisely the opposite: that parallel litigation does threaten a particular form of a federal court's jurisdiction. But the broad holdings of these cases vitiate Zurich's arguments. One might as well attempt to distinguish a Supreme Court holding about "cars" on the ground that "red cars" were not at issue. Indisputable law holds that state proceedings do not threaten a federal court's jurisdiction—removal, diversity, admiralty, or otherwise—merely because the same issues will be decided in both.

Indeed, the purpose of the Anti-Injunction Act was to eliminate the temptation for federal courts to enjoin state proceedings merely because the federal court viewed the parallel state proceeding as a threat. *See Pelfresne v. Vill. of Williams Bay*, 917 F.2d 1017, 1019 (7th Cir. 1990) ("The main purpose of the Anti–Injunction Act is to avoid the affront to comity (the mutual respect of sovereigns) that would be entailed if a court of one sovereign, namely a federal court, attempted to enjoin proceedings in the court of another sovereign, namely a state court."); *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (noting the Act's purpose of "[p]revention of frequent federal court intervention" and allowing state proceedings "to continue unimpaired by intervention of the lower federal courts").

Even if Section 1446(d) expressly authorized this Court to enjoin any proceeding that threatened its removal jurisdiction, the nexus in the substantive issues between the state and federal cases does not threaten this Court's jurisdiction. Zurich identifies no authority to the contrary. Because the injunction violates the Anti-Injunction Act, it should be reconsidered and vacated.

III. This Court Should Also Reconsider the Injunction in Light of Both Fourth Circuit Precedent and the Recent State-Court Ruling.

As noted previously (at ECF 109 at 16-19), this Court should have followed the *Trustgard* factors and declined to exercise jurisdiction over the injunction request in the first instance. Although Zurich is correct that this line of argument could have been raised previously, the clear legal error underlying the exercise of jurisdiction over the state-law claims here justifies reversal. *See Zinkand*, 478 F.3d at 637.

Moreover, Chief Justice Toal's recent decision on South Carolina insurance law weighs heavily under *Trustgard* in favor of allowing the state court to resolve the underlying state-law questions at issue here. Contrary to the Zurich's description, this case does not merely involve "a declaration of parties' rights under an insurance policy." Zurich Resp. 19 (quoting *United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 494 (4th Cir. 1998)). Instead, the underlying issues involve difficult and unsettled questions of South Carolina insurance law that are best left to the state court. Beyond that, Zurich (at 20) wants to use the injunction to justify cutting off the entanglement between this Court and the state court. But this only begs the question. Moreover, the state court has already provided direction on significant questions of South Carolina law—prior to the injunction here being issued—and Zurich's request that this Court compel the Receiver into unwinding that decision is unprecedented.

Finally, Zurich implies (at 20-21) that the Receiver acted inappropriately by proceeding in state court, despite the absence of any injunction from this Court barring the Receiver's actions. This is not improper and does not weigh against the arguments here for abstention under *Trustgard*.

Zurich's additional arguments for avoiding abstention fare even worse. It asserts (at 21)—without proof—that "the interpretation of insurance policies [here] will not interfere with the adjudication of the asbestos tort claims in state court." This is far from the truth. The state court—overseeing a functionally administrative docket—must resolve the insurance policies in order to proceed. That was the reason the state court was even more frustrated with the Insurers' continual refusal to participate in the proceedings there. Moreover, it is the Insurers' "jurisdictional gamesmanship" in expanding exceptions to the Anti-Injunction Act beyond all recognition that misled this Court into enjoining a bevy of state-court lawsuits. Lastly, Zurich attempts (at 22-23) to play off the Insurers' culpability in (1) secretly operating Covil as an alter ego without the knowledge of the courts in order to (inappropriately) control its asbestos litigation; and (2) undertaking sanctionable conduct to spoliate evidence. Far from "discharging a contractual duty to defend," the Insurers—as the state court recognized—triggered the appointment of a receiver and potential investigations into their conduct precisely by *not* fulfilling their duties to Covil.

The entanglement between this Court and the state court over issues of law and fact has already taken place, and this Court should decline to extend its jurisdiction further through the injunction. *Trustgard*, 942 F.3d at 202-04. These serious questions concerning the exercise of jurisdiction add even more weight to the state court side of the scale.

CONCLUSION

The Court's Opinion and Order instituting an injunction against the Receiver should be reversed.

Dated: April 1, 2020

Respectfully submitted,

/s/ John B. White, Jr.

John B. White, Jr. (Fed. ID 04619)
Marghretta H. Shisko (Fed. ID 11601)
HARRISON WHITE P.C.
178 West Main Street
Spartanburg, South Carolina 29306
Tel.: (864) 585-5100
jwhite@spartanlaw.com
mshisko@spartanlaw.com

Jescelyn Tillman Spitz (Fed. ID: 12159)
RIKARD & PROTOPAPAS, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Post Office Box 5640 (29250)
PH: (803) 978-6111
FAX: (803) 978-6112
EMAIL: jspitz@rplegalgroup.com

Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2020, I caused a true and correct copy of the foregoing *Reply to Zurich's Response to Motion for Reconsideration of Order Enjoining Receiver* to be served on all counsel of record by email through the Court's CM/ECF system.

Dated: April 1, 2020 By: */s/ John B. White, Jr.*

EXHIBIT 55

CERTIFIED POLICY

This certification is affixed to a policy which is a true and accurate copy of the document in the company's business records as of the date shown below.

No additional insurance is afforded by this copy.

Fidelity and Guaranty Insurance Underwriters, Inc.

Name of Insuring Company(ies)

SMP 490049	03/31/76 - 03/31/79	09/24/19
Policy Number(s)	**Policy Period(s)**	**Date**

Kenneth Kupec, Second Vice President
BI Document Management

...re, Maryland 2101

...STATE ...LITY AND GUARANTY ...

...FIDELITY AND GUARANTY COMPANY

[X] FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

USE BLOCKS AT RIGHT FOR REVISIONS OF REINSURANCE AFTER INCEPTION DATE	NET	NET
	DATE UND.	DATE UND.

No. SMP 490049 F&GIU

NEW / RENEWAL OF NUMBER — USE PROPER

CR 3A1 | CARDED BY ES | INSP. NO.

OTHER LINES SAME RISK OR ADJOINING (SEE MAP CARD) ☐ YES ☐ NO

No. SMP 490049

1. Named Insured and P. O. Address

COVIL CORPORATION, ETAL (SEE GEN. 166)
P. O. Box 1804
Greenville, S. C. 29602

DESTROY

2. Policy Period 3-31-76 (Inception) 3-31-79 (Expiration)
12:01 A.M. Standard Time at location of described property
MAR 31 1976

3. The Named Insured is: ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other Entity Occupancy of Premises

4. Location of Premises (Enter "Same" if same location as above)

1. See MLB-22
2.
3.

I certify this is a true copy.
Linda C. Poole

RECEIVED MAR 26 1976 S. C.

Date JUL 10 1978
CANCELLATION
APPROVED

3/31/76

5. Insurance is provided with respect to those premises described above and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:

SECTION	COVERAGE			Coinsurance Percentage Applicable	LIMIT OF LIABILITY Loc. No. / Bldg. No.	Loc. No. / Bldg. No.	Loc. No. / Bldg. No.
I PROPERTY COVERAGE	DIVISION 1.	Cov. A — Building(s)			$ See MLB-22	$	$
		Cov. B — Personal Property			$	$	$
		Addl. Cov. (Specify)			$	$	$
		Loss Deductible Clause No. 1 is ____ applicable.			Loss Deductible Clause No. 2 is ____ applicable.		
	DIVISION 2.	Addl. Cov. (Specify)			$	$	$

	COVERAGE	LIMIT OF LIABILITY		
II LIABILITY COVERAGE	Cov. C — Bodily Injury and Property Damage Liability	$ See MLB-21 each occurrence	$	aggregate
	Cov. D — Premises Medical Payments	$ 1,000 each person	$ 10,000	each accident
	Addl. Cov. (Specify)	$	$	$
III	CRIME COVERAGE ☐	(Limits as stated in the endorsement, made part of this Policy, if indicated by ☒.		
IV	BOILER AND MACHINERY COVERAGE ☐			

6. Forms and Endorsements made part of this Policy at time of issue: (Insert No. and Edition Date) See Schedule of Applicable Forms per Gen. 170 Attached.

7. Mortgagee: (NAME AND ADDRESS)

8. The Total Provisional Premium is $ 117,747, and is payable $ 39,289 at inception, and $ 39,229 at each anniversary.
Countersignature Date 3-31-76 Agency at Greenville, S. C.

SAM J. CRAIN CO., INC. Agent

No. SMP 490049

☐ SUBJECT TO AUDIT

UNDERWRITING COPY

THE USF&G COMPANIES

SPECIAL MULTI-PERIL POLICY

except for the existence of this insurance, then the Company shall be liable as follows:

a. If such insurance is Contributing Insurance, defined as any insurance written in the name of the insured, upon the same plan, terms, conditions and provisions as contained in this policy whether collectible or not, the Company shall be liable for no greater proportion of any loss than the limit of liability under this policy bears to the whole amount of insurance covering such property.

b. If such insurance is Specific Insurance, defined as any insurance other than that described as Contributing Insurance in a. above, the Company shall not be liable for any loss hereunder until the liability of such Specific Insurance has been exhausted, and then shall cover only such amount as may exceed the amount due from such Specific Insurance whether collectible or not) after application of any contribution, coin-

IMPORTANT NOTICE

PLEASE READ YOUR POLICY CAREFULLY

This policy may contain changes in coverage from those afforded in prior policies. In order to thoroughly understand your current coverage, reference must be made to this entire policy. Consult your agent for any assistance you may require.

1973
Fire
Bill Phelan
F.P.M.
2/81

THE USF&G COMPANIES

United States Fidelity and Guaranty Company

Fidelity and Guaranty Insurance Underwriters, Inc.

The issuing company is designated on the declarations

SPECIAL MULTI-PERIL POLICY

The United States Fidelity and Guaranty Companies — leaders in the insurance industry in America — stand ready to serve you at all times through a national network of service offices.

This policy is written through your local, independent insurance agent who has the facilities to provide insurance protection designed for your specific needs . . . consult him as you would your doctor or lawyer.

POLICY PROVISIONS—PART ONE

Fire 800 (Standard) Rev. 1-1-73

THE FOLLOWING PROVISIONS APPLY TO SECTIONS I AND II

A. WAR RISK AND GOVERNMENTAL ACTION EXCLUSION: Under Section I as respects perils other than fire (which is otherwise provided for on Page 2 of this policy) and under Section II as respects liability assumed by the insured under any incidental contract or as to first aid or medical expense, this policy shall not apply to loss, bodily injury, or property damage caused, directly or indirectly, by or due to any act or condition incident to the following:

1. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;
2. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or custom's regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

B. LIBERALIZATION CLAUSE: If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Company there be adopted, or filed with and approved or accepted by the insurance supervisory authorities, all in conformity with law, any changes in the form attached to this policy by which this form of insurance could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the insured hereunder as though such endorsement or substitution of form had been made.

C. INSPECTION AND AUDIT: The Company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the named insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

D. CANCELLATION (NOT APPLICABLE IN THE STATES OF MASSACHUSETTS AND MINNESOTA): The words "five days" in the cancellation provision on Page 2 of the policy are deleted and the words "ten days" are substituted therefor.

E. SUBROGATION: In the event of any payment under this policy, the Company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

F. CONFORMITY WITH STATUTE: The terms of this policy and forms attached hereto which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

G. POLICY PERIOD, TERRITORY:

1. Section I of this policy applies only to loss to property during the policy period while such property is within the fifty states of the United States of America and the District of Columbia.
2. Section II of this policy applies only to bodily injury or property damage which occurs during the policy period within the policy territory; "policy territory" means:
   a. the United States of America, its territories or possessions, or Canada, or
   b. international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
   c. anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph a. above, provided the original suit for such damages is brought within such territory.

H. TIME OF INCEPTION: To the extent that coverage in this policy replaces coverage in other policies terminating at 12:01 A.M. (Standard Time) on the inception date of this policy, this policy shall be effective at 12:01 A.M. (Standard Time) instead of at Noon Standard Time.

THE FOLLOWING PROVISIONS APPLY TO SECTION I

A. NUCLEAR CLAUSE: The word "fire" in this policy is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy; however, subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

B. NUCLEAR EXCLUSION: Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against by this policy; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke". This clause applies to all perils insured against hereunder except the perils of fire and lightning, which are otherwise provided for in the Nuclear Clause above.

C. NO CONTROL: This insurance shall not be prejudiced:

1. by any act or neglect of the owner of any building if the insured is not the owner thereof, or by any act or neglect of any occupant (other than the insured) of any building, when such act or neglect of the owner or occupant is not within the control of the insured, or
2. by failure of the insured to comply with any warranty or condition contained in any form or endorsement attached to this policy with regard to any portion of the premises over which the insured has no control.

D. PROTECTIVE SAFEGUARDS: It is a condition of this insurance that the insured shall maintain so far as is within his control such protective safeguards as are set forth by endorsement hereto.

Failure to maintain such protective safeguards shall suspend this insurance, only as respects the location or situation affected, for the time of such discontinuance.

E. IMPAIRMENT OF RECOVERY: Except as noted below, the Company shall not be bound to pay any loss if the insured shall have impaired any right of recovery for loss to the property insured; however it is agreed that:

1. as respects property while on the premises of the insured, permission is given the insured to release others in writing from liability for loss prior to loss, and such release shall not affect the right of the insured to recover hereunder, and
2. as respects property in transit, the insured may, without prejudice to this insurance, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

F. OTHER INSURANCE:

1. Loss by fire or other perils not provided for in 2. below: If at the time of the loss, there is other insurance available to the insured or any other interested party covering such loss or which would have covered such loss

Insert Declarations Page (Part Two), Form and Endorsements

Insert Declarations Page (Part Two), Form and Endorsements here so that top edge butts against fold of Contract, and permits policy numbe n Declarations Page to appear through window.

except for the existence of this insurance, then the Company shall be liable as follows:

a. If such insurance is Contributing Insurance, defined as any insurance written in the name of the insured, upon the same plan, terms, conditions and provisions as contained in this policy whether collectible or not, the Company shall be liable for no greater proportion of any loss than the limit of liability under this policy bears to the whole amount of insurance covering such property.

b. If such insurance is Specific Insurance, defined as any insurance other than that described as Contributing Insurance in a. above, the Company shall not be liable for any loss hereunder until the liability of such Specific Insurance has been exhausted, and then shall cover only such amount as may exceed the amount due from such Specific Insurance (whether collectible or not) after application of any contribution, coinsurance, average or distribution or other clauses contained in policies of such Specific Insurance affecting the amount collectible thereunder, not exceeding however, the applicable limit of liability under this policy.

2. Loss by burglary, robbery or theft or loss of personal property covered on an unspecified peril basis: Insurance under this policy shall apply as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy.

3. When loss under this policy is subject to a deductible, the Company shall not be liable for more than its pro rata share of such loss in excess of the deductible amount.

G. **NO BENEFIT TO BAILEE:** This insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee for hire.

H. **LOSS PAYABLE CLAUSE:** Loss if any, shall be adjusted with the named insured and shall be payable to him unless other payee is specifically named hereunder.

I. **REPORT TO POLICE:** When either a loss or occurrence takes place, the insured shall give notice thereof to the proper police authority if loss or occurrence is due to a violation of a law.

THE FOLLOWING PROVISIONS APPLY TO SECTION II

A. **MODIFICATION OF TERMS:** Provisions on Page 2, other than those pertaining to waiver, cancellation and concealment and fraud, do not apply.

B. **FINANCIAL RESPONSIBILITY LAWS:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

C. **PREMIUM:** All premiums for this insurance shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "provisional premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each annual period (or part thereof terminating with the end of the policy period), the earned premium shall be computed for such period and, upon notice thereof to the named insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the named insured the unearned portion paid by the named insured.

The named insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Company at the end of the policy period and at such times during the policy period as the Company may direct.

D. **INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT:**

1. In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable.

2. If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

3. The insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

E. **MEDICAL REPORTS, PROOF AND PAYMENT OF CLAIM — COVERAGE D:** As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim for medical expense, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

F. **OTHER INSURANCE:** This insurance is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

1. **Contribution by Equal Shares:** If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

2. **Contribution by Limits:** If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

G. **ACTION AGAINST COMPANY:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

H. **NUCLEAR EXCLUSION:**

1. This policy does not apply:

a. Under any Liability Coverage, to bodily injury or property damage

(1) with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

(A)

c. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

(1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispersed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

2. As used in this provision: "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or byproduct material; "source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph a. or b. thereof; "nuclear facility" means

a. any nuclear reactor,

b. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

c. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material; "property damage" includes all forms of radioactive contamination of property.

DEFINITIONS—SECTION II

When used in the provisions applicable to Section II of this policy (including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

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

(1) when all operations to be performed by or on behalf of the named insured under the contract have been completed,

(2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed, or

(3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

The completed operations hazard does not include bodily injury or property damage arising out of (1) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof, (2) the existence of tools, uninstalled equipment or abandoned or unused materials, or (3) operations for which the classification stated in the policy or in the Company's manual specifies "including completed operations";

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement;

"insured" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Company's liability;

"insured premises" means (1) the premises designated in the Declarations, (2) premises alienated by the named insured (other than premises constructed for sale by the named insured), if possession has been relinquished to others, and (3) premises as to which the named insured acquires ownership or control and reports his intention to insure such premises under this policy and no other within 30 days after such acquisition; and includes the ways immediately adjoining such premises on land;

"medical expenses" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services;

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"named insured" means the person or organization named in Item 1 of the Declarations of this policy;

"named insured's products" means goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but "named insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

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

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

If coverage under this policy is provided by the Fidelity and Guaranty Insurance Underwriters, Inc., as indicated by the Declaration Page attached, the following shall apply:

The entire liability under this policy is reinsured by United States Fidelity and Guaranty Company, Baltimore, Maryland, and the insured is hereby given and granted the same rights of recovery against United States Fidelity and Guaranty Company as the insured has against Fidelity and Guaranty Insurance Underwriters, Inc. It is hereby agreed and acknowledged that the liability created hereunder is a joint and/or several obligation.

UNITED STATES FIDELITY AND GUARANTY COMPANY

William F. Spliedt
Secretary

(5)

Willford Gragg
President

No. 525-1
Ala.-Fla.
Ga.-S. C.
(Edition 5-64)

LOST POLICY CANCELLATION RELEASE

Dated March 31, 19 78

IN CONSIDERATION OF $ 52531, receipt of which is hereby acknowledged, being the unearned portion of premium upon cancellation of Policy No. SMP 490049
of the FIDELITY & GUARANTY INSURANCE UNDERWRITERS, INC.
(NAME OF INSURANCE COMPANY)
issued at its Greenville, South Carolina Agency,
(CITY OR TOWN) (STATE)
and said policy having been lost or mislaid, it is hereby agreed by the Undersigned that said policy is hereby cancelled and terminated as of 12 o'clock noon (Standard Time) on the date hereof at the place where the property described in the said policy is located, and it is hereby agreed that no claim whatever will be made for any loss under said policy, and if found, said policy will be returned to this Company forthwith and without further compensation.

Signed COVIL CORPORATION ETAL
(INSURED)

Signed _____
(MORTGAGEE)

Signed _____
(INSURED)

Signed _____
(MORTGAGEE)

RECEIVED
MAY 1 1978
COLUMBIA, S. C.

Sam J. Crain Agent.
SAM J. CRAIN & CO., INC.

NOTES TO AGENTS:

1. Send direct to Company.
2. The policy should not be admitted as lost without a search.
3. This Release should be signed by [illegible] named in the policy and, when a Mortgage Clause is attached, should be signed by ALL named Mortgagees.

RECEIVED APR 2 6 1978

No. 525-1 (8-64) (Ala.-Fla.-Ga.-S. C.)

No. 525-1 (8-64) (Ala.-Fla.-Ga.-S. C.)

TYPE AB

Named Insured Endorsement:

COVIL CORPORATION, & PALMER COVIL & G. & C. REALTY CO., INC., COVIL CONSTRUCTION CO., INC. & INDUSTRIAL ASSOCIATES, INC., A WHOLLY OWNED SUBSIDIARY OF COVIL CORPORATION.

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Splidt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

Willford Grace
President

Countersigned by.....
Authorized Representative

General 166 (8/73)

DO NOT TYPE ABOVE THIS LINE

SCHEDULE OF FORMS AND APPLICABLE ENDORSEMENTS:

✓ MLB-21(1-73)	MLB-202(1-73)
✓ MLB-22(10-66)	✓ MLB-300(1-71)
✓ MLB-66(11-69)	MLB-400(1-71)
MLB-100(2-71)	✓ MLB-401(1-71)
MLB-101(5-69)	MLB-402(1-71)
MLB-102(2-71)	✓ CAS.205(4-74)
MLB-109(2-71)	✓ MARINE-319(11-71)
✓ MLB-121(3-71)	✓ GEN.166(8-73)
✓ MLB-122(5-69)	✓ GEN.170(3-70)
✓ MLB-156(1-71)	✓ FIRE-263(12-71)
✓ MLB-16(11-69)	✓ CAS.71(3-72)
MLB-200(1-73)	

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Spliedt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

Williford Gragg
President

Countersigned by.....
Authorized Representative

General 170 (3-70) ⊙

SMP GENERAL PROPERTY FORM
SECTION I — PROPERTY COVERAGE

I. PROPERTY COVERED

COVERAGE A — BUILDING(S): When the insurance under this policy covers buildings, such insurance shall also cover all additions and extensions attached thereto; all fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building; materials and supplies intended for use in construction, alteration or repair of the buildings; yard fixtures; personal property of the insured as landlord used for the maintenance or service of the described buildings, and including fire extinguishing apparatus, floor coverings, refrigerating, ventilating, cooking, dishwashing and laundering equipment, shades and outdoor furniture (but not including other personal property in apartments or rooms furnished by the insured as landlord); all while at the described locations.

★ **COVERAGE B — PERSONAL PROPERTY:** When the insurance under this policy covers personal property, such insurance shall cover only business personal property owned by the insured and usual to the occupancy of the insured, including bullion, manuscripts, furniture, fixtures, equipment and supplies, not otherwise covered under this policy, and shall also cover the insured's interest in personal property owned by others to the extent of the value of labor and materials expended thereon by the insured, all while in or on the described buildings, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

This coverage shall also include Tenant's Improvements and Betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the buildings occupied but not owned by the insured and made or acquired at the expense of the insured exclusive of rent paid by the insured, but which are not legally subject to removal by the insured.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage B — Personal Property at such location, as an additional amount of insurance, to cover for the account of the owners thereof (other than the named insured) direct loss by a peril insured against to personal property, similar to that covered by this policy, belonging to others while in the care, custody or control of the named insured and only while on the described premises or within 100 feet thereof.

Loss shall be adjusted with the named insured for the account of the owners of the property, except that the right to adjust any loss with the owners is reserved to the Company and the receipts of the owners in satisfaction thereof shall be in full satisfaction of any claim by the named insured for which payments have been made. As respects personal property belonging to others, this provision shall replace any loss payable provision of this policy.

The Coinsurance Clause of this form or the Value Reporting and Full Reporting Clauses of the Reporting Provisions of any other form made a part of this policy shall not apply to this coverage, and when applying said clauses to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL — COVERAGE A — BUILDING(S) OR COVERAGE B — PERSONAL PROPERTY: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril insured against. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

II. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Animals and pets; aircraft; watercraft, including motors, equipment and accessories (except rowboats and canoes, while out of water and on the described premises); and automobiles, trailers, semi-trailers or any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured.
This exclusion does not apply to the following types of property when held for sale or sold but not delivered and specifically covered by endorsement:
1. Animals and pets.
2. Motorcycles and motor-scooters.
3. Trailers designed for use with private passenger vehicles for general utility purposes or carrying boats.
4. Watercraft, including motors, equipment and accessories, while not afloat.

B. Outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls not constituting a part of building; walks, roadways and other paved surfaces; unless such items are specifically covered by endorsement.

C. The cost of excavations, grading or filling; foundations of buildings, machinery, boilers or engines which foundations are below the undersurface of the lowest basement floor, or where there is no basement, below the surface of the ground; pilings, piers, pipes, flues and drains which are underground; pilings which are below the low water mark.

D. Outdoor signs, whether or not attached to a building unless specifically covered by endorsement.

E. Household and personal effects contained in living quarters occupied by the insured, any officer, director, stockholder or partner of the insured or relatives of any of the foregoing, except as provided in the Extensions of Coverage or unless specifically covered by endorsement.

F. Growing crops and lawns. ★

G. Trees, shrubs and plants, except when held for sale or sold but not delivered, or to the extent provided in the Extensions of Coverage.

H. Property which is more specifically covered in whole or in part under this or any other contract of insurance.

III. PERILS INSURED AGAINST

This policy insures under Section I against all direct loss to the property covered under this form caused by the following perils, except as otherwise specifically provided:

A. Fire.

B. Lightning.

C. Windstorm and Hail:

1. The Company shall not be liable as respects these perils for loss caused directly or indirectly by frost or cold weather or ice (other than hail), snow or sleet, whether driven by wind or not.
2. The Company shall not be liable as respects these perils for loss to the interior of the buildings or the property covered therein caused
   a. by rain, snow, sand or dust, whether driven by wind or not, unless the buildings covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct action of wind or hail and then shall be liable for loss to the interior of the buildings or the property covered therein as may be caused by rain, snow, sand or dust entering the buildings through openings in the roof or walls by direct action of wind or hail; or
   b. by water from sprinkler equipment or other piping, unless

such equipment or piping be damaged as a direct result of wind or hail.

3. Unless specifically covered by endorsement, the Company shall not be liable as respects these perils for damage to the following property:
   a. grain, hay, straw or other crops outside of buildings;
   b. windmills, windpumps or their towers;
   c. crop silos or their contents;
   ★ d. metal smokestacks or, when outside of buildings, awnings or canopies (fabric or slat) including their supports;
   e. outdoor radio or television antennas including their lead-in wiring, masts or towers;
   f. trees, shrubs and plants.

D. **Explosion:** Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. The Company shall not be liable for loss by explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the insured. The following are not explosions within the intent or meaning of these provisions:
   1. Shock waves caused by aircraft, generally known as "sonic boom"
   2. Electric arcing.
   3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown.
   4. Water hammer.
   5. Rupture or bursting of water pipes.
   6. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
   7. Rupture, bursting or operation of pressure relief devices.

