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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHMOND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

_____

Case No. 2020-CP-40-01226

_____

Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, Respondent,

v.

Pennsylvania National Mutual Casualty Insurance Company, Appellant.

Appellate Case No. 2020-001239

RECORD ON APPEAL
VOLUME I OF II

David G. Harris, II
Brady A. Yntema
David L. Brown
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, NC 27408
(336) 419-4900
Attorneys for Appellant

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-40-01226
COVIL CORPORATION, by and through its duly appointed Receiver, Peter D. Protopapas, Plaintiff, v. PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Defendant.	**ORDER GRANTING COVIL CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

On February 28, 2020, the Receiver for Covil Corporation filed this lawsuit, *Covil Corporation v. Pennsylvania National Mutual Insurance Co.*, in the Court of Common Pleas for the Fifth Judicial Circuit against Pennsylvania National Mutual Insurance Company ("Penn National"). Covil alleges that Penn National breached one of the two insurance contracts it has with Covil when it refused to participate in the settlement of the *David D. Rollins* matter pending against Covil. Complaint at ¶¶ 11-18.

On April 22, 2020, the Receiver moved for partial summary judgment on the ground that Penn National breached its insurance contract with Covil that it issued and which was in effect during the relevant time period, Penn National policy number 515 5028 537, for the policy period March 31, 1986 to March 31, 1987, when it attended the court-ordered mediation in the *Rollins* case, but declined to contribute any dollar amount to settle *Rollins*, even though the $50,000 required to settle the case was within the limits of the insurance policy Penn National issued to

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Covil. Penn National opposed the motion, arguing that an exclusion in its policy, the "completed operations hazard" and the "products hazard," bars coverage for *Rollins*.

Viewing the Motion for Partial Summary Judgment in the light most favorable to the non-moving party, it is evident that it must be granted, as there is no genuine issue as to any material fact, and it is clear that the moving party is entitled to judgment as a matter of law. Having considered the plaintiff's motion and the applicable response and reply, together with the exhibits submitted with these pleadings, 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. *See Re: Operation of the Trial Courts During the Coronavirus Emergency,* S.C. Sup. Ct. Order dated Apr. 3, 2020. In the Order, the Supreme Court noted the impossibility of continuing the practice of conducting hearings on virtually all motions during this unprecedented time. *Id.* 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." *Id.*

The Court finds these motions have been fully and comprehensively briefed, and after reviewing all submissions, the Court further finds that hearings on these motions are not necessary and the motions may readily be decided without further input from the lawyers.

II. LEGAL ANALYSIS

1. Jurisdiction

Preliminarily, this case is properly before this court because not only did this Court supervise the *Rollins* case, but also this Court has jurisdiction over a breach of contract case involving an

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amount in controversy of $50,000. Furthermore, as is clear from the face of the insurance contract, the Penn National policy was issued to Covil at its address in Greenville, South Carolina. The exposure took place in South Carolina. The *Rollins* case was brought in this Court and settled in South Carolina. There is no dispute that South Carolina substantive law applies to this action, and Penn National does not suggest otherwise.

Penn National attempts to benefit from the protection of an injunction established by the federal district court for the District of South Carolina in a proceeding to which it is not a party. The Receiver for Covil has not been enjoined from seeking the construction of policies issued to Covil and this Court faces no impediment in deciding any issue of fact or law related to the insurance policies that Penn National issued to Covil. There is no just cause to delay the Receiver's right to adjudicate this dispute with Penn National in this Court.

2. The Receiver's Motion for Summary Judgment

This breach of contract case arises out of the asbestos personal injury action against Covil and others in the case styled *David D. Rollins v. Air & Liquid Systems Corp*., C/A No. 2019-CP-25-00118 pending in Hampton County, South Carolina. Neither party disputes that the *Rollins* case involves bodily injury to David D. Rollins, which took place between March 11, 1986 and January 25, 1987, when Covil was performing operations at the Bowater paper mill in Catawba, South Carolina. The parties agree that the exposure to asbestos resulting from Covil's operations took place during the period of Penn National's policy number 515 5028 537, in effect during the policy period of March 31, 1986 to March 31, 1987. The parties further agree that the policy covers bodily injury resulting from the conduct of Covil's operations, with a $1,000,000 policy limit for each "occurrence."

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The principal dispute between Covil and Penn National is whether an exclusion in the Penn National policy applies to bar coverage for the *Rollins* action. This Court already has considered the application of the "product liability hazard" and the "completed operations hazard" in the specific context of Covil and this Court's supervision of the Receiver and the Receivership. Rulings made in this Court's Order for Rule to Show Cause of January 8, 2020 apply equally here and govern the disposition of this case.

In the January 8, 2020 Order, this Court made the following determinations regarding South Carolina insurance law, which govern this case and which are hereby declared and entered as rulings in this case:

1. The "completed operations hazard" and "product liability hazard" apply *only* when a plaintiff is exposed to asbestos products *after* Covil completed its installation or removal operations or work at a particular jobsite;

2. As to this individual asbestos law suit, it is Penn National's burden to prove that the suit seeks the recovery of damages that are subject to the exclusion applicable to the "completed operations" or "product liability" provisions of the policy;

3. Every asbestos insulation contracting, or "operations," claim against Penn National results from a separate "occurrence", thus entitling Covil to multiple "per occurrence" limits of liability to satisfy its asbestos liabilities;

4. As to this asbestos "operations" claim against Covil, Penn National is obligated to pay "in full" up to its "per occurrence" limit of liability; and

5. Penn National bears the burden of proving the applicability of its exclusion for product liability and completed operations claims.

As to the issue of burden of proof, 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*

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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").

Penn National has not met its burden in this case. Having agreed that the insurance policy it issued to Covil covers the injury at the center of the *Rollins* action, Penn National asserts that bodily injury resulting from Covil's operations at Bowater in 1986 and 1987 is excluded under the insurance contract because Covil must have supplied asbestos-containing materials to Bowater. To establish this position, Penn National points to language in a 1986 subcontract that required Covil to "[f]urnish all supervision, labor, equipment and tools, materials (except as noted), and incidentals required to supply and install all insulation on requiring piping systems." Although the argument is not clearly articulated, it appears that Penn National takes the position that this language indicates that Covil itself supplied the asbestos insulation to which Mr. Rollins was exposed.

This allegation was never established in the *Rollins* action, and Penn National has done nothing more than imply that it was the case. Instead, the evidence from the *Rollins* action

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demonstrates that while Mr. Rollins' stepfather, Robert Ashworth, performed pipefitting work at the Bowater facility between 1986 and 1987, Covil employees also were at the site at the same time performing insulation work. Covil's operations at the Bowater facility were not complete at the time that Mr. Ashworth worked at Bowater—they were ongoing, and happening simultaneously with, Mr. Ashworth's work.

Additionally, no evidence in this case or in the underlying *Rollins* action suggests that Covil supplied asbestos insulation to the Bowater facility between 1986 and 1987. As a result, this case cannot be characterized as a "product liability" exposure that would exclude it from coverage under the insurance policy Penn National issued to Covil.

