

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

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Jun 22 2020

SC Court of Appeals

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 Babcock 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; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor 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., individually 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.; Sprinx 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

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EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	ORDER DENYING MOTIONS TO
	)	RECONSIDER AND MOTION TO STAY
Plaintiffs,	)	
	)	
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

This matter is before the Court on (1) Non-Party USF&G's Motion to Reconsider, Alter, or Amend this Court's Approval Order of April 10, 2020, (2) Non-Party USF&G's April 20, 2020 Motion to Stay, and (3) Non-Party Zurich American Insurance Company's Motion to Reconsider, Alter, or Amend Approval Order of April 10, 2020. In these motions and the extensive briefing and exhibits submitted in support thereof, non-party USF&G and non-party Zurich ("the Objecting Insurers") complain that this Court granted joint motions filed by Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver"), Hartford Accident and Indemnity Company and First State Insurance Company (collectively "Hartford"), TIG Insurance Company, as successor to Ranger Insurance Company ("TIG"), and Sentry Insurance a Mutual Company ("Sentry") (jointly the "Settling Insurers") to (1) establish a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of

1986, as amended ("I.R.C."), (2) keep continuing jurisdiction over that Qualified Settlement Fund, and (3) approve the settlements between the Receiver and each of Hartford, TIG, and Sentry.

The Court has ruled that the Objecting Insurers are not parties to these actions, have failed to avail themselves of the procedures available to become parties to these actions, and therefore lack standing to file any objections in these actions. During the several weeks since this Court's order, nothing has changed in this regard related to the Objecting Insurers' lack of standing. Having considered the Objecting Insurers' motions and the applicable responses, together with the exhibits submitted with these motions and responses, the Court hereby decides the matter on the filings and rules as follows:

I. FINDINGS RELATED TO CORONAVIRUS EMERGENCY PROCEDURES

On April 3, 2020, the South Carolina Supreme Court issued an Order providing guidance to the courts of South Carolina to help ensure the continued operation of the courts during the Coronavirus emergency. In the Order, the Supreme Court noted the impossibility of continuing the practice of conducting hearings on virtually all motions during this unprecedented time. The Supreme Court indicated South Carolina trial judges, after allowing all parties the opportunity to file responses to a motion, "may elect to not hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers." *See* April 3, 2020 Order of the South Carolina Supreme Court.

The Court finds these motions have been fully and exhaustively briefed, and, after reviewing all submissions, the Court further finds that hearings on these motions are not necessary and these motions may readily be decided without further input from the lawyers. Ruling on these motions is also in the best interest of the Receivership as delay in these perilous times imperils

assets of the Receivership and the proposed liquidation of those assets into a qualified settlement fund.

II. FINDINGS REGARDING PARALLEL FEDERAL PROCEEDINGS

In the case of *Covil Corporation By Its Duly Appointed Receiver, Peter D. Protopapas v. Zurich, USF&G et al.* in the United States District Court for the District of South Carolina, Spartanburg Division, CA No. 7:18-3291-BHH, United States District Judge Bruce Howe Hendricks issued an Opinion and Order dated February 27, 2020 in which she reviewed comprehensively the procedural complexities of the insurance coverage case before her involving claims and cross-claims regarding insurance coverage for policies issued or allegedly issued by various insurance companies to Covil at various times between the 1950s and 1993.

Judge Hendricks also detailed the responsibilities assigned to this Court regarding the trial of asbestos cases in South Carolina and the supervision of the Receivership of Covil. In her order, Judge Hendricks declined to issue a broad moratorium on further proceedings before this Court as the Receivership Court. Judge Hendricks found: "It is abundantly clear 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."

As this Court explained in its April 10, 2020 Order, this Court again intends to faithfully adhere to Judge Hendricks' rulings and stay out of ruling on coverage matters that are before Judge Hendricks' Court.

With regard to the proposed settlements, the three Settling Insurers were parties to the case pending before Judge Hendricks; but each Settling Insurer has now been dismissed

without prejudice from that proceeding. In each case, the settling parties indicated to Judge Hendricks that the requested dismissals were to be without prejudice because each settlement still required the approval of this Court. In addition, the Receiver filed with Judge Hendricks the proposed Orders submitted to this Court. The settling parties also advised Judge Hendricks that, upon the Receivership Court's approval, the parties would return to Judge Hendricks' Court in order to convert the dismissals without prejudice into final dismissals with prejudice. Objecting Insurers did not object to any of these motions even though the motions were predicated on this Court's considering the proposed Orders approving settlement to which they now object.

As to each settling insurer, Judge Hendricks signed the dismissals without prejudice on this basis, and as a result the settling insurers have all been dismissed from the above-referenced case in Judge Hendricks' court. Therefore, it is not possible for this Court to rule on the coverage matters pending before Judge Hendricks in regard to the settling insurers because these matters are no longer pending as to these settling parties.

Since this Court signed its April 10, 2020 Approval Order, Judge Hendricks has continued to dismiss claims as a result of the settlement agreements approved therein. See April 15, 2020 Order Dismissing Sentry without Prejudice from *Peter D. Protopapas, as Receiver for Covil Corporation v. Wall Templeton & Haldrup, P.A. et al.* in the United States District Court for the District of South Carolina, Columbia Division, CA No. 3:19-01635-BHH. As such, this Court will continue to meet its responsibilities for managing the South Carolina asbestos docket, and the Covil receivership, without interfering with issues subject to coverage litigation pending before Judge Hendricks.

III. OBJECTIONS TO THE QUALIFIED SETTLEMENT FUND

A Qualified Settlement Fund is a creature of statute based on Section 468B of the Internal Revenue Code. The establishment of a Qualified Settlement Fund serves to streamline the income tax treatment of a policyholder's settlement proceeds with an insurer, provided that the full amount of the settlement proceeds are dedicated to meeting the costs and liabilities associated with the insured risk. At the conclusion of such liability, any residual amounts in a Qualified Settlement Fund must be donated to one or more 501(c)(3) charitable institutions.

The use of a Qualified Settlement Fund is routine in the resolution of a complex insurance coverage dispute. The Receiver has satisfied the criteria established by Congress for establishing a Qualified Settlement Fund, and the QSF will remain subject to the ongoing jurisdiction and supervision of this Court. The Objecting Insurers cannot, and certainly have not even tried, to explain why they would benefit from the Settling Insurers' settlement payments being fully subject to payment of federal income tax. The Receiver is exercising financial prudence in implementing a tax planning structure for the receipt of these settlement funds. The Objecting Insurers' continued objections to this Court's approval of the Receiver's use of this ubiquitous tax planning vehicle are baseless.

IV. IMPACT OF PRIOR RECEIVERSHIP PROCEEDINGS

Non-Party USF&G waited until its Motion to Reconsider (and concurrently filed Motion to Stay) to lodge, for the first time, an objection to this Court's Approval order based on the existence of a prior receiver for Covil, Mr. Winston Lee. In lodging this objection, USF&G claims that it just recently discovered that Covil was "judicially dissolved" after the appointment of Winston Lee as Covil's general receiver. USF&G Mot. to Reconsider at 2; Mot. to Stay at 2.

However, based on the conclusive evidence submitted in connection with this motion, it is abundantly clear that USF&G and Zurich have been aware of the first Covil receivership since at least 1991. Yet, remarkably, USF&G waited over 28 years to raise this objection and now feigns to have only recently learned about this previous receivership proceeding. USF&G even goes so far as to blame Covil, a corporation that was administratively dissolved in 1993 and operated by the Objecting Insurers until the appointment of a Receiver in 2018, for not bringing this prior receivership to this Court's attention. USF&G is not being honest with this Court.

A. Background of Objecting Insurers' Knowledge of Prior Covil Receivership

In responding to Non-Party USF&G's objections, the Receiver for Covil established the following historic timeline related to USF&G's knowledge of this prior receivership.

In 1991, Greenville County Master in Equity, Judge Simmons appointed L. Winston Lee as Receiver in a case entitled: *In Re: The First Savings Bank, FSB v. Covil Corporation, Oxytherm, Inc., and Equitable Enterprises, a South Carolina General Partnership*: C/A 1991-CP-23-4445 (Greenville County). On November 14, 1991, the lawyer retained to defend Covil by the Objecting Insurers, Mr. Danny White, wrote to inform the Objecting Insurers that "Covil Corporation has now been placed in receivership and L. Winston Lee, as Receiver, has been charged with the responsibility to gather the assets of Covil Corporation for public auction on December 5, 1991." See Letter from Danny White dated November 14, 1991. David N. Kappus of Maryland Casualty n/k/a Zurich and Richard L. Teal of USF&G n/k/a Travelers were recipients of this correspondence. In this letter, Mr. White further explained, "Covil does not intend to dissolve as a corporation but rather, in fact, will remain a corporation which can sue and be sued."

Finally, White requested the permission of the insurers to “gather and store all personnel records and job files of Covil Corporation which have potential relevance to the asbestos litigation.”

On that same day in November of 1991, the Objecting Insurers’ appointed defense counsel Mr. White also wrote to Covil’s first receiver, L. Winston Lee, requesting permission to review Covil’s records and cautioning against their destruction. As to the potential destruction, Mr. White wrote, “Because of outstanding discovery requests against Covil and the potential for new lawsuits, I would suggest that the destruction of these records may violate current discovery orders and potentially be considered contempt of court.” *See id.* Historical records indicate that by April 15, 1992, White had made “arrangements to retrieve Covil’s personnel records and job files which may be of potential future relevance in this litigation,” and was “storing those files in [his] office.” *See* Letter from Danny White to Richard Teal, David Kappus, and Dave Christian, dated April 15, 1992.

Mr. White’s third letter of November 14, 1991 was addressed to counsel for the underlying asbestos personal injury plaintiffs. Enclosing a copy of the Receivership’s filing in Common Pleas of a Notice to Creditors, White informed the counsel that “[t]he Order indicates that there appears to be no assets available from which payment may be made to unsecured creditors.” *Id.* The letter ended, “You are placed on such notice of this receivership as you deem proper to protect the interests of your clients.” *Id.* After being advised of the Receivership and its status, Covil’s insurers continued to pay settlements to Covil asbestos personal injury claimants. *See* Letter from Kelly Bruner to John Truzzolino and Lori Sheppard dated September 15, 1994 (noting, “This serves to reiterate our September 9, 1994 conversation in reference to the disposition of Covil in the asbestos litigation,” and outlining the jointly-determined authority for payment of asbestos personal injury claims).

The L. Winston Lee receivership continued until the Master-in-Equity signed a Final Order on November 30, 1992. The Final Order accepted the Receivership Accounting, which included a listing of all receipts and disbursements undertaken by the receiver. The receipts for Covil during the receivership included \$562,500 for the sale of real estate, \$26,755.27 in auction proceeds, and \$80,209.74 in cash surrender value from New York Life, among others. *See id.* at 5. All remaining receivership funds, and all remaining accounts receivable of Covil, were assigned to First Savings Bank, which the receiver identified in his Final Report as a “priority line creditor.” *See id.* at 2-3; *see also*, Final Report of the Receiver at 4. All other Covil assets that were not receivership funds or accounts receivable were abandoned to the shareholders and partners of Covil. *See* (“That the abandonment by the Receiver of all remaining assets of the above-named Defendants is hereby approved”); (“That your Petitioner is informed and believes that any remaining assets of the Defendants are without monetary value and that your Petitioner should be authorized and directed to abandon any and all such remaining assets, if any, to the shareholders and partners of the Defendants.”).

More than six months after the Master-in-Equity entered the Final Order, on July 30, 1993, the South Carolina Secretary of State signed a Certificate of Revocation of Authority for Covil. The document indicates Covil was dissolved for failure to file its annual report and to pay its franchise tax. *See id.* No other document produced in this case demonstrates that the South Carolina Secretary of State prepared any document dissolving Covil Corporation prior to the Certificate of Revocation of Authority on July 30, 1993.

Apparently, the Objecting Insurers waited twenty-seven years to consult the public files of the prior receivership court. During that time, Covil-related litigation continued apace throughout the courts of South Carolina as well as in other states. Undeterred by this prior

receivership, the Objecting Insurers carried on with “business as usual” for Covil as an active litigant in numerous courts for decades – never mentioning anything to any of these many courts about this prior receivership until only a few days ago.

B: Impact of Prior Receivership on Current Receivership

Non-Party USF&G contends that its late objection based on the prior receivership “raises significant doubts as to whether the Receiver possesses the authority to sell Covil’s insurance policies back to the Settling Insurers, whether Covil is properly subject to suit in any of the underlying asbestos claims against Covil, and whether this Court’s November 2018 order appointing Mr. Protopapas as Covil’s Receiver should be vacated.” Mot. to Stay at 3.

As explained above, Non-Party USF&G lacks standing to complain about these proceedings. In light of Non-Party USF&G objection, the Court will state its rationale and rulings if it were to reach Non-Party USF&G’s objections.

In addition to being untimely, Non-Party USF&G’s objections are simply incorrect. It does not matter if Covil was administratively or judicially dissolved in the early 1990s. The current Covil Receiver was appointed under Section 15-65-10 of the South Carolina Code of Laws, which provides, “A receiver may be appointed by a judge of the circuit court ... (4) When a corporation has been dissolved . . .” *Id.* at 15-65-10(4). The statute does not require that the corporation was previously “administratively dissolved” or “judicially dissolved.” It just says dissolved. Thus, whether Covil was administratively or judicially dissolved in 1992, the current Receiver’s appointment is lawful. USF&G does not attempt to cite or explain away the plain language of Section 15-65-10.

USF&G also makes the erroneous assertion that the current Receiver may not administer Covil's assets because the prior Receiver is "the permanent Receiver of Covil Corporation." Mot. to Reconsider at 3; Mot. to Stay at 6. The Final Order, however (the one USF&G fails to cite) shows that the prior receiver was "discharged as Receiver."

USF&G also claims Section 33-14-107 "bars claims against a judicially dissolved entity that are asserted more than ten years following the entity's publication of notice of dissolution." Mot. to Reconsider at 3; Mot. to Stay at 6 (citing S.C. Code Ann. § 33-14-107(c)). USF&G urges this Court to find that "Covil no longer has any underlying liabilities in the asbestos suits." Mot. to Reconsider at 3; Mot. to Stay at 6. USF&G cites no authority for this proposition, instead noting that USF&G and Zurich "are still investigating these matters." *Id.*

USF&G fails to cite the rest of the statute. Section 33-14-107 plainly provides that "[u]nknown claims . . . may be enforced under this section (1) against the dissolved corporation to the extent of its undistributed assets." S.C. Code Ann. § 33-14-107(d)(1). Under all three types of dissolution, "A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs." S.C. Code Ann. § 33-14-105(a) (voluntary); *id.* at § 33-14-210(d) (administrative); *id.* at § 33-14-330(b) (judicial dissolution statute providing, "After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 33-14-105").

The issues raised by USF&G have been thoroughly addressed by the Delaware Supreme Court *In the Matter of Krafft-Murphy*, 82 A.3d 696 (Del. 2013). The South Carolina Supreme Court has looked to Delaware case law to inform interpretation of the South Carolina Business Corporations Act. For example, in the 1975 case of *Santee Oil Co. v. Cox*, 265 S.C. 270, 272-273, 217 S.E.2d 789, 791 (1975), the South Carolina Supreme Court addressed an issue involving the South Carolina Business Corporations Act. It stated:

No prior decision of this Court has come to our attention which is at all helpful, but courts of other states, particularly the courts of Delaware, the home of so many corporations, have had fairly frequent occasions to define and apply such term under corporation law similar to ours.

Id. at 791. The Court then relied extensively on Delaware law to decide the matter at issue under the South Carolina Business Corporations Act. *Id.* at 791-92.

In the Matter of Krafft-Murphy, 82 A.3d 696 (Del. 2013) soundly rejects USF&G's position. There, similar to here, asbestos "tort claimants in lawsuits pending against [Krafft-Murphy] in other jurisdictions [sought] the appointment of a receiver to enable them lawfully to pursue those claims." *Id.* at 698. Krafft-Murphy had "formally dissolved in 1999" and its "only assets [were] its unexhausted insurance policies." *Id.* at 699. As here, the insurers in *Krafft-Murphy* attempted to argue that asbestos lawsuits were barred because of the dissolution. After a thorough analysis, the *Krafft-Murphy* Court held, "Delaware's dissolution statutes impose no generally applicable statute of limitations that would time-bar claims against a dissolved corporation by third parties." 82 A.3d at 698. The court also held "that as a *body corporate* a dissolved corporation ceases to exist and is not amenable to suit after the expiration of § 278's three year period. From that it does not follow, however, that § 278 extinguishes the corporation's underlying liability to third parties. To the contrary, § 279 enables a dissolved corporation to

(through a receiver) 'sue and *be sued*' after the expiration of the § 278 three year period." *Id.* (footnotes omitted). The same is true in South Carolina.

The Delaware Supreme Court noted that its statutes expressly barred certain claims, but not the asbestos claims at issue in that case. *Id.* at 705. "The five and ten year claims planning periods were not intended to operate as general statutes of limitation." *Id.* at 706. South Carolina's statute applies the same way. *See* S.C. Code Ann. § 33-14-107(b)(3).

Moreover, there is no basis for USF&G's assertion that the current Receivership is unnecessary. After the *Krafft-Murphy* Court noted that the "Insurers are continuing to defend those lawsuits on [Krafft-Murphy's] behalf," it found that the Insurers "cannot re-infuse the Corporation with a legal existence that by statute has terminated. The only means by which the Corporation may become re-empowered to defend its interests in the litigation is through the appointment of a receiver." *Id.* at 710. USF&G also relies on *All Cases Against Sager Corp.*, 967 N.E. 2d 1203 (Ohio 2012). Mot. to Reconsider at 4. The *Sager* decision is an Ohio case applying Illinois law. It relies upon *Pielet v. Pielet*, 942 N.E.2d 606 (Ill App. 2010). *See Sager*, 967 N.E.2d at 1210. USF&G, however, may not rely on *Sager*, and should not have cited it to this Court, because the Illinois Supreme Court reversed the lower court in *Pielet v. Pielet*, 978 N.E.2d 1000 (Illinois 2012). *Id.* at 1013 ("the precedent in Illinois has consistently held that the survival provisions of section 12.80 and its antecedents may only be invoked in aid of a cause of action against a dissolved corporation where the cause of action accrued prior to the corporation's dissolution.").

In short, "*Krafft-Murphy* makes clear that there is no time limit on when a party can request a receiver be appointed to represent a dissolved corporation and there is no ten (10) year statute of limitations on bringing a suit against a dissolved corporation." *United States v.*

Marmon Holdings, Inc., Civ. No. 2:10-cv-00526-EJL-CWD, 2015 WL 5822620, at *12 (D. Idaho Sept. 30, 2015).

Further, a review of the statutory history of the statute USF&G attempts to rely on to support its newly found, self-serving argument that Covil no longer has any underlying liabilities in asbestos cases in South Carolina due to its dissolution shows the statute was materially different at the time of Covil's dissolution. Even if the Court ignored the clear language in section 33-14-107(d), the sound analysis of the Delaware courts on this issue, and the fact that the Objecting Insurers appear to have themselves reanimated Covil for the past two decades, there is no basis for USF&G's argument that section 33-14-107(c) prohibits asbestos claims against the dissolved Covil.

The Court finds sections 33-14-107(a) and (b) are clearly inapplicable in the context of these asbestos claims against Covil. Further, section 33-14-107(c)(3) did not exist at the time of Covil's 1992 dissolution, and the Comments to section 33-14-107 show the General Assembly specifically chose not to adopt what is today subsection (c)(3), which addresses the bar of contingent claims and claims based on an event after dissolution, from the Model Act. In fact, the Comments note the clear legislative intent behind the version of the statute in effect at the time of Covil's dissolution was that "[t]he statute of repose only applie[d] to *claims existing at dissolution*." See South Carolina Reporter's Comments, S.C. Code Ann. 33-14-107. The General Assembly did not adopt subsection (c)(3) until 2004, and as such, this subsection, which did not exist until either eleven or twelve years after Covil's dissolution, clearly cannot apply.

The Court refuses to ignore the plain language of the statute and the clearly expressed legislative intent that section 33-14-107 does not bar claims that did not exist at the time of Covil's dissolution. regardless of whether Covil was dissolved in 1992 or 1993.

This Court appointed Mr. Protopapas as the Receiver for Covil Corporation, pursuant to South Carolina statute, to marshal Covil's assets and administer those assets for use in the defense of Covil's asbestos litigation. Given the unusual nature of latent occupational disease, the Court understands that Mr. Protopapas may find that he is required to serve in this role for years to ensure that Covil meets its obligations to future South Carolinians diagnosed with asbestos-related disease as a result of Covil's business operations.

The Objecting Insurers repeatedly insinuate that the Receiver's key role in these proceedings is to protect the Objecting Insurers from the contractual obligations that they voluntarily assumed when they sold insurance policies to Covil. This Court views the Receiver's role differently. As the Court's appointed receiver, Mr. Protopapas is charged with marshaling Covil's assets and prudently using those assets to address Covil's asbestos liabilities in a responsible fashion. This Court's appointed Receiver is certainly under no obligation to advance frivolous arguments or to assert specious defenses to Covil's asbestos cases. Non-Party USF&G's contention that the Receiver is somehow not cooperating with Covil's insurers and is undermining Covil's asbestos defenses by refusing to behave unethically (at USF&G's behest) is absurd.

This Court manages the South Carolina docket, and has observed Covil's behavior in numerous asbestos cases since Mr. Protopapas was appointed. From this Court's perspective, Mr. Protopapas has managed Covil's defense in those cases appropriately and professionally, while consistently meeting his obligations to Covil's insurers.

Having tried a Covil asbestos case to verdict, this Court is keenly aware of Covil's history and finds that this course of action – although it may take years to conclude – is equitable to all involved, including the insurers who sold liability insurance to Covil and to the people of

South Carolina who have been (and may in the future) diagnosed with asbestos-related diseases potentially attributable to Covil's business operations.

As to the Objecting Insurers, this Court again notes the extreme inconsistency in the positions advanced in objecting to the Court's establishment of the Covil QSF and approval of these three settlements. The Objecting Insurers knew about the previous receivership for almost three decades, yet USF&G waits until its motion to reconsider to raise an objection based on this previous receivership. At this late hour, USF&G now takes the position that the prior receivership may mean that Covil is not subject to suit in any underlying asbestos claim. *See* Motion to Stay at 2. The Court would note that USF&G, along with Zurich, animated an otherwise dissolved Covil for purposes of defending Covil's asbestos litigation from 1993 until 2018. In its role as the South Carolina Asbestos Court and as the trial court in a Covil asbestos case tried to verdict, this Court observed that the Insurers operated Covil without input from any policyholder, and they did so without ever raising this new claim that Covil was not subject to suit because of a prior receivership.

This late and seemingly frivolous objection simply raises additional questions about the propriety of the Objecting Insurers' management of Covil prior to 2018. If the Objecting Insurers really relied on the position that they now have asserted, they would not have animated an otherwise extinct Covil for twenty-five years. Having demonstrated their true view of Covil's role in asbestos litigation for more than two decades, USF&G now raises a last-minute objection that is entirely inconsistent with its course of conduct since 1993.

V. Objecting Insurers' Motion to Stay

USF&G also contends that these proceedings should be stayed. It asserts that a stay would not harm the Receiver. Once again, USF&G is simply not being honest with this Court. As noted in the Receiver's response, at the same time that USF&G advances its argument to stay the Receiver's settlements, USF&G is also demanding that the Receiver fund portions of underlying asbestos settlements. USF&G knows that the Covil QSF lacks funding to respond to these settlement demands, and USF&G is currently leading the effort to prevent the Covil QSF from receiving the proceeds from the sale of some of its insurance assets.

The Objecting Insurers object that they were not given time nor opportunity to file additional objections. This Court provided ample time for briefing on these matters and has never prohibited any such filings, despite how repetitive and voluminous many of the Objecting Insurers' filings have been.

The Objecting Insurers object that they have standing to behave as parties despite their oft-asserted status as non-parties. The fact remains that they are not parties, despite having had months to intervene in these proceedings. The case that they cite for the proposition that they need not be parties to object to these proceedings does not stand for this proposition at all. Contrary to the way that it was represented to this Court, the entity seeking relief in *Ross Development Corporation v. Fireman's Fund Insurance Co.*, 809 F.Supp. 2d 449 (D.S.C. 2011) was a third-party defendant (*i.e.*, a party) to the litigation described therein. Once again, the Objecting Insurers took liberties in representing authority to this Court.

The Objecting Insurers object that this Court's April 10, 2020 order impairs their contribution, indemnification, and subrogation rights. This Court already has addressed these

objections related to potential, future contribution rights. Perhaps USF&G said it best in its April 20, 2020 filing in Judge Hendricks' court: "USF&G does not, and cannot, know the extent of its contribution claims until its right to contribution is ripened by resolution of underlying claims...." *See* USF&G's April 21, 2020 Reply to Response in Opposition to Motion to Enforce Injunction at ECF 148 at 6, Case No. 7:18-cv-03291-BHH, in the United States District Court of South Carolina, Spartanburg Division. As this Court has observed before, this Court is charged with supervision of the South Carolina asbestos docket and the Covil receivership. The Receiver has reached settlements with three of Covil's insurers, and these parties seek approval and closure. The Objecting Insurers seek to prevent this settlement based on a theory that their future, possible, unknowable rights could be impaired. Yet USF&G did not even seek relief relating to these rights in the insurance coverage case pending with Judge Hendricks. *See* USF&G's January 18, 2019 Answer, ECF 39. Its motivation to assert future rights now is thus questionable.

Accordingly, this Court will not place its important business on hold while and until the Objecting Insurers' future potential rights "ripen" to the point that they are ready to have them adjudicated. The law of South Carolina favors settlements, and this Court has a complex asbestos docket to manage. The Receiver's significant settlements have already resulted in a decrease in litigation in multiple state and federal courts, and this Court stands ready to adjudicate contribution rights related to its asbestos docket and the Covil QSF that it will supervise should the necessity to adjudicate such rights ever materialize in any of this Court's cases.

Until such time, the Objecting Insurers cannot indefinitely block this Court's functions in defense of rights that they may, or may not, possess at some undetermined time in the future. Finally, the concept of subrogation, although mentioned frequently by the Objecting Insurers, is not at issue in these proceedings.

VI. Ruling

For the reasons stated above, this Court hereby **DENIES** Non-Party United States Fidelity and Guaranty Company's ("USF&G") April 20, 2020 Motion to Reconsider, Alter or Amend Approval Order; Non-Party USF&G's April 20, 2020 Motion to Stay; and Non-Party Zurich's April 20, 2020 Motion to Reconsider, Alter or Amend Approval Order.

AND IT SO ORDERED this ____ day of _____, 2020.

Jean H. Toal, Chief Justice of the Supreme
Court, Retired, acting as Circuit Court Judge

Columbia, South Carolina.



York Common Pleas

Case Caption: Wayne Ervin Howe , plaintiff, et al VS Air & Liquid Systems Corp ,
defendant, et al
Case Number: 2015CP4603456
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2020-05-06 16:55:46 page 21 of 21

EXHIBIT 2

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

The First Savings Bank, FSB,
Plaintiff,

vs.

Covil Corporation, Oxytherm, Inc.
and Equitable Enterprises, a South
Carolina General Partnership,

Defendants.

ORDER

91-CP-23-4445

CS
#1

This matter was referred to me by Order of the Honorable Larry R. Patterson for the purpose of filing and hearing matters, taking any necessary testimony and receiving any evidence and determining all issues of law and fact with full authority to enter final judgment and orders without further order of the Circuit Court.

This matter now comes before me pursuant to the Motion of the Receiver for the relief as herein after recited.

It appears and I find that L. Winston Lee is the duly appointed Receiver of the property of Covil Corporation and Oxytherm, Inc. The Receiver now seeks to have his appointment responsibility and authority broadened to that of a general receiver for Covil Corporation and Oxytherm, Inc. At the request of the Defendants, he also requests that these two corporations be judicially dissolved. It appears and I find that this appointment as a general receiver is necessary just and proper for the

purpose of liquidating the assets of Covil Corporation and Oxytherm, Inc. and that the judicial dissolution of these two corporations is appropriate. Based upon the foregoing, and with the consent of Counsel for the above named Plaintiff and Defendants, it is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. That Covil Corporation and Oxytherm, Inc. be, and the same hereby are decreed to be judicially dissolved effective as of the date of the filing of this Order, and the Clerk of this Court is hereby directed to deliver a certified copy of this decree to the South Carolina Secretary of State, and the Secretary of State is hereby directed to file this decree without charge.

2. That the continued dissolution of Covil Corporation and Oxytherm, Inc. shall be continued under this Court's supervision.

CS #2
3. That L. Winston Lee be, and he hereby is, appointed the permanent Receiver of Covil Corporation and Oxytherm, Inc. and all of their respective properties including, but not limited to, all real and personal property, inventory, funds and deposits and accounts receivable, for the purpose of marshalling and liquidating such assets.

4. That the Receiver shall have all of the usual and normal statutory powers and authority of a Receiver, including, but not limited to, those set forth in §§ 33-14-105 and 33-14-320 of the Code of Laws of the State of South Carolina, 1976 as amended, and

he shall, as rapidly as circumstances shall permit, proceed with the collection of accounts and marshalling of assets, and the orderly liquidation of the business of Covil Corporation and Oxytherm, Inc., with said Receiver to have the full discretion and authority to sell the corporate assets thereof in any commercially reasonable manner, at such price(s) as he finds attainable, including, but not limited to, full authority to sell goods in bulk and/or auction and in this regard, the Receiver is authorized and directed, pursuant to § 40-6-20(3) of the Code of Laws of the State of South Carolina, 1976 as amended, to himself conduct any auction he may deem necessary or appropriate without the services of a licensed auctioneer. The Receiver shall be, and he hereby is, authorized to compromise and/or settle any claim(s) of Covil Corporation and/or Oxytherm, Inc. against any of their respective creditors, without further order of this Court. The Receiver shall be, and he hereby is, further authorized without further order of this Court to incur and pay such reasonable expenses as may be necessary in carrying out his duties as herein described, including, but not limited to, the expense of the premium for any bond now or hereafter ordered, the cost of litigation, including the cost of labor, including sales and/or other employees, and attorney's and accountant's fees, with all such expenses and costs to be regarded as an expense of the Receivership which shall be a preferred lien on the assets coming into the Receiver's hands, and shall be paid together with the receiver's fee as hereinafter set forth, as a first priority before any other claims of creditors.

5. The Receiver is hereby authorized to abandon any of the property of Covil Corporation and/or Oxytherm, Inc. which he, in his sole discretion, shall deem burdensome and without value. However, the records of any employee's representatives, customers or clients (hereinafter collectively referred to "Customers") of Covil Corporation and/or Oxytherm, Inc. which the Receiver in his sole discretion shall deem to be of a confidential nature, shall not be disposed of until the receiver has given thirty (30) days written notice to such Customers that they may make claim to such records. Upon receiving any such claim, the Receiver shall turn over such records to each claiming customer, and all such records not claimed by any such customer shall be disposed of in such manner as the Receiver, in his sole discretion, deems appropriate under the circumstances.

6. Covil Corporation and Oxytherm, Inc. and their respective officers, directors, employees, representatives, agents and all other persons upon presentation of a certified copy of this Order shall deliver to the Receiver all records property and assets of said corporations of every kind and nature whatsoever which may be in their possession and/or their control.

7. That upon presentation of a certified copy of this Order, all banking institutions shall turn over and deliver to the Receiver all bank accounts and funds held by them in the account, or for the benefit of, Covil Corporation and/or Oxytherm, Inc. and they shall further turn over to the Receiver any and all banking or other records pertaining to any account whatsoever, opened or closed, indi-

vidually or jointly, in the name of said Corporations.

8. The Receiver is fully authorized to receive, open and act upon all mail received at the addresses of Covil Corporation and/or Oxytherm, Inc. and to divert same to such address or adreses as he may determine necessary.

9. To the extent not already accomplished, the Receiver shall provide the claimants of Covil Corporation and/or Oxytherm, Inc. known to him with the Notice as required by § 33-14-106 of the Code of Laws of the State of South Carolina, 1976 as amended. In addition to the foregoing, and to the extent not already accomplished, the Receiver shall publish the Notice required by § 33-14-107 of the Code of Laws of the State of South Carolina, 1976 as amended.

CS
#5
10. As to any claim filed by a claimant of Covil Corporation or Oxytherm, Inc., the Receiver shall reject any claim which he deems unjustified. If the Receiver rejects in whole or in part a claim filed pursuant to the requirements hereunder, the Receiver shall mail notice of the rejection to the creditor whose claim has been rejected, setting forth in such notice the amount of the claim so rejected. This notice shall further state the "Effective Date" of the rejection and advise the claimant that a proceeding to enforce the claim must be commenced within ninety (90) days of the Effective Date. A claim against the Petitioner shall be barred if the claimant whose claim was rejected by the Receiver does not commence a proceeding to enforce the claim within ninety (90) from the Effective Date.

11. All creditors and other persons are hereby restrained and enjoined pursuant to this Court's power to grant injunctive relief as set forth in § 33-13-310 of the Code of Laws of the State of South

Carolina, 1976 as amended, from instituting or prosecuting any action or proceeding against Covil Corporation and/or Oxytherm, Inc. other than as set forth in this Order or from levying upon, attaching, distraining, or selling, or attempting to levy upon, attach, distrain or sell any of the property of Covil Corporation and/or Oxytherm, Inc.

12. The Receiver's fee shall be seven and a half percent (7.5%) of all monies received by him as Receiver provided, however, should the Receiver sell the real estate owned by Covil Corporation within this Receivership proceeding, then in such event the Receiver's fee shall be three percent (3%) of all monies received by him as Receiver, and the Receiver is hereby authorized from time to time to disburse from the receivership funds said receivership fees and any costs and/or expenses advanced and/or incurred by him hereunder, to himself and/or those retained or employed by him hereunder without further order of this Court, provided, however, that he shall clearly set forth in his final accounting all such fees and costs so disbursed.

13. With the consent of Counsel for The First Savings Bank, FSB affixed to the foot of this Order, the Receiver shall not be required to post a bond pursuant to § 33-14-320(b) of the Code of Laws of the State of South Carolina, 1976 as amended.

14. All law enforcement agencies of this state shall render unto this Court's duly appointed Receiver, L. Winston Lee, whatsoever assistance he may require to carry out the order of this Court, and to prevent a breach of the peace.

15. That upon liquidation of Covil Corporation and Oxytherm, Inc., the Receiver shall submit an accounting to this Court

and petition for authority to make final disbursement of the proceeds from such liquidation.

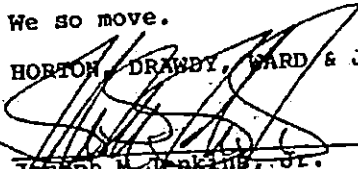
IT IS SO ORDERED this 11 day of May, 1992.

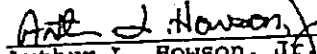

Charles B. Simmons, Jr.
Master-In-Equity

I Consent.

We so move.

HORTON, DRAWDY, WARD & JOHNSON


Joseph M. Jenkins, Jr.
307 Pettigru Street
Greenville, SC 29603
Attorney for the Receiver


Arthur L. Howson, Jr.
Attorney for the Plaintiff

We Consent.

Love, Thornton, Arnold & Thomason

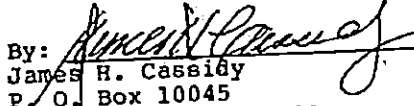
By: 
James H. Cassidy
P. O. Box 10045
Greenville, SC 29603
Attorney for the Defendants.

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

The First Savings Bank,
F.S.B.,
Plaintiff,

v.

Covil Corporation,
Oxytherm, Inc., and
Equitable Enterprises, a
South Carolina general
partnership,

Defendants.

CONSENT ORDER
FOR APPOINTMENT OF RECEIVER

C.A. No.: 91-CP-23-4445

07 31 PM '91

ENTERED COMPUTER

This matter comes before me upon motion of Arthur L. Howson, Jr., attorney for the plaintiff. It appears that the defendants are indebted to the plaintiff ("The First") by virtue of the following instruments:

a. Commercial Note from Covil Corporation ("Covil") to the plaintiff, dated October 17, 1988, in an original amount of Eight Hundred Eighty-six Thousand Nine Hundred Eighty-one and 00/100 (\$886,981.00) Dollars, modified by that certain Commercial Loan Modification Agreement between the parties dated March 28, 1991. ("First Covil Note");

b. Commercial Note executed by Covil to The First dated December 21, 1990, in an original amount of One Hundred Seventy-five Thousand and 00/100 (\$175,000.00) Dollars, ("Second Covil Note");

c. Commercial Note executed by Oxytherm, Inc. ("Oxytherm") to The First dated April 5, 1990, in an original

amount of Two Hundred Thousand and 00/100 (\$200,000.00) Dollars, ("Oxytherm Note");

d. Commercial Note executed by Equitable Enterprises to The First dated February 27, 1989, in an original amount of Three Hundred Thousand and 00/100 (\$300,000.00) Dollars, modified by that certain Commercial Loan Modification Agreement between the parties dated March 28, 1991 ("Equitable Enterprises Note"); and

WHEREAS, payment of the First Covil Note and Second Covil Note is secured by a security interest granted by Covil to the First in all of the equipment, inventory, and accounts receivable of Covil ("Covil Personal Property"); and

WHEREAS, payment of the First Covil Note is also secured by that certain Commercial Mortgage executed by Covil to the First dated October 17, 1988, recorded October 18, 1988 in Mortgage Book with 1967 of page 265 in the RMC office for Greenville County, which mortgage covers that certain real property more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("Covil Real Property"); and

WHEREAS, payment of the Oxytherm Note is secured by a security interest granted by Oxytherm to The First in all of the equipment, inventory, and accounts receivable of Oxytherm ("Oxytherm"); and

WHEREAS, payment of the Equitable Enterprises Note is secured by a Commercial Mortgage executed by Equitable Enterprises to The First dated December 13, 1988, recorded December 21, 1988 Mortgage Book 1979 at page 380 in the RMC office for Greenville

County, covering that certain real property more particularly described in Exhibit B, attached hereto and incorporated herein by reference ("Equitable Enterprises Real Property"); and

WHEREAS, The First Covil Note, Second Covil Note, Oxytherm Note, and Equitable Enterprises Note are all in default, and Covil, Oxytherm, and Equitable Enterprises have agreed to surrender the collateral to The First for liquidation and payment to The First of the net proceeds of the sale thereof; and

WHEREAS, the parties hereto have agreed that to assure the orderly liquidation of the collateral and the security thereof pending liquidation, the property should be placed in the control of a receiver,

NOW, THEREFORE, upon motion of Arthur L. Howson Jr., attorney for The First, by and with the consent of James H. Cassidy, attorney for Covil, Oxytherm, and Equitable Enterprises, it is

ORDERED, ADJUDGED AND DECREED:

1. That L. Winston Lee be appointed as receiver of the Covil Personal Property and Oxytherm Personal Property to take and have complete and exclusive management and control of said property. Said receiver may sell said property at public or private sale, pursuant to the security interests of The First in said property and the South Carolina Uniform Commercial Code. Said receiver shall make such normal and customary payments and disbursements as may be necessary and proper for the preservation of said property; provided, however, that in the event the receiver

deems it necessary, he may expend up to One Thousand and 00/100 (\$1,000.00) Dollars for extraordinary expenses, provided he has the prior written consent of the plaintiff or the court.

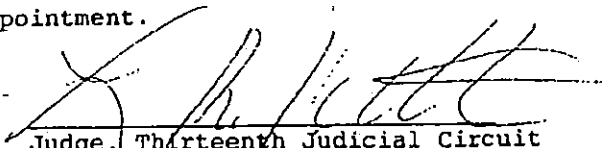
2. That L. Winston Lee be appointed as receiver of the Covil Real Property and Equitable Enterprises Real Property, to take and have complete and exclusive management and control of said property. Said receiver shall make such normal and customary payments and disbursements as may be necessary and proper for the operation and preservation of said real properties; provided, however, that in the event the receiver deems it necessary, he may expend up to One Thousand and 00/100 (\$1,000.00) Dollars for extraordinary expenses, provided he has the prior written consent of the plaintiff or the court.

3. From funds received from the sale of the Covil Personal Property and Oxytherm Personal Property the receiver shall pay all costs and expenses of the receivership including, but not limited to the receiver's fee as receiver and the cost and expense of the bond hereinafter required, and the net funds shall be paid to The First for application to the debts to The First of Covil, Oxytherm, and Equitable Enterprises, as applicable.

4. The plaintiff shall file a cash bond with the Office of the Clerk of Court for Greenville County in the amount of Five Hundred and 00/100 (\$500.00) Dollars.

5. The plaintiff and the receiver shall provide a full and complete accounting to this court of all sums collected by the receiver from the date of appointment.

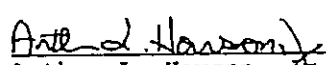
IT IS SO ORDERED.


Judge, Thirteenth Judicial Circuit

Greenville, SC

October 11, 1991

I SO MOVE:


Arthur L. Howson, Jr.

Attorney for the Plaintiff

I CONSENT:

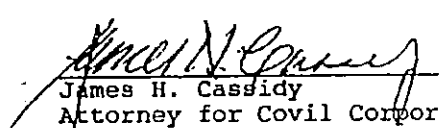

James H. Cassidy
Attorney for Covil Corporation
Exytherm, Inc. and
Equitable Enterprises

EXHIBIT 4

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN RE:

The First Savings Bank,
FSB,

Plaintiff,

vs.

Covil Corporation,
Oxytherm, Inc. and Equitable
Enterprises, a South Carolina
General Partnership,

Defendants.

) IN THE COURT OF COMMON PLEAS

) C.A. NO. 91-CP-23-4445

) JR# 91-5988

) ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
CAROLINE W. PATTON
Nov 12 8 52 AM '92

35
JH
#1

TO ALL CLAIMANTS AGAINST THE ABOVE-NAMED DEFENDANTS:

Pursuant to the Orders of Receivership filed in this matter, L. Winston Lee was appointed Receiver for the purposes as recited therein and, pursuant to the Order of Reference filed in this matter, this case was referred to the Master-in-Equity for Greenville County, South Carolina for the purposes set forth in said Order, including authority to enter a final Judgment in the cause.

The Receiver has now filed a Petition wherein he has made his final report and seeks the following relief:

A. That this Court approve the Receiver Accounting attached hereto as Exhibit A including all disbursements heretofore made by the Receiver.

B. That this Court authorize the payment of the Receivership fees and costs and attorneys' fees and costs as set forth in Exhibit A. The Receiver has reserved the right to seek additional attorneys' fees and costs should further hearings and proceedings be required in this matter.

C. That this Court authorize the Receiver to pay four thousand five hundred dollars (\$4,500.00) to Environmental Protection Associates, Inc. for the removal of hazardous materials unknowingly sold by him at public auction to Shelnutt Heating & Air Conditioning Company, Inc.

D. That, as set forth in Exhibit A, the Receiver be authorized to pay all other

Receivership funds to First Savings Bank, FSB in accordance with its priority claims and also any such additional funds, less a 3 percent (3%) Receivership fee, received by the Receiver between October 30, 1992 and his discharge as Receiver in this proceeding.

E. That this Court authorize the Receiver to assign all accounts receivable of any of the above-named Defendants to First Bank in accordance with First Bank's priority claim.

F. That the Receiver be authorized to abandon all remaining assets of the Defendants and to otherwise dispose of the books and records of the Defendants held by him subject to any claims for same by their respective shareholders and partners and the Internal Revenue Service.

G. That the Receiver be automatically discharged when he has made all disbursements as authorized by this Court.

From the foregoing Petition of the Receiver, it appears and I find that he has fully complied with the previous Orders of this Court in liquidating the assets of the his Defendants, that his accounting is in order and that the relief sought by him should be approved.

BASED UPON THE FOREGOING, IT IS ORDERED AS FOLLOWS:

1. The Receiver is hereby ordered to serve, by First Class Mail, a copy of this Order upon all Claimants whose names and addresses are known to the Receiver.

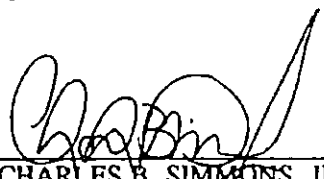
2. All Claimants are hereby ordered to file any Objections they may have to the above-referenced relief sought by the Receiver both with this Court and the Receiver. All Objections must be filed with and received by this Court and the Receiver on or before the 27th day of November, 1992 at the addresses listed below. All such Objections shall be in writing and bear the above caption and shall set forth the reasons for the Objections citing applicable statutes, rules and controlling law.

3. In the event any Objections to the relief sought by the Receiver are filed with this Court and the Receiver, a hearing shall be scheduled and noticed to all Claimants filing Objection. In the event no such objections are filed by the date hereinabove set forth, this Court shall, without further notice or hearing, enter its Final Order granting the relief sought by the Receiver.

IT IS SO ORDERED.

Greenville, S.C.
November 11, 1992

Honorable Charles B. Simmons, Jr.
Master-in-Equity
Greenville County Courthouse
Suite 207
Greenville, South Carolina 29601



CHARLES B. SIMMONS, JR.
Master-in-Equity

L. Winston Lee, Receiver
10 Brookside Circle
Greenville, SC 29609

EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN RE:

The First Savings Bank,
FSB,

Plaintiff,

vs.

Covil Corporation,
Oxytherm, Inc. and Equitable
Enterprises, a South Carolina
General Partnership,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO. 91-CP-23-4445.

FINAL ORDER

FILED-CLERK OF COURT
GREENVILLE, SC
CAROLINA
DEC 7 11 29 AM '92



Pursuant to the Orders of Receivership filed in this matter, L. Winston Lee was appointed Receiver for the purposes as recited therein and pursuant to the Order of reference likewise filed in this matter, this case was referred to the Master-in-Equity for Greenville County, South Carolina for the purposes set forth in said Order, including authority to enter a final Judgment in the cause.

This matter is now before this Court pursuant to the Petition of the Receiver for final relief and in accordance with the Order issued in this case on November 11, 1992 and filed on November 12, 1992.

As more fully appears in the Affidavit of the Receiver filed in this case, all Claimants of the above Defendants whose names and addresses were known to the Receiver were served with a copy of the aforesaid Order of October 11, 1992 and no such Claimants have objected

in accordance with the terms of said Order to the relief sought by the Receiver in his Petition.

Based upon the foregoing, the Petition of the Receiver and the exhibits attached thereto, and the aforesaid Orders previously issued in this matter, it appears and I find that the final relief sought by the Receiver should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the Receivership accounting attached hereto as Exhibit A, including all previous disbursements made by the Receiver as recited therein, be and the same hereby are approved.

2. That the Receiver be, and he hereby is authorized to pay the Receivership fees and costs as set forth on Exhibit A.

15
#2 3. That the Receiver be, and he hereby is authorized to pay the attorneys's fees and costs as set forth in Exhibit A.

4. That the Receiver be, and he hereby is authorized to accept the proposal of Environmental Protection Associates as set forth on Exhibit B attached to his Petition, to pay the four thousand five hundred dollar (\$4,500.00) fee relating thereto from Covil Receivership assets, and to assign his rights under said proposal to Shelnutt Heating & Air Conditioning Company, Inc. provided Shelnutt Heating & Air Conditioning Company, Inc. enters into the release and assignment as set forth on Exhibit C attached to the Receiver's Petition.

5. That the Receiver be, and he hereby is authorized to pay all remaining Receivership funds as set forth in Exhibit A over to First Savings Bank, FSB and also any

and all such additional funds he shall have received between October 30, 1992 and the date of such disbursement less, however, a 3% Receivership fee which the Receiver is authorized to pay from such additional funds to himself.

6. That the Receiver be, and he hereby is authorized to execute the assignment attached to his Petition as Exhibit D whereby all accounts receivable of any of the above-named Defendants shall be assigned to First Savings Bank, FSB.

7. That the abandonment by the Receiver of all remaining assets of the above-named Defendants is hereby approved, and the Receiver is otherwise authorized to return any books and records of any of the Defendants held by him to the shareholders and/or partners of the Defendants upon written demand for same provided, however, that if said books and records are not so demanded and picked up from the Receiver by said shareholders or partners or their authorized representatives within 30 days of the date of this Order, the Receiver is authorized to destroy said books and records at such time or times, and in such fashion or fashions as he, in his sole discretion, deems most advisable under the circumstances, provided further, however, should the Internal Revenue Service object to such disposal, the Receiver is hereby authorized to turn over all such books and records to the Internal Revenue Service as may be requested by it.

8. That upon the Receiver filing with this Court his Affidavit that he has made all of the foregoing disbursements and that all checks have cleared and the Receivership bank accounts have a zero (0) balance, he shall be automatically discharged as Receiver in this matter. Provided, however notwithstanding the foregoing, should any such check not be negotiated by the drawee thereof within 90 days after the date of same, the Receiver is

hereby authorized to recite such circumstances in his foregoing Affidavit to be filed with this Court and upon filing such Affidavit with such additional circumstances described therein, he shall likewise be automatically discharged and in accordance with the provisions of *Title 27, Chapter 18 of the Code of Laws of the State of South Carolina, 1976 as amended, L.* Winston Lee then acting as Agent of this Court, shall hold open the Receivership account from which said check was issued, the funds therein being deemed to be intangible property held for the owner by this Court in accordance with §27-18-140 of the *Code of Laws of the State of South Carolina, 1976 as amended*, with L. Winston Lee as Agent of this Court being authorized to dispose of said funds in accordance with the provisions of *Title 27, Chapter 18 of the Code of Laws of the State of South Carolina, 1976 as amended.*

IT IS SO ORDERED.

Greenville, S.C.
November 30, 1992

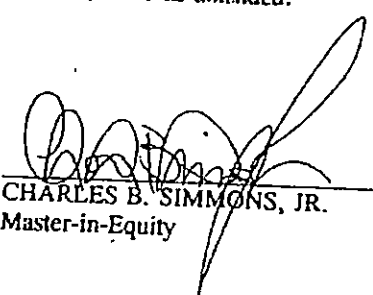

CHARLES B. SIMMONS, JR.
Master-in-Equity

EXHIBIT A

RECEIVER'S ACCOUNTING
COVIL CORPORATION**Receipts:**

Sale of Real Estate	\$562,500.00
Auction Proceeds	26,755.27
New York life Cash Surrender Values	80,209.24
Accounts Receivable	13,245.88
Bank Accounts	141.51
Utility Deposit Refunds	618.92
Interest through 10/30/92	906.88
Total Receipts	684,377.70

Disbursements:	Disbursed	Proposed Disbursements	Total
S.C. Tax Commission	\$76.00		\$76.00
1991 County Taxes	11,434.63		11,434.63
1992 Prorated Co. Taxes	5,955.00		5,955.00
Attorney Fees	5,563.00	\$4,912.50	10,475.50
Attorney Costs		100.00	100.00
Recording Fees	19.00		19.00
Deed Stamps	2,081.25		2,081.25
Duke Power Company	2,724.20		2,724.20
Greenville Water System	265.90		265.90
Accountant's Fees	800.00		800.00
IRS 1991 940 Forms	18.72		18.72
W-2 Forms	22.54		22.54
Payroll Clerk	565.00		565.00
Incinerator Disposal Charge	500.00		500.00
Mini Warehouse Charge	540.00		540.00
Receiver Fees	16,875.00	3,656.33	20,531.33
Receiver Expense		1,576.50	1,576.50
Environmental Protection Agcy.		4,500.00	4,500.00
First Savings Bank	520,496.12	101,696.01	622,392.13
Total Disbursements:			684,377.70

EXHIBIT 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNT OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
DENVER D. TAYLOR and	)	CASE NO. 2018CP-000000
JANICE TAYLOR,	)	
	)	In Re:
Plaintiffs.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
AIR & LIQUID SYSTEMS	)	
CORPORATION, et al.	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION TO APPOINT A
RECEIVER OVER COVIL CORPORATION PURSUANT TO S.C. CODE § 15-65-10**

Plaintiffs, pursuant to S.C. Code §15-65-10(4), move this Court to appoint a receiver over the Covil Corporation and would respectfully show the Court as follows:

BACKGROUND

As this Court well knows, Covil Corporation, formerly a South Carolina corporation, was one of the largest suppliers and installers of asbestos insulation in the southeastern United States from the 1950s until 1991 when it voluntarily dissolved leaving its creditors, namely the thousands of men and women it exposed to asbestos, without any meaningful entity to proceed against and, apparently, disposed of its assets without regards to those creditors. Now, apparently, all that remains of Covil is its insurance coverage.¹

¹ Plaintiffs are aware of several directors and officer's policies and are investigating the ability to access that coverage, but that is an argument for a different day.

As a result, Covil is not, as a normal corporation would be, controlled by its shareholders or management, but rather its insurance carriers through its lawyers. Thus it is Covil's insurance carriers that are making strategic decisions on compliance with this Court's discovery orders and when and how to settle without regard to their fiduciary obligations to Covil. As this Court knows, Covil has flouted this Court's discovery requirements and orders on several occasions and Covil has declined to make reasonable decisions about resolution of the myriad of cases pending against it. By way of example only, in *Finch v. Covil, et. al.*, 1:16-CV-01077 filed in the Middle District of North Carolina rather than tender the limits of its policies, Covil's insurers litigated that case to a plaintiff's verdict of \$32.7 million in damages.² See Judgment attached as Exhibit A. These are not the actions of a reasonable corporation and thus Covil's insurers have subjected it to risks and now, actual damages, far greater than the limits of its insurance limits. This conduct cries out for an objective party to be appointed to attempt to inject some level of reasonableness into Covil's insurers' actions. Plaintiffs request that this Court appoint a receiver to do just that.

LAW AND ARGUMENT

South Carolina Code §15-65-10(4) states that

a receiver may be appointed by a judge of the circuit court, either in or out of court:
 . . . (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights, and in like cases, of the property within this state of foreign corporations . . .

It is undisputed that Covil is not an existing entity, indeed Covil's own counsel improperly so argued during the *Crawford v. Covil* matter resulting in this Court granting a new trial and a further demonstration of Covil's insurers' commitment to wasting judicial resources rather than deploying

² And under North Carolina's prejudgment interest statute, approximately \$5.6 million in prejudgment interest has accrued.

them effectively to compensate at least some of Covil's victims. Thus the element required for the appointment of a receiver under this code section is met.

Section 15-65-20 requires that notice of this application be provided to the party to the action whose property is sought to be put in the hands of a receiver. Plaintiffs have given notice to Covil's counsel as well as all insurance carriers of which they are aware. Under the statute, 4 days notice is required unless a shorter period of time is determined to be appropriate by the court.

An immediate appointment of a receiver is appropriate. Covil has failed to answer or respond in two recently filed cases: *Hill* and *Taylor*. Counsel for Covil has failed to respond to calls inquiring about their failure to answer. Thus it appears that the need for a receiver over Covil has become immediate so that its rights, assets and obligations are protected.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for Covil Corporation for all purposes, including, but not limited to taking possession of and disposing of any remaining assets of Covil Corporation, is appropriate. Plaintiffs request that this Court issue an order appointing a receiver as soon as practicably possible and for such other and further relief to which they may be entitled.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar No. 77935)
Kevin W. Paul (To be admitted *Pro Hac Vice*)
Charles W. Branham, III (To be admitted *Pro Hac Vice*)
DEAN, OMAR, & BRANHAM, LLP
302 N. Market Street, Suite 302
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991
kpaul@dobllp.com
tbranham@dobllp.com
Other email: tgilliland@dobllp.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this 11th day of October 2018. Additionally, Plaintiffs have given notice to each of the insurance carriers for Covil of which they are aware.

/s/ Jonathan M. Holder

Jonathan M. Holder

EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
DENVER D. TAYLOR and	)	
JANICE TAYLOR,	)	CASE NO. 2018-CP-40-04940
	)	
Plaintiffs,	)	Order Appointing a Receiver for Covil
	)	Corporation
v.	)	
	)	
AIR & LIQUID SYSTEMS	)	
CORPORATION, et al.	)	
	)	
Defendants.	)	

This matter comes before the Court by way of Plaintiff's Motion for Appointment of a Receiver pursuant to South Carolina Code § 15-65-10. This Court finds that the application is meritorious under the applicable statute because Covil Corporation has dissolved. Therefore, Plaintiff's motion is GRANTED.

This Court hereby appoints Attorney Peter Protopapas as Receiver at such rate of compensation as may be approved by the Court. Mr. Protopapas is hereby appointed Receiver in this case pursuant to § 15-65-10 with the power and authority to fully administer all assets of Covil Corporation ("Covil"). This order 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.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any

mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2018.

JEAN TOAL, CHIEF JUSTICE (Ret.)



Richland Common Pleas

Case Caption: Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al
Case Number: 2018CP4004940
Type: Order/Appointment of Receiver

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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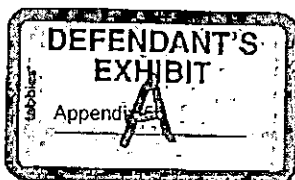
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EXHIBIT 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
COVIL CORPORATION,	)	SUMMONS
	)	
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.	)	

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer this Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the Plaintiff's counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint, judgement by default will be rendered against you for the relief demanded in the Complaint.



Dated: November 21, 2018

Respectfully submitted,

/s/ Richard R. Gleissner

Richard R. Gleissner

SC Bar Number 15139

Gleissner Law Firm, LLC

1237 Gadsden Street, Suite 200A

Columbia, South Carolina 29201

+1.803.787.0505

Attorneys for the Receiver of Covil Corporation

ELECTRONICALLY FILED - 2018 Nov 27 11:39 AM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4204099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
COVIL CORPORATION BY IT DULY	)	COMPLAINT FOR BREACH OF
APPOINTED RECEIVER, PETER D.	)	CONTRACT; BAD FAITH;
PROTOPAPAS,	)	DECLARATORY JUDGMENT AND
	)	OTHER RELIEF
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,	)	
<u>Defendants.</u>		

This action is brought by Covil Corporation, a dissolved South Carolina corporation ("Covil"), by and through its duly-appointed receiver, appointed by Order of the Honorable Jean Toal in the Court of Common Pleas, Richland County, in the case of *Denver D. Taylor and Janice Taylor v. Air & Liquid Systems Corporation*, civil action number 2018-CP-40-04940 dated November 2, 2018, pursuant to South Carolina Code § 15-65-10 (the "Receiver Order"). 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.

INTRODUCTION

1. Covil was an installer of thermal insulation, including thermal insulation which contained asbestos. It has been alleged that, during the conduct of its operations, *i.e.*, in connection with the installation, repair, replacement, removal or disturbance of thermal insulation materials, persons were exposed to asbestos, thereby suffering bodily injury. Covil's operations subject of these allegations took place beginning in or about 1964, extending to in or before 1986. The alleged bodily injury took place during the periods 1964 to 1986 and thereafter continued and progressed, resulting in suits asserted against Covil, including but not limited to suits asserted by certain of the defendants herein, and otherwise, as described further in this complaint (the "Covil asbestos suits").

2. Peter D. Protopapas (the "Receiver") was appointed the receiver of Covil on November 2, 2018 pursuant to the Receiver Order.

3. At all times pertinent prior to the appointment of the Receiver, Covil's defense of the Covil asbestos suits was controlled by defendants Zurich American Insurance Company ("Zurich"), Sentry Casualty Company ("Sentry") and United States Fidelity and Guaranty Company ("USF&G"). Zurich, Sentry and USF&G in essence managed Covil, making all determinations as to the disposition of Covil asbestos suits, as well as their treatment as product liability or operations claims. This control over Covil, and management of Covil's asbestos suits, extended to the *Finch* suit and the *Crawford* suit, discussed below. Zurich, Sentry and USF&G defended against the *Finch* suit and *Crawford* suit, on Covil's behalf. Although each of Zurich and USF&G, both individually and collectively, could have resolved the Covil asbestos

suit asserted by Ann Finch, as Executrix of the Estate of Franklin Delenor Finch and the suit asserted by Jerry Crawford, within the applicable limits of their insurance policies, neither did so, the result in the Finch suit being a verdict entered against Covil in the *Finch* suit in the amount of \$32,700,000, plus pre-judgment interest of \$5,633,358.89 and a new trial being granted in the *Crawford* suit. The verdict in the *Finch* suit was rendered on October 19, 2018, prior to the appointment of the Receiver. No final judgment has been issued in the *Finch* suit. However, the verdict in the *Finch* suit is sufficient to invoke all of the insurance policies issued to Covil in and after 1975, including but not limited to the pertinent policies issued by Zurich, the policies issued by USF&G, the umbrella policies of insurance issued by defendant TIG Insurance Company, and, perhaps, the umbrella policies issued by Hartford Accident and Casualty Company, and First State Insurance Company (Hartford and First State are collectively referred to, where appropriate, as "Hartford").

4. In response to the verdict in the *Finch* suit, defendant Zurich has sought a declaratory judgment in federal court in North Carolina, styled as *Zurich American Insurance Company v. Covil Corporation*, Civil No. 1:18 cv-932 (M.D.N.C.) (the "Zurich Federal Declaratory Judgment Action"), seeking to limit Zurich's exposure to the *Finch* verdict.

5. The Zurich Federal Declaratory Judgment Action, however, is an ineffective and incomplete attempt to adjudicate the current disputes among the parties. The Zurich Federal Declaratory Judgment Action does not appear to be intended to protect the interests of Covil or the various claimants in the Covil asbestos suits, including but not limited to the claimants in the *Finch* suit, the claimants in the *Crawford* suit or certain of the defendants in this action. Among other things, defendants Zurich and USF&G breached their contracts of insurance by failing or refusing to resolve the *Finch* suit and the *Crawford* suit within their policy limits, instead

allowing an adverse judgment to be taken in the amount of \$32,700,000 in the *Finch* suit and a new trial being issued in the *Crawford* suit. These same defendants also breached the duty of good faith and fair dealing owed to their insured, and to other claimants in the Covil asbestos suits, by failing or refusing fairly and reasonably to resolve the *Finch* suit and *Crawford* suit.

6. Furthermore, Zurich, Sentry and USF&G have also breached their contracts of insurance by treating all Covil asbestos suits as invoking solely the products hazard, a coverage part subject to an aggregate limit of liability, whereas some or all of the Covil asbestos suits are covered under the "operations" coverage part, as to which there is no aggregate limit of liability but only a per person or per occurrence limit of liability.

7. Covil also seeks declaratory relief against all of Covil's insurers, including umbrella insurers TIG and Hartford.

8. As to TIG, Covil seeks declarations (i) that TIG must "drop down" and provide "first dollar" coverage above the retained limit of \$10,000 if there is no applicable underlying primary coverage; (ii) that, in such event, TIG is required to pay defense costs in addition to its applicable limits of liability; and (iii) that TIG's \$2,000,000 annual limit of liability has no aggregate limit for claims other than product liability claims, such that its \$2,000,000 per occurrence limit responds repeatedly to each and every occurrence, with no limit to the number of occurrences.

9. As to Hartford, Covil seeks declarations (i) that Hartford's policies provide coverage for non-products asbestos suits; (ii) that there is no aggregate limit for such asbestos suits in any Hartford policy, but only a "per occurrence" limit, with no limit to the number of occurrences; and (iii) that Hartford's policies provide for a supplemental defense in addition to their limits of liability.

10. Finally, Covil seeks an anti-suit injunction against Zurich, seeking to enjoin it from prosecuting the Zurich Federal Declaratory Judgment Action pendente lite of this more comprehensive case.

11. As to the individually-named defendants, all residents of the State of South Carolina, Covil seeks the following declaratory relief: (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.

THE PARTIES

12. Covil Corporation is a dissolved South Carolina corporation, appearing by and through its duly appointed receiver, Peter D. Protopapas, (the "Receiver"). This Court appointed the Receiver to undertake actions to administer all assets of Covil Corporation, including without limitation its insurance policies. See Receiver Order, p. 1 ("This order 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 of failure to act of Covil's insurance carriers.").

13. Upon information and belief, Zurich American Insurance Company ("Zurich") is a corporation organized under the laws of the State of New York with its principal place of business located in the State of Illinois. Zurich is the successor by merger to Maryland Casualty Company and Northern Insurance Company of New York.

14. Upon information and belief, Sentry Casualty Company ("Sentry") is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business in the State of Wisconsin.

15. Upon information and belief, United States Fidelity and Guaranty Company ("USF&G") is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in the State of Connecticut.

16. Upon information and belief, TIG Insurance Company ("TIG") is the successor in interest to Fairmont Specialty Insurance Company, formerly known as Ranger Insurance Company, and is a corporation organized and existing under the laws of the State of California with a principal place of business in the State of New Hampshire.

17. Upon information and belief, Hartford Accident and Indemnity Company ("Hartford") is a corporation organized and existing under the laws of the State of Connecticut with a principal place of business in the State of Connecticut.