E. **Sudden and Accidental Damage from Smoke,** other than smoke from agricultural smudging or industrial operations.

F. **Vehicles or Aircraft:** Loss by aircraft or by vehicles shall mean only ★ direct loss resulting from actual physical contact of an aircraft, including self-propelled missiles or spacecraft, or a vehicle with the property covered hereunder or with the buildings containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom.
   The Company shall not be liable as respects this peril for loss
   1. by any vehicle owned or operated by the insured or by any occupant of the described premises; or
   2. to any aircraft or vehicle, including contents thereof, other than stocks of aircraft or vehicles in process of manufacture or for sale.

G. **Riot, Riot Attending a Strike and Civil Commotion:** Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the described buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion.
   The Company shall not be liable as respects this peril for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

IV. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the limit of liability specified for the coverages being extended.

The total amount recoverable under the Extensions of Coverage in this form and Extensions of Coverage in any other form made a part of this policy are not cumulative and shall not exceed the largest amount recoverable under any single form made a part of this policy.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limits set forth in the following Extensions of Coverage.

A. **Newly Acquired Property:**
   1. The insured may apply up to 10%, but not exceeding $25,000, of the limit of liability specified for Coverage A — Building(s) to cover direct loss in any one occurrence by a peril insured against to the following described property:
      a. New additions, new buildings and new structures when constructed on the described premises and intended for similar occupancy. This coverage shall cease 30 days from the date construction begins or on the date the values of new construction are reported to the Company, or on the expiration date of the policy, whichever occurs first.
      b. Buildings acquired by the insured at any location, elsewhere than at the described premises, within the territorial limits of this policy and used by him for similar occupancies or warehouse purposes. This coverage shall cease 30 days from the date of such acquisition or on the date values of the buildings are reported to the Company, or on the expiration date of the policy, whichever occurs first.
   2. The insured may apply up to 10%, but not exceeding $10,000, of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against to such property at any location (except fairs and exhibitions) acquired by the insured, elsewhere than at the described premises, within the territorial limits of this policy. This coverage shall cease 30 days from the date of such acquisition or on the date values at such locations are reported to the Company, or on the expiration date of the policy, whichever occurs first.

   Additional premium shall be due and payable for values so reported from the date construction begins or the property is acquired.

B. **Off-Premises:** The insured may apply up to 2%, but not exceeding $5,000, of the sum of the limits of liability specified for Coverage A — Building(s) and Coverage B — Personal Property at a described location to cover direct loss in any one occurrence by a peril insured against to such property (other than merchandise or stock) while removed from such location for purposes of cleaning, repairing, reconstruction or restoration. This Extension of Coverage shall not apply to property in transit, nor to property on any premises owned, leased, operated or controlled by the insured.

C. **Personal Effects:** The insured may apply up to $500 of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against to personal effects while located on the described premises, belonging to the insured, officers, partners or employees thereof, and limited to $100 on personal effects owned by any one individual. This Extension of Coverage does not apply if the loss is covered by any other insurance, whether collectible or not, or which would have been covered by such other insurance in the absence of this policy. At the option of the Company, loss under this Extension of Coverage may be adjusted with and payable to the insured.

D. **Valuable Papers and Records:** The insured may apply up to $500 of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against under Coverage B — Personal Property of this form to valuable papers and records consisting of books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records, all the property of the insured at described locations. This Extension of Coverage covers only the cost of research and other expense necessarily incurred by the insured to reproduce, replace or restore such valuable papers and records. The total amount payable in any one occurrence under this Extension of Coverage shall not exceed the limit specified above, regardless of the number of described locations.

E. **Trees, Shrubs and Plants:** The insured may apply up to $1,000 of the sum of the limits of liability specified for Coverage A — Building(s)

and Coverage B — Personal Property to cover trees, shrubs and plants at the described location against direct loss in any one occurrence by the perils of fire, lightning, explosion, riot, civil commotion or aircraft, but only to the extent such perils are insured against herein. The Company shall not be liable for more than $250 on any one tree, shrub or plant, including expense incurred for removing debris thereof.

F. **Extra Expense:** The insured may apply up to $1,000 of the sum of the limits of liability specified for Coverage A — Building(s) and Coverage B — Personal Property to cover the necessary extra expense incurred by the insured in order to continue as nearly as practicable the normal operation of the insured's business immediately following damage by a peril insured against to the buildings or personal property situated at the described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation of the insured's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no loss occurred. Any salvage value of property obtained for temporary use during the period of restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any loss hereunder.

"Period of restoration" means that period of time, commencing with the date of damage and not limited by the date of expiration of this policy, as would be required with the exercise of due diligence and dispatch to repair, rebuild or replace such part of said buildings or personal property thereof as have been damaged.

The Company shall not be liable under this Extension of Coverage for:

1. loss of income.
2. the cost of repairing or replacing any of the described property, or the cost of research or other expense necessary to replace or restore books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records that have been damaged by a peril insured against, except cost in excess of the normal cost of such repair, replacement or restoration necessarily incurred for the purpose of reducing the total amount of extra expense. In no event shall such excess cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

G. **Replacement Cost:** In the event of loss to a building structure covered under this policy, when the full cost of repair or replacement is less than $1,000, the coverage of this policy is extended to cover the full cost of repair or replacement (without deduction for depreciation). Coverage shall be applicable only to a building structure covered hereunder, but excluding carpeting, cloth awnings, air-conditioners, domestic appliances and out-door equipment, all whether permanently attached to the building structure or not.

The Company shall not be liable under this Extension of Coverage:

1. unless and until the damaged property is actually repaired or replaced on the same premises with due diligence and dispatch, and, in no event, unless repair or replacement is completed within a reasonable time after such loss.
2. unless the whole amount of insurance applicable to the building structure for which claim is made is equal to or in excess of the amount produced by multiplying the co-insurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

V. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:

1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement;
2. electrical currents artificially generated unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by a peril insured against. The Company shall not be liable for any loss specifically excluded under the riot provisions of this form.

C. Loss caused by, resulting from, contributed to or aggravated by any of the following:

1. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;
2. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
3. water which backs up through sewers or drains;
4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

VI. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder than the limit of liability under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

In the event that the aggregate claim for any loss is both less than $10,000 and less than 5% of the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory and appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under Section I of this policy is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

The value of property covered under Extensions of Coverage, and the cost of the removal of debris, shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

VII. DEDUCTIBLE CLAUSES

A. The following Deductible Clauses are applicable only if so stated in the Declarations:

1. **Loss Deductible Clause No. 1:** With respect to loss by windstorm or hail to buildings, structures or personal property in the open, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.
2. **Loss Deductible Clause No. 2:** With respect to loss by any of the perils insured against other than:
   a. fire or lightning,
   b. windstorm or hail to buildings, structures or personal property in the open,

   the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.

B. No more than one deductible shall apply to loss by windstorm or hail arising out of any one occurrence.

VIII. VALUATION

Subject to the provisions and stipulations of this policy, the following bases for valuation of property are established:

★ **A.** Tenant's Improvements and Betterments:

1. If repaired or replaced at the expense of the insured within a reasonable time after loss, the actual cash value of the damaged or destroyed improvements and betterments.
2. If not repaired or replaced within a reasonable time after loss, that proportion of the original cost at time of installation of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the periods from the dates such improvements or betterments were made to the expiration date of the lease.
3. If repaired or replaced at the expense of others for the use of the insured, there shall be no liability hereunder.

B. Books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing) for not exceeding the cost of blank books, cards or other blank material.

C. Film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing for not exceeding the cost of such media in unexposed or blank form.

D. All other property at actual cash value.

IX. CONDITIONS

A. Permits and Use: Except as otherwise provided herein, permission is hereby granted:

1. to make alterations and repairs;
2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
3. in the event of loss hereunder, to make reasonable repairs, temporary or permanent, *provided* such repairs are confined solely to the protection of the property from further damage, and provided further that the insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril insured hereunder shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that, in case loss occurs, the insured shall protect the property from further damage.

B. Loss Clause: Any loss hereunder shall not reduce the amount of this policy.

C. Mortgage Clause: Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee) in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy: provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void. The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

Whenever the Company shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

SUPPLEMENTAL DECLARATIONS ENDORSEMENT

Form MLB-22 (Ed. 10-66)

Location of premises, as stated in the Declarations, is extended to include the following and insurance is provided with respect to those premises described below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all the terms of this policy including forms and endorsements made a part hereof:

Div. No.	Loc. No.	Bldg. No.	LOCATION OF PREMISES (Address, City, State)	OCCUPANCY	SECTION I			
					COVERAGE	Forms and Endorsements Applicable	Coinsurance Percentage Applicable	Limits of Liability ($)
	1	1	131 Pinsley Circle Greenville, S. C.	Main Office & Warehouse	A	MLB-101 M	80%	375,000
					B	MLB-100		
						MLB-121	80%	650,000
						MLB-109	80%	75,000
	2	1	523 Rear Sulphur Springs Rd. Greenville, S. C.	Sheet Metal Shop & Office	A	MLB-101	80%	100,000
					B	MLB-100		
						MLB-121	80%	100,000
						MLB-109	80%	3,000
	2	2	523 B Rear Sulphur Springs Rd. Greenville, S. C.	Builders Risk	A	MLB-102	80%	40,000
	3	1	1911 Sullivan St. Greensboro, N. C.	Office & Warehouse	B	MLB-100		
						MLB-121	80%	50,000
						MLB-109	80%	4,000
	3	2	1911 Rear Sullivan St Greensboro, N. C.	Warehouse	B	MLB-100		
						MLB-121	80%	125,000
					Sprinkler Leakage	MLB-122	90%	52,000
	4	1	Main Street Black Creek, N. C.	Office & Warehouse	A	MLB-101	80%	20,000
					B	MLB-100		
						MLB-121	80%	125,000
						MLB-109	80%	4,000
	5	1	721 Roosevelt Avenue Albany, Georgia	Office & Warehouse	B	MLB-100		
						MLB-121	80%	100,000
						MLB-109	80%	4,000

Form MLB-22 (Ed. 10-66)

SUPPLEMENTAL DECLARATIONS ENDORSEMENT

Form MLB-22 (Ed. 10-56)

Location of premises, as stated in the Declarations, is extended to include the following and insurance is provided with respect to those premises described below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all the terms of this policy including forms and endorsements made a part hereof:

Div. No.	Loc. No.	Bldg. No.	LOCATION OF PREMISES (Address, City, State)	OCCUPANCY	SECTION I			
					COVERAGE	Forms and Endorsements Applicable	Coinsurance Percentage Applicable	Limits of Liability ($)
	6	1	9th St. at Market St. Augusta, Georgia	Bonded Warehouse	B	MLB-100		
						MLB-121	80%	100,000
	7	1	423 Margaret St. Jacksonville, Fla.	Office & Warehouse	B	MLB-100		
						MLB-121	80%	40,000
						MLB-109	80%	3,000
	8	1	3211 8th Ave. North Birmingham, Alabama	Office & Warehouse	B	MLB-100		
						MLB-121	80%	75,000
						MLB-109	80%	10,000
	9	1	1510 East Adams St. Jacksonville, Fla.	Office & Warehouse	80%	MLB-100		
						MLB-121	80%	175,000
						MLB-109	80%	10,000

Form MLB-22 (Ed. 10-56)

SOUTH CAROLINA AMENDATORY ENDORSEMENT

Form MLB-66 (Ed. 11-69)

I. Subject to all the provisions and stipulations otherwise applicable to Section I, this policy is amended as follows:

A. With respect to Coverage A—Building(s), as provided under Forms MLB-100, MLB-101, MLB-104, or MLB-105, insurance under this policy is effected subject to the following agreements and provisions and supersedes and replaces any Valuation Clause in the policy of which this form is made a part:

Valuation Clause: Insofar as insurance against the perils of fire and lightning are concerned, the insured and the insurer hereby agree that the value of buildings described herein is—and hereby fix the amount of insurance to be carried thereon (including this policy)—respectively, as follows:

AGREED VALUE OF BUILDINGS

Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No. SEE MLB-22		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	

B. With respect to Coverage A—Building(s), as provided under Forms MLB-102 or MLB-103 insurance under this policy is effected subject to the following agreements and provisions and supersedes and replaces any Valuation Clause in the policy of which this form is made a part:
Valuation Clause: Insofar as insurance against the perils of fire and lightning are concerned, the insured and the insurer hereby agree that the value of buildings described herein, when completed, is—and hereby fix the amount of insurance to be carried thereon (including this policy)—respectively, as follows:

AGREED VALUE OF BUILDINGS

Loc. No. 2 Bldg. No. 2 $ 40,000		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	

C. The Special Loss Deductible Clause in Form MLB-101, as made a part of this policy, is superseded and replaced by the following Special Loss Deductible Clause:

Special Loss Deductible Clause: With respect to loss by any of the perils of explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, and vandalism and malicious mischief, as insured against under this form, the Company shall be liable only when such loss exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible provision shall not apply.

With respect to loss by any of the perils insured against under this form other than fire, lightning, explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, windstorm or hail, and vandalism and malicious mischief, the Company shall be liable only when such loss in each occurrence exceeds $100. When loss is between $100 and $500, the Company shall be liable for 125% of loss in excess of $100; and when loss is $500 or more, this deductible provision shall not apply.

D. The Deductible Clause provisions of Form MLB-102, as made a part of this policy, are amended to include the following additional Loss Deductible Clause:

Loss Deductible Clause No. 2: With respect to loss by any of the perils insured against other than:

a. fire or lightning,

b. windstorm or hail to buildings, structures or personal property in the open,

the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible provision shall not apply.

E. The Special Loss Deductible Clause in Form MLB-103, as made a part of this policy, is superseded and replaced by the following Special Loss Deductible Clause:

Special Loss Deductible Clause: With respect to loss by any of the perils of explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, and vandalism and malicious mischief, as insured against under this form, the Company shall be liable only when such loss exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible provision shall not apply.

The sum of $500 shall be deducted from the amount of loss in any one occurrence resulting from any peril other than fire, lightning, explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, windstorm or hail, and vandalism and malicious mischief. This deductible shall apply separately to each building or structure (including its personal property) and separately to personal property in the open.

F. The following Clause is added to the Deductible Clause provisions in Forms MLB-107, MLB-108 or MLB-109, and Endorsements MLB-172 or MLB-173, as made a part of this policy:

With respect to loss caused by the perils of aircraft, explosion, riot, civil commotion, smoke, vehicles, or wind storm or hail to property contained in any building, as insured against under this form, the Company shall be liabl only when such loss exceeds $50.

G. The provision relating to Loss Deductible Clause No. 2 in Vandalism and Malicious Mischief Endorsement, Fo MLB-121, as made a part of this policy, is superseded and replaced by the following provision:

Loss Deductible Clause No. 2 applies to the coverage afforded by this endorsement.

H. The Loss Clause in Forms MLB-100, MLB-101, MLB-102, MLB-103, MLB-104, MLB-105, MLB-107, MLB-108 and MLB-109, as made a part of this policy, is deleted and the following condition is added:

Unearned Premium Clause: If a loss is paid under this policy, the named insured, shall be indemnified for loss of the pro rata unearned premium on the amount of such loss payment; however, this Company may elect by written notice within 60 days after time of loss to reinstate this policy in the amount of such loss and, in consideration of such reinstatement, make no payment to the named insured as otherwise provided by this clause.

II. Subject to all the provisions and stipulations otherwise applicable to Section II, the Alcoholic Beverage Exclusion is amended to read as follows:

It is agreed that that part of the alcoholic beverage exclusion which relates to the selling, serving or giving of any alcoholic beverage (a) to a person under the influence of alcohol or (b) which causes or contributes to the intoxication of any person, is deleted.

SECTION I — PROPERTY COVERAGE

With respect to SECTION I — PROPERTY COVERAGE, this form cancels and replaces any coverage on buildings provided under any other form made a part of the policy, but only with respect to those buildings to which this form is shown to be applicable.

I. INSURING AGREEMENT

This policy insures against all risks of direct physical loss to Coverage A–Building(s), subject to the provisions and stipulations herein and in the policy of which this form is made a part.

II. PROPERTY COVERED

COVERAGE A — BUILDING(S): When the insurance under this policy covers buildings, such insurance shall also cover all additions and extensions attached thereto; all fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building; materials and supplies intended for use in construction, alteration or repair of the buildings; yard fixtures; personal property of the insured as landlord used for the maintenance or service of the described buildings, and including fire extinguishing apparatus, floor coverings, refrigerating, ventilating, cooking, dishwashing, and laundering equipment, shades and outdoor furniture (but not including other personal property in apartments or rooms furnished by the insured as landlord); all while at the described locations.

DEBRIS REMOVAL: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril not otherwise excluded. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

III. PROPERTY SUBJECT TO LIMITATIONS

The following property is subject to these additional limitations:

A. Plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) are not covered against loss caused by or resulting from freezing while the described buildings are vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy.

B. Steam boilers, steam pipes, steam turbines or steam engines are not covered against loss caused by any condition or occurrence within such boilers, pipes, turbines or engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber, of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom).

C. Hot water boilers or other equipment for heating water are not covered against loss caused by any condition or occurrence within such boilers or equipment, other than an explosion.

D. Glass is not covered against loss for more than $50 per plate, pane, multiple plate, insulating unit, radiant heating panel, jalousie, louver or shutter, nor for more than $250 in any one occurrence, unless caused by fire, lightning, windstorm, hail, aircraft, vehicles, discharge from fire protection or building service equipment, explosion, riot or civil commotion, and then the Company shall be liable only to the extent that such perils are insured against in this policy.

E. Fences, pavements, outdoor swimming pools and related equipment, retaining walls, bulkheads, piers, wharves or docks, when covered under this policy, are not covered against loss caused by freezing or thawing, impact of watercraft, or by the pressure or weight of ice or water whether driven by wind or not.

F. Metal smokestacks and, when outside of buildings, cloth awnings, radio or television antennas including their lead-in wiring, masts or towers, are not covered against loss caused by ice, snow or sleet, nor by windstorm or hail unless liability therefor is specifically assumed by endorsement.

G. The interior of buildings is not covered against loss caused by rain, snow, sand or dust, whether driven by wind or not, unless (1) the buildings shall first sustain an actual damage to roof or walls by the direct action of wind or hail, and then the Company shall be liable for loss to the interior of the buildings as may be caused by rain, snow, sand or dust entering the buildings through openings in the roof or walls made by direct action of wind or hail; or (2) such loss results from fire, lightning, aircraft, vehicles, explosion, riot or civil commotion, vandalism or malicious mischief, to the extent that such perils are insured against in this policy.

H. Buildings or structures in process of construction, including materials and supplies therefor, when covered under this policy, are not covered against loss unless caused by fire, lightning, windstorm, hail, aircraft, vehicles, smoke, explosion, riot or civil commotion, vandalism or malicious mischief, and then the Company shall be liable only to the extent that such perils are insured against in this policy.

I. Property undergoing alterations, repairs, installations or servicing, including materials and supplies therefor, is not covered against loss if directly attributable to the operations or work being performed thereon, unless loss by a peril not excluded in this policy ensues, and then the Company shall be liable for only such ensuing loss.

IV. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls not constituting a part of a building; walks, roadways and other paved surfaces; unless such items are specifically covered by endorsement.

B. The cost of excavations, grading or filling; foundations of buildings, machinery, boilers or engines which foundations are below the undersurface of the lowest basement floor, or where there is no basement, below the surface of the ground; pilings, piers, pipes, flues and drains which are underground; pilings which are below the low water mark.

C. Outdoor signs, whether or not attached to a building, unless specifically covered by endorsement.

D. Growing crops and lawns.

E. Trees, shrubs and plants, except as provided in the Extensions of Coverage.

F. Property which is more specifically insured in whole or in part under this or any other contract of insurance.

V. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the limit of liability specified for the coverages being extended.

The total amount recoverable under the Extensions of Coverage in this form and Extensions of Coverage in any other form made a part of this policy are not cumulative and shall not exceed the largest amount recoverable under any single form made a part of this policy.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limits set forth in the following Extensions of Coverage.

A. Newly Acquired Property: The insured may apply up to 10%, but not exceeding $25,000, of the limit of liability specified for Coverage A—Building(s) to cover direct loss in any one occurrence by a peril not otherwise excluded to the following described property:

1. New additions, new buildings and new structures when constructed on the described premises and intended for similar occupancy. This coverage shall cease 30 days from the date construction begins or on the date the values of new construction are reported to the Company, or on the expiration date of the policy, whichever occurs first.
2. Buildings acquired by the insured at any location, elsewhere than at the described premises, within the territorial limits of this policy and used by him for similar occupancies or warehouse purposes. This coverage shall cease 30 days from the date of such acquisition or on the date values of the buildings are reported to the Company, or on the expiration date of the policy, whichever occurs first.

Additional premium shall be due and payable for values so reported from the date construction begins or the location is acquired.

B. Off-Premises: The insured may apply up to 2%, but not exceeding $5,000, of the limits of liability specified for Coverage A—Building(s) at a described location to cover direct loss in any one occurrence by a peril not otherwise excluded to such building property while removed from such location for purposes of cleaning, repairing, reconstruction or restoration. This Extension of Coverage shall not apply to property in transit nor to property on any premises owned, leased, operated or controlled by the insured.

C. Trees, Shrubs and Plants: The insured may apply up to $1,000 of the limit of liability specified for Coverage A—Building(s) to cover trees, shrubs and plants at the described location against direct loss in any one occurrence by the perils of fire, lightning, explosion, riot, civil commotion or aircraft, but only to the extent such perils are insured against herein. The Company shall not be liable for more than $250 on any one tree, shrub or plant, including expense incurred for removing debris thereof.

D. Extra Expense: The insured may apply up to $1,000 of the limit of liability specified for Coverage A—Building(s) to cover the necessary extra expense incurred by the insured in order to continue as nearly as practicable the normal operations of the insured's business immediately following damage by a peril not otherwise excluded under this form to the buildings or personal property situated at the described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation of the insured's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no loss occurred. Any salvage value of property obtained for temporary use during the period of restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any loss hereunder.

"Period of restoration" means that period of time, commencing with the date of damage and not limited by the date of expiration of this policy, as would be required with the exercise of due diligence and dispatch to repair, rebuild or replace such part of said buildings or personal property as have been damaged.

The Company shall not be liable under this Extension of Coverage for:

1. loss of income.
2. the cost of repairing or replacing any of the described property, or the cost or research or other expense necessary to replace or restore damaged books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records that have been damaged by a peril not otherwise excluded, except cost in excess of the normal cost of such repair, replacement or restoration necessarily incurred for the purpose of reducing the total amount of extra expense. In no event shall such excess cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

E. Replacement Cost Coverage: In the event of loss to a building structure covered under this policy, when the full cost of repair or replacement is less than $1,000, this policy is extended to cover the full cost of repair or replacement (without deduction for depreciation). Coverage shall be applicable only to a building structure covered hereunder, but excluding carpeting, cloth awnings, air conditioners, domestic appliances and outdoor equipment, all whether permanently attached to the building structure or not.

The Company shall not be liable under this Extension of Coverage:

1. unless and until the damaged property is actually repaired or replaced on the same premises with due diligence and dispatch, and, in no event, unless repair or replacement is completed within a reasonable time after such loss.
2. unless the whole amount of insurance applicable to the building structure for which claim is made is equal to or in excess of the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

VI. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:

1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement;
2. electrical currents artificially generated unless loss by fire or explosion not otherwise excluded as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by perils not otherwise excluded. Also, the Company shall not be liable under this clause for any loss resulting from riot, riot attending a strike, civil commotion, or vandalism and malicious mischief.

C. Loss caused by, resulting from, contributed to or aggravated by any of the following:

1. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;
2. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
3. water which backs up through sewers or drains;
4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless loss by fire or explosion not otherwise excluded ensues, and then the Company shall be liable for only such ensuing loss.

D. Loss caused by:

1. wear and tear, deterioration, rust or corrosion, mould, wet or dry rot; inherent or latent defect; smog; smoke, vapor or gas from agricultural or industrial operations; mechanical breakdown, including rupture or bursting caused by centrifugal force; settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings; animals, birds, vermin, termites or other insects; unless loss by a peril not otherwise excluded ensues and then the Company shall be liable for only such ensuing loss.
2. explosion of steam boilers, steam pipes, steam turbines or steam engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber, of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom) if owned by, leased by or operated under the control of the insured, or for any ensuing loss except by fire or explosion not otherwise excluded, and then the Company shall be liable for only such ensuing loss.
3. vandalism, malicious mischief, theft or attempted theft, if the described building had been vacant or unoccupied beyond a period of 30 consecutive days immediately preceding the loss, unless loss by a peril not excluded in this policy ensues, and then the Company shall be liable for only such ensuing loss.
4. leakage or overflow from plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) caused by or resulting from freezing while the described building is vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy.
5. theft (including but not limited to burglary and robbery) of any property which at the time of loss is not an integral part of a building or structure (except direct loss by pillage and looting occurring during and at the immediate place of a riot or civil commotion), unless loss by a peril not excluded in this policy ensues from theft or attempted theft, and then the Company shall be liable for only such ensuing loss.
6. unexplained or mysterious disappearance of any property, or shortage as disclosed on taking inventory, or caused by any wilful or dishonest act or omission of the insured or any associate, employee or agent of any insured.

VII. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder than the limit of liability under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

In the event that the aggregate claim for any loss is both less than $10,000 and less than 5% of the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory and appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under Section I of this policy is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

The value of property covered under Extensions of Coverage, and the cost of the removal of debris, shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

VIII. DEDUCTIBLE CLAUSES

A. Loss Deductible Clause No. 1 — Applicable only if so stated in the Declarations: With respect to loss by windstorm or hail, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this loss deductible clause shall not apply.

B. Special Loss Deductible Clause — With respect to loss by any of the perils insured against under this form other than fire, lightning, aircraft, vehicles, smoke, explosion, riot or civil commotion, windstorm or hail, the Company shall be liable only when such loss in each occurrence exceeds $100. When loss is between $100 and $500, the Company shall be liable for 125% of loss in excess of $100; and when loss is $500 or more, this loss deductible clause shall not apply.

IX. CONDITIONS

A. Permits and Use: Except as otherwise provided herein, permission is hereby granted:

1. to make alterations and repairs;
2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
3. in the event of loss hereunder, to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage, and provided further that the insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril not otherwise excluded shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that, in case loss occurs, the insured shall protect the property from further damage.

B. Loss Clause: Any loss hereunder shall not reduce the amount of this policy.

C. Mortgage Clause: Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee) in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy: provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void. The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

Whenever the Company shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

SMP BUILDERS' RISK COMPLETED VALUE FORM
SECTION I — PROPERTY COVERAGE

With respect to SECTION I — PROPERTY COVERAGE, this form cancels and replaces any coverage provided under any other forms or endorsements made a part of the policy, but only with respect to the property to which this form is shown to be applicable.