Indeed, the undisputed facts in this case confirm the position asserted by Covil. It is undisputed that Mr. Rollins alleged "take home" exposure to asbestos via his stepfather, Robert Ashworth, with whom he lived between 1980 and 1991; that Mr. Ashworth came home from work covered in dust; that the dust filled the family home and family vehicles; that Mr. Ashworth performed pipe, pump and boiler work at Bowater between 1986 and 1988; and that Mr. Ashworth died of asbestos-related cancer in November 2018. Penn National has not disputed any of these facts.

Covil performed insulation work at Bowater when Mr. Ashworth worked at the facility. On February 26, 1986, Covil entered a subcontract with BE&K Construction Company, denominated as "Contract No. 4192-F-6410," to "[f]urnish all supervision, labor, equipment and tools, materials (except as noted), and incidentals required to supply and install all insulation on required piping systems" at Bowater, as Penn National concedes. The contract required Covil to maintain at least $1,000,000 in liability insurance coverage to respond to claims seeking the

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recovery of damages for bodily injury and property damage during Covil's work. Covil worked on the Bowater pipe insulation project at least between March 11, 1986 and January 25, 1987.

Penn National does not dispute these facts, nor does it dispute that Mr. Rollins' exposure to asbestos took place during the period of Penn National's policy number 515 5028 537, in effect during the policy period of March 31, 1986 to March 31, 1987. The parties agree that the Penn National policy indemnifies Covil against the payment of damages when bodily injury happens during the period of the policy, subject to a $1,000,000 per occurrence limit of liability.

The parties also agree that there is a "products hazard" exclusion and a "completed operations hazard" exclusion in the policy. Although the two exclusions may apply in different factual scenarios depending upon the individual case, it is established that the risk insured by the "products hazard" and the "completed operations hazard" is "the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than the product or completed work itself . . . ." Roger C. Henderson, *Insurance Protection For Products Liability And Completed Operations – What Every Lawyer Should Know*, 50 Neb. L. Rev. 415, 441 (1971). Penn National asserts that it need not cover the *Rollins* action because exposure to asbestos during the policy period took place after Covil either completed its work on the Bowater contract or after Covil relinquished possession of the products it installed at Bowater.

The undisputed evidence, however, is that Rollins was exposed to asbestos *during* the period in which Covil performed Contract No. 4192-F-6410 at Bowater. Penn National acknowledges this undisputed fact. It argues instead that Covil "relinquished possession" of the products it installed at Bowater *as they were installed during Covil's work*, as opposed to at the time that Covil completed its work at Bowater in or about January 1987. Penn National therefore

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asserts that Rollins' exposure during the period of the Penn National policy took place after Covil relinquished possession of each of its individually installed products at Bowater such that the products hazard in the policy bars coverage for the *Rollins* action.

Courts have rejected this argument. The case law holds that the products hazard exclusion applies in a contracting situation only if bodily injury or property damage first occurs after the insured completed *all of its work* under the contract:

> Regardless of the involvement of the insured's products, so long as an accident occurs on the insured's business premises or away from his premises, but while he has the jobsite under his control, the premises operations clause obtains and coverage is afforded thereunder. It is only after he has relinquished control of a jobsite that the products hazard or completed operations hazard exclusions will operate to deny coverage.

Friestad v. Travelers Indem. Co., 260 Pa.Super. 178, 186, n.5 (1978). Other courts have held similarly that the "products hazard" applies only when an injury is caused after a defective product has been placed into the stream of commerce. See, e.g., *B & R Farm Servs., Inc. v. Farm Bureau Mutual Ins. Co.*, 483 N.E.2d 1076, 1077 (Ind.1985). A federal decision applying South Carolina law held more than sixty years ago that an exclusion for "Products Liability" did not apply because the insured had not completed *all of its work* on a construction project, even though the insured previously completed all of its work on the occupied unit where an explosion occurred. *Heyward v. American Cas. Co. of Reading, Pa.*, 129 F.Supp. 4, 10 (E.D. S.C. 1955).

Most importantly, Penn National has not proven that any of the materials subject to the 1986 contract contained asbestos. By 1986 asbestos was not found in pipe insulation. Penn National has not suggested otherwise, let alone proven its case. Penn National has not met its burden of establishing that this action falls within either the "product liability hazard" or the "completed operations hazard." The Receiver's partial motion for summary judgment is granted.

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3. Penn National's Late Notice Defense

Finally, Penn National asserts that it is not responsible for breach of its insurance contract with Covil because it did not receive timely notice of the *Rollins* action. Penn National argues that because Covil did not make Penn National aware of the *Rollins* action until close to the time of the mediation, Covil breached its obligations to Penn National. As a result, Penn National did not believe that it had to participate in, or indemnify Covil for, the *Rollins* action.

At the same time, however, Penn National admits that "a representative of Penn National attended the mediation and expressed a willingness to contribute toward settlement on behalf of Covil." Defendant Penn National's Memorandum of Law in Opposition to Covil's Motion for Partial Summary Judgment at 17. Penn National engaged the same defense counsel as all other Covil insurers to defend Covil's interests for Penn National in the *Rollins* action and other Covil asbestos personal injury claims. *Id.* at 7. It had access to all of the same materials as the insurers that elected to resolve the *Rollins* action at mediation. Yet, Penn National alone states that "Penn National was not in a position to contribute the amount requested by Covil at the mediation." *Id.* at 17.

Penn National had access to all available information related to the *Rollins* action, attended the *Rollins* mediation with a "willingness to contribute toward settlement," and then made the deliberate decision not to resolve *Rollins*, presumably because it believe that its policy exclusion barred coverage. Penn National's deliberate choice to decline to settle the *Rollins* action within its policy limit is not equivalent to the late notice defenses established in the cases it cites. Penn National's alleged late notice of the *Rollins* action is not a valid defense to breach of its insurance contract with Covil.

* * *

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The Receiver has set forth that Penn National issued a contract of insurance with coverage that applies directly to the facts of the *Rollins* action against Covil. Penn National could not overcome the burden of proving the applicability of policy exclusions to create a bar to coverage in this case. Construing the facts in the light most favorable to the nonmoving party, the Court finds that there is no triable issue that Penn National was required to defend Covil against the *Rollins* action, and is required to indemnify Covil against the settlement of the *Rollins* action.

III. RULING

For the reasons stated above, the Court hereby **GRANTS** The Receiver's Motion for Partial Summary Judgment.

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

_____

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

Columbia, South Carolina.