18. Upon information and belief, First State Insurance Company ("First State", except when referred to jointly with "Hartford," in which case "Hartford" also applies to First State) is a corporation organized and existing under the laws of the State of Connecticut with a principal place of business in the State of Connecticut.

19. Upon information and belief, Timothy W. Howe, the personal representative of Wayne Erwin Howe, is a citizen of the State of South Carolina and a party in an action pending in the courts of South Carolina, County of York, Civil Action No. 2015-CP-46-03456 (the "*Howe* suit"), in which Covil's answer has been stricken. Upon information and belief, Jeannette Howe is a citizen of the State of South Carolina and a party in this same *Howe* suit.

20. Upon information and belief, Jerry Crawford is a citizen of the State of South Carolina, residing at 400 Pacolet Highway, Gafney, South Carolina 29340, and the plaintiff in an action pending in this Court, State of South Carolina, Spartanburg County, Civil Action No. 2017-CP-42-04429 (the "*Crawford* suit").

21. Upon information and belief, Denver Taylor and Janice Taylor are citizens of the State of South Carolina, parties in Case No. 2018-CP-40-0490 (the "*Denver Taylor* suit") pending in the Court of Common Pleas, Richland County, in which a default judgment has been entered against Covil. It is in the *Denver Taylor* suit that the Receiver was appointed.

22. Upon information and belief, James Coleman Sizemore, personal representative of James Calvin Sizemore, is a citizen of the State of South Carolina with a pending action against Covil in Hampton County of this state, Civil Action No. 2016-CP-25-0440 (the "*Sizemore* suit").

JURISDICTION AND VENUE

23. This Court has jurisdiction over this suit inasmuch as this Court appointed the receiver for Covil Corporation, a dissolved South Carolina corporation.

24. Venue is proper in this Court as the *Crawford* Suit is pending in this Court and because a new trial was granted, the *Crawford* suit is likely the next law suit to be tried in the consolidated Asbestos litigation. Because the *Crawford* suit is pending in this court, Venue is proper in this Court. Further, on March 3, 2017, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Honorable Jean Hoefer Toal was appointed to have jurisdiction in all circuits in this state to dispose of all pretrial matters and motions, as well as trials, arising out of asbestosis and asbestos litigation filed within the state court system. Thus, the Honorable Jean Hoefer Toal will have jurisdiction over this matter.

THE INSURANCE POLICIES

25. Each of Zurich, Sentry, USF&G, TIG and Hartford issued general liability policies to Covil. These policies all provide defense and indemnity coverage, in varying degrees, for the Covil asbestos suits, as those terms are used in the insurance industry. All of Zurich, Sentry and USF&G have admitted that they insured Covil and are responsible for Covil's asbestos suits since they have been controlling Covil's defense and making determinations regarding potential liability for Covil asbestos suits. Certain of Covil's insurance policies are missing, in whole or in part. However, Covil's insurers have issued policies through standard terms and conditions applicable to general liability policies, and have provided secondary evidence of the issuance of such policies or the policies themselves. It is the burden of Covil's insurers to prove any limitation to or exclusion of coverage.

26. Zurich has admitted to the issuance of a series of commercial general liability insurance policies (policy nos. 41-190897 and 41-206393) issued by its predecessors, to Covil for the six policy periods of March 31, 1970 to March 31, 1973 and March 31, 1973 to March 31, 1976 (collectively, the "Zurich Primary Policies").

27. A copy of all policy materials known to Zurich relating to policy no. 41-190897 is attached as Exhibit A.

28. Though no policy documentation is available with regard to policy no. 41-206393, Zurich admits that said policy contains the same terms and conditions applicable to policy no. 41-190897, with the exception of certain increased limits of liability under policy no. 41-206393.

29. Each of the 1970 to 1973 Zurich primary policy years provides an annual aggregate limit of \$300,000 for those claims, such as product liability claims, for which an aggregate limit applies. This policy also provides coverage of \$100,000 per person and \$300,000 per occurrence for other covered claims, with no limit to the number of occurrences. These policy years have an

unlimited supplemental defense obligation. Each of the 1973 to 1976 Zurich primary policy years provides an annual aggregate limit of \$500,000 for those claims, such as product liability claims, for which an aggregate limit applies. This policy also provides coverage of \$100,000 per person and \$500,000 per occurrence for other covered claims, with no limit to the number of occurrences. These policy years also have an unlimited supplemental defense obligation.

30. Zurich also issued a series of umbrella policies (policy nos. 48-001080, 48010333, and 48-019572) to Covil for the policy periods of March 31, 1970 to March 31, 1971, March 31, 1971 to March 31, 1972, March 31, 1972 to March 31, 1973, and March 31, 1973 to March 31, 1974 (collectively, the "Zurich Umbrella Policies"). The Zurich Umbrella Policies each has a \$1,000,000 limit, per occurrence, and in the aggregate for those claims subject to an aggregate limit, such as product liability claims, except for the period December 16, 1971 to January 26, 1972, when the limits (both per occurrence and aggregate) were increased to \$3,000,000. There is no limit to the number of occurrences covered by the Zurich Umbrella Policies.

31. A copy of all policy materials known and available relating to the Zurich Umbrella Policies is attached hereto as Exhibit B.

32. On information and belief, Sentry issued primary general liability coverage from 1964 to 1970, including (but not limited to) by and through Hardware Mutual Casualty Company policy 39 04132 02 (April 21, 1966 to March 31, 1967) and 39 04132 05 (for the three annual periods March 31, 1967 to March 31, 1970) with annual aggregate limits of \$300,000 for those claims (such as product liability claims) subject to an aggregate limit and \$300,000 per occurrence for claims not subject to an aggregate limit, with no limit to the number of occurrences. These primary policies also contain an unlimited supplemental duty to defend.

33. On information and belief, Sentry also issued umbrella coverage for the three separate annual periods March 31, 1967, to March 31, 1970, with \$1,000,000 in limits.

34. On information and belief, USF&G issued primary commercial general liability policy SMP 490049, for the two annual periods March 31, 1976 to March 31, 1978, with \$300,000 in per occurrence and aggregate limits for claims for which an aggregate limit pertains, with no limit to the number of occurrences. The USF&G policy years also contain an unlimited supplemental defense obligation. Each of the \$300,000 in limits (where applicable) applies separately to each of the two annual periods of this policy.

35. On information and belief, TIG issued umbrella coverage that “drops down” to provide “first dollar” coverage in the event there is no available primary coverage. This umbrella coverage, in such event, provides for an unlimited supplemental defense obligation. Each TIG policy year provides \$2,000,000 for claims that are subject to an aggregate limit and \$2,000,000 per occurrence for all other claims, with no limit to the number of occurrences. TIG issued the following umbrella policies, each using the language set forth in the policy form attached as Exhibit C:

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
July 25, 1976 – February 15, 1977	RU 309724	\$2,000,000 per occurrence; \$2,000,000 aggregate where applicable; supplemental defense
February 15, 1977 – March 31, 1977	RU 308527	\$2,000,000 per occurrence; \$2,000,000 aggregate where applicable; supplemental defense
March 31, 1978 – March 31, 1979	RU 430944	\$2,000,000 per occurrence; \$2,000,000 aggregate where applicable; supplemental defense

36. On information and belief, Hartford issued the following primary insurance policies with \$500,000 in per occurrence limits (which were increased to \$1,000,000 per occurrence in 1984, 1985 and 1986), and no limit to the number of occurrences, and with an unlimited supplemental defense obligation, applicable to claims other than product liability suits:

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
March 31, 1978 – March 31, 1979	22 C 936166	\$500,000 per occurrence; supplemental defense
March 31, 1979 – March 31, 1980	22 C 938625	\$500,000 per occurrence; supplemental defense
March 31, 1980 – March 31, 1981	22 C 941900	\$500,000 per occurrence; supplemental defense
March 31, 1981 – March 31, 1982	22 C 943927	\$500,000 per occurrence; supplemental defense
March 31, 1982 – March 31, 1983	22 C 943927	\$500,000 per occurrence; supplemental defense
March 31, 1983 – March 31, 1984	22 C 943927	\$1,000,000 per occurrence; supplemental defense
March 31, 1984 – March 31, 1985	22 C 943927	\$1,000,000 per occurrence; supplemental defense
March 31, 1985 – March 31, 1986	22 C 943927	\$1,000,000 per occurrence; supplemental defense

37. On information and belief, Hartford and First State, a Hartford company, issued umbrella coverage with the same "drop down" and supplemental defense provisions as TIG, responsive on a per occurrence basis with the exception of product liability claims, as follows:

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
March 31, 1980 – March 31, 1981	22 RIU 371518	\$2,000,000 per occurrence
March 31, 1981 – March 31, 1982	22 RHU 371789	\$5,000,000 per occurrence

March 31, 1982 – March 31, 1983	22 RHU EX 4908	\$5,000,000 per occurrence
March 31, 1983 – March 31, 1984	22 RHU EX 4908	\$5,000,000 per occurrence
March 31, 1984 – March 31, 1985	22 RHU EX 4908	\$5,000,000 per occurrence
March 31, 1985 – March 31, 1986	22 RHU EX 4908	\$5,000,000 per occurrence

THE UNDERLYING ACTIONS

38. Covil was named as a defendant in a lawsuit filed in the United States District Court for the Middle District of North Carolina, entitled "*ANN FINCH, Individually, and as Executrix of the Estate of Franklin Delenor Finch, Plaintiff, vs. BASF CATALYSTS LLC, individually and as successor-in-interest to EASTERN MAGNESIA TALC CO. and ENGELHARD, PITA REALTY LTD; COVIL CORPORATION; FOSTER WHEELER ENERGY CORPORATION; MCNEIL (OHIO) CORPORATION, INC.; MCNEIL & NRM, INC.; PFIZER, INC.; CBS CORPORATION f/k/a Viacom Inc. (sued as successor-by-merger to CBS Corporation f/k/a Westinghouse Electric Corporation) and also as successor-in-interest to BF Sturtevant; FMC CORPORATION, Individually and as successor in interest to Stearns Brakes; RED SEAL ELECTRIC COMPANY; and REXNORD INDUSTRIES, LLC MCNEIL (OHIO) CORPORATION, INC.; MCNEIL & NRM, INC.; PFIZER, INC.; CBS CORPORATION f/k/a Viacom Inc. (sued as successor-by-merger to CBS Corporation f/k/a Westinghouse Electric Corporation) and also as successor-in-interest to BF Sturtevant; FMC CORPORATION, Individually and as successor in interest to Stearns Brakes; RED SEAL ELECTRIC COMPANY; and REXNORD INDUSTRIES, LLC*", file number 1:16-cv-01077 (the "*Finch* suit").

39. On October 19, 2018, a verdict in the amount of \$32,700,000, plus \$5,633,358.89 in pre-judgment interest, was entered against Covil in the *Finch* suit. This verdict

in the *Finch* suit remains subject to post-trial motions and is not yet final as the date of commencement of this action.

40. Covil also has been named as a defendant in other underlying lawsuits pending in the United States District Courts for the Middle and Western Districts of North Carolina.

41. In addition, Covil has been named as a defendant in other underlying lawsuits pending in the courts located in South Carolina. Certain of these suits, and the parties in these suits, are parties in this action.

42. The aforementioned underlying lawsuits are hereinafter collectively referred to as the "Covil asbestos suits."

COUNT I
(Breach of Contract Against Zurich, Sentry and USF&G)

43. On October 19, 2018, verdict was entered against Covil in the *Finch* suit in the amount of \$32,700,000 plus \$5,633,358.89 in pre-judgment interest. That judgment remains subject to post-judgment motions and is not yet final.

44. The *Finch* suit alleged wrongful death relating to plaintiff Franklin Delenor Finch's exposure to asbestos first beginning on December 15, 1975, during the Zurich primary policy with a policy period effective between March 31, 1975 to March 31, 1976, and continuing thereafter.

45. Plaintiffs contended and the jury found that Covil was responsible for plaintiff Franklin Delenor Finch's exposure to asbestos and a subsequent diagnosis of mesothelioma.

46. Covil's defense was controlled by Sentry, Zurich and USF&G for the *Finch* suit.

47. Zurich and USF&G between themselves had not less than \$800,000 in per occurrence and \$1,300,000 in aggregate limits available to resolve the *Finch* suit in their pertinent policy years (1975 to 1978) and not less than \$4,800,000 in per occurrence and \$5,300,000 in

aggregate limits otherwise available to resolve the *Finch* suit. Zurich and USF&G declined to resolve the *Finch* suit within policy limits although they had the opportunity to do so.

48. Each of Sentry, Zurich and USF&G is jointly and severally responsible to pay the entire verdict in the *Finch* suit, including all interest and ancillary damages.

49. The *Finch* suit is covered in its entirety under the policies of insurance issued, respectively, by Zurich and USF&G, each of which owes an independent duty fully to protect its insured, Covil, and injured parties with unsatisfied claims against Covil. Sentry, Zurich and USF&G have breached their contracts of insurance by, among other things (i) failing to resolve the *Finch* suit within policy limits; (ii) failing or refusing to pay in full the *Finch* suit verdict; (iii) failing properly to treat claims as operations claims not subject to an aggregate limit of liability; and (iv) failing to protect the interests and rights of the claimants against Covil.

50. Covil seeks all compensatory, ancillary and consequential damages as a result of these breaches of contract by Sentry, Zurich and USF&G.

COUNT II
(Bad Faith Against Zurich and USF&G)

51. Covil repeats and realleges the allegations contained in paragraphs 1 through 50 and further alleges as follows:

52. The insurance policies issued by Zurich and USF&G contain an implied covenant of good faith and fair dealing. This covenant of good faith and fair dealing requires these defendants to put the interests of their insured above their own.

53. Zurich and USF&G breached their duties of good faith and fair dealing, placed their interests above those of Covil and Covil's claimants and creditors, and have engaged in bad faith. Among other things, Zurich and USF&G engaged in bad faith by failing or refusing to resolve the *Finch* suit within their policy limits; by allowing Covil to receive an adverse verdict of

\$32,700,000 in the *Finch* suit; and by failing to protect the interests of Covil and its claimants and creditors.

54. As a remedy for such bad faith, Covil seeks an order requiring Zurich and USF&G jointly and severally, to pay for the *Finch* suit verdict in full, including all pre- and post-judgment interest, without impairing any limit of liability under any of their policies. In addition, Covil seeks an order requiring Zurich and USF&G to pay or reimburse Covil for all costs and expenses resulting from such bad faith conduct and to pay to Covil such damages as may be necessary to deter such bad faith conduct by these defendants and others.

COUNT III

(Declaratory Judgment Against Sentry, Zurich, USF&G, TIG and Hartford)

55. Covil repeats and realleges paragraphs 1 through 54 and further alleges as follows:

56. Covil seeks a declaration and order that each of the 1970 to 1973 Zurich primary policy years under policy no. 41-190897 provides an annual aggregate limit of \$300,000 for product liability claims to which an aggregate limit applies; that this policy also provides coverage of \$100,000 per person and \$300,000 per occurrence for other covered claims, with no limit to the number of occurrences; and that these policy years have an unlimited supplemental defense obligation. Covil seeks a further declaration and order that each of the 1973 to 1976 Zurich primary policy years under policy no. 41-20639 provides an annual aggregate limit of \$500,000 for product liability claims for which an aggregate limit applies; that this policy also provides coverage of \$100,000 per person and \$500,000 per occurrence for other covered claims, with no limit to the number of occurrences; and that these policy years also have an unlimited supplemental defense obligation.

57. Covil seeks a further declaration and order that Zurich also issued a series of umbrella policies (policy nos. 48-001080, 48010333, and 48-019572) to Covil for the policy periods March 31, 1970 to March 31, 1971, March 31, 1971 to March 31, 1972, March 31, 1972 to March 31, 1973, and March 31, 1973 to March 31, 1974 (collectively, the "Zurich Umbrella Policies"); that each Zurich Umbrella Policy has a \$1,000,000 limit, per occurrence, and in the aggregate for those product liability claims subject to an aggregate limit, except for the period December 16, 1971 to January 26, 1972, when the limits (both per occurrence and aggregate) were increased to \$3,000,000; and that there is no limit to the number of occurrences covered by the Zurich Umbrella Policies.

58. Covil seeks a further declaration and order that Sentry issued primary general liability coverage from 1964 to 1970, including (but not limited to) by and through Hardware Mutual Casualty Company policy 39 04132 02 (April 21, 1966 to March 31, 1967) and 39 04132 05 (for the three annual periods March 31, 1967 to March 31, 1970) with annual aggregate limits of \$300,000 for those product liability claims subject to an aggregate limit and \$300,000 per occurrence for claims not subject to an aggregate limit with no limit to the number of occurrences, and with an unlimited supplemental duty to defend.

59. Covil also seeks a declaration and order that Sentry issued umbrella coverage for the three annual periods March 31, 1967, to March 31, 1970, with \$1,000,000 in limits.

60. Covil seeks a further declaration and order that USF&G issued primary commercial general liability policy SMP 490049, for the two annual periods March 31, 1976 to March 31, 1978, with \$300,000 in per occurrence and aggregate limits for claims for which an aggregate limit pertains, with no limit to the number of occurrences; that the USF&G policy also contains an

unlimited supplemental defense obligation; and that each of the \$300,000 in limits applies separately to each of the two annual periods of this policy for product liability claims.

61. Covil seeks a further declaration and order that TIG issued umbrella coverage that "drops down" to provide "first dollar" coverage in the event there is no available primary coverage; that this umbrella coverage, in such event, provides for an unlimited supplemental defense obligation; that each TIG policy year provides \$2,000,000 for claims that are subject to an aggregate limit and \$2,000,000 per occurrence for all other claims, with no limit to the number of occurrences; and that TIG issued the following umbrella policies, each using the language set forth in the policy form attached as Exhibit C:

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
July 25, 1976 – February 15, 1977	RU 309724	\$2,000,000 per occurrence; \$2,000,000 aggregate where applicable; supplemental defense
February 15, 1977 – March 31, 1977	RU 308527	\$2,000,000 per occurrence; \$2,000,000 aggregate where applicable; supplemental defense
March 31, 1978 – March 31, 1979	RU 430944	\$2,000,000 per occurrence; \$2,000,000 aggregate where applicable; supplemental defense

62. Covil seeks a further declaration and order that Hartford issued the following primary insurance policies with \$500,000 in per occurrence limits (which were increased to \$1,000,000 per occurrence in 1984, 1985 and 1986), and no limit to the number of occurrences, and with an unlimited supplemental defense obligation, applicable to claims other than product liability suits:

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
March 31, 1978 – March 31, 1979	22 C 936166	\$500,000 per occurrence; supplemental defense
March 31, 1979 – March 31, 1980	22 C 938625	\$500,000 per occurrence; supplemental defense
March 31, 1980 – March 31, 1981	22 C 941900	\$500,000 per occurrence; supplemental defense
March 31, 1981 – March 31, 1982	22 C 943927	\$500,000 per occurrence; supplemental defense
March 31, 1982 – March 31, 1983	22 C 943927	\$500,000 per occurrence; supplemental defense
March 31, 1983 – March 31, 1984	22 C 943927	\$1,000,000 per occurrence; supplemental defense
March 31, 1984 – March 31, 1985	22 C 943927	\$1,000,000 per occurrence; supplemental defense
March 31, 1985 – March 31, 1986	22 C 943927	\$1,000,000 per occurrence; supplemental defense

63. Covil seeks a further declaration and order that Hartford and First State, a Hartford company, issued umbrella coverage with the same “drop down” and supplemental defense provisions as TIG, responsive on a per occurrence basis with the exception of product liability claims, as follows:

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
March 31, 1980 – March 31, 1981	22 RHU 371518	\$2,000,000 per occurrence
March 31, 1981 – March 31, 1982	22 RHU 371789	\$5,000,000 per occurrence
March 31, 1982 – March 31, 1983	22 RHU EX 4908	\$5,000,000 per occurrence
March 31, 1983 – March 31, 1984	22 RHU EX 4908	\$5,000,000 per occurrence
March 31, 1984 – March 31, 1985	22 RHU EX 4908	\$5,000,000 per occurrence

<u>Policy Period</u>	<u>Policy Number</u>	<u>Limits of Liability</u>
March 31, 1985 – March 31, 1986	22 RHU EX 4908	\$5,000,000 per occurrence

64. The foregoing policies of insurance are referred to as the “Covil Insurance Policies.” As to all of the Covil Insurance Policies, Covil seeks the following declarations:

- a. The Covil Insurance Policies cover all Covil asbestos suits that allege any of bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of their policy periods;
- b. Each Covil asbestos suit “triggers” all Covil Insurance Policies with policy periods from the date of first alleged exposure to asbestos up through and including the date of discovery, or “manifestation” of an asbestos-related disease;
- c. Covil may select the policy or policy years to which to assign or allocate each Covil asbestos suit-related loss;
- d. In the case of a claimed ambiguity in any Covil Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Covil Insurance Policies;
- e. Defense costs for the Covil asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of Covil Insurance Policies;
- f. If any allegation or cause of action in a Covil asbestos suit is actually or potentially covered under the Covil Insurance Policies, each defendant insurer must defend or reimburse the costs of defending against all of said allegations and causes of action contained in such complaint;
- g. Each Covil Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of the Covil asbestos suits;

h. Each Covil Insurance Policy must cover the Covil asbestos suits, in full, up to its "per occurrence" limits, regardless of whether a continuing injury spans multiple policy periods;

i. The Covil asbestos suits that allege exposure to asbestos for which Covil is alleged to be liable, during Covil's operations, including Covil's construction, installation, maintenance or removal activities, are subject only to the "per occurrence" limits of the Covil Insurance Policies, and not subject to "aggregate" limits, if any, of the Covil Insurance Policies;

j. Any aggregate limit on coverage in any of the Covil Insurance Policies is a limitation on coverage, and therefore each defendant insurer has the burden to prove, based on the evidence, any assertion that any particular Covil asbestos suit is subject to the aggregate limits in the Covil Insurance Policies, if any; and

k. Each defendant insurer has the burden to prove, based on the evidence, that any particular Covil asbestos suit is either a "products" claim or a "completed operations" claim, as those terms are defined in the Covil Insurance Policies, in order to subject the claim to the aggregate limits in the Covil Insurance Policies, if any.

65. An actual and justiciable controversy exists between Covil and each of the defendant insurers concerning their obligations under the Covil Insurance Policies.

66. Judicial declarations are necessary and appropriate at this time, and under the circumstances alleged above, so that Covil may ascertain its rights under the Covil Insurance Policies. A judicial declaration of Covil's rights will obviate *seriatim* litigation and a multiplicity of actions that otherwise would result from the actual and justiciable controversy between Covil and the insurance company defendants concerning their respective rights and obligations under the Covil Insurance Policies.

COUNT IV
(Declaratory Judgment Against Individual Defendants)

67. Covil repeats and realleges paragraphs 1 through 66 and further alleges as follows:

EXHIBIT 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2018-CP-40-04680
	)	
James Michael Hill, Jr., as Executor of the Estate of James Michael Hill,	)	
	)	
Plaintiff,	)	<u>STIPULATION OF DISMISSAL</u>
	)	<u>WITH PREJUDICE OF</u>
vs.	)	<u>COVIL CORPORATION</u>
	)	
Advance Auto Parts, Inc., et al.,	)	
	)	
Defendants.	)	

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, Plaintiff James Michael Hill, Jr., as Executor of the Estate of James Michael Hill, and Defendant Covil Corporation, by and through their respective undersigned counsel of record, hereby stipulate to the dismissal with prejudice of all claims asserted by Plaintiff against Defendant Covil Corporation in the above-captioned lawsuit. Each party shall bear his or its own attorney's fees and costs.

Dated: June 7, 2019

/s/ Theile B. McVey
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Attorney for Defendant Covil Corporation

EXHIBIT 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2018-CP-40-04940
Denver D. Taylor and Janice Taylor,	)	
	)	
Plaintiffs,	)	
	)	<u>STIPULATION OF DISMISSAL</u>
vs.	)	<u>WITH PREJUDICE OF</u>
	)	<u>COVIL CORPORATION</u>
Air & Liquid Systems Corporation, et	)	
al.,	)	
	)	
Defendants.	)	

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, Plaintiffs Denver D. Taylor and Janice Taylor and Defendant Covil Corporation, by and through their respective undersigned counsel of record, hereby stipulate to the dismissal with prejudice of all claims asserted by Plaintiffs against Defendant Covil Corporation in the above-captioned lawsuit. All parties shall bear their own attorney's fees and costs.

Dated: June 7, 2019

/s/ Theile B. McVey
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Attorney for Defendant Covil Corporation

EXHIBIT 11

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRUIT

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

Vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

C/A NO: 2015-CP-46-02155

RECEIVER'S NOTICE OF MOTION AND
MOTION FOR STATUS CONFERENCE

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRUIT

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

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: 2015-CP-46-03456

RECEIVER'S NOTICE OF MOTION AND
MOTION FOR STATUS CONFERENCE

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRUIT
CHALES T. HOPPER and REBCCA 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 RECEIVER'S NOTICE OF MOTION AND MOTION FOR STATUS CONFERENCE
STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRUIT
JAMES MICHAEL HILL, Plaintiff, Vs. Advance Auto Parts, Inc., et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	C/A NO: 2018-CP-40-04680 RECEIVER'S NOTICE OF MOTION AND MOTION FOR STATUS CONFERENCE

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FIFTH JUDICIAL CIRUIT
DENVER D. TAYLOR and JANICE TAYLOR,	
Plaintiffs,	
Vs.	C/A NO: 2018-CP-40-04940
Air & Liquid Systems Corporation, et al.,	RECEIVER'S NOTICE OF MOTION AND MOTION FOR STATUS CONFERENCE
Defendants.	
In Re:	
Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	

COMES NOW the Receiver for Covil Corporation ("Covil"), Peter D. Protopapas, Esq., ("Receiver"), who, by and through the undersigned counsel, moves for a Status Conference as soon as may be heard requiring attendance of representatives for Zurich American Insurance Company ("Zurich"); Sentry Insurance, A Mutual Company ("Sentry"); United States Fidelity and Guaranty Company ("USF&G"); TIG Insurance Company ("TIG"); and Hartford Accident and Indemnity Company ("Hartford") (collectively referred to as "Covil's Insurers") and Wall Templeton & Haldrup PA. In support of this Motion, the Receiver would show the following:

JURISDICTION

1. This Court has jurisdiction pursuant to its Order Appointing a Receiver for Covil, its Order Granting the Receiver for Covil's Motion to Clarify the Receiver Order, and this Court's Order of February 28, 2019 requiring Covil's Insurers attend mediation. *See Exhibit A November 2, 2018 Order Appointing a Receiver for Covil; Exhibit B, March 4, 2019 Order Granting the Receiver for Covil Corporation's Motion to*

Clarify the Receiver Order; and, Exhibit C, February 28, 2019 Order Granting the Plaintiff's Motion to Compel Attendance at the Mediation.

2. This Court appointed the Receiver with the “power and authority to fully administer all assets of Covil Corporation,” which is “inclusive of, the right and obligation to administer any insurance assets of Covil as well as any claims related to the actions or failure to act of Covil’s insurance carriers.” *See Exhibit A.*
3. Through this Court’s appointment of the Receiver, the insurance policies issued by Covil’s Insurers to Covil are in possession of the 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)).
4. “A receiver is an officer of the court through whom the court takes possession of the assets of the insolvent bank, for the purpose of preventing their waste or destruction and of reducing them to such form as may be necessary for their ratable distribution among those who may be entitled thereto The property in the hands of the receiver is in *custodia legis*; the possession of the property by him is the possession of the court which appointed him. . . . He is the medium through which the court acts in the execution of its orders and decrees.” *Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 790 (1928).
5. Though there are other actions pending between the insurers, the Receiver and others, as set forth in more detail below, “[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).

6. Furthermore, “[i]t is a distinguishing peculiarity of a proceeding in rem that the jurisdiction of the court, in the particular case, rests merely upon the seizure or attachment of the property. No personal notice to any individual is required. The res, being brought within the jurisdiction of the court, becomes subject to its adjudication, and all parties interested are supposed to be duly apprised of the proceedings by the mere taking of the property, or by the usual proclamation or published notice.” Tolbert v. Buick Car, New York License, 6E2255, 142 S.C. 362, 140 S.E. 693, 695 (1927)
7. Following the Receiver’s appointment, this Court clarified its prior order stating that the Receiver’s appointment is not solely related to the instant matter but rather includes “all asbestos related cases and for all asbestos related matters,” in addition to the Receiver’s “right and obligation to administer any insurance assets of Covil as well as any claims related to the actions or failure to act of Covil’s insurance carriers.” *See Exhibit B.*
8. Furthermore, in its Order clarifying the Receiver’s appointment, the Court ordered: “Specifically, the Receiver is entitled to review and obtain the entire file contents related to representation of Covil in the possession of Wall Templeton Attorneys . . .” *See Exhibit B.*
9. On June 17, 2019, Ezra Gollogly, an attorney for Travelers, instructed Wall Templeton to not produce documents from Covil’s file to Covil:

“Before those documents are produced, Travelers needs time to evaluate whether they are protected by the common interest doctrine. . .”

Wall Templeton advised it would comply with the request. *See Exhibit D, June 17, 2019 Email*. Respectfully, the files must be turned over pursuant to this Court's Order.

10. Finally, this Court has jurisdiction to enforce its Order of February 28, 2019 wherein the Court ordered the Receiver and Covil's Insurers to participate in mediation in Charleston on March 4-6. *See Exhibit C*. One of the cases the Court ordered into mediation was *Taylor v. Covil*, 2018-CP-40-04940 which along with *Hill v. Covil* was in default. The parties were unable to resolve *Hill* and *Taylor* at mediation but settlement discussion continued through to April 18, 2019 where a settlement was reached. The Receiver, by and through his lawyers, communicated with the Insurers and in a subject line "Covil – Subject to Absolute Mediation Privilege", set forth the Receiver's position regarding settlement. Attached as **Exhibit E** is a redacted form of that communication. Covil's Insurers now seek to use these protected communications in other Court proceedings against the Receiver. *See Exhibit F, June 13, 2019 Correspondence from William P. Davis to The Honorable Robin L. Blume, Clerk of Court, US District Court*. This Court has the power to enforce its Mediation Order and the confidence that attaches to the settlement communications stemming from mediation.

RECEIVER'S SUGGESTED TOPICS FOR STATUS CONFERENCE

11. The Receiver respectfully requests a status conference to address the following issues:
 - a. The Four Cases currently pending involving Covil Corporation, Covil's Insurers, and others:

i. *Zurich American Insurance Company vs. Covil Corporation; 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; Ann Finch, as Executrix of the Estate of Franklin Delenor Finch, Darrell A. Connor, as Executrix of the Estate of Charles Franklin Conner; Robert A. Mullinax as Executor of the Estate of Jack Junior Waugh; Robert Joseph Ellis; and Sharon Whitehead as Executrix of the Estate of James T. Whitehead. Current Case Number 1:18-cv-932. See Exhibit G, Complaint without attachments.*

Background and Status: This matter was filed by Zurich American Insurance Company ("Zurich") on November 6, 2018, in the USDC Middle District of North Carolina, against Covil; Covil's other Insurers, USF&G, TIG, Hartford and Sentry; and a number of Plaintiffs from underlying actions against Covil, *Finch, Connor, Ellis, Waugh and Whitehead* (collectively "Underlying Plaintiffs"). Thereafter, the case was assigned to the Honorable Catherine Eagles. Covil, acting through its Receiver, Peter D. Protopapas, then filed a Motion to Dismiss or Stay the action and a supporting brief; Underlying Plaintiffs also filed a Motion to Dismiss or Stay. In addition to filing Answers to the Complaint and each asserting Crossclaims and Counterclaims, the Defendant Insurers and Zurich each filed memorandums in opposition to Covil's Motion to Dismiss or

Stay. Zurich also filed a Motion to Deposit Funds into the Court related to *Finch* on May 22, 2019, which Covil and Finch have opposed. A teleconference was conducted by Judge Eagles on June 4, 2019, and the motions remain pending.

- ii. *Covil Corporation by its Duly Appointed Receiver, Peter D. Protopapas 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 Ervin Howe; Jeannette Howe; Jerry Crawford, Denver Taylor and Janice Taylor and James Coleman Sizemore, Personal Representative of James Calvin Sizemore.* Current Case Number 7:18-cv-03291-BHH. **See Exhibit H, Complaint without attachments.**

Background and Status: This matter was filed by Covil Corporation, through its Receiver, Peter D. Protopapas, on November 27, 2018 in Spartanburg County State Court and removed to Federal Court on December 6, 2018 (Original Common Pleas Case Number 2018-CP-42-04099). The action sets forth allegations against Covil's Insurers, Zurich, USF&G, TIG, Hartford and Sentry (collectively "Insurers") and a number of Plaintiffs from underlying actions against Covil ("Underlying Plaintiffs"). The Receiver sought to declare certain rights and

responsibilities under the policies that had been identified. Sentry filed a Motion to Realign the Co-Defendants on December 20, 2018. Covil then filed a Motion to Remand and a memorandum in support. On June 14, 2019, Judge Hendricks issued an Order Denying the Motion to Remand and Granting the Motion to Realign the Parties.

- iii. *Peter D. Protopapas as Receiver for Covil Corporation vs. Wall Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; and Zurich American Insurance Company*, filed April 24, 2019 in Richland County and removed on June 6, 2019 to USDC Case Number 3:19-cv-01635-BHH.

Background and Status: The Receiver sued Covil's Insurers and prior law firm asserting, in part, that Covil's Insurers acted as Covil and are for all purposes Covil. The Receiver further asserted that the lawyers hired by Covil's Insurers were negligent and acted for the Insurers and not Covil. Covil's Insurers removed the case based on diversity asserting that Wall, Templeton & Haldrup, PA were not a proper party joined and that Covil does not have any damages against Wall Templeton & Haldrup. The Receiver intends on filing a Motion to Remand for lack of diversity. **See Exhibit I, Complaint without attachments and Exhibit J, Notice of Removal without attachments.**

iv. *Ann Finch, Individually and as Executor of the Estate of Franklin Finch vs. Sentry Casualty Company; United States Fidelity and Guaranty Company; Zurich American Insurance Company; Peter Protopapas as Court Appointed Receiver for Covil Corporation, and Wall, Templeton & Haldrup, P.A.*; Summons and Complaint filed May 30, 2019 in Richland County, SC. Case Number 2019-CP-40-03003. **See Exhibit K, Complaint.**

Background and Status: Ann Finch individually and as executor of the Estate of Franklin Finch brought an action against Covil, Covil's Insurers, and Wall Templeton & Waldrup PA asserting, in part, that the judgment she received in excess of \$30 Million against Covil in the Middle District of North Carolina is collectible against Covil's Insurers and prior attorneys on an alter ego basis.

- b. Prior management of the insurance policies currently in the Court's control, Covil's Insurers' decisions and positions regarding Covil's insurance policies. The Receiver respectfully requests the Court inquire into the prior management of Covil's insurance policies including past settlements, *Taylor et. al v. Covil Corporation*, 2018 -CP- 40-04940, *Hill, et. al. v. Covil*, 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.).
- c. The remaining and applicable limits of Covil's insurance policies, require an accounting from Covil's Insurers of the amounts paid and who authorized the payment, coverage available under various coverage parts of the policies, as the

Receiver is currently hampered in appropriately addressing pending claims against Covil and administering Covil's assets due to the primary insurers' positions regarding coverage;

- i. Attached as **Exhibits L and M** are the insurance coverage charts;
- ii. Attached as **Exhibit N** are the cases currently pending against Covil. Cases on the list are now coming up for trial with *Smith v. Covil Corporation*, C/A No 2015-CP-46-02155 and *Howe v. Covil Corporation*, C/A 2015-CP-46-03456 set for trial in September and *Hopper v. Covil Corporation*, C/A/ 19-CP-40-00076 set for trial in November. The Receiver is hamstrung to protect the policies as Covil's Travelers is asserting its policies are exhausted and Zurich is stating portions of certain policies are exhausted. See **Exhibits O and G**.
- iii. Attached as **Exhibit O** is Travelers April 24, 2019 position that their policies are exhausted and attached as **Exhibit G** is Zurich's November 6, 2018 position at paragraph 47 that their policies are exhausted.
- d. Whether the Receiver may be sued without leave of this Court.¹

¹ Insurers have sued and/or threaten to personally sue the Receiver despite the Barton Doctrine. *Barton v. Barbour*, 104 U.S. 126, 136–37, 26 L. Ed. 672 (1881) (holding that absent statutory authority, a receiver cannot be sued without leave of the appointing court). The Barton Doctrine was adopted by the Fourth Circuit as well, in which the court reiterated that “the plaintiff must obtain leave of the court that appointed the receiver.” *McDaniel v. Blust*, 668 F.3d 153, 156–57 (4th Cir. 2012). South Carolina has likewise adopted the Barton Doctrine in *Sigwald v. City Bank*, 82 S.C. 382, 64 S.E. 398, 400 (1909). Further, “a receiver represents the Court appointing him . . . [therefore] [h]e is subject only to the Court's direction.” *Kirven v. Lawrence*, 244 S.C. 572, 580, 137 S.E.2d 764, 768 (1964) (citing *Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 71 A.L.R. 783; *Int'l Shoe Co. v. U. S. Fid. & Guar. Co.*, 186 S.C. 271, 195 S.E. 546).

- e. Whether Covil's Insurers Sentry, Zurich, and Travelers have violated this Court's Order of February 28, 2019 requiring their attendance at mediation and then using the substance of settlement communications stemming from the post mediation settlement discussions against Covil. Attached as **Exhibit C** is the February 28, 2019 Court Order Granting the Plaintiff's Motion to Compel Attendance at the Mediation.
- f. Whether Travelers and Wall Templeton & Haldrup have violated this Court's Order clarifying Receiver by continuing to hold back Covil's files. Attached as **Exhibit D** are the email communications dated June 17, 2019 from Travelers and from Wall Templeton & Haldrup evidencing violation of this Court's prior Order.
- g. Any other matter the Court deems appropriate.

WHEREFORE the Receiver prays that this Court issue an order granting his request for a status conference and requiring the attendance of Covil's Insurers, its former attorneys Wall Templeton & Waldrup PA and their respective counsel.

Respectfully submitted,

s/Robert G. Rikard
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Attorney for Receiver

June 18, 2019

EXHIBIT 12

1	STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		)	FOR THE SIXTH JUDICIAL CIRCUIT
2	COUNTY OF YORK	)	C/A NO.: 2015-CP-46-02155
		)	
3	ROXANNE FALLS,	)	
	Individually and as	)	
4	Personal Representation of	)	
	the Estate of CHARLOTTE GAYE)		ORDER FOR RULE TO SHOW CAUSE
5	SMITH,	)	
		)	
6	Plaintiffs,	)	
		)	
7	vs.	)	
		)	
8	CBS Corporation, et al.,	)	
		)	
9	Defendants.	)	
	In Re:	)	
10		)	
	Receivership of Covil	)	
11	Corporation by and through	)	
	its Receiver Peter D.	)	
12	<u>Protopapas</u>	)	
	STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
13		)	FOR THE SIXTH JUDICIAL CIRCUIT
	COUNTY OF YORK	)	C/A NO.: 2015-CP-46-03456
14		)	
	TIMOTHY W. HOWE,	)	
15	Individually and as	)	
	Personal Representation of	)	
16	the Estate of Wayne Ervin	)	ORDER FOR RULE TO SHOW CAUSE
	Howe, deceased, and Jeanette)		
17	Howe,	)	
		)	
18	Plaintiffs,	)	
		)	
19	vs.	)	
		)	
20	Air & Liquid Systems	)	
	Corporation, et al.,	)	
21		)	
	Defendants.	)	
22	In Re:	)	
		)	
23	Receivership of Covil	)	
	Corporation by and through	)	
24	its Receiver Peter D.	)	
	<u>Protopapas</u>	)	
25		)	

1	STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
2	COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
3	CHARLES T. HOPPER and	)	C/A NO.: 2019-CP-40-00076
4	REBECCA HOPPER,	)	
5	Plaintiffs,	)	ORDER FOR RULE TO SHOW CAUSE
6	vs.	)	
7	Air & Liquid Systems	)	
8	Corporation, et al.,	)	
9	Defendants.	)	
10	In Re:	)	
11	Receivership of Covil	)	
12	Corporation by and through	)	
13	its Receiver Peter D.	)	
14	<u>Protopapas</u>	)	
15	STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
16	COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
17	JAMES MICHAEL HILL,	)	C/A NO.: 2018-CP-40-04680
18	Plaintiff,	)	ORDER FOR RULE TO SHOW CAUSE
19	vs.	)	
20	Advance Auto Parts, Inc.,	)	
21	et al.,	)	
22	Defendants.	)	
23	In Re:	)	
24	Receivership of Covil	)	
25	Corporation by and through	)	
	its Receiver Peter D.	)	
	<u>Protopapas</u>	)	

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
 3 DENVER D. TAYLOR and JANICE) C/A NO.: 2018-CP-40-04940
 4 TAYLOR,)
 5 Plaintiffs,) ORDER FOR RULE TO SHOW CAUSE
 6 vs.)
 7 Air & Liquid Systems)
 8 Corporation, et al.,)
 9 Defendants.)
 10 In Re:)
 11 Receivership of Covil)
 12 Corporation by and through)
 13 its Receiver Peter D.)
 14 Protopapas)

--

September 13th, 2019
 Columbia, South Carolina

B e f o r e:
 The Honorable Jean H. Toal, Judge

A p p e a r a n c e s:

Peter D. Protopapas, Esquire
 Jescelyn T. Spitz, Esquire
 Lee H. Ogburn, Esquire
 Wesley B. Sawyer, Esquire
 Peter H. Dworjany
 G. Murrell Smith, Jr., Esquire
 James P. Ruggeri, Esquire
 Ezra S. Gollogly
 Theile B. McVey
 Ilya A. Kosten, Esquire
 Brady Edwards, Esquire

Betty R. Lyons, Court Reporter I (At-Large)
 South Carolina Judicial Department
 747 Bishops Circle, Evans, Georgia 30809

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1 THE COURT: Ladies and gentlemen, the first thing
2 I ask is has everyone given their cards to the court
3 reporter? Okay. So that's all set.

4 What I ask you to do -- and those of you who deal
5 with the asbestos cases with me all the time are familiar
6 with this routine. When you stand to address the Court --
7 no matter whether you've been up or down several different
8 times, for the court reporter's benefit, always say first
9 your name and the party you represent, and she'll be able to
10 produce a transcript for you that's accurate.

11 I have been supplied by Mr. Protopapas with a
12 proposed agenda. And is that something, Mr. Protopapas,
13 that you've given everybody?

14 MR. PROTOPAPAS: Yes, Your Honor.

15 THE COURT: Any concerns, any additions, or is the
16 agenda satisfactory?

17 (No response.)

18 Satisfactory. Very well, we will proceed then.

19 So, I'm just going down the list. The Receiver's
20 Status of Civil Litigation is the first item on the agenda.
21 Mr. Protopapas.

22 MR. PROTOPAPAS: Yes, Your Honor. If I may, Your
23 Honor, hand up two notebooks for you and Mr. Berry, for the
24 hearing today?

25 THE COURT: Yes, sir.

1 I've got a motions hearing notebook. Wait a
2 minute, hold this. I've got -- excuse me. I've got the
3 Receiver's Covil Corporation's Motion for Status Conference
4 with exhibits that you sent me in June. I've got the Rules
5 to Show Cause and the various briefing materials attached,
6 both on your side with proposed Orders and on the part of
7 the insurance companies.

8 Now what else you got for me?

9 MR. PROTOPAPAS: These are the additional
10 materials to bring the Court up to date for where we stand
11 today. These will be the ones ---

12 THE COURT: Okay. Right. Bring them forward.
13 Thank you, sir.

14 (Mr. Protopapas hands documents to the Court.)

15 MR. PROTOPAPAS: Your Honor, we've endeavored to
16 narrow the issues as much as possible before coming before
17 you today.

18 Your Honor, before I get to the agenda, may I give
19 the Court an update on the data tape?

20 THE COURT: Yes. I was about to ask that very
21 thing to begin with. Yes, sir.

22 MR. PROTOPAPAS: As the Court recalls, the
23 Receiver took possession of the data tape, and it has been
24 forwarded to national experts in DC.

25 On September 12th, they updated us, due to the age

1 of the tape and the concerns that the parties have given to
2 the company. They have bought equipment -- because it's an
3 old tape. They have bought supplies to make the equipment
4 work. And they are waiting on similar tapes to be delivered
5 to their office today or Monday so they can do a dry run on
6 a non-evidence tape to see if it destroys it or not.

7 And so, they have advised me that they are
8 progressing. And that my understanding is, in the next ten
9 to fourteen days we should have some conclusions. And I've
10 been keeping the Plaintiffs' Counsel advised of that
11 progress.

12 THE COURT: Right. All right. Do you
13 anticipate or -- all right -- and I'll ask opposing Counsel,
14 both. Do you anticipate any issues with respect to
15 confidentiality, or other things, or you're just going over
16 to see what's on there?

17 MR. PROTOPAPAS: Your Honor, I do not know. But I
18 believe we will go through whatever is found very rapidly to
19 ensure that a prompt turnover occurs to all parties
20 identified by the Court here.

21 THE COURT: Right. And if either side -- or as
22 the contents become known -- have issues with respect to the
23 ability to use that material -- I mean, obviously, they're
24 Covil's tapes. You have the right to see them, and you've
25 got the authority under the Order to -- or if you think

1 they're confidential, to waive that confidentiality if you
2 want to.

3 But I just want some advice, from both you and
4 from opposing Counsel, as to what your position is about the
5 contents on the tapes before we proceed with just putting
6 them into the normal middle of the litigation.

7 MR. PROTOPAPAS: Yes, Your Honor, we'll do so.

8 THE COURT: Very good.

9 MR. PROTOPAPAS: Also, Your Honor, as a side note,
10 I've received an update as to the chain of custody of the
11 tape going back to August of 2018. I anticipate receiving
12 an update on the chain of custody prior to August 2018
13 within the next two weeks.

14 THE COURT: Very good.

15 MR. PROTOPAPAS: Your Honor, as it pertains to our
16 agenda today, I'll like to just begin -- we're going to try
17 to keep this brief, Your Honor, and give you just a quick
18 status of the Covil litigation. As the Court recalls, after
19 appointing me Receiver on November 2nd of 2018, I've been
20 engaged in two categories of litigation. One I colloquially
21 call the insurance litigation, and the other I call the
22 personal injury lawsuits.

23 The insurance litigation comprises of four cases.
24 The first case is Zurich v Covil -- which is pending in the
25 middle district of North Carolina before Judge Eagles.

1 Judge Eagles has recently issued an Order. Your Honor, for
2 the Court's convenience -- and we're not asking the Court to
3 review it or anything like that. But I included it at
4 Tab 4, not for you to reference, but just so you'll know
5 that this ---

6 THE COURT: That's helpful. I had gotten a copy
7 and looked at it. And I think that's good for us to have
8 this for guidance as we proceed with our Covil litigation.

9 MR. PROTOPAPAS: Yes, Your Honor. Then the other
10 three cases -- which are pending before Judge Hendricks --
11 consist of Covil v Zurich; Covil v Wall Templeton, Zurich,
12 et al; and then Finch v Covil, Zurich, Wall Templeton, et
13 al. There's been no activity ---

14 THE COURT: Who's the Plaintiff in the third one?

15 MR. PROTOPAPAS: The third one is Covil v Wall
16 Templeton ---

17 THE COURT: No, that's the second one.

18 MR. PROTOPAPAS: I'm sorry. I apologize, Your
19 Honor. You're correct. Finch ---

20 THE COURT: Finch.

21 MR. PROTOPAPAS: --- v ---

22 THE COURT: And that's the Plaintiff in the case
23 in North Carolina that had the big verdict?

24 MR. PROTOPAPAS: Correct, Your Honor.

25 There has not been additional activity since the

1 July 11 status conference -- nothing of substance. Your
2 Honor ---

3 THE COURT: So there's no scheduling order or
4 anything pending in that matter?

5 MR. PROTOPAPAS: No, Your Honor.

6 THE COURT: All right.

7 MR. PROTOPAPAS: On the personal injury
8 litigation, Your Honor, at Tab 1 -- for the Court's
9 convenience -- I set forth a chart of cases pending against
10 Covil that are personal injury lawsuits with certain notes
11 and so forth.

12 I provided to the Court, not as a detailed
13 analysis of each case, but to tell the Court we have a lot
14 of litigation on our -- and we have trials coming up. We
15 have mediations coming up. And these cases are going to be
16 coming -- this Court has the majority of these cases. And
17 managing the Covil docket, or the asbestos docket, I know is
18 a challenge. And I show you the chart simply to underscore
19 Covil -- I need some help.

20 These cases -- the personal injury cases, Your
21 Honor, are -- I need two pieces of information that would
22 help me represent Covil and help me with the docket that's
23 before you. One is continued information from the carriers,
24 so that I can analyze what exposure I think a carrier may
25 have in certain piece of litigation, so that I can be

1 effective -- either in mediation, bad-faith letters,
2 compromised discussions.

3 And the great thing that came out of July 11th,
4 was that it did help in that aspect. Since July 11th -- and
5 Ms. Spitz will be speaking about this briefly -- we have
6 gotten more information. And so that's a good thing. And I
7 tell the Court I need the information if I'm going to
8 effectively analyze what Covil's position should be in these
9 mediations and these various pieces of litigations, all of
10 which are coming before this Court.

11 Hopper is coming to mediation in early October,
12 trial in November. Rollins, likely mediation,
13 November/December. Likely trial January/February. And then
14 there's a whole slew of cases for next year. Okay. It's an
15 uphill climb for me. I'm climbing uphill in this
16 litigation. In part because, I continue to need more
17 information.

18 And the carriers have been cooperating since
19 July 11th -- and some even before July 11th. I would note
20 that Travelers did provide me the loss-run sheet prior to
21 the July 11th hearing, and I appreciate them doing that.
22 And I have follow-up questions that they're answering --
23 each of the carriers.

24 But also, Your Honor, when I go to these
25 mediations, and I engage in an attempt to have cases

1 resolved, I no longer have confidence that I can speak
2 clearly and fairly without the fear that I'm about to be
3 cross examined or somehow punished for participating in some
4 other -- participating in a personal injury mediation. And
5 then getting punished in a coverage case or some other
6 lawsuit that Covil is involved in with the carriers.

7 If I don't have the ability to have confidence
8 within these personal injury cases, to negotiate or -- I
9 understand there will be pressure between -- or conflict
10 between the carriers and me, the Plaintiffs and me. But
11 it's hard for me to do my job, if every time I speak I have
12 to worry about something being filed, something being sent
13 to me in a baloney summary email or so on, and so on, and so
14 on.

15 And so I've asked Mr. Smith to handle the last
16 item on the agenda for Receiver, which is the Rule to Show
17 Cause and the Mediation Order. And so those are the two
18 items we're bringing before you. One, the status post
19 July 11th on documents and information -- what else we need.
20 And then to help me address this mediation problem that it's
21 going to make it very hard for me to operate -- participate
22 in Hopper.

23 THE COURT: And the vehicle that you have chosen
24 to try to solve that problem is the Rule to Show Cause and
25 the proposed Order that Mr. Smith has submitted, and I take

1 it, he will be addressing that. And we will, of course,
2 hear from opposing Counsel about that, right?

3 MR. PROTOPAPAS: Yes, Your Honor.

4 THE COURT: So, all right. We know we're going to
5 deal with the Rule. Do you want to talk about the status of
6 the insurance information before you do the Rules?

7 MR. PROTOPAPAS: Yes, Your Honor.

8 THE COURT: Very good.

9 MR. PROTOPAPAS: If I may ask Jescelyn Spitz to
10 speak to that matter.

11 THE COURT: Very good, sir.

12 MS. SPITZ: May it please the Court, Your Honor.
13 Jescelyn Spitz here on behalf of the Receiver for Covil
14 Corporation and Protopapas.

15 Your Honor, as Peter mentioned -- as
16 Mr. Protopapas mentioned, I'm here today to talk about the
17 second item on the agenda -- the status of the insurance
18 information since the July 11th, hearing. I sort of have
19 three subcategories under that. The first being other job
20 site insurance. The second being the primary umbrella
21 policies that we are aware of that maybe missing or have
22 been destroyed. And three, additional information the
23 Receiver needs in order to fulfill his functions on behalf
24 of the Receivership Court.

25 Your Honor, the first item regarding the other job

1 site insurance -- if you look in the binder that we handed
2 up this morning, and look at Tab 3. We've compiled a list
3 of suspected job sites where Covil would have worked
4 throughout the years. Again, this is suspected, and this
5 list is ever-changing. But we've done our best to compile
6 this based off of Covil documents and various items
7 exchanged in Discovery.

8 There's a list of more than a hundred places here.
9 Your Honor, and this is more so of an update to the Court.
10 There may be other project policies in which Covil would be
11 named as an additional insured, or would fall into a
12 category of an additional insured. Maybe it's not named on
13 the policy, but it would include contractors such as Covil.

14 Your Honor, one of the Receiver's next steps is
15 going to be to request this information from these
16 companies, from these various job sites, and from some of
17 the insurers that sit here today, and other insurers
18 involved in asbestos litigation for this information.

19 Of course, it would benefit everybody, I think, in
20 this room if we were able to locate additional coverage for
21 Covil through project site coverage.

22 THE COURT: Let me ask you this. All right. Do
23 you have any list at all of the potential companies that you
24 think might be involved in job site insurance?

25 MS. SPITZ: We do not yet have any project

1 policies or specific job site insurance certificates or
2 policies at this point. That's the investigation we intend
3 to engage in.

4 Your Honor, I would note in some of the other
5 Receiver matters we're involved in, we have started issuing
6 subpoenas and have gotten a little bit of push back,
7 objections, and whatnot from some of these companies and
8 from some of these sites. But we do think we're entitled to
9 the information that we're requesting.

10 THE COURT: Well, what -- all right. These job
11 sites, as I look at them, are almost without exception job
12 sites involved, in whole or in part, in cases that are
13 pending before me.

14 MS. SPITZ: Exactly, Your Honor.

15 THE COURT: And we have been through a 30-year
16 fiction that Covil was driving these cases, when in fact it
17 turns out that that was not the case. And I am not going to
18 operate on that basis anymore. And we are going to have the
19 insured or possible beneficiary insurances absolutely
20 entitled to see the policies to determine whether they can
21 make a claim. And I am not going to tolerate that any more.

22 That doesn't mean I've made up my mind about
23 everything to do with these matters that will be argued
24 today. But I can just tell you, this Court's got the
25 authority to enforce subpoenas and document requests, and

1 make its own Orders with respect to receipt of insurance
2 information. That's going to be done. I cannot possibly
3 manage this big asbestos docket without having basic
4 information about coverage.

5 It effects mediation. It effects everything about
6 the management of these cases. And because mesothelioma has
7 such a long latency period, it is quite common, all right,
8 to have very old policies way before claims made became the
9 method for writing policies -- when it was occurrence type
10 policies. Many of these policies had impact. And I'm not
11 going to tolerate this pushback, hide the ball, or any of
12 that kind of conduct anymore for cases that are to be
13 managed by myself here in South Carolina.

14 MS. SPITZ: Yes, Your Honor. We completely agree
15 and we appreciate that.

16 Moving on to sort of the second point under the
17 status of the July 11th hearing, Your Honor. I'll like to
18 briefly discuss the primary umbrella policies. If you look
19 to Tab 2 in the binder that we provided this morning, you'll
20 see an insurance chart that we compiled. This is somewhat
21 different than what we provided at the last hearing. And
22 this shows what policies we have and what policies we don't
23 have. And there are a number of missing policies.

24 And at this point we don't know if the policies
25 are missing, or whether they've been destroyed at some

1 point. But we're needing information on that. And I think
2 it's pretty clear when you look at this chart, that there is
3 a lot of information that we need. And you can even just
4 look at the right column to see that.

5 And one of things that you'll noticed is that
6 there's no coverage or policies listed for prior to 1954.
7 We believe there are policies out there, and that Covil
8 would have them insured prior to 1954, we just don't have
9 that information at this time.

10 THE COURT: Do you have any cases for which those
11 policies would come into play in the matters that are
12 pending before me?

13 MS. SPITZ: Your Honor, that's a good question,
14 and very likely is the case. If there's not any pending
15 currently, we expect that there could be some that come
16 forward in the future. I do not have a list of those cases
17 with me right now. But I'll be happy to provide that for
18 Your Honor later on. We may have someone here that would
19 respond to that question.

20 THE COURT: All right.

21 MS. SPITZ: Your Honor, in looking at the chart of
22 pending cases -- the color-coded chart we provided, you can
23 see in yellow the cases that are currently pending before
24 this Court in South Carolina. And we've noted just very
25 brief facts in the far right column -- a lot of that

1 information is drawn from the complaints.

2 And if you look at, for instance, Number 21, the
3 Hamann case. The exposure began, potentially, in the 1950s.
4 Loveday case, we're talking 1952. There're some cases that
5 we're still investigating when exposure potentially --
6 allegedly began. But I'll refer Your Honor to that chart.

7 THE COURT: Okay. Thank you.

8 MS. SPITZ: Yes, Your Honor. Your Honor, and the
9 insurance carriers have an obligation to undertake all
10 efforts to locate these policies. And that leads me into
11 point number three, the additional information that the
12 Receiver needs.

13 And as Mr. Protopapas mentioned at the beginning,
14 since the July 11th hearing, many of the carriers have
15 provided items that we've requested, such as the loss runs.
16 We have made significant progress since the July 11th
17 hearing in regards to the information needed. But we still
18 need more information.

19 Your Honor, just by way of example, some of the
20 information we would need, potentially the specimen policies
21 for the years that the Covil policies are allegedly missing,
22 full claims files for Covil. Your Honor, to that point, as
23 Your Honor is aware, I believe we have obtained all prior
24 records that we're aware -- that are still in existence for
25 Covil. We have gotten those scanned in, into a usable

1 format, and we've provided those files and those historical
2 records to the insurance carriers.

3 It's essentially been a one-way street, when you
4 look at it that way. We have given them the Covil files and
5 historical records, but we haven't received the Covil files
6 from the insurance carriers, and we're entitled to that.
7 Another item we would like is the underwriting manuals and
8 underwriting files for Covil as well.

9 And what we would propose, Your Honor, is to
10 submit an Order to the Court that outlines in more detail
11 this information and inquiries we need answered by the
12 carriers. We would be happy to submit that to the Court
13 within the next couple of days.

14 But, Your Honor, all of this goes back to what
15 Mr. Protopapas began with. We need this information for him
16 to effectively function as the Receiver. And I can attest
17 that Mr. Protopapas has been working tirelessly on these
18 cases, facilitating resolution on the cases that are on that
19 list that have settled. But to continue that effectiveness,
20 we're getting to the point where he really does -- we need
21 this information to continue that.

22 If there are no questions, Your Honor, I think
23 we're ready to move on with the third part of the hearing.

24 THE COURT: All right. I turn to my friends
25 representing the insurance companies. Would you prefer to

1 respond to the Receiver's status discussion in the course of
2 making your presentation on the Rule or separately?

3 MR. OGBURN: Your Honor, Lee Ogburn on behalf of
4 USF&G Company.

5 THE COURT: Yes, sir.

6 MR. OGBURN: Mr. Gollogly and I came prepared
7 today with the expectation that I would address insurance
8 information issues, and he would address the mediation email
9 issue.

10 THE COURT: Okay.

11 MR. OGBURN: So I didn't realize -- I will
12 confess -- that we had a dispute concerning information
13 today. This is the first time that I've heard that claims
14 files and underwriting files are being requested. All
15 right.

16 THE COURT: To whom have you sent these requests?
17 I've been hearing this issue -- hearing about this issue for
18 quite some time. I realize that you are freshly involved in
19 the matter.

20 But, Ms. Spitz, to whom have you been
21 communicating with?

22 MS. SPITZ: Particularly, Your Honor, we have
23 requested much of this information. As far as some of the
24 specific things I've said, like the specimen policy, that
25 should not be a surprise in a case such as this. But there

1 has been multiple dealings -- primarily with the Receiver
2 directly with Counsel for the carriers.

3 THE COURT: Which Counsel?

4 MR. OGBURN: I didn't expect that. I believe
5 that ---

6 MS. SPITZ: I believe both, Your Honor.

7 MR. OGBURN: I talked to ---

8 THE COURT: We'll let you make a presentation in
9 an orderly fashion. But this is not -- this issue about the
10 specimen policies and about Covil's claims files, for
11 example, have been talked about for -- in July. Of course,
12 y'all didn't attend, although you were requested -- and more
13 than that, directed to attend.

14 So we've been talking about the Covil files in the
15 hands of insurance companies for a while now. So that's
16 not -- that isn't new to my camp.

17 MR. OGBURN: Your Honor, I would like to address
18 that I understand the Court's remarks. I have read the
19 transcripts.

20 THE COURT: Right.

21 MR. OGBURN: But I don't want to interfere with
22 Ms. Spitz's presentation. So at the conclusion of her
23 presentation, if I may briefly, I would appreciate the
24 opportunity.

25 THE COURT: Sure. Ms. Spitz.

1 MS. SPITZ: Yes, Your Honor. And I would just add
2 before I turn the podium over, that in the Receiver's
3 proposed Order for Rule to Show Cause that was circulated
4 back on August 9th, the Receiver did include Covil's files,
5 communication, claims handling -- that information is
6 covered in that proposed Order.

7 THE COURT: Right.

8 MS. SPITZ: So it should be no surprise.

9 THE COURT: Right. And it's also briefed and
10 frankly -- you know, there's even some reference in the
11 USF&G brief to this issue as well, so this isn't new.

12 MS. SPITZ: Yes, Your Honor.

13 THE COURT: All right.

14 MS. SPITZ: Thank you.

15 THE COURT: All right, sir.

16 MR. OGBURN: If I may, thank you, Your Honor.

17 THE COURT: And I know it's repetitive, but say
18 your name again.

19 MR. OGBURN: My name is Lee Ogburn. It's
20 O-G-B-U-R-N. I represent USF&G.

21 THE COURT: Yes, sir.

22 MR. OGBURN: Thank you, Your Honor.

23 THE COURT: And you're going to address, all
24 right, the Receiver's status comments with respect to
25 additional insurance information.

1 MR. OGBURN: Yes, Your Honor. If I may, Your
2 Honor, I -- I believe that we're proceeding under the same
3 structure as at the July 11 hearing, which is that the
4 insurers are permitted to appear and respond to Your Honor
5 without sedating the personal jurisdiction the Court can
6 have on the Show Cause ---

7 THE COURT: Well, I'm going to tell you something,
8 I think the time has come to go on and address that
9 directly. I had wanted to simply have a status and let you
10 preserve that. But I have a problem.

11 I do not understand -- or what the possible basis
12 would be to claim lack of jurisdiction. I know that is
13 routinely done by Defendants. But you are the insurer for
14 Covil. All right. Our mediation rules as well as our rules
15 of the ones regarding the trial of asbestos cases subject
16 these policies to the jurisdiction of this Court -- and the
17 Receivership does as well.

18 So, I don't want to bring you here on false
19 pretenses and not have you be able to assert the
20 jurisdictional issues. And you've done that to some extent
21 in your memo -- your lengthy memo. But I would appreciate
22 your directly addressing that. Because in addition to
23 telling me what you want to tell me about the additional
24 policies, we can't continue on this thing of putting our
25 heads in the sand about that.

1 MR. OGBURN: Yes, Your Honor. I don't suggest
2 that we should.

3 THE COURT: All right.

4 MR. OGBURN: I do not suggest that Travelers USF&G
5 is not subject to personal jurisdiction in South Carolina.
6 It plainly is. We don't dispute that.

7 THE COURT: Right.

8 MR. OGBURN: It's really just a question of
9 timing, and whether USF&G is entitled to be served with a
10 Show Cause Order if it's going to be ---

11 THE COURT: Well, now they've been served with a
12 Proposed Rule to Show Cause. If you want me to sign that
13 and make it official -- but what we did was to have you
14 respond about what you wanted the Rule to Show Cause to look
15 like, and we'll argue that.

16 But in the process of that -- in terms of
17 timing -- we are here to discuss the substance of those
18 issues, are we not?

19 MR. OGBURN: I am prepared to discuss the
20 substance of the issue. I did understand that the proposed
21 Order from the Receiver ---

22 THE COURT: Right.

23 MR. OGBURN: --- would have the Order served on
24 the South Carolina Department of Insurance, prior to the
25 insurers being subject to having a Rule to Show Cause

1 entered against them. I believe that's what that proposed
2 Order ---

3 THE COURT: Yeah, and it does. And that process
4 will be followed.

5 MR. OGBURN: All right.

6 THE COURT: But we're here now, and we need to
7 discuss all the issues that surround that Rule, including
8 anything that pertains to jurisdiction.