I. PROPERTY COVERED ★

COVERAGE A — BUILDING(S): This policy covers the building or structure at the described location while in the course of construction, including all additions directly attached thereto and all fixtures, machinery and equipment constituting a permanent part of said building.

This policy also covers temporary structures, materials and supplies of all kinds owned by the named insured and incident to the construction of said building or structure; all while in or on the described buildings, structures or temporary structures, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage A — Building(s) at such location, as an additional amount of insurance, to cover for the account of the owners thereof (other than the named insured) direct loss by a peril insured against to materials and supplies similar to that covered by this policy, belonging to others while in the care, custody or control of the named insured and only while on the described premises or within 100 feet thereof.

Loss shall be adjusted with the named insured for the account of the owners of the property, except that the right to adjust any loss with the owners is reserved to the Company and the receipts of the owners in satisfaction thereof shall be in full satisfaction of any claim by the named insured for which payments have been made. As respects personal property belonging to others, this provision shall replace any loss payable provision of this policy.

The Provisional Limit of Liability Condition of this form shall not apply to this coverage, and when applying said clause to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril insured against. The total amount recoverable for both loss to property and debris removal expense shall not exceed the actual limit of liability applying at the time of loss to the item of insurance involved in the application of this clause.

II. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, property which is more specifically covered in whole or in part under this or any other contract of insurance is also excluded from coverage under this form.

III. PERILS INSURED AGAINST

This policy insures under Section I against direct loss to the property covered under this form caused by the following perils, except as otherwise specifically provided:

A. Fire.

B. Lightning.

C. Windstorm and Hail:

1. The Company shall not be liable as respects these perils for loss caused directly by or indirectly by frost or cold weather or ice (other than hail), snow or sleet whether driven by wind or not.
2. The Company shall not be liable as respects these perils for loss to the interior of the buildings or the property covered therein caused
   a. by rain, snow, sand or dust whether driven by wind or not, unless the buildings covered or containing the property covered shall first sustain an actual damage to the roof or walls by the direct action of wind or hail and then shall be liable for loss to the interior of the buildings or the property covered therein as may be caused by rain, snow, sand or dust entering the buildings through openings in the roof or walls made by direct action of wind or hail; or
   b. by water from sprinkler equipment or other piping, unless such equipment or piping be damaged as a direct result of wind or hail.
3. Unless specifically covered by endorsement, the Company shall not be liable as respects these perils for damage to the following property:
   a. grain, hay, straw or other crops outside of buildings or structures;
   b. windmills, windpumps or their towers;
   c. crop silos or their contents;
   ★ d. metal smokestacks or, when outside of buildings, awnings or canopies (fabric or slat) including their supports;
   e. radio or television antennas including their lead-in wiring, masts or towers;
   f. trees, shrubs or plants.

D. Explosion: Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the fire box (or the combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. The Company shall not be liable for loss by explosion of steam boilers, steam pipes, steam turbines or steam engines if owned by, leased by or operated under the control of the insured. The following are not explosions within the intent or meaning of these provisions:

1. Shock waves caused by aircraft, generally known as 'sonic boom'.
2. Electrical arcing.
3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal or mechanical breakdown.
4. Water hammer.
5. Rupture or bursting of water pipes.
6. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
7. Rupture, bursting or operation of pressure relief devices.

E. Sudden and Accidental Damage from Smoke, other than smoke from agricultural smudging or industrial operations.

F. Aircraft or Vehicles: Loss by aircraft or by vehicles shall mean only direct loss resulting from actual physical contact of an aircraft, including self-propelled missiles or spacecraft, or a vehicle ★ with the property covered hereunder or with the buildings containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom. The Company shall not be liable as respects this peril for loss:

1. by any vehicle owned or operated by the insured or by any occupant of the described premises;
2. to any aircraft or vehicle including contents thereof, other than stocks of aircraft or vehicles in process of manufacture or for sale.

G. **Riot, Riot Attending a Strike and Civil Commotion:** Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the described buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion.

The Company shall not be liable as respects this peril for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

IV. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:
   1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement;
   2. electrical currents artificially generated unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by a peril insured against. The Company shall not be liable for any loss specifically excluded under the riot provisions of this form.

C. Loss caused by, resulting from, contributed to or aggravated by any of the following:
   1. earth movement, including but not limited to earthquake, volcanic eruption, landslide, mudflow, earth sinking, earth rising or shifting;
   2. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
   3. water which backs up through sewers or drains;
   4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

   unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

V. DEDUCTIBLE CLAUSE

Loss Deductible Clause No. 1 — Applicable only if so stated in the Declarations: With respect to loss by windstorm or hail, to buildings, structures or personal property in the open, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.

VI. OCCUPANCY CLAUSE

It is made a condition of this policy that the buildings, additions or structures in the course of construction shall not be occupied without obtaining the consent of the Company endorsed hereon with proper rate adjustment, except that machinery may be set up and operated solely for the purpose of testing the same without prejudice to this policy.

VII. CONDITIONS

A. **Provisional Limit of Liability:** The limit of liability applicable to property under this form is provisional. It is a condition of this insurance, wherein the rate and premium are based on an average amount of liability during the period of construction, that at any date while this policy is in force, the actual limit of liability under this form is that proportion of the provisional limit of liability that the actual value of the described property on that date bears to the value at the date of completion, but shall not in any case exceed the provisional limit of liability, and:

   In consideration of the reduced rate at which this policy is written, it is a condition of this insurance that in the event of loss, the Company shall be liable for no greater proportion thereof than the provisional limit of liability under this form bears to the value of the described property at date of completion.

   If this form applies to two or more items, the foregoing shall apply separately to each such item.

B. **Permits and Use:** Except as otherwise provided herein, permission is hereby granted in the event of loss hereunder, to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage, and provided further that the insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril insured hereunder shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that, in case loss occurs, the insured shall protect the property from further damage.

C. **Loss Clause:** Any loss hereunder shall not reduce the amount of this policy.

D. **Mortgage Clause:** Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee, (or trustee), in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void.

   The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

   Whenever the Company shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made under all securities held as collateral to the mortgage debt or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the rights of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

COINSURANCE CONTRACT

SMP SPECIAL OFFICE PERSONAL PROPERTY FORM

Form MLB-109 (Ed. 2-71)

SECTION I — PROPERTY COVERAGE

With respect to SECTION I — PROPERTY COVERAGE, this form cancels and replaces any coverage on personal property provided under any other form made a part of this policy, but only with respect to personal property to which this form is shown to be applicable.

I. INSURING AGREEMENT

This policy insures against all risks of direct physical loss to Coverage B — Personal Property, subject to the provisions and stipulations herein and in the policy of which this form is made a part.

II. PROPERTY COVERED ★

COVERAGE B — PERSONAL PROPERTY: This policy covers business personal property owned by the insured and usual to the office occupancy of the insured, including manuscripts, furniture, fixtures, equipment and supplies not otherwise covered under this policy, and shall also cover the insured's interest in personal property owned by others to the extent of the value of labor and materials expended thereon by the insured; all while in or on the described building, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

This coverage shall also include Tenant's Improvements and Betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the buildings occupied but not owned by the insured and made or acquired at the expense of the insured exclusive of rent paid by the insured, but which are not legally subject to removal by the insured.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage B — Personal Property at such location, as an additional amount of insurance, to cover for the account of the owners thereof (other than the named insured) direct loss by a peril not otherwise excluded to personal property, similar to that covered by this policy, belonging to others while in the care, custody or control of the named insured and only while on the described premises or within 100 feet thereof.

Loss shall be adjusted with the named insured for the account of the owners of the property, except that the right to adjust any loss with the owners is reserved to the Company and the receipts of the owners in satisfaction thereof shall be in full satisfaction of any claim by the named insured for which payments have been made. As respects personal property belonging to others, this provision shall replace any loss payable provision of this policy.

The Coinsurance Clause of this form or any other form made a part of this policy shall not apply to this coverage, and when applying said clause to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril not otherwise excluded. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

III. PROPERTY SUBJECT TO LIMITATIONS

The following property is subject to these additional limitations:

A. 1. Glass, glassware, statuary, marbles, bric-a-brac, porcelains and other articles of a fragile or brittle nature are covered against loss by breakage only if directly caused by the "specified perils". This limitation shall not apply to bottles or similar containers of property for sale, or sold but not delivered, nor to lenses of photographic or scientific instruments.

2. Steam boilers, steam pipes, steam turbines and steam engines are not covered against loss caused by bursting, rupture, cracking or explosion originating therein (other than explosion of accumulated gases or unconsumed fuel within a fire box or combustion chamber).

3. Machines and machinery are not covered against loss caused by rupture, bursting or disintegration of their rotating or moving parts resulting from centrifugal or reciprocating force.

B. The term "specified perils" sall mean direct loss by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, windstorm or hail to property contained in any building, vandalism and malicious mischief, leakage or accidental discharge from automatic fire protective systems.

IV. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Live animals, birds and fish; aircraft; watercraft, including motors, equipment and accessories (except rowboats and canoes, while out of water and on the described premises); and automobiles, trailers, semi-trailers or any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured.

B. Property for sale; samples or merchandise in the care, custody or control of salesmen away from the premises.

C. Currency, money and stamps, except to the extent provided in the Extensions of Coverage; notes, securities, deeds, accounts, bills, evidences of debt, letters of credit and tickets.

D. Outdoor signs, whether or not attached to a building, unless specifically covered by endorsement.

E. Household and personal effects contained in living quarters occupied by the insured, any officer, director, stockholder or partner of the insured or relatives of any of the foregoing, except as provided in the Extensions of Coverage or unless specifically covered by endorsement.

F. Growing crops and lawns. ★

G. Fur, fur garments, jewelry and watches, watch movements, jewels, pearls, precious and semi-precious stones, gold, silver, platinum and other precious alloys or metals.

H. Trees, shrubs and plants, except to the extent provided in the Extensions of Coverage.

I. Property shipped by mail from the time it passes into the custody of the Post Office Department.

J. Property which is more specifically covered in whole or in part under this or any other contract of insurance.

V. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the amount of insurance applicable to Personal Property. The total amount recoverable under the Extensions of Coverage in this form and Extensions of Coverage in any other form made a part of this policy are not cumulative and shall not exceed the largest amount recoverable under any single form made a part of this policy. When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limits set forth in the following Extensions of Coverage.

A. **Newly Acquired Property:** The insured may apply up to 10%, but not exceeding $10,000, of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril not otherwise excluded to such property at any location (except fairs and exhibitions) acquired by the insured for mercantile or warehouse purposes, elsewhere than at the described locations within the territorial limits of this policy. This coverage shall cease 30 days from the date of such acquisition or on the date values at such locations are reported to the Company, or on the expiration date of the policy, whichever occurs first. Additional premium shall be due and payable for values so reported from the date the property is acquired.

B. **Personal Effects:** The insured may apply up to $500 of the amount of insurance applicable to Coverage B — Personal Property to cover direct loss in any one occurrence by the perils not otherwise excluded to personal effects while located on the described premises, belonging to the insured, officers, partners or employees thereof and limited to $100 on personal effects owned by any one individual. This Extension of Coverage does not apply if the loss is covered by any other insurance, whether collectible or not, or which would have been covered by such other insurance in the absence of this policy. At the option of the Company, loss under this Extension of Coverage may be adjusted with and payable to the insured.

C. **Valuable Papers and Records:** The insured may apply up to $500 of the amount of insurance applicable to Coverage B — Personal Property to cover direct loss in any one occurrence by a peril not otherwise excluded to valuable papers and records consisting of books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records, all the property of the insured at described locations. This Extension of Coverage covers only the cost of research and other expense necessarily incurred by the insured to reproduce, replace or restore such valuable papers and records. The total amount payable in any one occurrence under this Extension of Coverage shall not exceed the limit specified above, regardless of the number of described locations.

D. **Extra Expense:** The insured may apply up to $1,000 of the amount of insurance applicable to Coverage B — Personal Property to cover the necessary extra expense incurred by the insured in order to continue as nearly as practicable the normal operations of the insured's business immediately following damage by a peril not otherwise excluded under this form to the buildings or personal property situated at the described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation of the insured's business over and above the total cost that would normally have been incurred to conduct the business during the same period had no loss occurred. Any salvage value of property obtained for temporary use during the period of restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any loss hereunder.

"Period of restoration" means that period of time, commencing with the date of damage and not limited by the date of expiration of this policy, as would be required with the exercise of due diligence and dispatch to repair, rebuild or replace such part of said buildings or personal property as have been damaged.

The Company shall not be liable under this Extension of Coverage for:

1. loss of income.
2. the cost of repairing or replacing any of the described property, or the cost of research or other expense necessary to replace or restore books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, and other records that have been damaged by a peril not otherwise excluded, except cost in excess of the normal cost of such repair, replacement or restoration necessarily incurred for the purpose of reducing the total amount of extra expense. In no event shall such excess cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

E. **Theft Damage to Buildings:** This policy includes loss (except by fire or explosion) to that part of the buildings occupied by the insured and containing property covered, and to equipment therein pertaining to the service of the building, (but not building property or equipment removed from premises), directly resulting from theft, burglary or robbery (including attempt thereat), provided the insured is the owner of such building or equipment or is liable for such damage, but in no event shall this coverage apply to glass (other than glass building blocks) or to any lettering or ornamentation thereon.

F. **Off Premises:** The insured may apply up to 10%, but not exceeding $10,000 of the amount of insurance applicable to Personal Property, to cover direct loss in any one occurrence by a peril not otherwise excluded to such property while away from the premises (not exceeding 30 consecutive days), but within the 50 states of the United States of America, the District of Columbia and in transit within and between such places, and in transit between such places and the Dominion of Canada.

G. **Currency, Money and Stamps:** The insured may apply up to $250 of the amount of insurance applicable to Personal Property to cover direct loss in any one occurrence by a peril not otherwise excluded to currency, money and stamps, while on the premises or while being conveyed outside the premises by the insured or by an employee of the insured.

H. **Trees, Shrubs and Plants:** The insured may apply up to $1,000 of the amount of insurance applicable to Personal Property to cover trees, shrubs and plants at the described location against direct loss in any one occurrence by the perils of fire, lightning, explosion, riot, civil commotion or aircraft, but only to the extent such perils are insured against herein. The Company shall not be liable for more than $250 on any one tree, shrub or plant, including expense incurred for removing debris thereof.

VI. EXCLUSIONS

A. **This policy does not insure under this form against loss caused by:**

1. Enforcement of any local or state ordinance or law regulating the construction, repair, or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement hereon.
2. Unexplained or mysterious disappearance of property (except property in the custody of carriers for hire); or shortage of property disclosed on taking inventory.
3. Actual work upon or installation of property covered, latent defect, failure, breakdown or derangement of machines or machinery, faulty materials or workmanship; unless loss by fire or explosion not otherwise excluded ensues and then the Company shall be liable for only such ensuing loss.
4. Electrical currents artificially generated unless loss by fire or explosion not otherwise excluded ensues, and then the Company shall be liable for only such ensuing loss.
5. Leakage or overflow from plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) caused by or resulting from freezing while the described building is vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy.
6. Delay, loss of market, interruption of business, nor consequential loss of any nature.
7. Inherent vice, wear and tear, marring or scratching, gradual deterioration, insects, vermin, dampness or dryness of atmosphere, changes in temperature, rust or corrosion.
8. Theft (including attempt thereat) from any vehicle, occurring while such vehicle is unattended, unless the property is contained in a fully enclosed and securely locked body or compartment of such

vehicle and theft results from forcible entry, evidenced by visible marks upon such body or compartment. This exclusion shall not apply to property in the custody of carriers for hire.

9. Voluntary parting with title or possession of any property by the insured or others to whom the property may be entrusted (except by carriers for hire) if induced to do so by any fraudulent scheme, trick, device or false pretense.
10. Any fraudulent, dishonest or criminal act done by or at the instigation of any insured, partner or joint adventurer in or of any insured, an officer, director, or trustee of any insured; pilferage, appropriation or concealment of any property covered due to any fraudulent, dishonest or criminal act of any employee while working or otherwise, or agent of any insured, or any person to whom the property covered may be entrusted, other than any carrier for hire.
11. Rain, snow or sleet to property in the open (other than property in the custody of carriers for hire).
12. Any legal proceeding.

B. This policy does not insure under this form against loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by perils not otherwise excluded. Also, the Company shall not be liable under this clause for any loss resulting from riot, riot attending a strike, civil commotion, or vandalism and malicious mischief.

C. This policy does not insure under this form against loss caused by, resulting from, contributed to or aggravated by any of the following:

1. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;
2. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
3. water which backs up through sewers or drains;
4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, or basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless loss by fire or explosion not otherwise excluded ensues, and the Company shall then be liable for only such ensuing loss; but these exclusions shall not apply to property in due course of transit or to loss arising from theft.

VII. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder than the amount of insurance under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

In the event the aggregate claim for any loss is both less than $10,000 and less than 5% of the total amount of contributing insurance applicable to the property involved at the time such loss occurs, no special inventory or appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the preceding paragraph of this clause.

If insurance under this policy is divided into separate amounts of insurance, the foregoing shall apply separately to the property covered under each such amount of insurance.

The value of property covered under Extensions of Coverage, and the cost of the removal of debris, shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

VIII. DEDUCTIBLE CLAUSE

Each loss shall be adjusted separately and from the amount of each such adjusted loss the sum of $100 shall be deducted or, if there is contributing insurance, this Company's pro rata share thereof.

This deductible shall not apply to (a) loss by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, windstorm or hail to property contained in any building; or (b) loss of or to property in transit while in the custody of carriers for hire.

IX. VALUATION

Subject to the provisions and stipulations of this policy, the following bases for valuation of property are established:

★ **A.** Tenant's Improvements and Betterments:

1. If repaired or replaced at the expense of the insured within a reasonable time after loss, the actual cash value of the damaged or destroyed improvements and betterments.
2. If not repaired or replaced within a reasonable time after loss, that proportion of the original cost at time of installation of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the periods from the dates such improvements or betterments were made to the expiration date of the lease.
3. If repaired or replaced at the expense of others for the use of the insured, there shall be no liability hereunder.

B. Books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing) for not exceeding the cost of blank books, cards or other blank material.

C. Film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing for not exceeding the cost of such media in unexposed or blank form.

D. All other property at actual cash value.

X. CONDITIONS

A. Loss Clause: Any loss hereunder shall not reduce the amount of this policy.

B. Permits and Use: Except as otherwise provided herein permission is hereby granted:

1. to make alterations and repairs;
2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
3. in the event of loss hereunder, to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage, and provided further that the insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by any peril not otherwise excluded shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that, in case loss occurs, the insured shall protect the property from further damage.

C. Protection of Property: In case of loss, it shall be lawful and necessary for the insured, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance, nor shall the acts of the insured or the Company, in recovering, saving and preserving the property insured in case of loss be considered a waiver or an acceptance of abandonment. The expenses so incurred shall be borne by the insured and the Company proportionately to the extent of their respective interests.

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
1	131 Pinsley Circle Greenville, S. C.	7,500	Included
2	523 Rear Sulphur Springs Rd. Greenville, S. C.	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50. %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

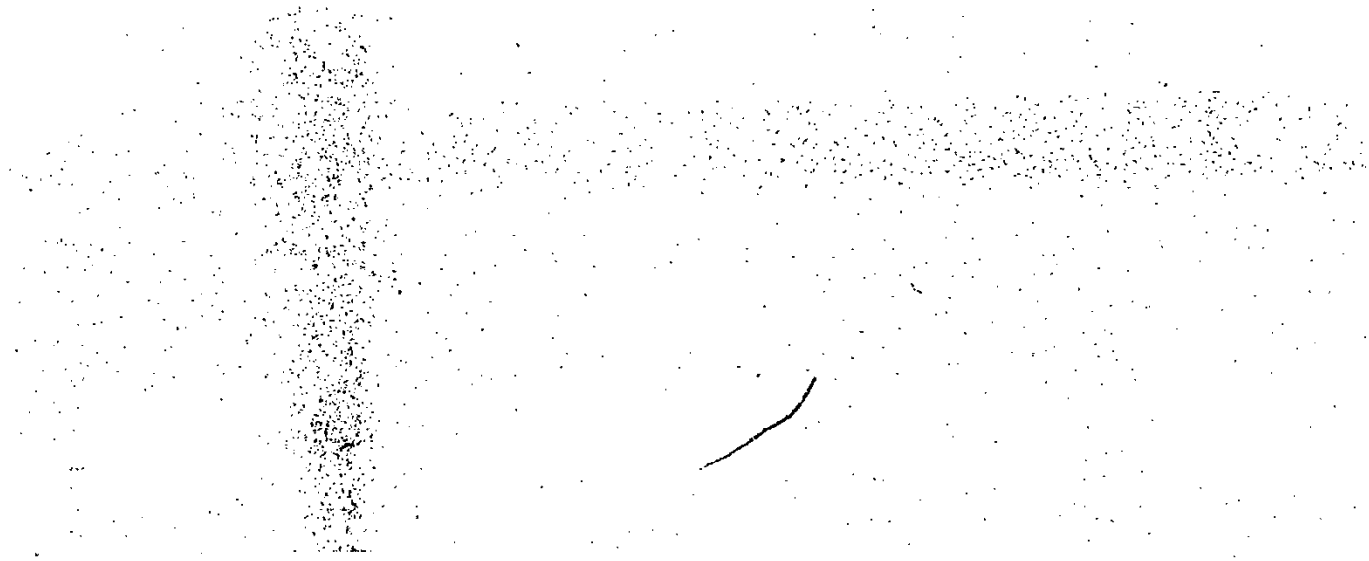
(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.



CONDITIONS

1. Definitions.

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. Ownership of Property; Interests Covered. The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. Joint Insured. If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. Books and Records. The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. Coinsurance. The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. Limits of Liability; Settlement Options. Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
3	1911 Sullivan Street Greenville, S. C.	7,500	Included
3 Bldg. #2	1911 Rear Sullivan Street Greenville, S. C.	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

CONDITIONS

1. **Definitions.**

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. **Ownership of Property; Interests Covered.** The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. **Joint Insured.** If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. **Books and Records.** The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. **Coinsurance.** The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. **Limits of Liability; Settlement Options.** Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
4	Main Street Black Creek, N. C.	7,500	Included
5	721 Roosevelt Avenue Albany, Georgia	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

CONDITIONS

1. Definitions.

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. Ownership of Property; Interests Covered. The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. Joint Insured. If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. Books and Records. The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. Coinsurance. The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. Limits of Liability; Settlement Options. Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
6	9th St. at Market St. Augusta, Georgia	7,500	Included
7	423 Margaret Street Jacksonville, Florida	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

CONDITIONS

1. **Definitions.**

"**Premises**" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"**Burglary**" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"**Robbery of a watchman**" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"**Loss**" includes damage.

"**Jewelry**" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. **Ownership of Property; Interests Covered.** The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. **Joint Insured.** If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. **Books and Records.** The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. **Coinsurance.** The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. **Limits of Liability; Settlement Options.** Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
8	3211 8th Avenue, North Birmingham, Alabama	7,500	Included
9	1510 East Adams St. Jacksonville, Florida	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

CONDITIONS

1. **Definitions.**

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. **Ownership of Property; Interests Covered.** The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. **Joint Insured.** If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. **Books and Records.** The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. **Coinsurance.** The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. **Limits of Liability; Settlement Options.** Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

SPRINKLER LEAKAGE ENDORSEMENT

Form MLB-122 (Ed. 5-69)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy of which this endorsement is made a part, except as otherwise provided for herein, this policy is extended to insure against all direct loss by sprinkler leakage, as defined and limited herein, to property covered by this endorsement. This coverage applies only to the following locations and property for which a limit of liability is shown:

SCHEDULE

Location or Premises Loc. No.	Bldg. No.	Property Covered (Indicate Cov. A—Bldgs. or Cov. B—Personal Property)	Limits of Liability	Coinsurance Percentage Applicable
3	2	Coverage B	52,000	90%

I. PROPERTY COVERED

When insurance under this endorsement covers on buildings, such insurance shall cover, in accordance with the description elsewhere in this policy of Coverage A — Building(s), including Debris Removal, Extensions of Coverage and Valuation, the cost of repairs and replacement of the automatic sprinkler system when the damage sustained is caused directly by (a) breakage of any of its parts resulting in sprinkler leakage or (b) freezing.

When insurance under this endorsement covers on business personal property, such insurance shall cover in accordance with the description elsewhere in this policy of Coverage B — Personal Property, including Debris Removal, Extensions of Coverage and Valuation.

II. EXCLUSIONS AND LIMITATIONS

A. Property not covered or excluded elsewhere in this policy is also excluded from coverage hereunder.

B. **Additional Perils Not Included:** The Company shall not be liable for loss by sprinkler leakage or by collapse or fall of a tank caused directly or indirectly by: fire; lightning; windstorm; earthquake; blasting; explosion; rupture or bursting of steam boilers or fly wheels; riot; civil commotion; and water, except from within an automatic sprinkler system.

C. **Conditions Suspending or Restricting Insurance:** Unless otherwise provided in writing, the Company shall not be liable for sprinkler leakage loss:

1. occurring during and resulting from the making of repairs, alterations or extensions involving a wall or supports of a floor or roof, the installation of or change in an automatic sprinkler system at the location described in this endorsement after a period of fifteen consecutive days from the beginning of such operations;
2. while a building at the location(s) described in this endorsement is vacant or unoccupied.

III. DEFINITIONS

A. "Sprinkler leakage" means (1) leakage or discharge of water or other substance from within any automatic sprinkler system or (2) direct loss caused by collapse or fall of a tank forming a part of such system.

B. "Automatic Sprinkler System" means any automatic fire protective system including sprinklers, discharge nozzles and ducts, pipes, valves, fittings, tanks (including component parts and supports thereof), pumps and private fire protection mains, all connected with and constituting a part of an automatic fire protective system; and non-automatic fire protective systems, hydrants, standpipes or outlets supplied from an automatic fire protective system.

IV. COINSURANCE

The Company shall not be liable for a greater proportion of any loss to the property covered by this endorsement than the limit of liability hereby insured bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this endorsement) by the actual cash value of such property at the time of loss.

In the event that the aggregate claim for any loss is both less than $10,000 and less than 5% of the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory and appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under this endorsement is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

The Extensions of Coverage, and the cost of removal of debris, shall not be considered in the determination of actual cash value when applying this Coinsurance Clause.