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Richland Common Pleas

Case Caption: Covil Corporation , plaintiff, et al vs Pennsylvania National Mutual Casualty Insurance Co

Case Number: 2020CP4001226

Type: Order/Summary Judgment

So Ordered

Jean H. Toal

ELECTRONICALLY FILED - 2020 Sep 21 10:31 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas, Plaintiff, Vs. Pennsylvania National Mutual Casualty Insurance Co., Defendant.	Case Number: 2020-CP-40-01226 **ORDER DENYING PENN NATIONAL'S MOTION FOR RECONSIDERATION**

This matter comes before the Court on Pennsylvania National Mutual Casualty Insurance Co.'s ("Penn National") August 24, 2020 Motion for Reconsideration ("Motion") of this Court's August 13, 2020 Order granting Covil Corporation's ("Covil") Motion for Partial Summary Judgment. Peter Protopapas, in his capacity as Receiver for Covil Corporation ("the Receiver"), and acting by and through the undersigned counsel, filed his response on August 27, 2020. After careful consideration of the parties' filings, the complete record before the Court, and applicable law, the Court hereby **DENIES** the Motion.

I. Factual Background

On February 28, 2020, the Receiver for Covil Corporation filed this lawsuit, which alleges that Penn National breached one of the two insurance contracts it has with Covil when it refused to participate in the settlement of the *David D. Rollins* matter pending against Covil.

On April 22, 2020, the Receiver moved for partial summary judgment on the ground that Penn National breached its insurance contract with Covil that it issued and which was in effect during the relevant time period, Penn National policy number 515 5028 537, for the policy period March 31, 1986 to March 31, 1987, when it attended the court-ordered mediation in the *Rollins*

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case. At that time, Penn National declined to contribute any dollar amount to settle *Rollins*, even though the $50,000 required to settle the case was within the limits of the insurance policy Penn National issued to Covil. In Penn National's May 8, 2020 Opposition, it argued, among other things, that it did not receive timely notice of the *Rollins* case or mediation therein, that an exclusion in its policy, the "completed operations hazard" and the "products hazard," bars coverage for *Rollins*, and that this case should be stayed due to pending litigation in federal court. In a one-sentence footnote, Penn National also made the conclusory statemen that summary judgment is premature because it wanted to conduct discovery. It did not explain what discovery it needed to conduct or why it was needed.

The Court granted Covil's Motion in its August 13, 2020 Order ("Order"). Penn National filed its Motion for Reconsideration on August 24, 2020, and Covil filed its response shortly thereafter.

II. Argument and Authorities

A. Legal Standard

Penn National moves for reconsideration under Rule 59(e), SCRCP. Under that Rule, "a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment." *Kiawah Prop. Owners Group v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (citing *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995)). The trial court has the discretion to deny a motion to reconsider "on the brief filed by the parties *without oral argument*." *Pollard v. Cnty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 534 (Ct. App. 1995) (emphasis in orginal).

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B. The Court has already ruled on the arguments Penn National raises in its Motion.

The Court already has considered and rejected each of the arguments Penn National raises in its Motion, and Penn National has failed to identify any errors of law or fact.

1. Penn National's late notice defense.

Penn National re-asserts that it is not responsible for breach of its insurance contract with Covil because it did not receive timely notice of the *Rollins* action. As a result, Penn National did not believe it had a duty to defend or indemnify Covil in the *Rollins* action.

The Court previously addressed this issue and found as follows:

> Penn National admits that "a representative of Penn National attended the mediation and expressed a willingness to contribute toward settlement on behalf of Covil." . . . . Penn National engaged the same defense counsel as all other Covil insurers to defend Covil's interests for Penn National in the *Rollins* action and other Covil asbestos personal injury claims. *Id.* at 7. It had access to all of the same materials as the insurers that elected to resolve the *Rollins* action at mediation. Yet, Penn National alone states that "Penn National was not in a position to contribute the amount requested by Covil at the mediation." *Id.* at 17.

Order at 9. "Penn National's alleged late notice of the *Rollins* action is not a valid defense to breach of its insurance contract with Covil." Order at 9. Penn National has presented no basis for altering or amended this holding.

2. Penn National did not met its burden to show that the "product liability hazard" exclusion or the "completed operations hazard" exclusion applies.

Penn National also argues that the "Completed Operations Hazard and Products Hazard" exclusion in the Penn National policy bars coverage for the claims asserted against Covil in the *Rollins* Asbestos Action. The Court carefully considered both Covil's and Penn National's arguments on this issue, as well as the undisputed facts. The Court held that Penn National has not met its burden of establishing that this action falls within either the "product liability hazard" or

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the "completed operations hazard." There is nothing new in Penn National's Motion that affects the Court's ruling.

3. Summary judgment is not premature.

Penn National complains that summary judgment is premature because it did not have the opportunity to engage in discovery. Penn National made this exact argument in its Opposition. The Court found, "It had access to all of the same materials as the insurers that elected to resolve the Rollins action at mediation." Order at 9. And, again, a Penn National representative even attended the parties' mediation. *Id*. Moreover, in its Opposition, Penn National did not submit a Rule 56(f) affidavit setting forth the discovery it needed to conduct in order to present "facts essential to justify [its] opposition." Rule 56(f), SCRCP; *see also Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433, 439-40 (2003). Therefore, Penn National's unsupported, and self-serving assertion that it needed additional time for discovery is not a valid ground for opposing summary judgment. There is no reason to reconsider the Court's decision on this issue.

C. Any new arguments may not be considered because, to the extent they exist, they could have been raised in Penn National's Opposition.

To the extent Penn National's motion attempts to raise any new arguments, those arguments cannot be raised in a Rule 59(e) motion. *See Kiawah Prop. Owners Group*, 359 S.C. at 113, 597 S.E.2d at 149.

III. Ruling

For the reasons stated above, the Court hereby **DENIES** Penn National's Motion.

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

_____

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

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Richland Common Pleas

Case Caption:	Covil Corporation , plaintiff, et al vs Pennsylvania National Mutual Casualty Insurance Co
Case Number:	2020CP4001226
Type:	Order/Other

So Ordered

Jean H. Toal

ELECTRONICALLY FILED - 2020 Feb 28 12:32 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas, Plaintiff, Vs. Pennsylvania National Mutual Casualty Insurance Co., Defendant.	Case No: SUMMONS (Jury Trial Demanded)

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1329 Blanding Street, Columbia, South Carolina 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

Jescelyn T. Spitz
Jescelyn T. Spitz (SC Bar 101880)
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, SC 29201
803.978.6111
jspitz@rplegalgroup.com

Attorney for the Receiver

This 28th Day of February, 2020

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas, Plaintiff, Vs. Pennsylvania National Mutual Casualty Insurance Co., Defendant.	Case No: COMPLAINT (Jury Trial Demanded)

COMES NOW Covil Corporation by and through its duly appointed Receiver, Peter D. Protopapas ("Plaintiff" or "Covil"), complaining of the defendant, Pennsylvania National Mutual Casualty Insurance Co., ("Defendant" or "Penn National"), who through undersigned counsel respectfully show unto the Court as follows:

PARTIES

1. The Receiver is a lawyer who was appointed as Receiver of Covil Corporation, by Order on November 2, 2018 and who maintains his principal place of business in Richland County, South Carolina.
2. Plaintiff is informed and believes the defendant, Penn National is a corporation organized under the laws of the State of Pennsylvania with its principal place of business located in the State of Pennsylvania.