9 MR. OGBURN: Yes, ma'am. I am prepared to proceed
10 with that, with that understanding.

11 THE COURT: Okay. And your rights are preserved
12 in that regard.

13 MR. OGBURN: Thank you.

14 THE COURT: You have the right to insist on being
15 served, and you will be served. And I will decide today
16 which of these Rules or what variance of these Rules to
17 sign. I will rule from the bench and you will know --
18 everybody will know exactly where they stand.

19 MR. OGBURN: Thank you, Your Honor.

20 THE COURT: All right, sir.

21 MR. OGBURN: On the insurance information --
22 Mr. Protopapas and I had discussed this at some length. And
23 I understood that -- I'll start with this. Travelers has
24 provided -- USF&G has provided the policies that exist to
25 the Receiver -- both uncertified and a certified -- copies

1 of those policies.

2 It also provided a loss run to the Receiver in
3 March of 2019 -- that was March 6th, by email. It provided
4 a letter to the Receiver on April 24th, setting out its
5 statement of the remaining limits. The limits that had then
6 been exhausted. The limits applied to products operations
7 hazard had been exhausted by payment of claims.

8 We stated that -- we stated how the limits were
9 treated in the Hill and Taylor settlements. We followed up
10 with a letter on -- I believe it's May 6th -- a letter in
11 May, concerning the defense obligations. We stated we would
12 look at having exhausted our product's operations aggregate
13 case by case. And then we followed up with a letter on
14 August 5th, advising the Receiver that we attached an
15 updated loss run, giving him the current status of USF&G's
16 view of the coverage remaining under its policies.

17 I don't think we have any dispute -- or any
18 disagreement with Mr. Protopapas about USF&G's understanding
19 of the insurance available under its policy.

20 THE COURT: Here is what I understand the dispute
21 to be.

22 MR. OGBURN: Yes, ma'am.

23 THE COURT: They know what your position is about
24 what you say the limits are, what you say the loss run
25 situation looks like, et cetera. What they do not know --

1 have is the documents -- the policies upon which you base
2 the position you take the limits are as you have stated
3 them. And they want to be able to independently look at the
4 documents upon which you base the various advisements that
5 you sent. They don't have that.

6 MR. OGBURN: They do have the policies. They do
7 not have our claims files. And when I said we haven't been
8 asked, the first I heard of a request for a claims files and
9 underwriting files is today. And this is what I mean. As
10 to underwriting files, it is the first I've heard. We've
11 never had a discussion about that. We've never had a
12 request for ---

13 THE COURT: Well, what's the problem in giving
14 them to them?

15 MR. OGBURN: The underwriting -- well, we're in
16 four coverage cases with Covil ---

17 THE COURT: You don't think ---

18 MR. OGBURN: --- that are the subject of
19 discovery.

20 THE COURT: Your four coverage cases are where?
21 The ones in Federal Court?

22 MR. OGBURN: Yes, Your Honor.

23 THE COURT: All right. You don't think for one
24 minute that Judge Eagles or Judge Hendricks would allow you
25 to keep to yourself the claims files or the underwriting

1 files, do you?

2 MR. OGBURN: Not for a minute do I think that we
3 don't have an obligation in this coverage litigation to
4 produce the underwriting file and non-privileged portion of
5 the claim file.

6 THE COURT: Well, you haven't supplied them with
7 anything privileged or unprivileged with respect to the
8 claims or underwriting files, why?

9 MR. OGBURN: We have not been asked for the
10 underwriting files.

11 THE COURT: Now, that you've been -- they say one
12 thing you say another. But it's very clear now that you are
13 being asked, and that I'm being requested to sign an Order
14 that requires that you turn these files over. So go from
15 that point forward and tell me what your position is about
16 these files.

17 MR. OGBURN: USF&G's position concerning those
18 files -- its view is that its obligation to turn over claims
19 files and underwriting files is the subject of litigation in
20 which it will comply with the Rules and its obligations.

21 THE COURT: No, sir. All right. You have a
22 coverage -- a direct coverage issue in the Federal Court.
23 But that does not preclude State Court, in which these
24 personal injury claims are pending, from asking and
25 requiring the same kind of information for another purpose,

1 and that is for the purpose of administering these personal
2 injury cases.

3 So I need for you to recite for me any law that
4 you have available to you that would preclude this Court
5 from having -- the litigants before it have the claims and
6 underwriting files for purposes of managing these personal
7 injury cases simply because you've got a coverage dispute.
8 I did a lot of work for USF&G, Travelers and so forth when I
9 was in private practice, and I am unfamiliar with that
10 proposition.

11 MR. OGBURN: I am not contending that an insurer,
12 upon a document request from its policyholder, has no
13 obligation -- obviously depending on the issues in the
14 case -- has no obligation to turn over its claims files --
15 the non-privileged portion -- in its own right. I agree
16 with that, Your Honor.

17 I was -- I'm going to say, I was told coming here
18 that no relief would be asked from Travelers as far as
19 producing additional information this morning. That's the
20 basis on which I appear. I did not expect to be addressing
21 Your Honor this morning. So this is ---

22 THE COURT: Disabuse yourself of that. The
23 rules -- the rules -- the way we set this hearing up, was to
24 talk about the Rule to Show Cause. Each side submitted
25 proposed Rule to Show Cause Orders, and each side submitted

1 briefs. And those Orders and those briefs directly address
2 exactly what we're talking about right now, among other
3 things.

4 MR. OGBURN: Your Honor, I respectfully disagree
5 that they address underwriting files. I believe I'm correct
6 in saying -- I just really intend to be, and I believe I am
7 correct in saying that we have never had ---

8 THE COURT: I'm not going to have another hearing
9 and then another hearing. We're here today, and we're going
10 to have a hearing in which we discuss the positions of both
11 sides with respect to these files. And what you have
12 asserted to begin with, is that somehow the federal
13 litigation has a preclusive effect on the ability of State
14 Court to require claims and underwriting information to be
15 disclosed on the insurers.

16 All right. I'm not aware of the legal proposition
17 that would support that contention. So I want you to
18 address that and address the substance of your position
19 about the claims and underwriting files.

20 MR. OGBURN: USF&G's view is that a status
21 conference that has evolved into a request for a Show Cause
22 Order, it is not obligated to produce its internal file to
23 its policy holder while ---

24 THE COURT: And the basis ---

25 MR. OGBURN: I'm sorry, Your Honor. But if I may

1 finish?

2 THE COURT: Sure. Sure. Pardon me.

3 MR. OGBURN: --- while -- while there is ongoing
4 litigation between them in which those files are an issue.
5 That's my issue.

6 THE COURT: The litigation does not involve those
7 files. It may involve that tangentially in terms of
8 discovery or anything else. Those litigation files -- those
9 pieces of litigation involve the direct issue of whether
10 there is coverage. And I cannot conceive that a Judge who
11 tries a case that involves whether or not there is coverage,
12 would not require that all information including claims and
13 underwriting files be disclosed to everybody, including the
14 Court so that determinations can be made.

15 MR. OGBURN: I completely agree with that, Your
16 Honor. I firmly agree with you.

17 THE COURT: Well, then, what -- all right. What
18 impact does the fact that you have this coverage issue in
19 Federal Court have on the ability of this Court to deal with
20 the issue of disclosing these claims and underwriting files
21 in the litigation that's pending before this Court, which is
22 personal -- right after personal injury cases?

23 MR. OGBURN: I understand that, Your Honor. And
24 it's -- it is this. We had been -- we -- I'll speak for
25 USF&G -- I expect what I say would be endorsed by other

1 insurers of Covil -- but on behalf of USF&G, I will say we
2 have been in a tug-of-war with Mr. Protopapas on some
3 issues -- not others.

4 May I say, he is working diligently to help
5 resolve these cases. I believe it's fair to say we are too.
6 And they had been resolved. So I commend him for his
7 efforts in that respect. And my client will continue to
8 cooperate with him.

9 Separate and apart from that, however, we have
10 been involved in a tug-of-war about the jurisdiction in
11 which our coverage issues, some of which are fundamental,
12 will be addressed.

13 Those issues were raised first in this case Zurich
14 filed in the United States District Court in the Middle
15 District of North Carolina, and then were raised here in
16 State Court in a litigation filed for there by
17 Mr. Protopapas. And then again in another litigation filed
18 in State Court here and then -- on behalf of Ms. Finch. And
19 yet another litigation here in State Court.

20 There is plainly a tension between the Receiver
21 and the insurers concerning where those fundamental coverage
22 issues will be resolved.

23 THE COURT: Well, Mr. Ogburn, what impact on that
24 argument, all right, is the very clear ruling by the Federal
25 Court that with respect to the personal injury cases --

1 which you all tried to remove to Federal Court -- that they
2 will not be dealt with in Federal Court, but rather they
3 will be dealt with here?

4 MR. OGBURN: We, Your Honor ---

5 THE COURT: That -- that issue is -- that ship has
6 sailed.

7 MR. OGBURN: Your Honor, we did not intend to --
8 and I believe it's accurate to say -- did not, in fact,
9 remove any underlying tort case to Federal Court. There
10 are -- there is substantial authority for the proposition.

11 I'm thinking of four federal appellate cases that
12 stands for the proposition that when an insurer is added to
13 a pending State Court tort case, and in that litigation,
14 issues are raised against the insurer, that are otherwise
15 pending in the State Court tort case, then a new civil
16 action is created, which is removable under the Federal
17 Removal Statute. It is otherwise removable ---

18 THE COURT: That ship has sailed.

19 MR. OGBURN: Understood. I'm not going to
20 argue --

21 THE COURT: That is the contention you made,
22 because there wasn't even a case pending, all right. And
23 that was the first thing, all right, that the Federal
24 Judges -- well the Federal Judge dealt with, is there isn't
25 anything to remove. And you're attempting to remove the

1 personal injury cases, they cannot be removed. They're
2 tried within the State Courts.

3 MR. OGBURN: Excuse me, Your Honor. I'm not
4 attempting to reargue that -- only to say -- only to
5 vindicate my clients and my honor here, Your Honor, in that
6 respect. There was a substantial good-faith basis for that
7 notice of removal in our judgment.

8 THE COURT: I don't have any problem with that.

9 MR. OGBURN: That's all I'm going to say.

10 THE COURT: Mr. Ogburn, please understand these
11 comments are not intended to castigate y'all for doing good
12 lawyering on behalf of your client. That's no problem.
13 What I'm simply saying is, that was attempted.

14 MR. OGBURN: Understood.

15 THE COURT: The Federal Courts made it very clear
16 that the personal injury cases would move forward as they
17 normally would.

18 MR. OGBURN: Yes, ma'am.

19 THE COURT: In that connection, there is a myriad
20 of rule and statutory material that govern the trial of
21 personal injury cases, all right, in State Courts. And it
22 includes requirements for cooperation by insurance
23 companies.

24 They don't need to be added as parties in these
25 huge bunch of Covil cases I've still got. The insurance

1 companies have obligations to their insurers in connection
2 with their insurers defending themselves ---

3 MR. OGBURN: Yes, ma'am.

4 THE COURT: --- with respect to claims. And that
5 is basic meat and potatoes with respect to management by a
6 trial Judge for personal injury cases. There's all kinds of
7 intersections between the rules of the Court and the
8 cooperation of insurance companies, the material contained
9 in its policies, and the material contained in its file.

10 And that's what I understand this current
11 tug-of-war to be about. And that's why I'm asking you,
12 given what has taken place in Federal Court with respect to
13 the trial of personal injury cases, what possible legal
14 basis do you have for not supplying your insurer with their
15 claims and underwriting files?

16 MR. OGBURN: I am not aware -- I've done this in a
17 number of places for a while.

18 THE COURT: Me too. Fifty years.

19 MR. OGBURN: Yes, ma'am. And I have never
20 encountered an obligation by an insurer to provide its
21 underwriting files or its claims files to its policyholder
22 in the context of participating in mediation, for example,
23 which I understand insurers have the obligation to under
24 South Carolina's ADR rules, and we will.

25 But I have never seen authority with a proposition

1 that an insurer -- in that context, as the insurer of a
2 Defendant in a tort case -- is obligated to produce to the
3 policyholder its own underwriting or claims policies. I
4 don't believe -- I'm not aware of any such authority. I
5 cannot cite for Your Honor a case saying -- affirmatively --
6 there is no such obligation of an insurer to insured.

7 I haven't encountered the request before. And
8 I've not -- I have looked at the ADR rules, and I don't see
9 anything in them that obligates an insurer to do that. It
10 must appear at the mediation with full authority. I
11 understand full authority means, under South Carolina law,
12 either authority equal to demand or equal to the limits and
13 insurance that are available to pay the claim. I understand
14 that.

15 THE COURT: And, of course, that's the rub in this
16 particular case. There is a, all right, decided difference
17 of opinion between yourself and your insured as to what the
18 limits of coverage are.

19 And because you have known for thirty years that
20 this is a defunct corporation, and have really controlled --
21 you and other insurance companies controlled the process of
22 these personal injury cases in South Carolina Court for a
23 good long time -- all right -- and your insured has not
24 really had any detailed information about the limits of
25 coverage and so forth -- particularly for these old policies

1 that go way back in time -- they, because of that unusual
2 situation, are asking for their files. And I know of no
3 proposition that would prevent you or shield you from giving
4 them their files.

5 We've got a particular controversy here that's at
6 play because of how this matter has transpired. Covil has
7 not only gathered every piece of information it could lay
8 its hands on about its file, and put them in a computerized
9 format that allows them to be searched easily and given that
10 to you.

11 But in return, you have only sent them letters --
12 a series of about five of them, I think, in detail -- in
13 which you made assertions about policy limits and coverage,
14 but do not give them the underlying material upon which
15 those positions are made, which has to include the claims,
16 claims made, claims paid, as well as underwriting for them
17 to understand whether you are correct in asserting that all
18 coverage is gone and the other things that you have
19 asserted.

20 That's where the rubber hits the road about this
21 particular controversy. In that circumstance I am -- and
22 it's an unusual circumstance -- I'm not aware of anything
23 that would shield you from giving your own insured its file
24 information.

25 MR. OGBURN: All right. Your Honor, I will

1 respectfully disagree with your characterization of "its
2 files". We're not entitled to Mr. Protopapas's internal
3 files -- at least not now. And ---

4 THE COURT: Well, Mr. Protopapas has -- is wearing
5 two hats. Number one, Mr. Protopapas is the Receiver for
6 Covil. And in that connection, he's given you everything
7 that pertains to you. You're not entitled to his lawyer
8 files when he wears his hat as a lawyer, nor when you wear
9 your hat as a lawyer, would Mr. Protopapas be entitled to
10 your files. Absolutely the take.

11 But these are files maintained by the insurance
12 companies for the purpose of administering claims. You
13 can't possibly take the position that you're going to tell
14 him your view about what the coverage is, and whether -- all
15 right -- it has been exhausted, and not have the insured be
16 able to look at your files to see whether you're wrong.

17 MR. OGBURN: And that is where I maybe departed
18 from our more linear conversations to say, we've had this
19 tug-of-war. We're going to disagree about -- I think --
20 about how much coverage is available, because we disagreed
21 about how the policies apply to facts. And proceeding to
22 address that issue here, before Your Honor, when it is the
23 subject of these other cases -- various -- expressly the
24 subject matter in the case -- concerns us. Because we know
25 that the Receiver, through his Counsel, is using his best

1 lawyering skills to have those issues addressed outside of
2 Federal Court.

3 The Federal authorities are somewhat favorable to
4 the insurers on the fundamental --

5 THE COURT: And the Federal Courts told this Court
6 that we are to proceed with the trial for personal injury
7 cases. The gist of the argument that's just been made to me
8 by Ms. Spitz is, we need that information -- the claims and
9 underwriting information -- in connection with our defense
10 both in mediation, in bad-faith claims, and in the trial,
11 itself. We need the information out of claims and
12 underwriting files.

13 And it impacts the mediation. But if there are
14 multiple Defendants -- which there always are -- a lot of
15 these Covil cases are now down to the claim where they're
16 the only ones left. But contribution among joint
17 tortfeasors is a major issue in most of the asbestos cases
18 I've tried.

19 And if a verdict is rendered, we don't ask the
20 jury -- Smith versus Tiffany and that line of cases don't
21 allow us to have the jury make the decision about how to
22 allocate the responsibilities among Defendants, the Court
23 has to do that. And that is another case in which coverage
24 available is a vital part of what the Court is going to have
25 to look at in connection with making these allocations.

1 So, all right, the fact that you have a dispute in
2 Federal Court that involves issues of coverage, does not
3 preclude State Courts -- or make somehow the personal injury
4 cases have to be truncated in the way it's tried because
5 you've got coverage -- a direct coverage bound in Federal
6 Court. So I don't understand why you keep bringing that up.

7 MR. OGBURN: Well, that's not what -- that is not
8 what I intended to bring up. I don't suggest that this
9 Court's handling of the court cases before should be altered
10 in any way by the fact of a coverage dispute between Covil
11 and its insurers. I am not suggesting that. I understand.
12 I agree with Your Honor in that respect.

13 THE COURT: Those cases don't have to give you any
14 concern in talking about the issue of whether they get the
15 claims and unwriting files for the purpose of the State
16 litigation. That ought not to give you any concern at all.
17 It doesn't preclude that.

18 MR. OGBURN: I am not aware of -- I am not aware
19 that allocation of a verdict among Defendants -- including
20 settlement Defendants -- would be affected by the amount of
21 insurance available to any of those. I have assumed that
22 the liability of a Defendant is determined independent of
23 the insurance available to pay that liability.

24 THE COURT: Absolutely, it is. Liability is
25 determined by the jury. All right. Allocation of the

1 resources -- because of those settlements, because of other
2 parties -- because of the verdicts against other parties is
3 determined by the Court. And it takes into account a lot of
4 issues -- but don't take some comfort by straying into that
5 issue.

6 The main issue is whether the mediation and trial
7 of a case, all right, requires that the Receiver have
8 information about claims and underwriting. You think he, at
9 least, is entitled to know what you say about how much
10 coverage is left. But you don't think he's entitled to look
11 at the claims and underwriting from whence you derive the
12 information.

13 The policies won't tell him that, because the
14 policies don't tell him what other claims have been made,
15 what other claims have been paid, and all that kind of
16 thing. And your position about the coverage that is left --
17 I would have to believe -- all right, is not based simply on
18 the policy range, but rather also on the history of
19 underwriting and paying claims against Covil.

20 MR. OGBURN: That is one hundred percent correct.

21 THE COURT: Well, then, I can't see how in the
22 world once you let the cat out of the bag by -- which I
23 think you had to do by sending them information in a letter
24 about your position about coverage -- I cannot see any
25 justification for the notion that they're not entitled to

1 these claims and underwriting.

2 If you've got something that's privileged in them,
3 that can be dealt within privileged laws. I go through
4 those things every day, make decisions, make them as
5 quickly, and go on.

6 MR. OGBURN: My clients have -- in my
7 experience -- never been asked. It's sort of on the spot to
8 produce the claim and underwriting file without a request
9 for documents or something that involves some process for
10 responding in an orderly fashion to that request. This
11 is -- as an underwriter -- first I've heard of it.

12 THE COURT: Well, let me just cut to the chase
13 here. I'm going to sign a Rule to Show Cause of some sort.
14 And then you're going to take the position that we've got to
15 re-litigate this whole thing about what they're entitled to
16 in these claims and underwriting file, is that it?

17 MR. OGBURN: No, ma'am. I am not suggesting that.
18 I'm suggesting only this -- I'll correct that -- not only
19 this. But I'm suggesting this. I didn't realize that the
20 Court would be asked to enter an Order today concerning
21 information from insurers. I will state on the record that
22 I was advised it would not be.

23 THE COURT: All right. What did you think was the
24 gist of the August proposal, all right, for the Order that
25 they proposed and the gist of your counter proposal for an

1 Order?

2 MR. OGBURN: I understood the ---

3 THE COURT: I mean, both of those things addressed
4 this very issue.

5 MR. OGBURN: They did, Your Honor. And I
6 understood that.

7 THE COURT: What did you think I was going to do
8 today, just kind of talk about it but not rule?

9 MR. OGBURN: No. I thought Your Honor was going
10 to be advised that we've made sufficient progress on that
11 front, that no Order was necessary. That's exactly what I
12 thought. And I thought that for a very good reason.

13 THE COURT: So far -- I mean, that's an argument
14 you can make. So far, all right, it looks like progress has
15 not been made on this issue.

16 MR. OGBURN: I was not aware this remain -- the
17 underwriting policy, I was not aware, was an issue. And
18 also I want to be clear on it. Yes, we have been asked for
19 information that supports your view of the basis on which
20 you may obtain that. We have been asked for that. That's
21 true.

22 And our belief is that that information is
23 available in our coverage dispute, because it bears on our
24 coverage dispute. But our belief is, that that information
25 is not available outside of that dispute. And that's --

1 that's the basis for USF&G's position.

2 THE COURT: Okay. Let me just nail this down one
3 more time. So you're taking the position -- based on what
4 you just said -- that the coverage dispute -- and by that
5 you mean the Federal Court litigation, right?

6 MR. OGBURN: Yes, ma'am.

7 THE COURT: Precludes the -- this Court from
8 requiring that you give the claims and underwriting files to
9 your insured, is that your position?

10 MR. OGBURN: Yes, ma'am.

11 THE COURT: Well, I mean, you danced all around it
12 and said everything. I would certainly like now for you to
13 tell me the basis upon which you make that claim of
14 preclusiveness.

15 MR. OGBURN: The position is -- I'll go a little
16 farther. My belief is -- and I believe my client's belief
17 is -- that its policyholder's entitlement to the files of
18 the company -- the insurer -- depends on the process. The
19 issues at present in the case in which the process is
20 pursued, and insurer cannot -- an insured policyholder
21 cannot write a letter to its insurer and say, "Please send
22 me your claims file and your underwriting file."

23 The insurer has no obligation to provide that
24 information. There's a contract between the parties. But
25 the contract doesn't entitle one party to the internal files

1 of the other. Insurers routinely -- USF&G routinely
2 produces its claim files and its underwriting files, in
3 litigation concerning the scope of coverage under its
4 policy. And it will do that, subject to whatever privileges
5 may apply in review of the materials.

6 In the litigation between Ecodyne -- but it
7 believes that Covil is entitled to that information outside
8 of that litigation.

9 THE COURT: And what is the legal basis for that?
10 That's all I'm asking.

11 MR. OGBURN: I want -- Your Honor, understand when
12 I say, I do not mean to be cavalier or flip about my answer,
13 I assure you. But I am not aware of any authority that it
14 is entitled. I don't have a case that says it's not. But I
15 don't believe it ---

16 THE COURT: You just stood here and said that
17 y'all routinely supply underwriting files and claims files
18 when insurers request them. Even though you don't think you
19 are obligated to do that. I cannot believe that, all right,
20 if you do that, all right, that this is some unusual request
21 in this particular litigation.

22 All right. It's either because you think that
23 because you have a coverage dispute that precludes them
24 getting it here, or it doesn't. And if you think it
25 precludes it, then all I want is the legal basis for your

1 making that contingency.

2 MR. OGBURN: Your Honor, I don't -- maybe I said
3 it, and I don't want to take everybody's time and repeat it.
4 I'll try to succinctly state the ---

5 THE COURT: I mean, give me a case or something --
6 or a provision in your insurance contract or something. I'm
7 just not aware of anything that supports the notion that
8 because you've got another dispute in another jurisdiction
9 about coverage that -- in this particular matter, where
10 coverage has become an issue in mediation, which is required
11 in these cases, and coverage has become an issue in some
12 cases in which you have not cooperated in mediation, I am
13 not aware of anything that impacts the ability of this Court
14 to require that you honor their request -- which you
15 normally do, you said -- and give them their claims and
16 underwriting files.

17 I just -- so I need a case or something that says
18 in this particular case, this Federal litigation precludes
19 Covil from getting this information here. They can get it
20 in the Federal case, but they can't get it here. That don't
21 make any sense to me.

22 MR. OGBURN: This is my client's position, Your
23 Honor. That its files -- "it" being my client -- USF&G's
24 files are available to its policyholder. It is only obliged
25 to provide its files to its policyholder when they are

1 sought in litigation. It has no separate independent
2 obligation to send its policyholder its internal file.

3 If I said that it did that routinely, I misspoke.
4 I didn't mean that. I meant that it routinely does that in
5 litigation in which it has a disagreement with its
6 policyholder.

7 THE COURT: Well, you've got a disagreement with
8 your policyholder in this particular case in the phase of
9 the matter that involves mediation, which is required under
10 our law -- and particularly in these asbestos cases, is
11 absolutely required. They're the standing Orders of the
12 Court. And the rules of the Court promulgated by the
13 Supreme Court, require mediation in this kind of situation.

14 All right. You have asserted in letters what
15 you -- your position is about coverage. But you're telling
16 me that they have no ability to check behind you, by seeing
17 your file?

18 MR. OGBURN: I'm saying this, Your Honor. In a
19 case ---

20 THE COURT: Well, answer that direct question.
21 Are you saying that your assertion in those five letters by
22 what you think coverage is, in these personal injury cases
23 in South Carolina, is all you have to do, and your insured
24 has no ability to check behind you and see its own -- the
25 files pertaining to it on the very matter you've written

1 about, which are the claims and underwriting files
2 pertaining to it?

3 MR. OGBURN: If it disagree -- if it disagrees.

4 THE COURT: It does disagree. It disagrees.
5 They've made that very clear.

6 MR. OGBURN: Yes, ma'am, if I may?

7 THE COURT: Yes.

8 MR. OGBURN: It does disagree, and it suits. And
9 we're going to resolve that disagreement in the case in
10 which it suits. I'm not aware of any authority -- in
11 response to Your Honor's question -- that requires an
12 insurer in the context of a case in which it is not a
13 problem, to arrive at mediation or in a courtroom and
14 produce its underwriting or its claims files.

15 We have been sued by our policyholder. We will
16 respond to its' discovery' request rule. We will provide it
17 the information with which it is entitled. But I'm not
18 aware of any authority that requires us to provide that
19 information in the inside case in which my client is not a
20 party.

21 THE COURT: And therefore you decline to provide
22 that information in these personal injury cases, as I
23 understand?

24 MR. OGBURN: We do -- yes, Your Honor.

25 THE COURT: All right. I understand. You think

1 the Federal litigation precludes your being required to give
2 it in a dispute involving personal injury cases. And that
3 all you have to do is just kind of assert what you think the
4 file says. That's your position, you don't have to give the
5 file.

6 You do have to tell them something about coverage
7 on it, you at least go that far. But they cannot see your
8 files -- claims and underwriting -- to determine whether
9 you're right about that?

10 MR. OGBURN: I want to put my response in context
11 in these two respects. First -- and this is why I brought
12 up the tug-of-war. It's happening. We have a slippery
13 slope concern. When we begin to produce things outside of
14 the coverage litigation that we're not, we believe, required
15 to produce outside the coverage litigation -- we don't know
16 how far that will go.

17 We have a significant dispute involving
18 significant issues. And we have a forum in which they are
19 being litigated, and that's where we want to resolve them.
20 That's one reason.

21 The other reason, here -- I'm saying this, Your
22 Honor, because I don't -- I resist the implication that my
23 client is simply being uncooperative for -- you know, for
24 reasons that aren't apparent. That's one reason. One
25 reason is its concern about where this goes.

1 The second reason is, that my client's -- there's
2 no dispute about this -- prior to us completing operations
3 hazards lead us for the two years of coverage it has
4 totaled, both years -- together they totaled \$600,000.
5 Seventy thousand more or less of that concerns burial cases
6 -- cases back in the '70s, '80s, and '90s, before 2010.
7 Very small settlements. The facts of which are -- the cost
8 of determining facts in those cases would far exceed the
9 amount they have to settle in those cases.

10 In recognition of that, we assigned only about
11 \$70,000 of a very large settlement in the Hill and Taylor
12 cases which was the amount which was announced to you in
13 this courtroom -- or courtroom here at the July 11th hearing
14 by Counsel for the Receiver. Seventy thousand of that we
15 allocated to our limits to over exhaust if you will -- to
16 the tune of \$70,000, to eliminate any dispute about those
17 numerous small old settlements.

18 The cost of litigating would far exceed the amount
19 of money. We tried to deal with this practically and
20 fairly, to avoid this conversation about claims files going
21 back twenty, thirty, or forty years. We are not taking a
22 position that is intended to be obstructionist. We're not
23 taking positions ---

24 THE COURT: Well, how do you propose Mr.
25 Protopapas goes about participating in mediation, having the

1 authority to settle -- which always involve having the
2 carrier give him the authority to settle? How do you
3 propose that he operates if he can't understand the
4 fundamentals of what kind of coverage is available?

5 MR. OGBURN: I believe he can and does understand
6 the fundamentals of what kind of coverage is available. I'm
7 confident of that.

8 THE COURT: Let's say he doesn't. Let's say he --
9 he takes the position he has no concept other than what you
10 tell him -- without the background information -- on what
11 kind of coverage is available. How do you think he is
12 suppose to -- I mean, mediation and having the full
13 authority under our rules of necessity involves having the
14 insurance company participate in the giving of authority to
15 settle the case. That's fundamental.

16 MR. OGBURN: Yes. I understand, Your Honor. I
17 agree.

18 THE COURT: What you're saying is he just
19 kind of -- what he has to do -- you've already settled way
20 over what you say the limits are for two cases. So it's
21 just going to be a kind of advisory claim that, all right,
22 he's just going to ask you every single time, "Well, we know
23 you take this position. You won't tell us why you take this
24 position. But what can you do to help us in this case?"

25 I mean, is that we he's supposed to do?

1 MR. OGBURN: No, Your Honor. And that's not what
2 he's been required to do, it's not what he has done.

3 My belief is that the Receiver and USF&G don't
4 disagree about the facts of the amount paid for products
5 completed operations hazard injury. I think we do disagree
6 about whether payments in years of coverage that post-date
7 the completion of the operation, that is alleged to
8 give rise to the injury, is properly within the products
9 completed operations hazards. That is a fundamental
10 coverage issue that is at issue between the Receiver and
11 USF&G.

12 THE COURT: All right. So I'll ask you one more
13 time, how do we administer these cases? I can't, well, just
14 kind of put every asbestos case in which Covil is involved
15 on hold until the Federal litigation is resolved. How are
16 these cases supposed to be managed?

17 MR. OGBURN: I would never suggest that you do.
18 And these cases have come up before mediation.

19 THE COURT: Please don't answer me that way.
20 Mr. Ogburn, on an ongoing basis, how do you propose that
21 these cases be managed?

22 MR. OGBURN: In the fashion that they are
23 currently being ---

24 THE COURT: --- with every single time just kind
25 of taking -- all right, saying, "Hey, I know you said you

1 haven't got any coverage left, but please, pretty please?"
2 I mean, is that kind of the operation that you would
3 envision?

4 MR. OGBURN: No, Your Honor. I would envision, in
5 each case, a look at the facts of the case. I think it's
6 inevitably necessary when insurance like this is involved.
7 I would suggest that Mr. Protopapas and the insurers look at
8 the facts of the underwriting case. The timing of the
9 injuries, the timing of exposure to a Covil operation that
10 involves asbestos is fundamental to the question of how much
11 coverage is available.

12 And it must be examined in every case. I don't
13 think there will be a way around that. And that's what's
14 happening. We've had conversations about that. At 8:30 at
15 night, the night before the mediation began, when new
16 information arrived, we've done that. We've done it
17 successfully.

18 THE COURT: Okay. I think I understand your
19 position.

20 MR. OGBURN: Thank you, Your Honor.

21 THE COURT: All right, sir. Ms. Spitz.

22 MS. SPITZ: Yes, Your Honor. I'm happy to respond
23 now to Mr. Ogburn's position, or wait until the end if
24 there's any other carriers that have something to say.

25 THE COURT: All right. Other carriers?

1 MR. SAWYER: Your Honor, briefly. Wesley Sawyer,
2 Murphy and Grantland -- or Sentry Casualty Insurance
3 Company -- Sentry Casualty Mutual Company.

4 THE COURT: All right. You may come forward.

5 MR. SAWYER: Your Honor, just so that we have
6 preserved the issue -- I don't intend to reargue with Your
7 Honor, but I do have a short memorandum about personal
8 jurisdiction. May I hand that to you?

9 THE COURT: Yes, sir.

10 (Mr. Sawyer hands document to the Court.)

11 MR. SAWYER: And, Judge, am I correct in
12 understanding, your ruling is that the Court decided the
13 personal jurisdiction issue, we're preserved on that.

14 THE COURT: I have not issued the Order yet. All
15 right. But I have certainly indicated that because of
16 mediation alone, all right, and the need for cooperation
17 from the insurance companies in connection with mediation of
18 these personal injury cases in which Covil is the Defendant,
19 and in which Sentry is an insurer, that both this Court and
20 Federal Court -- which has already taken a look at this
21 assertion -- have taken the position that you don't have to
22 be sued in order to have responsibility in connection with
23 these personal injury cases.

24 And so I don't -- I haven't signed the Order yet.
25 But, yes, I take the position that a personal jurisdiction

1 argument -- because of your position that you have to be
2 sued -- you're a non-party, you would have to be sued in
3 order for the Court to deal with your participation in
4 mediation. I take a position that that does not preclude,
5 nor does the Federal litigation preclude your
6 responsibilities in connection with State Court litigation.

7 And I believe that -- the position I take in that
8 is also very much supported by the Order that Judge Bruce
9 Howe Hendricks signed when she sent those personal injury
10 cases back to South Carolina.

11 MR. SAWYER: Thank you, Your Honor. And just for
12 one point of clarification for Sentry's position in addition
13 to what you said, the other portion of the personal
14 jurisdiction argument, is Sentry has never been served with
15 any process in any of the caption cases that we're reporting
16 on today. No subpoena, no motion for Rule to Show Cause was
17 served upon through process, so that's the other aspect of
18 the personal jurisdiction argument, Your Honor.

19 THE COURT: All right, sir.

20 MR. SAWYER: Thank you, Your Honor. Judge, having
21 that been ruled upon, I'll go into the issue that the Court
22 asked about. I know Mr. Dworjanyn will argue more
23 generally, I believe, about jurisdictional issues. So I'll
24 stay out of the subject matter of jurisdiction ground so he
25 can handle that.

1 Just to tack on, very briefly, what Mr. Ogburn
2 argued to, Your Honor. The scope of discovery -- which I
3 think is technically really what the confines are for what
4 we do before this Court in terms of whether the claims file
5 has to be produced, or the underwriting file has to be
6 produced, is going to be confined by the limitations, which
7 I admit are broad.

8 The discovery limitations are irrelevant matters,
9 or information that's recently calculated to lead to the
10 discovery of admissible evidence. And I think that's where
11 we hit the boarder -- hit the wall, Your Honor.

12 The amount of coverage that's available, is
13 clearly in dispute between the parties. And this Court does
14 not have before it a case in which to decide the answer to
15 that dispute. The question of how much coverage is
16 available is the subject of litigation in other cases. But
17 it's not the subject of litigation here.

18 And therefore how much coverage is available --
19 and the carriers can say what they believe, the Receiver can
20 say what it -- what he believes. But when it gets to a
21 matter of litigating how much there is, and getting to the
22 final number of this is what it is, that's not before the
23 Court, and it wouldn't be before the Court in tort cases.
24 They're diametrically separated issues that this Court has
25 recognized for many, many years.

1 THE COURT: We're traveling on different wave
2 lengths here, so let me get you focused on what I'll like
3 for you to direct your attention to.

4 Mr. Protopapas is here in two roles. And the main
5 role that we're talking about today is his role as the
6 Receiver for Covil, your insured. And in connection with
7 his responsibilities as Receiver, he has come to the Court
8 and asked for the Court's assistance in getting information
9 from his insurance companies about coverage for these
10 personal injury cases, so that he can participate in Court
11 Ordered and rule required mediations.

12 And that is the context in which these discussions
13 are had. And as the authority who is not only trying these
14 personal injury cases, but has also appointed and is
15 supervising the Receivership of Covil by Mr. Protopapas, he
16 is asking that I exercise my authority in that connection.

17 I've already modified the Receiver's Order once --
18 I might say without any disagreement from anybody -- to make
19 it absolutely clear, first of all, that the Receivership
20 status applies to everything. The insurance companies took
21 the position it only applied to one of the cases. That
22 would have been nonsensical that I would appoint a Receiver
23 if it only applied to one case. So I made it clear, it
24 applies to all asbestos cases.

25 And I also made it clear that the Receiver is

1 entitled to what its' insured would be entitled to. And
2 that the Receiver is entitled to use the Court's authority
3 to try to gain information that's not forthcoming.

4 All right. The contention is also made that the
5 insurance is an asset of Covil in connection with the
6 litigation -- considerable litigation in which it is
7 involved. And that as the supervising Court and the
8 ordering Court of this Receivership, the Court's got
9 authority over the assets.

10 So that is the posture in which, all right,
11 Mr. Protopapas comes to the Court and says, "I cannot
12 adequately perform my duties as Receiver in mediation
13 without having information about coverage. The companies
14 have told me what they think coverage is, but have not
15 shared with me their claims and underwriting files so that I
16 may understand why they take the position they take. And
17 therefore I'm unable to know what kind of money I can offer
18 to a Plaintiff and how much I cannot."

19 The rules require that Covil have complete
20 authority. And like every other Defendant in these asbestos
21 cases, that almost universally means authority from the
22 insurance company to settle these matters. All right. And
23 that is the -- that is the framework in which I'm being
24 asked to operate.

25 MR. SAWYER: Just, if I may, I'll do my best to --

1 I know you covered a lot of ground there, Your Honor. I'll
2 try to address it in its entirety.

3 Just as a matter of preservation, Sentry is not
4 served with any of the prior motions. So the fact that
5 something went unopposed, Sentry wasn't a party in a
6 position to oppose any prior motions as to the Receiver.
7 Now to the ---

8 THE COURT: Did you advise your insured about any
9 position you would take with respect to the insurer's and
10 this Court's ability to require the production of insurance
11 information -- which is clearly what my Order said?

12 MR. SAWYER: Your Honor, my client is Sentry. And
13 I just want clarification on the question that you're
14 asking, Your Honor. I don't fully understand when you say
15 did I advise my insurer?

16 THE COURT: I don't understand why we're playing
17 dodge the ball here.

18 MR. SAWYER: I don't want to dodge, Your Honor.

19 THE COURT: You all have kept up to a gnat's eye
20 everything that has come out of this Court on these matters.
21 And I am positive that you know what the Receiver's
22 Orders -- initial appointing Order says. Because you
23 contested it, all right, and took the position it only
24 applied to one case.

25 When I modified that Order in August, I feel quite

1 confident that you were very much aware of that. And among
2 the things in the modified Order, I made it clear it applies
3 to all cases, and it applies to the Receiver's full
4 authority to pursue assets from these insurance companies.

5 And what I'm simply asking is a real
6 straight-forward question. When you saw that in that August
7 Order, did you contact your insured and take any position
8 with respect to its authority to get this claim and
9 underwriting information from you?

10 MR. SAWYER: Judge, the claims file has never been
11 requested prior to today. Certain aspects have been
12 discussed. But there's never been a formal requested with
13 my ---

14 THE COURT: All right. Please don't. I ---

15 MR. SAWYER: It's important that the record is
16 clear.

17 THE COURT: I know that argument. They take the
18 position that you well know that that's what they want. I'm
19 simply asking a very direct question, which is, why haven't
20 you produced these claims and unwriting files they want?
21 Take it from me, they are requesting in this courtroom
22 today. What's your position about providing them?

23 MR. SAWYER: Your Honor, they would be -- they
24 would be the subject of either a subpoena or discovery done
25 in one of the cases. We've never received process -- again,

1 before there's never been a request. So I can't say why we
2 didn't provide in the past, because it wasn't requested in
3 the past. I can't change history, Your Honor. But today,
4 Your Honor ---

5 THE COURT: Today, what you're saying is that a
6 mere request by your insured is not going to be enough.

7 MR. SAWYER: In a ---

8 THE COURT: And what you're saying is they're
9 going to have to subpoena or have an Order from this Court
10 requiring that you provide this information, otherwise
11 you're not going to do it?

12 MR. SAWYER: Your Honor, yes. And may I answer
13 what we addressed earlier. First of all, one thing that's
14 significant that we don't have the benefit of here, but
15 we'll have the benefit of in discovery in the other cases is
16 a Protective Order, that can be negotiated to work through
17 to protect these claims file documents that they -- you
18 know, like, even the non-privileged parts. There are still
19 parts that are privileged between us and the insured that
20 other parties are going to be entitled to receive. So those
21 protections are important, Your Honor.

22 Secondly, this is not a situation that's any
23 different from what insurers do on a normal basis in courts
24 across South Carolina -- tort cases that aren't asbestos
25 cases where there is a dispute over coverage. I routinely

1 litigate a coverage matter while the underlying case is
2 going forward. That coverage matter can go forth -- how
3 much coverage is available, or whether coverage is available
4 at all.

5 It doesn't stop the tort case from going forward.
6 But they're done on parallel tracts, and mediations, they
7 work out. They're done. But what we don't have -- is
8 because that's happening -- discovery in the tort case about
9 underwriting documents or Plaintiff's files. They're done
10 on parallel tracts. That's how it's always been done -- at
11 least in my experience.

12 THE COURT: What is the legal basis for telling me
13 it can't be done in personal injury cases?

14 MR. SAWYER: I think because of the issue of the
15 scope of the Rules of Discovery which are matters recently
16 calculated, so it makes the discovery ---

17 THE COURT: I understand that. You're not a
18 party. All right. You don't think the discovery applies to
19 you.

20 MR. SAWYER: Not because we're not a party.
21 Because discovery is limited to relevancy, and matters
22 calculated to lead to discovery of admissible evidence at
23 trial. The amount of coverage available is not admissible
24 in the tort case.

25 THE COURT: All right, sir. You dance around this

1 every single time. But I'm going to ask it one more time
2 and I'm going to move on, because otherwise we're going to
3 sound like we're just kind of going around in circles here.

4 We are in two parallel tracts in this Court. One
5 of them involves those personal injury cases. But today we
6 are discussing the administration of the Receivership for
7 Covil as it participates in the litigation of these matters.

8 MR. SAWYER: Yes, Your Honor.

9 THE COURT: And, you know -- all right. This
10 thing has run around many, many different tracts including
11 the decision made at one point to just default on these
12 cases, which has resulted in a huge verdict in North
13 Carolina and some ultimate settlements in this state.

14 All right. What I am asked to do now by the
15 Receiver in connection with its function as a Receiver in
16 mediation -- required mediation of these personal injury
17 cases, is to give it -- is to require that its insurer give
18 it its claims and underwriting files. It's not a discovery
19 matter. It's not in connection with what's admissible
20 evidence. It's in connection with its function in the role
21 I have appointed it to function, which is as the Receiver
22 for your insured.

23 And it is in that connection and with that
24 authority that I ask you, what legal basis you have for not
25 responding to a request for the Receiver for your insured

1 for this information?

2 MR. SAWYER: Judge, I'm not wanting to put words
3 in your mouth, but I do want to make sure. Is the question
4 that because the Court appointed Mr. Protopapas to effect
5 these issues of the insured, why won't we give our insured
6 this information? Is that a fair way to summarize what
7 you're saying to me?

8 THE COURT: You can argue it that way. I'm on the
9 question end.

10 MR. SAWYER: I know. And I want to answer your
11 question accurately, and part of that, I think, is making
12 sure I understand it. And I think that the answer to that
13 is, we give the insured the information that we'll give any
14 insured.

15 And now we're at the point that the insured is
16 wanting information that would not be given to an insured,
17 just on the role of a simple request by the insured. We're
18 at the point where the information is the type of
19 information that's only provided in the discovery context of
20 litigation between the carrier and insured.

21 THE COURT: I understand that. That's all I need.
22 What you're saying is, that you refuse to give the claims
23 and underwriting files. And that the only way they're going
24 to get them -- in connection with performing his role as the
25 Receiver in these personal injury cases and specifically in

1 mediation of these cases -- is for the Court to order them?

2 MR. SAWYER: That's fair. And, Your Honor, one
3 other point of clarification. You said the Receiver decides
4 what amounts can be settled based upon the amount of
5 coverage. At least as to my understanding of the policies
6 that would be an issue here, none of these policies would
7 contain what's called a Consent to Settle Clause that would
8 give the insured the ability to approve or reject the
9 proposed settlement.

10 All of these policies -- they duty to defend and
11 the ability to settle a decision when it's settled -- rest
12 solely within the hands of the insurance companies. I don't
13 think any of these policies would have rested that to the
14 insured. It happens in professional liability policies.
15 But these would be CGL or similar type policies.

16 And that would be my last point. I hear the point
17 you're making ---

18 THE COURT: Well, what pertinence does that --
19 tell me this. You say you don't have to participate in
20 mediation. You don't have to give him the ability to --
21 he's got to have some information ---

22 MR. SAWYER: I was just stating the issue ---

23 THE COURT: --- about how much money he can offer.
24 He's got to have the full authority to make an offer, that's
25 what our rules say. But you're saying that you don't have

1 to participate in that. All right. You have the sole
2 authority to settle these cases. And, yet, you're not going
3 to participate and you're not going to give him the
4 information?

5 MR. SAWYER: I'm not saying that. Sentry has
6 participated in every mediation where we've been asked to
7 participate, or there's been a slight possible ---

8 THE COURT: And how does he get the ability to --
9 do you and you alone decide how much money he's going to put
10 on the table?

11 MR. SAWYER: Each carrier decides how much it
12 would put on the table for mediation. It's consistent with
13 the terms of policy and it's consistent with ---

14 THE COURT: And in that connection, if he says,
15 all right, you know, "I don't want you to put the limits
16 on." What -- how does he make a determination as to what to
17 ask you for?

18 MR. SAWYER: We give him a loss run total about
19 what the remaining limits we believe are. And the --

20 THE COURT: Well, he doesn't have the ability to
21 check behind you on that, in your view?

22 MR. SAWYER: And that's where we fight that out in
23 culpable issue. That's what the next step is.

24 THE COURT: I understand. I don't -- you know, I
25 don't want -- it is of no moment to this Court, that that's

1 the way you normally handle things. The way you normally
2 handle things does not -- very many times -- include a
3 Receivership.

4 We have a very unusual situation now, which is a
5 Receivership. And the Receiver has certain fiduciary
6 obligations quite apart from just the obligations of a
7 Defendant and its lawyer. And one of those obligations is
8 to have the authority to make what it believes are fair
9 settlement offers in mediation.

10 And it is a defunct corporation, and cannot
11 possibly use any assets other than the assets of your
12 policy. And in order to understand what that asset is, they
13 need to know what material influences you to say what your
14 coverage is. And if you don't give them that information,
15 they are stuck with simply saying we have to accept what is
16 said.

17 MR. SAWYER: Your Honor, I don't want to step on
18 the shoes of Mr. Dworjanyn, who I believe is going to
19 argue about Howard v Allen, a South Carolina Supreme Court
20 that deals with whether or not our liability policy is and
21 is not in terms of it being a res or not a res, or subject
22 to attachment.

23 So I don't want to step in that argument, because
24 I think somebody else is prepared for that.

25 THE COURT: That kind of case has nothing to do

1 with what we're talking about here. But I'll be glad to
2 hear from him. I'm very familiar with that case. It has
3 nothing to do with what we're talking about.

4 All right.

5 MR. SAWYER: Fair enough. Your Honor, I guess
6 these are my main points. I don't believe that these
7 payments are made through the Receiver, they're made outside
8 the Receiver. And the Receiver -- even the ones appointed
9 by the Court -- he can't change the contractual rights of
10 the carriers in terms of the size amount that's being made.

11 THE COURT: The verdict and the responsibility of
12 liability is solely with your insured.

13 MR. SAWYER: I didn't dispute that, Your Honor.

14 THE COURT: You fight like that, if we ever put
15 you as a co-defendant in there.

16 MR. SAWYER: You are right. You are right.

17 THE COURT: That is so -- he -- your statement
18 makes no sense whatsoever. The only way that he's got an
19 asset to respond is an asset he paid for when the company
20 was still in business, and when you wrote policies, that
21 were occurrence-based policies and not claims-made policies.

22 And he is certainly entitled to plumb the depths
23 of whatever it is that leads him to the information about
24 what his assets are.

25 MR. SAWYER: Your Honor, I appreciate it. I don't

1 have anything else to say.

2 THE COURT: All right.

3 MR. SAWYER: I appreciate it, Your Honor.

4 THE COURT: Yes, sir.

5 MR. DWORJANYN: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. DWORJANYN: Peter Dworjanyn on behalf of
8 Zurich Insurance.

9 THE COURT: Wait a minute. Hold. Say your name
10 again.

11 MR. DWORJANYN: Yes. Peter Dworjanyn.

12 THE COURT: Peter, spell that for me.

13 MR. DWORJANYN: D-W-O-R-J-A-N-Y-N.

14 THE COURT: Okay. You're here on behalf of?

15 MR. DWORJANYN: Zurich Insurance Company.

16 THE COURT: I hope you will not tread the same
17 path that's been treaded before. If you've got something
18 additional to add, that's fine.

19 MR. DWORJANYN: And that's how I wanted to start.
20 Because in general we would -- we're not a monolith with the
21 other insures, but in general I agree with their positions
22 they've taken. I do want to expand on a couple of things.

23 We do object to the Court's jurisdiction over
24 Zurich in this matter for a couple of reasons. One, Zurich
25 has never been served with anything. They've never been

1 correctly served with any documents that would require them
2 to come to court. And if they were, then that would be
3 something that they could challenge.

4 Number two, I don't think that -- based on Howard
5 vs. Allen -- I don't think the fact that the Receiver has
6 insurance policy gives the Court jurisdiction over the
7 out-of-state insurance companies to be summoned to court, or
8 to provide -- to make people come provide discovery in
9 mediation, or any of that.

10 But a question that you ask a lot of times, which
11 I -- it's easier to sit there and listen than it is,
12 sometimes, to argue -- which, I think, you made -- without
13 being disingenuous -- a solid -- a good point. Was ^{it} does
14 the fact that they're entitled to something in Federal Court
15 mean they're not entitled to something outside of Federal
16 Court? The answer to that is, no.

17 If an insured -- the insurance company always has
18 a duty of good faith and fair dealing to its insured. So
19 the question is, what information is the insured asking for,
20 and is it reasonable for the insurance company to provide it
21 or not? So what's the purpose of it?

22 We've provided -- and just to build on something
23 that Mr. Ogburn said earlier as to what our expectations
24 were today. I fully expected to come here and -- not unlike
25 Counsel for Wall Templeton -- for the Court to be advised

1 that we've been provided with a lot of information. We're
2 continuing to work on some things, but at this time there's
3 no need for a Court ordering people to do something, because
4 the order is going to change -- may create issues.

5 That's what I thought was going to happen, instead
6 of showing cause today why we shouldn't be ordered to
7 provide information. But we -- with respect to what they're
8 asking for, to my knowledge, they have never asked for
9 underwriting files. I wasn't aware that they were asking
10 for all of our claims files. If it was in a motion or the
11 Order they submitted, then I missed that.

12 But there were a lot of things in the Order.
13 There were things in the Order which Your Honor never told
14 them to put in the Order. Things like finding carriers in
15 contempt for not having personal representatives at the
16 hearing. So, neither of the Orders were signed, so I
17 thought we were going to talk about the merits of that.

18 THE COURT: And we are. That's what we're talking
19 about right now. It's kind of gotten pretty disjointed,
20 because the Plaintiff has given me a status report on
21 insurer's coverage, and now y'all have gotten into the nuts
22 and bolts of the Rule to Show Cause, and jurisdiction, and
23 all of the rest of it.

24 MR. DWORJANYN: Well, I think it's because she --
25 they came up and asked you for an Order today, ordering

1 us -- ordering us to provide them with information.

2 THE COURT: That is what they're asking for.

3 MR. DWORJANYN: Right, I think that's ---

4 THE COURT: But Mr. Smith has got a whole Order
5 that he has proposed. And he hasn't gotten up and given one
6 argument about it yet. All right, Ms. Spitz has given me a
7 very good landscape of the cases pending, the insurance
8 policies, the insurance that they want, and the materials
9 that they want.

10 All right. Y'all have gotten into an argument
11 about jurisdiction and Rule to Show Cause. So its kind of
12 gotten a little bit off tract. I don't mind hearing from
13 you, but frankly I think the thing to do first is to ask the
14 Plaintiff to explain exactly what they want today -- or the
15 Receiver to explain exactly what they want out of Court as
16 an Order, and then you all can respond. Does that make
17 sense?

18 MR. DWORJANYN: Yes, ma'am.

19 THE COURT: I'm not fussing with you.

20 MR. DWORJANYN: No, I understand that. That makes
21 perfect sense.

22 THE COURT: Okay.

23 MR. DWORJANYN: Thank you.

24 THE COURT: All right. It's about twenty minutes
25 to twelve. Madame Court Reporter, a little teeny break?

1 THE COURT REPORTER: That's fine.

2 THE COURT: You're good?

3 THE COURT REPORTER: I'm good.

4 THE COURT: All right, how about it? Shall we
5 proceed? Ms. Spitz, did y'all want a break?

6 MS. SPITZ: Yes, Your Honor, we're ready to move
7 forward. I expect to be brief with my response, and I think
8 Mr. Protopapas had a ---

9 THE COURT: I don't think you need to respond. I
10 think we need to get into the nuts and bolts of what
11 Mr. Smith is going to say about the Rule to Show Cause.

12 MS. SPITZ: Yes, Your Honor. And we're good with
13 that. I did want to make ---

14 THE COURT: The tic for tat about whether you
15 asked or whether you didn't ask, I -- all right, if that's
16 the best they got, it's not going to be very persuasive.
17 I'll just put it that way.

18 MS. SPITZ: Yes, Your Honor. And just a point of
19 clarification. We are not asking for a Show Cause Order
20 when we're requesting this information. We're requesting
21 information with the Court's oversight. I do want to make
22 that point clear.

23 THE COURT: Yeah. But I've got to have a vehicle
24 for doing it. And they are saying they're not going to play
25 nice and just do it on the basis of the status conference.

1 They are going to contest any authority unless the Court
2 orders them. That's been very clear from what Mr. Ogburn
3 said, and what Peter Dworjanyyn said.

4 So -- and I'm not going to get into a back and
5 forth about that. But I think a way to clarify it, is to
6 talk about the vehicle that can be used -- all right,
7 clearly can be used -- to require what they are otherwise
8 unwilling to give. And it's clear to me now that they take
9 the position, since they got coverage litigations pending in
10 North Carolina, they're not going to voluntarily give up
11 their claims and underwriting files.

12 MS. SPITZ: Yes, Your Honor.

13 THE COURT: So I think the thing to do, is to go
14 on forward. One of the vehicles for making that
15 requirement -- and the most traditional vehicle is the Rule
16 to Show Cause. So that's what Mr. Smith is going to argue
17 about right now, and they can respond.

18 Another vehicle would be the use of Discovery,
19 Rules or subpoenas in connection with each of these
20 litigations. But what the Receiver has chosen to do, is to
21 ask me to exercise my supervisory powers over the
22 Receivership. And I think that's what Mr. Smith is going to
23 argue in front of me right now.

24 MR. DWORJANYN: Your Honor, may I just say one --
25 no?

1 THE COURT: Yes, sir. But I'm going to be
2 inpatient if this is going to be another little argument
3 that you're really going to make after Mr. Smith.

4 MR. DWORJANYN: I wouldn't necessarily say the
5 Receiver is not entitled to information. I wanted to know
6 what he was asking for, and that he might be ---

7 THE COURT: He's asking for the claims and the
8 underwriting files, period, end of conversation. You have
9 stood -- the very first thing out of your mouth was, that we
10 don't have jurisdiction to require that. That there is a
11 process that has to be followed.

12 But Mr. Ogburn also made it abundantly clear that
13 he -- although he dodged around it a lot of different
14 ways -- but made it abundantly clear that he believed the
15 Federal litigation precludes any requirement or obligation
16 to provide this -- these files in these personal injury
17 cases, or in connection with the administration of the
18 Receivership. Sentry said the same thing.

19 So I got a picture of what position is being
20 taken. And therefore I'm going to get the Receiver to talk
21 to me about the vehicle it has chosen to employ to try to
22 get information that you are not going to voluntarily give.

23 I'm not going to have ten different hearings on
24 slices of this issue. I'm going to have a hearing. I'm
25 going to sign an Order. And if there's some problem about

1 it, we'll have a hearing on the enforcement of the Order.
2 But this concept that we're going to go through a bunch of
3 auxillary litigations interferes with the main thing I'm
4 here to do, which is try these asbestos cases, and
5 administer their disposition.

6 I'm not going to get involved in offshoots. We
7 would never get to the main thing at issue here, which is
8 gettings these PI cases disposed of if we followed the idea
9 of having little baby steps every step along the way --
10 which all these arguments continue to be propound.

11 MR. DWORJANYN: Yes, Your Honor. I was just going
12 to say -- I would not say -- Zurich would not say he's never
13 entitled to any of the information he requests outside of
14 discovery.

15 THE COURT: You're repeating yourself.

16 MR. DWORJANYN: There's -- there's -- I'm sorry?

17 THE COURT: You're repeating yourself. Go ahead.

18 MR. DWORJANYN: Okay. Thank you, Your Honor.

19 THE COURT: Yeah. I think the best thing to do,
20 let's hear from Mr. Smith, and then you can tell me what you
21 want to tell me about what you all are willing to do.

22 Mr. Smith.

23 MR. SMITH: Thank you, Your Honor. May it please
24 the Court. For the record, I'm Murrell Smith, and I
25 represent Covil in this case.

1 Judge, let me just -- as a way of a background on
2 how we got here -- and this is moving parts and our
3 positions has kind of evolved as I hear some of these
4 arguments. So we're going to have to try to work our way
5 through this as to where we stand. But, obviously, we
6 appeared before you and filed a motion to have the Court
7 issue an Order of Rule to Show Cause.

8 We came before you on July 11th. And we made an
9 argument. There were two arguments. And I'll talk about --
10 well one argument was about the insurance policies, and
11 producing us the information.

12 So before we came to the hearing today, we were
13 going to tell the Court -- you know, the Court will continue
14 to tell them to continue to cooperate -- provide an Order.
15 We really are not interested in the Rule to Show Cause,
16 because they have made some good-faith efforts -- each of
17 them in their own individual capacity -- to give us
18 information. We still need more information, and we want to
19 work with them.

20 Well, today I've heard that, "No, you're not
21 entitled to any of the information." So I'm trying to
22 scratch my head as to, you know, how we thought we were --
23 we were close to having this issue resolved and that they
24 were working towards giving us the information, and all of a
25 sudden, now they're coming into court and telling the Court

1 they're not.

2 And they're raising jurisdictional issues and
3 every other issue that we're going to have to address
4 through this. And certainly the one thing that I want to
5 make sure of, is that we do this right. I mean, you know,
6 they made it abundantly clear that the litigation is no --
7 is no stumbling block or road block for them. That they'll
8 litigate this as far as they go through their conduct here.
9 And so I want to make sure we get our -- procedurally, we're
10 in the right place when we move forward.

11 What we did, Judge, is we came -- it was that, and
12 then it was also -- just to bring you back -- and I've lost
13 some of these terms that I've heard from the opposing side.
14 You know, last time it was an amorphous process. And today
15 it's a slippery slope. And, you know, we're going through
16 these other issues here that -- you know, that just try to
17 obscure what we're trying to do here.

18 And the heart of the thing -- there's two things
19 that we need. We need the insurance policies. And the
20 other issue is -- we're not going to let go -- we want to
21 hear on this email from Mr. Gollogly about -- that he did
22 when he violated the mediation privilege. And we brought
23 that up -- just to bring to the Court's attention. And he's
24 here. He's here to argue.

25 You may recall last time, he's the one that filed

1 the action and asked for your tort case to be removed. And
2 there was no doubt he used your tort case. I heard today
3 that they weren't removing tort cases. They did. They used
4 your tort case to try to remove it. And they instructed you
5 that you couldn't have a hearing.

6 And so you have to bring him into court, and they
7 wouldn't even come to court. We had to send the clerk out
8 there to bring him into the courtroom. So that issue, right
9 there, is we asked -- you told us that we could have a Rule
10 to Show Cause against USF&G as a result of that.

11 So we did what the Court instructed us to do. We
12 filed -- we prepared an Order -- a Rule to Show Cause.
13 Submitted it to the Court. And, of course, what always
14 happens here, Judge, they start objecting. They brief.
15 They get the issues confused. And so we stand here today --
16 in all sincerity -- without the Order of Rule to Show Cause
17 -- a mechanism.

18 And they're obviously raising jurisdiction. I
19 heard Mr. Ogburn say that, as well as Mr. Sawyer say that,
20 that we don't have jurisdiction because they've never been
21 served with anything. So if that's the case, Judge, you
22 know, we've got two routes to go, and we'll do whatever is
23 the pleasure of the Court to do.

24 Because, obviously, you've put them on notice.
25 But we also said in the transcript that we would issue an

1 Order of Rule to Show Cause and serve them. And they're on
2 notice that they are here today to deal with these two
3 issues on the contempt. But if they're going to raise
4 jurisdictional issues -- and we certainly would leave that
5 up to the Court's discretion.

6 I just would ask the Court to let us prepare and
7 sign the Order of Rule to Show Cause. We'll serve the
8 insurance department. And we'll be here to be properly
9 before this Court and deal with their conduct that they've
10 engaged in -- both from the lack of ability of abiding by
11 the Orders and producing the information to the Receiver on
12 the insurance policies.

13 Because, today, now -- unless they change their
14 position from what we just heard earlier -- they go back and
15 we're going to get the information -- we're going to,
16 obviously, either have to get an Order, or we're going to
17 have to litigate that issue through a Rule to Show Cause.

18 Alternatively in concurrence of that, I'll also
19 like the right to be able to move forward in regards to the
20 violation of Rule 8 of the mediation. And that was your
21 Order, Judge, that ordered them to go to mediation. And
22 they took a confidential mediation email, and they attached
23 it and filed in the Federal Court to try to prevent us from
24 exercising jurisdiction of our legal malpractice case in
25 State Court.

1 And so that is material. And that is -- and
2 that's the basis of what we're doing here today. So, you
3 know, Judge, I'll leave it in your discretion how you want
4 to proceed. But, you know, if they're going to raise
5 jurisdictional issues, we rather not get into jurisdictional
6 issues. We'd rather appear and come here and have the --
7 adjudicate this case on merits.

8 THE COURT: For number one, I think it's
9 abundantly clear that they -- although there's been some
10 cooperation and that's a good thing. All right. They're
11 not going to cooperate by giving you the foundation for the
12 information you want about how much coverage they've got.
13 And they've got all kinds of things to say about that --
14 some of which are jurisdictional, and some of which are --
15 it's in the Federal Court, State Court can't get it, and so
16 forth.

17 I think that's best dealt with by a Rule to Show
18 Cause. And the only thing we're talking about then is
19 whether to go on and sign your Rule to Show Cause, or their
20 Rule to Show Cause.

21 MR. SMITH: Yes, ma'am.

22 THE COURT: And my current inclination is to sign
23 yours, but I would hear from them on it.

24 MR. SMITH: Okay.

25 THE COURT: All right. The second thing -- and I

1 am -- I think all sides should absolutely be prepared to
2 argue that today -- and that is the contentions with respect
3 to the violation of mediation privileges in connection with
4 the matters you talked about, them filing in Federal Court.

5 So I -- all right. If you want to discuss any of
6 the provisions of the Rule to Show Cause, that's fine. I
7 have got your Rule and your memorandum, and I am inclined to
8 sign your order. I think perhaps the best, most efficient
9 way, to deal with things -- having said that -- is to let
10 them say what problems they got with your Rule.

11 MR. SMITH: Judge, early on in my career I learned
12 when the Court is inclined to do something I requested, sit
13 down. And I'm going to sit down.

14 THE COURT: All right, now -- what I would like to
15 go on and do is deal with the confidentiality of the email
16 issue. Is that something you're going to handle, or is that
17 something that Mr. Protopapas is going to handle.

18 MR. SMITH: I'm handling that, Your Honor.

19 THE COURT: All right. Why don't we first get
20 their position on the Rule, then I'll get you back up here
21 on the email.

22 All right, Mr. Protopapas?

23 MR. PROTOPAPAS: Briefly, Your Honor. The Rule to
24 Show Cause that we presented to the Court in Mr. Smith's
25 letter on August 9th, I am removing the Rule to Show Cause

1 for failure to appear to the July 11th hearing. I advised
2 these Defendants that I understood we disagree. We're
3 making progress. I will not ask this Court to sanction them
4 for not having their clients appear on July 11th.