V. CONDITIONS

A. Loss Deductible Clause No. 2 shall not apply to any sprinkler leakage loss covered by this endorsement.

B. **Time Element Coverage:** When the insurance under this policy, and by this endorsement, provides time element coverage such as earnings, tuition fees, extra expense, or rents, the term "direct" as applied to loss, means loss, as limited and conditioned in such forms attached to this policy, resulting from direct physical damage to the described property caused by sprinkler leakage. The conditions in such forms attached to this policy supersede the condition of this endorsement except for those shown in II — Exclusions and Limitations, and III — Definitions.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

VANDALISM OR MALICIOUS MISCHIEF ENDORSEMENT

Form MLB-121 (Ed. 3-71)

PROPERTY COVERED ☐ Coverage A — Building(s) ☒ Coverage B — Personal Property

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy of which this endorsement is made a part, except as otherwise provided for herein, the following perils are added to and made part of the "Perils Insured Against" section of the forms of which this endorsement is made a part with respect to the coverage specified by an "X" in the appropriate box above.

A. Vandalism or Malicious Mischief: Loss by vandalism or malicious mischief shall mean only the wilful and malicious damage to or destruction of the property covered. The Company shall not be liable, as respects these perils, for any loss:

1. to glass (other than glass building blocks) constituting a part of a building;
2. by pilferage, theft, burglary or larceny, except for wilful damage to the buildings covered hereunder caused by burglars;
3. by explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, steam engines, or rotating parts of machines or machinery owned, operated or controlled by the insured;
4. caused by or resulting from power, heating or cooling failure unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located;
5. if the described buildings had been vacant or unoccupied beyond a period of 30 consecutive days immediately preceding the loss, whether or not such period commenced prior to the inception date of this endorsement.

   NOTE: A building in process of construction shall not be deemed vacant or unoccupied.

Loss Deductible Clause No. 2 does not apply to the coverage afforded by this endorsement.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

AMENDMENT OF LIMITS OF LIABILITY

Form MLB-21
(Ed. 1-73)

COVERAGE C—BODILY INJURY AND PROPERTY DAMAGE LIABILITY

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

SMP LIABILITY INSURANCE
COMPREHENSIVE GENERAL LIABILITY INSURANCE

It is agreed that the policy is amended as follows:

1. The limits of liability stated in the Declarations as applicable to Coverage C—Bodily Injury and Property Damage Liability are amended to read as follows:

Bodily Injury Liability	$300,000 each occurrence
	$300,000 aggregate
Property Damage Liability	$100,000 each occurrence
	$100,000 aggregate

2. The Limits of Liability provision is replaced by the following:

   Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

   Coverage C—Bodily Injury Liability—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated as applicable to "each occurrence".

   Subject to the above provisions respecting "each occurrence" the total liability of the Company for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limits of bodily injury liability stated as "aggregate".

   Coverage C—Property Damage Liability—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated as applicable to "each occurrence".

   Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated as "aggregate".

   (1) all property damage arising out of premises or operations rated on a remuneration basis or contractors equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;

   (2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

   (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

   Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the named insured.

   Bodily Injury and Property Damage Liability—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

3. With respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

I. COVERAGE C—BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use of the insured premises and all operations necessary or incidental to the business of the named insured conducted at or from the insured premises and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply

(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

(b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or

(2) any other automobile or aircraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to the parking of an automobile on insured premises, if such automobile is not owned by or rented or loaned to any insured;

(c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any watercraft owned or operated by or rented or loaned to any insured, or

(2) any other watercraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to watercraft while ashore on the insured premises;

(f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(g) to bodily injury or property damage arising out of operations on or from premises (other than insured premises) owned by, rented to or controlled by the named insured, or to liability assumed by the insured under any contract or agreement relating to such premises;

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

(a) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (b) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;

(k) to property damage to

(1) property owned or occupied by or rented to the insured,

(2) property used by the insured, or

(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the named insured;

(l) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to the named insured's products arising out of such products or any part of such products;

(o) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work forms a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to bodily injury and property damage arising out of demolition operations performed by or on behalf of the insured.

II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

(a) if the named insured is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the

spouse of the named insured with respect to the conduct of such a business;

(b) if the named insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the named insured is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, member of the board of trustees, directors or governors or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,

(i) an employee of the named insured while operating any such equipment in the course of his employment, and

(ii) any other person while operating with the permission of the named insured any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided that no person or organization shall be an insured under this paragraph (e) with respect to:

(1) bodily injury to any fellow employee of such person injured in the course of his employment, or

(2) property damage to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.

III. SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

(a) all expenses incurred by the Company, all costs taxed against the insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed $250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;

(d) reasonable expenses incurred by the insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed $25 per day.

IV. LIMITS OF LIABILITY—COVERAGE C

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the Company's liability is limited as follows:

(a) The total liability of the Company for Coverage C for all damages, including damages for care and loss of services, as a result of any one occurrence shall not exceed the limit of liability for Coverage C as stated in the Declarations provided that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province such limit of liability shall be applied to provide the separate limits required by such law for bodily injury liability and property damage liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the Company's liability.

(b) Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all bodily injury and property damage which occurs during each annual period while this policy is in force commencing from its effective date and is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Declarations as "aggregate":

(1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;

(2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) all bodily injury and property damage included within the completed operations hazard and all bodily injury and property damage included within the products hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) and separately with respect to each project away from the insured premises. Such aggregate limit shall apply separately to the bodily injury and property damage described in subparagraph (3).

For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

V. COVERAGE D—PREMISES MEDICAL PAYMENTS:

The Company will pay to or for each person who sustains bodily injury caused by accident all reasonable medical expense incurred within one year from the date of the accident on account of such bodily injury, provided such bodily injury arises out of (a) a condition in the insured premises or (b) operations with respect to which the named insured is afforded coverage for bodily injury liability under this policy.

Exclusions:

This insurance does not apply:

(a) to bodily injury

(1) arising out of operations on or from premises (other than insured premises) owned by, rented to, or controlled by the named insured;

(2) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any automobile or aircraft owned or operated by or rented or loaned to any insured, or

(ii) any other automobile or aircraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to the parking of an automobile on the insured premises, if such automobile is not owned by or rented or loaned to any insured;

(3) arising out of (i) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (ii) the operation or use of any snowmobile or trailer designed for use therewith;

(4) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any watercraft owned or operated by or rented or loaned to any insured, or

(ii) any other watercraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to watercraft while ashore on the insured premises; or

(5) arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(b) to bodily injury

(1) included within the completed operations hazard or the products hazard;

(2) arising out of operations performed for the named insured by independent contractors other than (i) maintenance and repair of the insured premises or (ii) structural alterations at such premises *which do not* involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage (i) in violation of any statute, ordinance or regulation, (ii) to a minor, (iii) to a person under the influence of alcohol or (iv) which causes or contributes to the intoxication of any person, if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the named insured is such an owner or lessor;

(4) arising out of demolition operations performed by or on behalf of insureds;

(c) to bodily injury

(1) to the named insured, any partner therein, any tenant or other person regularly residing on the insured premises or any employee of the foregoing if the bodily injury arises out of and in the course of his employment therewith;

(2) to any other tenant if the bodily injury occurs on that part of the insured premises rented from the named insured or to any employee of such a tenant if the bodily injury occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such bodily injury are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic *activity or contest*;

(d) to any medical expense for services by the named insured, any employee thereof or any person or organization under contract to the named insured to provide such services.

VI. LIMITS OF LIABILITY—COVERAGE D:

The limit of liability for Coverage D stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all medical expense for bodily injury to any one person as the result of any one accident; but subject to the above provision respecting "each person", the total liability of the Company under Premises Medical Payments Coverage for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the Declarations as applicable to "each accident".

When more than one medical payments coverage afforded by this policy applies to the loss, the Company shall not be liable for more than the amount of the highest applicable limit of liability.

COMPREHENSIVE GENERAL LIABILITY INSURANCE ENDORSEMENT

Form MLB-202
(Ed. 1-73)

In consideration of the payment of the premium, in reliance upon the statements in the Declarations of the policy of which this endorsement is made a part, and subject to all the terms of this endorsement, the Company agrees with the named insured as follows:

I. COVERAGE—BODILY INJURY AND PROPERTY DAMAGE LIABILITY

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies, caused by an occurrence, and the Company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

(b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or

(2) any other automobile or aircraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any insured;

(c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any watercraft owned or operated by or rented or loaned to any insured, or

(2) any other watercraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;

(f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(g) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

(a) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (b) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to property damage to

(1) property owned or occupied by or rented to the insured,

(2) property used by the insured, or

(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of elevators at premises owned by, rented to or controlled by the named insured;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;

(k) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(l) to property damage to the named insured's products arising out of such products or any part of such products;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(o) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work forms a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(p) to bodily injury or property damage for which insurance is afforded under

(1) the SMP Liability Insurance Coverage, or

(2) any Comprehensive Personal Liability Endorsement forming a part of this policy

or for which insurance would have been afforded but for the exhaustion of the limits of liability thereunder.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

II. LIMIT OF LIABILITY—COVERAGE C

The limit of the Company's liability with respect to each occurrence under this endorsement is the amount stated in the Declarations as applicable to Coverage C of Section II of this policy and such limits apply to the insurance afforded by this endorsement in accordance with the terms of Provision IV, Limits of Liability, of Section II.

III. OTHER PROVISIONS APPLICABLE TO THIS ENDORSEMENT

A. The following provisions applicable to Sections I and II of the policy are applicable to this endorsement; War Risk and Governmental Action Exclusion; Inspection and Audit; Cancellation; Subrogation; and subparagraph (2) of Policy Period, Territory.

B. The following terms and provisions applicable only to Section II are applicable to this endorsement: Persons Insured; Supplementary Payments; Modification of Terms; Financial Responsibility Laws; Premium; Insured's Duties in the Event of Occurrence, Claim or Suit; Other Insurance; Action Against the Company; Nuclear Exclusion; and Definitions—Section II.

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.
BALTIMORE, MARYLAND 21203

SPECIAL MULTI-PERIL POLICY—SECTION II LIABILITY SCHEDULE

This schedule forms a part of SMP Liability Insurance Form, MLB—200.

Agency Code	Policy Number	Effective Date	Named Insured
15-3764	SMP 490049	3-31-76	COVIL CORPORATION, ETAL

Provisional Premiums: ☐ Three Year Prepaid ☒ Annual Installment

Description of Hazards—See Note Below† The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Annual Premium Bases	Rates†† B. I. or Single Lmt.	Rates†† P. D.	Rates†† Medical Payments	Provisional Premiums B. I. or Single Lmt.	Provisional Premiums P. D.	Provisional Premiums Medical Payments
Premises—Operations		(a) Area (Sq. Ft.) (b) Receipts (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per $100 of Receipts (c) Per $100 of Remuneration					
131 Pinsley Circle Greenville, S. C.								
533 Rear Pinsley Circle Greenville, S. C. Insulation Work-installation or application of acoustical or thermal insulating material in buildings or within building walls.---	15161	(c)1,533,461	.104	.175	.007	1595	2684	11
Contractors-construction or erection-executive supervisors exercising supervision through superintendents and foreman-no direct supervision	15192	(c)42,067	.218	.083	.014	92	35	1
Escalators		Number	Per Landing					
Independent Contractors		Cost	Per $100 of Cost					
Completed Operations		Receipts	Per $1,000 of Receipts					
Insulation-Buildings	15161	8,911,525	.073	.255		651	2272	
Products Stores or Dealers-Retail Building Materials-excluding ladders, scaffolding, and installation work	52111	5,185,544	.113	.116		586	602	
					Increased Limits Basic Charge		5	
					Total Annual Premiums	6161	11037	58
					Total Three Year Premiums	18483	33111	174

†Premium for insured hazards not specifically rated herein will be determined by audit and accordingly charged.

††Annual Rates Indicated By "*", if premiums are three year prepaid.

Fire 263 (12-71)

GENERAL SCHEDULE — SECTION II

Form MLB-16 (Ed. 11-69)

XX MLB-200, SMP Liability Insurance Form

☐ MLB-202, Comprehensive General Liability Insurance Endorsement

Description of Hazards and Locations

The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Premium Bases †	Rates *B.I.	Rates P.D.	Advance Premiums *B.I.	Advance Premiums P.D.
(a) Premises—Operations		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration		*If Single Limit, Use B.I. Column. Include Premium for Premises Medical Payment Insurance in B.I. Column.	
(b) Escalators		(d) Number Insured	(d) Per Landing			
(c) Independent Contractors—Let or Sublet Work		(e) Cost	(e) Per $100 of Cost			
(d) Completed Operations		(f) Receipts	(f) Per $1,000 of Receipts			
(e) Products		(g) Sales	(g) Per $1,000 of Sales			
(A) Painting, Decorating or Paper Hanging-including shop operations- 17235		c)50,000	e).076	.267	38	134
Medical Payments:			.005		3	
1911 Sullivan St. Greensboro, N. C.						
1911 Rear Sullivan St. Greensboro, N. C.						
Main Street Black Creek, N. C.						
(A) Same as above	15161	e)1,429,653	e).066	.230	944	3288
Medical Payments:			.004		SMP	
(A) Same as above	15192	e)25,862	e).123	.092	32	24
Medical Payments:			.008		Inc.	
721 Roosevelt Ave. Albany, Georgia						
9th St. at Market St. Augusta, Georgia						
(A) Same as above	15161	e)174,922	e).113	.202	198	353
Medical Payments:			.007		SMP	
(A) Same as above	15192	e)25,436	e).237	.138	60	35
Medical Payments:			.015		Inc.	
423 Margaret St. Jacksonville, Florida						
1510 East Adams Street Jacksonville, Florida						
Same as above	15161	e)71,137	e).245	.267	174	190
Medical Payments:			.015		SMP	
(a) Same as aobve	15192	e)If Any	e).946	.267		
Medical Payments:			.060			

† Describe premium basis, if other than stated.

Form MLB-16 (Ed. 11-69)

GENERAL SCHEDULE — SECTION II

☒ MLB-200, SMP Liability Insurance Form
Description of Hazards and Locations

☒ MLB-202, Comprehensive General Liability Insurance Endorsement

The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Premium Bases †	Rates *B.I.	Rates P.D.	Advance Premiums *B.I.	Advance Premiums P.D.
(a) Premises—Operations		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration		*If Single Limit, Use B.I. Column. Include Premium for Premises Medical Payment Insurance in B.I. Column.	
(b) Escalators		(d) Number Insured	(d) Per Landing			
(c) Independent Contractors—Let or Sublet Work		(e) Cost	(e) Per $100 of Cost			
(d) Completed Operations		(f) Receipts	(f) Per $1,000 of Receipts			
(e) Products		(g) Sales	(g) Per $1,000 of Sales			
3211 8th Ave., North. Birmingham, Alabama						
(A) Same as above 15161		e)28,494	e).189	.230	54	66
Medical Payments:			.012		SMP	
(A) Same as above 15192		e)If Any	e).454	.156		
Medical Payments:			.029			
Virginia						
(A) Same as above 15161		e)158,920	e).056	.156	89	248
Medical Payments:			.004		SMP	
(A) Same as above 15192		e)If Any	e).228	.175		
Medical Payments:			.014			
Tennessee						
(A) Same as above 15161		e)If Any	e).175	.249		
Medical Payments:			.011			
(A) Same as above 15192		e)If ANy	e).245	.184		
Medical Payments:			.015			
Mississippi						
(A) Same as above 15161		e)3,079	e).180	.191	6	6
Medical Payments:			.023		SMP	
(A) Same as above 15192		e)If Any	e).360	.156		
Medical Payments:			.023			
Kentucky						
(A) Same as above 15161		e)16,957	.085	.202	14	34
Medical Payments:			.005		SMP	
Purchase Agreements		P L A T	C H A R G E		119	
CGL Supplement per CAS.205					1506	1061
		Premium Included on Fire-263				

† Describe premium basis, if other than stated.

UNITED STATI FIDELITY AND GUARANI COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.
BALTIMORE, MARYLAND 21203

SPECIAL MULTI-PERIL POLICY—SECTION II COMPREHENSIVE GENERAL LIABILITY SCHEDULE
This schedule forms a part of Comprehensive General Liability Insurance Endorsement, MLB—202.

Agency Code	Policy Number	Effective Date	Named Insured	Provisional Premiums: ☐ Three Year Prepaid ☐ Annual Installment
	SMP 490049	3-31-76	COVIL CORPORATION, ETAL	

Description of Hazards—See Note Below † The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Annual Premium Bases	Annual Rates B. I. or Single Lmt.	Annual Rates P. D.	Annual Rates Medical Payments	Provisional Premiums B. I. or Single Lmt.	Provisional Premiums P. D.	Provisional Premiums Medical Payments
Premises—Operations		(a) Area (Sq. Ft.) (b) Receipts (c) Remuneration (d) Each	(a) Per 100 Sq. Ft. of Area (b) Per $100 of Receipts (c) Per $100 of Remuneration					
Private Residences: Additional Residence - 65143		d)1.0	2.510	.459	Flat Charge	3	Inc.	8
Escalators		Number	Per Landing					
Independent Contractors		Cost	Per $100 of Cost					
Completed Operations		Receipts	Per $1,000 of Receipts					
Included								
Products		Sales	Per $1,000 of Sales					
Included								
					Increased Limits Basic Charge			
					Total Annual Premiums	Included on		
					Total Three Year Premiums	Fire 263		

†Premium for insured hazards not specifically rated herein will be determined by audit and accordingly charged.

Casualty 71 (3-75)

This endorsement ...fies such insurance as is afforded by the provisions of the p... relating to
Comprehensive General Liability Insurance

COMPREHENSIVE GENERAL LIABILITY SUPPLEMENT

(Contractors)

(Part 1)

I. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY

A. The Company will pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as **damages** because of injury sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the **Named Insured's** business as stated in the declarations:

Group A—false arrest, detention or imprisonment, or malicious prosecution;

Group B—the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **Named Insured**;

Group C—wrongful entry or eviction, or other invasion of the right of private occupancy;

herein called "**personal injury**"; or

Group D—libel, slander, defamation, invasion of the right of privacy, piracy, unfair competition or idea misappropriation under an implied contract, or infringement of copyright, title or slogan, arising out of the **Named Insured's** advertising activities;

herein called "**advertising injury**";

if such offense is committed during the policy period, within the **policy territory**, and the Company shall have the right and duty to defend any suit against the **Insured** seeking **damages** on account of such injury even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

1. to liability assumed by the **Insured** under any contract or agreement;
2. to **personal injury** arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the **Named Insured** was made prior to the effective date of this endorsement;
3. to **personal injury** arising out of a publication or utterance described in Group B concerning any organization or business enterprise, or its products or services, made by or at the direction of any **Insured** with knowledge of the falsity thereof;
4. to **advertising injury** arising out of (a) failure of performance of contract, other than the unauthorized appropriation of ideas based upon the alleged breach of an implied contract; (b) infringement of trademark, service mark or trade name; (c) unfair competition based upon infringement of trademark, service mark or trade name; or (d) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
5. to **personal injury** or **advertising injury** arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any **Insured**;
6. to **personal injury** or **advertising injury** arising out of the conduct of any partnership or joint venture of which the **Insured** is a partner or member and which is not designated in the declarations as a **Named Insured**.

B. **Limit of Liability**—Regardless of the number of (1) **Insureds** under this policy, (2) persons or organizations who sustain **personal injury** or **advertising injury**, or (3) claims made or suits brought on account of **personal injury** or **advertising injury**, the total limit of the Company's liability under this insurance for all **damages** shall not exceed the limit of liability stated in the declarations as "aggregate" for the Bodily Injury Liability Coverage.

C. **Deductible Provision**—The Company's obligation to pay **damages** on behalf of the **Insured** because of **advertising injury** applies only to the amount of **damages** in excess of the deductible amount of $5,000. Such deductible amount applies separately to each claim for **advertising injury**. For the purpose of determining the application of such deductible amount, "each claim" shall include all claims made or suits brought on account of **advertising injury** sustained by one or more persons or organizations and arising out of the same injurious material or act, regardless of the frequency of repetition thereof or the number or kind of media used. The terms of the policy, including those with respect to the Company's rights and duties with respect to the defense of suits and the **Insured's** duties in the event of an **occurrence**, apply irrespective of the application of the deductible amount. The Company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the **Named Insured** shall promptly reimburse the Company for such part of the deductible amount as has been paid by the Company.

D. When used in reference to this insurance "**damages**" means only those damages which are payable because of **personal injury** or **advertising injury** arising out of an offense to which this insurance applies.

E. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Paragraphs (a), (b) and (c) of Persons Insured; Definitions; Supplementary Payments; Conditions and the Nuclear Energy Liability Exclusion.

II. BROAD FORM PROPERTY DAMAGE (Excluding Completed Operations)

The Property Damage Liability Coverage (including **property damage** coverage under Part III. Contractual Liability) applies to **property damage** to property in the care, custody or control of the **Insured** and to **property damage** to work performed by or on behalf of the **Named Insured**, subject to the following additional provisions:

1. The exclusions relating to **property damage** to (1) property owned, occupied or used by or rented to the **Insured** or in the care, custody or control of the **Insured** or as to which the **Insured** is for any purpose exercising physical control and (2) work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (w) and (x):

   (w) to **property damage**

   (1) to property owned or occupied by or rented to the **Insured** or, except with respect to the use of **elevators**, to property held by the **Insured** for sale or entrusted to the **Insured** for storage or safekeeping;

   (2) except with respect to liability under a written sidetrack agreement or the use of **elevators**, to

   (a) property while on premises owned by or rented to the **Insured** for the purpose of having operations performed on such property by or on behalf of the **Insured**,

   (b) tools or equipment while being used by the **Insured** in performing his operations,

   (c) property in the custody of the **Insured** which is to be installed, erected or used in construction by the **Insured**,

   (d) that particular part of any property, not on premises owned by or rented to the **Insured**,

   (i) upon which operations are being performed by or on behalf of the **Insured** at the time of the **property damage** arising out of such operations, or

   (ii) out of which any **property damage** arises, or

   (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **Insured**,

   (x) with respect to the **completed operations hazard**, to **property damage** to work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof or out of materials, parts or equipment furnished in connection therewith.

2. This insurance shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the **Insured**, such as, but not limited to, Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage; the "Other Insurance" Condition is amended accordingly.

(Continued on reverse side)

III. CONTRACTUAL LIABILITY

A. The Company will pay on behalf of the **Insured** all sums which the **Insured**, by reason of **contractual liability**, shall become legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies, caused by an **occurrence**, and the Company shall have the right and duty to defend any **suit** against the **Insured** seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the **suit** are groundless, false or fraudulent, and may make such investigation and settlement of any claim or **suit** as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend

(1) any arbitration proceeding wherein the Company is not entitled to exercise the **Insured's** rights in the choice of arbitrators and in the conduct of such proceedings, or

(2) any **suit** after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

(a) to liability assumed by the **Insured** under any **incidental contract**;

(b) to **bodily injury** or **property damage** for which the **Insured** has assumed liability under any contract or agreement, if such injury or damage occurred prior to the entering into of the contract or agreement;

(c) (1) if the **Insured** is an architect, engineer or surveyor, to **bodily injury** or **property damage** arising out of professional services performed by such **Insured**, including

(i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and

(ii) supervisory, inspection or engineering services;

(2) if the indemnitee of the **Insured** is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of

(i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or

(ii) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the **bodily injury** or **property damage**;

(d) to **bodily injury** or **property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;

(e) to **bodily injury** or **property damage** for which the indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed

(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (ii) of this exclusion does not apply with respect to liability of the indemnitee as an owner or lessor described in (2) above;

(f) to any obligation for which the **Insured** or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(g) to any obligation for which the **Insured** may be held liable in an action on a contract by a third party beneficiary for **bodily injury** or **property damage** arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;

(h) to **property damage** to

(1) property owned or occupied by or rented to the **Insured**,

(2) property used by the **Insured**, or

(3) property in the care, custody or control of the **Insured** or as to which the **Insured** is for any purpose exercising physical control;

(i) to **property damage** to premises alienated by the **Named Insured** arising out of such premises or any part thereof;

(j) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the **Named Insured** of any contract or agreement, or

(2) the failure of the **Named Insured's products** or work performed by or on behalf of the **Named Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Named Insured**;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Named Insured's products** or work performed by or on behalf of the **Named Insured** after such products or work have been put to use by any person or organization other than an **Insured**;

(k) to **property damage** to the **Named Insured's products** arising out of such products or any part of such products;

(l) to **property damage** to work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(m) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **Named Insured's products** or work completed by or for the **Named Insured** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(n) to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;

(o) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(p) to **bodily injury** or **property damage** arising out of the loading or unloading of watercraft;

(q) to **bodily injury** or **property damage** arising out of operations affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing, within fifty feet of any such railroad property;

(r) to **property damage** included within (1) the **explosion hazard**, (2) the **collapse hazard**, or (3) the **underground property damage hazard**; except to the extent that insurance is afforded for such **property damage** by the Comprehensive General Liability Insurance Coverage forming a part of the policy.

B. **Limits of Liability**

Regardless of the number of (1) **Insureds** under this policy, (2) persons or organizations who sustain **bodily injury** or **property damage**, or (3) claims made or suits brought on account of **bodily injury** or **property damage**, the Company's liability is limited as follows:

The limits of liability shall be the same as the limits stated in the declarations for Comprehensive General Liability Insurance and shall apply separately to Contractual Liability Coverage. With respect to Contractual Liability Coverage, the total liability of the Company for all damages because of **property damage** to which this coverage applies shall not exceed the limit of **property damage** liability stated in such declarations as "aggregate" and such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the **Named Insured**.

For the purpose of determining the limit of the Company's liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

C. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Paragraphs (a), (b) and (c) of Persons Insured; Definitions; Supplementary Payments; Conditions and the Nuclear Energy Liability Exclusion.

3. to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the **Named Insured** or (b) the **Named Insured**, or, if the **Named Insured** is a partnership or joint venture, any partner or member thereof;

4. to **bodily injury** or **property damage** included within Incidental Malpractice Liability.

X. PREMISES MEDICAL PAYMENTS

A. The Company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **Named Insured** is afforded coverage for **bodily injury** liability under this policy.