JURISDICTION

3. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers.

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4. In particular, Penn National sold insurance to Covil Corporation.

VENUE

5. Plaintiff is informed and believes that venue is proper in Richland County, South Carolina.

FACTS

6. It has been alleged that Covil's operations from 1954 through 1991 included the installation, repair, replacement, removal or disturbance of thermal insulation and other building materials and that those operations exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations").
7. Covil conducted these operations from at least 1954 until approximately 1991, after which Covil ceased to conduct business operations and, ultimately, Covil's charter was administratively revoked.
8. Based on information discovered to date, Covil purchased general liability insurance from Penn National for, at the least, the periods of: 3/31/86 - 3/31/87 and the periods of 3/31/87-3/31/88.
9. The alleged bodily injury resulting from the Asbestos Allegations has resulted in claims and lawsuits against Covil ("Covil Asbestos Suits").
10. One such claim is *David D. Rollins v. Covil Corporation*, et. al. civil action 2019-CP-25-0118 ("Rollins") pending in Hampton County, South Carolina.
11. Rollins' allegations included but were not limited to Rollins being exposed to asbestos due to Covil Operations. For example, Rollins was allegedly exposed both directly and/or through take home exposure because of Covil Operations including but not limited to:

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a. at a facility in 1986 and 1988;

b. at Bowater's Rock Hill/Catawba plant;

c. at a Celanese facility as part of an ongoing business relationship;

d. at a Hoechst Celanese facility and Hoechst Fibers facility; and,

e. at such other places as the record supports.

12. Though Rollins provided evidence of asbestos exposure during the Penn National policies, Penn National refused to participate in the settlement of Rollins and refused to contribute the amount of $50,000 to a settlement.

13. As a direct result of Penn National's improper refusal to participate in the settlement of the Rollins claim, other Covil assets were expended to resolve the Rollins case.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

14. The foregoing allegations are realleged and reincorporated as if fully set forth herein verbatim to the extent not inconsistent herewith.

15. For valuable consideration, Plaintiff and Defendant entered into a binding contract for the provision of insurance.

16. Defendant breached the terms of the contract in one or more of the following particulars:

a. by failing to protect its insured from liability exposure in Rollins;

b. by failing to provide services in accordance with the terms of the contract; and

c. in such other and further particulars as may be developed during the course of discovery and proven at trial.

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17. Plaintiff is informed and believes this Defendant breached the covenant of good faith and fair dealing implied as a term of the contract by acting in bad faith and/or failing to adhere to reasonable standards of conduct within the insurance profession.

18. As a direct and proximate result of Defendant's breaches of contract, Plaintiff has been injured and is entitled to recover damages in such amount as may be proven at trial but not greater than $74,999.99, including, but not necessarily limited to, actual damages, consequential damages, prejudgment interest, attorney's fees, the costs of this action, and such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff requests that this Court inquire into these matters and find that Defendant is liable to Plaintiff for no more than $74,999.99 inclusive of actual damages, consequential damages, pre-judgment interest, attorney's fees, the costs of this action, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

Jescelyn T. Spitz
Jescelyn T. Spitz (SC Bar 101880)
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, SC 29201
803.978.6111
jspitz@rplegalgroup.com

Attorney for the Receiver

This 28th Day of February, 2020

ELECTRONICALLY FILED - 2020 Mar 30 5:23 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
COVIL CORPORATION, by and through its duly appointed Receiver, Peter D. Protopapas, Plaintiff, v. PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Defendant.	Case No: 2020-CP-40-01226 DEFENDANT'S NOTICE OF MOTION AND MOTION TO TRANSFER VENUE AND ANSWER TO COMPLAINT

NOTICE OF MOTION AND MOTION TO TRANSFER VENUE

YOU WILL PLEASE TAKE NOTICE that Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National") will move before the Presiding Judge in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as may be set by the Court, for an Order, pursuant to Rule 82(b) of the South Carolina Rules of Civil Procedure, for an Order transferring this case to Court of Common Pleas for Greenville County, South Carolina, and in support of such motion, Defendant Penn National, by and through counsel, hereby states as follows:

1. Plaintiff Covil Corporation ("Covil") in this action alleges a single claim against Defendant Penn National for breach of an insurance policy issued by Defendant Penn National to Plaintiff Covil.

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2. The subject policy of insurance was issued to Plaintiff Covil, which upon information and belief, had its principal place of business in Greenville County, South Carolina (Exhibit A – Declarations Page).

3. At all times herein, Defendant Penn National was a foreign corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located in the Commonwealth of Pennsylvania.

4. Upon information and belief, and at all times pertinent to this action, Plaintiff Covil was not a corporation with its principal place of business in Richland County, South Carolina, and that none of the pertinent actions or omissions alleged by Plaintiff Covil's Complaint occurred in Richland County, South Carolina.

5. The Court of Common Pleas of Richland County, South Carolina, is not a proper venue for this action, pursuant to S.C. Code § 15-7-30.

6. That the Court of Common Pleas of Greenville County, South Carolina, is a proper venue in which this action should be tried, pursuant to S.C. Code § 15-7-30, and that this action should be transferred to the Court of Common Pleas of Greenville County, South Carolina, pursuant to S.C. Code § 15-7-100.

WHEREFORE, pursuant to S.C. Code §§ 15-70-30 and 15-7-100, Defendant Penn National respectfully requests that this action be transferred to the Court of Common Pleas of Greenville County, South Carolina.

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ANSWER

COMES NOW Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through counsel, and hereby responds to the Complaint of Plaintiff as follows:

PARTIES

1. It is admitted, upon information and belief, that Peter Protopapas was appointed as a Receiver in other civil actions to which Penn National was and is not a party and which are wholly unrelated to this action, and it is further admitted that Peter Protopapas is a lawyer who maintains his principal place of business in Richland County, South Carolina. Except as admitted, denied.

2. It is admitted that Penn National is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business located in the Commonwealth of Pennsylvania. Except as admitted, denied.

JURISDICTION

3. The allegations of paragraph 3 appear to attempt to state legal conclusions, and therefore, do not require a response from Penn National. To the extent a response is required, such allegations are denied.

4. It is admitted Penn National issued a Comprehensive General Liability policy to Covil Corporation ("Covil") with policy periods of March 31, 1986 to March 31, 1987, with one renewal of March 31, 1987 to March 31, 1988. Except as admitted, denied.

VENUE

5. Denied.

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FACTS

6. The allegations of paragraph 6 are vague and lack clarity in that they allege certain allegations have been asserted against Covil without any identification of the parties asserting such allegations or the cases or matters in which such allegations have been asserted. As such, the allegations of paragraph 6 are denied.

7. Penn National is without knowledge or information sufficient to either admit or deny the allegations of paragraph 7, and to the extent a response is required, such allegations are denied.

8. It is admitted Penn National issued a Comprehensive General Liability policy to Covil with policy periods of March 31, 1986 to March 31, 1987, with one renewal of March 31, 1987 to March 31, 1988. Except as admitted, denied.