5 THE COURT: All right, sir.

6 MR. PROTOPAPAS: That's a gesture of good faith to
7 them. The document issue, Your Honor, I'll leave to them to
8 address. But I did advise them I was not seeking that
9 relief from them, and I stay true to that word.

10 THE COURT: Okay. So ---

11 MR. PROTOPAPAS: I will give you a modified
12 proposal later.

13 THE COURT: So have you got a modified proposed
14 Order?

15 MR. PROTOPAPAS: I apologize, Your Honor, I do
16 not, but I can get one emailed to the Court today.

17 THE COURT: All right. So the modified proposed
18 Order -- let's just look at your proposed order for a
19 minute, because I want to give them adequate ability to
20 respond right now. I don't want to have another hearing, on
21 the hearing, on the hearing.

22 All right. How about just go through that Order
23 and tell me what you would want to strike from the Order.

24 MR. PROTOPAPAS: Your Honor, Category 1 on Page 9
25 is accurate and we're requesting -- which is to deal with

1 the mediation privilege. Category 2 ---

2 THE COURT: Wait a minute. You want to strike
3 that?

4 MR. PROTOPAPAS: No I will keep them, Your Honor.

5 THE COURT: You want to keep that, right.

6 MR. PROTOPAPAS: Yes, Your Honor.

7 THE COURT: Category Number 2?

8 MR. PROTOPAPAS: Yes, Your Honor. Category
9 Number 2, which deals with the production of information ---

10 THE COURT: Right.

11 MR. PROTOPAPAS: --- from the carriers, we are
12 keeping, Your Honor.

13 THE COURT: Right.

14 MR. PROTOPAPAS: On Category 3 ---

15 THE COURT: Hang on for a minute, with that. With
16 Category 2 -- all right. Where in Category 2 have you -- do
17 you specifically mention the claims and -- it certainly
18 includes limits of policies. If you don't think it's
19 elsewhere, you need to make a specific -- they want a
20 specific direct request for the policies, for the claims
21 files, and the underwriting files.

22 MR. PROTOPAPAS: Your Honor, I have a list of -- I
23 tried to avoid this -- of twenty-two very specific questions
24 that I can include -- apparently that's what I'll have to
25 do.

1 THE COURT: That's what you're going to have to
2 do. Because otherwise they -- we're not going to get any
3 place. So have you got the list that you can share with me
4 and with them?

5 MR. PROTOPAPAS: Yes, Your Honor, if you'll give
6 me a moment.

7 THE COURT: All right. Let's do that.

8 MR. PROTOPAPAS: And, Your Honor, this is -- may I
9 approach?

10 THE COURT: Yes, sir.

11 (Mr. Protopapas hands the document to the Court.)

12 MR. PROTOPAPAS: Your Honor, this was not a
13 document I intended to provide to the Court today. But the
14 list of the questions were the things I wanted to ---

15 THE COURT: And you're drawing my attention to
16 Rule -- to Number 5?

17 MR. PROTOPAPAS: Page 5, Your Honor. There's a
18 list from -- starting on one -- Number 1 through 23. My
19 intention, Your Honor, was not to have to do this with the
20 carriers, but to have a cooperative effort before this
21 Court, to ensure I got the information I wanted.

22 I told them I would not seek sanctions for
23 attorney's fees, cost, or any of those things for prior
24 conduct as it pertains to documents. And it's unfortunate
25 they accepted that olive branch to be, I would never want

1 more information from them in this Court. I do not know how
2 that could have been the impact.

3 But if a Rule to Show Cause is where we have to
4 go, that's ---

5 THE COURT: I think it is. I mean, this idea that
6 we're going to kind of be cooperative, simply means we're
7 going to have repetitive hearings at which when we get to
8 the barn door they're going to say, "Hey, you don't have any
9 authority to make us do anything."

10 MR. PROTOPAPAS: Yes, Your Honor. And so, Your
11 Honor, because there are policies that are missing in the
12 chart that's been provided to the Court, there are
13 incomplete policies and sample policies.

14 The first grouping of requests are all geared
15 towards identifying the actual policy and having a
16 certification from these carriers that there are no other
17 policies, and these are indeed the policies of the Covil
18 including for years that are missing or incomplete.

19 If they cannot make that certification, Your
20 Honor, then we want the samples and all the other items that
21 go with it. I want to know about their efforts to locate
22 these policies. Who did it? Who's looking? Have you gone
23 into libraries that have your historic policies? And each
24 of these -- of exemplars and so forth, one after another,
25 after another -- are questions that speak directly towards

1 Covil Corporation's insurance policy and the underwriting
2 files.

3 If you'll look at page -- Question 6, "Provide all
4 underwriting files related to workers compensation
5 injuries." Number 5, "Provide all underwriting files to
6 general liability or product liability insurance." These
7 are the requests of documents that we want from them, Your
8 Honor.

9 And if the Rule to Show Cause hearing -- if it
10 does take place, I would want a witness. And I will be
11 specific in the subpoena to them, so they can have them
12 prepared to answer our questions regarding what policies
13 they have, and what efforts they've done to locate them.
14 And how they ran Covil for thirty years and what decisions
15 they made. The impact, the limits of the policies when
16 appear at mediation in Hopper, Rollins and other cases.

17 THE COURT: Mr. Protopapas, all right, you know
18 they contend that because they're not a party to any of
19 these cases, that you can't just subpoena them. Might be
20 able to use discovery. But they say the discovery tool is
21 used to get to admissible evidence, and the coverage issues
22 are not admissible evidence.

23 So the subpoena is not available to you. What is
24 available to you, is a Rule to Show Cause in connection with
25 your administration of the Receivership. And the documents

1 you've just shown me is a pretty straight forward request
2 that because they are not -- because you do not understand
3 how you can have full authority for claims mediation without
4 knowing the policies and insurance coverage that you are
5 requesting that they give you all this stuff.

6 This may be the very stuff you're also litigating
7 in Federal Court. All right. They sometimes say that that
8 litigation precludes this, and they sometimes say
9 differently.

10 MR. PROTOPAPAS: Your Honor, within the
11 Receivership I need this information to manage the personal
12 injury docket before this --

13 THE COURT: And to participate in the mediation of
14 the cases.

15 MR. PROTOPAPAS: Yes, Your Honor.

16 THE COURT: All right, sir. I get that and I
17 understand that.

18 MR. PROTOPAPAS: And, Your Honor, I would point to
19 the two things, first. It's TIG -- an insurance company in
20 this case -- has bent over backwards to satisfy me. They do
21 not need to be part of any Rule to Show Cause. They have
22 done everything they can to satisfy me. And the other
23 carriers have made great strides. I did not want it to come
24 to this quell, but it's ---

25 THE COURT: Well, I think it's the best way to

1 handle it. Then we can issue a Rule to Show Cause, which
2 simply says with respect to all these enumerated things that
3 you want, they need to Show Cause, and it will be at some
4 soon time -- as soon as I can schedule it -- as to why they
5 shouldn't have to produce these things.

6 MR. PROTOPAPAS: And, Your Honor, what I can do is
7 prepare a modified Rule to Show Cause off of the August 9th?

8 THE COURT: No -- yeah, an Order.

9 MR. PROTOPAPAS: An Order, Your Honor. And I can
10 email to you with the categories.

11 THE COURT: Okay. All right. Now let's hear from
12 them about what they think ought to be in the Order, if it
13 ought to be an Order at all.

14 Peter, you want to start? If you're going to say
15 something about jurisdiction, I think you've made your
16 points about that. You can summarize if you want to. Come
17 up to the podium if you're going to make a presentation
18 about it.

19 MR. DWORJANYN: May it please the Court, Your
20 Honor. I haven't seen the list before. What I was -- if I
21 was -- the insured asked me to provide information, I would
22 say with -- how is it, why do you need to know it, and
23 what's the issue?

24 If we're -- if Zurich isn't denying coverage on a
25 policy based on some information that is in underwriting

1 files from policies that were issued in the 1970s -- if
2 we're not denying coverage -- I would say, "We'll see --
3 I'll see if we can get them." But I don't even know where
4 the underwriting policies issued -- policies issued in the
5 1970s are, and what would be the effort necessary to get it.

6 So at -- I mean, my response would be to any
7 insured who asks for information, "Okay, why do you need it?
8 And I'll see if we can reasonably provide it," and talk to
9 the insurance company about it. I wouldn't say just as a
10 blanket rule you're not entitled to anything. But I also
11 don't think -- we've provided him with stipulations as to
12 policies. So he's obviously entitled to that.

13 We've provided him the list through claims -- he's
14 said on those things. Just -- you know, all of these -- all
15 of this information here, I don't think is relevant to how
16 much insurance is available to settle any particular claim.

17 THE COURT: Well, that you can assert in whatever
18 you want to say after I issue this Order, and we have yet
19 another hearing on this thing. All right. But as I
20 understand it -- although your Order is kind of at variance
21 with that -- at least the Order that Hartford submitted and
22 the brief and Order that USF&G submitted.

23 But as I understand it, you say the jurisdiction
24 of the Court to manage the Receivership does not include the
25 authority to make you give them the information that's

1 requested in this list of 20 something things, right?

2 MR. DWORJANYN: Yes, Your Honor.

3 THE COURT: Well, that will be something that you
4 can assert when you answer the Rule to Show Cause. Anything
5 else that you want to add about this?

6 MR. DWORJANYN: No, Your Honor, other than we will
7 look through this and we might -- we might provide some of
8 this information.

9 THE COURT: I would hope so. And I would hope
10 whatever the battle ground is going to be, that it will be
11 on the things that you don't want to provide.

12 MR. DWORJANYN: And whether it reasonable for his
13 purpose, yes, sir -- yes, Your Honor, that's all -- that
14 would be my only response to this.

15 Q. All right.

16 MR. DWORJANYN: All right. Thank you.

17 THE COURT: Anything further, anybody, on the Rule
18 to Show Cause?

19 MR. OGBURN: May I approach?

20 THE COURT: Yes, sir. That's exactly what I want
21 you to do.

22 MR. OGBURN: The answer to your question is, I
23 don't think so. I just want to make sure I understand what
24 this Rule to Show Cause will say. I understand that the
25 Receiver will ask for a Rule to Show Cause on Item Number 1

1 in his proposed Order. That will be on Page 9 -- Roman
2 Numeral I. Although I understand you'll have argument today
3 on that issue.

4 THE COURT: Yeah. We're going to have argument
5 today on the violation of the confidentiality thing. That's
6 something separate and apart. This is just -- the gist of
7 this Rule to Show is going to be that he has requested, as
8 Receiver, in connection with his administration of Covil
9 defense in the personal injury cases, and in connection with
10 his administration of the mediation by Covil as Defendant in
11 these cases, he is requesting all of this information about
12 coverage.

13 And you may -- your response may be, to provide
14 some of it, and we'll battle over the things you don't want
15 to provide. And if you've got any jurisdictional things you
16 will insert them then.

17 MR. OGBURN: Yes, ma'am. I understand, Your
18 Honor. We had not seen that before, so I can't address
19 that, specifically.

20 THE COURT: Right. I understand.

21 MR. OGBURN: And don't believe, actually, we have
22 any dispute with the Receiver about USF&G policy. The
23 certified copies have been produced.

24 THE COURT: Well, they have gotten -- I will draw
25 your attention to the detailed listing that has been made

1 under Tab 2 of the materials submitted to me. And this is a
2 huge number of policies that they assert covered them for
3 the years 1954 through 1963 on some of them, and it just
4 goes through a bunch of them. And in each case they are
5 asking for those policies and other information related to
6 coverage. You understand that?

7 MR. OGBURN: I saw that this morning, Your Honor.

8 THE COURT: Okay.

9 MR. OGBURN: And that's how much I know about
10 that.

11 THE COURT: Okay, good.

12 MR. OGBURN: We will -- I'll find out more about
13 that.

14 THE COURT: All right, sir.

15 MR. OGBURN: I understand they're asking for the
16 information in Roman Numeral II of the prior proposed Show
17 Cause.

18 THE COURT: Yeah. And that's going to be expanded
19 to list, specifically, all of these things that are on
20 Page 5 of the draft that they need to send me.

21 MR. OGBURN: Mr. Protopapas and I agreed that
22 there are six items in this Item Number 2 -- we agreed to
23 five of the six two days ago. And the other one I didn't
24 think was a dispute -- it has the identity of the person who
25 made the decision about allocating -- we will resolve that.

1 THE COURT: Yeah.

2 MR. OGBURN: And Item Number 3, I understand is
3 withdrawn.

4 THE COURT: Well, I just think -- you know, y'all
5 wanted it to be a cooperative thing where I just say,
6 kumbaya, everybody is exchanging information, and therefore
7 don't do it. But then the minute we start talking about
8 specifics, it was all a jurisdictional issue, and you don't
9 have any authority to do this, and we've never been asked
10 for that.

11 I think the way to cut to the chase on that, is to
12 have a specific list of things, and then you specifically
13 respond -- you and Sentry and all the other companies,
14 Zurich, et cetera -- respond very specifically, "I gave
15 this. I did not give that," and we'll have a hearing on the
16 things you won't give them -- or can't give them, or say
17 don't exist or whatever.

18 MR. OGBURN: Understood.

19 THE COURT: And I'm not fussing with anybody about
20 that. This is very complex, and it's a lot of information,
21 and a lot of old cases. And in fairness to your client, we
22 need a specific list like this that you can then look with
23 your client and decide what you can and can't -- as a matter
24 of ability -- and what you won't -- as a matter of legal
25 position. No problem.

1 MR. OGBURN: Thank you, Your Honor.

2 THE COURT: All right, sir. Anything further from
3 anybody else?

4 MR. RUGGERI: Good afternoon, Your Honor. James
5 Ruggeri for Hartford. I submitted the letter in the
6 proposed Order. I rise just to get clarification from the
7 Court. If we are turning to Mr. Smith's proposed Order, and
8 the Court wonders why I submitted what I submitted in
9 Section 2, which I think is the one, that concerns Hartford.

10 That second paragraph doesn't bear resemblance to
11 the discussion that we had on July 11th, including a request
12 to hold my client in contempt for failing to appear at
13 mediation. I think Mr. Protopapas talks about an
14 evidentiary hearing. No one needs an evidentiary hearing
15 because we're all people of honor, including the Receiver
16 and his Counsel. And if we have agreements, who needs to be
17 at the mediation and who doesn't need mediation, I think
18 both side will stand by that agreement. Which is one of the
19 issues that I raised in my letter.

20 The other issue that I would raise is, there is --
21 in my view -- a new request for information from the
22 carriers. And we will respond to that. That's the list of
23 23 items. If we go to back to July 11th, the hearing, in
24 the Order To Show Cause, the notion of the statement was
25 that carriers violated the March 4th Order -- Order that the

1 Court had entered that day.

2 That Order -- and I have it here, and I'm happy to
3 hand it up if the Court doesn't have it -- actually discuss
4 the production of underlying Defense Counsel's files to the
5 Receiver. It didn't discuss the production of claims files
6 or underwriting files to the Receiver.

7 And, again, I say that because the proposed Order
8 To Show Cause that you receive, didn't just make the request
9 that we have here today. It actually asked the Court to
10 hold my client and the other carriers --

11 THE COURT: He says he's not pursuing that. Why
12 are you arguing it?

13 MR. RUGGERI: And that's my -- as long as that --
14 that part of Section 2. And perhaps -- I'm happy to work
15 with the Receiver to document that to --

16 THE COURT: I believe they will work with you on
17 that, will you not, Mr. Protopapas?

18 MR. PROTOPAPAS: I will, Your Honor. I'm not
19 seeking to hold Hartford in contempt.

20 THE COURT: He's already said, he's not pursuing
21 that.

22 MR. RUGGERI: Thank you, Your Honor.

23 THE COURT: Yes, sir. I mean, it is a little bit
24 of an ire that you talk so much about what took place in
25 July when y'all wouldn't attend. But be that as it may.

1 MR. RUGGERI: I had the pleasure of being here in
2 July, and the pleasure again today, Your Honor.

3 THE COURT: Yes, sir. All right. Are we clear
4 that Mr. Protopapas will draw us a Rule to Show Cause Order,
5 and the primary focus of it is not going to be what took
6 place in the past, it's going to be what they need and want
7 in the future?

8 All right. I'm going to look at my calendar right
9 now, if I can find it. I want to set a date right now for
10 this Rule to Show Cause hearing if that's possible -- or
11 make some suggestions. Because I have -- my bailiffs has to
12 apply for court space and everything else. But let me see
13 if I can't give you some suggested dates.

14 Mr. Protopapas I want the Rule to Show Cause back
15 to me -- today is Friday -- by Tuesday of next week.

16 MR. PROTOPAPAS: Yes, Your Honor.

17 THE COURT: That will give you -- I would hope you
18 would go home and write it up today and send it to your,
19 opposing Counsel. And then I will be prepared to sign
20 something when I get it -- unless opposing Counsel has got
21 something to say about it.

22 Send it to them, send it to me, all right, today.
23 And then I will be prepared to do something -- if I don't
24 hear anything further -- by Tuesday.

25 MR. PROTOPAPAS: Yes, Your Honor.

1 MR. DWORJANYN: Your Honor, may I ask the Court in
2 terms of when you set the hearing, the category of documents
3 here is pretty broad that he's going to submit. And these
4 are -- and they're historic and involves companies that have
5 been acquired, dissolved and so on. And quite honestly, it
6 make take a little while to be able to even say we have
7 these documents, or we don't have them, or we can find them,
8 or we can't find them.

9 So just in terms of when you set the hearing, I
10 would ask for -- to consider that.

11 THE COURT: Well, the next one of these cases is
12 up for trial in November, is it not?

13 MR. PROTOPAPAS: It is your, Your Honor.

14 THE COURT: And when is the mediation scheduled
15 for?

16 MR. PROTOPAPAS: October 3rd and 4th, I believe,
17 Your Honor.

18 MR. SMITH: October 2nd and 3rd.

19 MR. PROTOPAPAS: October 2nd and 3rd, Your Honor.

20 THE COURT: Well, you see the bind I'm in. I mean
21 this thing of, "I don't have to do anything until my back's
22 against the wall," is the very thing I've been trying to
23 avoid with this. But rather than play nice, I've got a
24 situation now where it's either depend on your good graces
25 in the potential settlement of an individual case, or drop

1 the bomb on this Rule to Show Cause. That's my dilemma.

2 You got any suggestions?

3 MR. DWORJANYN: I can only say for me, but I've
4 been to every mediation and we've managed to settle cases.
5 I empathize, to some degree, with Mr. Protopapas, what he's
6 expressed. At the same time we get information -- as was
7 alluded to earlier -- the night before a mediation that
8 talks about when somebody worked somewhere.

9 THE COURT: They give you what they get from
10 Plaintiffs when they get it from Plaintiffs.

11 MR. DWORJANYN: Oh, I understand that. I'm not
12 complaining about Mr. Protopapas. But it's hard for
13 insurers to respond. You know, I can't respond to the
14 October 2nd and 3rd, mediation. I don't know how.

15 THE COURT: Well, surely you know enough to know
16 what that case is, and what your files are, and what your
17 and policies are, so forth and so on.

18 MR. DWORJANYN: Yes, Your Honor. We've provided
19 that to him already.

20 THE COURT: Please don't get into that again. All
21 right. He's going to need more than just the policies with
22 respect to that particular case in order to determine what
23 your coverage is. That's the problem. Now, you know,
24 what's going to be done there?

25 MR. RUGGERI: Your Honor, James Ruggeri for

1 Hartford. I haven't seen Numbers 1 through 23. It's a
2 almost a quarter after noon. Perhaps we can take a break
3 and talk to Mr. Protopapas about what information could be
4 provided without, I think you said, the hammer coming down.
5 Because the parties have been working cooperatively.

6 And I think it's a mistake to veer in that
7 direction if we don't need to veer in that direction.

8 THE COURT: It's up to you, Mr. Protopapas. I've
9 heard that before, several times.

10 MR. PROTOPAPAS: Your Honor, what I suggest is,
11 the Court's time is valuable. I know you have a 2:00 p.m.
12 I will prepare a proposed Order and send it to you. I will
13 talk with each one. And if we can resolve this before
14 Tuesday, I promise you we will work on it.

15 THE COURT: Okay. What I would like for y'all to
16 do is to do it that way. And also to discuss what
17 suggestions y'all can agree upon as to when the matter will
18 be heard -- the only thing you can agree about, okay?

19 MR. PROTOPAPAS: Yes, Your Honor.

20 THE COURT: All right. What we have remaining is
21 the issue of the violation of mediation confidentiality.
22 And I do want to hear that today, and I'm going to rule on
23 that today. We can take a short break. But I would like to
24 come right back before lunch, because I've got a 2:00 that
25 I'm going to try my darndest to make. All right. Let's

1 take a ten minute break.

2 (Recess.)

3 THE COURT: Please be seated. All right,
4 Mr. Smith.

5 MR. SMITH: Thank you, Your Honor. May it please
6 the Court. Let me make one correction. I get so confused
7 with so many parties here. I am the attorney for the
8 Receiver, not the Corporation.

9 THE COURT: Yes, sir. I noted what you said, but
10 I knew what you meant.

11 MR. SMITH: I wanted to clear that up. Basically,
12 we're going to rely on the brief, but I can give you a brief
13 recitation. And the brief has got almost all the exhibits
14 and maybe one email. Unfortunately, we didn't bring copies.
15 And so copies are being made this morning. I'll give it to
16 you.

17 But, Judge, if you would just refer to the
18 memorandum. Do you have a copy of that? It was in support
19 of our Rule to Show Cause when it was filed on ---

20 THE COURT: Yeah.

21 MR. SMITH: -- July -- June 27th of 2019.

22 THE COURT: All right. Yes, Section Two in the
23 file, USF&G, Sentry, Zurich, and Hartford Violation Rule,
24 right?

25 MR. SMITH: Yes, ma'am.

1 THE COURT: You may go forward.

2 MR. SMITH: And so -- so let me just say
3 throughout this process -- because obviously you're aware
4 that you issued an Order, and you issued an Order on
5 February 28th, 2019, for them to mediate four cases. And
6 there were four cases -- it was the Noland (phonetic), the
7 Green, the Thompson and the Taylor case.

8 And all of those cases -- all of those cases went
9 to mediation. And Tom Wills was the mediator. And on
10 March 4th through March 7th of 2019, he conducted mediation
11 in those four cases. They all signed the mediation
12 agreement. That is attached to our memorandum talking about
13 the confidentiality of the mediation. Two of the cases were
14 settled, and two of the cases were not settled.

15 And I think that's an important distinction as we
16 get through here. And the other two -- and obviously I was
17 not a party -- but, you know, the other two of them -- the
18 two that did not settle, they had agreed that they would
19 continue the discussions and continue the mediation.

20 I think it's important to note -- when you look at
21 this -- is as you are well aware, when you go through a
22 mediation in South Carolina State Courts, the mediator has
23 to file ADR certificate at the end. Either he says it's
24 settled, there was an impasse, and at some point we,
25 obviously, all get these cases and we say, "Let's let

1 some -- let's let some time pass and y'all continue
2 mediating." And so I only infer from Tom Wills not filing
3 the ADR certificate, that was my understanding, that the
4 parties were going to continue their mediation.

5 So when they did that, Trey Branham -- as you
6 know, who is the Plaintiff's attorney in these cases -- sent
7 an email to the parties -- and that would include those who
8 were represented with USF&G -- and said, "We have discussed
9 internally the issue requesting the Court to continue the
10 damages hearing in the Taylor and the Hill case" -- those
11 were the two cases that were not settled at the mediation.

12 And said, "I'll ask the Court for the following
13 conditions" -- and he talks about this attached group --
14 "Will work towards resolution on the global issue, in good
15 faith participating in at least weekly conference calls and
16 make sure things are moving forward." And I wanted to know
17 how the cases went in the -- which is really not related.
18 So he tells them, let's continue our mediation discussions.
19 Let's continue our talks, to try to resolve this case.

20 And we go on to this email -- and I'm going to
21 pass this up to the Court. It's in the process of getting
22 copied right now. But Mr. Ogburn sends a letter -- here's
23 the email. I got it. May I approach?

24 (Mr. Smith hands document to the Court.)

25 THE COURT: Sure. Thank you, sir.

1 MR. SMITH: So Mr. Ogburn emails the Receiver and
2 says -- the Receiver, obviously, asked, "Please" -- you see
3 at the bottom -- "Please keep me apprised of what occurs at
4 mediation" -- this is in April 7. And, Judge, for the
5 record and also my understanding, they went -- the
6 Defendants requested that they go to Texas and have a
7 mediation before the trial. So they went down to Texas and
8 engaged in -- in a mediation also there, and continued on
9 with the process.

10 And so Mr. Ogburn says, "We'll keep you posted.
11 Depending upon how it develops, we may seek your help. But
12 in any case, I hope you have a relaxing week next week off."

13 So here they are continuing to have mediation
14 discussions well into April at this point. So next we get
15 to -- we get to the mediation. Obviously that Texas
16 mediation didn't occur. And then there's some discussions
17 and some email chains which are attached to this memorandum
18 between the Receiver and Mr. Ogburn, again, and talking
19 about the term -- about settling the case.

20 And as you can see -- it's attached as Exhibit E
21 to this -- obviously you've got the notebook that's got the
22 information in it, too. So I apologize. Your Honor, it's
23 in the part -- it's at Tab 7.

24 THE COURT: Exhibit E?

25 MR. SMITH: Yes, ma'am.

1 THE COURT: That's on the Smith Robinson ---

2 MR. SMITH: Yes, ma'am. On the letterhead. I
3 think you can turn the pages -- hold on a second. That's
4 the wrong email.

5 THE COURT: Which one do you want?

6 MR. SMITH: I'll tell you. It is after those
7 cases settled, shortly thereafter that mediation. So this
8 is really the e-mail that's at issue. And it's Page 2,
9 there, if you'll look down. At some point we'd gotten into
10 this case. We had filed the case against Wall Templeton as
11 well as the insurance companies. And they had moved to
12 remove the case, and then filed a motion to dismiss.

13 And this is where -- where they ask on there. It
14 says, "The local rules require we consult you with the
15 motion to seal. We seek to seal attached confidential
16 settlement agreement. And we intend to redact Paragraph 1."

17 So let me go back to show you where -- what email
18 he's talking about in there. And that's an email between
19 Brady Edwards, who is also an attorney representing the
20 Receiver in this case. And that is attached as Exhibit C.

21 THE COURT: Hang on.

22 MR. SMITH: I should have had this tabbed. I
23 apologize.

24 THE COURT: I got it.

25 MR. SMITH: All right. In Exhibit C ---

1 THE COURT: The one I got is redacted in part.

2 MR. SMITH: That's correct. And we redacted it,
3 because obviously we can't complain that -- we can't -- if
4 it has -- certainly if they file it, then we should be able
5 to file what's redacted.

6 But this is the email in question. And, Judge,
7 what's important is to note up there, it's in the Subject of
8 the email, it says, "Covil - Subject to Absolute Mediation
9 Privilege." So Mr. Edwards is operating under that concept
10 that this is still mediated settlement discussions, because
11 the case has not settled yet. And they communicate with
12 some of the concerns and settlement issues that they have
13 with that.

14 And so that's where we fast forward into the email
15 we just last received, where Mr. Gollogly had asked if he
16 could file that under seal, was there any objection. I
17 note, Judge -- I think what's interesting about this, is he
18 changes the term from where Mr. Brady terms this as
19 confidential mediation settlement communication, and he
20 changes it to just settlement discussions in his email
21 that -- when he asked if he could file.

22 And obviously you see -- and back to "E" --
23 Exhibit E in this thing -- in this agreement that
24 Mr. Edwards says, "As you can see from the legend of the
25 email, itself, it is protected by absolute mediation

1 privilege. And as such we would object to the use of the
2 document for any purpose. Covil and our law firm similarly
3 object to any use of related discussions from our ongoing
4 mediation."

5 So, again, Mr. Edwards puts them on notice that
6 this is ongoing mediation communications, and do not file
7 it. And as you can see, that they've attached this as an
8 exhibit to their file and to their motion to dismiss. And I
9 think it's interesting to read what we have of their motion
10 to dismiss and why they're doing that.

11 It's in there. They again change the terms of
12 what they're saying. It says, "The insurers then engaged in
13 settlement discussions with the Plaintiff in the Hill and
14 Taylor actions, and kept the Receiver fully apprised of
15 those discussions. By email dated April 18th, the Receiver
16 agreed that with respect to the settlement Hill and Taylor,
17 Covil will cooperate with insurers and vindicate all
18 parties' rights against Wall and Templeton. Example email
19 exchange dated April 18th, 2019, filed under seal."

20 That is the point of this whole case. You read
21 Rule 8(a), mediation is confidential. There's exceptions to
22 it. None of those exceptions are met. And then when you
23 look at this, again, they are placed on notice that this was
24 a confidential mediation settlement. And they asked if they
25 could file it. Mr. Edwards told them, "No." And just like

1 they've done in the other things here, Your Honor, they went
2 ahead, and they took upon themselves that they're going to
3 file it anyway, and let the consequences fall as they may.

4 And so that's the concern we have. We have a --
5 we had an agreement. We have a mediation that's per Court
6 Order, that we went to the mediation. They signed mediation
7 agreements that said they would keep this confidential.
8 They participated, by their own emails, in continued
9 mediation settlement discussions.

10 And then there is a communication that is sent to
11 them that says, privileged -- "absolute privileged mediation
12 communication," and they disregard that. They change the
13 terms of it, call it a settlement communication and file it
14 with the Federal Court to try to use this as saying that,
15 the suit that Covil has filed against Wall Templeton is just
16 nothing but a sham Defendant and a way to try to defeat
17 jurisdiction.

18 And they think that that case can be assignable.
19 And, Judge, as you know -- well know -- I mean, I think you
20 were on the Court when y'all decided this in 2015 -- a
21 malpractice action is not assignable. It is not assignable.
22 So there is -- there is no way that they can even get a case
23 assigned. That's a violation of the law in the State of
24 South Carolina in the case law. So that's what they're
25 askings.

1 So, Judge, what we would ask is that you will find
2 USF&G in contempt of your Order that required them to attend
3 mediation, as well as in violation of Rule 8 of the
4 Alternative Dispute Rules and ask that they be sanctioned.
5 And one of the sanctions, Judge, we would ask -- because,
6 you know, what this is used for, they felt this was
7 necessary in their removal action and their motion to
8 dismiss.

9 And they're trying to say that because we
10 agreed -- because Covil agreed to sign something, then that
11 in and of itself, shows that this is reason that, you know,
12 this is a sham Defendant, or whatever reason that they want
13 to use that. So I would ask -- and if there's a sanction in
14 this, that there be two -- two findings made by this Court
15 as it relates to these issues.

16 And the first one I would ask, is that they -- we
17 find -- we ask that you find they violated the mediation
18 agreement as we've said. And find that, that communication
19 and that filing was improper with the Federal Court.

20 The second one is, Covil has an independent legal
21 malpractice action in State Court -- I believe, one in State
22 Court -- in the action against Wall Templeton, and it's
23 nonassignable in accordance with the law of the State of
24 South Carolina.

25 Judge, I'll tell you is -- obviously the case law

1 as I said, you may -- a Sentinel case that came out
2 recently, it's the Sentry Insurance versus Maybank case.
3 And so there are two ---

4 THE COURT: I'm very familiar with that case.

5 MR. SMITH: Yes, ma'am. And so there were two
6 cases that were -- there were two issues that were certified
7 to the Court. One, whether someone can -- you know, anyone
8 other than the client can sue an attorney in a legal
9 malpractice action. And the Court allowed that under a
10 narrow circumstance.

11 And the second question was, is there -- is
12 there -- can you assign a case against -- can you assign a
13 legal malpractice claim in Court. The Court declined to
14 address that issue, and the descent (phonetic) went ahead
15 and addressed that issue. And in the descent, they
16 obviously noted the prior case law of the State of South
17 Carolina that said, one, a legal malpractice case is not
18 assignable.

19 And so I think it's important that we deal with
20 that issue, because they're going to go and they're going to
21 continue to represent that we agreed with assignment. And
22 that's not something that Covil has the authority to do
23 under South Carolina law.

24 THE COURT: All right. Sir.

25 MR. GOLLOGLY: Good afternoon, Your Honor. May it

1 please, the Court. Ezra Gollogly, I represent USF&G. And
2 I'm here to explain why the Court should not hold USF&G in
3 contempt, or issue a Rule to Show Cause Order for a hearing
4 to decide that question at a later time.

5 I'd like to -- to proceed by just reviewing the
6 relevant chronology of events, and then presenting some
7 legal argument to the Court. And before I get to the
8 chronology, I just want to give a preview of the argument.

9 And I'm going to refer to the April 18th email
10 that's just that. That's the email that's at issue in the
11 case. It's the one behind Exhibit C that you just looked
12 at, Your Honor, that's redacted. I'll be calling that the
13 April 18th email.

14 So my argument basically consists of four parts.
15 Number one, that email was filed under seal in a Federal
16 Court pursuant to an expressed exception in South Carolina
17 ADR Rule 8. That's Subsection (c)(4), which allows for the
18 disclosure of mediation information when it's offered in a
19 judicial proceeding for the limited purpose of establishing
20 settlement agreement. That's exactly what happened here.

21 That exception and the conduct of carriers with
22 respect to the April 18th email, is supported by two cases
23 that are issued in the last two years from the South
24 Carolina Court Of Appeals. One case is called Huck v
25 Oakland Wings. That was in 2018. The second case is called

1 May v May. And that issued a few weeks ago, July 24th, 2019.
2 And I'll discuss those later.

3 The second point I want to make is that the
4 version of the April 18th email that USF&G and the other
5 carriers filed under seal was redacted. So the April 18th
6 email, I can represent to the Court, contains two parts.

7 In one part there's a confidential mediation
8 communication. That part was redacted. It was not
9 disclosed when it was filed under seal. The remaining parts
10 consist of agreements between the Receiver and the carriers.
11 Those parts were filed unsealed. But I want to point out
12 that the confidentiality of the April 18th email was
13 maintained by the carriers. It was maintained because they
14 chose to file it under seal in Federal Court.

15 And the final point I want to make is that the
16 April 18th email was only filed in Federal Court after
17 Judge Hendricks granted the insurers' joint motion to seal.
18 So that's a preview of what I'll be arguing today.

19 I would like to -- with Your Honor's permission, I
20 have a short binder with some relevant documents. My I
21 approach and give that to you?

22 (Mr. Gollogly hands documents to the Court.)

23 THE COURT: Yes. Thank you, sir.

24 MR. GOLLOGLY: The chronology is laid out much
25 like Mr. Smith described. Your Honor ordered the insurers

1 to attend the mediation on February 28th. The mediation
2 commenced in March 4th of -- March 4th through the 6th. It
3 didn't result in the conclusion of the case, and the parties
4 continued their negotiations after the formal mediation
5 conference concluded.

6 On April 18th the Receiver's lawyers sent the
7 email that we've been talking about today to the carriers.
8 As I mentioned, that email has the two parts -- the
9 mediation communication that was redacted, and the
10 settlement agreements that were reached between the insurers
11 and the Receiver. Those agreements formed the basis on
12 which the insurers were going to settle the underlying
13 cases. It's a side agreement. It's enforceable.

14 And then the next day, on April 19th, the parties
15 actually agreed to settle the underlying Hill and Taylor
16 cases.

17 THE COURT: I am still kind of confused about what
18 email we're talking about. All right. Show me the email we
19 are discussing.

20 MR. GOLLOGLY: Your Honor, if you'll look at Tab 7
21 of the binder that the Receiver gave you this morning. And
22 you look at -- for Exhibit C -- it should be a mostly
23 blacked-out email.

24 THE COURT: Yeah. "I have spoken to the Receiver,
25 and we have the following responses to the four issues that

1 you raised. The settlements of Hill and Taylor -- Hill and
2 Taylor."

3 So that -- what this thing purports to say is that
4 Hill and Taylor has been settled, right?

5 MR. GOLLOGLY: No, Your Honor. As I said, there's
6 two parts to the email.

7 THE COURT: Well, what is the other part?

8 MR. GOLLOGLY: The other part is a mediation --
9 confidential mediation communications. That's behind
10 Paragraph Number 1. And it was written -- obviously it's
11 redacted. I can show you the actual email, Your Honor, but
12 I would need permission from the Receiver.

13 THE COURT: Well, what was filed with the Federal
14 Court? I can't deal with something that's been redacted.
15 I've got to see ---

16 MR. GOLLOGLY: Your Honor, I'm prepared to present
17 you with a copy of the email that was filed with the Federal
18 Court.

19 THE COURT: Yeah.

20 MR. GOLLOGLY: To do that, I believe the Receiver
21 has to agree that it's okay for ---

22 MR. PROTOPAPAS: I agree.

23 THE COURT: Yeah, they agree that I can see it.
24 That doesn't -- and I will say that I will see it. And that
25 hasn't -- doesn't weigh in anybody's position about anything

1 about confidentiality.

2 MR. GOLLOGLY: Here it is, Your Honor.

3 (Mr. Gollogly hands the document to the Court.)

4 THE COURT: All right.

5 MR. PROTOPAPAS: Your Honor, we just ask that it
6 remain under seal of the Court.

7 THE COURT: Yes, it will be. Okay.

8 MR. GOLLOGLY: Okay. So that's the April 18th,
9 email.

10 THE COURT: All right.

11 MR. GOLLOGLY: So on April 24th, six days after
12 the parties had reached an agreement about the terms on
13 which these cases would be settled, and that agreement, as
14 you can see, includes an agreement by the Receiver that he
15 would cooperate with the insurers in the claims against Wall
16 Templeton.

17 So six days later, the Receiver files a complaint
18 against Wall Templeton and the insurers. And the crux of
19 the insurers' concern with respect to that complaint, is
20 that the allegations made by the Receiver destroyed the
21 insurers' rights to pursue Wall Templeton under the Sentry v
22 Maybank case. The insurers view it as a violation to the
23 agreement to cooperate.

24 The insurers filed a motion to dismiss shortly
25 thereafter in the Federal case. And in connection with that

1 motion, they sought to seal in the April -- they filed a
2 motion to seal the email that is before you. The motion is
3 behind Tab 2 of the binder that's in front of you. That was
4 filed on June 13th. It was a joint motion filed by three
5 parties -- USF&G, Zurich and Sentry.

6 And the motion essentially points out that this is
7 a -- the April 18th email contains confidential settlement
8 terms that shouldn't be disclosed publically. The insurers
9 sought to protect the confidentiality over that email by
10 filing it under seal. And it was done. A few days later,
11 Judge Hendricks granted that motion to seal. And the Order
12 granting the motion was a text Order. It's behind Tab 3 in
13 the binder.

14 On June 27th, as you know, the Receiver filed a
15 Motion To Show Cause as to USF&G. And the Receiver's
16 argument is very simple. He says on Page 1 that, "Covil's
17 insurers have violated the ADR Rules in this Court's
18 February 28th Order by disclosing confidential
19 communications issues.

20 But there are a few salient facts that are not
21 mentioned in the Receiver's paper. Number one, the Receiver
22 does not mention Subsection (c)(4) of Rule 8, which contains
23 the expressed exception for offering in judicial
24 proceedings -- that mediation document for the purpose of
25 establishing a settlement agreement.

1 THE COURT: Okay.

2 MR. GOLLOGLY: The June 27th paper also doesn't
3 mention that equally the email was filed under seal pursuant
4 to a Federal Order. And it doesn't mention that the version
5 of the April 18th email that was filed under seal was
6 redacted. And it was redacted to protect the confidential
7 communications that were part of the April 18th email.
8 That's the ---

9 THE COURT: It's redacted as to the first
10 paragraph. But you submitted the second, third, and fourth
11 paragraph.

12 MR. GOLLOGLY: Correct. And the reason for that
13 is the second ---

14 THE COURT: And that's what they -- that's the
15 thing that's got him so hot.

16 MR. GOLLOGLY: That's apparently what's got him so
17 hot, that's right. And there's a difference between the two
18 that is material under South Carolina law. The difference
19 is that Part 1 concerns a confidential mediation agreement
20 issue. Parts 2, 3, and 4, concern agreements between the
21 Receiver and the insurers about the terms of which the
22 insurers would settle some underlying cases.

23 THE COURT: But did not Covil's attorney let you
24 know that he was insisting on the subject to absolute
25 mediation privileges which is what the thing is headed? All

1 right. He let you know that he was insisting on that, and
2 would not agree to let this be submitted to Federal Court?

3 MR. GOLLOGLY: Your Honor, he did let me know
4 that.

5 THE COURT: And when you submitted it to the
6 Federal Court, did you notice the Receiver?

7 MR. GOLLOGLY: Well, yes, because the conversation
8 that I had was the Receivership ---

9 THE COURT: No, no, no, no. As I understand the
10 sequence of events, you communicated with them beforehand,
11 in one of these other emails, saying that by -- you wanted
12 to -- "We will later file today a motion to dismiss Covil's
13 recent complaint against Wall Templeton and the insurers.
14 As part of this motion, we intend to file under seal an
15 email that you sent to the insurers' Counsel on April 18th,
16 confirming that Covil would cooperate with the insurers.
17 That email is attached."

18 "We intend to redact Paragraph 1. Do you agree
19 that this email should be filed under seal and, if so, can
20 we represent this in our motion to seal?"

21 And the reply from Mr. Edwards was, "As you can
22 see from the legend on the email itself, this document is
23 protected by absolute mediation privilege. As such, we
24 object to the use of this document for any purpose. Covil
25 and our law firm similarly object to any use of the related

1 discussions from our ongoing mediation."

2 In short, you do not have permission to use this
3 document. Isn't that what they he said?

4 MR. GOLLOGLY: That is what he said.

5 THE COURT: All right. Well, then, on what basis
6 do you have the right to do that without having some
7 communication with the Court to whom you're sending it
8 saying, this -- although this says absolute privilege
9 communication, and we want to put it under seal, that Covil
10 has forbade us to do any of that. And said that won't --
11 we -- why would you consult with them ---

12 MR. GOLLOGLY: I can answer the question, Your
13 Honor.

14 THE COURT: --- and then they just tell you, "No".
15 And then without any notice to them, you file this with the
16 Federal Court?

17 MR. GOLLOGLY: Under -- under the Local Rules in
18 the District of South Carolina, the opposing Counsel have an
19 obligation to meet and confer before filing a motion,
20 including a motion to seal.

21 THE COURT: I get that. That's -- I'm not talking
22 about opposing Counsel. I'm talking about -- you certainly
23 had an obligation to ask them. But you also have an
24 obligation to say -- at least tell -- at the minimum to tell
25 the Federal Court, "We met and conferred, and they did not

1 agree, and vociferously objected to our filing this
2 confidential email out of a mediation. But we're doing it
3 anyway."

4 MR. GOLLOGLY: Your Honor, if you turn to Tab 2,
5 which is the motion that we filed. On Page 3, there's a --
6 the second paragraph says, "Undersign Counsel affirms that
7 consultation with opposing Counsel concerning this motion
8 occurred, and that said Counsel was unable to consent to
9 same." We told the Federal Court this was a contested
10 motion.

11 THE COURT: But what I want to understand, is how
12 you could violate what they told you, and not ask some Court
13 to adjudicate your right to file this thing before you just
14 blindly go ahead and file it when our mediation rules don't
15 allow it. And, frankly, the exception that you're talking
16 about, does not apply to this particular situations.
17 Because this is a situation in which you -- the opposing
18 Counsel forbade you.

19 MR. GOLLOGLY: Your Honor, I respectfully disagree
20 that the exception doesn't apply. If you'll let me continue
21 and get to the legal argument.

22 THE COURT: Well, let's get to it.

23 MR. GOLLOGLY: Okay. The -- there are two basic
24 points that justified the conduct of the insurers here.
25 Number one, is exception -- Subsection (c)(4) in Rule 8.

1 And if you'll turn to Tab 4 in your binder, the Rule is
2 presented there. And on the second page is Subsection
3 (c)(4).

4 That provides a limited exception to
5 confidentiality. "There is no" -- this is the statute.
6 "There is no confidentiality attached to information that is
7 disclosed during a mediation offered for the limited purpose
8 in judicial proceedings of establishing, refuting,
9 approving, voiding, or reforming settlement agreement
10 reached during a mediation." It is under that exception
11 that the April 18th email was filed under seal.

12 THE COURT: This was not a settlement agreement,
13 though. This was a confidential communication engaged in,
14 in the course of settlement. You redacted the settlement
15 information about the cases. But what you didn't redact,
16 was something that continued to be covered by the head note
17 that said that this is a confidential communication in the
18 course of a mediation.

19 You made the unilateral decision, yourself, that
20 you could disclose something that they forbade you from
21 disclosing. And you did it to try to harm them. Because,
22 all right, they were your opponent in another piece of
23 litigation. And you tried to establish an admission on
24 their part, and an agreement on their part, when, in fact,
25 it was a confidential communication.

1 MR. GOLLOGLY: Your Honor, it was not a
2 confidential communication.

3 THE COURT: Yes, sir, it was. It says so right at
4 the top of it.

5 MR. GOLLOGLY: If you'll look at the content of
6 the email, it is an agreement. And if I can just have a
7 minute or two to discuss the two South Carolina cases I read
8 to you earlier.

9 THE COURT: Yes, sir.

10 MR. GOLLOGLY: So those two cases are interesting
11 because they -- well they're important. They're more than
12 interesting. Because they establish that settlements and
13 agreements, documents reflecting settlements are not
14 confidential mediation communications -- or confidential
15 mediation information.

16 The first case is the Huck case. That's from
17 2018. It was a slip-and-fall case. A guy goes into the
18 Wild Wing Café, slips, falls, hurts himself. He sues the
19 Wild Wing Café and the building owner. Before trial he
20 settles against two other -- two other Defendants. But the
21 trial proceeds against Wild Wing Café and the building
22 owner. He gets a jury verdict of about a hundred thousand
23 dollars. The jury finds him fifty percent negligent. It's
24 cut in half.

25 At that point, the Defendants that went all the

1 way to trial, filed a motion to disclose settlement. They
2 want to find out what the settlement agreement was with the
3 settling Defendant so they can establish a set off.

4 Mr. Huck says, "Oh, no, you can't have that information. It
5 is protected by Rule 8," and the Trial Court agrees. It's
6 appealed.

7 The South Carolina Court of Appeals reversed this,
8 and says that Rule 8 does not protect settlements reached
9 during a mediation. And the language is fairly clear. This
10 is [422 S.C. 436]. The South Carolina Court of Appeal says,
11 "Once the parties reach a settlement, documents prepared in
12 conjunction with the settlement and release are not for the
13 purpose of, or in the course of, mediation. Rather, they
14 are documents prepared in connection with the litigation,
15 and to bring the litigation to a close."

16 The April 18th email was exactly such a document.
17 Fast forward to July of -- last month -- July of 2019, two
18 months ago, and we've got the May v May case in the same
19 court. It's a husband and wife. They're getting a divorce.
20 They were ordered to go to mediation. They resolve their
21 disputes at mediation. The mediator writes the settlement
22 agreement, and the parties go on their merry way.

23 The wife refinances her house. And at that point
24 the husband expected to get a \$60,000 payout, but it never
25 came. So the husband goes to his lawyer and says, "We've

1 got to reform this agreement, because I should have received
2 my \$60,000."

3 The husband forms a motion to reform agreement
4 with the Trial Court. He submits affidavits from himself,
5 from his lawyer, from the mediator, describing what happened
6 at the mediation. Describing the agreement that was
7 actually reached.

8 The wife says, "No, you can't do that. That's
9 protected by Rule 8. Those are all confidential mediation
10 communications." The Trial Court says, that absolutely not.
11 Under Huck and under South Carolina Rule 8, they're not.
12 It's an agreement. It's protected. And it goes on to
13 reform the agreement. The decision is appealed, and the
14 South Carolina Court of Appeals affirms.

15 The interesting thing about May, is that it --
16 when the Trial Court made its initial decision, we had the
17 old Rule 8. Rule 8 was amended in 2018. And it was amended
18 to create this explicit exception for offering for the
19 limited purpose in judicial proceedings of establishing or
20 reforming -- that was the issue with May v May -- a
21 settlement agreement reached during the mediation.

22 And the Court -- The South Carolina Court of
23 Appeals said, "You know what, we're going to look at this
24 under the old Rules where you didn't even have that
25 subsection -- that (c)(4) -- and the new Rules where we've

1 got it and see what the outcome would be."

2 They held that under the old Rules -- even without
3 the expressed exception -- those affidavits describing what
4 happened at that mediation, despite being filed under the
5 objection of the opposing party were fair game. And the
6 reason is the one that the Huck Court established -- as a
7 matter of law, a document or communication prepared in
8 conjunction with the settlement and release are not for the
9 purpose of, or in the course of, mediation.

10 So the Court of Appeals said, under the old
11 version of Rule 8 which doesn't have this exception ---

12 THE COURT: I'm very familiar with what these
13 cases say.

14 MR. GOLLOGLY: Okay.

15 THE COURT: Okay. All right. And it's all going
16 to revolve around the question of whether or not this is a
17 settlement agreement. These cases both deal with
18 accomplished settlement agreements. And as I read this
19 thing, what happened here is that a settlement agreement was
20 reached in two of the four cases. A settlement agreement
21 was not reached in the other two of the four cases.

22 And in addition to that, a discussion was had --
23 "Thank you for today's telephone discussion" -- about the
24 Wall Templeton situation, because Wall Templeton had
25 defaulted on these cases. And what was said in this

1 confidential communication is, "While Covil is not in a
2 position to assign any claims against Wall Templeton, Covil
3 will cooperate with the insurers in the vindication of all
4 parties' rights against Wall Templeton."

5 That is not a settlement agreement. That -- Wall
6 Templeton and its posture was not involved with Hill,
7 Taylor, Noland or Green. And it certainly wasn't involved
8 with Hill and Taylor with the settlement. Hill and Taylor
9 were the only things upon which a settlement agreement was
10 reached. And both Huck and May deal with enforceable
11 settlement agreements that were reached and then breeched.

12 This thing deals with a communication that was
13 confidentially made about an ancillary issue to the
14 mediation. But it was made in the confidentiality of the
15 mediation.

16 MR. GOLLOGLY: Your Honor ---

17 THE COURT: And when they then sued y'all, you
18 decided that you wanted to bring it to the Federal Court's
19 attention what was said in a confidential communication that
20 says, "Subject to Absolute Mediation Privilege," right on
21 the top of it. But you wanted the Federal Court to know
22 that, because even though no agreement had been reached in
23 this thing -- it couldn't be, because it's a confidential
24 mediation communication -- it's no enforceable agreement
25 here.

1 But you wanted to be able to take the position it
2 was an enforceable agreement. When they then told you, "No,
3 you cannot file this under seal or in any other way, because
4 this is a confidential mediation communication," you decided
5 to file it anyway. These cases don't help you. The Rule
6 doesn't help you. And I don't see any way in the world that
7 you could justify that.

8 Sure you could have a big contest with them about
9 the Wall Templeton matter. And they can have a big contest
10 with you about why they felt they had to in order to protect
11 their position or sue you. But this deals with whether or
12 not there was some settlement agreement that had been
13 reached that encompassed these provisions. And I don't read
14 this to suggest that that is such. That's my problem with
15 it.

16 MR. GOLLOGLY: I understand, Your Honor. And I
17 respectfully must disagree. The basis of my disagreement is
18 that this email is an agreement. It represents an agreement
19 between the Receiver and the insurers about the terms on
20 which the --

21 THE COURT: What was the consideration for this
22 agreement?

23 MR. GOLLOGLY: The consider -- well, the
24 consideration ultimately resulted in the settlement of Hill
25 and Taylor.

1 THE COURT: You mean this, that you wouldn't have
2 settled Hill and Taylor but for what they said in these --
3 Hill and Taylor had already been settled.

4 MR. GOLLOGLY: No, they were settled the next day,
5 Your Honor. This is ---

6 THE COURT: Well, this agreement in the redacted
7 part said Hill and Taylor are settled -- we reached
8 settlement on those things. You reached a settlement in
9 mediation, did you not?

10 MR. GOLLOGLY: My understanding is that the
11 settlement was reached the next day.

12 MR. OGBURN: If I may, Your Honor. I was
13 personally involved. That is correct.

14 MR. GOLLOGLY: So -- so ---

15 THE COURT: Well, was part of the -- are you
16 telling me, that part of the written agreement that settled
17 Hill and Taylor, also the consideration for that was that
18 they cooperate with you and Wall Templeton? Was that
19 written in the settlement -- if the settlement agreement
20 wasn't written until the next day ---

21 MR. GOLLOGLY: That was not written in the
22 settlement.

23 THE COURT: Well, then what -- on what basis is
24 that -- is the Hill and Taylor settlement a part of the
25 consideration for what you say is a binding agreement on

1 their part?

2 MR. GOLLOGLY: Because this is a side agreement
3 that the Receiver and the insurers ---

4 THE COURT: Oh, come on. All right. You know
5 Contract Basics 101 just as I do. You're going to have to
6 have an agreement containing all the pertinent provisions,
7 and it's going to have to spell out considerations. You're
8 telling me that you take the position that part of the
9 consideration for this -- what you say is a binding
10 agreement -- was the settlement of Hill and Taylor.

11 Well, first of all, Hill and Taylor hadn't been
12 settled when this communication was made, by your own
13 representation. So the consideration had not been tendered
14 or received yet. But second of all, it doesn't say anything
15 like that in this. It only says, "Subject to Absolute
16 Mediation Privilege." And it starts off, "Thank you for
17 today's telephone discussion. We have the following
18 responses to the issues you raised." That's a
19 quintessential confidential communication.

20 MR. GOLLOGLY: I respectfully disagree under
21 the ---

22 THE COURT: Well, that's the way I see it. That's
23 not immediately appealable, as you know. But it's certainly
24 something that you can take a position about when others
25 grade my papers on this thing. But I don't see this in any

1 way, shape, or form as an agreement. And if you had some
2 thought that it might have been an agreement, before the
3 consideration had passed, the writer advised you that they
4 were not going to consent to your submitting this to Federal
5 Court.

6 MR. GOLLOGLY: Respectfully, Your Honor, their
7 consent wasn't necessary. When we filed a motion to seal, I
8 was trying to see if they agreed with the idea of filing it
9 under seal. They are free to ---

10 THE COURT: Well, if you sought their agreement
11 and didn't get it, and filed it anyway, I really don't
12 understand your argument. But I hear it and it's noted.

13 MR. GOLLOGLY: Thank you, Your Honor.

14 THE COURT: All right, sir. Mr. Smith.

15 MR. SMITH: Your Honor, briefly, I'll like to
16 respond and point out a lot of the same issues that I would
17 have.

18 Let me have a discussion about the settlement
19 agreement. Judge, there's two ways that -- he may term it a
20 settlement agreement, but the law tells us what a settlement
21 agreements is. And it tells us a settlement agreement in
22 two ways in the context of this case.

23 A mediated settlement agreement which you execute
24 with your clients at the mediation, and the mediator either
25 files it or uses that as evidence of a resolution at

1 mediation and so advises the Court. So that email is not a
2 mediated settlement agreement. So then lets go to the other
3 one. Forget the contract stuff -- because you know the law
4 in South Carolina is Rule 43 (k) is the settlement
5 agreement.

6 And 43 (k) is, there's no contracts. If you and I
7 decide that we're going to do something. And you give me a
8 hundred dollars today to settle a case I have against you.
9 I walk out of here. I'm still -- and it's not placed on the
10 record, and it's not announced on the record, or nothing is
11 filed. And so there under 43 (k), you've got two obligations
12 that you must imply to the Court in order for it to be an
13 enforceable settlement agreement.

14 You have to have it placed on a record in an open
15 court, or either you have to have the parties and the
16 attorneys to sign and file it -- neither of which that email
17 is. So that's the first problem he's got. He can term it a
18 settlement agreement all day long, but it is not a
19 settlement agreement.

20 And so he -- you know, I appreciate him quoting
21 the law and telling us what it is, but that's not the law.
22 So that -- his whole argument falls because it doesn't have
23 a settlement agreement.

24 The second part of it is, is what I found
25 interesting, is ---

1 THE COURT: Let me stop you there. You would have
2 to have a settlement agreement for this matter to be other
3 than simply a communication in mediation, and to meet the
4 requirements in May and Huck, correct?

5 MR. SMITH: Yes, ma'am. And that's what I was
6 going to say. It is under those -- May and Huck is talking
7 about settlement agreements. He doesn't have a settlement
8 agreement. He has a settlement -- mediation settlement
9 communication.

10 THE COURT: Confidential.

11 MR. SMITH: Confidential. By the way -- which I
12 would say -- I love the term "agreement". But you see on
13 the agreement, Mr. Edwards rejected three of his terms. So
14 I guess a rejection of what your settlement proposal is, has
15 now all of sudden turned into an agreement. So, again, that
16 is something else that I'm -- that I'm really struggling
17 with.

18 And obviously that email -- and if he disclosed it
19 to the Federal Court, and you know -- and he put this in
20 here, "Offered for the limited purpose in a judicial
21 proceeding -- establishing, refuting, approving, voiding, or
22 reforming, a settlement agreement." Those are the top
23 sentences.

24 So help me understand -- and I only have one
25 copy -- that he filed it, and he put his name on this

1 agreement that he filed to the Court. I'll like to give it
2 to the Court. I'm sure they've got their own copy of this.
3 But in there, he doesn't refer to it as a settlement
4 agreement.

5 He refers to it as -- it says, "That insurers then
6 engaged in settlement discussions with the Plaintiffs in
7 Hill and Taylor, and kept the Receiver fully apprised by
8 email. The Receiver agreed that with respect to settlement
9 in Hill, they would cooperate with insurers in vindicating
10 all parties' rights against Wall Templeton."

11 So his own thing says we're engaging in settlement
12 discussions. And then they were advising on what -- of what
13 would happen. But that's not a part of a settlement
14 agreement. So he didn't use this in the Federal Court to
15 modify, vacate, or do any of the requirements under there.
16 He just said, "I deem it admissible."

17 And what did -- by his own admission, you know, he
18 came and said, "Maybe -- hey this isn't confidential. That
19 this is just part of something else." But he agreed that
20 this was a confidential mediation. So he randomly chose
21 which sections he thought were confidential, and which ones
22 weren't. Just like he just randomly decided, "Hey, I'm
23 going to file this."

24 And I think the Court brought up a good point
25 about saying, you could -- you know, you should at least

1 bring it to the Court's attention that it's a -- there is a
2 disagreement and it needs to be heard, and let the Judge
3 know, so they can determine whether this is a mediation
4 privileged document or whether it's not. It's not up for
5 them to decide and file with the Court.

6 So I think -- at the end of the day, I think the
7 Court's following along where -- what it is, is that he took
8 this agreement. This is not an agreement. It is a
9 communication, and none of these cases apply. Because,
10 obviously, to be able to settle an agreement, it's not
11 provided under the exception of the Rule, and it doesn't
12 even meet the term of the settlement agreement according to
13 South Carolina law.

14 So I think by his own admission, from what I heard
15 up there, they violated this, and I'll ask the Court to find
16 accordingly.

17 THE COURT: All right, Mr. Smith, he contends that
18 it's an agreement -- or maybe an agreement to agree. And he
19 says that part of the consideration for settling Hill and
20 Taylor was your agreement -- or the Receiver's agreement
21 that you would cooperate with the insurers in the
22 vindication of all parties' rights against Wall Templeton --
23 what is your reaction to that contention?

24 MR. SMITH: That was not a part of being a
25 settlement agreement, and it was rejected. I mean, we would

1 cooperate with vindicating all rights, but that's not a part
2 of being a settlement agreement. And we -- you know, we --
3 we didn't agree to that. If it was, I presume you would see
4 the -- see the signed agreement in those records. It's not.
5 I mean, it's just an allegation that he's put in there, and
6 it's not appropriate or a correct assertion.

7 THE COURT: All right, sir. Now, you asked that
8 sanctions -- you asked that as a sanction, that I find that
9 they -- that the confidentiality -- the Confidentiality Rule
10 with respect to the mediation privilege was violated. Well,
11 that's fine. What else are you asking for by the way of a
12 sanction?

13 MR. SMITH: And that it was improper for him to
14 file -- I also want it to be improper that -- that this
15 Court find it was improper for him to file that -- whatever
16 limited purpose that is -- but it is improper for it to be
17 filed in any court -- especially in Federal Court -- to be
18 in violation of our Rules and your Order.

19 The other thing, Judge, that I ask, is I ask that
20 the Court make a finding that Covil had -- does have an
21 independent State action -- malpractice action against Wall
22 Templeton, and it's nonassignable in the accordance with the
23 laws of the State of South Carolina. The law is Skipper
24 versus Ace Property and Casualty Insurance Company,
25 413 S.C. 33.

1 And that's the purpose of why he used the
2 settlement agreement, is to try to say, you really don't
3 have the -- you don't have the legitimate claim, and it's
4 assignable. And so you know, I -- that's the purpose to
5 which he uses it. And he knows it's against the law, so he
6 tried to use some type of confidential mediation agreement.
7 So we ask the Court to make that finding.

8 THE COURT: Now Covil has filed an action, but not
9 in State Court, rather in Federal Court, correct?

10 MR. SMITH: No, ma'am. We filed an action in
11 State Court, and the removed us and alleged that we didn't
12 have the appropriate action against Wall Templeton -- or
13 Covil didn't.

14 THE COURT: I got you. Okay. All right, sir.

15 I will grant -- I will find that Rule 8 was -- and
16 the absolute confidentiality privilege was violated here.
17 That the exception for settlement agreements is -- is not
18 met here because there was no settlement agreement that
19 would meet the requirements of enforceability of the
20 settlement agreement under South Carolina law at the time
21 that this email was sent. That the email made it clear that
22 it was an absolute privileged communication. And therefore
23 the State of South Carolina Mediation Rules of absolute
24 mediation privilege had been violated.

25 I will further find that it was improper to file

1 the email with the Federal Court. That there is no -- that
2 there was no agreement to do so. There was an absolute
3 direction not to use the email that came from the Plaintiff
4 who had made the -- whose lawyer had made the confidential
5 communication.

6 I would further find that Covil does have an
7 independent cause of action for malpractice against Wall
8 Templeton, and that that cause of action is not assignable
9 pursuant to Skipper and that line of cases.

10 Draw me an Order that reflects this, Mr. Smith,
11 and get it to me as soon as possible. Send it to the other
12 side. After I've received it from you, Mr. Smith, the
13 proposed Order, I will wait two days before I sign it.

14 And so attorneys for the defense, I'm not going to
15 change my mind on this. If you have objections, otherwise,
16 to the content of the proposed Order, I'll, of course, will
17 consider those before I sign anything. So that is how we
18 disclose of that.

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: With respect to the Rule to Show
21 Cause, I think I made it clear what needs to be done with
22 regards to that. Hopefully I'll have something in hand that
23 I can sign by Tuesday or Wednesday of next week.

24 We've got a judicial conference. Those three --
25 first three days of next week that I will be attending my

1 emails and look at them. And I won't sign anything until I
2 notify both parties what I intend to sign so that I can
3 receive whatever comments you have to make about it.

4 Okay. Anything else in the Covil matter?

5 All right. Yes, I know, Ms. McVey.

6 MS. MCVEY: It's a Covil matter.

7 THE COURT: But in these matters that all of these
8 attorneys are lined up for me.

9 MR. PROTOPAPAS: Nothing from the Receiver, Your
10 Honor.

11 THE COURT: All right. Insurance company, nothing
12 further?

13 (No response.)

14 All right. Y'all just keep your seats. Ms. McVey
15 has something that doesn't immediately involve you but ---

16 MS. MCVEY: It actually does.

17 THE COURT: --- it involves the Receiver.

18 MS. MCVEY: It involves the carriers, Your Honor.

19 THE COURT: This is Hopper?

20 MS. MCVEY: Yes, ma'am. So what we've done is we
21 filed a motion to compel the insurance carriers attend the
22 mediation in Hopper scheduled for October 2nd and 3rd. And
23 not just their attendance, but we want some information from
24 them as well.

25 Our prospective is a little bit different in that

1 although we have been asking, and asking, and asking, no one
2 will tell us what the policy limits are. There are two
3 different types of policy limits, if I understand correctly,
4 based on the year and what type of work was being done about
5 the exposure -- there are products, liability limits and
6 there are operations.

7 What I hear from the carriers when we go to these
8 mediations is, "We're exhausted. We don't have money. The
9 product is done." We have evidence of operations. I can
10 get into the technicalities of that or not. But my
11 understanding is, that operation policies are not kept.