Exclusions

This insurance does not apply:

(a) to **bodily injury**

(1) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any **automobile** or aircraft owned or operated by or rented or loaned to any **Insured**, or

(ii) any other **automobile** or aircraft operated by any person in the course of his employment by any **Insured**;

but this exclusion does not apply to the parking of an **automobile** on the **insured premises**, if such **automobile** is not owned by or rented or loaned to any **Insured**;

(2) arising out of (i) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (ii) the operation or use of any snowmobile or trailer designed for use therewith;

(3) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any watercraft owned or operated by or rented or loaned to any **Insured**, or

(ii) any other watercraft operated by any person in the course of his employment by any **Insured**;

but this exclusion does not apply to watercraft while ashore on the **insured premises**; or

(4) arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to any **Insured**;

(b) to **bodily injury**

(1) included within the **completed operations hazard** or the **products hazards**;

(2) arising out of operations performed for the **Named Insured** by independent contractors other than (i) maintenance and repair of the **insured premises** or (ii) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage

(i) in violation of any statute, ordinance or regulation,

(ii) to a minor,

(iii) to a person under the influence of alcohol, or

(iv) which causes or contributes to the intoxication of any person,

if the **Named Insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the **Named Insured** is such an owner or lessor;

(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(c) to **bodily injury**

(1) to the **Named Insured**, any partner therein, any tenant or other person regularly residing on the **insured premises** or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;

(2) to any other tenant if the **bodily injury** occurs on that part of the **insured premises** rented from the **Named Insured** or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the **insured premises** and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the **insured premises** or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such **bodily injury** are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest unless a premium charge is entered for sport activities in the policy with respect to Premises Medical Payments Coverage;

(d) to any **medical expense** for services by the **Named Insured**, any employee thereof or any person or organization under contract to the **Named Insured** to provide such services.

B. **Limits of Liability**

The limit of liability for Premises Medical Payments is $250 each person; $10,000 each accident unless amended in the schedule of this endorsement. The limit of liability for Premises Medical Payments applicable to "each person" is the limit of the Company's liability for all medical expense for **bodily injury** to any one person as the result of any one accident; but subject to the above provision respecting "each person," the total liability of the Company under Premises Medical Payments for all medical expense for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of liability stated as applicable to "each accident."

When more than one medical payments coverage afforded by this policy applies to the loss, the Company shall not be liable for more than the amount of the highest applicable limit of liability.

C. **Policy Period; Territory**

This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

D. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Definitions, Conditions and the Nuclear Energy Liability Exclusion.

E. **Additional Definitions**

When used in reference to this insurance:

"**insured premises**" means all premises owned by or rented to the **Named Insured** with respect to which the **Named Insured** is afforded coverage for **bodily injury** liability under this policy, and includes the ways immediately adjoining on land;

"**medical expense**" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

F. **Additional Condition**

Medical Reports; Proof and Payment of Claim As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereund[illegible] all not constitute an admission of liability of any person [illegible]cept hereunder, of the Company.

(Continued on Part 2)

3. to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the **Named Insured** or (b) the **Named Insured**, or, if the **Named Insured** is a partnership or joint venture, any partner or member thereof;
4. to **bodily injury** or **property damage** included within Incidental Malpractice Liability.

X. PREMISES MEDICAL PAYMENTS

A. The Company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **Named Insured** is afforded coverage for **bodily injury** liability under this policy.

Exclusions

This insurance does not apply:

(a) to **bodily injury**

(1) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any **automobile** or aircraft owned or operated by or rented or loaned to any **Insured**, or

(ii) any other **automobile** or aircraft operated by any person in the course of his employment by any **Insured**;

but this exclusion does not apply to the parking of an **automobile** on the **insured premises**, if such **automobile** is not owned by or rented or loaned to any **Insured**;

(2) arising out of (i) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (ii) the operation or use of any snowmobile or trailer designed for use therewith;

(3) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any watercraft owned or operated by or rented or loaned to any **Insured**, or

(ii) any other watercraft operated by any person in the course of his employment by any **Insured**;

but this exclusion does not apply to watercraft while ashore on the **insured premises**; or

(4) arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to any **Insured**;

(b) to **bodily injury**

(1) included within the **completed operations hazard** or the **products hazards**;

(2) arising out of operations performed for the **Named Insured** by independent contractors other than (i) maintenance and repair of the **insured premises** or (ii) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage

(i) in violation of any statute, ordinance or regulation,

(ii) to a minor,

(iii) to a person under the influence of alcohol, or

(iv) which causes or contributes to the intoxication of any person,

if the **Named Insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the **Named Insured** is such an owner or lessor;

(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(c) to **bodily injury**

(1) to the **Named Insured**, any partner therein, any tenant or other person regularly residing on the **insured premises** or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;

(2) to any other tenant if the **bodily injury** occurs on that part of the **insured premises** rented from the **Named Insured** or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the **insured premises** and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the **insured premises** or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such **bodily injury** are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest unless a premium charge is entered for sport activities in the policy with respect to Premises Medical Payments Coverage;

(d) to any **medical expense** for services by the **Named Insured**, any employee thereof or any person or organization under contract to the **Named Insured** to provide such services.

B. **Limits of Liability**

The limit of liability for Premises Medical Payments is $250 each person; $10,000 each accident unless amended in the schedule of this endorsement. The limit of liability for Premises Medical Payments applicable to "each person" is the limit of the Company's liability for all medical expense for **bodily injury** to any one person as the result of any one accident; but subject to the above provision respecting "each person," the total liability of the Company under Premises Medical Payments for all medical expense for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of liability stated as applicable to "each accident."

When more than one medical payments coverage afforded by this policy applies to the loss, the Company shall not be liable for more than the amount of the highest applicable limit of liability.

C. **Policy Period; Territory**

This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

D. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Definitions, Conditions and the Nuclear Energy Liability Exclusion.

E. **Additional Definitions**

When used in reference to this insurance:

"**insured premises**" means all premises owned by or rented to the **Named Insured** with respect to which the **Named Insured** is afforded coverage for **bodily injury** liability under this policy, and includes the ways immediately adjoining on land;

"**medical expense**" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

F. **Additional Condition**

Medical Reports; Proof and Payment of Claim As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereund[er] shall not constitute an admission of liability of any person except hereunder, of the Company.

(Continued on Part 2)

Coverage	Line	Premium On Effective Date of This Endorsement		Premium Adjustment To Each Subsequent Anniversary		Revised Premium Due On Each Subsequent Anniversary
		Additional	Return	Additional	Return	
Bodily Injury		$	$	$	$	$
Property Damage		$	$	$	$	$
Total Premium	General Liability	$	$	$	$	$

(Continued from Part 1)

COMPREHENSIVE GENERAL LIABILITY SUPPLEMENT

(Contractors)

(Part 2)

SCHEDULE

☒ An "x" in this block indicates that **BROAD FORM PROPERTY DAMAGE** includes Completed Operations and exclusion (x) is amended to read:

(x) with respect to the **completed operations hazard** to **property damage** to work performed by the **Named Insured** arising out of the work, or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

☐ An "x" in this block indicates that the limit for property damage liability is, as respects **FIRE LEGAL LIABILITY—REAL PROPERTY**, further amended to read:

$,000 each **occurrence**

PREMISES MEDICAL PAYMENTS limits of liability are amended to read:

☐ $1,000 each person; $25,000 each accident
☐ $2,000 each person; $25,000 each accident
☐ $3,000 each person; $50,000 each accident

Coverages (PF60)	Code No.	Premium Bases	Rates / % Bodily Injury	Rates / % Property Damage	Premiums Bodily Injury	Premiums Property Damage
Contractual Liability	90100	Contract Cost 8,911,525	(Per $100 of Cost) $ .012	$ .006	$1069	$535
All Other	90200	B.I.-P.D. (M&C,OLT,OCP) Premium	10 %	5 %	$ 437	$382
Completed Operations (Broad Form P.D.)		Completed Operations P.D. Premium		5 %		$144
Fire Legal Liability—Increased Limit		Limit of Liability (If amended above)	(Per $100 of Limit) $			$
TOTAL ADVANCE PREMIUMS					$1506	$1061

Minimum Premiums: B.I.$ 21.00 P.D. $ 23.00

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Splidt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

William J. Gregg
President

Countersigned by.....
Authorized Representative

Trans. Code	Pkg.	Line	Pol. Eff. Date Mo.	Day	Yr.	Exp. Date Mo.	Yr.	State	Terr.	PF	Class		Limits BI PD Age Sp	Exposure	Coll. P.F. Med.	L. Prem.	R. Prem.	Comm.
									—	60	9010	0	—	—	—	.00	.00	
											9020	0				.00	.00	

Casualty 205 (Part 2) (4-74)

Form MLB-300 (Ed. 1-71)

SMP COMPREHENSIVE CRIME COVERAGE ENDORSEMENT
SECTION III — CRIME COVERAGE

This endorsement shall be attached to Policy No. SMP 490049 of the

FIDELITY & GUARANTY INSURANCE UNDERWRITERS, INC. Insurance Company.

(herein called Company)

The Insuring Agreements, General Agreements, Conditions and Limitations and other terms of this endorsement shall apply only as specified herein and none of the provisions, stipulations and other terms of the policy to which this endorsement is attached shall apply to insurance hereunder.

DECLARATIONS

Item 1. Effective Period: from noon on 3-31-76 to noon on the 3-31-79 (Month, Day, Year)

effective date of the cancelation or termination of the policy to which this endorsement is attached, standard time at the P.O. Address shown in the policy to which this endorsement is attached as to each of said dates, unless this endorsement is canceled or terminated as hereinafter provided or in any other manner.

Item 2.

	Table of Limits of Liability	
Insuring Agreement IA	Employee Dishonesty (Commercial Blanket) Coverage	$ 25,000
Insuring Agreement IB	Employee Dishonesty (Blanket Position) Coverage	$
Insuring Agreement II	Loss Inside the Premises Coverage	$ 2,000
Insuring Agreement III	Loss Outside the Premises Coverage	$ 2,000
Insuring Agreement IV	Money Orders and Counterfeit Paper Currency Coverage	$ 25,000
Insuring Agreement V	Depositors Forgery Coverage	$
If added by endorsement:		
Insuring Agreement		$

Item 3. The liability of the Company is subject to the terms of the following endorsements attached hereto:

Item 4. The Insured by the acceptance of this endorsement gives notice to the Company terminating or canceling prior bond(s) or policy(ies) No.(s) such termination or cancelation to be effective as of the time this endorsement becomes effective.

The Company, in consideration of the payment of the premium, and subject to the Declarations made a part hereof, the General Agreements, Conditions and Limitations and other terms of this endorsement, agrees with the Insured, in accordance with such of the Insuring Agreements hereof as are specifically designated by the insertion of an amount of insurance in the Table of Limits of Liability of this endorsement, to pay the Insured for:

INSURING AGREEMENTS

EMPLOYEE DISHONESTY COMMERCIAL BLANKET COVERAGE

IA. Loss of Money, Securities and other property which the Insured shall sustain, to an amount not exceeding in the aggregate the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement IA through any fraudulent or dishonest act or acts committed by any of the Employees, acting alone or in collusion with others.

EMPLOYEE DISHONESTY BLANKET POSITION COVERAGE

IB. Loss of Money, Securities and other property which the Insured shall sustain through any fraudulent or dishonest act or acts committed by any of the Employees, acting alone or in collusion with others, the amount of insurance on each of such Employees being the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement IB.

LOSS INSIDE THE PREMISES COVERAGE

II. Loss of Money and Securities by the actual destruction, disappearance or wrongful abstraction thereof within the Premises or within any Banking Premises or similar recognized places of safe deposit.

Loss of (a) other property by Safe Burglary or Robbery within the Premises or attempt thereat, and (b) a locked cash drawer, cash box or cash register by felonious entry into such container within the Premises or attempt thereat or by felonious abstraction of such container from within the Premises or attempt thereat.

Damage to the Premises by such Safe Burglary, Robbery or felonious abstraction, or by or following burglarious entry into the Premises or attempt thereat, provided with respect to damage to the Premises the Insured is the owner thereof or is liable for such damage.

LOSS OUTSIDE THE PREMISES COVERAGE

III. Loss of Money and Securities by the actual destruction, disappearance or wrongful abstraction thereof outside the Premises while being conveyed by a Messenger or any armored motor vehicle company, or while within the living quarters in the home of any Messenger.

Loss of other property by Robbery or attempt thereat outside the Premises while being conveyed by a Messenger or any armored motor vehicle company, or by theft while within the living quarters in the home of any Messenger.

MONEY ORDERS AND COUNTERFEIT PAPER CURRENCY COVERAGE

IV. Loss due to the acceptance in good faith, in exchange for merchandise, Money or services, of any post office or express money order, issued or purporting to have been issued by any post office or express company, if such money order is not paid upon presentation, or due to the acceptance in good faith in the regular course of business of counterfeit United States or Canadian paper currency.

DEPOSITORS FORGERY COVERAGE

V. Loss which the Insured or any bank which is included in the Insured's proof of loss and in which the Insured carries a checking or savings account, as their respective interests may appear, shall sustain through forgery or alteration of, on or in any check, draft, promissory note, bill of exchange, or similar written promise, order or direction to pay a sum certain in money, made or drawn by or drawn upon the Insured, or made or drawn by one acting as agent of the Insured, or purporting to have been made or drawn as hereinbefore set forth, including

(a) any check or draft made or drawn in the name of the Insured, payable to a fictitious payee and endorsed in the name of such fictitious payee;

(b) any check or draft procured in a face to face transaction with the Insured, or with one acting as agent of the Insured, by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one so impersonated; and

(c) any payroll check, payroll draft or payroll order made or drawn by the Insured, payable to bearer as well as to a named payee and endorsed by anyone other than the named payee without authority from such payee;

whether or not any endorsement mentioned in (a), (b) or (c) be a forgery within the law of the place controlling the construction thereof.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

(f) under Insuring Agreement II, to loss of Money contained in coin operated amusement devices or vending machines, unless the amount of Money deposited within the device or machine is recorded by a continuous recording instrument therein;

(g) under Insuring Agreement III, to loss of insured property while in the custody of any armored motor vehicle company, unless such loss is in excess of the amount recovered or received by the Insured under (1) the Insured's contract with said armored motor vehicle company, (2) insurance carried by said armored motor vehicle company for the benefit of users of its service, and (3) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service, and then this endorsement shall cover only such excess;

(h) under Insuring Agreement II, to loss, other than to money, securities, a safe or vault, by fire whether or not such fire is caused by, contributed to by, or arises out of the occurrence of a hazard insured against.

(i) under Insuring Agreements II and III, to loss due to nuclear action, nuclear radiation or radio active contamination, or to any act or condition incident to any of the foregoing.

DEFINITIONS

Section 3. The following terms, as used in this endorsement shall have the respective meanings stated in this Section:

"Money" means currency, coins, bank notes and bullion; and travelers checks, register checks and money orders held for sale to the public.

"Securities" means all negotiable and non-negotiable instruments or contracts representing either Money or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include Money.

"Employee" means any natural person (except a director or trustee of the Insured, if a corporation, who is not also an officer or employee thereof in some other capacity) while in the regular service of the Insured in the ordinary course of the Insured's business during the Effective Period of this endorsement and whom the Insured compensates by salary, wages or commissions and has the right to govern and direct in the performance of such service, but does not mean any broker, factor, commission merchant, consignee, contractor or other agent or representative of the same general character. As applied to loss under Insuring Agreement IA or IB the above words "while in the regular service of the Insured" shall include the first 30 days thereafter; subject, however, to Sections 15 and 16.

"Premises" means the interior of that portion of any building which is occupied by the Insured in conducting its business.

"Banking Premises" means the interior of that portion of any building which is occupied by a banking institution in conducting its business.

"Messenger" means the Insured or a partner of the Insured or any Employee who is duly authorized by the Insured to have the care and custody of the insured property outside the Premises.

"Custodian" means the Insured or a partner of the Insured or any Employee who is duly authorized by the Insured to have the care and custody of the insured property within the Premises, excluding any person while acting as a watchman, porter or janitor.

"Robbery" means the taking of insured property (1) by violence inflicted upon a Messenger or a Custodian; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by a partner or Employee of the Insured; (4) from the person or direct care and custody of a Messenger or Custodian who has been killed or rendered unconscious; or (5) under Insuring Agreement II, (a) from within the Premises by means of compelling a Messenger or Custodian by violence or threat of violence while outside the Premises to admit a person into the Premises or to furnish him with means of ingress into the Premises, or (b) from a showcase or show window within the Premises while regularly open for business, by a person who has broken the glass thereof from outside the Premises.

"Safe Burglary" means (1) the felonious abstraction of insured property from within a vault or safe, the door of which is equipped with a combination lock, located within the Premises by a person making a felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom or walls of such vault or such safe and any vault containing the safe through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the Premises.

"Loss", except under Insuring Agreements IA, IB and V, includes damage.

LOSS CAUSED BY UNIDENTIFIABLE EMPLOYEE

Section 4. If a loss is alleged to have been caused by the fraud or dishonesty of any one or more of the Employees covered under Insuring Agreement IA or IB, as the case may be, and the Insured shall be unable to designate the specific Employee or Employees causing such loss, the Insured shall nevertheless have the benefit of such applicable Insuring Agreement subject to the provisions of Section 2 (b) of this endorsement provided that the evidence submitted reasonably proves that the loss was in fact due to the fraud or dishonesty of one or more of the said Employees, and provided, further, that the aggregate liability of the Company for any such loss shall not exceed the Limit of Liability applicable to such Insuring Agreement.

OWNERSHIP OF PROPERTY; INTERESTS COVERED

Section 5. The insured property may be owned by the Insured, or held by the Insured in any capacity whether or not the Insured is liable for the loss thereof, or may be property as respects which the Insured is legally liable; provided, Insuring Agreements II, III and IV apply only to the interest of the Insured in such property, including the Insured's liability to others, and do not apply to the interest of any other person or organization in any of said property unless included in the Insured's proof of loss, in which event the third paragraph of Section 8 is applicable to them.

BOOKS AND RECORDS

Section 6. The Insured shall keep records of all the insured property in such manner that the Company can accurately determine therefrom the amount of loss.

PRIOR FRAUD, DISHONESTY OR CANCELATION

Section 7. The coverage of Insuring Agreement IA or IB shall not apply to any Employee from and after the time that the Insured or any partner or officer thereof not in collusion with such Employee shall have knowledge or information that such Employee has committed any fraudulent or dishonest act in the service of the Insured or otherwise, whether such act be committed before or after the date of employment by the Insured.

If, prior to the issuance of this endorsement, any fidelity insurance in favor of the Insured or any predecessor in interest of the Insured and covering one or more of the Insured's Employees shall have been canceled as to any of such Employees by reason of the giving of written notice of cancelation by the insurer issuing such fidelity insurance whether the Company or not, and if such Employees shall not have been reinstated under the coverage of said fidelity insurance or superseding fidelity insurance, the Company shall not be liable on account of such Employees unless the Company shall agree in writing to include such Employees within the coverage of Insuring Agreement IA or IB, as the case may be.

LOSS; NOTICE; PROOF; ACTION AGAINST COMPANY

Section 8. Upon knowledge or discovery of loss or of an occurrence which may give rise to a claim for loss, the Insured shall: (a) give notice thereof as soon as practicable to the Company or any of its authorized agents and, except under Insuring Agreements IA or IB, and V, also to the police if the loss is due to a violation of law; (b) file detailed proof of loss, duly sworn to, with the Company within four months after the discovery of loss.

Proof of loss under Insuring Agreement V shall include the instrument which is the basis of claim for such loss, or if it shall be impossible to file such instrument, the affidavit of the Insured or the Insured's bank of deposit setting forth the amount and cause of loss shall be accepted in lieu thereof.

Upon the Company's request, the Insured shall submit to examination by the Company, subscribe the same, under oath if required, and produce for the Company's examination all pertinent records, all at such reasonable times and places as the Company shall designate, and shall cooperate with the Company in all matters pertaining to loss or claims with respect thereto.

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this endorsement nor until ninety days after the required proofs of loss have been filed with the Company, nor at all unless commenced within two years from the date when the Insured discovers the loss. If any limitation of time for notice of loss or any legal proceeding herein contained is shorter than that permitted to be fixed by agreement under any statute controlling the construction of this endorsement the shortest permissible statutory limitation of time shall govern and shall supersede the time limitation herein stated.

VALUATION — PAYMENT — REPLACEMENT

Section 9. In no event shall the Company be liable as respects Securities for more than the actual cash value thereof at the close of business on the business day next preceding the day on which

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

The Insured shall be entitled to priority of payment over loss sustained by any bank aforesaid. Loss under this Insuring Agreement, whether sustained by the Insured or such bank, shall be paid directly to the Insured in its own name, except in cases where such bank shall have already fully reimbursed the Insured for such loss. The liability of the Company to such bank for such loss shall be a part of and not in addition to the amount of insurance applicable to the Insured's office to which such loss would have been allocated had such loss been sustained by the Insured.

If the Insured or such bank shall refuse to pay any of the foregoing instruments made or drawn as hereinbefore set forth, alleging that such instruments are forged or altered, and such refusal shall result in suit being brought against the Insured or such bank to enforce such payment and the Company shall give its written consent to the defense of such suit, then any reasonable attorneys' fees, court costs, or similar legal expenses incurred and paid by the Insured or such bank in such defense shall be construed to be a loss under this Insuring Agreement and the liability of the Company for such loss shall be in addition to any other liability under this Insuring Agreement.

GENERAL AGREEMENTS

CONSOLIDATION-MERGER

A. If, through consolidation or merger with, or purchase of assets of, some other concern, any persons shall become Employees, the insurance afforded by this endorsement shall also apply as respects such Employees, provided the Insured shall give the Company written notice thereof within thirty days thereafter and shall pay the Company an additional premium computed pro-rata from the date of such consolidation, merger or purchase to the end of the current premium period.

JOINT INSURED

B. If more than one Insured is covered under this endorsement, the Insured first named shall act for itself and for every other Insured for all purposes of this endorsement. Knowledge possessed or discovery made by any Insured or by any partner or officer thereof shall, for the purposes of Sections 7, 8 and 15, constitute knowledge possessed or discovery made by every Insured. Cancelation of the insurance hereunder as respects any Employee as provided in Section 15 shall apply to every Insured. If, prior to the cancelation or termination of this endorsement, this endorsement or any Insuring Agreement hereof is canceled or terminated as to any Insured, there shall be no liability for any loss sustained by such Insured unless discovered within one year from the date of such cancelation or termination, or as respects Insuring Agreement IB, within two years therefrom. Payment by the Company to the Insured first named of any loss under this endorsement shall fully release the Company on account of such loss. If the Insured first named ceases for any reason to be covered under this endorsement, then the Insured next named shall thereafter be considered as the Insured first named for all purposes of this endorsement.

LOSS UNDER PRIOR BOND OR POLICY

C. If the coverage of an Insuring Agreement of this endorsement other than Insuring Agreement V, is substituted for any prior bond or policy of insurance carried by the Insured or by any predecessor in interest of the Insured, which prior bond or policy is terminated, canceled or allowed to expire as of the time of such substitution, the Company agrees that such Insuring Agreement applies to loss which is discovered as provided in Section 1 of the Conditions and Limitations and which would have been recoverable by the Insured or such predecessor under such prior bond or policy except for the fact that the time within which to discover loss thereunder had expired; provided:

(1) the insurance under this General Agreement C shall be a part of and not in addition to the amount of insurance afforded by the applicable Insuring Agreement of this endorsement;

(2) such loss would have been covered under such Insuring Agreement had such Insuring Agreement with its agreements, conditions and limitations as of the time of such substitution been in force when the acts or events causing such loss were committed or occurred; and

(3) recovery under such Insuring Agreement on Account of such loss shall in no event exceed the amount which would have been recoverable under such Insuring Agreement in the amount for which it is written as of the time of such substitution, had such Insuring Agreement been in force when such acts or events were committed or occurred, or the amount which would have been recoverable under such prior bond or policy had such prior bond or policy continued in force until the discovery of such loss, if the latter amount be smaller.

Insuring Agreement V shall also cover loss sustained by the Insured at any time before the termination or cancelation of Insuring Agreement V, which would have been recoverable under the coverage of some similar form of forgery insurance (exclusive of fidelity insurance) carried by the Insured or any predecessor in interest of the Insured, had such prior forgery insurance given all of the coverage afforded under Insuring Agreement V; provided, with respect to loss covered by this paragraph:

(a) the coverage of Insuring Agreement V is substituted on or after the date hereof for such prior forgery coverage and the Insured or such predecessor, as the case may be, carried such prior forgery coverage on the office at which such loss was sustained continuously from the time such loss was sustained to the date the coverage of Insuring Agreement V was substituted therefor;

(b) at the time of discovery of such loss, the period for discovery of loss under all such prior forgery insurance has expired; and

(c) if the amount of insurance carried under Insuring Agreement V applicable to the office at which such loss is sustained is larger than the amount applicable to such office under such prior forgery insurance, and in force at the time such loss is sustained, then liability hereunder for such loss shall not exceed the smaller amount.

THE FOREGOING INSURING AGREEMENTS AND GENERAL AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

EFFECTIVE PERIOD, TERRITORY, DISCOVERY

Section 1. Loss is covered under Insuring Agreement IB of this endorsement only if discovered not later than two years from the end of the Effective Period of this endorsement. Except under Insuring Agreement IB, loss is covered under this endorsement only if discovered not later than one year from the end of such Effective Period.

Subject to General Agreement C:

(a) this endorsement, except under Insuring Agreement IA, IB and V, applies only to loss which occurs during the Effective Period of this endorsement within any of the States of the United States of America, the District of Columbia, Virgin Islands, Puerto Rico, Canal Zone or Canada;

(b) Insuring Agreements IA and IB apply only to loss sustained by the Insured through fraudulent or dishonest acts committed during the Effective Period of this endorsement by any of the Employees engaged in the regular service of the Insured within the territory designated above or while such Employees are elsewhere for a limited period;

(c) Insuring Agreement V applies only to loss sustained during the Effective Period of this endorsement.

EXCLUSIONS

Section 2. This endorsement does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any Insured or a partner therein, whether acting alone or in collusion with others;

(b) under Insuring Agreement IA or IB, to loss, or to that part of any loss, as the case may be, the proof of which, either as to its factual existence or as to its amount, is dependent upon an inventory computation or a profit and loss computation; provided, however, that this paragraph shall not apply to loss of Money, Securities or other property which the Insured can prove, through evidence wholly apart from such computations, is sustained by the Insured through any fraudulent or dishonest act or acts committed by any one or more of the Employees;

(c) under Insuring Agreements II and III, to loss due to any fraudulent, dishonest or criminal act by an Employee, director, trustee or authorized representative of any Insured, while working or otherwise and whether acting alone or in collusion with others; provided, this Exclusion does not apply to Safe Burglary or Robbery or attempt thereat;

(d) under Insuring Agreements II and III, to loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(e) under Insuring Agreements II and III, to loss (1) due to the giving or surrendering of Money or Securities in any exchange or purchase; (2) due to accounting or arithmetical errors or omissions; or (3) of manuscripts, books of account or records;

the loss was discovered, nor as respects other property, for more than the actual cash value thereof at the time of loss; provided, however, the actual cash value of such other property held by the Insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the Insured when making the advance or loan, nor, in the absence of *such record*, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may, with the consent of the Insured, settle any claim for loss of property with the owner thereof. Any property for which the Company has made indemnification shall become the property of the Company.