9. The allegations of paragraph 9 are vague and lack clarity in that they assert certain allegations that have been asserted against Covil without any identification of the parties asserting such allegations or the cases or matters in which such allegations have been asserted. As such, the allegations of paragraph 9 are denied.

10. It is admitted that an action was filed against Covil entitled *David D. Rollins v. Covil Corporation, et al.,* civil action 2019-CP-25-0118 ("Rollins Action") pending in Hampton County, South Carolina.

11. It is admitted that the allegations of the Rollins Action speak for themselves. Except as admitted, denied.

12. It is admitted that Penn National appeared for the mediation conducted in the Rollins Action, and that it participated in such mediation in good faith. Except as admitted, denied.

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13. Denied.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

14. Penn National's responses to paragraphs 1 through 13 are realleged and incorporated as if fully set forth herein.

15. It is admitted Penn National issued a Comprehensive General Liability policy to Covil with policy periods of March 31, 1986 to March 31, 1987, with one renewal of March 31, 1987 to March 31, 1988. Except as admitted, denied.

16. Denied.

17. Denied.

18. Denied.

GENERAL DENIAL

Except as specifically admitted above, Penn National denies each and every allegation of Plaintiff's Complaint.

FIRST DEFENSE

Penn National moves to dismiss this action pursuant to South Carolina Rule of Civil Procedure 12(b)(1) in that there is no subject matter jurisdiction over the claims asserted inasmuch as (1) the Receiver does not have legal standing to pursue such claims, and (2) the Plaintiff has failed to comply with the conditions precedent to filing suit under Penn National's policies issued to Covil with policy periods of March 31, 1986 to March 31, 1987, with one renewal of March 31, 1987 to March 31, 1988 ("Policies").

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SECOND DEFENSE

Penn National moves to dismiss this action pursuant to South Carolina Rule of Civil Procedure 12(b)(6) in that the Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Plaintiff failed to tender or submit the underlying Rollins Action in a timely matter under the Policies and otherwise failed to comply with the provisions of the Policies. Therefore, Plaintiff's claims in this action are barred.

FOURTH DEFENSE

Penn National's rights, liabilities, and obligations are defined and controlled by the terms and provisions of the Policies. The terms and provisions of the Policies, including, but not limited to, any and all applicable policy definitions, conditions, exclusions, limitations, and endorsements, do not provide coverage for the claims against Covil in the Rollins Action. Accordingly, Plaintiff's claims against Penn National in this action, which are grounded on the theory that Penn National had an obligation to provide coverage to Covil under the Policies for the claims asserted against Covil in the Rollins Action, should be dismissed.

FIFTH DEFENSE

To the extent Plaintiff asserts any claim for punitive damages, which are expressly denied, Penn National pleads all provisions of S.C. Code § 15-32-510 *et seq.* in bar of and in defense to any such claims for punitive damages in this action.

SIXTH DEFENSE

Any claim for punitive damages asserted by Plaintiff in this action is in violation of the United States Constitution and the South Carolina State Constitution, as well as the holding of

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State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003), and the cases upon which it is based.

SEVENTH DEFENSE

Penn National further moves the Court for an award of costs and attorneys' fees for having to defend any claim for punitive damages, bad faith, fraud, and improper claims practices asserted by Plaintiff inasmuch as such claims are not well-grounded in law or fact and have been made for an improper purpose.

EIGHTH DEFENSE

Plaintiff's claims may be barred by failure to reduce or mitigate its damages as required by law.

NINTH DEFENSE

Penn National pleads the equitable doctrines of waiver, estoppel, and laches in bar of the claims against Penn National in this action.

TENTH DEFENSE

Penn National pleads the applicable statute of limitations and/or statute of repose in bar of any claims or recovery against Penn National in this action.

WHEREFORE, Penn National respectfully prays the Court as follows:

1. That Plaintiff have and recover nothing of it in this action;

2. That the Plaintiff's claims against it be dismissed, with prejudice;

3. That the costs of this action be taxed against the Plaintiff;

4. For a trial by jury on all issues so triable; and

5. For such other and further relief as to the Court may seem just and proper.

This the 30th day of March, 2020.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II (S.C. Bar No. 101951)
dharris@goldbergsegalla.com
Brady A. Yntema (N.C. Bar No. 25771)
byntema@goldbergsegalla.com
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Phone: 336.419.4900
Fax: 336.419.4950
Attorneys for Defendant

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EXHIBIT A

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SPECIAL MULTI-PERIL POLICY
NON-ASSESSABLE

PENNSYLVANIA NATIONAL...

Mutual Casualty INSURANCE COMPANY

1001 DERRY STREET, HARRISBURG, PENNSYLVANIA 17105

POLICY NO. 91 5 GL 26 5 3 7

ZERO #016

Covil Corporation, Inc. (See 70-53)
P O Box 1804
Greenville, Greenville, SC 29602

NEW | 99 | 2 3 1793 | 6567

ITEM 2. POLICY PERIOD FROM 3-31-86 TO 3-31-87
12:01 AM STANDARD TIME AT LOCATION OF DESIGNATED PREMISES

AGENCY: Sam J Crain & Co., Inc.

AGENCY NUMBER: 22 6729
ISSUANCE DATE: 4-14-86 mt
PRODUCER ID:

In consideration of the premium insurance is provided the named insured with respect to the designated premises shown in item 4 below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:

3 Rated Period: Annual, unless otherwise stated: | The Named Insured is ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other:

4 Designated Premises (Item 3 does not apply unless entered above) | Tax Dist. | Occupancy of Premises
See MP1205 | | See MP1205

Multiple buildings or premises are described on Supplemental Declarations attached

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

	COVERAGES	Deductible	LIMITS OF LIABILITY			
SECTION I PROPERTY COVERAGE	Building(s)		$	$	$	$
	Personal Property of the Insured		$ See MP1205	$	$	$
	Personal Property of Others		$	$	$	$
	All Other (Specify)					

Coverage Code: See 70-16

Bodily Injury and Property Damage Liability

SECTION II LIABILITY COVERAGE	Combined Single Limit	$ 1,000,000	each occurrence	$ 1,000,000	aggregate
	Bodily Injury Liability	$	each occurrence	$	aggregate
	Property Damage Liability	$	each occurrence	$	aggregate
	Premises Medical Payments	$ 1,000	each person	$ 10,000	each accident
	Auto Use (Specify)				

SECT. III: PI-1 CRIME COVERAGE XX
SECT. IV: MOBILE AND MACHINERY COVERAGE ☐
As stated in the endorsement made part of this Policy if indicated by ☒

6 Forms and Endorsements in force as part of this policy at time of issue (other than those listed above)

a Section I - Forms and Endorsements only: MP0315(4/80) MP0090(7/77) MP0127(12/79) IL0018(10/84) MP0013(10/83) 70-53 MP0014(10/83) MP0420(1/83) 70-627 70-640 70-16 No 520(9/65)
b Section II - Forms and Endorsements only: GL0104(7/66) GL9918(3/83) GL0032(4/84) GL2133(2/85) 70-1656(7/85) GL0031(4/84) CGL-1 MP-1 PI-1 GL0300(7/81) 70-260 73-3010
c Section III - Forms and Endorsements only: MP0450(12/79) MP5231(7/77) MP0307(7/77)
d Section IV - Forms and Endorsements only

7 Mortgagee: Bldg 1)Community Bank, P O Box 6807 Greenville, SC 29602

8 Due Total Advance Premium is $ 35,268 and is payable $ 35,268 at inception, and $ XXXXXXXXXX at each anniversary.
If boxes indicated by an X in the box below as "NOT APPLICABLE", the premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date. ☐ NOT APPLICABLE

THIS POLICY PROVIDES LIMITED COVERAGE FOR POLLUTION LIABILITY. READ YOUR POLICY CAREFULLY.