12 And so for Mr. Hopper we had exposure to Covil
13 over multiple years for decades. We alleged operations
14 types of exposure. What I would like for you to do, is
15 order the carriers to tell me -- before the mediation,
16 preferably, or at the mediation -- one, what are the
17 operations policies limits for Mr. Hopper as well as the
18 product liability limits. And we want to be able to see the
19 run loss sheets -- I'm sorry the loss run sheets, and
20 documents sufficient to understand why those policies have
21 been depleted.

22 As you know, we have alleged the alter-ego with
23 the carriers, and Wall Templeton was acting as the
24 alter-ego ---

25 THE COURT: Right.

1 MS. MCVEY: --- ego of Covil. And they have
2 purposely depleted the products policy limits.

3 THE COURT: Right.

4 MS. MCVEY: We had to educate our -- the Covil
5 case -- the value of the Covil case in front of a jury is
6 pretty high. And so the only thing that we are constrained
7 with, is what can we collect for Mr. Hopper. And so we need
8 that information to advise him and his family and his asking
9 about what he should settle the case for, for him to settle
10 it. That's what we're asking for you to do.

11 THE COURT: All right. Who will speak for Covil?
12 Mr. Protopapas.

13 MS. MCVEY: Your Honor, one more thing before, I
14 go. I noticed that Mr. Protopapas handed up a notebook that
15 had policy years and limits, and work sites, amongst other
16 stuff. I would like a copy of that so I can be informed to
17 educate my client.

18 THE COURT: Mr. Protopapas?

19 MR. PROTOPAPAS: Yes, Your Honor.

20 THE COURT: Will you give her a copy that?

21 MR. PROTOPAPAS: I will, Your Honor.

22 THE COURT: All right.

23 MR. PROTOPAPAS: Your Honor, I do believe -- and
24 our Rule 33 is explicit -- Covil should -- the Plaintiff's
25 entitled to the know the policy limits of Covil. And the

1 only way I can get the policy limits Of Covil, is if my
2 carriers cooperate in giving that information.

3 I have my position on what they are. And I will
4 agree to provide that to the Plaintiff -- the best of the
5 information that I have, and knowing that there are some
6 limitations to the information that I have. I will submit
7 that the Receiver will give his impression on policies. The
8 carriers have a different impression. The Plaintiff is
9 entitled to know the limits of our policies, and know the
10 limits that are remaining. I will be happy to give it to
11 them. So, yes, I think they are entitled to it.

12 I think the insurers are required to be at
13 mediation, unless the Plaintiff -- unless the parties
14 consent to the insurer not coming. And so if the Plaintiff
15 and I can consent to them not coming, so be it. And we have
16 done that in the Smith case where I asked the carriers to
17 participate. They said, "Peter, the exposure is 95." That
18 agreement was reached. Their policies were not attached to
19 that claim.

20 So they should come unless an explanation is given
21 that satisfies the parties that their attendance is not
22 required. I would respect the request ---

23 THE COURT: And which carriers are we talking
24 about?

25 MR. PROTOPAPAS: This is exposure from -- I

1 apologize, Your Honor.

2 MS. MCVEY: It's essentially the exposure from
3 1970 -- if that's right -- through the '80s -- through the
4 mid -- middle '80s.

5 MR. PROTOPAPAS: Which is everybody.

6 MS. MCVEY: Which is everybody. Which includes
7 Travelers, Zurich, Sentry, TIG, and Hartford.

8 MR. SAWYER: Your Honor, Wesley Sawyer for Sentry.
9 Because the alleged last Sentry period would be in the midst
10 of 1970, do you know what part of 1970, that would have
11 been?

12 MS. MCVEY: Well, there's 1970 and 1974 at Duke,
13 1974 to 1980s.

14 MR. SAWYER: My focus is, was it after the first
15 quarter of 1970? Is this something we can reach in
16 agreement?

17 MS. MCVEY: Yes. /

18 MR. SAWYER: I think that's really what I'm
19 focused right here, Your Honor.

20 MS. MCVEY: It's 1970 and I don't have more
21 specific than that.

22 MR. PROTOPAPAS: And what I would recommend is --
23 what would happen is the Social Security and work records
24 for Mr. Hopper be provided. To the two carriers -- and to
25 their credit -- Zurich and Sentry, who have paid for the

1 defense of Covil. They're provided to Zurich and Sentry.
2 Those Social Security records should have dates and
3 employment on them -- perhaps have the dates and employment.

4 Ms. McVey has been reasonable on these issues in
5 the past. We can get on a call and explain, "We do not have
6 exposure evidence for Sentry. Will you release them?" And
7 we will try to work from there.

8 I would ask, Your Honor -- what's funny is
9 Ms. McVey and her client needs some of the same information
10 I've asked this Court for -- a better understanding of what
11 the limits are. At this stage would ask the information be
12 provided to the Receiver. Allow me to use it in the best
13 interest of Covil, as far as the underlying information on
14 allocation of loss -- prior loss.

15 But I do believe we need to give her the limit
16 numbers -- the Plaintiff the limit numbers. Those limit
17 numbers will reflect the prior payments. But I would like
18 to keep the information in-house at Covil -- their
19 underlying files -- underwriting files and such.

20 THE COURT: So you would not want them to get run
21 sheets?

22 MR. PROTOPAPAS: I would not, Your Honor. The
23 conclusion from the run sheet -- from my perspective --
24 here's the limit, and on the insurers perspective, here's
25 the limit. I will give my reasons why. And then I think an

1 educated decision can be made from the Plaintiff. If they
2 agree with what I believe the situation is and go to trial,
3 they will understand I would have written the entire letter
4 at some point.

5 And that would be -- but I would ask, to the
6 extent, we keep in house at Covil as much of the
7 underwriting stuff. But I understand why she wants it. The
8 Plaintiff is entitled to an explanation. Our rules provide
9 that.

10 THE COURT: Okay. Can there be some kind of
11 united thing on here. It's almost 1:30. I want a succinct
12 thing as to what position the insurers is on here.

13 MR. DWORJANYN: I will speak, Your Honor.

14 THE COURT: All right, sir.

15 MR. DWORJANYN: The Order -- the Plaintiffs have
16 the insurance policies.

17 THE COURT: We know that. Don't start off with
18 that. We're talking about things you can agree to.

19 MR. DWORJANYN: Well, they say -- I understand
20 that they said what the limits are. And the Receiver at --
21 here's what they asked for in the Order, Your Honor, was to
22 make the insurance companies bring someone to the hearings
23 that demonstrate what -- have evidence that demonstrate
24 their authority. Bring evidence of their authority
25 including their loss run sheets and documents to show

1 whether claims previously paid were outdated as products,
2 claims that are operations claims, and why. They're talking
3 about claims that go back for decades.

4 THE COURT: Are these claims part of the reason
5 why you say that the limits are exhausted?

6 MR. DWORJANYN: Zurich hasn't said its limits are
7 exhausted.

8 THE COURT: All right. Well, then, let's not talk
9 to you. You're in a different situations. Which of the
10 insurers says their limits are exhausted with respect to ---

11 MR. OGBURN: Travelers does, Your Honor. Lee
12 Ogburn speaking for Travelers. We agree with
13 Mr. Protopapas ---

14 THE COURT: Well, then, you're in a different
15 situation. You're going to have to give us your run sheets,
16 or something that will give us underwriting information as
17 to why you say that the claims are exhausted.

18 MR. OGBURN: We have given the loss runs to
19 Mr. Protopapas. I heard him just say he would like to keep
20 those in house. We endorse his agreements -- his view in
21 that respect.

22 THE COURT: All right. But does she know what
23 your policy limits are?

24 MR. PROTOPAPAS: We're going to give her -- I
25 believe that we should give the Plaintiff the policy limits

1 from the Receiver's perspective, from the insurance carrier
2 perspective. The insurance carrier -- every insurance
3 carrier is claiming some measure of repair from prior
4 payments.

5 And so, the number from Travelers, for example, is
6 three hundred thousand dollars in operations for 1977. We
7 will tell Ms. McVey it's an unadhered three hundred
8 thousand -- if Travelers agrees with me. If they don't, we
9 will note the disagreement for Ms. McVey.

10 THE COURT: All right. Well, here's what I'm
11 going to do. I am going to, first of all, require that the
12 insurers be at the mediation. Second, I am going to require
13 that the Receiver -- that the Plaintiff be given information
14 about the policy limits on any and all applicable policies
15 with respect to any and all times with Mr. Hopper on work
16 facilities and was covered by any of these insurance
17 companies and their policies.

18 And I'm going to require that underwriting
19 information and run sheets be given to Mr. Protopapas. And
20 I am going to take him at his word in representation that he
21 will accurately convey that information to Ms. McVey.

22 MS. MCVEY: Yes, ma'am.

23 THE COURT: So that's what I'm going to do.
24 Please get me up an Order to that effect, Ms. McVey. Get it
25 to me quickly.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: You all have got a mediation that
3 you've got to get going on.

4 MS. MCVEY: We'll do it. I'll give it to you next
5 week -- early next week.

6 MR. RUGGERI: Your Honor, James Ruggeri for
7 Hartford.

8 THE COURT: I've ruled.

9 MR. RUGGERI: No, no. I was going to ask you to
10 make it even a bigger part based on ---

11 THE COURT: Come up here. You're going to have
12 to -- she can't hear what you have to say. Tell her who you
13 are and so forth.

14 MR. RUGGERI: James Ruggeri for Hartford. I know
15 the Court is ordering the insurers to be at Hopper, and the
16 Court ordered the Receiver to identify who those insurers
17 are. And I'm just trying to be helpful, based on the
18 spreadsheet that the Court received, today ---

19 THE COURT: Yes, sir.

20 MR. RUGGERI: --- and based on what Ms. McVey said
21 today about the allegations, maybe no guarantee we're going
22 to be on the same page, but accepting those allegations
23 there are at least two other insurers who should be ordered
24 to be there.

25 THE COURT: All right.

1 MR. RUGGERI: Those are Edison Insurance Company,
2 which apparently provided products coverage -- primary
3 products coverage during the 1980s. And then Penn National
4 Insurance Company which provided -- we would say general
5 liability coverage from 1986 to 1988. So I will request,
6 Your Honor, that if we're going to order insurers to be at
7 Hopper, you should order all of the insurers to be there who
8 appeared to be potentially implicated pursuant to ---

9 THE COURT: Were Edison and Penn National notified
10 of these proceedings?

11 MR. RUGGERI: No idea, Your Honor.

12 MR. PROTOPAPAS: No, Your Honor, they were not
13 notified of today's proceeding. There are tenders that had
14 been made to Penn. Now, Edison, I do not recall the exact
15 reason if one has not been tendered to them. However, Your
16 Honor, rather than compel two carriers that have not been
17 formally brought, I suggest the five that are here today. I
18 suggest we leave them alone. We can pick them up with
19 Rollins. The exclusions are in those policies -- especially
20 the later policies -- are issues that are, one, required a
21 different ---

22 THE COURT: I mean, it's the usual thing of trying
23 to muddy the waters by introducing a another level of
24 confusion ---

25 MR. RUGGERI: Your Honor ---

1 THE COURT: They can always be brought in if they
2 won't cooperate with giving you the information you need by
3 the mediation, Mr. Protopapas.

4 MR. RUGGERI: May we -- may the Court instruct
5 Mr. Protopapas to share with insurers the policy documents
6 that he has from these other carriers? He's talking about
7 exclusions on policies that are missing, and claims made
8 that are missing?

9 THE COURT: I am not going to get into these other
10 insurers. They weren't notified of these proceedings. So
11 that may be some side issue that you'll bring back to me at
12 a certain time. But I am not going to muddy the waters with
13 this thing by getting into that issue right now.

14 MR. RUGGERI: Understood, Your Honor.

15 THE COURT: What else?

16 MR. PROTOPAPAS: Nothing from the Receiver, Your
17 Honor.

18 THE COURT: Sir?

19 MR. PROTOPAPAS: Nothing from the Receiver, Your
20 Honor.

21 THE COURT: All right. Ms. McVey?

22 MS. MCVEY: No, ma'am. Thank you.

23 THE COURT: Anything else from any of the
24 insurers?

25 (No response.)

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THE COURT: All right. We're adjourned.

END OF TRANSCRIPT

1 State of South Carolina

2 Certificate of Reporter

3 I, the undersigned Betty R. Lyons, Official Court
4 Reporter for the Second Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the hearing of
8 the captioned case, relative to appeal, in the Fifth Circuit
9 Court for Richland County, South Carolina on the 13th day of
10 September, 2019.

11 I FURTHER CERTIFY that I am neither kin, counsel,
12 nor of interest to any party hereto.

13
14
15
16
17
18
19 Betty R. Lyons
20 Court Reporter and Notary Public
21 For the State of South Carolina
22 My commission expires
23 July 13, 2020
24
25

EXHIBIT 13

STATE OF SOUTH CAROLINA
COUNTY OF YORK
ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

ORDER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

ORDER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	ORDER
	)	
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

This matter comes before the Court by way of Peter D. Protopapas², as the duly appointed Receiver of Covil Corporation ("Receiver"), Motion for a Rule to Show Cause against United States Fidelity and Guaranty Company ("USF&G") for contempt of Court for violating the South Carolina Rules of Alternative Dispute Resolution and the Court's February 28, 2019 Order Granting Plaintiff's Motion to Compel Attendance at Mediation.

PROCEDURAL HISTORY

By way of background, Covil was an installer of thermal insulation materials. 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. These asbestos claimants have sued Covil and are seeking to recover for their bodily injuries. Covil ceased its operations in 1991 and forfeited its corporate authority to transact business in 1993.

On February 28, 2019, this Court issued an Order requiring Covil's Insurers to attend mediation on March 4-6, 2019 in Charleston. One of the cases the Court ordered into mediation was *Taylor v. Covil*, 2018-CP-40-04940, which along with *Hill v. Covil*, was in default. Mediation occurred in March 2019 and all parties at the mediation, including Covil's Insurers, agreed all documents "prepared for the purpose of, or in the course of, or pursuant to, the mediation" were subject to confidentiality and not admissible into evidence in any other action. The parties were unable to resolve *Hill* and *Taylor* at mediation but continued negotiating after mediation. On March 20, 2019, this Court denied Covil's Motion to Lift Entry of Default in *Hill* and *Taylor*. In denying the Motion to Lift Entry of Default, this Court found that Covil was a façade behind which Covil's Insurers stand¹ and Covil's Insurers are, in fact, the alter ego of Covil.

The parties reached a settlement agreement in *Hill* and *Taylor* on April 19, 2019. The day before the settlement, on April 18, 2019, the Receiver communicated with Covil's Insurers in an email with the subject line "Covil – Subject to Absolute Mediation Privilege" in which he set forth his position regarding settlement.

On April 24, 2019, the Receiver filed an action in state court against Wall, Templeton & Haldrup PA and Covil's Insurers asserting, in part, that Covil's Insurers acted as Covil and are for all purposes Covil and that the lawyers hired by Covil's Insurers were negligent and acted for the Insurers and not Covil. Covil's Insurers removed this case to federal court on June 6, 2019.² Covil's Insurers, specifically USF&G, have now used these protected communications in the federal court proceeding against the Receiver.

¹ At least until such time as Plaintiffs moved for the appointment of a Receiver to protect Covil.

² There is currently a Motion to Remand pending in the federal court action.

APPLICABLE LAW

This Court has the power to enforce its Mediation Order and the confidence that attached to the settlement communications stemming from mediation. Pursuant to Rule 8(a) of the South Carolina Rules of Alternative Dispute Resolution (“ADR Rules”),

Any mediation communication disclosed during a mediation, including, but not limited to, oral, documentary, or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation, except as permitted under this rule or by statute.

“The parties and any other person present or participating shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation . . .” *Id.* Rule 8(a) indicates the parties attending a mediation “must execute an Agreement to Mediate that protects the confidentiality of the process.” Pursuant to Rule 10(b) of the ADR Rules, this Court can grant sanctions against any person who violates the ADR Rules, “including, but not limited to, the payment of attorney’s fees, neutral’s fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRPC.”

ANALYSIS

This Court finds USF&G has violated the South Carolina Rules of Alternative Dispute Resolution and this Court’s Mediation Order and sanctions them accordingly. This Court issued an Order on February 28, 2019, requiring Covil’s Insurers to attend mediation on March 4-6, 2019, and to have “full settlement authority as defined by the South Carolina Supreme Court and the South Carolina Alternative Dispute Resolution Rules.” In addition to that Order and by participating in mediation pursuant to that Order, Covil’s Insurers were bound to act in accordance

with the ADR Rules. Pursuant to Rule 8(a), USF&G, along with the other parties present at mediation, signed an agreement recognizing

Unless a document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence, and disclosure of any document shall not be compelled in any civil action in which pursuant to law, testimony can be compelled to be given.

Despite knowing that any documents and communications prepared pursuant to the mediation were confidential, USF&G submitted a confidential electronic communication from the Receiver dated April 18, 2019, one day before settlement in the *Hill* and *Taylor* cases, in a separate federal court action in support of its motion to dismiss Covil's action. The email produced by USF&G was clearly labeled "Absolute Mediation Privilege" and was generated as a continuation of the negotiations between the parties which began at the mediation on March 4, 2019. In fact, the parties reached a settlement agreement the day after the email. Prior to submitting the confidential communication to the Court, USF&G attempted to get the Receiver's consent to file the communication under seal. Counsel for the Receiver did not consent to USF&G filing the confidential communication, stating

As you can see from the legend on the email itself, this document is protected by the absolute mediation privilege. As such, we object to the use of this document for any purpose. Covil and our law firm similarly object to any use of the related discussions from our ongoing mediation.

USF&G has violated the ADR Rules and mediation agreement by attending mediation pursuant to this Court's February 28, 2019 Order and then using the substance of settlement communications stemming from the ongoing mediation settlement discussions against Covil in a separate action.

Although mediation ended on March 6, the parties were still participating in settlement negotiations stemming from the mediation, and thus, the confidentiality provisions in Rule 8(a) still attached to the April 18 communication. In *In re Anonymous*, the Fourth Circuit considered

the question of when the confidentiality provision in a mediation rule similar to the confidentiality provision in the ADR Rules ended. 283 F.2d 627 (4th Cir. 2002). The Court noted the rule did not “specifically define the duration of ‘mediation’ for the purposes of maintaining confidentiality,” but it found that “it [wa]s plain that the ‘mediation’ is not limited to the mediation conference” and continued after the mediation conference ended. *Id.* at 635. The Court noted

This conception of the duration of mediation is a practical necessity of the process itself, in that the mediated dispute is rarely conclusively resolved during the mediation conference. Instead, the parties to the dispute often resume mediation, or refine aspects of the settlement agreement, subsequent to the mediation conference, and many times do so outside the presence of the mediator. These conversations and the information disclosed therein are entitled to the same degree of confidentiality as disclosures made during the mediation conference.

Id. This case is instructive in the current situation as there are no South Carolina cases discussing when the confidentiality of Rule 8(a) ends. In the instant case, the parties continued to participate in the same discussions that began at mediation because the dispute was not conclusively resolved during the mediation. The parties signed a mediation agreement acknowledging all documents “prepared for the purpose of, or in the course of, or pursuant to, the mediation” were not subject to disclosure in any other action. Furthermore, Counsel for the Receiver clearly labeled the correspondence as being subject to the mediation confidentiality provisions, and Covil’s Insurers did not object to this characterization. When USF&G informed the Receiver they were seeking consent to file what they admitted was “a confidential settlement communication” under seal with the District Court, Counsel for the Receiver clearly objected because the communication was “protected by the absolute mediation privilege.”

Because USF&G knowingly disclosed a confidential mediation communication, this Court finds USF&G in contempt for violating this Court’s Order compelling Covil’s Insurers’

attendance at mediation and duty to abide by the confidentiality provisions in the ADR rules and Mediation Agreement.

The Court, having conducted a hearing on this matter September 13, 2019, makes and enters the following findings pursuant to Rule 10(b) of the ADR Rules as a result of USF&G's contemptuous conduct:

- (1) USF&G violated the court's February 28, 2019 Order Granting Plaintiff's Motion to Compel Attendance at Mediation;
- (2) USF&G's improper filing of the April 18, 2019 email violated Rule 8, SCRADR, and the limited exception set forth in Rule 8(c)(4), SCRADR, is not met as the email at issue did not constitute a settlement agreement;
- (3) USF&G improperly relied upon and filed the April 18, 2019 email protected by the absolute mediation privilege as a sealed exhibit in South Carolina District Court;³ and
- (4) Covil Corporation, by and through its Receiver, has an independent legal malpractice cause of action against Wall, Templeton & Haldrup, P.A., which is non-assignable pursuant to South Carolina law. *See Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 426 S.C. 154, 158, 826 S.E.2d 270, 272 (2019) (finding there can be no liability of the attorney to the insurer if the interests of the client/policyholder are "the slightest bit inconsistent with the insurer's interest."); *See also Skipper v. ACE Property and Casualty Ins. Co.*, 413 S.C. 33, 38, 775 S.E.2d 37, 39 (2015) (holding that a legal malpractice claim could not be assigned between adversaries in litigation in which the legal malpractice arose).

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2019.

JEAN H. TOAL, CHIEF JUSTICE (Ret.)

³ See *Peter D. Protopapas as Receiver for Covil Corp. v. Wall, Templeton & Haldrup, P.A., et al.*, 3:19-cv-01635-BHH, ECF 10 at 7, 9, and Exhibit G.



Richland Common Pleas

Case Caption: Charles T Hopper , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al
Case Number: 2019CP4000076
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2019-09-19 14:36:37 page 9 of 9

EXHIBIT 14

STATE OF SOUTH CAROLINA
COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) C/A NO.: 2015-CP-46-02155
)
)
)

) **RECEIVER'S NOTICE OF MOTION**
) **AND MOTION FOR A RULE TO SHOW**
) **CAUSE**
)
)
)

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) C/A NO.: 2015-CP-46-03456
)
)
)

) **RECEIVER'S NOTICE OF MOTION**
) **AND MOTION FOR A RULE TO SHOW**
) **CAUSE FOR FAILURE TO OBEY**
) **ORDERS**
)
)
)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
CHARLES T. HOPPER and REBECCA
HOPPER,

Plaintiffs,

VS.

Air & Liquid Systems Corporation, et al.,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JAMES MICHAEL HILL,

Plaintiff,

VS.

Advance Auto Parts, Inc., et al.,

Defendants.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	RECEIVER'S NOTICE OF MOTION
	)	AND MOTION FOR A RULE TO SHOW
vs.	)	CAUSE FOR FAILURE TO OBEY
	)	ORDERS
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the Receiver for Covil Corporation ("Covil"), Peter D. Protopapas, Esq., ("Receiver"), by and through the undersigned counsel, intends to move and does hereby move before the Court on the tenth day after service of this Motion, or at such other time as established by the Court, for a Rule to Show Cause on the grounds that United States Fidelity and Guaranty Company ("USF&G"), Zurich American Insurance Company ("Zurich"), and Sentry Insurance, A Mutual Company ("Sentry"), and Hartford Accident and Indemnity Company ("Hartford") (collectively referred to as "Covil's Insurers") have violated the following Orders of this Court: (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation; (2) February 28, 2019 Order requiring Covil's Insurers to attend mediation; and (3) September 19, 2019 Order¹ requiring Covil's Insurers should respond and produce required documents before September 30, 2019. To date, the Receiver has not received the information and documents this

¹ Zurich, USF&G, and Sentry appealed this Order to the South Carolina Supreme Court, and the Supreme Court dismissed the appeals as interlocutory. Hartford has attempted to duplicate the appeal to the South Carolina Court of Appeals. Receiver's Motion to Dismiss Hartford's appeal is currently pending before the Court of Appeals.

Court ordered to be produced. This motion is supported by the attached Affidavit of Receiver. Counsel for the Receiver certifies consultation on this matter would serve no useful purpose pursuant to Rule 11 of the South Carolina Rules of Civil Procedure.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC

s/Jonathan M. Robinson

Jonathan M. Robinson (SC Bar # 68285)

G. Murrell Smith, Jr.

2530 Devine Street

Columbia, SC 29205

(803) 254-5445

Rikard & Proropapas, LLC

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Paul A. Zevnik (admitted *pro hac vice*)

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Morgan, Lewis & Bockius LLP

1000 Louisiana Street, Suite 4000

Houston, TX 77002

(713) 890-5110

Attorneys for the Receiver

October 24, 2019

EXHIBIT 15

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
CHARLES T. HOPPER and REBECCA
HOPPER,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	ORDER FOR RULE TO SHOW CAUSE
	)	HEARING
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court by way of Peter D. Protopapas', as the duly appointed Receiver of Covil Corporation ("Receiver"), Motion for a Rule to Show Cause against United States Fidelity and Guaranty Company ("USF&G"), Zurich American Insurance Company ("Zurich"), Sentry Insurance, a Mutual Company ("Sentry"), and Hartford Accident and Indemnity Company ("Hartford") for contempt of Court for violating this Court's (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation¹; (2) February 28, 2019 Order requiring Covil's Insurers to attend mediation²; and (3) September 19, 2019 Order requiring Covil's Insurers should respond and produce required documents before September 30, 2019.³

It appears to this Court that Insurers have refused to provide policy limits and settlement

¹ See November 2, 2018, Order Appointing Receiver in *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-40-04940).

² See February 28, 2019, Order Granting Plaintiff's Motion to Compel Attendance at Mediation in *Nolen v. Daniel, et al.* (C/A No. 2016-CP-40-04184); *Greene v. Armstrong, et al.* (C/A No. 2016-CP-40-00173); *Thompson v. Armstrong, et al.* (2016-CP-40-2498); and *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-04940).

³ See September 19, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A No. 2019-CP-40-00076).

authority information to their insured Receiver, even after this Court ordered the Insurers to provide the information by September 30, 2019. As such, this Court hereby ORDERS Covil's Insurers—USF&G, Sentry, Zurich, and Hartford—to show cause why they should not be held in contempt of Court for violation of this Court's Order Appointing a Receiver for Covil Corporation; Order Compelling their Attendance at Mediation; and Order for a Rule to Show Cause. Further, 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.

A hearing on this matter will be scheduled for November 13, 2019 and USF&G, Sentry, Zurich, and Hartford are required to attend.

IT IS THEREFORE ORDERED that Zurich American Insurance Company; Sentry Insurance, A Mutual Company; United States Fidelity and Guaranty Company; and Hartford Accident and Indemnity Company, show cause why they should not be held in contempt of Court for the reasons set forth above, and a hearing shall be scheduled for November 13, 2019 at 9:00 am at the Richland County Judicial Center.

IT IS FURTHER ORDERED that service of this Rule to Show Cause shall be served upon the South Carolina Department of Insurance for Zurich American Insurance Company; Sentry Insurance, A Mutual Company; United States Fidelity and Guaranty Company; and Hartford Accident and Indemnity Company, at least ten days prior to the Rule to Show Cause Hearing, which shall constitute proper service pursuant to Rule 4(e) of the South Carolina Rules of Civil Procedure.

SIGNED this _____ day of _____, 2019.

JEAN H. TOAL, CHIEF JUSTICE (Ret.)



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2019-10-28 11:53:40 page 6 of 6

EXHIBIT 16

STATE OF SOUTH CAROLINA

COUNT OF ORK

RO ANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GA E SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNT OF ORK

TIMOTH W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) C/A NO.: 2015-CP-46-02155
)

) UNITED STATES FIDELITY AND
) GUARANTY COMPANY IS
) MEMORANDUM REGARDING ORDER
) FOR RULE TO SHOW CAUSE
) HEARING
)

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
) C/A NO.: 2015-CP-46-03456
)

) UNITED STATES FIDELITY AND
) GUARANTY COMPANY IS
) MEMORANDUM REGARDING ORDER
) FOR RULE TO SHOW CAUSE
) HEARING
)

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

**UNITED STATES FIDELITY AND
GUARANTY COMPANY IS
MEMORANDUM REGARDING ORDER
FOR RULE TO SHOW CAUSE
HEARING**

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**UNITED STATES FIDELITY AND
GUARANTY COMPANY'S
MEMORANDUM REGARDING ORDER
FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS,
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	UNITED STATES FIDELITY AND
	)	GUARANTY COMPANY'S
vs.	)	MEMORANDUM REGARDING ORDER
	)	FOR RULE TO SHOW CAUSE
Air & Liquid Systems Corporation, et al.,	)	HEARING
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
<u>through its Receiver Peter D. Protopapas</u>	)	

United States Fidelity and Guaranty Company ("USF&G") submits this memorandum regarding the Order for Rule to Show Cause ("Show Cause Order") scheduled for hearing on November 12, 2019.

Preliminary Objections

USF&G adopts and incorporates the objections to personal jurisdiction filed by Sentry Insurance a Mutual Company ("Sentry") on September 13, 2019, and the additional objections filed by Sentry on September 17, 2019. There is, moreover, no complaint filed in this Court by the Receiver against USF&G or any other Covil insurer. Receivership proceedings are governed by the Rules of Civil Procedure, *see* Rule 66, SCRPC, and there are no pleadings against USF&G under Rule 7, discovery requests under Rules 27 to 36, or subpoena under Rule 45. Without waiving those objections to this proceeding, USF&G responds to the Show Cause Order as follows.

Responses Regarding Three Orders

The Show Cause Order requires USF&G to show cause why it should not be held in contempt of Court for violating this Court's (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation; (2) February 28, 2019 Order requiring Covil's Insurers to attend mediation; and (3) September 19, 2019 Order requiring Covil's Insurers should respond and produce required documents before September 30, 2019.

□ November 2, 2018 Order Appointing a Receiver for Covil Corporation

The Order Appointing a Receiver for Covil Corporation, entered on November 2, 2018, ordered as follows:

This Court hereby appoints Attorney Peter Protopapas as Receiver at such rate of compensation as may be approved by the Court. Mr. Protopapas is hereby appointed Receiver in this case pursuant to § 15-65-10 with the power and authority to fully administer all assets of Covil Corporation ("Covil"). This order 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.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of

Respondent may be situated, and to review and obtain copies of all documents related to same.

This order provided authority to the Receiver. It was not directed to USF&G and did not order USF&G to take any action or refrain from taking any action. It predated any request that the Receiver directed to USF&G. USF&G has not violated the order in any way.

February 28, 2019 Order Granting the Plaintiffs' Motion to Compel Attendance at Mediation

The Court entered the February 28, 2019 order in the *Jefferson* (2016-CP-40-04184), *Greene* (2016-CP-40-00173), *Thompson* (2016-CP-40-2498), and *Taylor* (2018-CP-40-04940) cases. The order was upon the [above-referenced Plaintiffs'] Motion to Compel the counsel for Covil Corporation (Covil), the Receiver for Covil and the representatives of Covil's insurers to attend mediation in Charleston on March 4-6. The Court ordered as follows:

Counsel for the Receiver, Mark H. Wall, and the Receiver for Covil, Peter D. Protopapas, as well as representatives from the following insurance carriers are required to attend the mediation in person: Zurich American Insurance Company; Sentry Casualty Company; U.S. 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; and First State Insurance Company. Each carrier's representative is required to attend mediation with full settlement authority as defined by the South Carolina Supreme Court and the South Carolina Alternative Dispute Resolution Rules.

USF&G attended the March 4-6 mediation, as the Court ordered. The Court entered the Show Cause Order in only one of the four cases subject to the February 28, 2019 order: *Taylor*. USF&G not only attended the March 4-6 mediation of *Taylor* in Charleston, it attended a follow up mediation of that case in Dallas, as a result of which the case settled. The Receiver's motion for rule to show cause alleges no violation by USF&G or any other Covil insurer of the February

28, 2019 order.¹ There is no violation of the February 28, 2019 order to be addressed at the November 12 hearing.

September 19, 2019 Order for Rule to Show Cause

Notwithstanding its objections to the September 19, 2019 order (the Order) USF&G has been making and continues to make a good faith effort to comply with the Order, and, indeed, is searching for and providing to the Receiver documents beyond those required by the Order. See Affidavit of Mark S. Esposito (Exhibit A).

The Order directed that service of this Rule to Show Cause shall be served upon the South Carolina Department of Insurance. The Receiver did not serve the Department of Insurance until October 1, 2019, the day after the September 30 production deadline specified in the Order; USF&G received the Order from the Department of Insurance on October 2, 2019. See Notice of Service of Process (Exhibit B). By that time, USF&G had begun its production of documents. By the time USF&G was served with the Order, the date for strict compliance with the Order had passed.

USF&G has to date made eight productions of documents responsive to the Order:

- October 1, 2019: TRAV ST 0000001 to TRAV ST 0000247
- October 2, 2019: TRAV ST 0000248 to TRAV ST 0000898
- October 3, 2019: TRAV ST 0000899 to TRAV ST 0004297
- October 4, 2019: TRAV ST 0004298 to TRAV ST 0004404
- October 21, 2019: TRAV ST 0004405 to TRAV ST 0008567
- October 30, 2019: TRAV ST 0008568 to TRAV ST 0008620

¹ The Receiver's allegations that USF&G violated the South Carolina Rules of Alternative Dispute Resolution are the subject of a separate motion and order, and USF&G's motion for reconsideration of that order is pending.

- November 8, 2019: TRAV ST .0008621 to TRAV ST 0008895
- November 11, 2019: TRAV ST 0008896 to TRAV ST 0016398

In addition to voluntarily agreeing to produce documents beyond the scope of the Order, USF&G has agreed to meet the Receiver's demands concerning the scope of documents within the Order. USF&G has asked only for reasonable extension of time to complete its search and production. *See* Letter of October 28, 2019 (Exhibit C); Email of November 1, 2019 (Exhibit D). USF&G anticipates substantially completing its production of documents this month, well in advance of the next trial against Covil in January 2020. The Receiver, moreover, has previously offered any insurer that attempts to comply with the Order an extension of time to do so. *See* Letter of October 8, 2019 (Exhibit E).

Absence of Basis to Find Contempt

On this record, there is no basis for concluding that USF&G willfully disobeyed the Court's orders. [C]ontempt results from the willful disobedience of a court order. Willful disobedience requires an act to be done voluntarily and intentionally with specific intent not to do something the law requires to be done. Moreover, in order to find willful disobedience, contempt requires the court order to be unequivocal. *Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012) (internal citations and quotation marks omitted).

USF&G is not alleged to have and has not violated any provision of the November 2 and February 28 orders. USF&G has been working in good faith to provide the documents and information set forth in the Order.

USF&G *could not* meet the 11-day time-frame specified in the Order. As Mr. Esposito's affidavit demonstrates, USF&G's search for records in response to the Order has produced to date 120,193 potentially responsive documents, comprising over 750,000 pages. *See* Ex. B at

7. That equates to more than 350 banker's boxes of paper. *Id.* It is simply not possible to locate and review for responsiveness and privilege that quantity of material in 11 days.

A good faith attempt to comply with the court's order, even if unsuccessful, does not warrant a finding of contempt. *Ex parte Lipscomb*, 398 S.C. 463, 470, 730 S.E.2d 320, 324 (Ct. App. 2012) (reversing contempt order, predicated on developer's failure to comply with order requiring it to halt discharge of sediment-laden stormwater onto downstream property, because developer was making good faith progress toward compliance). USF&G began producing documents to the Receiver in response to the Order before it was served with the Order. Its effort to locate and produce documents in response to the Order exceeds merely a good faith attempt to comply with the court's order. USF&G is searching for documents beyond the scope of the Order. Under these circumstances, there is no basis to find USF&G in contempt for violation of the Order.

In sum, USF&G respectfully submits that there is no basis for finding it in contempt for violating any of the three Orders referenced in the Show Cause Order.

Respectfully submitted:

s/William P. Davis

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Mariel D. Norton, Fed. ID No.: 11286

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*Attorneys for Defendant United States Fidelity and
Guaranty Company*

(Pro Hac Vice Applications Pending)

Dated: November 11, 2019

EXHIBIT 17

STATE OF SOUTH CAROLINA
COUNTY OF YORK
ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA
COUNTY OF YORK
TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
CHARLES T. HOPPER and REBECCA
HOPPER,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	ORDER FOR RULE TO SHOW CAUSE
	)	HEARING
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

This matter comes before this Court by way of a Motion for a Rule to Show Cause initiated by Peter D. Protopapas, as the duly appointed Receiver of Covil Corporation ("Receiver"). The Receiver's Motion for a Rule to Show Cause against United States Fidelity and Guaranty Company ("USF&G"), Zurich American Insurance Company ("Zurich"), and Sentry Insurance, a Mutual Company ("Sentry") (collectively "Insurers") seeks an order holding these Insurers in contempt for violating this Court's (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation;¹ (2) February 28, 2019 Order requiring Covil's Insurers to attend mediation;² (3) September 19, 2019 Order requiring Covil's Insurers to respond and produce required documents before September 30, 2019;³ and (4) October 28, 2019 Order for Rule to Show Cause.⁴

¹ See November 2, 2018, Order Appointing Receiver in *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-40-04940).

² See February 28, 2019, Order Granting Plaintiff's Motion to Compel Attendance at Mediation in *Nolen v. Daniel, et al.* (C/A No. 2016-CP-40-04184); *Greene v. Armstrong, et al.* (C/A No. 2016-CP-40-00173); *Thompson v. Armstrong, et al.* (2016-CP-40-2498); and *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-04940).

³ See September 19, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

⁴ See October 28, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

The South Carolina Supreme Court appointed the undersigned to serve as the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system. The asbestos litigation in South Carolina constitutes a significant number of complex multi-party cases. A typical case will include an injured plaintiff alleging that an asbestos-related cancer was caused by dozens of different defendants.

This Court has worked diligently to manage this docket and to organize this complicated statewide litigation into an orderly process whereby cases are assigned for trial in a predictable fashion. This process is designed to allow the litigants to participate in discovery in an orderly fashion to facilitate the evaluation of litigation positions well before trial, and to try the cases as necessary.

The Supreme Court's charge to this Court includes facilitating meaningful mediations of asbestos cases consistent with the South Carolina Rules of Alternative Dispute Resolution. The Rules mandate attendance at mediation of "a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim" on behalf of any insured party against whom a claim is made. SCRADR 6(b)(4).

Although this Court manages a large asbestos docket involving scores of different defendants, the matters associated with defendant Covil Corporation have required a very significant amount of this Court's time and attention for the reasons explained in more detail below.

From the time of its original formation in or about 1954, Covil Corporation was engaged in the installation and removal of insulation in various industrial facilities across South Carolina. Covil's operations involved the installation, removal and disturbance of insulation materials, typically supplied, required or acquired by other parties. At pertinent times insulation materials contained asbestos and Covil's operations are alleged to have resulted in bodily injury to South Carolina citizens. In 1991, Covil's business failed and it ceased operations. Thereafter, in 1993 the State of South Carolina rescinded Covil's corporate charter for failing to file the appropriate documentation with the Secretary of State.

Despite Covil's failure as a going concern and its subsequent forfeiture of its corporate charter, it continued to be sued in numerous asbestos cases. Through the management of the South Carolina asbestos docket, this Court observed several irregularities in the way that Covil conducted itself in its litigation. In the fall of 2018, Covil inexplicably defaulted on two mesothelioma asbestos cases pending before this Court, and shortly thereafter on November 2, 2018, the undersigned appointed Peter D. Protopapas to serve as a Receiver for Covil Corporation to manage its affairs according to South Carolina law.

During the ensuing months, this Court conducted numerous hearings regarding issues related to Covil. Over time, it became clear to this Court that certain of Covil's primary insurers (USF&G, Zurich, and Sentry) were operating an otherwise defunct Covil for purposes of managing Covil's asbestos litigation and had been doing so for over two decades without any apparent involvement from the insured – Covil Corporation. For over two decades, these primary Insurers pretended to be Covil. The primary insurers never sought the appointment of a receiver to represent Covil's interests in the defense of its asbestos cases. In fact, despite numerous opportunities to do so, at no time did any of Covil's Insurers even disclose to this Court their scheme to operate Covil as an undisclosed alter ego of these insurance companies.

As Covil's Receiver began to undertake his responsibilities, it became evident to this Court that Covil's Insurers would not willingly cooperate with the Receiver.⁵ In fact, several of these Insurers went to great lengths to thwart the Receiver's efforts to understand the basic nature and amount of the asbestos insurance coverage available to Covil. As a result of the insurers' refusal to cooperate, the Receiver began to seek this Court's intervention to determine the nature and amount of insurance available to Covil for its asbestos litigation. This information is critical to the Receiver's ability to manage Covil's asbestos

⁵ The Court's discussion of Covil's Insurers does not apply to TIG Insurance Company, as successor in interest to Fairmont Specialty Company, formerly known as Ranger Insurance Company ("TIG"). Unlike Covil's other insurers, TIG has cooperated with this Court and the Receiver. After producing the requisite materials, TIG acknowledged its responsibilities and reached an amicable settlement with Covil's Receiver. The Court commends TIG and its counsel for their cooperation and professionalism throughout this process. The Court also dissolved its Order to Show Cause as it related to Hartford and notes that Hartford also has reached an agreement to resolve its differences with Covil's Receiver.

litigation and, specifically, to participate meaningfully in mediation sessions scheduled for Covil's asbestos cases as required by the South Carolina Rules of Alternative Dispute Resolution.

Proceedings before this Court on the issue of Covil's participation in mediation exercises have demonstrated a lack of clarity regarding what constitutes "full authority" for claims filed against Covil Corporation. This lack of clarity continually delays settlement, stalls negotiations, and slows the ability of this Court to manage the South Carolina asbestos docket. An inquiry into the insurance coverage of Covil Corporation is warranted to fully determine the amount of authority available for settlement of asbestos personal injury actions filed against Covil Corporation.

Over time, this Court entered a series of escalating orders designed to require the Insurers to produce relevant insurance information to Covil's Receiver and to participate in asbestos mediations as scheduled on the South Carolina docket. Although several asbestos cases have been resolved under this system, except as noted above in note 5, the Insurers have yet to comply with this Court's Orders regarding the full production of the relevant insurance information to Covil's Receiver. These Insurers' defiance of this Court's lawful orders has impeded Covil's Receiver in his work under this Court's mandate, has interrupted this Court's ability to manage the numerous asbestos cases pending on its docket, and has required this Court unnecessarily to expend valuable time and resources in numerous hearings designed to encourage these Insurers to conduct themselves in accordance with the basic tenets of well-established South Carolina law. The Court has experienced problems with these Insurers when they were animating an otherwise defunct Covil and controlling its behavior in asbestos litigation before the appointment of the Receiver. See Order Granting Plaintiff's Motion for New Trial in *Crawford v. Coleanese Corp.*, C/A No. 2017-CP-42-04429 (where this Court found that Covil's insurers had been improperly operating, controlling, and abusing Covil for many years).

Unfortunately, this Court's persistence and patience have been unsuccessful in causing these Insurers fully to disclose and produce the insurance information or the details concerning their respective insuring relationship with Covil to the Receiver for their insured, Covil. After numerous attempts to achieve

compliance, this Court scheduled a show cause hearing on November 12, 2019, where the Insurers were directed to appear 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. With the exceptions noted above in note 5, the Insurers failed and refused to comply with this order.

In sum, after months of work by this Court and its Receiver, it appears to this Court that these Insurers have refused to provide complete policy limits and settlement authority information to their insured's Receiver, even after this Court ordered the Insurers to provide the information by September 30, 2019, under penalty of perjury, and again in a show cause hearing scheduled on November 12, 2019. Despite their assertions in their memoranda submitted to this Court following the November 12, 2019 hearing, the Court has given the Insurers ample opportunity to respond to Receiver's arguments and explain to the Court why they should not be held in contempt for failing to abide by this Court's September 19, 2019 Order. Despite these Insurers not complying with the clear terms of the September 19, 2019 Order to respond to the areas of inquiry under the penalty of perjury by September 30, 2019, the Court allowed these Insurers to submit additional affidavits and evidence after the November 12, 2019 hearing. However, as the Court noted at the hearing, these Insurers were already in contempt of this Court's order by not providing proper responses under perjury by the September 30, 2019 deadline, and the supplemental submissions, although potentially helpful to the Court in making this ruling, do not necessarily cure the Insurers' contempt. The Court has diligently reviewed and considered the extensive filings submitted by both the

Receiver and these Insurers after the November 12, 2019 hearing. The Court finds the submissions by these Insurers are not relevant to, and do not cure, their contemptuous conduct. Rather, these filings have consumed additional countless hours of this Court's time while these Insurers continue to play games rather than comply with this Court's orders.

The Court is particularly concerned with the fact that these Insurers continue to claim ignorance surrounding their responsibility to their insured and their obligations under this Court's orders. The Court has held multiple hearings wherein the Court has allowed the Receiver and the Insurers to present arguments pertaining to these issues, and the Receiver has been trying to obtain the requested information since his appointment, well over a year ago. These 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. The Insurers have continuously attempted to impede the Receiver's ability to determine the amounts of coverage available to Covil and have violated the South Carolina Alternative Dispute Resolution Rules by refusing to provide the Receiver with the necessary coverage information to fully participate in the mediation of these claims. In fact, because of these Insurers' obstinate refusal to comply with this Court's order and their past conduct, the Receiver has been forced to go to great lengths in order to present evidence to this Court and piece together the secondary evidence of insurance. While the Insurers have produced thousands of pages of documents, the production does not satisfy this Court's order as these Insurers have still not produced full coverage information or policies to the Receiver or fully disclosed the nature and extent of their insuring relationship.

During these hearings, the Court has been presented with evidence in the form of documents and sworn testimony indicating that Covil purchased products liability and completed operations liability insurance from USF&G (now a part of Travelers) from 1954 to 1964. Specifically, Palmer Covil (the founder of Covil Corporation) testified in a deposition in 1977 that Covil purchased USF&G general liability insurance coverage from 1954 to 1964. Moreover, Palmer Covil identified the Goldsmith Agency as the broker responsible for selling USF&G coverage to Covil. Former Lieutenant Governor Nick

Theodore provided an affidavit, as a former employee and partner of this agency, that he recalled selling USF&G insurance to Covil during this time period (until his agency lost the business to an agent selling insurance issued by Sentry). The Court finds this evidence and testimony to be persuasive, credible, and consistent with other known facts in this case.

On the other hand, USF&G reports only that it has been unable to locate these insurance policies. However, the Court has also been presented with evidence that USF&G undertook a systematic corporate program to destroy or discard its historical insurance policies which included policies and other related documentation from the period of time for which policies were issued to Covil as demonstrated by the evidence before this Court. In its arguments before the Court on November 12, 2019, and its memorandum submitted after the hearing, USF&G argues the Court should disregard its historical conduct because past conduct cannot be the basis of a finding of contempt. However, USF&G failed to inform the Court of the systematic destruction of policies until the Receiver brought the matter to the attention of the Court at the most recent hearing. The Court is concerned by the Insurers' failure to fully represent facts to the Court regarding the insurance coverage issued to Covil, especially considering that the Insurers acted as the alter ego of Covil for numerous years. The Court has given the Insurers ample opportunity to inform the Court of the necessary facts surrounding these coverage issues, and the Insurers have continuously refused to provide full information, misrepresented information, and attempted to prevent this Court from ruling on these issues.

The Court is deeply troubled by USF&G's historical behavior, including the widespread destruction of its insureds' insurance policies in an effort to evade liability under these policies. The Court is even more troubled by the fact that USF&G never mentioned, in numerous hearings on this very topic, that its policy destruction "purge" was the reason that USF&G is now unable to produce Covil's policies to the receiver. In this regard, USF&G has flagrantly defied this Court's orders and attempted to make a mockery of this Court's important work. Rarely, if ever, has this Court encountered such a degree of corporate

dishonesty as has been on display from USF&G during these proceedings. USF&G owes this Court a duty of candor, and should have been forthright.

The spoliation of evidence is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a current or reasonably anticipated legal proceeding. If proven, spoliation may be used to establish that the evidence was unfavorable to the party responsible. *Black's Law Dictionary* (8th Ed. 2004). The theory behind imposing sanctions for spoliation of evidence is that when a party destroys evidence, it is reasonable to infer that the party had "consciousness of guilt" or other motivations to avoid the evidence being heard or introduced to the jury.

A party bringing a motion for sanctions based on spoliation bears the burden of establishing three (3) independent elements before the Court may determine which sanction, if any, is appropriate. These elements are:

- (1) that the party having control over the evidence had a duty to preserve it at the time it was destroyed;
- (2) that the evidence was destroyed with a culpable state of mind; and
- (3) that the destroyed evidence was relevant to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Hawkins v. College of Charleston, 2013 WL 6050324, *2 (4th Cir. 2013) (quoting *Cytec Carbon Fibers, LLC v. Hopkins*, No. 2:11-cv-0217, 2012 WL 6044778 (D.S.C. Oct. 22, 2012)).

As to the first element, USF&G had a duty to preserve this evidence. "A party has a duty to preserve evidence during litigation and at any time 'before the litigation when a party reasonably should know that evidence may be relevant to anticipated litigation.'" *Id.* at *3 (quoting *Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001)). There is a common law duty to preserve evidence, and a party can only be sanctioned for destroying evidence it had a duty to preserve. That duty arises when a party has notice that the party possesses evidence that is relevant to litigation or when a party should have known the evidence may be relevant to future litigation. Pre-litigation discussions or requests to inspect can also trigger a duty to preserve relevant evidence and it can be said that the obligation to preserve evidence

runs first to counsel, who then has an ethical obligation to notify and advise their client on its obligations to safeguard and preserve the evidence relevant to the litigation on a continuing basis.

Covil is unable to identify a specific date on which USF&G's duty to preserve records arose. However, by 1976, USF&G had received correspondence from Covil requesting USF&G to respond to an asbestos case, and by June 1983, USF&G had received correspondence from Covil serving as Covil's final written demand that USF&G afford a defense to Covil in an asbestos case. As a result of this exchange of correspondence, USF&G knew by at least June 1983 that its insurance policies issued to Covil would be highly relevant documents for years to come. Despite this fact, USF&G reports that it has been unable to locate the early policies issued to Covil – policies that it denies having issued – or an actual copy of a later policy that it admits to having issued to Covil.

The evidence demonstrates that USF&G cannot locate the early policies USF&G issued to Covil, or the later policy it admits having issued to Covil, because USF&G destroyed the policies. In 1984, the year after Covil's counsel demanded a defense from USF&G, which was facing a growing number of long-tail claims like the asbestos claims here, USF&G deliberately began purging old policies and policy information, including information on policy limits. To support its contentions regarding the destruction of policies, the Receiver submitted documents from the *Western MacArthur* litigation; most importantly the Pillsbury Report, which USF&G Filed in *Western MacArthur* litigation (*Western MacArthur Company v. General Accident Insurance Company of America*, Case No. 721595-7, In the Superior Court for Alameda County, California).⁶

⁶ The Pillsbury Report is an 85-page document, filed in *United States Fidelity & Guaranty Company, et al. v. American Re-Insurance Company, et al.* Index No. 604517/2002, in the Supreme Court of the State of New York, County of New York. An expert witness, Philip L. Pillsbury, Jr., of the New York law firm, Pillsbury and Levinson, was retained by the reinsurers of USF&G to evaluate, in the context of California bad faith and insurance practice, the potential exposure for damages, which USF&G faced in a jury trial in 2002. This material was presented by Covil, at the November 12, 2019 hearing to describe the significant corporate misconduct leading to USF&G's contention that it was unable to locate copies of Covil's early insurance policies, which the Receiver found highly probative of the key issues in the proceeding. There was no objection regarding the Court's consideration of the documents, and Defendant

As stated in the Pillsbury report, an April 30, 1984 memorandum from Charles Watson, then a Vice President of USF&G, the new document destruction policy mandated the "purging of *each* file, not just files that can be discarded in entirety," required that doubts should be resolved "in favor of discarding unless there are legal restraints," and admonished that "we must be absolutely sure that we have thoroughly cleaned existing files." Similarly, a March 16, 1984 Department Circular detailing the Records Management Program noted: "All existing departmental files are to be in full compliance including having been completely purged of all obsolete and duplicate material."

As detailed in the expert report of Philip Pillsbury, which USF&G filed on February 21, 2017 as an exhibit to its opposition to a motion in the *Western MacArthur* reinsurance matter then pending in New York, USF&G's employees were given just two months to comply with the document destruction. Relying on USF&G's historical records, Mr. Pillsbury also described the deposition testimony of Randolph Rohrbaugh, the USF&G Vice President of Quality Assurance, who testified that, at a meeting concerning the USF&G document destruction program among USF&G management and attorneys in 1984, "there was a discussion as to whether USF&G should retain its records information about insureds' policies given that insureds would bear the burden of proof as to those policies." *See Pillsbury Report at 18.*

In short, the evidence shows that USF&G plainly undertook its purge of policy-related materials in anticipation of litigation. Having destroyed its policy-records, USF&G then could require its policyholders to provide copies of their policies to USF&G in order for USF&G to provide coverage. Beginning in the late 1980s, however, USF&G realized that policyholders could prove coverage for long-tail liability claims with secondary evidence, even if USF&G had destroyed the actual historical policy records in its possession. In his report in the reinsurance matter, Mr. Pillsbury describes the USF&G decision to reverse course on the document destruction policy. *See Pillsbury Report at 18-19.* Summarizing the deposition of Kenneth Ford, the USF&G in-house counsel in the Claims Legal Division, Mr. Pillsbury notes that Ford

USF&G and others requested the court allow them to submit further documentation. The court has considered the report and the additional insurers' submissions in drafting this order.

“testified at deposition that USF&G decided to ‘stop the destruction’ after policyholders began to prove coverage for the long-tail claims with ‘partial information concerning a policy,’ and the burden was shifted to the insurer to prove there wasn’t a policy or at least to prove the policy terms, and USF&G was not able to rebut some of that information.” *Id.* at 19. The reversal of course apparently occurred after USF&G destroyed evidence of the coverage it had provided to Covil between 1954 and 1964 and the actual policy it admits to having issued to Covil in the 1976 to 1978 periods.

Recently produced documents from USF&G itself further support that had USF&G not destroyed its historical policies, it would have been able to locate coverage it issued to Covil in the 1950s and 1960s and the actual policy it admits to having issued to Covil in 1976 to 1978. USF&G Claims Register documents⁷ produced to the Receiver by USF&G on November 22, 2019, and December 5, 2019, over two months after this Court’s deadline for production, show USF&G paid claims on Covil policies made by third-party business entities such as Daniel Construction, Tennessee Eastman, Raburn Mills, First Baptist Church and Hicks & Ingle Company during the period from 1955 to 1962, further supporting the fact that USF&G issued general liability insurance coverage to Covil during this timeframe and, due to its conduct, has been unable to produce full and complete coverage information. Furthermore, although it claims to have what it calls a “certified” copy of the 1976 to 1978 primary policy it admits having issued to Covil, USF&G has not been transparent with either Covil or the court. This so-called “policy” is a collection of forms, not an actual insurance policy, and there is no competent proof of an aggregate limit for products or completed operations claims. USF&G’s use of the word “certified” is also misleading since the documents have no independent verification of their source or accuracy.

⁷ The Court understands that USF&G utilized Claims Registers to maintain an index of all paid claims, and specifically that an entry was not placed on a claims register until a clerk had reviewed the relevant insurance policy to ensure that there was coverage for the loss. An April 1947 booklet entitled “Claim Department Clerical Instructions” detailed USF&G’s instructions to clerical staff regarding entry of claims in the claims register: “After the clerk has checked the policy or bond information to determine if there is coverage for the loss, she enters it on the claim register as provided on that form. She assigns the number next in order to the last one used. A separate sheet is used on each class of claims for each month. A carbon copy of the claim register is sent to the Home Office on the first of each month on AL [Automobile Bodily Injury], L [Other Bodily Injury], C [Compensation], and MP [Miscellaneous Property Damage] claims.”

By failing to maintain documents relevant to pending and future asbestos personal injury and insurance litigation, USF&G had a culpable state of mind because it either intentionally or negligently destroyed the evidence. The destruction of the documentary evidence that Covil seeks significantly hampers Covil's Receiver's ability to reconstruct its insurance program and other information relevant to pending and future asbestos personal injury and insurance litigation.

The "culpable" state of mind requirement does not require willful destruction. Rather, the moving party need only show that the evidence was destroyed "knowingly, even without intent [to breach the duty to preserve it], or negligently." *Byrnie v. Town of Cromwell*, 243 F.3d 93, 107–12 (2d Cir. 2001). "[T]he Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of the sanctions." *Sampson v. City of Cambridge, Maryland*, 251 F.R.D. 172, 179 (D. Md. 2008) (citing *Silvestri*, 271 F.3d at 590).

Here, the evidence before the Court shows that USF&G's conduct of destroying or losing relevant documents satisfies the required minimum level of culpability needed for spoliation sanctions to be imposed. Because culpability encompasses everything from ordinary negligence to willful conduct, the culpable standard merely requires USF&G to have some degree of fault, which is the case in this matter. Whether the Court finds that USF&G was negligent, grossly negligent, or willful in destroying the evidence, the Court concludes that USF&G had a culpable state of mind when it spoliated the evidence at issue.

The last of the three independent elements, relevance to the party's claims, is also clearly present on these facts. Under Rule 401 of the South Carolina Rules of Evidence, "relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." "Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears." *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Thus, any evidence which assists a jury at arriving at the truth of an issue is relevant. The determination of the relevancy of evidence is largely

within the trial judge's discretion. *Strickland v. Coastal Design Assocs., Inc.*, 294 S.C. 421, 425, 365 S.E.2d 226, 228 (Ct. App. 1987).

Here, Covil has met its burden of showing the spoliated evidence is highly relevant to its case. The fact that USF&G destroyed or lost such evidence is extremely damaging to Covil's ability to reconstruct its insurance policies. As such, USF&G should not profit or benefit from its failure to preserve this evidence. Of course, Covil has no way of knowing precisely what has been destroyed. However, there is reason to believe that the destroyed evidence would have aided Covil's position, which has suffered irreparable prejudice due to USF&G's spoliation. USF&G is hereby ORDERED to produce ALL documents related to these issues, including all transcripts, from the *Western Asbestos* litigation, including the subsequent re-insurance litigation, to Covil's Receiver by January 13, 2020.

By destroying relevant evidence, USF&G has succeeded in hiding significant evidence of its insurance coverage and attempted to deprive Covil of the opportunity to present critical evidence of insurance coverage. Thus, the Court finds 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 evidentiary playing field.

When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. *Gathers ex rel. Hutchinson v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 83, 427 S.E.2d 687, 689 (Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990)). Over the years, courts have found numerous sanctions to be appropriate for the spoliation of evidence. Courts have allowed adverse inferences to be drawn from the loss or destruction of relevant evidence, dismissed cases or stricken pleadings, issued fines plus attorney's fees and applied almost every other sanction available for the failure to provide discovery.

Among the tools that judges may use to combat spoliation is the adverse inference jury instruction/presumption. Giving the finder of fact the ability to decide what weight to place on the spoliation is the preferred practice in South Carolina. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d

679 (Ct. App. 1997). The presumption does not arise from the failure to present the evidence, but rather from the role that the spoliating party had in preventing it from being reviewed by the jury or court. When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. *Gathers v. S.C.E.&G. Co.*, 427 S.E.2d 687, 689 (S.C. Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ.*, 302 S.C. 390, 396 S.E.2d 369). Based on the evidence established by Covil's Receiver regarding the existence of Covil insurance coverage issued by USF&G, and based on the evidence demonstrating USF&G's spoliation of evidence regarding the existence of the coverage, this Court holds that USF&G's issued general liability insurance coverage to Covil Corporation on an annual basis, including products and completed operations coverage, between 1954 and 1964, without an aggregate limit of liability for damages paid for bodily injury or property damage. The court also makes a similar finding as to the 1976 to 1978 policy, SMP 490049.

Further, necessitated by the Supreme Court's charge to this Court to manage the South Carolina statewide asbestos litigation cases and as a direct result of these Insurers' recalcitrance in refusing to cooperate with this process, this Court and its Receiver are now left to discharge their respective duties by reconstructing 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. In this effort, the Court will apply the following principles of South Carolina insurance law.

1. "Trigger of Coverage." The term "trigger of coverage" describes the necessary events for a liability policy to respond to a suit seeking damage because of bodily injury. The Court rules that the policies at issue respond to suits when bodily injury takes place during the policy period, regardless of when the event causing the injury took place and regardless of when the injury becomes known or knowable. All of an insured's policies in effect from a person's first exposure to asbestos through manifestation of an asbestos disease and, ultimately, to death cover the asbestos cases unless coverage is otherwise excluded. This approach is called a "continuous trigger of coverage" or an "injury in fact trigger of coverage" inasmuch as medical science established long ago that asbestos injuries begin upon first inhalation of

asbestos fibers and continue progressively thereafter. As respects asbestos injury and death suits, the “continuous trigger of coverage” and the “injury in fact trigger of coverage” yield the same result such that the court need not choose between these conceptually similar approaches. *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 45 Cal. App. 4th 1, 45 (1996) (“We find no error in the trial court’s use of an injury-in-fact analysis to apply a continuous trigger.”).

2. **The Distinction Between “Operations” and “Completed Operations.”** The Court finds that the policies at issue contain separate and distinct coverage parts for “operations” and “completed operations.” As a general matter, the policies contain no aggregate limit of liability for the operations coverage part, although the Court has also held that the USF&G policies issued to Covil between 1954 and 1964 also contain no aggregate limit of liability for the products and completed operations coverage part as well. The operations coverage part for each one of the policies at issue in this case responds repeatedly to each and every “occurrence” without a total “cap” on the insurers’ liability to pay, subject only to a “per occurrence” limit of liability. The same is true of products and completed operations claims covered under the 1954 to 1964 USF&G policies. Most of the asbestos contracting claims against Covil invoke the operations coverage part because they did not result from its “completed operations.”

The insurers have conflated the separate “operations” coverage part with the “completed operations” coverage part and have applied their policies in a manner that has not been adopted by the state courts in South Carolina. The Court is aware that the insurers contend that aggregate limits of liability apply to any third party’s claim against Covil involving exposure to asbestos that took place before the *inception date* of their policies. The policies are not written in that manner, however. There is nothing in the definition of “completed operations” that focuses on the inception date of a policy.

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 policies 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.

This Court finds that the “completed operations hazard” described in the insurers’ policies, and the corresponding aggregate limits of liability in the policies that contain such aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos *after* Covil completed its installation or removal operations or work at a particular jobsite.

The Court holds that any aggregate limit of liability in the insurers’ policies applies only to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos attributed to Covil *after* Covil completed its work at a particular jobsite. No aggregate limits of liability apply to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos while Covil was performing work at a particular jobsite.⁸ See, e.g., *Travelers Cas. & Sur. Co. v. Gerling Global Reinsurance Corp. of Am.*, 419 F.3d 181, 184 (2d Cir. 2005) (“*Gerling*”) (“Operations” coverage “protected [the insured] from claims for asbestos-related injuries resulting from asbestos exposure on [the insured’s] premises or during its business operations, for example, injuries occurring during the installation or removal of asbestos products”); *Travelers Cas. & Sur. Co. v. Employers Ins. of Wausau*, 130 Cal. App. 4th 99, 114 n.6 (2005) (“Examples of injuries covered under the premises-operations coverage include injuries suffered by a shipyard worker while installing insulation at the insured’s facility and injuries caused by a subcontractor’s negligent construction of a wall that fell on a worker while the job was in progress.”).

⁸ Covil contends that policies in addition to those issued by USF&G between 1954 and 1964 do not contain any aggregate limits of liability at all. The court has not reached any conclusion as to this contention, except to conclude, in accordance with well-settled South Carolina law, that the burden is on the insurer to prove any limitation on coverage, including a limitation such as an aggregate limit of liability.

3. **Burden Of Proof.** The Insurers bear the burden of proving any exclusion or limitation of coverage, including the application of aggregate limits to particular suits and the “exhaustion” of the aggregate limits of liability in their policies.

The South Carolina Supreme Court has recognized that insurers bear the burden of proving the applicability of a coverage provision that limits their liability to their insured: “Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion’s applicability.” *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560 S.E.2d 611, 614 (2004) (citing *Boggs v. Aetna Cas. and Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565 (1979)); *see also Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144–48, 781 S.E.2d 137, 141–44 (2015) (upholding circuit court decision to construe an ambiguous terms in favor of coverage, and noting that “ambiguous terms are to be construed strictly against the insurer”). Courts have held that this basic principle also applies to “limitations” on coverage. *Ins. Co. of N. Am. v. Kayser-Roth Corp.*, 770 A.2d 403 (R.I. 2001) (“[o]nce the insured makes a prima facie showing of coverage, ‘the insurer then bears the burden of proving the applicability of policy exclusions and limitations in order to avoid an adverse judgment.’” (quoting *Gen. Accident Ins. Co. v. Am. Nat’l Fireproofing, Inc.*, 770 A.2d 403, 416 (R.I. 1998))); *Koppers Co. v. Aetna Cas. & Sur. Co.*, 98 F.3d 1440, 1446 (3d Cir. 1996) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage, since disclaiming coverage on the basis of an exclusion is an affirmative defense”).