In case of damage to the Premises or loss of property other than Securities, the Company shall not be liable for more than the actual cash value of such property, or for more than the actual cost of repairing such Premises or property or of replacing same with property or material of like quality and value. The Company may, at its election, pay such actual cash value, or make such repairs or replacements. If the Company and the Insured cannot agree upon such cash value or such cost of repairs or replacements, such cash value or such cost shall be determined by arbitration.

RECOVERIES

Section 10. If the Insured shall sustain any loss covered by this endorsement which exceeds the applicable amount of insurance hereunder, the Insured shall be entitled to all recoveries (except from suretyship, insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whomsoever made, on account of such loss under this endorsement until fully reimbursed, less the actual cost of effecting the same; and any remainder shall be applied to the reimbursement of the Company.

LIMITS OF LIABILITY

Section 11. Payment of loss under Insuring Agreement IA, IB or V shall not reduce the Company's liability for other losses under the applicable Insuring Agreement whenever sustained. The Company's total liability (a) under Insuring Agreement IA for all loss caused by any Employee or in which such Employees is concerned or implicated, (b) under Insuring Agreement IB as to each Employee or (c) under Insuring Agreement V for all loss by forgery or alteration committed by any person or in which such person is concerned or implicated, whether such forgery or alteration involves one or more instruments, is limited to the applicable amount of insurance specified in the Table of Limits of Liability or endorsement amendatory thereto. The liability of the Company for loss sustained by any or all of the Insured shall not exceed the amount for which the Company would be liable had all such loss been sustained by any one of the Insured.

Except under Insuring Agreements IA, IB and V the applicable limit of liability stated in the Table of Limits of Liability of this endorsement is the total limit of the Company's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the Premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

Regardless of the number of years this endorsement shall continue in force and the number of premiums which shall be payable or paid, the limit of the Company's liability as specified in the Table of Limits of Liability of this endorsement shall not be cumulative from year to year or period to period.

LIMIT OF LIABILITY UNDER THIS ENDORSEMENT AND PRIOR INSURANCE

Section 12. This Section shall apply only to Insuring Agreements IA, IB and V.

With respect to loss caused by any person (whether one of the Employees or not) or in which such person is concerned or implicated or which is chargeable to any Employee as provided in Section 4 and which occurs partly during the Effective Period of this endorsement and partly during the period of other bonds or policies issued by the Company to the Insured or to any predecessor in interest of the Insured and terminated or canceled or allowed to expire and in which the period for discovery has not expired at the time any such loss thereunder is discovered, the total liability of the Company under this endorsement and under such other bonds or policies shall not exceed, in the aggregate, the amount carried under the applicable Insuring Agreement of this endorsement on such loss or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss, if the latter amount be the larger.

OTHER INSURANCE

Section 13. If there is available to the Insured any other insurance or indemnity covering any loss covered by Insuring Agreement IA, IB or V the Company shall be liable hereunder only for that part of such loss which is in excess of the amount recoverable or recovered from such other insurance or indemnity, except that if such other insurance or indemnity is a bond or policy of fidelity insurance, any loss covered under both such fidelity insurance and Insuring Agreement V shall first be paid under Insuring Agreement V. Any loss covered under both Insuring Agreements IA or IB and also under Insuring Agreement V shall first be paid under Insuring Agreement V and the excess, if any, shall be paid under Insuring Agreement IA or IB, as the case may be. The Company waives any right of contribution which it may have *against any forgery* insurance carried by any depository bank which is indemnified under Insuring Agreement V.

Under any other Insuring Agreement, if there is any other valid and collectible insurance which would apply in the absence of such Insuring Agreement, the insurance under this endorsement shall apply only as excess insurance over such other insurance; provided, the insurance shall not apply (a) to property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by the Insured.

SUBROGATION

Section 14. In the event of any payment under this endorsement the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatsoever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

CANCELATION AS TO ANY EMPLOYEE

Section 15. Insuring Agreements IA or IB shall be deemed canceled as to any Employee: (a) immediately upon discovery by the Insured, or by any partner or officer thereof not in collusion with such Employee, of any fraudulent or dishonest act on the part of such Employee; or (b) at noon, standard time as aforesaid, upon the effective date specified in a written notice mailed to the Insured. Such date shall be not less than ten days after the date of mailing. The mailing by the Company of notice as aforesaid to the Insured at the P. O. address shown in the policy to which this endorsement is attached shall be sufficient proof of notice. Delivery of such written notice by the Company shall be equivalent to mailing.

CANCELATION OF ENDORSEMENT OR INSURING AGREEMENT

Section 16. This endorsement or any Insuring Agreement thereof may be canceled by the Insured by mailing to the Company written notice stating when thereafter the cancelation shall be effective. This endorsement or any such Insuring Agreement may be canceled by the Company by mailing to the Insured at the P.O. address shown in the policy to which this endorsement is attached written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date of cancelation stated in the notice shall become the end of the Effective Period of this endorsement for any affected Insuring Agreement. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

NO BENEFIT TO BAILEE

Section 17. This Section shall apply only to Insuring Agreements II and III.

The insurance afforded by this endorsement shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

ASSIGNMENT

Section 18. Assignment of interest under this endorsement shall not be valid except with the written consent of the Company; if, however, the Insured shall die, this endorsement shall cover the Insured's legal representative as Insured; provided that notice of cancelation addressed to the Insured named in the Declarations and mailed to the P.O. address shown in the policy to which this endorsement is attached shall be sufficient notice to effect cancelation of this endorsement.

CHANGES

Section 19. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this endorsement or estop the Company from asserting any right under the terms of this endorsement, nor shall the terms of this endorsement be waived or changed, except by endorsement issued to form a part of this endorsement signed by an officer of the Company.

By acceptance of this endorsement the Insured agrees that it embodies all agreements existing between the Insured and the Company or any of its agents relating to this insurance.

SMP BOILER AND MACHINERY COVERAGE ENDORSEMENT
SECTION IV — BOILER AND MACHINERY COVERAGE

Form MLB-400 (Ed. 10-66)

This endorsement is effective as to the policy designated below.

Policy Symbol and No.	Name of Company	Endorsement effective from noon of (Month, Day, Year)

Insured

The Insuring Agreement, Conditions, Definitions and Special Provisions and other terms of this endorsement shall apply only as specified herein and none of the provisions, stipulations and other terms of the policy to which this endorsement is attached shall apply to insurance hereunder.

DECLARATIONS

Item 1.
Item 2. } as stated in the policy to which this endorsement is attached, unless amended herein:
Item 3.

	Limit per Accident:	Location 1	Location 2	Location 3
Item 4.		$	$	$

Item 5. Premium
$

Item 6. Repair or Replacement _____ Coverage not afforded unless the word "Included" is inserted in this Item.

Item 7. Endorsements Nos. made part of this endorsement at inception date

INSURING AGREEMENT

In consideration of the Premium, subject to the Declarations, to the Conditions, to the Definitions, to the Special Provisions, to other terms of this endorsement and to the endorsements issued to form a part thereof, the Company agrees with the Insured respecting loss from an Accident, as defined herein, occurring while this endorsement is in effect, to an Object, as defined herein, while the Object is in use or connected ready for use at any Location specified in the Declarations, as follows:

Coverage I—LOSS ON PROPERTY OF INSURED

To pay for loss on the property of the Insured directly damaged by such Accident (or, if the Company so elects, to repair or replace such damaged property), excluding (a) loss from fire concomitant with or following an Accident or from the use of water or other means to extinguish fire, (b) loss from an Accident caused directly or indirectly by fire or from the use of water or other means to extinguish fire, (c) loss from a combustion explosion outside the Object concomitant with or following an Accident, (d) loss from flood unless an Accident ensues and the Company shall then be liable only for loss from such ensuing Accident, (e) loss from delay or interruption of business or manufacturing or process, (f) loss from lack of power, light, heat, steam or refrigeration and (g) loss from any other indirect result of an Accident;

Coverage II—EXPEDITING EXPENSES

To pay, subject to exclusions (a) through (g) stated in Coverage I, and to the extent of any indemnity remaining after payment of all loss as may be required under Coverage I, for the reasonable extra cost of temporary repair and of expediting the repair of such damaged property of the Insured, including overtime and the extra cost of express or other rapid means of transportation, provided the Company's liability under Coverage II shall not exceed $1,000;

Coverage III—PROPERTY DAMAGE LIABILITY

To pay, to the extent of any indemnity remaining after payment of all loss as may be required under Coverages I and II, such amounts as the Insured shall become obligated to pay by reason of the liability of the Insured for loss on property of others directly damaged by such Accident, including liability for loss of use of such damaged property of others;

Coverage IV—DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

To defend the Insured against claim or suit alleging liability under Coverage III, unless or until the Company shall elect to effect settlement thereof, and to pay all costs taxed against the Insured in any legal proceeding defended by the Company in accordance with such Coverage, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premiums on appeal bonds required in such legal proceedings, all premiums on bonds to release attachments for an amount not in excess of the applicable limits of liability for Coverage III, and all expenses incurred by the Company for such defense; the amounts incurred under Coverage IV are payable by the Company irrespective of the Limit per Accident, except settlements of claims and suits.

CONDITIONS

1. LIMIT PER ACCIDENT

The Company's total liability for loss from any One Accident shall not exceed the amount specified as Limit per Accident. The term "One Accident" shall be taken as including all resultant or concomitant Accidents whether to one Object or to more than one Object or to part of an Object. The inclusion herein of more than one Insured shall not operate to increase the limits of the Company's liability.

2. OTHER INSURANCE

The words "joint loss," as used herein, mean loss to which both this insurance and other insurance carried by the Insured apply. In the event of such "joint loss,"

(a) the Company shall be liable under this endorsement only for the proportion of the said joint loss that the amount that would have been payable under this endorsement on account of said joint loss, had no other insurance existed, bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said joint loss, had there been no insurance under this endorsement, but

(b) in case the policy or policies affording such other insurance do not contain a clause similar to clause (a), the Company shall be liable under this endorsement only for the proportion of said joint loss that the amount insured under this endorsement, applicable to said joint loss, bears to the whole amount of insurance, applicable to said joint loss.

3. NUCLEAR ENERGY EXCLUSION

This endorsement does not apply to loss, whether it be direct or indirect, proximate or remote,

(1) from an Accident caused directly or indirectly by nuclear reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled; or

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

(2) from nuclear reaction, nuclear radiation or radioactive contamination, *all whether controlled or uncontrolled*, caused directly or indirectly by, contributed to or aggravated by an Accident;

nor shall the Company be liable for any loss covered in whole or in part by any contract of Insurance carried by the Insured, which also covers any hazard or peril of nuclear reaction or nuclear radiation.

4. WAR DAMAGE EXCLUSION

This endorsement does not apply to loss from an Accident caused directly or indirectly by

(1) hostile or warlike action, including action in hindering, combating or defending against an actual, impending or expected attack, by

(i) any government or sovereign power (de jure or de facto) or any authority maintaining or using military, naval or air forces,

(ii) military, naval or air forces, or

(iii) an agent of any such government, power, authority or forces;

(2) insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating or defending against such an occurrence, or by confiscation by order of any government or public authority.

5. PROPERTY VALUATION—COVERAGE I

The limit of the Company's liability for loss on the property of the Insured shall not exceed the actual cash value thereof at the time of the Accident. If, as respects the damaged property of the Insured, the repair or replacement of any part or parts of an Object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the Object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

6. REPAIR OR REPLACEMENT — COVERAGE I

If the word "Included" is inserted in Item 6 of the Declarations, but not otherwise, the Property Valuation — Coverage I Condition of this endorsement is deleted and loss on property of the Insured as specified in Coverage I shall mean the amount actually expended by the Insured to repair or replace such property of the Insured, all subject to the following provisions:

(a) The damaged property shall be repaired or replaced within twelve months from the date of the Accident unless such period is extended with *written consent* of the Company.

(b) If an Object Limit clause and a Coinsurance clause are applicable to the payment of loss under Coverage I of the Insuring Agreement of this endorsement, the words "replacement cost" are substituted for words "actual cash value" wherever they appear in said clauses.

(c) The Company's liability for any repair or replacement shall be limited to the smaller of the following:

(1) The cost at the time of the Accident to repair the said property, or

(2) The cost at the time of the Accident to replace the said property on the same site with property of like kind, capacity, size and quality;

provided that in the event the replacement is by property of a better kind or quality or of larger capacity or size, the liability of the Company shall not exceed the amount that would be paid if the replacement has been made by property of like kind, capacity, size and quality.

(d) The Company shall not be liable for:

(1) any increase in the cost of repair or replacement necessitated by any ordinance or law regulating *or restricting* repair, construction or installation,

(2) loss or damage to property useless to the Insured or obsolete to the Insured, nor

(3) the cost of repairing or replacing any part or parts of an Object which is in excess of the cost of repairing or replacing the entire Object.

(e) If any damaged property is not repaired or replaced, the Company's liability as respects such property shall be limited to the amount that would have been paid had this Condition not been in effect.

7. INSPECTION AND SUSPENSION

The Company shall be permitted at all reasonable times while this endorsement *is in effect* to inspect any Object and the premises where said Object is located.

Upon the discovery of a dangerous condition with respect to any Object, any representative of the Company may immediately suspend the insurance with respect to an Accident to said Object by written notice mailed or delivered to the Insured at the P.O. Address of the Insured as specified in the Declarations or at the location of the Object. Insurance so suspended may be reinstated by the Company but only by an endorsement issued to form a part of this endorsement and signed by a duly authorized representative of the Company. The Insured shall be allowed the unearned portion of the premium paid for such suspended insurance, pro rata, for the period of suspension.

8. CANCELLATION

Cancellation or termination of the policy to which this endorsement is attached shall effect cancellation or termination of this endorsement.

This endorsement may be cancelled by the Insured by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This endorsement may be cancelled by the Company by mailing to the Insured at the P.O. Address of the Insured, as specified in the Declarations, written notice stating when not *less than ten* days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the Policy Term for this endorsement. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

If the Insured cancels, the earned premium shall be computed in accordance with the Term Table in the Company's Manual of Rules and Rates applicable. If the Company cancels, the earned premium shall be computed pro rata. Premium Adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due the Insured.

If the premium indicated in the Declarations is made payable in Annual installments, failure of the Insured to pay any such installment when due, shall be deemed a request by the Insured for cancellation of this endorsement and Notice by the Company to the Insured in accordance with the provisions of this Condition shall operate as a cancellation thereof at the request of the Insured and the earned premium shall be determined as *specified in this* Condition for cancellation by the Insured.

If the earned premium, computed in accordance with the provisions of this Condition, exceeds the premium paid by the Insured, the Insured shall pay the Company the difference.

9. NOTICE OF ACCIDENT AND ADJUSTMENT

When an Accident occurs, written notice shall be given by or on behalf of the Insured to the Company or any of its authorized agents as soon as practicable. The Insured shall give like notice of any claim made on account of such Accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Insured before repairs are undertaken or physical evidence of the Accident is removed, except for protection or salvage. Proof of loss shall be made by the Insured in such form as the Company may require. If suit is brought against the Insured for loss to which this insurance is applicable, the Insured shall immediately forward to the Company any summons or other process served upon the Insured. The Insured upon request of the Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company.

In the event of disagreement between the Company and the Insured as to the amount of loss on the property of the Insured for which the Company is liable under this endorsement, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then on the request of the Insured or the Company, such umpire shall be

selected by a judge of a court of record in the State in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss and upon failure to agree shall submit their difference to the umpire. An award in writing of any two of said three persons shall determine the amount of said loss. The Insured and the Company shall pay the appraisers respectively chosen by each and shall share and pay equally for the umpire and for other expenses of appraisal. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

The Insured shall not voluntarily assume any liability or incur any expense, other than at the Insured's own cost, except as otherwise expressly permitted in this endorsement, or interfere in any negotiation for settlement or any legal proceeding, without the consent of the Company previously given in writing.

10. SUBROGATION

In the event of any payment under this endorsement, the Company shall be subrogated to the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the Accident to prejudice such rights.

11. ACTION AGAINST COMPANY—COVERAGES I AND II

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this endorsement, nor unless commenced within fourteen months from the date of Accident. If this limitation of time is shorter than that prescribed by any statute controlling the construction of this endorsement, the shortest permissible statutory limitation in time shall govern and shall supersede the time limitation herein stated.

12. ACTION AGAINST COMPANY—COVERAGE III

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this endorsement, nor until the amount of the Insured's obligation to pay has been finally determined either by judgment against the Insured after trial or by written agreement of the Insured, the claimant and the Company. The Insured upon request of the Company shall aid in effecting settlements, in securing evidence and the attendance of witnesses and in prosecuting appeals.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this endorsement to the extent of the insurance afforded by this endorsement. Nothing contained in this endorsement shall give any person or organization any right to join the Company as a codefendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

13. PREMIUM ADJUSTMENT

With respect to the Objects described in the Definitions, the premiums for all kinds of insurance afforded by this endorsement or amendment thereof shall be adjusted as follows:

(a) any premium applicable to such Objects shall be adjusted, as of the effective date such insurance applies, on the basis of the information obtained at the time of the Company's survey of such Objects that are in use or connected ready for use as of such effective date;

(b) an additional premium shall be charged for additional Objects, included in this endorsement in accordance with the terms and provisions of this Condition which are located in new structures or structural additions constructed after the effective date of this endorsement, such additional premium to be computed pro rata from the time said additional Objects are connected ready for use; and

(c) a return premium shall be allowed for insured Objects located in structures or structural additions demolished after the effective date of this endorsement, such return premium to be computed pro rata from the time said Objects are disconnected.

14. ASSIGNMENT

Assignment of interest under this endorsement shall not bind the Company until its consent is endorsed herein; if, however, the Insured shall die or be adjudged bankrupt or insolvent during the Term of the Policy to which this endorsement is attached, this endorsement, unless cancelled, shall, if written notice be given to the Company within sixty days after the date of such death or adjudication, cover the Insured's legal representative as the Insured.

15. CHANGES

By accepting this endorsement, the Insured agrees that this endorsement embodies all agreements existing between the Insured and the Company or any of its agents relating to this insurance. Notice to any agent or knowledge possessed by an agent or any other person shall not effect a waiver or a change in any part of this endorsement or estop the Company from asserting any rights under this endorsement; nor shall the terms of this endorsement be waived or changed, except by endorsement issued to form a part of this endorsement signed by a duly authorized representative of the Company. The additional or return premium for any such endorsement shall be computed in accordance with the Company's Manual of Rules and Rates applicable to such change.

DEFINITIONS

A. DEFINITION OF OBJECT

Object shall mean

Group 1, any steam boiler, electric steam generator, hot water boiler, fired water heater or fired pressure vessel, including as part thereof (1) any steel economizer used solely with such vessel, (2) any indirect water heater used for hot water supply service which is directly in the water circulating system of such vessel and which does not form a part of a water storage tank, and (3) any piping on the premises of the Insured, or between parts of said premises, with valves, fittings, traps and separators thereon, which contains steam or condensate thereof, generated in whole or in part in such vessel, and any feed water piping between such vessel and its feed pump or injector; but Object shall not include

a. any part of such vessel or piping which does not contain water or steam;
b. any reciprocating or rotating machine;
c. any electrical apparatus;
d. any piping not on the premises of the Insured, used to supply any premises not owned by, leased by or operated under the control of the Insured; nor
e. any other piping, any radiator, convector, coil, vessel or apparatus except as included in (1), (2) and (3) above.

Group 2, any metal unfired pressure vessel as follows: hot water storage tank with or without internal heating coils, coil water heater, electric water heater, tank for the storage of compressed air and hydro-pneumatic tank; but Object shall not include

a. any part of such vessel which is not under pressure of contents therein or which is not under vacuum therein;
b. any reciprocating or rotating apparatus within or forming a part of such vessel;
c. any electrical apparatus within or forming a part of such vessel;
d. any piping leading to or from such vessel;
e. any cylinder containing a movable plunger or piston;
f. any expansion tank used with a hot water heating system;
g. any radiator, inductor or convector; nor
h. any vessel or coil connected to or used with a refrigerating system or an air conditioning system.

Group 3, metal piping with valves, fittings, traps or separators thereon containing steam or condensate thereof, on or between parts of the premises of the Insured, supplied by boilers or vessels not owned, operated or controlled by the Insured, and compressed air piping on the premises; but Object shall not include

a. any radiator;
b. any convector; nor
c. any coil or other vessel or apparatus connected to such piping.

B. DEFINITION OF ACCIDENT

I. Accident shall mean a sudden and accidental breakdown of the Object, or a part thereof, which manifests itself at the time of its occurrence by physical damage to the Object that necessitates repair or replacement of the Object or part thereof, but Accident shall not mean

a. depletion, deterioration, corrosion or erosion of material;
b. wear and tear;
c. leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
d. the breakdown of any vacuum tube, gas tube or brush;
e. the breakdown of any structure or foundation supporting the Object or any part thereof;
f. the functioning of any safety device or protective device; nor
g. the explosion of gas or unconsumed fuel within the furnace of any fired Object or within the gas passages therefrom to the atmosphere.

II. Subject to the War Damage Exclusion in Condition 4 of this endorsement, an Accident arising out of strike, riot, civil commotion or acts of sabotage, vandalism or malicious mischief shall be considered "accidental" within the terms of this definition.

SPECIAL PROVISIONS

A. As respects any Object described in Group 1 of the Definition of Object, the furnace of any such Object and the gas passages therefrom to the atmosphere shall be considered as "outside the Object."

B. As respects any Object described in Group 1 of the Definition of Object, the Company shall not be liable for loss from an Accident while said Object is undergoing a hydrostatic pressure test.

C. As respects any Object described in Groups 2 and 3 of the Definition of Object, the Company shall not be liable for loss while said Object is undergoing a hydrostatic, pneumatic or gas pressure test.

SECTION IV — BOILER AND MACHINERY COVERAGE

Form MLB-401 (Ed. 1-71)

DECLARATIONS

Item 1. Policy Number SMP 490049

Item 2. Name and Address of Insured COVIL CORPORATION, ETAL
P. O. Box 1804, Greenville, S. C.

Item 3. Policy Period: From noon of 3-31-76 to noon of 3-31-79 Standard Time, as to each of said dates, at the place where the accident occurs.

Item 4.

Total Premium	If Installments, Premium Payable:		
	In Advance	1st Anniversary	2nd Anniversary
$ 2,916	$ 1,012	$ 952	$ 952

Item 5. Repair or Replacement ..... (Coverage not afforded unless the word "Included" is inserted in this Item.)

Item 6. Endorsements Nos. made part of this endorsement at inception date MLB-400, MLB-40, mLB-402

Item 7. Limit per Accident:

Location 1	Location 2	Location 3
$ 500,000	$	$

Item 8. Schedule A—Applicable when coverage is provided by object groups. Insurance is afforded only with respect to Groups for which the word "Included" is inserted in the space provided below.

Groups	Descriptions	Included or Amount	Groups	Descriptions	Included or Amount
1, 2, 3	Boilers, Unfired Vessels, and Piping	Included	5, 6, 7, 8	Machinery	
				Object Limit (Group 8)	%
2a	Additional Unfired Vessels	Included		Coinsurance (Group 8)	%
4	Refrigerating		9, 10	Steam Machinery	
	Additional Vessels & Piping		11, 12	Nonrotating Electrical	
	Ammonia Contamination Limit	$		Object Limit (Group 12)	%
	Water Damage Limit	$		Coinsurance (Group 12)	%
			13, 14	Machinery Units	Included
				Water Damage Limit (Group 13)	$ 1,000

Item 9. Schedule B—Applicable only when coverage under MLB-400 is provided in conjunction with MLB-422.

Definitions and Special Provisions Section	Designated No. of Objects	Description of Objects and Other Provisions	Coverage

Form MLB-401 (Ed. 1-71)

DO NOT TYPE ABOVE THIS LINE

Applicable to Form MLB-401

In Item 5 Repair or Replacement is included except as respects the following 2 (two) air conditioning units.
1) Air conditioning Unit No. 58-3612, 180,000 btu/hr
2) Air Conditioning Unit No. 249667, 180,000 btu/hr.

The described units are located at:
131 Pinsley Circle,
Greenville, S. C.

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Splidt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

Willford Gragg
President

Countersigned by.....
Authorized Representative

General 166 (8/73)

ADDITIONAL OBJECT GROUPS
(Definitions and Special Provisions)

Insurance is afforded only with respect to Groups for which the word "Included" is inserted in Item 8 of the Declarations of Form MLB-401.

A. GROUP 4—REFRIGERATING

Object shall mean any system of refrigerating or air conditioning vessels and piping of 5HP capacity or more consisting of

1. all interconnected vessels, coils and piping which contain refrigerant;
2. all vessels which contain coils within which refrigerant is circulated;
3. any vessel, heated directly or indirectly, which functions as a generator, regenerator or concentrator and which forms a part of an absorption type system;
4. all valves and fittings on such vessels, coils and piping;

and if the word "Included" is inserted in Item 8 of the Declarations of MLB-401 opposite Additional Vessels & Piping, but not otherwise, Object shall also include

5. all vessels, radiators, inductors, convectors and coils together with valves and fittings thereon, which are connected to or used with the system and within which steam, water, brine or other solution is circulated for cooling, humidifying or space heating; and all piping containing water, brine or other solution interconnecting such vessels, radiators, inductors, convectors and coils, together with valves and fittings on such piping;

but excluding

(a) any steam boiler, steam piping or hot water boiler;
(b) any reciprocating or rotating machine or apparatus;
(c) any electrical apparatus;
(d) any apparatus mounted on or forming a part of a truck or other vehicle, or any hose, flexible device or non-metallic pipe connected to such apparatus; and
(e) any vessel, cooling tower, reservoir or other source of supply of cooling water for any condenser or compressor together with any water piping leading to or from such source of supply.

Ammonia Contamination Limit—The Company's liability for loss, including salvage expense, with respect to damage by ammonia contacting or permeating property under refrigeration, or in process requiring refrigeration, resulting from any One Accident to one or more Objects described in this Group shall not exceed $1,000 or shall not exceed the amount, if any, specified as the "Ammonia Contamination Limit" in Item 8 of the Declarations of MLB-401, whichever amount is greater, any such amount being a part of and not in addition to the Limit per Accident.