Authorized Agent

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SPECIAL MULTI-PERIL
POLICY
NON-ASSESSABLE

Pennsylvania National
Insurance Companies
Pennsylvania National Mutual Casualty Insurance Company

POLICY NO. 515 50 28 53-8 — THIS LAST DIGIT OF EXPIRATION YEAR

ORIGINAL OFFICE: SERO 025

ITEM 1. INSURED'S NAME AND MAILING ADDRESS (LAST NAME FIRST)
Covil Corporation, Inc. (See 70-53)
P OBox 1804
Greenville, Greenville, SC 29602

ISSUED OF: 515 50 28 53-7
RATING PLAN: 99
NATURE OF BUS. TYPE: 2
CLASS: 3
SUB CODE: 2093
EMPLOYEE NUMBER: 6967

ITEM 2. POLICY PERIOD FROM 3/31/87 TO 3/31/88
12:01 AM STANDARD TIME AT LOCATION OF DESIGNATED PREMISES

AGENCY: Sam J Crain & Co.,Inc.
AGENCY NUMBER: 22 - 6729
ISSUING DATE: 4/8/87
PRODUCER ID:

In Consideration of the premium insurance is provided the named insured with respect to the designated premises shown in Item 4 below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:

3. Audit Period: Annual, unless otherwise stated. The Named Insured is: ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other:

4. Designated Premises (ENTER "SAME" IF SAME LOCATION AS ITEM 1 ABOVE) | Tax Dist. | Occupancy of Premises
a. 131 Pensley Cir. Greenville, Greenville, SC | | Warehouse
b. Same | | Warehouse
c.
d.
☐ Multiple buildings or premises as designated on Supplemental Declarations attached.

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

SECTION	COVERAGES	Coinsurance % Applicable	Loc No.	Bldg No.	Loc No.	LIMITS OF LIABILITY	Bldg No.	Loc No.	Bldg No.	Loc No.	Bldg No.
			1	1	1		2				
I PROPERTY COVERAGE	Building(s)	80	$ 393,000								
	Personal Property of the Insured	80	$ 1,200,000		$ 5000		$		$		$
	Personal Property of Others		$		$ 2000		$		$		$
	Addl. Cov. (Specify) MP0420						$		$		$

Deductible: $ See 70-627 each occurrence. $ See 70-627 aggregate each occurrence.
If no deductible stated above, the deductible shall be $100 each occurrence, $1,000 aggregate each occurrence.

SECTION II LIABILITY COVERAGE	Bodily Injury and Property Damage Liability - Combined Single Limit				
	Bodily Injury Liability	$ 1,000,000	each occurrence	$ 1,000,000	aggregate
	Property Damage Liability	$	each occurrence	$	aggregate
	Premises Medical Payments	$ 1,000	each person	$ 10,000	each accident
	Addl. Cov. (Specify) PI-1				

SECT. III CRIME COVERAGE ☒
SECT. IV BOILER AND MACHINERY COVERAGE ☐
As stated in the endorsement, made part of this Policy, if indicated by ☒.

6. Forms and Endorsements made part of this policy at time of issue (insert No. and Ed. Date):
a. Section I - Forms and Endorsements only: MP0315 4/80 MP0090 7/77 MP0127 4/86 IL0018 10/84 MP0013 10/83 70-53 MP0014 10/83 MP0420 1/83 70-627 70-640 70-16 NO.520 9/65 70-1911 9/86 IL0928 5/86
b. Section II - Forms and Endorsements only: GL0104 7/66 GL9918 3/83 GL0032 4/84 70-1656 7/85 CGL-1 MP-1 PI-1 GL0300 7/81 70-260 73-3010
c. Section III - Forms and Endorsements only: MP0450 12/79 MP5231 7/77 MP0307 7/77 IL0249 9/86 GL2104 7/66
d. Section IV - Forms and Endorsements only: MP2405 7/77

7. Mortgagee: (Name and Address) Bldg. 1) Community Bank, P O Box 6807 Loc. 1) Bldg. 1) First Federal of SC SC 29611
Greenville, SC 29602 2304 W. Parker Rd. Greenville,

8. The Total Advance Premium is $ 38193 and is payable $ 38193 at inception, and $ at each anniversary.
Unless indicated by an X in the box below as "NOT APPLICABLE", the premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date.
☐ NOT APPLICABLE

THIS POLICY PROVIDES LIMITED COVERAGE FOR POLLUTION LIABILITY. READ YOUR POLICY CAREFULLY.

CODED BY SR

Countersigned by: Authorized Agent

Form 70-1574 (REV. 10/84)

HOME OFFICE COPY

ELECTRONICALLY FILED - 2020 Apr 22 6:49 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas, Plaintiff, Vs. Pennsylvania National Mutual Casualty Insurance Co., Defendant.	Case Number: 2020-CP-40-01226 COVIL CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TO: DAVID G. HARRIS, II AND BRADY A. YNTEMA, ATTORNEYS FOR DEFENDANT PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE CO.:

PLEASE TAKE NOTICE that Peter D. Protopapas, as Receiver for Covil Corporation, ("the Receiver"), by and through the undersigned counsel, will move before this honorable Court ten (10) days after this Motion is served upon you, or as soon thereafter as this matter may be conveniently heard, for an Order of the Court granting partial summary judgment against the Defendant, Pennsylvania National Mutual Casualty Insurance Co., (hereinafter "Penn National") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This Motion is based upon the following grounds and any other grounds that may be raised by any supporting memorandum filed prior to a hearing on this motion.

I. INTRODUCTION

David Rollins was diagnosed with mesothelioma at age 45. A "living" mesothelioma case filed by a person under 50 is a valuable asbestos case. Peter D. Protopapas, serving as the court-appointed Receiver for Covil Corporation ("Covil"), was able to settle Mr. Rollins' lawsuit for a confidential amount which will be submitted under seal to the Court. Mr. Protopapas asked one

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of Covil's historic liability insurance companies, Pennsylvania National Insurance Company ("Penn National"), to pay the Rollins settlement. Penn National refused, relying on exclusions for "products" and "completed operations" in successive primary comprehensive general liability insurance policies it issued to Covil between March 31, 1986 and March 31, 1987, and March 31, 1987 and March 31, 1988. *See* Exhibit A, Partial Penn National 1986 Policy; Exhibit B, Partial Penn National 1987 Policy. The "products" exclusion applies to injuries caused by an insured's products after they have been placed into the stream of commerce. The "completed operations" exclusion applies to injuries caused by the insured's work after the insured completed the work at a jobsite.