Consequently, as to any individual asbestos lawsuit, it is the Insurers’ burden to prove that the suit seeks the recovery of damages that are subject to the aggregate limits of liability, if any, applicable to the “completed operations” provisions in their policies, where such aggregate limits have been proven by each particular Insurer as to each specific policy or policy period. By definition, aggregate limits restrict coverage. Accordingly, the insurers bear the burden of demonstrating that aggregate limits in their policies, if any, apply to any particular asbestos suits.

4. **Occurrences.** The policies at issue provide coverage for legal liabilities resulting from an

"occurrence." An "occurrence" is typically defined as an accident, including exposure to substantially similar conditions, that results in bodily injury during the policy period. Covil faces allegations in numerous lawsuits that multiple asbestos injury and wrongful death "occurrences" have resulted from its asbestos "operations." Covil is therefore entitled to multiple "per occurrence" limits of liability to resolve each of the asbestos suits.

The asbestos insulation operations suits against Covil are not repetitive products liability suits alleging exposure to asbestos from the same defective product. Instead, these suits allege that Covil's operations exposed workers and other bystanders to asbestos. Courts have held that the type of asbestos operations claims against Covil resulted from multiple "occurrences" under the standard definition of "occurrence" used during the time of the insurers' policies. *See, e.g., Gerling*, 419 F.3d at 184 ("[I]f claims arising from multiple occurrences triggered [operations] coverage, then Travelers was exposed to unlimited liability; each occurrence was subject to a \$1 million limit on liability, but there was no cap on total liability. Regardless of how much Travelers had paid for previous non-products occurrences under a single policy, each additional non-products occurrence under that policy subjected Travelers to liability anew.").

5. **Allocation of Losses to Covil's Policies.** Exposure to asbestos results in progressive injury spanning many years, thereby triggering coverage under multiple policies. Exposure to asbestos during the conduct of operations that results in bodily injury during the policy period or periods during which the operations were conducted also presents an allocation issue. And, here, Covil is in a Receivership, with no assets other than its insurance policies and proceeds, which also affects any allocation of loss since Covil itself cannot absorb any allocation of loss. Finally, the Court notes that the language of the policies typically requires the insurers to pay "all sums" – meaning everything – for which the insured is legally obligated to pay if a claimant sustains bodily injury during the period of the policy.

The Court is mindful of the South Carolina Supreme Court's decision in *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), and notes that it speaks generally to allocation of loss in a continuous injury situation such as asbestos-related disease but does not

address the particular circumstances presented by this Receivership, *i.e.*, the applicability of operations coverage and the impracticability of allocation of loss to Covil itself. Therefore, the Court will apply the rule of *Crossman Communities of N.C., Inc.* except in the case of operations claims where the policies in effect during the conduct of the operations will apply on an "all sums" basis. The Court also interprets *Crossman* such that allocation of loss will not be made to policy years when Covil does not have any available or responsive coverage.

Finally, each individual insurer will nevertheless be protected fully against the possibility that it paid too much on a single asbestos claim by its right to seek contribution from any other insurer, but not from Covil, whose policy also was triggered by the asbestos suit. This approach "ensures that [Covil] is indemnified by one [or more] insurer for the full extent of the loss up to the policy's limits, but apportions liability among all insurers whose policies were triggered by the claimant's asbestos-related bodily injury." *Armstrong*, 45 Cal. App. 4th at 55.

This Court further finds that no aggregate limit of liability for product liability or completed operations claims has been or can be proven, and therefore no aggregate limit for product liability or completed operations claims exists, for the following Covil insurance policies:

<u>Policy Period</u>	<u>Insurer</u>	<u>Policy Number</u>
April 21, 1964 – April 21, 1965	Hardware Mutual Casualty Co.	39 04132 02 01
April 21, 1965 – April 1, 1966	Hardware Mutual Casualty Co.	39 04132 02 01
April 21 1966 – March 31, 1967	Hardware Mutual Casualty Co.	39 04132 02
March 31, 1967 – March 31, 1968	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1968 – March 31, 1969	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1969 - March 31, 1970	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1974 – March 31, 1975	Maryland Casualty Company	41-206393
March 31, 1975 – March 31, 1976	Maryland Casualty Company	41-206393

March 31, 1976 – March 31, 1977	USF&G	SMP 490049
March 31, 1977 – March 31, 1978	USF&G	SMP 490049

This Court further orders that this Order be forwarded to the South Carolina Attorney General and to the South Carolina Department of Insurance for their consideration and further action, as they may deem appropriate.

AND IT SO ORDERED this 8 day of January, 2020.

Jean H. Toal, Chief Justice of the Supreme
Court, Retired, acting as Circuit Court Judge

Columbia, South Carolina.



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2020-01-08 11:32:39 page 23 of 23

EXHIBIT 18

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, Individually and as Personal
Representative of the Estate of CHARLOTTE
GAYE SMITH,

Plaintiff,

v.

CBS Corporation, et al.,

Defendant.

In Re:

Receivership of Covil Corporation by and through its
Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as Personal
Representative of the Estate of Wayne Ervin Howe,
deceased, and Jeanette Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and through its
Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE TAYLOR,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and through its	)	
Receiver Peter D. Protopapas	)	

**NON-PARTY USF&G'S MOTION
TO RECONSIDER, ALTER OR AMEND
CONTEMPT ORDER OF JANUARY 8, 2020**

Pursuant to South Carolina Rules of Civil Procedure ("SCRCP") 6(a), 52(b), 59(e), and 60(b), United States Fidelity and Guaranty Company ("USF&G") respectfully submits this Memorandum in Support of its Motion to Reconsider, Alter or Amend the Court's Order on Rule to Show Cause entered by this Court on January 8, 2020 (the "Show Cause Order"), which found USF&G in contempt and adopted a panoply of sanctions requested in the motion for rule to show cause filed by Peter Protopapas, as the Receiver of Covil Corporation ("Covil") (the "Receiver"). USF&G respectfully requests that this Court reconsider, alter, or amend its Show Cause Order for the following reasons.

Preliminary Procedural and Jurisdictional Objections¹

1. USF&G seeks reconsideration² on the basis that USF&G is not a party to any of the above-captioned cases and there is no separate Receivership action pursuant to which USF&G

This Memorandum refers to and incorporates herein by reference the following filings, including all exhibits attached thereto, all of which have been filed in the above-captioned actions (2015-CP-46-02155, 03456, 2019-CP-40-00076, 2018-CP-40-04680 & 04940): USF&G's Motion to Dismiss for Insufficient Process and Insufficient Service of Process filed on July 17, 2019 ("USF&G Motion to Dismiss");

Non-Party Sentry Insurance A Mutual Company's Written Objection to Personal Jurisdiction filed on September 18, 2019, which USF&G adopted and incorporated on November 11, 2019 ("Sentry Personal Jurisdiction Objection");

USF&G's Motion to Alter or Amend Contempt Order filed on September 27, 2019 ("USF&G Original Motion")

Petition for Certiorari filed by Zurich American Insurance Company on September 30, 2019 and subsequently joined by USF&G on October 15, 2019 ("Petition for Certiorari");

September 30, 2019 Affidavit of Mark S. Esposito ("Esposito Sept. 30 Aff.");

USF&G's Memorandum Regarding Order for Rule to Show Cause submitted on November 11, 2019 ("Show Cause Memorandum") and the corresponding Affidavit of Mark S. Esposito ("Esposito Nov. 11 Aff.");

USF&G's Supplemental Submission and Proposed Order on Rule to Show Cause submitted on November 22, 2019 (the "Supplemental Submission") and corresponding Affidavit of David E. Nanzig ("Nanzig Aff."), Declaration of Steven Plitt ("Plitt Declaration"), and Affidavit of Mark S. Esposito ("Esposito Nov. 22 Aff.");

USF&G's Memorandum in Further Support of Its Supplemental Submission and Proposed Order on Rule to Show Cause and in Opposition to Receiver's Brief and Proposed Order submitted on December 6, 2019 ("Memorandum in Further Support") and corresponding affidavit of Mark S. Esposito ("Esposito Dec. 6 Aff."); and

USF&G's Response to the Receiver's December 23, 2019 Revised Proposed Order on Rule to Show Cause submitted on January 6, 2020 ("USF&G Response") and corresponding Affidavit of Craig Johnson ("Johnson Aff.").

By submitting this Memorandum, USF&G does not intend to waive any objection.

² As used herein, "reconsideration" includes clarification, correction, modification, amendment, avoidance, specificity, legal justification, and similar relief.

has ever been served with process. *See In re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas*, No. 3:19-cv-0948 (D.S.C. July 26, 2019), at 6 (“None of the Insurers are parties to the five underlying asbestos actions itemized in the caption, and the mere fact that the Receiver included the words ‘In re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas’ in the caption of his motion for status conference does not manufacture a new ‘action’ subject to removal.”).

2. SCRCP 4(a) provides: “Copies of the original summons shall be served upon each defendant.” Rule 4(d) requires the summons and complaint to be filed together. USF&G was never served with any summons and complaint by the Receiver in connection with the Rule to Show Cause and resulting Show Cause Order. The Receiver could have served non-party USF&G pursuant to statutory service requirements but chose not to. *See* S.C. Code Ann. § 15-9-270 (2012).

3. In addition, Rule 6(d) provides: “A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court.” Rather than serving USF&G with his June 18, 2019 Notice of Motion and Motion for Status Conference, the Receiver copied the attorneys who are representing USF&G in separate actions on his emails to the Court and later delivered the attorneys paper copies of his motion. These attorneys, at that time, had not entered appearances in the above-referenced cases nor did they agree to accept service on behalf of the Insurers. *See* USF&G Motion to Dismiss; Sentry Personal Jurisdiction Objection at 9; Petition for Certiorari at 3, 10–11, 13–14, 17;³ Ex. A

³ The arguments made in the Petition for a Writ of Certiorari were not decided on the merits and, therefore, the subsequent denial has no precedential value. *See generally State v. Rucker*, 321 S.C. 552, 553, 471 S.E.2d 145, 145 (1996) (“The denial of a petition for a writ of certiorari to the Court of Appeals does not dismiss or decide the underlying appeal; it simply determines that, as a matter of discretion, this Court does not desire to review the

Correspondence from Ezra Gollogly to Walker Berry regarding this Court's Lack of Jurisdiction on June 26, 2019, also filed in the Petition for Certiorari and Receiver's Memorandum on Jurisdiction in the above-captioned cases on July 1, 2019 ("Receiver's Memo re Jurisdiction").

4. The Court lacks personal jurisdiction over a party or, as here, a non-party, until service has been effected regardless of whether the party otherwise has notice of the proceeding. USF&G is not a party in any of the above-captioned actions, and this Court does not have personal jurisdiction over it. *See* Sentry Personal Jurisdiction Objection at 10; *see generally* Ex. A.

5. An insurer does not become a party to an action under South Carolina law by virtue of its contractual duty to defend its insured. *See generally* *Major v. Nat'l Indem. Co.*, 267 S.C. 517, 521, 229 S.E.2d 849, 850 (1976) (finding no right, either statutory or under the common law, to maintain an action solely against the insurer); *see also* *Lucas v. Garrett*, 208 S.C. 292, 297, 38 S.E.2d 18, 21 (1946) (affirmative defenses directed at the party's insurer were properly stricken as irrelevant and immaterial because the insurer was not a party plaintiff); *see also* *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). The failure of the Receiver to comply with SCRCP 4 and properly serve USF&G deprives this court of jurisdiction. *See* Sentry Personal Jurisdiction Objection at 10–11.

6. USF&G seeks reconsideration on the basis that the order requiring mediation of two above-captioned cases, *Hill* and *Taylor*, does not give this court personal jurisdiction over a non-party insurer. South Carolina's Alternative Dispute Resolution Rules ("SCADR Rules") provide for the attendance of a representative of the Insurer at mediation and do not provide this Court with continuing authority to compel the attendance of the Insurers outside of the mediation settlement conference. Covil has been voluntarily dismissed with prejudice in both *Hill* and

decision of the Court of Appeals."); *see also* *Rios v. Warden, Perry Corr. Inst.*, 711 F. App'x 696, 700 (4th Cir. 2017) (same).

Taylor. Therefore, there is no longer any live case or controversy over which the Court sits. Even if there were, the Insurers are not parties to that action. The South Carolina Rules of Civil Procedure provide no basis for the order at issue. SCRCPP 16(e), regarding status conferences, provides that “the trial judge may hold an informal conference before trial to dispose of any remaining matters, including disposition of any pending motions and consideration of settlement.” There is no authority for compelling the attendance of a non-party at a status conference in Rule 16(e) and no grant of personal jurisdiction over non-party insurers. *See* Sentry Personal Jurisdiction Objection at 11–12.

7. USF&G seeks reconsideration on the basis that no discovery requests have been served on USF&G pursuant to SCRCPP 27 to 36. The only proper mechanism for obtaining discovery from a non-party is via subpoena, which requires proper service.⁴ *See* Rule 34 (c), SCRCPP (“A person not a party may be compelled to produce documents or things or submit to an inspection only as provided in Rule 45.”). SCRCPP 45 provides for the form and issuance of subpoenas, the requirements for service of a subpoena, and the protection of persons subject to subpoenas. No subpoena has been served by the Receiver upon USF&G, as required by Rule 45. In addition, the discovery sought and the resulting September 19, 2019 Production Order (“Production Order”)⁵ bear no relation to the claims and defenses in the above-captioned cases. *See* Sentry Personal Jurisdiction Objection at 9–10; Petition for Certiorari at 1, 5–6, 10–13; Ex. B USF&G’s First Response to Receiver’s Proposed Order for Rule to Show Cause, Aug. 26, 2019,

⁴ USF&G is not a party to any case currently pending before this Court. Therefore, it is a non-party, and any discovery served upon it must conform to the Uniform Interstate Depositions and Discovery Act. S.C. CODE § 15-47-100 et. seq (2013).

⁵ For the avoidance of doubt, the Production Order required USF&G to respond to twenty-four areas of inquiry, including production of twenty categories of documents.

also filed in Petition for Certiorari; Ex. C USF&G's Second Response to Receiver's Proposed Order for Rule to Show Cause, Sept. 17, 2019, also filed in Petition for Certiorari; Show Cause Memorandum at 3.

8. USF&G seeks reconsideration on the basis that there is no complaint filed in this Court by the Receiver against USF&G and no pleadings against USF&G under SCRCP 7. *See* USF&G Motion to Dismiss; Petition for Certiorari at 10–11, 17; Show Cause Memorandum at 3.

9. USF&G seeks reconsideration on the basis that the assignment of Justice Toal to oversee asbestos litigation pending in state court does not give the Court personal jurisdiction over non-parties such that the Court can order those non-parties into court or to provide responses to *de facto* interrogatories and requests to produce without compliance with the applicable rules of civil procedure or due process. *See* Petition for Certiorari at 12.

10. USF&G seeks reconsideration on the basis that the SCADR Rules do not provide authority for the Sept. 19, 2019 Production Order, ordering USF&G to produce 20 categories of documents. SCADR Rule 6(b)(4) requires the physical attendance of “a representative of the insurance carrier who is not the carrier’s outside counsel and who has full authority to settle the claim” at the mediation settlement conference. No court order, other than for mediation, is necessary to require this. SCADR Rule 10 provides the penalty for failure to adhere to that requirement, and, assuming due process of law, permits the imposition of sanctions against an insurance company for violating that requirement. Any failure of the Insurers with regard to settlement or mediation can and certainly will be raised by the Receiver in one of the several lawsuits he has or had pending against the Insurers. The Production Order goes far beyond the parameters of the SCADR Rules by requiring USF&G and other insurers to respond to interrogatories and produce, in eleven days, thirty-seven years of policies, underlying files, and

claims documents, none of which has anything to do with the settlement of an underlying asbestos lawsuit. *See* Petition for Certiorari at 12–13.

11. USF&G seeks reconsideration on the basis that the Court deprived USF&G of a hearing to object to the above-mentioned 24 areas of inquiry, issued by the Court without any prior non-party subpoena or other opportunity to object prior to adoption of the non-party discovery by order of this Court. *See* Petition for Certiorari at 6; Ex. D Sept. 13, 2019 Hearing Tr. 87:9-13, 89:1-5, 94:11-25, 97:3-13, also filed in Petition for Certiorari.

12. USF&G seeks reconsideration on the basis that the jurisdiction the Court has over the Receiver does not extend to non-party, out-of-state entities without due process of law. The Receiver claims that this Court has *in rem* jurisdiction over the insurance policies by virtue of its “possession” of them as the receiver court. However, the South Carolina Supreme Court has held that the contractual obligations of a defendant’s insurer are not a debt subject to attachment under the law of this state. *Howard v. Allen*, 254 S.C. 455, 459, 176 S.E.2d 127, 129 (1970). As such, there is no basis for the claim that the receivership itself provides the Court jurisdiction over the Insurers. *See* Petition for Certiorari at 13–14.

13. USF&G also seeks reconsideration on the basis that the receivership is improper. “The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Midlands Util., Inc. v. S.C. Dep’t of Health & Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) (citing *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957)). “[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (citing *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887)); *see also Andrick Dev. Corp. v.*

Maccaro, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (Ct. App. 1984) (appointment of a receiver is proper before judgment “where the property which is the subject matter of the action is in the possession of the adverse party, where the party making application for a receiver establishes an apparent right to the property, and where the property, or its rents and profits, are in danger of being lost or materially injured or impaired.”).

14. Additionally, plaintiffs in the *Taylor* above-captioned action did not provide USF&G with at least four days’ notice, as is required under S.C. Code Ann. § 15–65–20 (2013), prior to appointment of a receiver. In their motion, Plaintiffs acknowledge this non-compliance with the law but insisted that “[a]n immediate appointment of a receiver is appropriate” because of Covil’s failure to respond in the above-captioned *Hill* and *Taylor* cases. Plaintiffs’ Motion to Appoint a Receiver at 3. This reasoning is inadequate and in any event is moot given the resolution of the *Hill* and *Taylor* actions.

15. In short, USF&G seeks reconsideration on the basis that the Court lacks jurisdiction with respect to USF&G in the above-captioned matters and USF&G has been deprived of due process in connection with the Order. *See* Ex. E Lee H. Ogburn Letter to Brady Edwards on September 30, 2019 (“Ogburn Letter”).

USF&G Complied With and is Not in Contempt of Any of the Court’s Orders

16. USF&G seeks reconsideration on the basis that it has not intentionally disobeyed any court order, as is required to hold a party in contempt under South Carolina law. *See Ex parte Lipscomb*, 398 S.C. 463, 469–70, 730 S.E.2d 320, 323–24 (2012). Instead, USF&G has complied with the Court’s November 2, 2018 Order (Order appointing the Receiver), February 28, 2019 Order (Order directing USF&G to attend a three-day mediation), September 19, 2019 Order (Order directing USF&G to respond to 24 areas of inquiry, including production of 20 categories of documents), and October 28, 2019 Order (Order directing USF&G to show cause why it should

not be held in contempt of the above three Orders). USF&G has complied with the above Orders to the fullest extent possible. *See* Esposito Sept. 30 Aff. at ¶¶ 3–8; Show Cause Memorandum at 4–8; Esposito Nov. 11 Aff. ¶¶ 5–11, 14–26; Supplemental Submission at ¶¶ 1–4, 9–15, 31, 34; Esposito Nov. 22 Aff. at ¶¶ 3–28; Memorandum in Further Support at 2, 4–5, 8–10; Esposito Dec. 6 Aff. ¶¶ 3–7; USF&G Response at 2–9, 11, 13; Johnson Aff. at ¶ 2.

17. USF&G seeks reconsideration on the basis that it has complied with the Court's November 2, 2018 Order (Order appointing the Receiver). This order provided authority to the Receiver. It was not directed to USF&G and did not order USF&G to take any action or refrain from taking any action. It predated any request that the Receiver directed to USF&G. USF&G has not violated the order in any way. *See* Show Cause Memorandum at 5; Memorandum in Further Support at 4.

18. USF&G seeks reconsideration on the basis that it has complied with the Court's February 28, 2019 Order (Order directing USF&G to attend a three-day mediation from March 4–6, 2019). USF&G attended the March 4–6 mediation, as the Court ordered. The Court entered the Show Cause Order in only one of the four cases subject to the February 28, 2019 order: *Taylor*. USF&G not only attended the March 4–6 mediation of *Taylor* in Charleston, it attended a follow up mediation of that case in Dallas, as a result of which the case settled. The Receiver's motion for rule to show cause alleges no violation by USF&G or any other Covil insurer of the February 28, 2019 Order. *See* Show Cause Memorandum 5–6; Memorandum in Further Support at 4; USF&G Response at 2.

19. Moreover, this Court has already considered and ruled on the Receiver's motion to hold USF&G in contempt of the February 28, 2019 Order Granting Plaintiff's Motion to Compel Attendance at Mediation in its order of September 19, 2019 in the above-captioned actions and objects to the extent the Court purports to issue multiple sanctions and multiple findings of

contempt based on the same alleged findings of contempt. USF&G has separately moved for reconsideration of that Order and its objections, which have yet to be ruled upon by this Court, are incorporated herein by reference. *See* USF&G Original Motion.

20. USF&G seeks reconsideration on the basis that it has complied with the Court's September 19, 2019 Order (Order directing USF&G to produce 24 categories of documents and information). The Order directed that "service of this Rule to Show Cause shall be served upon the South Carolina Department of Insurance." The Receiver did not serve the Department of Insurance until October 1, 2019, the day *after* the September 30 production deadline specified in the Order; USF&G received the Order from the Department of Insurance on October 2, 2019. *See* Show Cause Memorandum at 6. As a preliminary matter, the basis for the deadline for responding to the Order—September 30, 2019—was that the mediation of the above-captioned *Hopper* case was scheduled to take place later that week. However, *Hopper* settled after the Court issued the September 19 Order but before the September 30 deadline. As a result, there was no reason that USF&G should have had to provide the documents and information contemplated by the 24 topics in the Production Order by September 30, 2019. *See* Ex. E.

21. By the time USF&G was served with the Order, the date for strict compliance with the Order had passed. Notwithstanding the impossible document production deadline, USF&G has produced responsive, non-privileged documents to the Receiver on a rolling basis. To date, USF&G has produced over 721,000 pages of materials to the Receiver.

22. The November 11 Esposito Affidavit describes in detail the steps USF&G has taken to respond in good faith to the mandates in the Court's September 19 Production Order, including the processes USF&G employed to collect and review documents potentially responsive to the twenty categories set forth in the Production Order. USF&G's document gathering process has included, but has not been limited to, extensive searches conducted for policies for five Covil

entities, searches through thirteen boxes of claim files associated with the March 31, 1976 to March 31, 1978 policy number SMP 490049 issued by Fidelity and Guaranty Insurance Underwriters, Inc. (the “USF&G Policy”), a search of the emails and electronic documents maintained by each of the employees associated with handling claims against Covil under the USF&G Policy, obtaining a loss run for each workers compensation policy issued to Covil and located by BI Document Management (which keeps business and policy records for USF&G), searches to locate workers compensation claim files, searches for policy jackets or “exemplar policies” associated with general liability policies issued by USF&G during the period 1954 to 1964, searches through reinsurance files to locate records that might identify specific policies issued by USF&G to Covil, searches for former employees who might possess personal knowledge regarding any insuring relationship between USF&G and Covil that may have existed during the period 1954 to 1964, and searches for documents regarding insurance agents that may have procured coverage for Covil. Esposito Nov. 11 Aff. ¶¶ 5–11, 14–26.

23. In late 2019, USF&G formed a document review team that was expanded to more than a dozen lawyers to review over 120,190 documents gathered by USF&G that were—at that time—potentially responsive. Further, as this Court requested at the November 12 Hearing, USF&G provided an item-by-item response to each of the twenty-four categories enumerated in the Production Order. As part of USF&G’s compliance with the Production Order, USF&G produced a complete copy of the USF&G 1976–1978 policy to the Receiver bearing bates-numbers TRAV000068–134 (“USF&G Policy”). Contrary to the Receiver’s unsubstantiated claim, the USF&G Policy is not missing. In fact, USF&G produced a complete copy of the USF&G Policy *before* the September 30, 2019 deadline for production set forth in the Production Order. Contrary to the Receiver’s unsupported allegations, USF&G has not impeded the search for information relevant to potential coverage and has not in any way violated any of this Court’s orders.

intentionally or otherwise. Instead, USF&G has diligently searched for, and produced to the Receiver documents responding to the Production Order.

24. USF&G has completed its document production and will supplement as necessary. USF&G provided the sworn affidavits attesting to its compliance with the September 19, 2019 Production Order on September 30, 2019, November 11, 2019, November 22, 2019, and December 6, 2019. At the Court's direction, USF&G submitted the Supplemental Affidavit of Mark Esposito dated November 22, 2019, which recounted USF&G's efforts to comply with the September 19, 2019 Order in detail on a paragraph-by-paragraph basis, attesting to the fact that USF&G's responses and productions were complete or substantially complete as to each category of requested information, including dates of production, Bates ranges, and steps USF&G personnel had undertaken to search for, review, and produce requested information (as noted above). USF&G also submitted memoranda on November 11, November 22, December 6, 2019, and January 6, 2020 explaining why it was not in contempt of this Court's orders, and providing factual and legal support in opposing the Rule to Show Cause. In addition, USF&G provided the Receiver with a detailed letter regarding the progress USF&G had made with respect to document production. *See* Show Cause Memorandum at 6; Esposito Nov. 11, 2019 Aff. at ¶¶ 4–8; Supplemental Submission at ¶¶ 2, 13; Esposito Nov. 22, 2019 Aff. at ¶¶ 3–4; Memorandum in Further Support at 4, 8, 9; USF&G Response at 2, 5–6; Ex. E.

25. USF&G has complied with the Court's September 19 Production Order notwithstanding the jurisdictional defects and the ramifications compliance may have had on the privacy of numerous unrelated persons as it required USF&G to provide the entire claims file for any and all claims filed under any liability or workers compensation policy issued to Covil, or on which Covil was an additional insured, from 1954 to 1991. *See* Petition for Certiorari at 15.

26. USF&G seeks reconsideration on the basis that it has complied with the Court's October 28, 2019 Order (Order directing USF&G to show cause why it should not be held in contempt of the above three Orders) by submitting additional memoranda supporting its position that it should not be held in contempt and attending the November 12, 2019 hearing on the Receiver's Motion for Rule to Show Cause. *See* Memorandum in Further Support at 4; USF&G Response at 2. USF&G also had a witness available to testify at the November 12, 2019 hearing as directed by the Court, but the Court did not hear any testimony and instead directed the parties to make additional written submissions.

Objections to Factual Findings

27. USF&G seeks reconsideration on the basis that the Court makes the following factual findings and inferences that are not supported by the record, not supported by clear and convincing evidence, and/or on the basis that the facts were misapplied or misinterpreted, as demonstrated in repeated filings in this Court.

- a. A Covil representative existed with whom insurers could have communicated. Instead, insurers "were operating an otherwise defunct Covil for purposes of managing Covil's asbestos litigation and had been doing so for over two decades without any apparent involvement from the insured – Covil Corporation." Show Cause Order at 3.
- b. The primary insurers "pretended to be Covil" and engaged in a "scheme to operate Covil as an undisclosed alter ego of" the insurers. *Id.*
- c. "Insurers went to great lengths to thwart the Receiver's efforts to understand the basic nature and amount of the asbestos insurance coverage available to Covil." *Id.*
- d. "[T]he Insurers have yet to comply with this Court's Orders regarding the full production of the relevant insurance information to Covil's Receiver." *Id.* at 4.
- e. "These Insurers' defiance of this Court's lawful orders has impeded Covil's Receiver in his work under this Court's mandate, has interrupted this Court's ability to manage the numerous asbestos cases pending on its docket, and has required this Court unnecessarily to expend valuable time and resources in numerous hearings designed to encourage these Insurers to conduct themselves in accordance with the basic tenets of well-established South Carolina law. The Court has experienced problems with these Insurers when they were animating an otherwise defunct Covil and controlling its behavior in asbestos litigation before the appointment of the Receiver." *Id.*

- f. "[T]he Insurers failed and refused to comply with th[e] [October 28, 2019] order" requiring the insurers to be prepared to discuss policy and exhaustion information at the November 12, 2019 Hearing. *Id.* at 4–5.
- g. "Insurers have refused to provide complete policy limits and settlement authority information to their insured's Receiver, even after this Court ordered the Insurers to provide the information by September 30, 2019, under penalty of perjury, and again in a show cause hearing scheduled on November 12, 2019." *Id.* at 5.
- h. "[T]hese Insurers were already in contempt of this Court's order by not providing proper responses under perjury by the September 30, 2019 deadline, and the supplemental submissions . . . do not necessarily cure the Insurers' contempt. . . . The Court finds the submissions by these Insurers are not relevant to, and do not cure, their contemptuous conduct." *Id.* at 5–6.
- i. Insurers "continue to claim ignorance surrounding their responsibility to their insured and their obligations under this Court's orders," "continue to plead ignorance in order to avoid the consequences of their own conduct," "continuously attempted to impede the Receiver's ability to determine the amounts of coverage available to Covil and have violated the South Carolina Alternative Dispute Resolution Rules by refusing to provide the Receiver with the necessary coverage information to fully participate in the mediation of these claims." *Id.* at 6.
- j. "Because of these Insurers' obstinate refusal to comply with this Court's order and their past conduct the Receiver has been forced to go to great lengths in order to present evidence to this Court and piece together the secondary evidence of insurance." *Id.*
- k. "[T]he production does not satisfy this Court's order as these Insurers have still not produced full coverage information or policies to the Receiver or fully disclosed the nature and extent of their insuring relationship." *Id.*
- l. "Covil purchased products liability and completed operations liability insurance from USF&G . . . from 1954 to 1964." "The Court finds this evidence [which USF&G contends did *not* establish the existence of products liability and completed operations liability insurance from 1954 to 1964] to be persuasive, credible, and consistent with other known facts in this case." *Id.* at 6–7.
- m. "[T]he Court has also been presented with evidence that USF&G undertook a systematic corporate program to destroy or discard its historical insurance policies which included policies and other related documentation from the period of time for which policies were issued to Covil as demonstrated by the evidence before this Court." *Id.* at 7.
- n. USF&G failed to inform the Court of "systematic destruction of policies" that it disputes and which has been demonstrated to be irrelevant and not based on admissible evidence; USF&G also allegedly failed "to fully represent facts to the Court regarding the insurance coverage issued to Covil," precipitating the finding that "the Insurers

acted as the alter ego of Covil for numerous years,”⁶ and that “the Insurers have continuously refused to provide full information, misrepresented information, and attempted to prevent this Court from ruling on these issues.” *Id.*

- o. All factual findings and associated legal conclusions regarding alleged document destruction at pages 7–11, including but not limited to findings concerning whether and when any Covil-related materials existed or were destroyed, USF&G’s purported motives, USF&G’s alleged knowledge of coverage, and USF&G’s alleged violation of the Court’s orders.⁷
- p. The 1976 to 1978 policy USF&G issued to Covil and produced to the Receiver “is a collection of forms, not an actual insurance policy, and there is no competent proof of an aggregate limit for products or completed operations claims.” *Id.* at 11.
- q. “USF&G’s use of the word ‘certified’ is also misleading since the documents have no independent verification of their source or accuracy.” *Id.*
- r. “USF&G has flagrantly defied this Court’s orders and attempted to make a mockery of this Court’s important work.” *Id.* at 7.
- s. “USF&G knew by at least June 1983 that its insurance policies issued to Covil would be highly relevant documents for years to come.” *Id.* at 9.
- t. “USF&G deliberately began purging old policies and policy information, including information on policy limits. . . . [T]he evidence shows that USF&G plainly undertook its purge of policy-related materials in anticipation of litigation. . . . USF&G had a culpable state of mind because it either intentionally or negligently destroyed the evidence,” notwithstanding any testimony of any witness and no other evidentiary support of USF&G’s motives. *Id.* at 9–12.
- u. “By destroying relevant evidence, USF&G has succeeded in hiding significant evidence of its insurance coverage and attempted to deprive Covil of the opportunity to present critical evidence of insurance coverage.” *Id.* at 13.
- v. “Most of the asbestos contracting claims against Covil invoke the operations coverage part because they did not result from its ‘completed operations.’” *Id.* at 15.
- w. “No aggregate limits of liability apply to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos while Covil was performing work at a particular jobsite.” *Id.* at 16.

⁶ The Receiver presented no prior briefing in these actions concerning the legal requirements of alter ego liability, nor did it provide any admissible evidence concerning the factual predicates for a finding of alter ego. *See also* ¶¶ 31–36, *infra*.

⁷ The Court’s spoliation-related findings and conclusions are addressed further below.

- x. “This Court further finds that no aggregate limit of liability for product liability or completed operations claims has been or can be proven, and therefore no aggregate limit for product liability or completed operations claims exists, for the following Covil insurance policies” including USF&G Policy SMP 490049, which contains aggregate limits of liability for product liability and completed operations claims. *Id.* at 19–20.
- y. Specifically, “this Court holds that USF&G’s issued general liability insurance coverage to Covil Corporation on an annual basis, including products and completed operations coverage, between 1954 and 1964, without an aggregate limit of liability for damages paid for bodily injury or property damage. The court also makes a similar finding as to the 1976 to 1978 policy, SMP 490049.” *Id.* at 14.

28. USF&G seeks reconsideration on the basis that the Court ignores industry-standard document retention policies and, instead, relies on the hearsay Pillsbury report that erroneously alleges that USF&G knowingly destroyed policies that may have been issued to Covil from 1954 to 1964 in an effort to avoid liability on long-tail claims. In his affidavit, Mr. Nanzig, Second Vice President in the Strategic Resolution Group at Travelers Indemnity Company, states that during the 1970s, USF&G issued uniform document retention guidelines. In 1970 and again in 1972, USF&G amended its uniform document retention guidelines. Under USF&G’s March 18, 1970 guidelines, “applications, correspondence, daily reports, endorsements, renewal certificates, cancellation evidence, and individual risk experience records [were] to be retained for all risks for three full years after the policy termination.” The only exception to that procedure was the retention of data pertaining to policies “(1) under which claims [were] pending until such claims are closed; [and] (2) for which premiums ha[d] not been collected until final settlement” and where “jurisdictional requirements,” such as a statute of limitations, necessitated a longer retention period. Mr. Nanzig further explains that in 1984, USF&G again amended its document retention policy, establishing additional guidelines for both the home and branch offices. Nanzig Aff. at ¶¶ 4–6.

29. Since the storing of obsolete records was costly for USF&G, management concluded that each department would benefit from an updated document retention program.

USF&G's management identified several benefits to be achieved from the new document management initiative, including substantial space-saving, reduction in file equipment expenditure, better control and organization of records, protection of the company's vital records, and compliance with legal retention requirements. Pursuant to USF&G's document retention program, if any Covil-related documents from the 1950s or 1960s previously existed and had been destroyed, they would have been destroyed long before the updated guidelines were implemented in 1984. *See* Supplemental Submission at ¶¶ 31–34; Nanzig Aff. at ¶¶ 5–6.

30. USF&G seeks reconsideration on the basis that the Court relied on the hearsay Pillsbury report, submitted in an unrelated case by a USF&G adversary, and explicitly based its reliance on the egregiously incorrect statement that “There was no objection regarding the Court’s consideration of the [Pillsbury report]” Show Cause Order at 9, n.6. Notwithstanding the Court’s assertion, USF&G objected to the Court considering the Pillsbury report on multiple occasions. *See* Nov. 12 Hrg. Trans. at 29:16–23; Supplemental Submission at ¶¶ 5–6, n.2, 9, 16–34; Plitt Declaration at ¶¶ 13–24; Nanzig Aff. at ¶¶ 3–6; Memorandum in Further Support at 10–11, 15–16; USF&G Response at 2–4, 9–11, n.4.

31. USF&G seeks reconsideration on the basis that, without any briefing by USF&G on the legal requirements for imposing alter ego liability, the Court draws an incorrect inference that USF&G fulfilling its contractual obligation to defend and, in certain instances, indemnify Covil, is akin to USF&G nefariously conducting itself as the alter ego of Covil. *See* Memorandum in Further Support at 6–7.

32. Importantly, “to disregard the corporate entity for jurisdictional purposes, plaintiff must make a prima facie case under appropriate substantive law to establish alter ego liability.” *See* MINIMUM CONTACTS DOCTRINE, RUTTER GRP. PRAC. GUIDE FED. CIV. PRO. BEFORE TRIAL, Ch. 3-E. “The [plaintiff’s] burden of proof [when asserting an alter ego claim] is *substantial* and

courts within [South Carolina] have made it clear that they are *generally reluctant* to disregard the integrity of the corporate entity.” *Osborn v. Univ. Med. Assoc. of Med. Univ. of S. Car.*, 278 F. Supp. 2d 720, 727 (D.S.C. 2003) (quoting *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316, 319 (Ct. App. 1984)) (emphasis added). As discussed below, the Receiver comes nowhere close to meeting this burden.

33. To allege a *prime facie* alter ego theory under South Carolina law, a plaintiff must satisfy a two-prong test: (1) the alleged alter ego or “dominant entity” must have exercised “domination or complete control” over the subservient entity (the “Control Prong”) and (2) the dominant entity must have engaged in fraudulent or self-serving conduct that results in “inequitable consequences” (the “Fairness Prong”). See *Colleton Cty. Taxpayers Ass’n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 237, 638 S.E.2d 685, 692 (2006).

34. To satisfy the Control Prong outside of the parent-subsidary context, the plaintiff must allege “total domination and control of one entity by another[.]” *Colleton Cty. Taxpayers Ass’n*, 371 S.C. at 237, 638 S.E.2d at 692 (citing *Peoples Fed. Sav. & Loan Assoc. v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 148, 425 S.E.2d 764, 774 (Ct. App. 1992)). “Control may be shown where the subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity.” *Id.* See also *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012). The Receiver fails to allege that USF&G exercised the type of “domination or complete control” needed to satisfy the Control Prong.

35. With respect to the Fairness Prong, case law from South Carolina and other jurisdictions require a causal nexus between (i) the alleged wrongful or self-serving conduct of the alter ego in exercising control over the subservient entity and (ii) the harm suffered by the plaintiff. See *Osborn*, 278 F. Supp. 2d at 727 (“the dominant corporation must have controlled the subservient corporation, and second, the dominant corporation must have proximately caused [the]

plaintiff harm through misuse of this control”). *See also S.C. Elec. & Gas Co. v. UGI Util., Inc.*, No. 2:06-CV-02627-CWH, 2012 WL 1432543, at *61 (D.S.C. Apr. 11, 2012) (“South Carolina courts have consistently refused to pierce the corporate veil without [] evidence of self-serving unfair actions and harm resulting from those actions.”). The only self-serving unfair actions in this proceeding are the Receiver’s dangerous litigation strategy and disregard for USF&G’s due process rights.

36. No South Carolina, or likely any other court, has ever held an insurer liable as the alter ego of its insured. Finding that USF&G operated as the alter ego of Covil is a radical departure from this state’s jurisprudence.

37. USF&G seeks reconsideration on the basis that it cannot be held in contempt of current Court orders for its conduct that occurred decades prior to the Court orders. Even the Receiver’s hyperbolic rhetoric, detailed above, cannot transform an insurer’s decades-old compliance with its document retention policies into a willful violation of a 2019 court order. *See* Supplemental Submission at ¶¶ 6, n.2, 30; USF&G Response at 4.

Objections to Legal Conclusions

38. As noted above, USF&G seeks reconsideration on the basis that it has not intentionally disobeyed a court order, as is required to impose contempt-related sanctions on a party under South Carolina law. *See Ex parte Lipscomb*, 398 S.C. at 469–70, 730 S.E.2d at 323–24.

39. USF&G seeks reconsideration on the basis that the sanctions contained in the Show Cause Order are not in any way reasonably related to the conduct and alleged harm they are intended to punish, as is required to impose sanctions on a party under South Carolina law. *See Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 609, 567 S.E.2d 514, 520 (Ct. App. 2002). The Court sanctioned USF&G for failing to meet the impossible, eleven-day document production

deadline by rewriting the scope and terms of the policies USF&G may have issued to Covil during the 1954 to 1964 period and the policy USF&G did issue to Covil during the 1976 to 1978 period, rewriting factual history, rewriting critical coverage issues to run contrary to legal precedent, and, in effect, adopting a strict liability standard for contempt. In short, the order improperly creates a contractual obligation between USF&G and Covil that details the material terms of the contracts that are wholly lacking in record support. In other words, this Court effectively has created an involuntary contractual relationship, including by dictating the terms of this relationship and the legal principles that should govern the interpretation of these contracts (and which are substantively wrong), as a sanction that is unprecedented and without any factual or legal support. See Memorandum in Further Support at 3, 5, 12, 16, 20–21; USF&G Response at 7, 13–14.

40. USF&G seeks reconsideration on the basis that the Show Cause Order is not supported by clear and convincing evidence and is, therefore, at odds with South Carolina law. See *Ex parte Lipscomb*, 398 S.C. at 469–70, 730 S.E.2d at 323–24; accord *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001); Supplemental Submission at ¶ 9; Memorandum in Further Support at 3.

41. USF&G seeks reconsideration on the basis that conclusions of law concerning insurance coverage issues (a) are not proper or warranted sanctions, (b) bear no reasonable relation and are disproportionate to the alleged harm suffered by the alleged contemptuous conduct, (c) are procedurally improper by denying USF&G a full opportunity to present its defense or brief these issues, (d) are the subject of pending insurance coverage actions in another action and not at issue in any of the above-captioned actions, and (e) are substantively incorrect, as summarized further below and in prior submissions. The Receiver is conspicuously attempting to moot other pending coverage litigation by requesting this Court rule on substantive coverage issues, notwithstanding the Receiver's prior assurances to a South Carolina federal judge that the Receiver had no intention

of making an “end run” around the pending coverage litigation. *See* Petition for Certiorari at 15; Memorandum in Further Support at 4–5, 13.

42. USF&G seeks reconsideration on the basis that the Court disregards well-established precedent in *In re Wallace & Gale Co.*, 385 F.3d 820 (4th Cir. 2004) (“*Wallace & Gale*”) and other cases, and, instead, finds that any aggregate limit of liability applies only after Covil completed its work at a certain jobsite. However, no court contemplating this issue has ruled similarly. Courts have aligned themselves with the holding in *Wallace & Gale*, which is that the completed operations hazard, and thus the aggregate limit, applies in policies where the bodily injury that occurred during the policy period took place after the insured completed its operations. *Id.* at 826; *see* Memorandum in Further Support at 14.

43. USF&G seeks reconsideration to the extent the Court found “completed operations hazard” to be ambiguous. With respect to whether the policy language is clear or ambiguous, *Wallace & Gale* (and other courts) addressed that issue as well. The Fourth Circuit held that the policy language—the exact policy language contained in the 1976–1978 USF&G policy—was unambiguous. *See Wallace & Gale*, 385 F.3d at 834. In recognizing the unambiguous terms of the policy, *Wallace & Gale* read the policy literally. *See id.* The meaning of “completed operations hazard” is clear on its face. *Accord Plant Insulation Co. v. Fireman's Fund Ins. Co.*, No. CGC06448618, 2013 WL 3286410, at *5–*6 (Cal. Super. Ct. Apr. 8, 2013) (concluding the completed operations policy language in policy issued by USF&G is clear and unambiguous); *id.* at *13 (same as to products hazard).

44. USF&G seeks reconsideration to the extent that the Court failed to discuss the issue regarding whether asbestos fibers, which existed as part of insulation materials, falls within the “abandoned or unused materials” exception to the completed operations hazard. No court has held that asbestos fibers existing in the manner described fall within the abandoned or unused materials

exception. In fact, multiple courts have considered the Receiver's argument to be "nonsensical." *Nat. Union Fire Ins. Co. of Pittsburgh v. Porter Hayden Co.*, 331 B.R. 652, 668 n.21 (D. Md. 2005); *see also Plant Insulation*, 2013 WL 3286410, at *11 (agreeing with the court in *Nat. Union Fire Ins. Co.* and holding that "[u]like tools, equipment, or other usable materials, asbestos fibers released during the course of ongoing operations cannot reasonably be construed as 'abandoned or unused materials' within the meaning of this exception"). Memorandum in Further Support at 14–16.

45. USF&G seeks reconsideration on the basis that the Court implies that the meaning of "aggregate limit" within the context of the completed operations hazard is ambiguous, again, contrary to precedent. *See* Memorandum in Further Support at 17–18.

46. USF&G seeks reconsideration on the basis that the Court mischaracterizes the policy term "aggregate limit" to mean a policy exclusion for which USF&G would have the burden of proving. *See id.*

47. USF&G seeks reconsideration on the basis that the Court fails to consider South Carolina precedent regarding allocation. Instead, this Court found that Covil is not responsible for any time periods in which it chose to not insure its risks and also for periods in which insurance was unavailable. In addition, the Court found Covil's insolvency impacts allocation. These findings are contrary to South Carolina precedent. *See Crossmann Cmtys. of N. C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 45, 62, 65 n.14, 66 n.16, 717 S.E.2d 589, 591, 600, 602 n.14, n.16 (2011), *overruling Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 561 S.E.2d 355 (2002); *Harleysville Grp. Ins. v. Heritage Cmtys, Inc.*, 420 S.C. 321, 330, n.4, 803 S.E.2d 288, 293, n.4 (2017); Memorandum in Further Support at 16–17; Show Cause Order at 18–19.

48. USF&G seeks reconsideration on the basis that the Court fails to engage in the analysis required to determine whether one or multiple occurrences exists, or if any occurrence exists at all. *See* Memorandum in Further Support at 19.

49. USF&G seeks reconsideration on the basis that the Court inappropriately decided which of Covil's policies apply to asbestos injury as well as critical coverage determinations without fully contemplating the nuance surrounding these issues. The USF&G Policy clearly and unambiguously limits coverage for product liability and completed operations injury. Specifically, the limits of liability set forth in that policy for bodily injury are \$300,000 each occurrence, with a \$300,000 per policy aggregate for bodily injury. *See* Ex. F USF&G Policy at TRAV000105. The \$300,000 aggregate limit fixes "the total liability of [USF&G] 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." *Id.* There is no basis for this Court to rewrite the terms of the USF&G Policy to remove these limits. *See* Memorandum in Further Support at 20–21; Ex. G USF&G Letter to the Receiver re Limit Exhaustion, originally filed in the Receiver's Memo re Jurisdiction.

50. USF&G seeks reconsideration on the basis that the Court holds USF&G responsible for Covil's own lost policies and relieves Covil of the burden of determining the terms and conditions of the policies. *See* USF&G Response at 4–5, n.3.

Additional Objections to Spoliation Findings and Conclusions

51. Separate and apart from the absence of contempt, USF&G seeks reconsideration on the basis that the Court inappropriately issued sanctions based on spoliation. *See* Memorandum in Further Support at 11, n.6, 21; Show Cause Order at 8–14. As the Court notes, a party bringing a motion for sanctions based on spoliation bears the burden of establishing (1) that the party having control over the evidence had a duty to preserve it at the time it was destroyed; (2) that the evidence was destroyed with a culpable state of mind; and (3) that the destroyed evidence was relevant to

the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense. *See* Show Cause Order at 8; *Hawkins v. Coll. of Charleston*, No. 2:12-CV-384-DCN, 2013 WL 6050324, at *2 (D.S.C. Nov. 15, 2013).

52. First, USF&G had no duty to preserve documents in the 1950s, 1960s, or 1970s and there is no evidence that Covil-related documents were destroyed in the 1980s. The undisputed evidence shows that USF&G had in effect industry-standard document retention policies before the 1970s, long before USF&G implemented updated guidelines in 1984. Thus, any Covil-related documents that may have existed from 1954 to 1964, and which may have been destroyed, were destroyed pursuant to those older document retention guidelines for valid reasons and not based on the revised guidelines that were misleadingly addressed in the Pillsbury expert report. Accordingly, there is no evidence that USF&G had a culpable state of mind. *See* Nanzig Aff. ¶¶ 3–6; USF&G Response at 10–11.

53. Second, there was nothing improper about the 1984 document retention modification. As Steven Plitt, an esteemed insurance coverage treatise author, noted “[i]t appeared from the record that the modification was initiated on or about March 14, 1984 when Mr. Karl Doerre, an executive vice president at USF&G, issued a memo that was sent to all USF&G department heads regarding the elimination of old documents (not just policy, underwriting or claim documents) which were being stored at USF&G’s headquarters at that time. Nowhere in the document trail was there even a suggestion that the 1984 memo was a response to long-tail/progressive injury exposures. Rather than being any type of alleged targeted purge, the retention memo went out to all department heads (not just the claims department). The memo was the result of a study that had conservatively estimated that 30% of the materials that were currently being retained and stored at USF&G’s headquarters were obsolete and could be destroyed. It was thought that the storing of obsolete records was costly and that each department at USF&G, not

just the claims department, would have benefitted by such a house-cleaning exercise.” Plitt Declaration at ¶ 24.

54. Third, the documents are not relevant to any claim or defense in the captioned cases. The Court incorrectly states the standard for relevance in the spoliation analysis. The Court, relying on Rule 401 of the South Carolina Rules of Evidence, states that “relevant evidence” means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable tha[n] it would be without the evidence.” Show Cause Order at 12–13. However, South Carolina law (as stated in cases on which the Court relies) dictates that for purposes of a spoliation analysis, the proper standard for “‘relevant’ means something more than sufficiently probative to satisfy Rule 401 of the Federal Rules of Evidence.” *Cytec Carbon Fibers LLC v. Hopkins*, No. 2:11-cv-0217-RMG, 2012 WL 6044778, at *3 (D.S.C. Oct. 22, 2012), *report and recommendation adopted*, No. 2:11-CV-0217-RMG, 2012 WL 6050595 (D.S.C. Dec. 5, 2012). Accordingly, “the party seeking an adverse inference sanction must adduce sufficient evidence from which a reasonable trier of fact could infer that ‘the destroyed [or unavailable] evidence would have been of the nature alleged by the party affected by its destruction.’” *Id.* Here, Covil relies on false assertions and does not produce any sufficient evidence.

55. Even if the Court were to *properly* find spoliation (it did not), the Court-imposed sanctions are not proportionate to the alleged harm and are not relevant or fairly at issue in the above-captioned actions or any other proceeding before this Court. Discovery sanctions “should be aimed at the specific misconduct of the party sanctioned” and “not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990). “In other words, the sanction should be a rifle-shot, not a shotgun blast.” *Id.* In the instant case—like *Balloon*

Plantation— the sanction is a hydrogen bomb. *See also* Memorandum in Further Support at 5, 10–11.

CONCLUSION

56. For all of the reasons set forth above and in USF&G's prior submissions, USF&G respectfully requests that the Court alter or amend its Order on Rule to Show Cause.

Respectfully submitted:

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(*Pro Hac Vice* Applications Pending or
 Forthcoming)

*Attorneys for Defendant United States Fidelity and
 Guaranty Company*

Dated: January 17, 2020

EXHIBIT 19

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND AND YORK COUNTIES
Court of Common Pleas

RECEIVED

The Honorable Jean H. Toal
Acting Circuit Court Judge

FEB 07 2020

SC Court of Appeals

Appellate Case No. 2020-
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*)

United States Fidelity and Guaranty Company Appellant,

v.

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

in the following cases:

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 Babcock 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; Fluor 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., individually 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.

RECEIVED

USF&G'S NOTICE OF APPEAL

FEB 07 2020

SC Court of Appeals

Please take notice that non-party United States Fidelity and Guaranty Company appeals the order captioned "Order for Rule to Show Cause Hearing" entered on January 8, 2020, in the above-captioned actions. USF&G received written notice of entry of this order on January 8, 2020, making this notice timely. USF&G further appeals the series of orders that gave rise to this appealable order, including: the November 2, 2018 Order Appointing a Receiver; the February 28, 2019 Order Granting Plaintiff's Motion to Compel Attendance at Mediation; the September 19, 2019 Order for Rule to Show Cause; and the October 28, 2019 Order for Rule to Show Cause. Copies of the orders on appeal are attached.

USF&G is not a party to these matters, nor is the Respondent Peter D. Protopapas, in his capacity as Receiver of Covil Corporation, but the orders on appeal were issued against USF&G in these cases, thus making it a proper appellant.

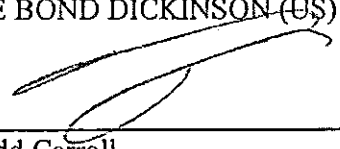
Zurich American Insurance Company and Sentry Insurance are also not parties to these matters, but they are impacted by the orders on appeal as well. To the extent they wish to participate in this appeal, their counsel are identified below with the other counsel of record.

USF&G further states that all necessary transcripts for this appeal have previously been ordered from and provided by the appropriate court reporters.

Signature Page Attached

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Counsel for Plaintiffs in the Above-Captioned Cases

ORDER FOR RULE TO SHOW CAUSE HEARING

ORDER FOR RULE TO SHOW CAUSE HEARING

SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	ORDER FOR RULE TO SHOW CAUSE
	)	HEARING
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	RECEIVED
	)	FEB 07 2020
Defendants.	)	SC Court of Appeals
	)	

This matter comes before this Court by way of a Motion for a Rule to Show Cause initiated by Peter D. Protopapas, as the duly appointed Receiver of Covil Corporation ("Receiver"). The Receiver's Motion for a Rule to Show Cause against United States Fidelity and Guaranty Company ("USF&G"), Zurich American Insurance Company ("Zurich"), and Sentry Insurance, a Mutual Company ("Sentry") (collectively "Insurers") seeks an order holding these Insurers in contempt for violating this Court's (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation;¹ (2) February 28, 2019 Order requiring Covil's Insurers to attend mediation;² (3) September 19, 2019 Order requiring Covil's Insurers to respond and produce required documents before September 30, 2019;³ and (4) October 28, 2019 Order for Rule to Show Cause.⁴

¹ See November 2, 2018, Order Appointing Receiver in *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-40-04940).

² See February 28, 2019, Order Granting Plaintiff's Motion to Compel Attendance at Mediation in *Nolen v. Daniel, et al.* (C/A No. 2016-CP-40-04184); *Greene v. Armstrong, et al.* (C/A No. 2016-CP-40-00173); *Thompson v. Armstrong, et al.* (2016-CP-40-2498); and *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-04940).

³ See September 19, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

⁴ See October 28, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

The South Carolina Supreme Court appointed the undersigned to serve as the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system. The asbestos litigation in South Carolina constitutes a significant number of complex multi-party cases. A typical case will include an injured plaintiff alleging that an asbestos-related cancer was caused by dozens of different defendants.

This Court has worked diligently to manage this docket and to organize this complicated statewide litigation into an orderly process whereby cases are assigned for trial in a predictable fashion. This process is designed to allow the litigants to participate in discovery in an orderly fashion to facilitate the evaluation of litigation positions well before trial, and to try the cases as necessary.

The Supreme Court's charge to this Court includes facilitating meaningful mediations of asbestos cases consistent with the South Carolina Rules of Alternative Dispute Resolution. The Rules mandate attendance at mediation of "a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim" on behalf of any insured party against whom a claim is made. SCRADR 6(b)(4).

Although this Court manages a large asbestos docket involving scores of different defendants, the matters associated with defendant Covil Corporation have required a very significant amount of this Court's time and attention for the reasons explained in more detail below.

From the time of its original formation in or about 1954, Covil Corporation was engaged in the installation and removal of insulation in various industrial facilities across South Carolina. Covil's operations involved the installation, removal and disturbance of insulation materials, typically supplied, required or acquired by other parties. At pertinent times insulation materials contained asbestos and Covil's operations are alleged to have resulted in bodily injury to South Carolina citizens. In 1991, Covil's business failed and it ceased operations. Thereafter, in 1993 the State of South Carolina rescinded Covil's corporate charter for failing to file the appropriate documentation with the Secretary of State.

Despite Covil's failure as a going concern and its subsequent forfeiture of its corporate charter, it continued to be sued in numerous asbestos cases. Through the management of the South Carolina asbestos docket, this Court observed several irregularities in the way that Covil conducted itself in its litigation. In the fall of 2018, Covil inexplicably defaulted on two mesothelioma asbestos cases pending before this Court, and shortly thereafter on November 2, 2018, the undersigned appointed Peter D. Protopapas to serve as a Receiver for Covil Corporation to manage its affairs according to South Carolina law.

During the ensuing months, this Court conducted numerous hearings regarding issues related to Covil. Over time, it became clear to this Court that certain of Covil's primary insurers (USF&G, Zurich, and Sentry) were operating an otherwise defunct Covil for purposes of managing Covil's asbestos litigation and had been doing so for over two decades without any apparent involvement from the insured – Covil Corporation. For over two decades, these primary Insurers pretended to be Covil. The primary insurers never sought the appointment of a receiver to represent Covil's interests in the defense of its asbestos cases. In fact, despite numerous opportunities to do so, at no time did any of Covil's Insurers even disclose to this Court their scheme to operate Covil as an undisclosed alter ego of these insurance companies.

As Covil's Receiver began to undertake his responsibilities, it became evident to this Court that Covil's Insurers would not willingly cooperate with the Receiver.⁵ In fact, several of these Insurers went to great lengths to thwart the Receiver's efforts to understand the basic nature and amount of the asbestos insurance coverage available to Covil. As a result of the insurers' refusal to cooperate, the Receiver began to seek this Court's intervention to determine the nature and amount of insurance available to Covil for its asbestos litigation. This information is critical to the Receiver's ability to manage Covil's asbestos

⁵ The Court's discussion of Covil's Insurers does not apply to TIG Insurance Company, as successor in interest to Fairmont Specialty Company, formerly known as Ranger Insurance Company ("TIG"). Unlike Covil's other insurers, TIG has cooperated with this Court and the Receiver. After producing the requisite materials, TIG acknowledged its responsibilities and reached an amicable settlement with Covil's Receiver. The Court commends TIG and its counsel for their cooperation and professionalism throughout this process. The Court also dissolved its Order to Show Cause as it related to Hartford and notes that Hartford also has reached an agreement to resolve its differences with Covil's Receiver.

litigation and, specifically, to participate meaningfully in mediation sessions scheduled for Covil's asbestos cases as required by the South Carolina Rules of Alternative Dispute Resolution.

Proceedings before this Court on the issue of Covil's participation in mediation exercises have demonstrated a lack of clarity regarding what constitutes "full authority" for claims filed against Covil Corporation. This lack of clarity continually delays settlement, stalls negotiations, and slows the ability of this Court to manage the South Carolina asbestos docket. An inquiry into the insurance coverage of Covil Corporation is warranted to fully determine the amount of authority available for settlement of asbestos personal injury actions filed against Covil Corporation.

Over time, this Court entered a series of escalating orders designed to require the Insurers to produce relevant insurance information to Covil's Receiver and to participate in asbestos mediations as scheduled on the South Carolina docket. Although several asbestos cases have been resolved under this system, except as noted above in note 5, the Insurers have yet to comply with this Court's Orders regarding the full production of the relevant insurance information to Covil's Receiver. These Insurers' defiance of this Court's lawful orders has impeded Covil's Receiver in his work under this Court's mandate, has interrupted this Court's ability to manage the numerous asbestos cases pending on its docket, and has required this Court unnecessarily to expend valuable time and resources in numerous hearings designed to encourage these Insurers to conduct themselves in accordance with the basic tenets of well-established South Carolina law. The Court has experienced problems with these Insurers when they were animating an otherwise defunct Covil and controlling its behavior in asbestos litigation before the appointment of the Receiver. *See* Order Granting Plaintiff's Motion for New Trial in *Crawford v. Ceeleanese Corp.*, C/A No. 2017-CP-42-04429 (where this Court found that Covil's insurers had been improperly operating, controlling, and abusing Covil for many years).

Unfortunately, this Court's persistence and patience have been unsuccessful in causing these Insurers fully to disclose and produce the insurance information or the details concerning their respective insuring relationship with Covil to the Receiver for their insured, Covil. After numerous attempts to achieve

compliance, this Court scheduled a show cause hearing on November 12, 2019, where the Insurers were directed to appear 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. With the exceptions noted above in note 5, the Insurers failed and refused to comply with this order.

In sum, after months of work by this Court and its Receiver, it appears to this Court that these Insurers have refused to provide complete policy limits and settlement authority information to their insured's Receiver, even after this Court ordered the Insurers to provide the information by September 30, 2019, under penalty of perjury, and again in a show cause hearing scheduled on November 12, 2019. Despite their assertions in their memoranda submitted to this Court following the November 12, 2019 hearing, the Court has given the Insurers ample opportunity to respond to Receiver's arguments and explain to the Court why they should not be held in contempt for failing to abide by this Court's September 19, 2019 Order. Despite these Insurers not complying with the clear terms of the September 19, 2019 Order to respond to the areas of inquiry under the penalty of perjury by September 30, 2019, the Court allowed these Insurers to submit additional affidavits and evidence after the November 12, 2019 hearing. However, as the Court noted at the hearing, these Insurers were already in contempt of this Court's order by not providing proper responses under perjury by the September 30, 2019 deadline, and the supplemental submissions, although potentially helpful to the Court in making this ruling, do not necessarily cure the Insurers' contempt. The Court has diligently reviewed and considered the extensive filings submitted by both the

Receiver and these Insurers after the November 12, 2019 hearing. The Court finds the submissions by these Insurers are not relevant to, and do not cure, their contemptuous conduct. Rather, these filings have consumed additional countless hours of this Court's time while these Insurers continue to play games rather than comply with this Court's orders.

The Court is particularly concerned with the fact that these Insurers continue to claim ignorance surrounding their responsibility to their insured and their obligations under this Court's orders. The Court has held multiple hearings wherein the Court has allowed the Receiver and the Insurers to present arguments pertaining to these issues, and the Receiver has been trying to obtain the requested information since his appointment, well over a year ago. These 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. The Insurers have continuously attempted to impede the Receiver's ability to determine the amounts of coverage available to Covil and have violated the South Carolina Alternative Dispute Resolution Rules by refusing to provide the Receiver with the necessary coverage information to fully participate in the mediation of these claims. In fact, because of these Insurers' obstinate refusal to comply with this Court's order and their past conduct, the Receiver has been forced to go to great lengths in order to present evidence to this Court and piece together the secondary evidence of insurance. While the Insurers have produced thousands of pages of documents, the production does not satisfy this Court's order as these Insurers have still not produced full coverage information or policies to the Receiver or fully disclosed the nature and extent of their insuring relationship.

During these hearings, the Court has been presented with evidence in the form of documents and sworn testimony indicating that Covil purchased products liability and completed operations liability insurance from USF&G (now a part of Travelers) from 1954 to 1964. Specifically, Palmer Covil (the founder of Covil Corporation) testified in a deposition in 1977 that Covil purchased USF&G general liability insurance coverage from 1954 to 1964. Moreover, Palmer Covil identified the Goldsmith Agency as the broker responsible for selling USF&G coverage to Covil. Former Lieutenant Governor Nick

Theodore provided an affidavit, as a former employee and partner of this agency, that he recalled selling USF&G insurance to Covil during this time period (until his agency lost the business to an agent selling insurance issued by Sentry). The Court finds this evidence and testimony to be persuasive, credible, and consistent with other known facts in this case.

On the other hand, USF&G reports only that it has been unable to locate these insurance policies. However, the Court has also been presented with evidence that USF&G undertook a systematic corporate program to destroy or discard its historical insurance policies which included policies and other related documentation from the period of time for which policies were issued to Covil as demonstrated by the evidence before this Court. In its arguments before the Court on November 12, 2019, and its memorandum submitted after the hearing, USF&G argues the Court should disregard its historical conduct because past conduct cannot be the basis of a finding of contempt. However, USF&G failed to inform the Court of the systematic destruction of policies until the Receiver brought the matter to the attention of the Court at the most recent hearing. The Court is concerned by the Insurers' failure to fully represent facts to the Court regarding the insurance coverage issued to Covil, especially considering that the Insurers acted as the alter ego of Covil for numerous years. The Court has given the Insurers ample opportunity to inform the Court of the necessary facts surrounding these coverage issues, and the Insurers have continuously refused to provide full information, misrepresented information, and attempted to prevent this Court from ruling on these issues.

The Court is deeply troubled by USF&G's historical behavior, including the widespread destruction of its insureds' insurance policies in an effort to evade liability under these policies. The Court is even more troubled by the fact that USF&G never mentioned, in numerous hearings on this very topic, that its policy destruction "purge" was the reason that USF&G is now unable to produce Covil's policies to the receiver. In this regard, USF&G has flagrantly defied this Court's orders and attempted to make a mockery of this Court's important work. Rarely, if ever, has this Court encountered such a degree of corporate

dishonesty as has been on display from USF&G during these proceedings. USF&G owes this Court a duty of candor, and should have been forthright.