Water Damage Limit—The Company's liability for loss, including salvage expense, on property damaged by water resulting from any One Accident to one or more Objects described in this Group, shall not exceed $1,000 or shall not exceed the amount, if any, specified as the "Water Damage Limit" in Item 8 of the Declarations of MLB-401, whichever amount is greater, any such amount being a part of and not in addition to the Limit per Accident.

Special Provision—The Company shall not be liable for loss from an Accident to any Object described in this Group while said Object is undergoing a hydrostatic, pneumatic or gas pressure test.

B. GROUP 5—MACHINERY

Object shall mean any pump, compressor, fan or blower of the centrifugal or rotary type which is driven by an electric motor of 5HP capacity or more; but Object shall not include

(a) any air tank, mechanism or other appliance connected to the pump, compressor, fan or blower;
(b) any electrical apparatus;
(c) any piping or duct leading to or from the pump, compressor, fan or blower; nor
(d) any well casing.

C. GROUP 6—MACHINERY

Object shall mean any reciprocating pump or compressor which is driven by an electric motor of 5HP capacity or more; but Object shall not include

(a) any air tank, mechanism or other appliance connected to the pump or compressor;
(b) any electrical apparatus;
(c) any piping or duct leading to or from the pump or compressor; nor
(d) any well casing.

D. GROUP 7—MACHINERY

Object shall mean any electric motor of 5HP capacity or more used to drive a pump, compressor, fan or blower including

1. any exciter which is mechanically connected to such motor and is used solely for the excitation of such motor;
2. any shaft of such motor and any gear, wheel or magnetic brake mechanism on such shaft or on the frame of such motor, if such shaft does not also form an integral part of any other machine;
3. any shaft coupled to such motor, including the couplings and bearings thereon, if there is no mechanism other than a coupling on such shaft;
4. any gear set, with its bearings and shafts, built into the frame of any such motor or built into a casing integral with such motor; and
5. any nonrotating equipment used solely to start, stop or control any such motor and all electrical conductors connecting such equipment with the said motor, provided that such control equipment is physically separate from, and does not form a part of a switchboard, cubicle or bus structure used for the control of any electrical machine other than the said motor;

but Object shall not include

(a) any electrical conductors not specified in item (5);
(b) any piping leading to or from such motor; nor
(c) any electronic computer or electronic data processing equipment.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause(a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from use of water or other means to extinguish fire."

E. GROUP 8—MACHINERY

Object shall mean any enclosed gear set used as an intermediate drive for an Object described in Groups 5 or 6; but object shall not include

(a) any mechanism or appliance connected to such machine; nor
(b) any electrical apparatus.

Object Limit. The liability of the Company for loss on any Object, if such loss is caused by an Accident to said

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the policy is written.

Object, shall not exceed the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Object Limit" in Item 8 of the Declarations of MLB-401, and such amount is a part of and not in addition to the Limit per Accident.

Coinsurance. The Company shall not be liable for a greater proportion of loss on any Object, if such loss is caused by an Accident to the Object, than the Object Limit determined above bears to the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Coinsurance" percentage in Item 8 of the Declarations of MLB-401.

F. GROUP 9—STEAM MACHINERY

Object shall mean any steam engine, steam type compressor or steam type pump; but Object shall not include

(a) any air tank, mechanism or other appliance connected to such machine;
(b) any electrical apparatus, other than a governor motor;
(c) any condenser or its adapter;
(d) any piping or duct leading to or from such machine; nor
(e) any well casing.

G. GROUP 10—STEAM MACHINERY

Object shall mean any steam turbine unit, including as part thereof

1. any complete driving turbine;
2. any electrical generator, pump, compressor, fan, blower, wheel or gear on the shaft of the driving turbine or turbines or on a shaft which is connected to any of said turbines by any coupling, clutch or gear set;
3. any mechanical or hydraulic governing mechanism together with any electric motor used solely therewith;
4. any auxiliary apparatus mounted on the frame or bed of the unit;
5. any oil pump, or any pump for circulating a coolant for any electric generator, if used solely for the unit together with any machine driving any such pump;
6. any auxiliary electric motor used to rotate the unit solely for maintenance purposes;
7. any shaft which forms a part of the unit or which connects parts of the unit, together with any coupling, clutch, bearing, gear or gear set on said shaft; and
8. the interconnecting wiring and piping between parts of the unit;

but Object shall not include

(a) any electronic computer or electronic data processing equipment used to govern or control the unit;
(b) any machine or apparatus except as included in Sections 1-8 above;
(c) any wiring or piping leading to or from the unit; nor
(d) any condenser, its connecting pipe or adapter.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

H. GROUP 11—NON ROTATING ELECTRICAL

Object shall mean any transformer of 5 KVA or 5 KW capacity or more; but Object shall not include (a) any electrical conductors nor any piping leading to or from such transformer; nor (b) any electronic computer or electronic data processing equipment.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

I. GROUP 12—NON ROTATING ELECTRICAL

Object shall mean any switchboard, cubicle, bus structure, oil circuit breaker or air circuit breaker; but Object shall not include

(a) any rotating electrical machine other than one used solely to operate any part of such apparatus;
(b) any power transformer or any induction feeder regulator;
(c) any electronic computer or electronic data processing equipment;
(d) any conduit; nor
(e) any electrical conductors or piping leading to or from such apparatus.

Object Limit. The liability of the Company for loss on any Object, if such loss is caused by an Accident to said Object, shall not exceed the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Object Limit" in Item 8 of the Declarations of MLB-401, and such amount is a part of and not in addition to the Limit per Accident.

Coinsurance. The Company shall not be liable for a greater proportion of loss on any Object, if such loss is caused by an Accident to the Object, than the Object Limit determined above bears to the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Coinsurance" percentage in Item 8 of the Declarations of MLB-401.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

J. GROUP 13—MACHINERY UNITS

Object shall mean any air conditioning unit which has a capacity of 60,000 Btu/hr, or more, but not in excess of 600,000 Btu/hr, consisting of

1. all interconnected vessels, coils and piping which contain refrigerant, or within which refrigerant is circulated, together with valves and fittings on such vessels, coils and piping;
2. any vessel, heated directly or indirectly, which functions as a generator, regenerator or concentrator and which forms a part of an absorption type unit;
3. all compressors, pumps, fans and blowers used solely with such unit, together with their driving electric motors;
4. all control equipment used solely with the unit; and
5. all vessels, radiators, inductors, convectors and coils, together with valves and fittings thereon, which are connected to or used with the unit and within which steam, water, brine or other solution is circulated for cooling, humidifying or space heating; and all piping containing water, brine or other solution interconnecting such vessels, radiators, inductors, convectors and

coils, together with valves and fittings on such piping; but Object shall not include

(a) any steam boiler, steam piping or hot water boiler;

(b) any vessel, cooling tower, reservoir or other source of supply of cooling water for any condenser or compressor, together with any water piping leading to or from such source of supply;

(c) any wiring or piping leading to or from the unit;

(d) any belt; nor

(e) any truck or other vehicle, cabinet or compartment on or within which the unit, or any part thereof, is installed.

Water Damage Limit—The Company's liability for loss, including salvage expense, on property damaged by water resulting from any One Accident to one or more Objects described in this Group, shall not exceed $1,000 or shall not exceed the amount, if any, specified as the "Water Damage Limit" in Item 8 of the Declarations of MLB-401, whichever amount is greater, any such amount being a part and not in addition to the Limit per Accident.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

K. GROUP 14—MACHINERY UNITS

Object shall mean any small refrigerating unit or small air compressing unit each of which has a single compressor driven by a single electric motor with a capacity of 5HP or more but not in excess of 15HP, excluding any such unit forming part of an air conditioning unit; and Object shall mean the complete unit, but shall not include

(a) any wiring or piping leading to or from the unit;

(b) any belt; nor

(c) any truck or other vehicle, cabinet or compartment on or within which the unit, or any part thereof, is installed.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

MOBILE PROPERTY FLOATER FORM
(FORM A)

Attached to and forming part of Policy Number SMP 490049

Issued by FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.
covering on the following described property:

DESCRIPTION OF PROPERTY	AMOUNT OF INSURANCE
This policy covers on property as per schedule on file at the office of the Company at Columbia, South Carolina dated 3-31-76.	267,345

DEDUCTIBLE

Each claim for loss or damage shall be adjusted separately, and from the amount of each adjusted claim, or the applicable limit of liability, whichever is less, the sum of $.....25.00.....shall be deducted.

THIS POLICY INSURES AGAINST:

All risks of direct physical loss or damage to the above described property from any external cause, except as hereinafter provided.

THIS POLICY DOES NOT INSURE AGAINST:

(a) Loss or damage caused by wear and tear, gradual deterioration, dampness of atmosphere, extremes of temperature, insect, vermin, defect, inherent vice, or damage sustained due to any process or while being actually worked upon and resulting therefrom;

(b) Loss or damage caused by short circuit or other electrical injury or disturbance, exclusive of lightning to electrical appliances, devices or other electrically operated property or wiring unless fire ensues and then for the loss or damage by fire only;

(c) Loss or damage due to mechanical damage or breakdown, breakage of glass or other brittle articles or parts (lenses of scientific instruments excepted), marring, scratching, chipping or denting unless caused by fire, lightning, theft or attempted theft, cyclone, tornado, windstorm, earthquake, flood, explosion, malicious damage or collision, derailment or overturn of transporting vehicle;

(d) Loss or damage caused by or resulting from misappropriation, secretion, conversion, infidelity or any dishonest act on the part of the insured or other party of interest, his or their employees or agents or others to whom the property may be entrusted (carriers for hire excepted);

THE PROVISIONS PRINTED ON THE BACK OF THIS FORM ARE HEREBY REFERRED TO AND MADE A PART HEREOF.

Date 3-31-76 SAM J. CRAIN CO., INC. Agent.

THIS POLICY DOES NOT INSURE AGAINST:

(e) Loss or damage caused by or resulting from theft from an unattended vehicle unless said vehicle is equipped with a fully enclosed body, and the loss is a direct result of violent forcible entry (of which there shall be visible evidence) into such fully enclosed body, the doors and windows of which have been securely locked;

(f) Delay, loss of market, indirect or consequential loss of any kind, unexplained loss, mysterious disappearance or shortage disclosed upon taking inventory;

(g) Loss or damage caused by or resulting from perils as specified in the War Risk Exclusion clause contained in the policy to which this form is attached;

(h) Loss caused by perils as specified in the Nuclear Exclusion Clause contained in the policy to which this form is attached.

SPECIAL CONDITIONS:

1. **TERRITORIAL LIMITS:** This policy covers the property insured only while it is within the forty-eight (48) contiguous states of the United States of America, the District of Columbia and the Dominion of Canada. *( )

2. **COINSURANCE:** The Company shall be liable, in the event of loss, for no greater proportion thereof than the amount insured hereunder bears to 100% of the actual value of the property insured hereunder at the time when such loss or damage shall happen. If this policy covers two or more items, this condition to apply to each item separately.

*Note: On policies issued to Insureds in Alaska, Hawaii or Puerto Rico, insert the words "and within Alaska" or "and within Hawaii" or "and within Puerto Rico" as the case may be.

Subject to all conditions of the policy to which this form is attached, except that any and all clauses and conditions in the printed portion of the policy in conflict with the terms of this special form are waived and declared null and void.

EXHIBIT 56

Subject: FW: Asbestos Litigation - Receiver for Covil's Motion for Status Conference

From: Toal, Jean <JToal@sccourts.org>
Sent: Wednesday, July 03, 2019 1:33 PM
To: Jescelyn Spitz <jspitz@rplegalgroup.com>
Cc: Berry, Walker <wberry@sccourts.org>; Ezra S. Gollogly <egollogly@kg-law.com>; Robert Rikard <rgr@rplegalgroup.com>; Peter Protopapas <pdp@rplegalgroup.com>; Murrell Smith <murrell@smithrobinsonlaw.com>; Jon Robinson <jon@duboselaw.com>; Dot Faulkenberry <Dot@smithrobinsonlaw.com>; mwhardee@bellsouth.net; Zevnik, Paul A. <paul.zevnik@morganlewis.com>; Edwards, Brady <brady.edwards@morganlewis.com>; Nes, W. Brad <brad.nes@morganlewis.com>; Morton, Clayton A. <clayton.morton@morganlewis.com>; McCulloch, Lauren A. <lauren.mcculloch@morganlewis.com>; ashley.brathwaite@elliswinters.com; leslie.packer@elliswinters.com; curtis.shipley@elliswinters.com; tmcvey@kassellaw.com; Trey Branham <tbranham@dobslegal.com>; Lee H. Ogburn <LOgburn@kg-law.com>; wdavis@brblegal.com; mnorton@brblegal.com; William A. Bulfer <WBulfer@teaguecampbell.com>; blove@teaguecampbell.com; pdworjanyn@collinsandlacy.com; Ilya Kosten <ikosten@btlawla.com>; wsawyer@murphygrantland.com; J. R. Murphy <jrmurphy@murphygrantland.com>; Jeff C. Kull <jkull@murphygrantland.com>; Ruggeri, James P. <JRuggeri@goodwin.com>; eparks@goodwin.com; mmorrison@goodwin.com; AWilliams@goodwin.com; wquick@brookspierce.com; Greg May <greg.may@nelsonmullins.com>; Matt Abee <matt.abee@nelsonmullins.com>; bob.calamari@nelsonmullins.com; wpowell@brunerpowell.com; Lindsay Valek <Lindsay@rplegalgroup.com>; Rick@gleissnerlaw.com
Subject: Re: Asbestos Litigation - Receiver for Covil's Motion for Status Conference

[EXTERNAL EMAIL]

Dear Ms. Spitz and all: I look forward to seeing you all on the 11th of July, 2019 in the Richland County Judicial Center at 10:00am or thereafter for our status conference. By attending this status conference, no counsel or party will waive their right to insist that South Carolina does not have jurisdiction to hear any or all of the cases filed in its Circuit Courts regarding Covil. As the Administrative Circuit Judge for Asbestos Litigation Matters, I simply want to get a handle on these cases. All rights will be preserved. Best regards, Jean Toal

Sent from my iPad

On Jul 2, 2019, at 6:16 PM, Jescelyn Spitz <jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Chief Justice Toal and Mr. Berry:

In light of the upcoming status conference, we are writing to provide your honor with a copy of the attached Motion to Enjoin this South Carolina Court and supporting memo (we will provide a hard copy with the exhibits due to email size restrictions), Motion to Expedite the briefing, and correspondence requesting a Scheduling Conference submitted by insurance counsel to the South Carolina and North Carolina federal courts. The motions and correspondence submitted by insurance counsel reference the upcoming status conference. As the Court is aware, the Receiver's request for a status conference was granted on June 21st.

Respectfully submitted,

Jescelyn Tillman Spitz, Esq.

RIKARD & PROTOPAPAS, LLC

1329 Blanding Street (29201)

P.O. Box 5640

Columbia, South Carolina 29250

Telephone: 803.978.6111

Fascimile: 803.978.6112

jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>

https://urldefense.proofpoint.com/v2/url?u=http-3A__www.rplegalgroup.com&d=DwIGaQ&c=wbMekZ1iboz3wtx3IlLI8YgCUSSh7g3G58syakvKORs&r=sqcyPdedu2lLAGxFEHg1sqbSPOHwbkrYewF61C_zRMA&m=Y8oJ7Mwh7clLwJMeH00s_ikXEuD5blOvOAUiFuXxAzM&s=gZAN2kv4cdo7cJ82Hrl4wYXRb87xAD_KUSsCqsmfugc&e= <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.rplegalgroup.com&d=DwMGaQ&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDQ41mXgQ4s&m=1YQxiB3JiB4iFx3ql4ItHwCuJp8pDdVlDMf4wztLNHY&s=2NFBYeKUmyxGjsPLGh0ZzqZl-tl3jRtkd2KTgJ3J2lo&e=>

From: Jescelyn Spitz

Sent: Monday, July 1, 2019 4:47 PM

To: 'Berry, Walker' <wberry@sccourts.org<mailto:wberry@sccourts.org>>

Cc: 'Ezra S. Gollogly' <egollogly@kg-law.com<mailto:egollogly@kg-law.com>>; Robert Rikard <rgr@rplegalgroup.com<mailto:rgr@rplegalgroup.com>>; Peter Protopapas <pdp@rplegalgroup.com<mailto:pdp@rplegalgroup.com>>; 'Murrell Smith' <murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; 'Jon Robinson' <jon@duboselaw.com<mailto:jon@duboselaw.com>>; 'Dot Faulkenberry' <Dot@smithrobinsonlaw.com<mailto:Dot@smithrobinsonlaw.com>>; 'mwhardee@bellsouth.net<mailto:mwhardee@bellsouth.net>' <mwhardee@bellsouth.net<mailto:mwhardee@bellsouth.net>>; 'Zevnik, Paul A.' <paul.zevnik@morganlewis.com<mailto:paul.zevnik@morganlewis.com>>; 'Edwards, Brady' <brady.edwards@morganlewis.com<mailto:brady.edwards@morganlewis.com>>; 'Nes, W. Brad' <brad.nes@morganlewis.com<mailto:brad.nes@morganlewis.com>>; 'Morton, Clayton A.' <clayton.morton@morganlewis.com<mailto:clayton.morton@morganlewis.com>>; 'McCulloch, Lauren A.' <lauren.mcculloch@morganlewis.com<mailto:lauren.mcculloch@morganlewis.com>>; 'ashley.brathwaite@elliswinters.com<mailto:ashley.brathwaite@elliswinters.com>' <ashley.brathwaite@elliswinters.com<mailto:ashley.brathwaite@elliswinters.com>>; 'leslie.packer@elliswinters.com<mailto:leslie.packer@elliswinters.com>' <leslie.packer@elliswinters.com<mailto:leslie.packer@elliswinters.com>>; 'curtis.shipley@elliswinters.com<mailto:curtis.shipley@elliswinters.com>' <curtis.shipley@elliswinters.com<mailto:curtis.shipley@elliswinters.com>>; 'tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>' <tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>>; 'Trey Branham' <tbranham@dobslegal.com<mailto:tbranham@dobslegal.com>>; 'Lee H. Ogburn' <LOgburn@kg-law.com<mailto:LOgburn@kg-law.com>>; 'wdavis@brblegal.com<mailto:wdavis@brblegal.com>' <wdavis@brblegal.com<mailto:wdavis@brblegal.com>>; 'mnorton@brblegal.com<mailto:mnorton@brblegal.com>' <mnorton@brblegal.com<mailto:mnorton@brblegal.com>>; 'William A. Bulfer' <WBulfer@teaguecampbell.com<mailto:WBulfer@teaguecampbell.com>>; 'blove@teaguecampbell.com<mailto:blove@teaguecampbell.com>' <blove@teaguecampbell.com<mailto:blove@teaguecampbell.com>>; 'pdworjanyn@collinsandlacy.com<mailto:pdworjanyn@collinsandlacy.com>' <pdworjanyn@collinsandlacy.com<mailto:pdworjanyn@collinsandlacy.com>>; 'Ilya Kosten' <ikosten@btlawla.com<mailto:ikosten@btlawla.com>>; 'wsawyer@murphygrantland.com<mailto:wsawyer@murphygrantland.com>' <wsawyer@murphygrantland.com<mailto:wsawyer@murphygrantland.com>>; 'J. R. Murphy' <jrmurphy@murphygrantland.com<mailto:jrmurphy@murphygrantland.com>>; 'Jeff C. Kull' <jkull@murphygrantland.com<mailto:jkull@murphygrantland.com>>; 'Ruggeri, James P.' <JRuggeri@goodwin.com<mailto:JRuggeri@goodwin.com>>; 'eparks@goodwin.com<mailto:eparks@goodwin.com>' <eparks@goodwin.com<mailto:eparks@goodwin.com>>; 'mmorrison@goodwin.com<mailto:mmorrison@goodwin.com>'

<mmorrison@goodwin.com<mailto:mmorrison@goodwin.com>>;
'AWilliams@goodwin.com<mailto:AWilliams@goodwin.com>'
<AWilliams@goodwin.com<mailto:AWilliams@goodwin.com>>;
'wquick@brookspierce.com<mailto:wquick@brookspierce.com>'
<wquick@brookspierce.com<mailto:wquick@brookspierce.com>>; 'Greg May'
<greg.may@nelsonmullins.com<mailto:greg.may@nelsonmullins.com>>; 'Matt Abee'
<matt.abee@nelsonmullins.com<mailto:matt.abee@nelsonmullins.com>>;
'bob.calamari@nelsonmullins.com<mailto:bob.calamari@nelsonmullins.com>'
<bob.calamari@nelsonmullins.com<mailto:bob.calamari@nelsonmullins.com>>;
'wpowell@brunerpowell.com<mailto:wpowell@brunerpowell.com>'
<wpowell@brunerpowell.com<mailto:wpowell@brunerpowell.com>>; Lindsay Valek
<Lindsay@rplegalgroup.com<mailto:Lindsay@rplegalgroup.com>>; 'Toal, Jean'
<JToal@sccourts.org<mailto:JToal@sccourts.org>>; 'Rick@gleissnerlaw.com<mailto:Rick@gleissnerlaw.com>'
<Rick@gleissnerlaw.com<mailto:Rick@gleissnerlaw.com>>

Subject: RE: Asbestos Litigation - Receiver for Covil's Motion for Status Conference

Dear Chief Justice Toal, Mr. Berry and Counsel:

Please find attached the following: (1) Receiver's Memorandum regarding jurisdiction; (2) Receiver's Memorandums regarding the Motions for Rules to Show Cause; and (3) the Receiver's and counsel's Affidavits and Declarations to the Rules to Show Cause. Hard copies with exhibits will be hand delivered to the Court this week, and counsel will provide a copy of the same to all interested parties electronically.

Respectfully submitted,

Jescelyn Tillman Spitz, Esq.

RIKARD & PROTOPAPAS, LLC

1329 Blanding Street (29201)

P.O. Box 5640

Columbia, South Carolina 29250

Telephone: 803.978.6111

Fascimile: 803.978.6112

jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>

https://urldefense.proofpoint.com/v2/url?u=http-3A__www.rplegalgroup.com&d=DwIGaQ&c=wbMekZ1iboz3wtx3lILI8YgCUSSh7g3G58syakvKORs&r=sqcyPdedu2lLAGxFEHg1sqbSPOHwbkrYewF61C_zRMA&m=Y8oJ7Mwh7clLwJMeH00s_ikXEuD5blOvOAUiFuXxAzM&s=gZAN2kv4cdo7cJ82Hrl4wYXRb87xAD_KUSsCqsmfugc&e= <https://urldefense.proofpoint.com/v2/url?u=http-3A__www.rplegalgroup.com&d=DwMGaQ&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDQ41mXgQ4s&m=1YQxiB3JiB4iFx3ql4ItHwCuJp8pDdVlDMf4wztLNHY&s=2NFBYeKUmyxGjsPLGh0ZzqZl-tl3jRtkd2KTgJ3J2lo&e=>

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From: Jescelyn Spitz

Sent: Thursday, June 27, 2019 12:13 PM

To: Berry, Walker <wberry@sccourts.org<mailto:wberry@sccourts.org>>

Cc: Ezra S. Gollogly <egollogly@kg-law.com<mailto:egollogly@kg-law.com>>; Robert Rikard <rgr@rplegalgroup.com<mailto:rgr@rplegalgroup.com>>; Peter Protopapas <pdp@rplegalgroup.com<mailto:pdp@rplegalgroup.com>>; Murrell Smith <murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; Jon Robinson <jon@duboselaw.com<mailto:jon@duboselaw.com>>; Dot Faulkenberry <Dot@smithrobinsonlaw.com<mailto:Dot@smithrobinsonlaw.com>>; mwhardee@bellsouth.net<mailto:mwhardee@bellsouth.net>; Zevnik, Paul A. <paul.zevnik@morganlewis.com<mailto:paul.zevnik@morganlewis.com>>; Edwards, Brady <brady.edwards@morganlewis.com<mailto:brady.edwards@morganlewis.com>>; Nes, W. Brad <brad.nes@morganlewis.com<mailto:brad.nes@morganlewis.com>>; Morton, Clayton A. <clayton.morton@morganlewis.com<mailto:clayton.morton@morganlewis.com>>; McCulloch, Lauren A. <lauren.mcculloch@morganlewis.com<mailto:lauren.mcculloch@morganlewis.com>>; ashley.brathwaite@elliswinters.com<mailto:ashley.brathwaite@elliswinters.com>; leslie.packer@elliswinters.com<mailto:leslie.packer@elliswinters.com>; curtis.shipley@elliswinters.com<mailto:curtis.shipley@elliswinters.com>; tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>; Trey Branham <tbranham@dobslegal.com<mailto:tbranham@dobslegal.com>>; Lee H. Ogburn <LOgburn@kg-law.com<mailto:LOgburn@kg-law.com>>; wdavis@brblegal.com<mailto:wdavis@brblegal.com>; mnorton@brblegal.com<mailto:mnorton@brblegal.com>; William A. Bulfer <WBulfer@teaguecampbell.com<mailto:WBulfer@teaguecampbell.com>>; blove@teaguecampbell.com<mailto:blove@teaguecampbell.com>;

pdworjanyn@collinsandlacy.com<mailto:pdworjanyn@collinsandlacy.com>; Ilya Kosten <ikosten@btlawla.com<mailto:ikosten@btlawla.com>>; wsawyer@murphygrantland.com<mailto:wsawyer@murphygrantland.com>; J. R. Murphy <jrmurphy@murphygrantland.com<mailto:jrmurphy@murphygrantland.com>>; Jeff C. Kull <jkull@murphygrantland.com<mailto:jkull@murphygrantland.com>>; Ruggeri, James P. <JRuggeri@goodwin.com<mailto:JRuggeri@goodwin.com>>; eparks@goodwin.com<mailto:eparks@goodwin.com>; mmorrison@goodwin.com<mailto:mmorrison@goodwin.com>; AWilliams@goodwin.com<mailto:AWilliams@goodwin.com>; wquick@brookspierce.com<mailto:wquick@brookspierce.com>; Greg May <greg.may@nelsonmullins.com<mailto:greg.may@nelsonmullins.com>>; Matt Abee <matt.abee@nelsonmullins.com<mailto:matt.abee@nelsonmullins.com>>; bob.calamari@nelsonmullins.com<mailto:bob.calamari@nelsonmullins.com>; wpowell@brunerpowell.com<mailto:wpowell@brunerpowell.com>; Lindsay Valek <Lindsay@rplegalgroup.com<mailto:Lindsay@rplegalgroup.com>>; Toal, Jean <JToal@sccourts.org<mailto:JToal@sccourts.org>>; Rick@gleissnerlaw.com<mailto:Rick@gleissnerlaw.com>

Subject: RE: Asbestos Litigation - Receiver for Covil's Motion for Status Conference (Sent on behalf of Robert G. Rikard)

Dear Chief Justice Toal, Mr. Berry and Counsel:

In response to Mr. Gollogly's objection, the Receiver would respectfully submit that this Court has in rem jurisdiction over Covil's Insurers pursuant to its Order Appointing the Receiver and the Order Clarifying the Receiver Order. As was set forth in the Receiver's Motion for Status Conference, the insurance policies issued by Covil's Insurers to Covil are in possession of this Court through its Receiver. The South Carolina Supreme Court has long established that "property in the hands of the receiver is in custodia legis; the possession of the property by the receiver is the possession of the court which appointed him." Bates v. S.C. Nat. Bank, 280 S.C. 599, 601, 313 S.E.2d 361, 362 (Ct. App. 1984) (citing Peurifoy v. Gamble, 145 S.C. 1, 142 S.E. 788 (1928)). Particularly in response to Mr. Gollogly's mention of the other pending actions involving the Insurers and the Receiver, the Receiver would submit "[T]he court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other" court. Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456, 466, 59 S.Ct. 275, 83 L.Ed. 285 (1939). The Receiver is more fully briefing this topic and a formal memorandum will follow.