The spoliation of evidence is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a current or reasonably anticipated legal proceeding. If proven, spoliation may be used to establish that the evidence was unfavorable to the party responsible. *Black's Law Dictionary* (8th Ed. 2004). The theory behind imposing sanctions for spoliation of evidence is that when a party destroys evidence, it is reasonable to infer that the party had "consciousness of guilt" or other motivations to avoid the evidence being heard or introduced to the jury.

A party bringing a motion for sanctions based on spoliation bears the burden of establishing three (3) independent elements before the Court may determine which sanction, if any, is appropriate. These elements are:

- (1) that the party having control over the evidence had a duty to preserve it at the time it was destroyed;
- (2) that the evidence was destroyed with a culpable state of mind; and
- (3) that the destroyed evidence was relevant to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Hawkins v. College of Charleston, 2013 WL 6050324, *2 (4th Cir. 2013) (quoting *Cytec Carbon Fibers, LLC v. Hopkins*, No. 2:11-cv-0217, 2012 WL 6044778 (D.S.C. Oct. 22, 2012)).

As to the first element, USF&G had a duty to preserve this evidence. "A party has a duty to preserve evidence during litigation and at any time 'before the litigation when a party reasonably should know that evidence may be relevant to anticipated litigation.'" *Id.* at *3 (quoting *Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001)). There is a common law duty to preserve evidence, and a party can only be sanctioned for destroying evidence it had a duty to preserve. That duty arises when a party has notice that the party possesses evidence that is relevant to litigation or when a party should have known the evidence may be relevant to future litigation. Pre-litigation discussions or requests to inspect can also trigger a duty to preserve relevant evidence and it can be said that the obligation to preserve evidence

runs first to counsel, who then has an ethical obligation to notify and advise their client on its obligations to safeguard and preserve the evidence relevant to the litigation on a continuing basis.

Covil is unable to identify a specific date on which USF&G's duty to preserve records arose. However, by 1976, USF&G had received correspondence from Covil requesting USF&G to respond to an asbestos case, and by June 1983, USF&G had received correspondence from Covil serving as Covil's final written demand that USF&G afford a defense to Covil in an asbestos case. As a result of this exchange of correspondence, USF&G knew by at least June 1983 that its insurance policies issued to Covil would be highly relevant documents for years to come. Despite this fact, USF&G reports that it has been unable to locate the early policies issued to Covil – policies that it denies having issued – or an actual copy of a later policy that it admits to having issued to Covil.

The evidence demonstrates that USF&G cannot locate the early policies USF&G issued to Covil, or the later policy it admits having issued to Covil, because USF&G destroyed the policies. In 1984, the year after Covil's counsel demanded a defense from USF&G, which was facing a growing number of long-tail claims like the asbestos claims here, USF&G deliberately began purging old policies and policy information, including information on policy limits. To support its contentions regarding the destruction of policies, the Receiver submitted documents from the *Western MacArthur* litigation; most importantly the Pillsbury Report, which USF&G Filed in *Western MacArthur* litigation (*Western MacArthur Company v. General Accident Insurance Company of America*, Case No. 721595-7, In the Superior Court for Alameda County, California).⁶

⁶ The Pillsbury Report is an 85-page document, filed in *United States Fidelity & Guaranty Company, et al. v. American Re-Insurance Company, et al.* Index No. 604517/2002, in the Supreme Court of the State of New York, County of New York. An expert witness, Philip L. Pillsbury, Jr., of the New York law firm, Pillsbury and Levinson, was retained by the reinsurers of USF&G to evaluate, in the context of California bad faith and insurance practice, the potential exposure for damages, which USF&G faced in a jury trial in 2002. This material was presented by Covil, at the November 12, 2019 hearing to describe the significant corporate misconduct leading to USF&G's contention that it was unable to locate copies of Covil's early insurance policies, which the Receiver found highly probative of the key issues in the proceeding. There was no objection regarding the Court's consideration of the documents, and Defendant

As stated in the Pillsbury report, an April 30, 1984 memorandum from Charles Watson, then a Vice President of USF&G, the new document destruction policy mandated the “purging of *each* file, not just files that can be discarded in entirety,” required that doubts should be resolved “in favor of discarding unless there are legal restraints,” and admonished that “we must be absolutely sure that we have thoroughly cleaned existing files.” Similarly, a March 16, 1984 Department Circular detailing the Records Management Program noted: “All existing departmental files are to be in full compliance including having been completely purged of all obsolete and duplicate material.”

As detailed in the expert report of Philip Pillsbury, which USF&G filed on February 21, 2017 as an exhibit to its opposition to a motion in the *Western MacArthur* reinsurance matter then pending in New York, USF&G’s employees were given just two months to comply with the document destruction. Relying on USF&G’s historical records, Mr. Pillsbury also described the deposition testimony of Randolph Rohrbaugh, the USF&G Vice President of Quality Assurance, who testified that, at a meeting concerning the USF&G document destruction program among USF&G management and attorneys in 1984, “there was a discussion as to whether USF&G should retain its records information about insureds’ policies given that insureds would bear the burden of proof as to those policies.” *See* Pillsbury Report at 18.

In short, the evidence shows that USF&G plainly undertook its purge of policy-related materials in anticipation of litigation. Having destroyed its policy records, USF&G then could require its policyholders to provide copies of their policies to USF&G in order for USF&G to provide coverage. Beginning in the late 1980s, however, USF&G realized that policyholders could prove coverage for long-tail liability claims with secondary evidence, even if USF&G had destroyed the actual historical policy records in its possession. In his report in the reinsurance matter, Mr. Pillsbury describes the USF&G decision to reverse course on the document destruction policy. *See* Pillsbury Report at 18–19. Summarizing the deposition of Kenneth Ford, the USF&G in-house counsel in the Claims Legal Division, Mr. Pillsbury notes that Ford

USF&G and others requested the court allow them to submit further documentation. The court has considered the report and the additional insurers’ submissions in drafting this order.

“testified at deposition that USF&G decided to ‘stop the destruction’ after policyholders began to prove coverage for the long-tail claims with ‘partial information concerning a policy,’ and the burden was shifted to the insurer to prove there wasn’t a policy or at least to prove the policy terms, and USF&G was not able to rebut some of that information.” *Id.* at 19. The reversal of course apparently occurred after USF&G destroyed evidence of the coverage it had provided to Covil between 1954 and 1964 and the actual policy it admits to having issued to Covil in the 1976 to 1978 periods.

Recently produced documents from USF&G itself further support that had USF&G not destroyed its historical policies, it would have been able to locate coverage it issued to Covil in the 1950s and 1960s and the actual policy it admits to having issued to Covil in 1976 to 1978. USF&G Claims Register documents⁷ produced to the Receiver by USF&G on November 22, 2019, and December 5, 2019, over two months after this Court’s deadline for production, show USF&G paid claims on Covil policies made by third-party business entities such as Daniel Construction, Tennessee Eastman, Raburn Mills, First Baptist Church and Hicks & Ingle Company during the period from 1955 to 1962, further supporting the fact that USF&G issued general liability insurance coverage to Covil during this timeframe and, due to its conduct, has been unable to produce full and complete coverage information. Furthermore, although it claims to have what it calls a “certified” copy of the 1976 to 1978 primary policy it admits having issued to Covil, USF&G has not been transparent with either Covil or the court. This so-called “policy” is a collection of forms, not an actual insurance policy, and there is no competent proof of an aggregate limit for products or completed operations claims. USF&G’s use of the word “certified” is also misleading since the documents have no independent verification of their source or accuracy.

⁷ The Court understands that USF&G utilized Claims Registers to maintain an index of all paid claims, and specifically that an entry was not placed on a claims register until a clerk had reviewed the relevant insurance policy to ensure that there was coverage for the loss. An April 1947 booklet entitled “Claim Department Clerical Instructions” detailed USF&G’s instructions to clerical staff regarding entry of claims in the claims register: “After the clerk has checked the policy or bond information to determine if there is coverage for the loss, she enters it on the claim register as provided on that form. She assigns the number next in order to the last one used. A separate sheet is used on each class of claims for each month. A carbon copy of the claim register is sent to the Home Office on the first of each month on AL [Automobile Bodily Injury], L [Other Bodily Injury], C [Compensation], and MP [Miscellaneous Property Damage] claims.”

By failing to maintain documents relevant to pending and future asbestos personal injury and insurance litigation, USF&G had a culpable state of mind because it either intentionally or negligently destroyed the evidence. The destruction of the documentary evidence that Covil seeks significantly hampers Covil's Receiver's ability to reconstruct its insurance program and other information relevant to pending and future asbestos personal injury and insurance litigation.

The "culpable" state of mind requirement does not require willful destruction. Rather, the moving party need only show that the evidence was destroyed "knowingly, even without intent [to breach the duty to preserve it], or negligently." *Byrnie v. Town of Cromwell*, 243 F.3d 93, 107–12 (2d Cir. 2001). "[T]he Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of the sanctions." *Sampson v. City of Cambridge, Maryland*, 251 F.R.D. 172, 179 (D. Md. 2008) (citing *Silvestri*, 271 F.3d at 590).

Here, the evidence before the Court shows that USF&G's conduct of destroying or losing relevant documents satisfies the required minimum level of culpability needed for spoliation sanctions to be imposed. Because culpability encompasses everything from ordinary negligence to willful conduct, the culpable standard merely requires USF&G to have some degree of fault, which is the case in this matter. Whether the Court finds that USF&G was negligent, grossly negligent, or willful in destroying the evidence, the Court concludes that USF&G had a culpable state of mind when it spoliated the evidence at issue.

The last of the three independent elements, relevance to the party's claims, is also clearly present on these facts. Under Rule 401 of the South Carolina Rules of Evidence, "relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." "Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears." *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Thus, any evidence which assists a jury at arriving at the truth of an issue is relevant. The determination of the relevancy of evidence is largely

within the trial judge's discretion. *Strickland v. Coastal Design Assocs., Inc.*, 294 S.C. 421, 425, 365 S.E.2d 226, 228 (Ct. App. 1987).

Here, Covil has met its burden of showing the spoliated evidence is highly relevant to its case. The fact that USF&G destroyed or lost such evidence is extremely damaging to Covil's ability to reconstruct its insurance policies. As such, USF&G should not profit or benefit from its failure to preserve this evidence. Of course, Covil has no way of knowing precisely what has been destroyed. However, there is reason to believe that the destroyed evidence would have aided Covil's position, which has suffered irreparable prejudice due to USF&G's spoliation. USF&G is hereby ORDERED to produce ALL documents related to these issues, including all transcripts, from the *Western Asbestos* litigation, including the subsequent re-insurance litigation, to Covil's Receiver by January 13, 2020.

By destroying relevant evidence, USF&G has succeeded in hiding significant evidence of its insurance coverage and attempted to deprive Covil of the opportunity to present critical evidence of insurance coverage. Thus, the Court finds 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 evidentiary playing field.

When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. *Gathers ex rel. Hutchinson v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 83, 427 S.E.2d 687, 689 (Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990)). Over the years, courts have found numerous sanctions to be appropriate for the spoliation of evidence. Courts have allowed adverse inferences to be drawn from the loss or destruction of relevant evidence, dismissed cases or stricken pleadings, issued fines plus attorney's fees and applied almost every other sanction available for the failure to provide discovery.

Among the tools that judges may use to combat spoliation is the adverse inference jury instruction/presumption. Giving the finder of fact the ability to decide what weight to place on the spoliation is the preferred practice in South Carolina. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d

679 (Ct. App. 1997). The presumption does not arise from the failure to present the evidence, but rather from the role that the spoliating party had in preventing it from being reviewed by the jury or court. When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. *Gathers v. S.C.E.&G. Co.*, 427 S.E.2d 687, 689 (S.C. Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ.*, 302 S.C. 390, 396 S.E.2d 369). Based on the evidence established by Covil's Receiver regarding the existence of Covil insurance coverage issued by USF&G, and based on the evidence demonstrating USF&G's spoliation of evidence regarding the existence of the coverage, this Court holds that USF&G's issued general liability insurance coverage to Covil Corporation on an annual basis, including products and completed operations coverage, between 1954 and 1964, without an aggregate limit of liability for damages paid for bodily injury or property damage. The court also makes a similar finding as to the 1976 to 1978 policy, SMP 490049.

Further, necessitated by the Supreme Court's charge to this Court to manage the South Carolina statewide asbestos litigation cases and as a direct result of these Insurers' recalcitrance in refusing to cooperate with this process, this Court and its Receiver are now left to discharge their respective duties by reconstructing 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. In this effort, the Court will apply the following principles of South Carolina insurance law.

1. **"Trigger of Coverage."** The term "trigger of coverage" describes the necessary events for a liability policy to respond to a suit seeking damage because of bodily injury. The Court rules that the policies at issue respond to suits when bodily injury takes place during the policy period, regardless of when the event causing the injury took place and regardless of when the injury becomes known or knowable. All of an insured's policies in effect from a person's first exposure to asbestos through manifestation of an asbestos disease and, ultimately, to death cover the asbestos cases unless coverage is otherwise excluded. This approach is called a "continuous trigger of coverage" or an "injury in fact trigger of coverage" inasmuch as medical science established long ago that asbestos injuries begin upon first inhalation of

asbestos fibers and continue progressively thereafter. As respects asbestos injury and death suits, the “continuous trigger of coverage” and the “injury in fact trigger of coverage” yield the same result such that the court need not choose between these conceptually similar approaches. *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 45 Cal. App. 4th 1, 45 (1996) (“We find no error in the trial court’s use of an injury-in-fact analysis to apply a continuous trigger.”).

2. **The Distinction Between “Operations” and “Completed Operations.”** The Court finds that the policies at issue contain separate and distinct coverage parts for “operations” and “completed operations.” As a general matter, the policies contain no aggregate limit of liability for the operations coverage part, although the Court has also held that the USF&G policies issued to Covil between 1954 and 1964 also contain no aggregate limit of liability for the products and completed operations coverage part as well. The operations coverage part for each one of the policies at issue in this case responds repeatedly to each and every “occurrence” without a total “cap” on the insurers’ liability to pay, subject only to a “per occurrence” limit of liability. The same is true of products and completed operations claims covered under the 1954 to 1964 USF&G policies. Most of the asbestos contracting claims against Covil invoke the operations coverage part because they did not result from its “completed operations.”

The insurers have conflated the separate “operations” coverage part with the “completed operations” coverage part and have applied their policies in a manner that has not been adopted by the state courts in South Carolina. The Court is aware that the insurers contend that aggregate limits of liability apply to any third party’s claim against Covil involving exposure to asbestos that took place before the *inception date* of their policies. The policies are not written in that manner, however. There is nothing in the definition of “completed operations” that focuses on the inception date of a policy.

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 policies 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.

This Court finds that the “completed operations hazard” described in the insurers’ policies, and the corresponding aggregate limits of liability in the policies that contain such aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos *after* Covil completed its installation or removal operations or work at a particular jobsite.

The Court holds that any aggregate limit of liability in the insurers’ policies applies only to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos attributed to Covil *after* Covil completed its work at a particular jobsite. No aggregate limits of liability apply to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos while Covil was performing work at a particular jobsite.⁸ See, e.g., *Travelers Cas. & Sur. Co. v. Gerling Global Reinsurance Corp. of Am.*, 419 F.3d 181, 184 (2d Cir. 2005) (“*Gerling*”) (“Operations” coverage “protected [the insured] from claims for asbestos-related injuries resulting from asbestos exposure on [the insured’s] premises or during its business operations, for example, injuries occurring during the installation or removal of asbestos products”); *Travelers Cas. & Sur. Co. v. Employers Ins. of Wausau*, 130 Cal. App. 4th 99, 114 n.6 (2005) (“Examples of injuries covered under the premises-operations coverage include injuries suffered by a shipyard worker while installing insulation at the insured’s facility and injuries caused by a subcontractor’s negligent construction of a wall that fell on a worker while the job was in progress.”).

⁸ Covil contends that policies in addition to those issued by USF&G between 1954 and 1964 do not contain any aggregate limits of liability at all. The court has not reached any conclusion as to this contention, except to conclude, in accordance with well-settled South Carolina law, that the burden is on the insurer to prove any limitation on coverage, including a limitation such as an aggregate limit of liability.

3. **Burden Of Proof.** The Insurers bear the burden of proving any exclusion or limitation of coverage, including the application of aggregate limits to particular suits and the “exhaustion” of the aggregate limits of liability in their policies.

The South Carolina Supreme Court has recognized that insurers bear the burden of proving the applicability of a coverage provision that limits their liability to their insured: “Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion’s applicability.” *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560 614 S.E.2d 611, 614 (2004) (citing *Boggs v. Aetna Cas. and Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565 (1979)); see also *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144–48, 781 S.E.2d 137, 141–44 (2015) (upholding circuit court decision to construe an ambiguous terms in favor of coverage, and noting that “ambiguous terms are to be construed strictly against the insurer”). Courts have held that this basic principle also applies to “limitations” on coverage. *Ins. Co. of N. Am. v. Kayser-Roth Corp.*, 770 A.2d 403 (R.I. 2001) (“[o]nce the insured makes a prima facie showing of coverage, ‘the insurer then bears the burden of proving the applicability of policy exclusions and limitations in order to avoid an adverse judgment.’” (quoting *Gen. Accident Ins. Co. v. Am. Nat’l Fireproofing, Inc.*, 770 A.2d 403, 416 (R.I. 1998))); *Koppers Co. v. Aetna Cas. & Sur. Co.*, 98 F.3d 1440, 1446 (3d Cir. 1996) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage, since disclaiming coverage on the basis of an exclusion is an affirmative defense”).

Consequently, as to any individual asbestos lawsuit, it is the Insurers’ burden to prove that the suit seeks the recovery of damages that are subject to the aggregate limits of liability, if any, applicable to the “completed operations” provisions in their policies, where such aggregate limits have been proven by each particular Insurer as to each specific policy or policy period. By definition, aggregate limits restrict coverage. Accordingly, the insurers bear the burden of demonstrating that aggregate limits in their policies, if any, apply to any particular asbestos suits.

4. **Occurrences.** The policies at issue provide coverage for legal liabilities resulting from an

“occurrence.” An “occurrence” is typically defined as an accident, including exposure to substantially similar conditions, that results in bodily injury during the policy period. Covil faces allegations in numerous lawsuits that multiple asbestos injury and wrongful death “occurrences” have resulted from its asbestos “operations.” Covil is therefore entitled to multiple “per occurrence” limits of liability to resolve each of the asbestos suits.

The asbestos insulation operations suits against Covil are not repetitive products liability suits alleging exposure to asbestos from the same defective product. Instead, these suits allege that Covil’s operations exposed workers and other bystanders to asbestos. Courts have held that the type of asbestos operations claims against Covil resulted from multiple “occurrences” under the standard definition of “occurrence” used during the time of the insurers’ policies. *See, e.g., Gerling*, 419 F.3d at 184 (“[I]f claims arising from multiple occurrences triggered [operations] coverage, then Travelers was exposed to unlimited liability; each occurrence was subject to a \$1 million limit on liability, but there was no cap on total liability. Regardless of how much Travelers had paid for previous non-products occurrences under a single policy, each additional non-products occurrence under that policy subjected Travelers to liability anew.”).

5. Allocation of Losses to Covil’s Policies. Exposure to asbestos results in progressive injury spanning many years, thereby triggering coverage under multiple policies. Exposure to asbestos during the conduct of operations that results in bodily injury during the policy period or periods during which the operations were conducted also presents an allocation issue. And, here, Covil is in a Receivership, with no assets other than its insurance policies and proceeds, which also affects any allocation of loss since Covil itself cannot absorb any allocation of loss. Finally, the Court notes that the language of the policies typically requires the insurers to pay “all sums” – meaning everything – for which the insured is legally obligated to pay if a claimant sustains bodily injury during the period of the policy.

The Court is mindful of the South Carolina Supreme Court’s decision in *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), and notes that it speaks generally to allocation of loss in a continuous injury situation such as asbestos-related disease but does not

address the particular circumstances presented by this Receivership, *i.e.*, the applicability of operations coverage and the impracticability of allocation of loss to Covil itself. Therefore, the Court will apply the rule of *Crossman Communities of N.C., Inc.* except in the case of operations claims where the policies in effect during the conduct of the operations will apply on an “all sums” basis. The Court also interprets *Crossman* such that allocation of loss will not be made to policy years when Covil does not have any available or responsive coverage.

Finally, each individual insurer will nevertheless be protected fully against the possibility that it paid too much on a single asbestos claim by its right to seek contribution from any other insurer, but not from Covil, whose policy also was triggered by the asbestos suit. This approach “ensures that [Covil] is indemnified by one [or more] insurer for the full extent of the loss up to the policy’s limits, but apportions liability among all insurers whose policies were triggered by the claimant’s asbestos-related bodily injury.” *Armstrong*, 45 Cal. App. 4th at 55.

This Court further finds that no aggregate limit of liability for product liability or completed operations claims has been or can be proven, and therefore no aggregate limit for product liability or completed operations claims exists, for the following Covil insurance policies:

<u>Policy Period</u>	<u>Insurer</u>	<u>Policy Number</u>
April 21, 1964 – April 21, 1965	Hardware Mutual Casualty Co.	39 04132 02 01
April 21, 1965 – April 1, 1966	Hardware Mutual Casualty Co.	39 04132 02 01
April 21 1966 – March 31, 1967	Hardware Mutual Casualty Co.	39 04132 02
March 31, 1967 – March 31, 1968	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1968 – March 31, 1969	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1969 - March 31, 1970	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1974 – March 31, 1975	Maryland Casualty Company	41-206393
March 31, 1975 – March 31, 1976	Maryland Casualty Company	41-206393

March 31, 1976 – March 31, 1977	USF&G	SMP 490049
March 31, 1977 – March 31, 1978	USF&G	SMP 490049

This Court further orders that this Order be forwarded to the South Carolina Attorney General and to the South Carolina Department of Insurance for their consideration and further action, as they may deem appropriate.

AND IT SO ORDERED this 8 day of January, 2020.

Jean H. Toal, Chief Justice of the Supreme
Court, Retired, acting as Circuit Court Judge

Columbia, South Carolina.



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2020-01-08 11:32:39 page 23 of 23

ELECTRONICALLY FILED - 2020 Jan 08 11:39 AM - YORK - COMMON PLEAS - CASE#2015CP4602155

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

RECEIVED

FEB 07 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CHARLES T. HOPPER and REBECCA
HOPPER,

Plaintiffs,

VS.

Air & Liquid Systems Corporation, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

ORDER FOR RULE TO SHOW CAUSE HEARING

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES MICHAEL HILL,

Plaintiff,

VS.

Advance Auto Parts, Inc., et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

ORDER FOR RULE TO SHOW CAUSE HEARING

RECEIVED

FEB 07 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
DENVER D. TAYLOR and JANICE
TAYLOR,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04940

ORDER FOR RULE TO SHOW CAUSE
HEARING

RECEIVED

FEB 07 2020

SC Court of Appeals

This matter comes before the Court by way of Peter D. Protopapas', as the duly appointed Receiver of Covil Corporation ("Receiver"), Motion for a Rule to Show Cause against United States Fidelity and Guaranty Company ("USF&G"), Zurich American Insurance Company ("Zurich"), Sentry Insurance, a Mutual Company ("Sentry"), and Hartford Accident and Indemnity Company ("Hartford") for contempt of Court for violating this Court's (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation¹; (2) February 28, 2019 Order requiring Covil's Insurers to attend mediation²; and (3) September 19, 2019 Order requiring Covil's Insurers should respond and produce required documents before September 30, 2019.³

It appears to this Court that Insurers have refused to provide policy limits and settlement

¹ See November 2, 2018, Order Appointing Receiver in *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-40-04940).

² See February 28, 2019, Order Granting Plaintiff's Motion to Compel Attendance at Mediation in *Nolen v. Daniel, et al.* (C/A No. 2016-CP-40-04184); *Greene v. Armstrong, et al.* (C/A No. 2016-CP-40-00173); *Thompson v. Armstrong, et al.* (2016-CP-40-2498); and *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-04940).

³ See September 19, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

authority information to their insured Receiver, even after this Court ordered the Insurers to provide the information by September 30, 2019. As such, this Court hereby ORDERS Covil's Insurers—USF&G, Sentry, Zurich, and Hartford—to show cause why they should not be held in contempt of Court for violation of this Court's Order Appointing a Receiver for Covil Corporation; Order Compelling their Attendance at Mediation; and Order for a Rule to Show Cause. Further, 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.

A hearing on this matter will be scheduled for November 13, 2019 and USF&G, Sentry, Zurich, and Hartford are required to attend.

IT IS THEREFORE ORDERED that Zurich American Insurance Company; Sentry Insurance, A Mutual Company; United States Fidelity and Guaranty Company; and Hartford Accident and Indemnity Company, show cause why they should not be held in contempt of Court for the reasons set forth above, and a hearing shall be scheduled for November 13, 2019 at 9:00 am at the Richland County Judicial Center.

IT IS FURTHER ORDERED that service of this Rule to Show Cause shall be served upon the South Carolina Department of Insurance for Zurich American Insurance Company; Sentry Insurance, A Mutual Company; United States Fidelity and Guaranty Company; and Hartford Accident and Indemnity Company, at least ten days prior to the Rule to Show Cause Hearing, which shall constitute proper service pursuant to Rule 4(e) of the South Carolina Rules of Civil Procedure.

SIGNED this _____ day of _____, 2019.

JEAN H. TOAL, CHIEF JUSTICE (Ret.)



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2019-10-28 11:53:40 page 6 of 6

ELECTRONICALLY FILED - 2019 Oct 28 11:56 AM - YORK - COMMON PLEAS - CASE#2015CP4602155

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

NORMAN JERFFERSON NOLEN,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE HEIRS
AND ESTATE OF LINDA NOLEN,

Plaintiff,

v.

DANIEL INTERNATIONAL
CORPORATION F/K/A DANIEL
CONSTRUCTION COMPANY, INC., et
al.,

Defendants.

Civil Action No: 2016-CP-40-04184

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FEB 07 2020

SC Court of Appeals

RHONDA ELAINE GREENE,
individually
and as Personal Representative of the
Estate of ELLA FAY GREENE,

Plaintiff,

v.

ARMSTRONG INTERNATIONAL, INC.,
et al.,

Defendants.

Civil Action No: 2016-CP-40-00173

ANDREA JEAN THOMPSON,
Individually and as Executrix of the
Estate of TRACY DEAN THOMPSON,
Plaintiff,

v.

ARMSTRONG INTERNATIONAL, INC.,
et al.,

Defendants.

Civil Action No: 2016-CP-40-2498

DENVER D. TAYLOR AND JANICE R.
TAYLOR,

Plaintiffs,

v.

AIR & LIQUID SYSTEMS
CORPORATION, individually and as
successor-in-interest to BUFFALO
PUMPS, et al.,

Defendants.

Civil Action No: 2018-CP-40-04940

RECEIVED

FEB 07 2020

SC Court of Appeals

**ORDER GRANTING THE PLAINTIFF'S MOTION TO COMPEL ATTENDANCE AT
THE MEDIATION**

This matter comes before the Court by way of the above-referenced Plaintiffs' Motion to Compel the counsel for Covil Corporation ("Covil"), the Receiver for Covil and the representatives of Covil's insurers to attend mediation in Charleston on March 4-6. The Plaintiff's Motion is hereby GRANTED.

Counsel for the Receiver, Mark H. Wall, and the Receiver for Covil, Peter D. Protopapas, as well as representatives from the following insurance carriers are required to attend the mediation in person: Zurich American Insurance Company; Sentry Casualty Company; U.S. 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; and First State Insurance Company. Each carrier's representative is required to attend mediation with full settlement authority as defined by the South Carolina Supreme Court and the South Carolina Alternative Dispute Resolution Rules.

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2019

Chief Justice Jean Toal (Ret), Supreme Court
Acting Circuit Court Judge



Richland Common Pleas

Case Caption: Norman Jefferson Nolen , plaintiff, et al vs Daniel International Corporation , defendant, et al
Case Number: 2016CP4004184
Type: Order/Compel

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2019-02-28 14:17:54 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

ORDER FOR RULE TO SHOW CAUSE

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FEB 07 2020

SC Court of Appeals

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

ORDER FOR RULE TO SHOW CAUSE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	ORDER FOR RULE TO SHOW CAUSE
	)	
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

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FEB 07 2020

CC Court of Appeals

This matter comes before the Court by way of a Rule to Show Cause motion and hearing on September 13, 2019, initiated by Peter Protopapas, as the duly appointed Receiver of Covil Corporation ("Receiver").

On May 28, 2019, the South Carolina Supreme Court appointed the undersigned to serve as the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system. The Supreme Court's charge includes facilitating meaningful mediations consistent with the South Carolina Rules of Alternative Dispute Resolution. The Rules mandate attendance at mediation "a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim" on behalf of any insured party against whom a claim is made. SCRADR 6(b)(4).

Further, the Court has jurisdiction in connection with the Court's authority over the Receiver in the administration of the receivership of Covil.

Proceedings before this Court on the issue of Covil's participation in mediation exercises

have demonstrated a lack of clarity regarding what constitutes “full authority” for claims filed against Covil Corporation. This lack of clarity continually delays settlement, stalls negotiations, and slows the ability of this Court to manage the South Carolina asbestos docket. An inquiry into the insurance coverage of Covil Corporation is warranted to fully determine the amount of authority available for settlement of asbestos personal injury actions filed against Covil Corporation.

IT IS THEREFORE ORDERED that United States Fidelity and Guaranty Company (“USF&G”), Zurich American Insurance Company (“Zurich”), Sentry Insurance, a Mutual Company (“Sentry”), and Hartford Accident and Indemnity Company (“Hartford”) respond to the following areas of inquiry under penalty of perjury by September 30, 2019, prior to the *Hopper* mediation. For purposes of clarification of the terms provided in the following areas of inquiry, the terms “You” and “Your” shall mean the responding insurer, in its own capacity and in its capacity as successor to any other insurer entity.

1. Provide all general liability and product liability insurance policies issued by You to Covil Corporation, during the period 1954 through 1991, including, but not limited to, all policy numbers previously identified to this Court as covering Covil Corporation.
2. Provide all workers compensation insurance policies issued by You to Covil Corporation during the period 1954 through 1991.
3. Provide all project policies issued by You to Covil Corporation, or naming Covil Corporation as an additional insured, during the period 1954 through 1991.
4. Provide all excess and umbrella liability insurance policies issued by You to Covil Corporation during the period 1954 through 1991.
5. Provide all underwriting files related to general liability and product liability insurance

- policies issued by You to Covil Corporation during the period 1954 through 1991.
6. Provide all underwriting files related to workers compensation insurance policies issued by You to Covil Corporation during the period 1954 through 1991.
 7. Provide all documents that reflect communications between You and Covil Corporation regarding the acquisition, placement, and termination of insurance coverage.
 8. Provide all documents that reflect communications between You and any other Covil Corporation insurer that refer or relate in any way to the defense and/or indemnification of Covil.
 9. Provide all claims files that refer or relate to general liability or product liability claims against Covil Corporation, handled by You during the period 1954 through 1991.
 10. Provide all claims files that refer or relate to workers compensation claims against Covil Corporation, handled by You during the period 1954 through 1991.
 11. Provide all documents that refer or relate to general liability or product liability claims against Covil Corporation, handled by YOU during the period 1954 through 1991.
 12. Provide all documents that refer or relate to workers compensation claims against Covil Corporation, handled by YOU during the period 1954 through 1991.
 13. Provide all Liability Cumulative Analysis reports prepared by You or on Your behalf in connection with general liability or product liability insurance policies issued by You to Covil Corporation during the time period 1954 through 1991.
 14. Provide all documents that refer or relate to Liability Cumulative Analysis reports prepared by You or on Your behalf in connection with general liability or product liability insurance policies issued by You to Covil Corporation, during the time period 1954 through 1991.
 15. Provide all documents that refer or relate to Your procedures for designating policy

- numbers, including policy prefixes, for general liability and product liability insurance policies issued by You during the time period 1954 through 1991.
16. Provide exemplars of general liability and product liability primary insurance policies issued by You during the period 1954 through 1991.
 17. Provide exemplars of excess and umbrella liability insurance policies issued by You during the period 1954 through 1991.
 18. Provide all underwriting manuals and guidelines related to general liability and product liability primary insurance policies issued by You during the period 1954 through 1991.
 19. Provide all underwriting manuals and guidelines related to excess and umbrella liability insurance policies issued by YOU during the period 1954 through 1991.
 20. Describe in detail Your efforts to locate general liability and product liability insurance policies, workers compensation policies, excess and umbrella liability insurance policies, all project policies issued by You to Covil Corporation, or naming Covil Corporation as an additional insured, during the period 1954 through 1991.
 21. State the names of the persons most knowledgeable regarding Your search efforts to locate the requested general liability and product liability insurance policies, workers compensation policies, excess and umbrella liability insurance policies, all project policies issued by You to Covil Corporation, or naming Covil Corporation as an additional insured, during the period 1954 through 1991.
 22. Identify all documents that refer to or relate to Your search efforts to locate the requested general liability and product liability insurance policies, workers compensation policies, excess and umbrella liability insurance policies, all project policies issued by You to Covil Corporation, or naming Covil Corporation as an additional insured, during the period 1954 through 1991.
 23. Identify the persons involved in preparing Your responses to this inquiry.
 24. State that these are all of the policies issued by You to Covil.

IT IS FURTHER ORDERED that service of this Rule to Show Cause shall be served upon the South Carolina Department of Insurance for Zurich, Sentry, USF&G, and Hartford, which shall constitute proper service pursuant to Rule 4(e) of the South Carolina Rules of Civil Procedure.

SIGNED this _____ day of _____, 2019.

JEAN H. TOAL, CHIEF JUSTICE (Ret.)



Richland Common Pleas

Case Caption: Charles T Hopper , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al
Case Number: 2019CP4000076
Type: Order/Rule To Show Cause

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2019-09-19 12:44:49 page 8 of 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
DENVER D. TAYLOR and	)	
JANICE TAYLOR,	)	CASE NO. 2018-CP-40-04940
	)	
Plaintiffs,	)	Order Appointing a Receiver for Covil
	)	Corporation
v.	)	RECEIVED
	)	FEB 07 2020
AIR & LIQUID SYSTEMS	)	SC Court of Appeals
CORPORATION, et al.	)	
	)	
Defendants.	)	

This matter comes before the Court by way of Plaintiff's Motion for Appointment of a Receiver pursuant to South Carolina Code § 15-65-10. This Court finds that the application is meritorious under the applicable statute because Covil Corporation has dissolved. Therefore, Plaintiff's motion is GRANTED.

This Court hereby appoints Attorney Peter Protopapas as Receiver at such rate of compensation as may be approved by the Court. Mr. Protopapas is hereby appointed Receiver in this case pursuant to § 15-65-10 with the power and authority to fully administer all assets of Covil Corporation ("Covil"). This order 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.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any

mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2018.

JEAN TOAL, CHIEF JUSTICE (Ret.)



Richland Common Pleas

Case Caption: Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al
Case Number: 2018CP4004940
Type: Order/Appointment of Receiver

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2018-11-02 13:22:24 page 3 of 3

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below through the United States mail, postage prepaid, at the address(es) below:

Pleading(s): USF&G's Notice of Appeal
Parties Served:

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Jescelyn Tillman Spitz
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Court of Appeals

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By: _____

Edwin T. Mathis

February 7, 2020

EXHIBIT 20

STATE OF SOUTH CAROLINA)
COUNT OF ORK)
RO ANNE FALLS, Individually and as Personal)
Representative of the Estate of CHARLOTTE)
GA E SMITH,)
Plaintiff,)
v.)
CBS Corporation, et al.,)
Defendant.)
In Re:)
Receivership of Covil Corporation by and through its)
Receiver Peter D. Protopapas)
STATE OF SOUTH CAROLINA)
COUNT OF ORK)
TIMOTH W. HOWE, Individually and as Personal)
Representative of the Estate of Wayne Ervin Howe,)
deceased, and Jeanette Howe,)
Plaintiffs,)
vs.)
Air & Liquid Systems Corporation, et al.,)
Defendants.)
In Re:)
Receivership of Covil Corporation by and through its)
Receiver Peter D. Protopapas)

IN THE COURT OF COMMON PLEAS.
FOR THE SEVENTEENTH JUDICIAL
CIRCUIT
C/A NO.: 2015-CP-46-02155

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTEENTH JUDICIAL
CIRCUIT
C/A NO.: 2015-CP-46-03456

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
DENVER D. TAYLOR and JANICE TAYLOR,	)	C/A NO.: 2018-CP-40-04940
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and through its	)	
<u>Receiver Peter D. Protopapas</u>	)	

NON-PARTY USF&G'S MOTION TO STAY

Non-party United States Fidelity and Guaranty Company ("USF&G") respectfully submits this Motion to Stay ("Motion to Stay") the Court's Order on Rule to Show Cause entered on January 8, 2020 (the "Show Cause Order"), pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 62(b).

This Motion to Stay incorporates herein the arguments USF&G submitted in its Memorandum in Support of its Motion to Reconsider, Alter or Amend the Court's Order on Rule to Show Cause, pursuant to SCRCP 6(a), 52(b), 59(e), and 60(b), filed on January 17, 2020 (the "Reconsideration Motion"). For the reasons stated in the Reconsideration Motion, and those listed below, USF&G respectfully requests that this Court stay enforcement of the Show Cause Order until the Court rules on the Reconsideration Motion and until further appellate review.

REASONS TO GRANT MOTION TO STAY ENFORCEMENT

This Court should grant USF&G's Motion to Stay for at least the following reasons:

1. SCRCP 62(b) allows a court to stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60
2. The Show Cause Order raises significant and novel legal issues related to the contractual rights and obligations of USF&G and Covil Corporation ("Covil"). The rights and obligations of the parties should not be impacted until this Court has had the opportunity to fully consider the Reconsideration Motion and, if necessary, these issues are decided on appeal.
3. The Receiver and underlying plaintiffs have already attempted to rely on the Show Cause Order in other proceedings. For example, the Receiver recently argued in the pending coverage action, *Zurich American Insurance Co. v. Sentry Casualty Co., et al.*, No. 1:18-cv-00932 (M.D.N.C.) (the North Carolina Coverage Action), that that action should be stayed pending the outcome of USF&G's anticipated appeal of the Court's Show Cause Order despite the fact that the court in that coverage action is directly addressing several issues raised in the Show Cause Order. Although the court in the North Carolina Coverage Action has declined the Receiver's attempt to stay that action, both USF&G and the Receiver have been extensively involved in litigating coverage issues in the North Carolina Coverage Action, including on such issues as the existence, terms and conditions of the policies and alleged policies that are the subject of the Show Cause Order. An express stay of the Show Cause Order pending resolution of the Reconsideration Motion and any further appellate review would avoid needless uncertainty and misuse of the Show Cause Order in other litigation.

4. Among other sanctions, the Show Cause Order purports to create a contractual relationship between USF&G and Covil and imposes specific terms and conditions of alleged contracts spanning 12 years of potential coverage, ten years of which are subject to disputes regarding whether USF&G issued commercial general liability policies to Covil at all. Even as to the 1976-1978 policy, which has been produced to the Receiver and the terms and conditions of which should not be in dispute, the Show Cause Order appears to materially alter the express terms and limitations agreed to by the parties' contract. The Show Cause Order has thus emboldened the Receiver to tender new claims under the policies the Show Cause Order purports to create and to modify.

5. Similarly, plaintiffs in underlying asbestos actions have relied upon this Court's Show Cause Order as evidence that USF&G and Zurich are alter egos of Covil, despite the fact that alter ego claims or liability was not the subject of any briefing in connection with the Show Cause Order and despite the fact that the factual underpinnings of the Court's statement are hotly disputed.

6. The Show Cause Order has also been sent to the South Carolina Department of Insurance and Attorney General's office at this Court's direction. The Court did not provide any indication as to what those state agencies are to do with the Court's order, apparently leaving it to those agencies to determine its effect and to take whatever actions they deem appropriate as necessary given the separation of powers between the executive and judicial powers of government. *See* S.C. Const. art. I, § 8. A stay of enforcement would make clear to those agencies that the Show Cause Order is subject to further review and does not require those agencies to take any particular action, in particular as to the regulation and conduct of the insurance industry.

7. As USF&G has argued in its Reconsideration Motion, the briefing leading to the Show Cause Order was inadequate to support findings of fact and conclusions of law included in

the Show Cause Order on several significant issues. The Court should not permit parties to misuse the Show Cause Order as if it reflected final determinations of the issues addressed therein, particularly given the arguments of both the Receiver and USF&G that have yet to be fully addressed by this Court and, if necessary, by the appellate courts.

8. Case law supports a stay under these circumstances. *See generally McConnell v. Williams*, 252 S.C. 573, 167 S.E.2d 429 (1969); *Rush v. Thompson*, 203 S.C. 106, 26 S.E.2d 411, 413 (1943). The issues in the pending declaratory judgment action that are in active litigation and in which extensive discovery on critical coverage issues is ongoing would help inform the coverage issues in a sanctions order where those issues were, as USF&G maintains, improperly presented and not fully briefed and not even ripe in connection with any of the above-captioned actions.

9. Granting the Motion to Stay Enforcement would best serve the interests of those involved. *See Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 119, 328 S.E.2d 621, 622 (1985). In *Talley*, the South Carolina Supreme Court considered whether staying certain asbestos litigations would serve the interests of the parties by permitting appellants to stay their products liability actions so that they could later pursue workers compensation actions. *Id.* at 118. The *Talley* court determined that a stay was necessary and would best serve the parties, notwithstanding the absence of active workers compensation claims. *Id.* at 120 (Littlejohn, J., dissenting). Though USF&G is a non-party, its interests are directly impacted by the Show Cause Order. The interests of the Receiver and USF&G would be best served by an opportunity to fully and fairly present all sides of the factual and legal issues addressed in the Show Cause Order and would benefit from the appellate courts' guidance.

10. The Receiver would suffer no harm from a stay of enforcement. The sanctions imposed by the Court does not require USF&G directly to pay any money, or to take any other

further action. Instead, the Show Cause Order contains various factual findings and legal conclusions that are hotly disputed and will inevitably be addressed by the appellate courts unless this Court were to grant Reconsideration Motion and vacate the Show Cause Order. A limited stay under these circumstances would maintain the status quo, while Covil and the Receiver remain protected given that USF&G and Zurich are continuing to defend and indemnify Covil in the underlying tort actions, as they have done both before and after appointment of the Receiver.

11. Further, virtually all of the disputed issues of insurance coverage, such as the existence, terms, and conditions of allegedly missing policies, and the proper interpretation of the undisputed policy provisions under governing law, are squarely before the court in the North Carolina Action, and thus the Receiver has both a forum and opportunity to address those issues on the merits while this Court considers the Reconsideration Motion and the Show Cause Order is subject to appellate review.

12. Indeed, neither the Receiver nor Covil has been required to expend any money for the defense or settlement of any asbestos-related action against Covil to date, either before or after appointment of the Receiver. Rather, from the 1970s through the present, USF&G and Covil's other insurers have borne virtually all of the costs of defending and resolving those claims while the coverage issues are being decided.

13. Although the court may stay the execution of or any proceedings to enforce a judgment on such conditions for the security of the adverse party are proper, SCR 62(b), no such security is necessary or appropriate here because the Show Cause Order does not involve any payment of money or provide similar relief and given that USF&G and Covil's other insurers are continuing to defend and indemnify Covil. Nonetheless, a stay of enforcement would maintain the status quo in terms of USF&G's contractual obligations, prevent parties from misusing the Court's Show Cause Order in other proceedings, and make clear that the findings and conclusions

and associated sanctions set forth in the Show Cause Order remain subject to this Court's and appellate courts' further review.

14. As noted above, and as discussed further in the Reconsideration Motion, the Show Cause Order presents numerous issues concerning the jurisdiction of this Court, the propriety of the Court's contempt sanctions under the facts and governing law, as well as important issues of insurance law and principles of due process. Regardless of how the Court ultimately decides those issues, there can be no doubt that they raise significant and novel issues on which the appellate courts may offer guidance. Under these circumstances, a stay is appropriate.

15. Given that numerous parties appear to be citing to and attempting to utilize the Court's Show Cause Order in other pending litigation in multiple jurisdictions, USF&G respectfully requests that the Court rule on this motion on an expedited basis.

CONCLUSION

For all of the reasons set forth above and in USF&G's prior submissions, USF&G respectfully requests that the Court stay enforcement of its Show Cause pending a ruling on the Reconsideration Motion and any further appeal of the Show Cause Order.

Undersigned counsel affirms that consultation with opposing counsel concerning this motion would serve no useful purpose.

Signature Page Attached

Respectfully submitted,

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Attorneys for Appellant United States Fidelity and
Guaranty Company

February 7, 2020

EXHIBIT 21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A NO.: 2015-CP-46-02155
	)	
ROXANNE FALLS, Individually and as	)	
Personal Representative of the Estate of	)	
CHARLOTTE GAYE SMITH,	)	
	)	JOINT MOTION TO ESTABLISH A
Plaintiffs,	)	QUALIFIED SETTLEMENT FUND;
	)	APPROVE COVIL QSF, LLC AS A
vs.	)	QUALIFIED SETTLEMENT FUND;
	)	AND RETAIN JURISDICTION OVER
CBS Corporation, et al.,	)	THE QUALIFIED SETTLEMENT FUND
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	
<u>STATE OF SOUTH CAROLINA</u>	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A NO.: 2015-CP-46-03456
	)	
TIMOTHY W. HOWE, Individually and as	)	
Personal Representative of the Estate of	)	
Wayne Ervin Howe, deceased, and Jeanette	)	
Howe,	)	
	)	JOINT MOTION TO ESTABLISH A
Plaintiffs,	)	QUALIFIED SETTLEMENT FUND;
	)	APPROVE COVIL QSF, LLC AS A
vs.	)	QUALIFIED SETTLEMENT FUND;
	)	AND RETAIN JURISDICTION OVER
Air & Liquid Systems Corporation, et al.,	)	THE QUALIFIED SETTLEMENT FUND
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	C/A NO.: 2019-CP-40-00076
CHARLES T. HOPPER and REBECCA HOPPER,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO ESTABLISH A
	)	QUALIFIED SETTLEMENT FUND;
vs.	)	APPROVE COVIL QSF, LLC AS A
	)	QUALIFIED SETTLEMENT FUND;
Air & Liquid Systems Corporation, et al.,	)	AND RETAIN JURISDICTION OVER
	)	THE QUALIFIED SETTLEMENT FUND
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	C/A NO.: 2018-CP-40-04680
JAMES MICHAEL HILL,	)	
	)	
Plaintiff,	)	
	)	JOINT MOTION TO ESTABLISH A
vs.	)	QUALIFIED SETTLEMENT FUND;
	)	APPROVE COVIL QSF, LLC AS A
Advance Auto Parts, Inc., et al.,	)	QUALIFIED SETTLEMENT FUND;
	)	AND RETAIN JURISDICTION OVER
Defendants.	)	THE QUALIFIED SETTLEMENT FUND
In Re:	)	
	)	
Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	C/A NO.: 2018-CP-40-04940
DENVER D. TAYLOR and JANICE TAYLOR,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO ESTABLISH A
	)	QUALIFIED SETTLEMENT FUND;
vs.	)	APPROVE COVIL QSF, LLC AS A
	)	QUALIFIED SETTLEMENT FUND;
Air & Liquid Systems Corporation, et al.,	)	AND RETAIN JURISDICTION OVER
	)	THE QUALIFIED SETTLEMENT FUND
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
<u>through its Receiver Peter D. Protopapas</u>	)	

Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver"), First State Insurance Company and Hartford Accident and Indemnity Company (collectively, "Hartford") and TIG Insurance Company ("TIG") (collectively, the "Transferor Insurers") jointly move this Court to establish a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of 1986, as amended ("I.R.C."). A proposed order is filed concurrently herewith.

In support of this joint motion, the Receiver, TIG, and Hartford respectfully state as follows:

1. This Court appointed the Receiver to marshal the assets of Covil Corporation ("Covil"), which include the insurance policies and proceeds of the insurance policies issued to Covil. The Receiver is, and has been, engaged in a series of coverage disputes with Covil's insurers.

2. The Receiver, TIG and Hartford have separately entered into settlements that will result in the dismissal of the Receiver's claims against Hartford and TIG, and all of these insurers' claims against the Receiver and each other, in all courts in which actions or other proceedings between the parties are pending. As to Hartford, the parties have entered into a final comprehensive settlement agreement titled "Confidential Settlement Agreement and Release" ("Hartford-Covil Settlement Agreement"). As to TIG, the parties have separately entered into a settlement agreement titled "Confidential Settlement Agreement And Release Between Peter D. Protopapas, As Receiver For Covil Corporation, An Administratively Revoked South Carolina Corporation And Covil QSF, LLC (the "QSF"), And TIG Insurance Company, Successor-In-Interest To Ranger Insurance Company ("TIG"), And RiverStone Claims Management, LLC ("RiverStone") (the "TIG-Covil Settlement Agreement").

3. The Hartford-Covil Settlement Agreement provides that Hartford shall transfer funds and claims to a Qualified Settlement Fund ("Covil QSF"), as that term is defined by Section 468B of the I.R.C., and the regulations promulgated thereunder, provided that the Covil QSF is approved by this Court and that this Court keeps continuing jurisdiction over the Covil QSF. The parties have further agreed that the Covil QSF will be a Delaware limited liability company. Such limited liability company has been formed under the laws of the State of Delaware, and is known as "Covil QSF LLC." A true and correct copy of a the Certificate of Formation of the limited liability company of Covil QSF LLC as a Delaware limited liability company filed with the Secretary of State of the State of Delaware on November 21, 2019 is attached hereto as Exhibit 1. The provisions for operating and managing the Covil QSF, including the distribution of its funds and the appointment of a Manager, are set forth in the Operating Agreement for Covil QSF LLC ("Covil Operating Agreement"). A redacted copy – removing the amounts paid consistent with

the confidentiality provisions in the Settlement Agreements between Covil and Hartford and between Covil and TIG Insurance Company -- is attached hereto as Exhibit 2. The TIG-Covil Settlement Agreement similarly provides for the transfer of funds and claims to the Covil QSF.

4. Article 1.2 of the Operating Agreement sets forth the purposes of the Covil QSF. Those purposes include "(i) to provide funds which may be used to pay for costs incurred by the parties hereto in connection with claims, suits and demands alleging personal injury and bodily injury from alleged exposure to asbestos-containing materials ("Covil Asbestos Suits"); (ii) to provide funds to be used to pay the legal fees of the parties hereto; (iii) to provide advances to pay for legal fees and settlement costs of Covil Asbestos Suits asserted against Covil Corporation, an administratively revoked South Carolina corporation ("Covil") pending reimbursement or indemnification by other responsible third parties including (without limitation) other insurers of Covil; (iv) to secure certain future potential contingent obligations to the Insurers pursuant to the terms of the Settlement Agreements, which terms are expressly incorporated herein by reference; (v) to pay for administrative and management costs as provided for herein; and (vi) to do all things necessary or appropriate in connection with the foregoing."

5. The Operating Agreement appoints the Receiver as the initial Manager of the Covil QSF. *See* Article 4.1. The Operating Agreement further provides that the Manager is charged with the performance of his duties as Manager, which include, among others: (i) investing the Covil QSF to maximize the amount of the fund available to provide a source of funds for the Covil Asbestos Suits; (ii) administering the Covil QSF; (iii) preparing a detailed accounting of the Covil QSF, including all receipts and disbursements, on at least an annual basis; and (iv) preparing and filing all applicable tax returns on behalf of the Covil QSF.

6. The Operating Agreement further requires that the Covil QSF maintain at all times a minimum cash balance in order to secure and satisfy the fund purposes set forth in Article 1.2 of the Operating Agreement.

7. The Covil QSF satisfies all requirements of a Qualified Settlement Fund pursuant to Section 468B of the I.R.C. and the regulations promulgated thereunder. The applicable regulations provide that "[a] qualified settlement fund is a fund, account, or trust that satisfies the requirements of paragraph (c) of this section." Treas. Reg. § 1.468B-1. The regulations further provide that a fund, account, or trust satisfies the "Qualified Settlement Fund" requirements when:

- (1) It is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;
- (2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability –
 - i) Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter referred to as CERCLA), as amended, 42 U.S.C. 9601 et seq.; or
 - ii) Arising out of a tort, breach of contract, or violation of law; or
 - iii) Designated by the Commissioner in a revenue ruling or revenue procedure; and
- (3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

Treas. Reg. § 1.468B-1(c).

8. This joint motion and the proposed order seek to satisfy the first requirement by asking this Court that the Covil QSF be established pursuant to an order of this Court, and that this Court retain continuing jurisdiction.

9. The second requirement is satisfied because the Covil QSF is being established by the settlement payments made by Hartford and separately by TIG pursuant to settlement agreements that resolve completely the alleged obligations of the insurers under the contracts of insurance issued by Hartford and by TIG's predecessor, Ranger Insurance Company.

10. Finally, the "otherwise segregated" requirement has also been met as the Operating Agreement provides that the assets are segregated from the other assets of the transferor insurers.

Based upon the foregoing, the Receiver, TIG and Hartford respectfully request that this Court enter an Order establishing the Covil QSF as a Qualified Settlement Fund under Section 468B of the I.R.C.

Respectfully submitted,

For Receiver, Court-Appointed
Representative on Behalf of Covil:

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For TIG:

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Exhibit 1

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF FORMATION OF "COVIL QSF LLC", FILED
IN THIS OFFICE ON THE TWENTY-FIRST DAY OF NOVEMBER, A.D. 2019,
AT 5:09 O'CLOCK P.M.



7715906 8100
SR# 20198235091

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 204068414
Date: 11-22-19

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:09 PM 11/21/2019
FILED 05:09 PM 11/21/2019
SR 20198235091 - File Number 7718906

**STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF LIMITED LIABILITY COMPANY**

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is Covil QSF LLC.
2. The Registered Office of the limited liability company in the State of Delaware is located at 251 Little Falls Drive, in the City of Wilmington, Zip Code 19808. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is Corporation Service Company.

By: /s/ Deana Baglanzls
Deana Baglanzls
Authorized Person

DB1/ 110036856.1

Appendix 406

Exhibit 2

**OPERATING AGREEMENT FOR
COVIL QSF LLC**

THIS OPERATING AGREEMENT ("Operating Agreement") is executed and declared to be effective (the "Effective Date") upon approval of this "Fund" by a court of competent jurisdiction and is entered into by Peter Protopapas in his capacity as receiver for Covil Corporation, an administratively-revoked South Carolina corporation ("Receiver") as the sole Member and the Managing Member ("the "Manager") of the limited liability company established under the law of the State of Delaware known as "Covil QSF LLC" (the "Fund") (Tax Identification No. 84-3775153).

WITNESSETH:

WHEREAS, in settlement of certain disputes, Hartford Fire Insurance Company, Hartford Accident and Indemnity Company and First State Insurance Company ("Hartford"), and TIG Insurance Company, successor to Ranger Insurance Company ("TIG"), also referred to as "Insurers" or "Transferors", and the Receiver, acting pursuant to his authority and solely in such capacity, have entered into certain settlement agreements ("Settlement Agreements");

WHEREAS, the Transferors, as set forth on Schedule 1 to this Operating Agreement, have agreed to transfer certain monies and other things of value, including specifically contribution, subrogation, "other insurance," equitable indemnity and similar rights and claims ("Contribution Claims") to the Fund;

WHEREAS, this Fund, together with all other additional insurance policies' proceeds or other assets that may become available to the Receiver ("Other Insurance"), will be responsible for meeting the costs and expenses of suits, claims and ancillary proceedings related to Covil Asbestos Suits (as defined below), to the extent that such Other Insurance has not paid or reimbursed such costs and expenses, but only to such extent, and to meet administrative costs and expenses of this Fund, including without limitation tax and investment fees and expenses;

WHEREAS, this Fund is excess of all such Other Insurance;

WHEREAS, the parties to this Operating Agreement acknowledge and agree that the funds and other assets and things of value transferred to the Fund and all earnings thereon or additions thereto are to be held, administered and distributed in accordance with the following provisions,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

Article I

General Fund Provisions

1.1 Name of Fund. This Fund shall be known as and properly referred to as the "Covil QSF LLC" or "Covil QSF."

1.2 Fund Purposes. The purposes of this Fund shall be (i) to provide funds which may be used to pay for costs incurred by the parties hereto in connection with claims, suits and demands alleging personal injury and bodily injury from alleged exposure to asbestos-containing materials ("Covil Asbestos Suits"); (ii) to provide funds to be used to pay the legal fees of the Receiver and lawyers engaged by the Receiver; (iii) to provide advances to pay for legal fees and settlement costs of Covil Asbestos Suits asserted against Covil Corporation, an administratively revoked South Carolina corporation ("Covil") pending reimbursement or indemnification by other responsible third parties including (without limitation) Other Insurers of Covil; (iv) to secure certain future potential contingent obligations to the Insurers pursuant to the terms of the Settlement Agreements, which terms are expressly incorporated herein by reference; (v) to pay for administrative and management costs as provided for herein; and (vi) to do all things necessary or appropriate in connection with the foregoing.

1.3 Distributions and Advances; Other Insurance; Minimum Fund Balance. Distributions from the Fund shall be made to meet Fund purposes, in the discretion of the Manager, or to meet any legal obligation of the Fund. Advances from the Fund may be made, in lieu of a distribution, when one or more insurance companies, or other parties, are responsible for meeting fees, expenses, demands, costs or liabilities properly payable by the Fund. The determination to make a distribution or an advance may be made in the discretion of the Manager. Distributions or advances to pay for or fund Covil Asbestos Suits may be made at any time, pursuant to Article 1.2 (iii) of this Operating Agreement. Payments from the Fund for Covil Asbestos Suits may be made at any time to supplement other available insurance that has been used to fund Covil Asbestos Suits or has been deposited in the Covil QSF. In addition to the foregoing, the Fund shall at all times maintain a minimum cash deposit balance of not less than Two Million Dollars (US \$2,000,000) ("Minimum Fund Balance") in order to secure and satisfy the other "Fund Purposes" as set forth in Article 1.2. Advances from the Fund shall be evidenced by a promissory note in the form attached as Schedule 2. All advances shall be recorded as receivables. The Minimum Fund Balance may be satisfied in part by any required minimum balance held or funds maintained in any sub-fund, including without limitation any Exclusive Sub-Fund (as defined herein), including but not limited to the TIG Sub-Fund. The Manager has adopted or may in the future adopt certain standards for distributions or advances to meet the costs of Covil Asbestos Suits, as set forth as Schedule 3.

1.4 Fund is Irrevocable. This Fund is irrevocable and may not be revoked, amended and modified, in whole or in part; *provided, however*, notwithstanding the foregoing to the contrary (i) the Manager of this Fund shall have the exclusive power and authority to petition the court that retains jurisdiction over the Covil QSF to reform this Fund, in whole or in part, to the extent said Court determines it necessary or reasonable in order for this Fund or the Manager to function or be used to serve the Fund purposes set forth herein and to serve and meet the needs

of the parties hereto, and (ii) upon written agreement of each of the parties hereto and without approval of the Court, the Fund instrument may be amended to accomplish one or more of the purposes of the Fund as set forth herein, to maintain the Fund's qualification as a Qualified Settlement Fund as set forth below or to transfer the Fund to a successor escrow fund, trust or other entity designated by the parties hereto which will carry out the purposes of this Fund. Notwithstanding the provisions of this Section 1.4, neither the Fund nor the Manager of the Fund may amend the terms of the Operating Agreement to the detriment of the Transferors or to otherwise make the Fund or the Operating Agreement inconsistent with the terms and conditions of the Settlement Agreements.

1.5 Separate and Independent Fund. This Fund shall at all times be held and remain as a separate and independent fund.

1.6 Duration of Fund. This Fund shall remain in existence for a period of approximately thirty (30) years from the date of its creation, until December 31, 2049, or until such earlier date as the Fund is exhausted or the court which has kept jurisdiction over the QSF has approved a distribution of the Fund as set forth in Section 3.4 below (the "Termination Date").

1.7 Situs of Fund. This Fund shall have as its situs Columbia, South Carolina; *provided, however*, that in the event the Manager deems it in the best interest of the Fund and the potential distributees of funds hereunder, the Manager may establish some or all of the Fund assets and/or the situs of the Fund in any other state or judicial district within the continental United States, including (without limitation) the District of Columbia.

1.8 Definitions. All terms shall have the meanings set forth in the Settlement Agreements or in this Operating Agreement, and any governing instrument applicable to its Managers.

1.9 The Settlement Agreements. All provisions of the Settlement Agreements are incorporated herein, and, to the maximum extent permitted by law, the Fund and the Fund Manager agree to be bound by the terms and conditions of the Settlement Agreements.

1.10 Sub-Funds. This Fund shall have the authority to create and maintain separate Sub-Funds which shall be separate and independent funds, in accordance with the documentary requirements establishing such Sub-Funds, but subject at all times to the general terms of this Operating Agreement and any and all orders establishing the Fund and retaining jurisdiction over this Fund or modifying the terms of such order or of this Operating Agreement. The Manager of the Fund may form one or more Sub-Funds at any time, in his discretion, including (without limitation) Sub-Funds that are designated for a specific liability or settlement, Sub-Funds that are for the exclusive benefit of one or more Beneficiaries, or Sub-Funds that may secure or provide for the satisfaction of a specific obligation, contingent or otherwise. An "Exclusive Sub-Fund" may be established solely for the benefit of a third party. The Manager is hereby directed and authorized to establish up to three Exclusive Sub-Funds, with one Exclusive Sub-Fund known as the "TIG Sub-Fund," which shall be governed by this Operating Agreement and pertinent

provisions of the TIG Settlement Agreement. The Manager may hereafter establish two additional Exclusive Sub-Funds which shall be governed by this Operating Agreement and pertinent provisions of any pertinent settlement agreement.

Article II

Deposits By Insurers

2.1 **Deposit of Cash and Claims.** The Insurers shall fund the Covil QSF with the "Settlement Amount," as defined by their respective Settlement Agreements, and claims assigned to the Covil QSF pursuant to the terms of the Settlement Agreements, referred to as "Contribution Claims."

2.2 **Maintenance of Funds.** The funds deposited by the Insurers shall be invested and maintained as provided for by Article V of this Operating Agreement.

Article III

Funding, Distributions and Advances

3.1 **Limitation on Distributions and Advances.** No funding shall be made into this Fund and no distribution or advance may be made from the Fund until and unless (i) joint written instructions are received from the Transferors and the Receiver consistent with the terms of the Settlement Agreements; (ii) an order is received from a court of competent jurisdiction approving the Covil QSF as part of the Settlement Agreements; and (iii) the foregoing court has retained continuing jurisdiction over this Fund. The foregoing conditions are referred to in this Article III as the "Conditions Precedent."

3.2 **Distributions or Advances For Covil Asbestos Suits.** The Manager may make distributions to pay for the costs and expenses of meeting Covil Asbestos Suit obligations to the extent there is no other responsive insurance or responsible party for meeting such expenses. To the extent such expenses are the responsibility of third parties, the Manager may advance funds to pay for the costs and expenses of defending against and paying otherwise unreimbursed expenses associated with the defense and settlement of Covil Asbestos Suits ("Asbestos Claim Expenses"), pending reimbursement of such asbestos claim expenses by otherwise responsible parties including (without limitation) the liability insurers of Covil. Such advances will be repaid upon receipt of such funds from responsible parties, and, pending receipt of such reimbursements, shall bear and cumulate interest at the rate of five percent (5.00%) simple interest per annum. To the extent funds are not received from third parties to pay for the Asbestos Claim Expenses subject of such advances on or prior to the Date of Termination of the Fund, then the obligation to repay such advances shall be canceled and voided *ab initio*. Any and all advances shall be documented by one or more promissory notes in the form annexed as Schedule 2 to this Operating Agreement. Any restriction on distributions or advances shall be set forth in Schedule 3.

3.3 **Distributions.** When permitted to do so, the Manager shall make distributions to pay Asbestos Claim Expenses as follows:

(a). The Manager shall make distributions hereunder solely with respect to qualifying liabilities as defined in Section 1.468B-1(c) of the Treasury Regulations;

(b). Prior to making any such distribution, the Receiver shall present Required Documentation (as defined herein) to substantiate that qualifying expenditures have been paid or incurred;

(c). Required Documentation shall consist of a declaration under penalty of perjury signed by the Receiver to the effect that qualifying expenditures have been incurred (the "Declaration") in the form annexed at Schedule 4, together with copies of any relevant invoices; and

(d). Receipt of the Declaration and invoices the Receiver shall constitute conclusive proof that claim expenditures have been paid or incurred. Receipt of the signed Declaration and invoices shall relieve the Manager of any duties or obligations of any kind or nature to verify that expenditures were paid or incurred.