In addition to having in rem jurisdiction, this Court has jurisdiction to enforce its orders, which have been violated by the Insurers and Wall Templeton, which forms the basis for the Receiver's Motions for Rules to Show Cause. As I previously noted, the Receiver is submitting memorandums in support of its motions for rules to show cause for this Court's consideration.

Upon filing of the supplemental materials, I will forward copies of the same to this Court.

Respectfully submitted,

Jescelyn Tillman Spitz, Esq.

RIKARD & PROTOPAPAS, LLC

1329 Blanding Street (29201)

P.O. Box 5640

Columbia, South Carolina 29250

Telephone: 803.978.6111

Fascimile: 803.978.6112

jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>

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From: Jescelyn Spitz <jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>>

Sent: Wednesday, June 26, 2019 5:49 PM

To: Berry, Walker <wberry@sccourts.org<mailto:wberry@sccourts.org>>

Cc: Ezra S. Gollogly <egollogly@kg-law.com<mailto:egollogly@kg-law.com>>; Robert Rikard <rgr@rplegalgroup.com<mailto:rgr@rplegalgroup.com>>; Peter Protopapas <pdp@rplegalgroup.com<mailto:pdp@rplegalgroup.com>>; Murrell Smith <murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; Jon Robinson <jon@duboselaw.com<mailto:jon@duboselaw.com>>; Dot Faulkenberry <Dot@smithrobinsonlaw.com<mailto:Dot@smithrobinsonlaw.com>>;

mwhardee@bellsouth.net<mailto:mwhardee@bellsouth.net>; Zevnik, Paul A. <paul.zevnik@morganlewis.com<mailto:paul.zevnik@morganlewis.com>>; Edwards, Brady <brady.edwards@morganlewis.com<mailto:brady.edwards@morganlewis.com>>; Nes, W. Brad <brad.nes@morganlewis.com<mailto:brad.nes@morganlewis.com>>; Morton, Clayton A. <clayton.morton@morganlewis.com<mailto:clayton.morton@morganlewis.com>>; McCulloch, Lauren A. <lauren.mcculloch@morganlewis.com<mailto:lauren.mcculloch@morganlewis.com>>; ashley.brathwaite@elliswinters.com<mailto:ashley.brathwaite@elliswinters.com>; leslie.packer@elliswinters.com<mailto:leslie.packer@elliswinters.com>; curtis.shipley@elliswinters.com<mailto:curtis.shipley@elliswinters.com>; tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>; Trey Branham <tbranham@dobslegal.com<mailto:tbranham@dobslegal.com>>; Lee H. Ogburn <LOgburn@kg-law.com<mailto:LOgburn@kg-law.com>>; wdavis@brblegal.com<mailto:wdavis@brblegal.com>; mnorton@brblegal.com<mailto:mnorton@brblegal.com>; William A. Bulfer <WBulfer@teaguecampbell.com<mailto:WBulfer@teaguecampbell.com>>; blove@teaguecampbell.com<mailto:blove@teaguecampbell.com>; pdworjanyn@collinsandlacy.com<mailto:pdworjanyn@collinsandlacy.com>; Ilya Kosten <ikosten@btlawla.com<mailto:ikosten@btlawla.com>>; wsawyer@murphygrantland.com<mailto:wsawyer@murphygrantland.com>; J. R. Murphy <jrmurphy@murphygrantland.com<mailto:jrmurphy@murphygrantland.com>>; Jeff C. Kull <jkull@murphygrantland.com<mailto:jkull@murphygrantland.com>>; Ruggeri, James P. <JRuggeri@goodwin.com<mailto:JRuggeri@goodwin.com>>; eparks@goodwin.com<mailto:eparks@goodwin.com>; mmorrison@goodwin.com<mailto:mmorrison@goodwin.com>; AWilliams@goodwin.com<mailto:AWilliams@goodwin.com>; wquick@brookspierce.com<mailto:wquick@brookspierce.com>; Greg May <greg.may@nelsonmullins.com<mailto:greg.may@nelsonmullins.com>>; Matt Abee <matt.abee@nelsonmullins.com<mailto:matt.abee@nelsonmullins.com>>; bob.calamari@nelsonmullins.com<mailto:bob.calamari@nelsonmullins.com>; wpowell@brunerpowell.com<mailto:wpowell@brunerpowell.com>; Lindsay Valek <Lindsay@rplegalgroup.com<mailto:Lindsay@rplegalgroup.com>>; Toal, Jean <JToal@sccourts.org<mailto:JToal@sccourts.org>>

Subject: Re: Asbestos Litigation - Receiver for Covil's Motion for Status Conference (Sent on behalf of Robert G. Rikard)

Dear Chief Justice Toal, Mr. Berry and Counsel:

Please see attached Motions for Rules to Show Cause, which were filed on behalf of the Receiver yesterday. Additional supporting material, including memoranda, are forthcoming. We will also supply a hard copy of all relevant materials early next week for this Court's review.

Best regards,

Jescelyn Tillman Spitz, Esq.

RIKARD & PROTOPAPAS, LLC

1329 Blanding Street (29201)

P.O. Box 5640

Columbia, South Carolina 29250

Telephone: 803.978.6111

Fascimile: 803.978.6112

jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>

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On Jun 26, 2019, at 5:15 PM, Ezra S. Gollogly <egollogly@kg-law.com<mailto:egollogly@kg-law.com>> wrote:

Dear Mr. Berry:

Thank you for your June 21, 2019 email in which you advise that the Court would like to grant the Receiver's request for a status conference and ask whether the insurers have any questions or concerns. This email responds to that inquiry on behalf of Zurich American Insurance Company, Sentry Insurance a Mutual Company, and United States Fidelity and Guaranty Company ("Travelers") (collectively "Insurers").

The Receiver's motion for status conference asks this Court to address, and presumably rule, concerning six topics: (A) four other pending cases concerning the same coverage issues the Receiver asks the Court to address at the status conference (see motion at ¶ 11.a); (B) the prior management of Covil's insurance policies, including "Covil's Insurers'

decisions and positions regarding Covil's insurance policies," matters that are at issue in the other pending cases (id. at ¶ 11.b); (C) the remaining and applicable limits of Covil's insurance policies, likewise matters that are at issue in the other pending cases (id. at ¶ 11.c); (D) whether the Receiver may be sued without leave of Court, although he has not been so sued (id. at ¶ 11.d); (E) whether Covil's insurers violated this Court's mediation Order dated February 28, 2019 by alleging in one of the other pending actions that the Receiver breached an agreement reached as part of the settlement resulting from mediation (id. at ¶ 11.e); and (F) whether Travelers and Wall Templeton violated this Court's clarifying Order dated June 17, 2019 in connection with Wall Templeton's response to a discovery request in one of the pending actions (id. at ¶ 11.f).

We recite the issues that are the subject of the Receiver's paper as the basis for asking whether your email stating that the Court would like to grant the Receiver's request is an order that the insurers appear in the Richland County Courthouse to address the insurance issues that are pending in other actions, including one filed by the Receiver against the insurers over which the United States District Court for the District Court for the South Carolina has accepted jurisdiction (see motion at ¶ 11.a.ii). Insurers respectfully object to the Court's jurisdiction.

Ezra S. Gollogly

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D 410-319-0481 | F 410-361-8233

egollogly@kg-law.com<mailto:egollogly@kg-law.com> | vCard<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.kramonandgraham.com_vcard.cfm-3Fitemid-3D128&d=DwMGaQ&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=xyGAMxUw01eIPNGBoA0cWLplrB2xVkmhXDQ41mXgQ4s&m=1YQxiB3JiB4iFx3ql4ItHwCuJp8pDdVlDMf4wztLNHY&s=OIoMqtrpZvO2GZs8-PWP2Mov_MxLnXH4rYSo4uENH04&e=>

KRAMON & GRAHAM PA

ATTORNEYS AT LAW

One South Street | Suite 2600 | Baltimore, MD 21202

T 410-752-6030 | F 410-539-1269 | https://urldefense.proofpoint.com/v2/url?u=http-3A__www.kramonandgraham.com&d=DwIGaQ&c=wbMekZ1iboz3wtx3lILI8YgCUSSh7g3G58syakvKORs&r=sqcyPdedu2lLAGxFEHg1sqbSPOHwbkrYewF61C_zRMA&m=Y8oJ7Mwh7clLwJMeH00s_ikXEuD5blOvOAUiFuXxAzM&s=uFYLcclwSFldRZEABcCyL2_d9HFgcmhx2lLuT-8WFO0&e= <https://urldefense.proofpoint.com/v2/url?u=http-

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From: Berry, Walker <wberry@sccourts.org<mailto:wberry@sccourts.org>>

Sent: Friday, June 21, 2019 4:15 PM

To: Lindsay Valek <Lindsay@rplegalgroup.com<mailto:Lindsay@rplegalgroup.com>>; Toal, Jean <JToal@sccourts.org<mailto:JToal@sccourts.org>>

Cc: Robert Rikard <rgr@rplegalgroup.com<mailto:rgr@rplegalgroup.com>>; Jescelyn Spitz <jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>>; Peter Protopapas <pdp@rplegalgroup.com<mailto:pdp@rplegalgroup.com>>; Murrell Smith <murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; Jon Robinson <jon@duboselaw.com<mailto:jon@duboselaw.com>>; Dot Faulkenberry <Dot@smithrobinsonlaw.com<mailto:Dot@smithrobinsonlaw.com>>;mwhardee@bellsouth.net<mailto:mwhardee@bellsouth.net>; Zevnik, Paul A. <paul.zevnik@morganlewis.com<mailto:paul.zevnik@morganlewis.com>>; Edwards, Brady <brady.edwards@morganlewis.com<mailto:brady.edwards@morganlewis.com>>; Nes, W. Brad <brad.nes@morganlewis.com<mailto:brad.nes@morganlewis.com>>; Morton, Clayton A. <clayton.morton@morganlewis.com<mailto:clayton.morton@morganlewis.com>>; McCulloch, Lauren A. <lauren.mcculloch@morganlewis.com<mailto:lauren.mcculloch@morganlewis.com>>; ashley.brathwaite@elliswinters.com<mailto:ashley.brathwaite@elliswinters.com>; leslie.packer@elliswinters.com<mailto:leslie.packer@elliswinters.com>; curtis.shipley@elliswinters.com<mailto:curtis.shipley@elliswinters.com>; tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>; Trey Branham <tbranham@dobslegal.com<mailto:tbranham@dobslegal.com>>; Lee H. Ogburn <LOgburn@kg-law.com<mailto:LOgburn@kg-law.com>>; Ezra S. Gollogly <egollogly@kg-law.com<mailto:egollogly@kg-law.com>>; wdavis@brblegal.com<mailto:wdavis@brblegal.com>; mnorton@brblegal.com<mailto:mnorton@brblegal.com>; William A. Bulfer <WBulfer@teaguecampbell.com<mailto:WBulfer@teaguecampbell.com>>; blove@teaguecampbell.com<mailto:blove@teaguecampbell.com>; pdworjanyn@collinsandlacy.com<mailto:pdworjanyn@collinsandlacy.com>; Ilya Kosten <ikosten@btlawla.com<mailto:ikosten@btlawla.com>>; wsawyer@murphygrantland.com<mailto:wsawyer@murphygrantland.com>; J. R. Murphy <jrmurphy@murphygrantland.com<mailto:jrmurphy@murphygrantland.com>>; Jeff C. Kull <jkull@murphygrantland.com<mailto:jkull@murphygrantland.com>>; Ruggeri, James P. <JRuggeri@goodwin.com<mailto:JRuggeri@goodwin.com>>; eparks@goodwin.com<mailto:eparks@goodwin.com>; mmorrison@goodwin.com<mailto:mmorrison@goodwin.com>; AWilliams@goodwin.com<mailto:AWilliams@goodwin.com>; wquick@brookspierce.com<mailto:wquick@brookspierce.com>; Greg May <greg.may@nelsonmullins.com<mailto:greg.may@nelsonmullins.com>>; Matt Abee <matt.abee@nelsonmullins.com<mailto:matt.abee@nelsonmullins.com>>; bob.calamari@nelsonmullins.com<mailto:bob.calamari@nelsonmullins.com>; wpowell@brunerpowell.com<mailto:wpowell@brunerpowell.com>

Subject: RE: Asbestos Litigation - Receiver for Covil's Motion for Status Conference (Sent on behalf of Robert G. Rikard)

All:

The Court would like to grant the request for a status conference and have it take place on July 11 at Richland County Courthouse. We will be in courtroom 3B and are currently scheduled to begin at 10 a.m.

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

Best,

Walker Berry, Law Clerk

South Carolina Supreme Court Bldg.

1231 Gervais Street

Columbia, SC 29201

Office: (803) 734-1926|Cell: (904) 563-1918

wberry@sccourts.org<mailto:wberry@sccourts.org>

From: Lindsay Valek <Lindsay@rplegalgroup.com<mailto:Lindsay@rplegalgroup.com>>

Sent: Tuesday, June 18, 2019 12:42 PM

To: Toal, Jean <JToal@sccourts.org<mailto:JToal@sccourts.org>>; Berry, Walker <wberry@sccourts.org<mailto:wberry@sccourts.org>>

Cc: Robert Rikard <rgr@rplegalgroup.com<mailto:rgr@rplegalgroup.com>>; Jescelyn Spitz <jspitz@rplegalgroup.com<mailto:jspitz@rplegalgroup.com>>; Peter Protopapas <pdp@rplegalgroup.com<mailto:pdp@rplegalgroup.com>>; Murrell Smith <murrell@smithrobinsonlaw.com<mailto:murrell@smithrobinsonlaw.com>>; Jon Robinson <jon@duboselaw.com<mailto:jon@duboselaw.com>>; Dot Faulkenberry <Dot@smithrobinsonlaw.com<mailto:Dot@smithrobinsonlaw.com>>;mwhardee@bellsouth.net<mailto:mwhardee@bellsouth.net>; Zevnik, Paul A. <paul.zevnik@morganlewis.com<mailto:paul.zevnik@morganlewis.com>>; Edwards, Brady

<brady.edwards@morganlewis.com<mailto:brady.edwards@morganlewis.com>>; Nes, W. Brad <brad.nes@morganlewis.com<mailto:brad.nes@morganlewis.com>>; Morton, Clayton A. <clayton.morton@morganlewis.com<mailto:clayton.morton@morganlewis.com>>; McCulloch, Lauren A. <lauren.mcculloch@morganlewis.com<mailto:lauren.mcculloch@morganlewis.com>>; ashley.brathwaite@elliswinters.com<mailto:ashley.brathwaite@elliswinters.com>; leslie.packer@elliswinters.com<mailto:leslie.packer@elliswinters.com>; curtis.shipley@elliswinters.com<mailto:curtis.shipley@elliswinters.com>; tmcvey@kassellaw.com<mailto:tmcvey@kassellaw.com>; Trey Branham <tbranham@dobslegal.com<mailto:tbranham@dobslegal.com>>; Lee H. Ogburn <LOgburn@kg-law.com<mailto:LOgburn@kg-law.com>>; egollogly@kg-law.com<mailto:egollogly@kg-law.com>; wdavis@brblegal.com<mailto:wdavis@brblegal.com>; mnorton@brblegal.com<mailto:mnorton@brblegal.com>; William A. Bulfer <WBulfer@teaguecampbell.com<mailto:WBulfer@teaguecampbell.com>>; blove@teaguecampbell.com<mailto:blove@teaguecampbell.com>; pdworjanyn@collinsandlacy.com<mailto:pdworjanyn@collinsandlacy.com>; Ilya Kosten <ikosten@btlawla.com<mailto:ikosten@btlawla.com>>; wsawyer@murphygrantland.com<mailto:wsawyer@murphygrantland.com>; J. R. Murphy <jrmurphy@murphygrantland.com<mailto:jrmurphy@murphygrantland.com>>; Jeff C. Kull <jkull@murphygrantland.com<mailto:jkull@murphygrantland.com>>; Ruggeri, James P. <JRuggeri@goodwin.com<mailto:JRuggeri@goodwin.com>>; eparks@goodwin.com<mailto:eparks@goodwin.com>; mmorrison@goodwin.com<mailto:mmorrison@goodwin.com>; AWilliams@goodwin.com<mailto:AWilliams@goodwin.com>; wquick@brookspierce.com<mailto:wquick@brookspierce.com>; Greg May <greg.may@nelsonmullins.com<mailto:greg.may@nelsonmullins.com>>; Matt Abee <matt.abee@nelsonmullins.com<mailto:matt.abee@nelsonmullins.com>>; bob.calamari@nelsonmullins.com<mailto:bob.calamari@nelsonmullins.com>; wpowell@brunerpowell.com<mailto:wpowell@brunerpowell.com>

Subject: Asbestos Litigation - Receiver for Covil's Motion for Status Conference (Sent on behalf of Robert G. Rikard)

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

SENT ON BEHALF OF ROBERT G. RIKARD

Dear Chief Justice Toal and Mr. Berry,

Attached for your consideration is the Receiver's Motion for Status Conference with exhibits filed today in the five captioned cases and proposed Order for the Court to consider if it deems a status conference appropriate. The proposed Order leaves the date for the status conference blank. Respectfully, the Receiver requests July 8th at 10 am for the status conference.

Also attached for the Court's file is an MS Word document identifying Covil's Insurers and their counsel as well as Wall Templeton's counsel.

Due to the Motion being in excess of 50 pages, we will deliver to the Court a hard copy of the filing by separate cover letter.

By copy of this email, I am alerting the attorneys for Covil's Insurers, the attorneys for the asbestos claimants in the five captioned matters and Wall Templeton's counsel of this communication and filing.

Thank you for your consideration of this request.

s/Robert G. Rikard

Lindsay H. Valek

Paralegal

Rikard & Protopapas, LLC

1329 Blanding Street

Columbia, SC 29201

803-978-6111

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<Judge Eagles 7.2.pdf>

<Hartford's Memo in Support of Motion to Enjoin.pdf>

<Hartford's Motion to Enjoin.pdf>

<Hartford's Motion to Expedite.pdf>

EXHIBIT 57

From: Toal, Jean <JToal@sccourts.org>
Sent: Thursday, April 09, 2020 12:32 PM
To: Peter Protopapas <pdp@rplegalgroup.com>; Selert, Hali <hselert@sccourts.org>
Cc: Theile McVey <TMcVey@kassellaw.com>; murrell@smithrobinsonlaw.com; Jon Robinson <jon@smithrobinsonlaw.com>; Christy E. Mahon <CEM@swblaw.com>; Matt Abee <matt.abee@nelsonmullins.com>; Phillips, Clay <CPhillips@salawus.com>; wsawyer@murphygrantland.com; Wilkerson, John S. <JWilkerson@turnerpadget.com>; Davis, William P. <WDavis@brblegal.com>; Norton, Mariel <mnorton@brblegal.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Jescelyn Spitz <jspitz@rplegalgroup.com>
Subject: RE: Covil Receivership proposed settlements

Dear Mr. Protopapas and Counsel: I am prepared to grant the Motions by Covil, TIG, Sentry and Hartford to approve an uncontested settlement agreement for the monetizing and liquidation of Covil assets to be deposited in a court-approved Qualified Settlement Fund. I am prepared to deny the objections of non parties and related motions filed by Travelers/USF&G and Zurich/Maryland. Please modify the proposed orders as follows: 1. Make it clear that I am making no determinations regarding insurance policy coverage or contributions. These are matters before Judge Bruce Howe Hendricks in the federal court litigation. You may freely use the content of my emails to Mr. William Davis. 2. Seal the settlement agreements for the reasons advanced but reveal the global amount of the Qualified Settlement Fund. 3. Approve the Attorneys' Fee Contracts and specify percentage or cost arrangements. Receiver should be entitled to attorneys fees agreed upon but waive any Receiver fees for work to date. Fees should be found reasonable in light of the professional stature and expertise of the attorneys and the remarkable results achieved of creating a substantial fund of liquid assets for a receiver Corporation which had no liquid assets when the receivership began. (4) Reject the objections of the non party insurance companies. Detail per my email to Mr. Davis that these companies only involvement in the matters before me was their violation of the South Carolina Supreme Court mediation rules by refusing to attend or in any way cooperate with mediation of the matters before me. Observe that had these companies wanted to challenge these settlements, they could have sought to intervene as parties. They have not and chose to litigate coverage and contribution before Judge Hendricks. In that regard, it should be noted that several of the insurance companies settling with the Receiver Corporation here, settled and have been dismissed from the litigation pending before Judge Hendricks with no objection from the 2 non party objectors here. (5) Make any further adjustments that you believe are warranted by these instructions. Send the Proposed Orders to me, copy to all of the counsel noted. I will act promptly. Best regards, Jean Toal

From: Peter Protopapas [mailto:pdp@rplegalgroup.com]
Sent: Wednesday, April 8, 2020 10:58 AM
To: Toal, Jean <JToal@sccourts.org>; Selert, Hali <hselert@sccourts.org>
Cc: Theile McVey <TMcVey@kassellaw.com>; murrell@smithrobinsonlaw.com; Jon Robinson <jon@smithrobinsonlaw.com>; Christy E. Mahon <CEM@swblaw.com>; Matt Abee <matt.abee@nelsonmullins.com>; Phillips, Clay <CPhillips@salawus.com>; wsawyer@murphygrantland.com; Wilkerson, John S. <JWilkerson@turnerpadget.com>; Davis, William P. <WDavis@brblegal.com>; mnorton@brblegal.com; Lindsay Valek <Lindsay@rplegalgroup.com>; Jescelyn Spitz <jspitz@rplegalgroup.com>
Subject: Covil Receivership proposed settlements

Dear Chief Justice Toal and Ms. Selert

As you recall, on March 23rd, you were scheduled to hear a joint motion by Covil Corporation, TIG, Sentry, and Hartford insurance companies to approve an uncontested settlement agreement for the liquidation of Covil assets to be deposited into a court-approved Qualified Settlement Fund. Travelers/USFG and Zurich filed limited objections of a non-party. The Court granted 10 days (March 30th) for additional briefing.

On March 30th, the Receiver filed his additional materials and no further materials have been filed with the Court.

To address these outstanding motions, Covil filed three proposed orders approving each of the settlements, one proposed order approving the qualified settlement fund, one proposed order addressing the non party insurers objections, and a proposed order vacating findings as to Sentry.

If the Court is inclined, our Rules of Civil Procedure as well as the April 3rd Supreme Court Order allow decisions of non jury motions without hearing. In particular, the Supreme Court authorized decisions on the briefs where opposing parties have had an opportunity to file responses to motions as is the case here. At such time "A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. . ."

Respectfully, we believe the matter is ripe for decision or further instruction from the Court.

Thank you for the consideration of this request, and by copy of this email local counsel for settling insurers, objecting insurers, and Plaintiff's are being copied on the email.

Best regards

Peter Protopapas

EXHIBIT 58

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO. 2019-CP-42-03968
	)	
TRACY JOLLY PAVLISH, individually and as Personal Representative of the Estate of BEVERLY DALE JOLLY, and BRENDA RICE JOLLY,	)	
Plaintiffs,	)	**ORDER GRANTING ADMISSION PRO HAC VICE FOR ANDREW FRANKEL**
v.	)	
COVIL CORPORATION SENTRY INSURANCE AGENCY, INC. SOUTHERN INSULATION, INC. STARR DAVIS COMPANY, INC. STARR DAVIS COMPANY OF S.C., INC. UNITED STATES FIDELITY & GUARANTY COMPANY ZURICH AMERICAN INSURANCE COMPANY, a/k/a ZURICH NORTH AMERICA, INC.	)	
Defendants.	)	

Having considered the Motion of William P. Davis, attorney for United States Fidelity & Guaranty Company ("USF&G"), to admit Andrew Frankel of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, *pro hac vice* to appear on behalf of USF&G in the above-captioned matter and the Verified Application for Admission *Pro Hac Vice* in support thereof, it is hereby

ORDERED that said motion is granted.

_____
Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

_____ ____, 2020

Columbia, SC

Spartanburg Common Pleas

Case Caption: Tracy Jolly Pavlish , plaintiff, et al VS Covil Corporation , defendant, et al

Case Number: 2019CP4203968

Type: Order/Pro Hac Vice

IT IS SO ORDERED.

s/ Jean H. Toal #2758

EXHIBIT 59

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	))))	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

CHARLES T. HOPPER and REBECCA HOPPER, Plaintiffs, Vs. Air & Liquid Systems Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	C.A. No. 2019-CP-40-00076 **ORDER GRANTING ADMISSION PRO HAC VICE FOR MARY BETH FORSHAW**

Having considered the Motion of William P. Davis, attorney for USF&G, to admit Mary Beth Forshaw of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, *pro hac vice* to appear on behalf of USF&G in the above-captioned matter and the Verified Application for Admission *Pro Hac Vice* in support thereof, it is hereby

ORDERED that said motion is granted.

_____
Jean H. Toal, Chief Justice (Ret.)

February __, 2020

Columbia, South Carolina

Richland Common Pleas

Case Caption: Charles T Hopper , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al

Case Number: 2019CP4000076

Type: Order/Pro Hac Vice

IT IS SO ORDERED.

s/ Jean H. Toal #2758