3.4. Distribution Upon Expiration of Term of Fund. In the event this Fund shall be in existence at the expiration of approximately thirty (30) years from the date of its creation, *i.e.*, December 31, 2049, this Fund shall terminate and the Manager shall, within a reasonable time thereafter and, after paying all accrued administrative expenses, taxes and other obligations of the Fund, distribute the remaining income and principal of this Fund to the extent of its unreimbursed or incurred Asbestos Claim Expenses as provided for herein, distribute all sub-funds as required pursuant to documents establishing such sub-funds, and, if there is any remaining income and principal of this Fund, to a qualified Section 501(c)(3) organization or organizations which have been organized and operated exclusively for charitable or educational purposes as designated in writing by the Manager from the approved organizations listed in Schedule 5 to this Operating Agreement.

Article IV **Manager**

4.1 Initial Manager. The Receiver is hereby appointed and named as the Manager of this Fund, and such appointment shall become effective upon the acceptance of such responsibilities by execution of this Operating Agreement. The Receiver in his capacity as Manager may form a legal entity, including a corporation, partnership, trust, limited liability company, or limited partnership, to act as the Manager so long as the Receiver has control, voting or otherwise, over the entity.

4.2 Successor Managers. All successor Managers of this Fund shall be appointed by the Receiver or the successor receivers of Covil, subject at all times to approval by the Court, if and to the extent required.

4.3 Resignation and Removal. Subject to the Receiver Order, including any amended or supplemental Receiver Order, a Manager of this Fund may resign at any time upon ten (10) days written advance notice to each of the parties hereto, or may be removed by the Court by petition of an interested party. Each resigned or removed Manager shall execute all documents and do all acts necessary to vest title of the Fund in the successor Manager. No successor Manager shall be personally responsible for any act or failure to act of a predecessor Manager.

4.4 Fees and Expenses of Manager. The Manager shall be entitled to reasonable compensation for the performance of his duties as Manager. The Manager is entitled to pay reasonable fees and expenses of other parties the Manager employs or retains to assist the Manager with the administration of this Fund, including but not limited to attorneys, accountants, and such other agents and consultants as the Manager, in his sole discretion, deems appropriate to accomplish the purposes of this Fund, *provided, however*, employment and payment of such parties' fees and expenses by the Manager shall not diminish the compensation of the Manager. Such compensation, fees and expenses shall be paid currently and be a proper expense of the income or principal or both of the Fund.

4.5 Indemnification. The Manager shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based on such gross negligence or willful misconduct that are successfully asserted against the Manager. Except as provided in the preceding sentence, this Fund shall and hereby agrees to indemnify and hold harmless the Manager (and any successor Manager) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Fund. In no event shall the Manager be liable for indirect, punitive, special or consequential damages.

Article V

Investment of Fund

5.1 General Intent. It is the purpose and intent of this Fund to maximize the amount of the Fund, including investment income, available to provide a source of funds for Asbestos Claim Expenses.

Article VI

Fund Administration, Record Keeping and Accountings

6.1 Fund Administration. This Fund shall be administered by the Manager free of the supervision of the Court, and the Manager may administer this Fund and the assets of this Fund without prior or subsequent Court approval or orders; *provided, however*, nothing herein shall prevent the Manager hereof, in the Manager's sole discretion, from seeking and receiving a declaratory judgment from the Court when the Manager deems same appropriate in connection with any matter involving the administration of the Fund. Further, to the extent any of the provisions of this Operating Agreement is incomplete or unclear, there is a change in applicable law, including tax laws, or there is a change in circumstances that frustrates the intent and purpose of this Fund, or is detrimental to Covil, the Manager, in the sole discretion of the

Manager, is authorized and empowered to have the Court, upon notice to all parties hereto, reform this Operating Agreement.

6.2 Fund Accounting. The Fund shall prepare no less often than annually a detailed Fund accounting setting forth all receipts and disbursements to or from this Fund, as well as the beginning and ending inventory of Fund assets, in accordance with the Manager's generally provided fiduciary accountings. Given the nature of this Fund, it is specifically directed that the Manager shall not be obligated to prepare its accounting reflecting transactions of this Fund as both income or principal receipts and disbursements, and instead, may account for the receipts and disbursements of this Fund without differentiation as to income or principal transactions. In this respect, the Manager is specifically authorized and directed not to account for the transactions applicable to this Fund under or in accordance with any applicable state statutes generally known as the Principal and Income Acts.

6.3 No Court Approval of Accounting. The Manager shall not be required to file with the Court any inventories or accountings, nor shall the Manager be required to qualify or otherwise be approved by the Court. No Manager serving hereunder shall be obligated to file any bond or secure the faithful performance of his duties hereunder.

Article VII

Powers of Manager

7.1 General Powers. Except as otherwise specifically provided herein, the initial Manager named herein, as well as all successor Managers of this Fund, shall have full power and authority to administer this Fund and the assets contained herein, which powers and authority shall include all the powers and authority set forth herein as well as all other powers and authority conferred by applicable law. The initial Manager and all Successor Managers shall have the power and authority to name agents and to designate functions and responsibilities to such agents, subject at all times to the powers and supervision of the Manager and to the provisions of this Fund.

Article VIII

Tax Matters - § 468B Qualified Settlement Fund

8.1 The Manager shall take all actions which are consistent with classification of the Fund as a Qualified Settlement Fund within the meaning of Regulations Section 1.468B-1, *et seq.*, such that all transfers to the Fund by any Transferor will be excludable from the gross income of the Fund.

8.2 Upon establishment of the Fund and in accordance with Regulations Section 1.468B-2(k)(4), the Manager shall apply for an Employer Identification Number or shall have previously obtained for the Manager pursuant to Internal Revenue Service Form SS-4.

8.3 If applicable, the Manager and all applicable Transferors, or any Transferor as the case may be, shall fully cooperate in filing a relation-back election under Regulations Section

1.468B-1(j)(2) to treat the Fund as coming into existence as a qualified settlement fund as of the earliest possible date.

8.4 In accordance with Regulations Section 1.468B-2(k)(1), the Manager shall cause to be filed, on behalf of the Fund, all required federal, state and local tax returns. Each Transferor shall supply to the Manager and to the United States Internal Revenue Service the statement described in the Regulations no later than February 15 of the year following the calendar year in which such Transferor makes a transfer to the Fund.

8.5 In accordance with Regulations Section 1.468B-2(j), the taxable year of the Fund shall be the calendar year and the Fund shall use an accrual method of accounting, within the meaning of Regulations Section 446(c).

8.6 Anything in this Operating Agreement to the contrary notwithstanding, the Manager shall take all such actions as he deems necessary to comply with applicable laws to assure that the Fund will be treated as a Qualified Settlement Fund under Code Section 468B and the Treasury Regulations promulgated thereunder. Further, the Manager may amend, either in whole or in part, any administrative provision of this Operating Agreement which causes unanticipated tax consequences or liabilities inconsistent with the foregoing, or conform to the administrative provisions of this Operating Agreement Fund to the requirements of taxing authorities or tax counsel to the Fund.

Article IX Miscellaneous Provisions

9.1 Notices. In the event any party hereto shall desire or be required to give notice to any other party hereto, then such notice shall be in writing addressed to the party who is to receive such notice and deposited in the United States mail with postage prepaid and sent registered or certified mail, return receipt requested, to the following addresses:

If to the Receiver:

Peter D. Protopapas
Receiver, Covil Corporation
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
E-mail: pdp@rplegalgroup.com

with a copy to:

Brady Edwards
Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, Texas 77002-5006
E-mail: brady.edwards@morganlewis.com

If to Hartford:

Sean Johnston
Vice President

The Hartford
One Hartford Plaza
Hartford, Connecticut 06155
E-mail: Sean.Johnston@thehartford.com

If to TIG:

Robert Sampson
Executive Vice President
RiverStone Claims Management LLC
250 Commercial Street, Suite 5000
Manchester, New Hampshire 03101
Email: Robert_Sampson@trg.com

with a copy to:

Timothy J. Fagan
SmithAmundsen LLC
150 North Michigan Avenue-3300
Chicago, Illinois 60601
Phone: 312.894.3239
Email: Tfagan@salawus.com

In the event any party hereto desires to change the address to which its notices shall be sent, or in the event any party shall relocate or change its address, such party shall immediately provide notice as herein provided to each of the other parties hereto. In addition, this section shall be amended to include information for any additional Transferor.

Notices shall be deemed received for all purposes related to this Operating Agreement five (5) business days after the mailing of such notice as herein provided, whether or not a party to whom a notice is sent accepts delivery of such notice or for any other reason fails to receive such notice. It shall be the responsibility of each party to keep informed all the other parties as to their current address. Further, each successor or substitute to a party listed herein shall be bound by the terms of these notice provisions the same as if such successor or substitute party was an initial party to this Operating Agreement.

9.2 Binding Effect. This Operating Agreement shall be binding upon each of the parties hereto, and each party's successor, and assign (to the extent permitted under this Operating Agreement).

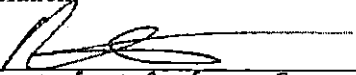
9.3 Paragraph Captions and Severability of Provisions. The captions for each of the paragraphs are for convenience only and are not intended to have any specific meaning. Each of the provisions of this Operating Agreement is separate and severable, and if a provision of this Operating Agreement is determined by the Court to be unenforceable, the remaining provisions of this Operating Agreement shall remain in full force and effect.

9.4 Applicable Law. This Fund and the Operating Agreement shall be governed and interpreted in accordance with the internal law of the State of Delaware, except as respects the

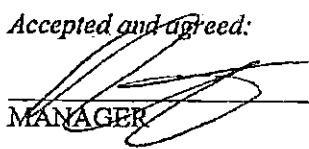
Fund's rights in and to Contribution Claims which shall be governed by the internal law of the State of South Carolina and except as respects tax matters, which shall be governed by federal law, specifically the Internal Revenue Code.

IN WITNESS WHEREOF, this Operating Agreement has been signed and sealed by the parties hereto to be effective and irrevocable on the day and year first above-written,

RECEIVER OF COVIL CORPORATION,
an administrative-revoked South Carolina
corporation

By: 
Name: Peter D Protopopis
Title: Managing Director
Date: 3/4/20

Accepted and agreed:


MANAGER

By: _____
Name: Peter Protopopis
Title: MANAGER
Date: 3/4/20

Schedule 1 to Operating Agreement

<u>Name and Addresses of Transferors:</u>	<u>Amount Transferred</u>
First State Insurance Company Hartford Accident and Indemnity Company One Hartford Plaza Hartford, Connecticut 06155	[]
Ranger Insurance Company, now known as TIG Insurance Company c/o RiverStone Claims Management LLC 250 Commercial Street, Suite 5000 Manchester , New Hampshire 03101	[]

Schedule 2 to Operating Agreement[FORM OF PROMISSORY NOTE FOR ADVANCES FOR ASBESTOS CLAIM EXPENSES]

\$ _____

Date

For value received, _____ ("Maker"), promises to pay to the Covil QSF LLC ("Payee"), in lawful money of the United States of America, the principal sum of _____ Dollars (US \$ _____), together with interest in arrears on the unpaid principal balance at an annual rate equal to five percent (5%) simple interest, in the manner provided below. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Covil QSF LLC Operating Agreement (the "Agreement"), and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. Payments.

1.1 Principal and Interest. The principal amount of this Note and all accrued but unpaid interest shall be payable concurrently with the receipt of reimbursement from a third party (including liability insurers) by Maker with respect to Asbestos Claim Expenses (as defined in Section 2.01 of the Agreement). Such payment shall be made on a dollar-for-dollar basis to the extent of such third party reimbursements, and any remaining unpaid principal and interest shall be repaid concurrently with the receipt of additional reimbursements from third parties with respect to Asbestos Claim Expenses. To the extent such third party reimbursements are not received for Asbestos Claim Expenses with respect to which funds have been advanced pursuant to the terms of this Note within thirty (30) years from the effective date of the Agreement, Maker's obligation to repay any sums pursuant to this Note shall be canceled and voided *ab initio*.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by check at Columbia, South Carolina or at such other place in the United States of America as Payee shall designate to Maker in writing or by wire transfer of immediately available funds to an account designated by Payee in writing. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of South Carolina.

1.3 Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this

Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment.

2. Defaults.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder ("Event of Default"):

(a). If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Payee notifies Maker therein writing.

(b). If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c). If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

(d). Notice by Maker. Maker shall notify Payee in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.2 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee's exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys' fees.

3. Miscellaneous

3.1. Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege by Payee. To the maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Payee, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by Payee; (b) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2. Notices. Any notice required or permitted to be given hereunder shall be given in accordance with the Operating Agreement.

3.3. Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid and unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4. Governing Law. This Note will be governed by the law of the State of South Carolina without regard to conflict of laws principles.

3.5. Parties in Interest. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker, except by will or, in default thereof, by operation of law.

3.6. Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Note unless otherwise specified.

All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "hereof" and "hereunder" and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of this date first stated above.

By: _____
Name: _____
Title: _____

Schedule 3 to Operating Agreement
Claims Handling Criteria and Guidelines

Schedule 4 to Operating Agreement

[DECLARATION CONCERNING ASBESTOS CLAIM EXPENSES]

I, _____, hereby certify that the Receiver for COVIL CORPORATION, has incurred Asbestos Claim Expenses in the amount of \$ _____, consisting of the following:

<u>Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of invoices for the expenditures, all of which have been paid in full, shall be maintained at the corporate headquarters and are available for inspection by representatives of the Receiver/Manager during regular business hours upon reasonable notice.

**RECEIVER FOR COVIL
CORPORATION, an administratively-
revoked South Carolina corporation**

Dated: _____

By: _____
Title: _____

Schedule 5 to Operating Agreement

The residuary beneficiaries are as follows:

College of Charleston

Clemson University

University of South Carolina

The Manager reserves the right to add or substitute other universities to the list provided above and to determine the final allocation of the funds to each residuary beneficiary at any time on or before the termination of the Covil QSF, as provided for by Sections 1.6 and 3.4 of the Operating Agreement.

EXHIBIT 22

STATE OF SOUTH CAROLINA
COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO APPROVE
	)	SETTLEMENT AGREEMENT
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
<u>through its Receiver Peter D. Protopapas</u>	)	

Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver") and First State Insurance Company and Hartford Accident and Indemnity Company (collectively, "Hartford"), jointly move the Court for an approval order relating to a settlement between the Receiver and Hartford. A proposed order is filed concurrently herewith.¹

In support of this motion, the Receiver and Hartford respectfully state as follows:

1. This Court appointed the Receiver to marshal the assets of Covil Corporation ("Covil"), which include the insurance policies and proceeds of the insurance policies issued to Covil. The Receiver is, and has been, engaged in a series of coverage disputes with Covil's insurers, including Hartford.

2. Covil and Hartford have reached a settlement that will result in the resolution of all disputes between Covil and Hartford. The Covil-Hartford settlement agreement provides for

¹ The settlement agreement will be submitted *in camera* to protect its confidential provisions.

the transfer of funds and Hartford's claims for contribution, indemnification, subrogation and otherwise, arising under the Hartford "other insurance" provisions ("Contribution Claims") to a qualified settlement fund, subject to this Court's continuing jurisdiction, known as "Covil QSF, LLC," managed by the Receiver. The settlement represents a fair and reasonable compromise of matters in dispute between these parties and will result in exhaustion and buyout of the Hartford policies, mutual dismissal of the Receiver and Hartford respective claims against each other, dismissal of Hartford's claims against other Covil insurers, and a means of protecting Hartford from Contribution Claims asserted by other insurers.

3. The Hartford-Covil settlement agreement will be submitted *in camera* to this Court for review. The Hartford-Covil settlement agreement and its performance is contingent upon the entry of the proposed approval order.

4. The parties respectfully request that the proposed order be entered, for all of the following reasons:

a. The settlement will provide substantial funding to a qualified settlement fund for the benefit of asbestos claimants asserting claims against Covil;

b. The settlement will resolve complex coverage litigation between these two parties that has embroiled the Receiver, this Court and other courts in extensive adversarial proceedings; and

c. The settlement will provide a mechanism to avoid having Hartford re-inserted into this complex litigation while placing Hartford's Contribution Claims in the hands of the Receiver, through the qualified settlement fund, for administration under this Court's continuing jurisdiction.

Based on the foregoing, the Receiver and Hartford respectfully request that the proposed approval order be entered.

Respectfully submitted,

s/ Jescelyn T. Spitz
Jescelyn Tillman Spitz
S.C. Bar 101880
Federal Bar 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

s/ Mark W. Hardee
Mark W. Hardee
S.C. Bar 7857
The Hardee Law Firm
2231 Devine Street
Suite 202
Columbia, South Carolina 29205
PH: (803)799-0905
EMAIL: mwhardee@bellsouth.net

s/ G. Murrell Smith, Jr.
G. Murrell Smith, Jr. (SCBar 66263)
Jonathan M. Robinson (SCBar 68285)
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Attorneys for Hartford

EXHIBIT 23

STATE OF SOUTH CAROLINA
COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA
COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2019-CP-40-00076
	)	
CHARLES T. HOPPER and REBECCA	)	
HOPPER,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO APPROVE
	)	SETTLEMENT AGREEMENT
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04680
	)	
JAMES MICHAEL HILL,	)	
	)	
Plaintiff,	)	
	)	JOINT MOTION TO APPROVE
vs.	)	SETTLEMENT AGREEMENT
	)	
Advance Auto Parts, Inc., et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO APPROVE
	)	SETTLEMENT AGREEMENT
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver") and TIG Insurance Company, successor-in-interest to Ranger Insurance Company ("TIG Insurance Company"), jointly move the Court for an approval order relating to a settlement between the Receiver and TIG Insurance Company. A proposed order is filed concurrently herewith.¹

In support of this motion, the Receiver and TIG Insurance Company respectfully state as follows:

1. This Court appointed the Receiver to marshal the assets of Covil Corporation ("Covil"), which include the insurance policies and proceeds of the insurance policies issued to Covil. The Receiver is, and has been, engaged in a series of coverage disputes with Covil's insurers, including TIG Insurance Company.

¹ The settlement agreement will be submitted *in camera* to protect its confidential provisions.

2. Covil and TIG Insurance Company have reached a settlement that will result in the resolution of all disputes between Covil and TIG Insurance Company. The settlement also clarifies the status of coverage issued by Evanston Insurance Company. The Covil-TIG Insurance Company settlement agreement provides for the transfer of funds and TIG's claims for contribution, indemnification, subrogation and otherwise, arising ("Contribution Claims") to a qualified settlement fund, subject to this Court's continuing jurisdiction, known as "Covil QSF, LLC," managed by the Receiver. The settlement represents a fair and reasonable compromise of matters in dispute between these parties and will result in exhaustion and buyout of the TIG Insurance Company policies, mutual dismissal of the Receiver's and TIG's respective claims against each other, dismissal of TIG's claims against other Covil insurers, and a means of protecting TIG Insurance Company and Evanston Insurance Company from Contribution Claims asserted by other insurers.

3. The Receiver has also determined, after full disclosure and analysis of the insurance policies and their underwriting history, that insurance policies issued by Evanston Insurance Company, are non-responsive claims-made policies. The settlement agreement recites this conclusion and includes protections for Evanston.

4. The TIG Insurance Company-Covil settlement agreement will be submitted *in camera* to this Court for review. The TIG Insurance Company-Covil settlement agreement and its performance is contingent upon the entry of the proposed approval order.

5. The parties respectfully request that the proposed order be entered, for all of the following reasons:

a. The settlement will provide substantial funding to a qualified settlement fund for the benefit of asbestos claimants asserting claims against Covil;

b. The settlement will resolve complex coverage litigation between these two parties that has embroiled the Receiver, this Court and other courts in extensive adversarial proceedings; and

c. The settlement will provide a mechanism to avoid having TIG Insurance Company re-inserted into this complex litigation while placing TIG's Contribution Claims in the hands of the Receiver, through the qualified settlement fund, for administration under this Court's continuing jurisdiction.

Based on the foregoing, the Receiver and TIG Insurance Company respectfully request that the proposed approval order be entered.

Respectfully submitted,

s/ Jescelyn T. Spitz
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Attorneys for TIG

EXHIBIT 24

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

FOR THE SEVENTH JUDICIAL CIRCUIT

TRACY JOLLY PAVLISH, individually
and as Personal Representative of the
Estate of Beverly Dale Jolly, and Brenda
Rice Jolly,

Case Number: 2019-CP-42-03968

Plaintiffs,

vs.

COVIL CORPORATION

SENTRY INSURANCE A MUTUAL
COMPANY

SOUTHERN INSULATION, INC.

STARR DAVIS COMPANY, INC.

STARR DAVIS COMPANY OF S.C., INC.

UNITED STATES FIDELITY AND
GUARANTY COMPANY

ZURICH AMERICAN INSURANCE
COMPANY, a/k/a ZURICH NORTH
AMERICA, INC.,

Defendants.

**MOTION TO APPROVE
SETTELEMENT AGREEMENT, TO
ESTABLISH COVIL QUALIFIED
SETTLEMENT FUND AND APPROVING
COVIL QSF, LLC AS A QUALIFIED
SETTLEMENT FUND AND RETAIN
JURISDICTION OVER THE QUALIFIED
SETTLEMENT FUND**

Covil Corporation (hereinafter "Covil"), by and through its duly-appointed Receiver, Peter D. Protopapas (the "Receiver"), hereby moves this Court for an Order approving the settlements as outlined in the attached exhibits A and B, and to establish a qualified settlement fund, approve Covil QSF, LLC as a qualified settlement fund and retain jurisdiction over the qualified settlement Fund as outlined in Exhibit C, in the instant action.

Respectfully submitted,

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Attorney for the Receiver

This 13th Day of March, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO APPROVE
	)	SETTLEMENT AGREEMENT
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
through its Receiver Peter D. Protopapas	)	

Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver") and First State Insurance Company and Hartford Accident and Indemnity Company (collectively, "Hartford"), jointly move the Court for an approval order relating to a settlement between the Receiver and Hartford. A proposed order is filed concurrently herewith.¹

In support of this motion, the Receiver and Hartford respectfully state as follows:

1. This Court appointed the Receiver to marshal the assets of Covil Corporation ("Covil"), which include the insurance policies and proceeds of the insurance policies issued to Covil. The Receiver is, and has been, engaged in a series of coverage disputes with Covil's insurers, including Hartford.

2. Covil and Hartford have reached a settlement that will result in the resolution of all disputes between Covil and Hartford. The Covil-Hartford settlement agreement provides for

¹ The settlement agreement will be submitted *in camera* to protect its confidential provisions.

the transfer of funds and Hartford's claims for contribution, indemnification, subrogation and otherwise, arising under the Hartford "other insurance" provisions ("Contribution Claims") to a qualified settlement fund, subject to this Court's continuing jurisdiction, known as "Covil QSF, LLC," managed by the Receiver. The settlement represents a fair and reasonable compromise of matters in dispute between these parties and will result in exhaustion and buyout of the Hartford policies, mutual dismissal of the Receiver and Hartford respective claims against each other, dismissal of Hartford's claims against other Covil insurers, and a means of protecting Hartford from Contribution Claims asserted by other insurers.

3. The Hartford-Covil settlement agreement will be submitted *in camera* to this Court for review. The Hartford-Covil settlement agreement and its performance is contingent upon the entry of the proposed approval order.

4. The parties respectfully request that the proposed order be entered, for all of the following reasons:

a. The settlement will provide substantial funding to a qualified settlement fund for the benefit of asbestos claimants asserting claims against Covil;

b. The settlement will resolve complex coverage litigation between these two parties that has embroiled the Receiver, this Court and other courts in extensive adversarial proceedings; and

c. The settlement will provide a mechanism to avoid having Hartford re-inserted into this complex litigation while placing Hartford's Contribution Claims in the hands of the Receiver, through the qualified settlement fund, for administration under this Court's continuing jurisdiction.

Based on the foregoing, the Receiver and Hartford respectfully request that the proposed approval order be entered.

Respectfully submitted,

s/ Jescelyn T. Spitz

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EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF YORK
ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
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

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	JOINT MOTION TO APPROVE
	)	SETTLEMENT AGREEMENT
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
In Re:	)	
	)	
Receivership of Covil Corporation by and	)	
<u>through its Receiver Peter D. Protopapas</u>	)	

Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver") and TIG Insurance Company, successor-in-interest to Ranger Insurance Company ("TIG Insurance Company"), jointly move the Court for an approval order relating to a settlement between the Receiver and TIG Insurance Company. A proposed order is filed concurrently herewith.¹

In support of this motion, the Receiver and TIG Insurance Company respectfully state as follows:

I. This Court appointed the Receiver to marshal the assets of Covil Corporation ("Covil"), which include the insurance policies and proceeds of the insurance policies issued to Covil. The Receiver is, and has been, engaged in a series of coverage disputes with Covil's insurers, including TIG Insurance Company.

¹ The settlement agreement will be submitted *in camera* to protect its confidential provisions.

2. Covil and TIG Insurance Company have reached a settlement that will result in the resolution of all disputes between Covil and TIG Insurance Company. The settlement also clarifies the status of coverage issued by Evanston Insurance Company. The Covil-TIG Insurance Company settlement agreement provides for the transfer of funds and TIG's claims for contribution, indemnification, subrogation and otherwise, arising ("Contribution Claims") to a qualified settlement fund, subject to this Court's continuing jurisdiction, known as "Covil QSF, LLC," managed by the Receiver. The settlement represents a fair and reasonable compromise of matters in dispute between these parties and will result in exhaustion and buyout of the TIG Insurance Company policies, mutual dismissal of the Receiver's and TIG's respective claims against each other, dismissal of TIG's claims against other Covil insurers, and a means of protecting TIG Insurance Company and Evanston Insurance Company from Contribution Claims asserted by other insurers.

3. The Receiver has also determined, after full disclosure and analysis of the insurance policies and their underwriting history, that insurance policies issued by Evanston Insurance Company, are non-responsive claims-made policies. The settlement agreement recites this conclusion and includes protections for Evanston.

4. The TIG Insurance Company-Covil settlement agreement will be submitted *in camera* to this Court for review. The TIG Insurance Company-Covil settlement agreement and its performance is contingent upon the entry of the proposed approval order.

5. The parties respectfully request that the proposed order be entered, for all of the following reasons:

a. The settlement will provide substantial funding to a qualified settlement fund for the benefit of asbestos claimants asserting claims against Covil;

b. The settlement will resolve complex coverage litigation between these two parties that has embroiled the Receiver, this Court and other courts in extensive adversarial proceedings; and

c. The settlement will provide a mechanism to avoid having TIG Insurance Company re-inserted into this complex litigation while placing TIG's Contribution Claims in the hands of the Receiver, through the qualified settlement fund, for administration under this Court's continuing jurisdiction.

Based on the foregoing, the Receiver and TIG Insurance Company respectfully request that the proposed approval order be entered.

Respectfully submitted,

s/ Jescelyn T. Spitz

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EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, Individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
Wayne Ervin Howe, deceased, and Jeanette
Howe,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-02155

**JOINT MOTION TO ESTABLISH A
QUALIFIED SETTLEMENT FUND;
APPROVE COVIL QSF, LLC AS A
QUALIFIED SETTLEMENT FUND;
AND RETAIN JURISDICTION OVER
THE QUALIFIED SETTLEMENT FUND**

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT
C/A NO.: 2015-CP-46-03456

**JOINT MOTION TO ESTABLISH A
QUALIFIED SETTLEMENT FUND;
APPROVE COVIL QSF, LLC AS A
QUALIFIED SETTLEMENT FUND;
AND RETAIN JURISDICTION OVER
THE QUALIFIED SETTLEMENT FUND**

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

**JOINT MOTION TO ESTABLISH A
QUALIFIED SETTLEMENT FUND;
APPROVE COVIL QSF, LLC AS A
QUALIFIED SETTLEMENT FUND;
AND RETAIN JURISDICTION OVER
THE QUALIFIED SETTLEMENT FUND**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
JAMES MICHAEL HILL,
Plaintiff,
vs.
Advance Auto Parts, Inc., et al.,
Defendants.
In Re:
Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

**JOINT MOTION TO ESTABLISH A
QUALIFIED SETTLEMENT FUND;
APPROVE COVIL QSF, LLC AS A
QUALIFIED SETTLEMENT FUND;
AND RETAIN JURISDICTION OVER
THE QUALIFIED SETTLEMENT FUND**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
DENVER D. TAYLOR and JANICE
TAYLOR,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04940

**JOINT MOTION TO ESTABLISH A
QUALIFIED SETTLEMENT FUND;
APPROVE COVIL QSF, LLC AS A
QUALIFIED SETTLEMENT FUND;
AND RETAIN JURISDICTION OVER
THE QUALIFIED SETTLEMENT FUND**

Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver"), First State Insurance Company and Hartford Accident and Indemnity Company (collectively, "Hartford") and TIG Insurance Company ("TIG") (collectively, the "Transferor Insurers") jointly move this Court to establish a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of 1986, as amended ("I.R.C."). A proposed order is filed concurrently herewith.

In support of this joint motion, the Receiver, TIG, and Hartford respectfully state as follows:

1. This Court appointed the Receiver to marshall the assets of Covil Corporation ("Covil"), which include the insurance policies and proceeds of the insurance policies issued to Covil. The Receiver is, and has been, engaged in a series of coverage disputes with Covil's insurers.

2. The Receiver, TIG and Hartford have separately entered into settlements that will result in the dismissal of the Receiver's claims against Hartford and TIG, and all of these insurers' claims against the Receiver and each other, in all courts in which actions or other proceedings between the parties are pending. As to Hartford, the parties have entered into a final comprehensive settlement agreement titled "Confidential Settlement Agreement and Release" ("Hartford-Covil Settlement Agreement"). As to TIG, the parties have separately entered into a settlement agreement titled "Confidential Settlement Agreement And Release Between Peter D. Protopapas, As Receiver For Covil Corporation, An Administratively Revoked South Carolina Corporation And Covil QSF, LLC (the "QSF"), And TIG Insurance Company, Successor-In-Interest To Ranger Insurance Company ("TIG"), And RiverStone Claims Management, LLC ("RiverStone") (the "TIG-Covil Settlement Agreement").

3. The Hartford-Covil Settlement Agreement provides that Hartford shall transfer funds and claims to a Qualified Settlement Fund ("Covil QSF"), as that term is defined by Section 468B of the I.R.C., and the regulations promulgated thereunder, provided that the Covil QSF is approved by this Court and that this Court keeps continuing jurisdiction over the Covil QSF. The parties have further agreed that the Covil QSF will be a Delaware limited liability company. Such limited liability company has been formed under the laws of the State of Delaware, and is known as "Covil QSF LLC." A true and correct copy of a the Certificate of Formation of the limited liability company of Covil QSF LLC as a Delaware limited liability company filed with the Secretary of State of the State of Delaware on November 21, 2019 is attached hereto as Exhibit 1. The provisions for operating and managing the Covil QSF, including the distribution of its funds and the appointment of a Manager, are set forth in the Operating Agreement for Covil QSF LLC ("Covil Operating Agreement"). A redacted copy – removing the amounts paid consistent with

the confidentiality provisions in the Settlement Agreements between Covil and Hartford and between Covil and TIG Insurance Company – is attached hereto as Exhibit 2. The TIG-Covil Settlement Agreement similarly provides for the transfer of funds and claims to the Covil QSF.

4. Article 1.2 of the Operating Agreement sets forth the purposes of the Covil QSF. Those purposes include “(i) to provide funds which may be used to pay for costs incurred by the parties hereto in connection with claims, suits and demands alleging personal injury and bodily injury from alleged exposure to asbestos-containing materials (“Covil Asbestos Suits”); (ii) to provide funds to be used to pay the legal fees of the parties hereto; (iii) to provide advances to pay for legal fees and settlement costs of Covil Asbestos Suits asserted against Covil Corporation, an administratively revoked South Carolina corporation (“Covil”) pending reimbursement or indemnification by other responsible third parties including (without limitation) other insurers of Covil; (iv) to secure certain future potential contingent obligations to the Insurers pursuant to the terms of the Settlement Agreements, which terms are expressly incorporated herein by reference; (v) to pay for administrative and management costs as provided for herein; and (vi) to do all things necessary or appropriate in connection with the foregoing.”

5. The Operating Agreement appoints the Receiver as the initial Manager of the Covil QSF. *See* Article 4.1. The Operating Agreement further provides that the Manager is charged with the performance of his duties as Manager, which include, among others: (i) investing the Covil QSF to maximize the amount of the fund available to provide a source of funds for the Covil Asbestos Suits; (ii) administering the Covil QSF; (iii) preparing a detailed accounting of the Covil QSF, including all receipts and disbursements, on at least an annual basis; and (iv) preparing and filing all applicable tax returns on behalf of the Covil QSF.

6. The Operating Agreement further requires that the Covil QSF maintain at all times a minimum cash balance in order to secure and satisfy the fund purposes set forth in Article 1.2 of the Operating Agreement.

7. The Covil QSF satisfies all requirements of a Qualified Settlement Fund pursuant to Section 468B of the I.R.C. and the regulations promulgated thereunder. The applicable regulations provide that "[a] qualified settlement fund is a fund, account, or trust that satisfies the requirements of paragraph (c) of this section." Treas. Reg. § 1.468B-1. The regulations further provide that a fund, account, or trust satisfies the "Qualified Settlement Fund" requirements when:

- (1) It is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority;
- (2) It is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability –
 - i) Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter referred to as CERCLA), as amended, 42 U.S.C. 9601 et seq.; or
 - ii) Arising out of a tort, breach of contract, or violation of law; or
 - iii) Designated by the Commissioner in a revenue ruling or revenue procedure; and
- (3) The fund, account, or trust is a trust under applicable state law, or its assets are otherwise segregated from other assets of the transferor (and related persons).

Treas. Reg. § 1.468B-1(c).

8. This joint motion and the proposed order seek to satisfy the first requirement by asking this Court that the Covil QSF be established pursuant to an order of this Court, and that this Court retain continuing jurisdiction.

9. The second requirement is satisfied because the Covil QSF is being established by the settlement payments made by Hartford and separately by TIG pursuant to settlement agreements that resolve completely the alleged obligations of the insurers under the contracts of insurance issued by Hartford and by TIG's predecessor, Ranger Insurance Company.

10. Finally, the "otherwise segregated" requirement has also been met as the Operating Agreement provides that the assets are segregated from the other assets of the transferor insurers.

Based upon the foregoing, the Receiver, TIG and Hartford respectfully request that this Court enter an Order establishing the Covil QSF as a Qualified Settlement Fund under Section 468B of the I.R.C.

Respectfully submitted,

For Receiver, Court-Appointed
Representative on Behalf of Covil:

s/ Jescelyn T. Spitz
Jescelyn Tillman Spitz, Esquire
S.C. Bar 101880
Federal Bar 12159
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For Hartford:

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SC ID No. 101336
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For TIG:

s/ Matthew A. Abee
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Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Exhibit 1

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF FORMATION OF "COVIL QSF LLC", FILED
IN THIS OFFICE ON THE TWENTY-FIRST DAY OF NOVEMBER, A.D. 2019,
AT 5:09 O'CLOCK P.M.



7715906 8100
SR# 20198235091

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 204068414
Date: 11-22-19

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:09 PM 11/21/2019
FILED 05:09 PM 11/21/2019
SR 20198135091 - File Number 7715906

STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is Covil QSF LLC.
2. The Registered Office of the limited liability company in the State of Delaware is located at 251 Little Falls Drive, in the City of Wilmington, Zip Code 19808. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is Corporation Service Company.

By: /s/ Deana Baglanzis

Deana Baglanzis
Authorized Person

DB1/ 110036856.1

Exhibit 2

**OPERATING AGREEMENT FOR
COVIL QSF LLC**

THIS OPERATING AGREEMENT ("Operating Agreement") is executed and declared to be effective (the "Effective Date") upon approval of this "Fund" by a court of competent jurisdiction and is entered into by Peter Protopapas in his capacity as receiver for Covil Corporation, an administratively-revoked South Carolina corporation ("Receiver") as the sole Member and the Managing Member ("the "Manager") of the limited liability company established under the law of the State of Delaware known as "Covil QSF LLC" (the "Fund") (Tax Identification No. 84-3775153).

WITNESSETH:

WHEREAS, in settlement of certain disputes, Hartford Fire Insurance Company, Hartford Accident and Indemnity Company and First State Insurance Company ("Hartford"), and TIG Insurance Company, successor to Ranger Insurance Company ("TIG"), also referred to as "Insurers" or "Transferors", and the Receiver, acting pursuant to his authority and solely in such capacity, have entered into certain settlement agreements ("Settlement Agreements");

WHEREAS, the Transferors, as set forth on Schedule 1 to this Operating Agreement, have agreed to transfer certain monies and other things of value, including specifically contribution, subrogation, "other insurance," equitable indemnity and similar rights and claims ("Contribution Claims") to the Fund;

WHEREAS, this Fund, together with all other additional insurance policies' proceeds or other assets that may become available to the Receiver ("Other Insurance"), will be responsible for meeting the costs and expenses of suits, claims and ancillary proceedings related to Covil Asbestos Suits (as defined below), to the extent that such Other Insurance has not paid or reimbursed such costs and expenses, but only to such extent, and to meet administrative costs and expenses of this Fund, including without limitation tax and investment fees and expenses;

WHEREAS, this Fund is excess of all such Other Insurance;

WHEREAS, the parties to this Operating Agreement acknowledge and agree that the funds and other assets and things of value transferred to the Fund and all earnings thereon or additions thereto are to be held, administered and distributed in accordance with the following provisions,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

Article I
General Fund Provisions

1.1 Name of Fund. This Fund shall be known as and properly referred to as the "Covil QSF LLC" or "Covil QSF."

1.2 Fund Purposes. The purposes of this Fund shall be (i) to provide funds which may be used to pay for costs incurred by the parties hereto in connection with claims, suits and demands alleging personal injury and bodily injury from alleged exposure to asbestos-containing materials ("Covil Asbestos Suits"); (ii) to provide funds to be used to pay the legal fees of the Receiver and lawyers engaged by the Receiver; (iii) to provide advances to pay for legal fees and settlement costs of Covil Asbestos Suits asserted against Covil Corporation, an administratively revoked South Carolina corporation ("Covil") pending reimbursement or indemnification by other responsible third parties including (without limitation) Other Insurers of Covil; (iv) to secure certain future potential contingent obligations to the Insurers pursuant to the terms of the Settlement Agreements, which terms are expressly incorporated herein by reference; (v) to pay for administrative and management costs as provided for herein; and (vi) to do all things necessary or appropriate in connection with the foregoing.

1.3 Distributions and Advances; Other Insurance; Minimum Fund Balance. Distributions from the Fund shall be made to meet Fund purposes, in the discretion of the Manager, or to meet any legal obligation of the Fund. Advances from the Fund may be made, in lieu of a distribution, when one or more insurance companies, or other parties, are responsible for meeting fees, expenses, demands, costs or liabilities properly payable by the Fund. The determination to make a distribution or an advance may be made in the discretion of the Manager. Distributions or advances to pay for or fund Covil Asbestos Suits may be made at any time, pursuant to Article 1.2 (iii) of this Operating Agreement. Payments from the Fund for Covil Asbestos Suits may be made at any time to supplement other available insurance that has been used to fund Covil Asbestos Suits or has been deposited in the Covil QSF. In addition to the foregoing, the Fund shall at all times maintain a minimum cash deposit balance of not less than Two Million Dollars (US \$2,000,000) ("Minimum Fund Balance") in order to secure and satisfy the other "Fund Purposes" as set forth in Article 1.2. Advances from the Fund shall be evidenced by a promissory note in the form attached as Schedule 2. All advances shall be recorded as receivables. The Minimum Fund Balance may be satisfied in part by any required minimum balance held or funds maintained in any sub-fund, including without limitation any Exclusive Sub-Fund (as defined herein), including but not limited to the TIG Sub-Fund. The Manager has adopted or may in the future adopt certain standards for distributions or advances to meet the costs of Covil Asbestos Suits, as set forth as Schedule 3.

1.4 Fund is Irrevocable. This Fund is irrevocable and may not be revoked, amended and modified, in whole or in part; *provided, however*, notwithstanding the foregoing to the contrary (i) the Manager of this Fund shall have the exclusive power and authority to petition the court that retains jurisdiction over the Covil QSF to reform this Fund, in whole or in part, to the extent said Court determines it necessary or reasonable in order for this Fund or the Manager to function or be used to serve the Fund purposes set forth herein and to serve and meet the needs

of the parties hereto, and (ii) upon written agreement of each of the parties hereto and without approval of the Court, the Fund instrument may be amended to accomplish one or more of the purposes of the Fund as set forth herein, to maintain the Fund's qualification as a Qualified Settlement Fund as set forth below or to transfer the Fund to a successor escrow fund, trust or other entity designated by the parties hereto which will carry out the purposes of this Fund. Notwithstanding the provisions of this Section 1.4, neither the Fund nor the Manager of the Fund may amend the terms of the Operating Agreement to the detriment of the Transferors or to otherwise make the Fund or the Operating Agreement inconsistent with the terms and conditions of the Settlement Agreements.

1.5 Separate and Independent Fund. This Fund shall at all times be held and remain as a separate and independent fund.

1.6 Duration of Fund. This Fund shall remain in existence for a period of approximately thirty (30) years from the date of its creation, until December 31, 2049, or until such earlier date as the Fund is exhausted or the court which has kept jurisdiction over the QSF has approved a distribution of the Fund as set forth in Section 3.4 below (the "Termination Date").

1.7 Situs of Fund. This Fund shall have as its situs Columbia, South Carolina; *provided, however,* that in the event the Manager deems it in the best interest of the Fund and the potential distributees of funds hereunder, the Manager may establish some or all of the Fund assets and/or the situs of the Fund in any other state or judicial district within the continental United States, including (without limitation) the District of Columbia.

1.8 Definitions. All terms shall have the meanings set forth in the Settlement Agreements or in this Operating Agreement, and any governing instrument applicable to its Managers.

1.9 The Settlement Agreements. All provisions of the Settlement Agreements are incorporated herein, and, to the maximum extent permitted by law, the Fund and the Fund Manager agree to be bound by the terms and conditions of the Settlement Agreements.

1.10 Sub-Funds. This Fund shall have the authority to create and maintain separate Sub-Funds which shall be separate and independent funds, in accordance with the documentary requirements establishing such Sub-Funds, but subject at all times to the general terms of this Operating Agreement and any and all orders establishing the Fund and retaining jurisdiction over this Fund or modifying the terms of such order or of this Operating Agreement. The Manager of the Fund may form one or more Sub-Funds at any time, in his discretion, including (without limitation) Sub-Funds that are designated for a specific liability or settlement, Sub-Funds that are for the exclusive benefit of one or more Beneficiaries, or Sub-Funds that may secure or provide for the satisfaction of a specific obligation, contingent or otherwise. An "Exclusive Sub-Fund" may be established solely for the benefit of a third party. The Manager is hereby directed and authorized to establish up to three Exclusive Sub-Funds, with one Exclusive Sub-Fund known as the "TIG Sub-Fund," which shall be governed by this Operating Agreement and pertinent

provisions of the TIG Settlement Agreement. The Manager may hereafter establish two additional Exclusive Sub-Funds which shall be governed by this Operating Agreement and pertinent provisions of any pertinent settlement agreement.

Article II

Deposits By Insurers

2.1 Deposit of Cash and Claims. The Insurers shall fund the Covil QSF with the "Settlement Amount," as defined by their respective Settlement Agreements, and claims assigned to the Covil QSF pursuant to the terms of the Settlement Agreements, referred to as "Contribution Claims."

2.2 Maintenance of Funds. The funds deposited by the Insurers shall be invested and maintained as provided for by Article V of this Operating Agreement.

Article III

Funding, Distributions and Advances

3.1 Limitation on Distributions and Advances. No funding shall be made into this Fund and no distribution or advance may be made from the Fund until and unless (i) joint written instructions are received from the Transferors and the Receiver consistent with the terms of the Settlement Agreements; (ii) an order is received from a court of competent jurisdiction approving the Covil QSF as part of the Settlement Agreements; and (iii) the foregoing court has retained continuing jurisdiction over this Fund. The foregoing conditions are referred to in this Article III as the "Conditions Precedent."

3.2 Distributions or Advances For Covil Asbestos Suits. The Manager may make distributions to pay for the costs and expenses of meeting Covil Asbestos Suit obligations to the extent there is no other responsive insurance or responsible party for meeting such expenses. To the extent such expenses are the responsibility of third parties, the Manager may advance funds to pay for the costs and expenses of defending against and paying otherwise unreimbursed expenses associated with the defense and settlement of Covil Asbestos Suits ("Asbestos Claim Expenses"), pending reimbursement of such asbestos claim expenses by otherwise responsible parties including (without limitation) the liability insurers of Covil. Such advances will be repaid upon receipt of such funds from responsible parties, and, pending receipt of such reimbursements, shall bear and cumulate interest at the rate of five percent (5.00%) simple interest per annum. To the extent funds are not received from third parties to pay for the Asbestos Claim Expenses subject of such advances on or prior to the Date of Termination of the Fund, then the obligation to repay such advances shall be canceled and voided *ab initio*. Any and all advances shall be documented by one or more promissory notes in the form annexed as Schedule 2 to this Operating Agreement. Any restriction on distributions or advances shall be set forth in Schedule 3.

3.3 Distributions. When permitted to do so, the Manager shall make distributions to pay Asbestos Claim Expenses as follows:

(a). The Manager shall make distributions hereunder solely with respect to qualifying liabilities as defined in Section 1.468B-1(c) of the Treasury Regulations;

(b). Prior to making any such distribution, the Receiver shall present Required Documentation (as defined herein) to substantiate that qualifying expenditures have been paid or incurred;

(c). Required Documentation shall consist of a declaration under penalty of perjury signed by the Receiver to the effect that qualifying expenditures have been incurred (the "Declaration") in the form annexed at Schedule 4, together with copies of any relevant invoices; and

(d). Receipt of the Declaration and invoices the Receiver shall constitute conclusive proof that claim expenditures have been paid or incurred. Receipt of the signed Declaration and invoices shall relieve the Manager of any duties or obligations of any kind or nature to verify that expenditures were paid or incurred.

3.4. Distribution Upon Expiration of Term of Fund. In the event this Fund shall be in existence at the expiration of approximately thirty (30) years from the date of its creation, *i.e.*, December 31, 2049, this Fund shall terminate and the Manager shall, within a reasonable time thereafter and, after paying all accrued administrative expenses, taxes and other obligations of the Fund, distribute the remaining income and principal of this Fund to the extent of its unreimbursed or incurred Asbestos Claim Expenses as provided for herein, distribute all sub-funds as required pursuant to documents establishing such sub-funds, and, if there is any remaining income and principal of this Fund, to a qualified Section 501(c)(3) organization or organizations which have been organized and operated exclusively for charitable or educational purposes as designated in writing by the Manager from the approved organizations listed in Schedule 5 to this Operating Agreement.

Article IV Manager

4.1 Initial Manager. The Receiver is hereby appointed and named as the Manager of this Fund, and such appointment shall become effective upon the acceptance of such responsibilities by execution of this Operating Agreement. The Receiver in his capacity as Manager may form a legal entity, including a corporation, partnership, trust, limited liability company, or limited partnership, to act as the Manager so long as the Receiver has control, voting or otherwise, over the entity.

4.2 Successor Managers. All successor Managers of this Fund shall be appointed by the Receiver or the successor receivers of Covil, subject at all times to approval by the Court, if and to the extent required.

4.3 Resignation and Removal. Subject to the Receiver Order, including any amended or supplemental Receiver Order, a Manager of this Fund may resign at any time upon ten (10) days written advance notice to each of the parties hereto, or may be removed by the Court by petition of an interested party. Each resigned or removed Manager shall execute all documents and do all acts necessary to vest title of the Fund in the successor Manager. No successor Manager shall be personally responsible for any act or failure to act of a predecessor Manager.

4.4 Fees and Expenses of Manager. The Manager shall be entitled to reasonable compensation for the performance of his duties as Manager. The Manager is entitled to pay reasonable fees and expenses of other parties the Manager employs or retains to assist the Manager with the administration of this Fund, including but not limited to attorneys, accountants, and such other agents and consultants as the Manager, in his sole discretion, deems appropriate to accomplish the purposes of this Fund, *provided, however*, employment and payment of such parties' fees and expenses by the Manager shall not diminish the compensation of the Manager. Such compensation, fees and expenses shall be paid currently and be a proper expense of the income or principal or both of the Fund.

4.5 Indemnification. The Manager shall not be liable, except for his own gross negligence or willful misconduct and, except with respect to claims based on such gross negligence or willful misconduct that are successfully asserted against the Manager. Except as provided in the preceding sentence, this Fund shall and hereby agrees to indemnify and hold harmless the Manager (and any successor Manager) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Fund. In no event shall the Manager be liable for indirect, punitive, special or consequential damages.

Article V **Investment of Fund**

5.1 General Intent. It is the purpose and intent of this Fund to maximize the amount of the Fund, including investment income, available to provide a source of funds for Asbestos Claim Expenses.

Article VI **Fund Administration, Record Keeping and Accountings**

6.1 Fund Administration. This Fund shall be administered by the Manager free of the supervision of the Court, and the Manager may administer this Fund and the assets of this Fund without prior or subsequent Court approval or orders; *provided, however*, nothing herein shall prevent the Manager hereof, in the Manager's sole discretion, from seeking and receiving a declaratory judgment from the Court when the Manager deems same appropriate in connection with any matter involving the administration of the Fund. Further, to the extent any of the provisions of this Operating Agreement is incomplete or unclear, there is a change in applicable law, including tax laws, or there is a change in circumstances that frustrates the intent and purpose of this Fund, or is detrimental to Covil, the Manager, in the sole discretion of the

Manager, is authorized and empowered to have the Court, upon notice to all parties hereto, reform this Operating Agreement.

6.2 Fund Accounting. The Fund shall prepare no less often than annually a detailed Fund accounting setting forth all receipts and disbursements to or from this Fund, as well as the beginning and ending inventory of Fund assets, in accordance with the Manager's generally provided fiduciary accountings. Given the nature of this Fund, it is specifically directed that the Manager shall not be obligated to prepare its accounting reflecting transactions of this Fund as both income or principal receipts and disbursements, and instead, may account for the receipts and disbursements of this Fund without differentiation as to income or principal transactions. In this respect, the Manager is specifically authorized and directed not to account for the transactions applicable to this Fund under or in accordance with any applicable state statutes generally known as the Principal and Income Acts.

6.3 No Court Approval of Accounting. The Manager shall not be required to file with the Court any inventories or accountings, nor shall the Manager be required to qualify or otherwise be approved by the Court. No Manager serving hereunder shall be obligated to file any bond or secure the faithful performance of his duties hereunder.

Article VII **Powers of Manager**

7.1 General Powers. Except as otherwise specifically provided herein, the initial Manager named herein, as well as all successor Managers of this Fund, shall have full power and authority to administer this Fund and the assets contained herein, which powers and authority shall include all the powers and authority set forth herein as well as all other powers and authority conferred by applicable law. The initial Manager and all Successor Managers shall have the power and authority to name agents and to designate functions and responsibilities to such agents, subject at all times to the powers and supervision of the Manager and to the provisions of this Fund.

Article VIII **Tax Matters - § 468B Qualified Settlement Fund**

8.1 The Manager shall take all actions which are consistent with classification of the Fund as a Qualified Settlement Fund within the meaning of Regulations Section 1.468B-1, *et seq.*, such that all transfers to the Fund by any Transferor will be excludable from the gross income of the Fund.

8.2 Upon establishment of the Fund and in accordance with Regulations Section 1.468B-2(k)(4), the Manager shall apply for an Employer Identification Number or shall have previously obtained for the Manager pursuant to Internal Revenue Service Form SS-4.

8.3 If applicable, the Manager and all applicable Transferors, or any Transferor as the case may be, shall fully cooperate in filing a relation-back election under Regulations Section

1.468B-1(j)(2) to treat the Fund as coming into existence as a qualified settlement fund as of the earliest possible date.

8.4 In accordance with Regulations Section 1.468B-2(k)(1), the Manager shall cause to be filed, on behalf of the Fund, all required federal, state and local tax returns. Each Transferor shall supply to the Manager and to the United States Internal Revenue Service the statement described in the Regulations no later than February 15 of the year following the calendar year in which such Transferor makes a transfer to the Fund.

8.5 In accordance with Regulations Section 1.468B-2(j), the taxable year of the Fund shall be the calendar year and the Fund shall use an accrual method of accounting, within the meaning of Regulations Section 446(c).

8.6 Anything in this Operating Agreement to the contrary notwithstanding, the Manager shall take all such actions as he deems necessary to comply with applicable laws to assure that the Fund will be treated as a Qualified Settlement Fund under Code Section 468B and the Treasury Regulations promulgated thereunder. Further, the Manager may amend, either in whole or in part, any administrative provision of this Operating Agreement which causes unanticipated tax consequences or liabilities inconsistent with the foregoing, or conform to the administrative provisions of this Operating Agreement Fund to the requirements of taxing authorities or tax counsel to the Fund.

Article IX Miscellaneous Provisions

9.1 Notices. In the event any party hereto shall desire or be required to give notice to any other party hereto, then such notice shall be in writing addressed to the party who is to receive such notice and deposited in the United States mail with postage prepaid and sent registered or certified mail, return receipt requested, to the following addresses:

If to the Receiver:

Peter D. Protopapas
Receiver, Covil Corporation
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
E-mail: pdp@rplegalgroup.com

with a copy to:

Brady Edwards
Morgan, Lewis & Bockius LLP
1000 Louisiana Street, Suite 4000
Houston, Texas 77002-5006
E-mail: brady.edwards@morganlewis.com

If to Hartford:

Sean Johnston
Vice President

The Hartford
One Hartford Plaza
Hartford, Connecticut 06155
E-mail: Sean.Johnston@thehartford.com

If to TIG:

Robert Sampson
Executive Vice President
RiverStone Claims Management LLC
250 Commercial Street, Suite 5000
Manchester, New Hampshire 03101
Email: Robert_Sampson@trg.com

with a copy to:

Timothy J. Fagan
SmithAmundsen LLC
150 North Michigan Avenue-3300
Chicago, Illinois 60601
Phone: 312.894.3239
Email: Tfagan@salawus.com

In the event any party hereto desires to change the address to which its notices shall be sent, or in the event any party shall relocate or change its address, such party shall immediately provide notice as herein provided to each of the other parties hereto. In addition, this section shall be amended to include information for any additional Transferor.

Notices shall be deemed received for all purposes related to this Operating Agreement five (5) business days after the mailing of such notice as herein provided, whether or not a party to whom a notice is sent accepts delivery of such notice or for any other reason fails to receive such notice. It shall be the responsibility of each party to keep informed all the other parties as to their current address. Further, each successor or substitute to a party listed herein shall be bound by the terms of these notice provisions the same as if such successor or substitute party was an initial party to this Operating Agreement.

9.2 Binding Effect. This Operating Agreement shall be binding upon each of the parties hereto, and each party's successor, and assign (to the extent permitted under this Operating Agreement).

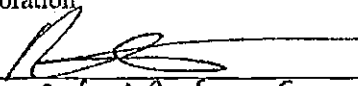
9.3 Paragraph Captions and Severability of Provisions. The captions for each of the paragraphs are for convenience only and are not intended to have any specific meaning. Each of the provisions of this Operating Agreement is separate and severable, and if a provision of this Operating Agreement is determined by the Court to be unenforceable, the remaining provisions of this Operating Agreement shall remain in full force and effect.

9.4 Applicable Law. This Fund and the Operating Agreement shall be governed and interpreted in accordance with the internal law of the State of Delaware, except as respects the

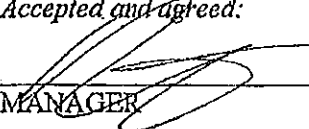
Fund's rights, in and to Contribution Claims which shall be governed by the internal law of the State of South Carolina and except as respects tax matters, which shall be governed by federal law, specifically the Internal Revenue Code.

IN WITNESS WHEREOF, this Operating Agreement has been signed and sealed by the parties hereto to be effective and irrevocable on the day and year first above-written.

RECEIVER OF COVIL CORPORATION,
an administrative-revoked South Carolina
corporation

By: 
Name: Peter D Protopapas
Title: Receiver
Date: 3/4/20

Accepted and agreed:


MANAGER

By:
Name: Peter D Protopapas
Title: MANAGER
Date: 3/4/20

Schedule 1 to Operating Agreement

<u>Name and Addresses of Transferors:</u>	<u>Amount Transferred</u>
First State Insurance Company Hartford Accident and Indemnity Company One Hartford Plaza Hartford, Connecticut 06155	[]
Ranger Insurance Company, now known as TIG Insurance Company c/o RiverStone Claims Management LLC 250 Commercial Street, Suite 5000 Manchester , New Hampshire 03101	[]

Schedule 2 to Operating Agreement

[FORM OF PROMISSORY NOTE FOR ADVANCES FOR ASBESTOS CLAIM EXPENSES]

\$ _____

Date

For value received, _____ ("Maker"), promises to pay to the Covil QSF LLC ("Payee"), in lawful money of the United States of America, the principal sum of _____ Dollars (US \$ _____), together with interest in arrears on the unpaid principal balance at an annual rate equal to five percent (5%) simple interest, in the manner provided below. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Covil QSF LLC Operating Agreement (the "Agreement"), and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. Payments.

1.1 Principal and Interest. The principal amount of this Note and all accrued but unpaid interest shall be payable concurrently with the receipt of reimbursement from a third party (including liability insurers) by Maker with respect to Asbestos Claim Expenses (as defined in Section 2.01 of the Agreement). Such payment shall be made on a dollar-for-dollar basis to the extent of such third party reimbursements, and any remaining unpaid principal and interest shall be repaid concurrently with the receipt of additional reimbursements from third parties with respect to Asbestos Claim Expenses. To the extent such third party reimbursements are not received for Asbestos Claim Expenses with respect to which funds have been advanced pursuant to the terms of this Note within thirty (30) years from the effective date of the Agreement, Maker's obligation to repay any sums pursuant to this Note shall be canceled and voided *ab initio*.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by check at Columbia, South Carolina or at such other place in the United States of America as Payee shall designate to Maker in writing or by wire transfer of immediately available funds to an account designated by Payee in writing. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of South Carolina.

1.3 Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this

Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment.

2. Defaults.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder ("Event of Default"):

(a). If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for fifteen (15) days after Payee notifies Maker therein writing.

(b). If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.

(c). If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

(d). Notice by Maker. Maker shall notify Payee in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

2.2 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee's exercise of any or all of its rights and remedies under this Note, including, without limitation, reasonable attorneys' fees.

3. Miscellaneous

3.1. Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege by Payee. To the maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Payee, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by Payee; (b) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

3.2. Notices. Any notice required or permitted to be given hereunder shall be given in accordance with the Operating Agreement.

3.3. Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid and unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4. Governing Law. This Note will be governed by the law of the State of South Carolina without regard to conflict of laws principles.

3.5. Parties in Interest. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker, except by will or, in default thereof, by operation of law.

3.6. Section Headings, Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Note unless otherwise specified.

All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "hereof" and "hereunder" and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of this date first stated above.

By: _____
Name: _____
Title: _____

Schedule 3 to Operating Agreement
Claims Handling Criteria and Guidelines

Schedule 4 to Operating Agreement

[DECLARATION CONCERNING ASBESTOS CLAIM EXPENSES]

I, _____, hereby certify that the Receiver for COVIL CORPORATION, has incurred Asbestos Claim Expenses in the amount of \$ _____, consisting of the following:

<u>Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of invoices for the expenditures, all of which have been paid in full, shall be maintained at the corporate headquarters and are available for inspection by representatives of the Receiver/Manager during regular business hours upon reasonable notice.

**RECEIVER FOR COVIL
CORPORATION, an administratively-
revoked South Carolina corporation**

Dated: _____

By: _____
Title: _____

Schedule 5 to Operating Agreement

The residuary beneficiaries are as follows:

College of Charleston

Clemson University

University of South Carolina

The Manager reserves the right to add or substitute other universities to the list provided above and to determine the final allocation of the funds to each residuary beneficiary at any time on or before the termination of the Covil QSF, as provided for by Sections 1.6 and 3.4 of the Operating Agreement.

EXHIBIT 25

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

FOR THE SEVENTH JUDICIAL CIRCUIT

TRACY JOLLY PAVLISH, individually
and as Personal Representative of the
Estate of Beverly Dale Jolly, and Brenda
Rice Jolly,

Case Number: 2019-CP-42-03968

Plaintiffs,

vs.

**COVIL CORPORATION'S NOTICE OF
WITHDRAWAL OF THE RECEIVER'S
MOTION TO APPROVE SETTLEMENT
AGREEMENT; TO ESTABLISH
QUALIFIED SETTLEMENT FUND; AND
APPROVING COVIL QSF, LLC AS A
QUALIFIED SETTLEMENT FUND**

COVIL CORPORATION

SENTRY INSURANCE A MUTUAL
COMPANY

SOUTHERN INSULATION, INC.

STARR DAVIS COMPANY, INC.

STARR DAVIS COMPANY OF S.C., INC.

UNITED STATES FIDELITY AND
GUARANTY COMPANY

ZURICH AMERICAN INSURANCE
COMPANY, a/k/a ZURICH NORTH
AMERICA, INC.,

Defendants.

Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas (the "Receiver"), hereby gives notice and withdraws his motion for this Court to issue an Order approving settlements with Hartford and TIG; to establish a qualified settlement fund; and to approve Covil QSF, LLC as a qualified settlement fund, which was submitted by the undersigned on March 13, 2020 in the instant matter. This withdrawal solely relates to the above-captioned matter, and the Receiver will proceed with seeking approval of the Covil settlements in the following cases: *Falls v. CBS Corp.*

et al., 2015-CP-46-02155; *Howe v. Air & Liquid Systems Corp., et al.*, 2015-CP-46-03456; *Hopper v. Air & Liquid Systems Corp., et al.*, 2019-CP-40-00076; *Hill v. Advance Auto Parts, Inc., et al.*, 2018-CP-40-04680; and *Taylor v. Air & Liquid Systems Corp., et al.*, 2018-CP-40-04940.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

s/ Jescelyn T. Spitz
Jescelyn T. Spitz, SC Bar 101880
1329 Blanding Street
Post Office Box 5640 (29250)
Columbia, SC 29201
Tel: (803) 978-6111
E-Mail: jspitz@rplegalgroup.com

Attorney for Peter D. Protopapas,
Receiver for Covil Corporation

March 20, 2020
Columbia, SC

EXHIBIT 26

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, individually and as
Personal Representative of the Estate of
CHARLOTTE GAYE SMITH,

Plaintiffs,

vs.

CBS CORPORATION, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-46-02155

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, individually and as
Personal Representative of the Estate of
WAYNE ERVINE HOWE, deceased, and
JEANETTE HOWE,

Plaintiffs,

vs.

AIR & LIQUID SYSTEMS
CORPORATION, et al.,

Defendants.

In Re:

Receivership of Covil Corporation by and
through its Receiver Peter D. Protopapas

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-46-03456

**NON-PARTY ZURICH AMERICAN INSURANCE COMPANY'S
JOINDER TO UNITED STATES FIDELITY AND GUARANTY COMPANY'S
LIMITED OBJECTION TO JOINT MOTIONS TO (I) ESTABLISH AND APPROVE
QUALIFIED SETTLEMENT FUND; AND (II) APPROVE SETTLEMENT
AGREEMENTS WITH HARTFORD, TIG AND SENTRY**

Non-Party Zurich American Insurance Company ("Zurich"), specifically reserving and not waiving its previously filed objection to this Court's exercise of personal jurisdiction over it, respectfully joins United States Fidelity and Guaranty Company's ("USF&G") Objection to Joint Motions to (I) Establish and Approve Qualified Settlement Fund and (II) Approve Settlement Agreements with Hartford, TIG and Sentry filed March 20, 2020. This joinder includes all factual and legal support set forth in said Objection, and further includes all requests for remedies (primary and alternative remedies) sought by USF&G in said Objection.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

s/John S. Wilkerson, III

John S. Wilkerson, III, SC Bar No.: 6105

Robert E. Kneece, III, SC Bar No.: 101279

P.O. Box 22129

Charleston, SC 29413-2129

Telephone: 843-576-2801

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R. Hawthorne Barrett, SC Bar No.: 16973

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Columbia, South Carolina 29202

Telephone: 803-227-4215

803-227-4219

Facsimile: 803-400-1560

803-400-1454

Email: tstanley@turnerpadget.com
tbarrett@turnerpadget.com

ATTORNEYS FOR DEFENDANT ZURICH
AMERICAN INSURANCE COMPANY