The undisputed evidence, however, is that Rollins was injured as a result of Covil's "operations." His stepfather, Robert Ashworth ("Ashworth"), worked as a pipefitter at the Bowater Paper Mill ("Bowater") in Catawba between 1986 and 1988. Covil did "all" of the piping system insulation work at Bowater at least between March 11, 1986 and January 25, 1987. It earned more than $1,200,000 for these services. Ashworth died of asbestos-related cancer in 2018.

Rollins described at his deposition a family home and family vehicles filled with asbestos dust during the time he lived with his stepfather between 1980 and 1991. It is undisputed that asbestos dust in his home, and in family vehicles, substantially contributed to his own asbestos-related disease. Some of that asbestos dust undoubtedly was brought to the family home, and into the family vehicles, by Ashworth when he returned home from work at Bowater between 1986 and 1988. Covil's pipe system insulation work undoubtedly at Bowater was the source of at least some of the asbestos dust that contributed to Rollins' mesothelioma.

Rollins therefore suffered bodily injury during the period of at least one of the Penn National policies. Coverage is triggered under the Penn National policies by the occurrence of

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bodily injury during the policy period. *Joe Harden Builders, Inc. v. Aetna Cas. and Sur. Co.*, 326 S.C. 231 (1997). An insurer then has the "strong" burden of showing the applicability of an exclusion to negate coverage under its policy. *Boggs v. Aetna Cas. and Sur. Co*., 272 S.C. 460 (1979).

Penn National cannot meet its burden of showing that Rollins' injury during the period of the March 31 1986 to March 31, 1987 policy was the result of products that Covil placed into the stream of commerce before Rollins was exposed to asbestos via Ashworth's work at Bowater in 1986 and 1987. Penn National also cannot meet its burden of showing that Rollins' injury during the period of the March 31 1986 to March 31, 1987 policy was the result of work that Covil completed before Rollins was exposed to asbestos via Ashworth's work at Bowater in 1986 and 1987.

Because Rollins suffered bodily injury attributed to Covil during the Penn National policy on the risk between March 31, 1986 and March 31, 1987, and because Penn National cannot show the applicability of an exclusion to coverage, the Court should enter judgment as a matter of law that Penn National is required to cover the settlement of the Rollins lawsuit and that it was required to defend the Rollins lawsuit.

II. STATEMENT OF FACTS

A. Current Status of Covil Corporation

From the time of its original formation in or about 1954, Covil Corporation ("Covil") was engaged in the installation and removal of insulation in various industrial facilities across South Carolina, and elsewhere. Covil's operations involved the installation, removal and disturbance of insulation materials, typically supplied, required or acquired by other parties. At certain times, insulation materials contained asbestos and Covil's operations are alleged to have resulted in bodily injury in South Carolina, and elsewhere. In 1991, Covil's business failed and it ceased

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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. In the fall of 2018, Covil defaulted on two mesothelioma asbestos cases pending in South Carolina. On November 2, 2018, the Court appointed (the "Order") Peter D. Protopapas to serve as a Receiver for Covil Corporation to manage its affairs according to South Carolina law. Among other things, the Order empowers the Receiver "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." *See* Exhibit C.

B. The *Rollins* Action

David D. Rollins sued Covil, and others, in the case styled *David D. Rollins v. Air & Liquid Systems Corp*., C/A No. 2019-CP-25-00118 pending in Hampton County, South Carolina (the "*Rollins* Action"). Rollins alleged that he suffered from mesothelioma as a result of exposure to asbestos. He was diagnosed with mesothelioma on or around January 17, 2019. Rollins produced a pathology report in support of his allegation of asbestos-related disease.

Among other things, Rollins alleged "take home" exposure to asbestos via his stepfather, Robert J. Ashworth ("Ashworth"), with whom he lived between 1980 and 1991. *See* Exhibit D, Amended Complaint of David D. Rollins, at 30. Ashworth invariably came home from work covered in dust from working at plants with asbestos. *See id.* The dust filled the family home and family vehicles. *See id.* Rollins recalled that Ashworth worked as a pipefitter welder supervisor, including at the Bowater Paper Mill ("Bowater") in Catawba, South Carolina. It is undisputed that

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Ashworth performed pipe, pump and boiler work at the Bowater between 1986 and 1988. *See* Exhibit E, Deposition of Robert Ashworth at 69-71. Ashworth died of asbestos-related cancer in November 2018. *See* Exhibit F, Deposition of David Rollins, at 13-14.

Covil did insulation work at Bowater when Ashworth worked at the facility. On February 26, 1986, Covil entered a subcontract with BE&K Construction Company, denominated as "Contract No. 4192-F-6410," to "[f]urnish all supervision, labor, equipment and tools, materials (except as noted), and incidentals required to supply and install all insulation on required piping systems" at Bowater. *See* Exhibit G. The contract required Covil to maintain at least $1,000,000 in liability insurance coverage to respond to claims seeking the recovery of damages for bodily injury and property damage during Covil's work. *See id.* at 2-3. Covil worked on the Bowater pipe insulation project at least between March 11, 1986 and January 25, 1987. *See* Exhibit H, Handwritten Notes entitled Bowater Project – Labor. It was paid more than $1.2 million for this work. *See* Exhibit I, Bowater Carolina Company Interoffice Memo dated November 10, 1986.

The Receiver settled the *Rollins* Action on behalf of Covil for a confidential amount.

C. The Penn National Coverage

Penn National issued two successive primary comprehensive general liability insurance policies to Covil. *See* Exhibits A and B. The policies were written on standard forms.

The first policy was issued for the March 31, 1986 to March 31, 1987 period. *See* Exhibit A. The second policy was issued for the March 31, 1987 to March 31, 1988 period. *See* Exhibit B. Both policies provide $1,000,000 in coverage for claims seeking the recovery of damages against Covil for bodily injury and property damage "per occurrence" and in the aggregate. Covil's procurement of the Penn National policies therefore satisfied the insurance requirements of Contract No. 4192-F-6410, governing Covil's work at Bowater. *See* Exhibit G at 2-3.

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Both of the Penn National policies purportedly exclude coverage for claims seeking the recovery of damages for bodily injury or property damage within either the "products hazard" or "completed operations hazard" of the policies. Penn National has not produced complete copies of the policies.

A standard definition of "products hazard" used in the 1980s[1] included the following verbiage pertinent to this motion:

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

A standard definition of "completed operations hazard" used in the 1980s included the following verbiage pertinent to this motion:

> bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured . . .

Penn National refuses to pay the settlement in the *Rollins* Action based on the "products hazard" and "completed operations hazard" in its policies.

The present motion ensued.

[1] The policies produced by Penn National in response to a subpoena served in another case are incomplete, and do not contain their definitions of "products hazard" or "completed operations hazard." Penn National's burden to prove the potential applicability of an exclusion to coverage includes its burden to prove the actual words that appear in an exclusion upon which it relies to deny. Covil identified standard definitions of these terms to show that there is no triable issue that Penn National is required to cover the settlement of the *Rollins* Action.

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III. ARGUMENT

A. Legal Standard

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452 (2001). South Carolina Rule of Civil Procedure 56(c) recognizes that summary judgment "may be rendered on the issue of liability alone." Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Baughman v. American Tel. and Tel. Co*., 306 S.C. 101, 114 – 115 (1991).

As discussed below, there is no genuine dispute that Penn National is required to cover the settlement of the *Rollins* Action, but did not do so

Judgment therefore should be entered in favor of Covil as a matter of law.

B. The Receiver Paid Damages For Rollins' Bodily Injury During the Period of 1986-1987 Policy Issued to Covil By Penn National

Rollins established that he suffers from mesothelioma. He established further that "take home" asbestos exposures via Ashworth substantially contributed to his asbestos-related disease. Those "take home" exposures occurred between March 31, 1986 and March 31, 1987, the period of the first Penn National policy because Rollins incurred "take home" exposure via Ashworth between 1980 and 1991. Rollins described a family home and family vehicles filled with asbestos dust during at least the entirety of the Penn National policy period of March 31, 1986 to March 31, 1987. *See* Exhibit F at 30-36. There is no contrary evidence.

Consequently, the undisputed evidence is that Rolling suffered asbestos bodily injury during the period of time that Penn National covered Covil for, among other things, bodily injury during the policy period. Bodily injury during the policy period is the basic triggering event for

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coverage under a comprehensive general liability insurance policy such as the March 31, 1986 to March 31, 1987 Penn National policy. *Joe Harden Builders, Inc. v. Aetna Cas. and Sur. Co.*, 326 S.C. 231, 236 (1997) ("coverage is triggered whenever the damage can be shown in fact to have first occurred, even if it is before the damage became apparent, and the policy in effect at the time of the injury-in-fact covers all the ensuing damage"). There is no triable issue that the Receiver paid damages on behalf of Covil for Rollins' bodily injury that occurred during the period of the Penn National coverage.

C. Penn National Cannot Show That the Products Hazard or Completed Operations Hazard Exclusions Apply to the *Rollins* Action

Insurance policy exclusions are construed "most strongly" *against* the insurance company that wrote the exclusion, thus placing the burden squarely onto the insurer to establish the exclusion's applicability. *Boggs v. Aetna Cas. and Sur. Co*., 272 S.C. 460 (1979). Here, Penn National contends that exclusions in its policy for damages for bodily injury within the "products hazard" and "completed operations hazard" bar coverage for the *Rollins* Action. Penn National is wrong.

It has been long-established that the risk insured by the "products hazard" and the "completed operations hazard" is "the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than the product or completed work itself . . . ." Roger C. Henderson, *Insurance Protection For Products Liability And Completed Operations – What Every Lawyer Should Know*, 50 Neb. L. Rev. 415, 441 (1971), attached as Exhibit J. By contrast, "[w]here an insured begins an operation and the evidence shows it is still in progress" when an injury or damage occurs, the applicable hazard is "premises-operations" and not "completed operations." *Id*. at 434-35.

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It is undisputed that Ashworth performed pipe, pump and boiler work at the Bowater between 1986 and 1988. He died of asbestos-related cancer in 2018. As noted above, Contract No. 4192-F-6410 obligated Covil to "[f]urnish all supervision, labor, equipment and tools, materials (except as noted), and incidentals required to supply and install all insulation on required piping systems" at Bowater. Exhibit G at 1. Covil performed this work *at least* between March 11, 1986 and January 25, 1987, earning more than $1,200,000 for its services. *See* Exhibits H and I. The first Penn National policy was on the risk between March 31, 1986 and March 31, 1987. *See* Exhibit A.

It is therefore undisputed that Ashworth did pipe, pump and boiler work at Bowater *while* Covil was installing "all insulation on required piping systems" at the site in 1986 and 1987. Ashworth thus was exposed to asbestos *during* the period of the Penn National coverage and *before* Covil completed its work at Bowater. Covil's completed work, or its "completed operations," did not cause Ashworth's mesothelioma. It is therefore is also undisputed that Rollins incurred "take home" exposure to asbestos via Ashworth *before* Covil completed its piping insulation work at Bowater under Contract No. 4192-F-6410.

Penn National therefore cannot show that the *Rollins* Action, and the Receiver's resulting settlement of Rollins' claim for bodily injury, is within either the "products hazard" or the "completed operations hazard" of the March 31, 1986 to March 31, 1987 Penn National policy. Covil is entitled to judgment as a matter of law that the settlement is covered under the Penn National policy issued to Covil between March 31, 1986 and March 31, 1987.

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IV. CONCLUSION

There is no triable issue as to Penn National's obligation to indemnify Covil against the settlement of the *Rollins* Action. Judgment should be entered in favor of Covil.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

s/ Jescelyn T. Spitz
Jescelyn T. Spitz (SC Bar 101880)
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, SC 29201
803.978.6111
jspitz@rplegalgroup.com

Attorney for the Receiver

This 22nd Day of April, 2020

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DECLARATIONS
POLICY
NON-ASSESSABLE

PENNSYLVANIA NATIONAL...
Mutual Casualty
INSURANCE COMPANY
1000 DERRY STREET, HARRISBURG, PENNSYLVANIA 17105
Established 1919

PM or RN: [illegible]

SERO #015
Covil Corporation, Inc. (See 70-53)
P O Box 1804
Greenville, Greenville, SC 29602

NEW
99
2 3 1793 6567

ITEM 2. POLICY PERIOD FROM 3-31-86 TO 3-31-87
12:01 AM STANDARD TIME AT LOCATION OF DESIGNATED PREMISES

AGENCY: Sam J rain & Co., Inc.
AGENCY NUMBER: 6729
ISSUING DATE: 4-14-86 mt
PRODUCER ID:

In Consideration of the premium insurance is provided the named insured with respect to the designated premises shown in Item 4 below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:

3 Audit Period: Annual, unless otherwise stated: The Named Insured is: ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other:

4 Designated Premises (ENTER SAME IF SAME LOCATION AS ITEM 1 ABOVE) — Tax Dist. — Occupancy of Premises
See MP1205 — See MP1205

Multiple buildings or premises as designated on Supplemental Declarations attached

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

	COVERAGES	CON INSURANCE APPLIES	LIMITS OF LIABILITY			
SECTION I PROPERTY COVERAGE	Building(s)	$	$		$	
	Personal Property of the Insured	$ See MP1205	$		$	
	Personal Property of Others	$	$		$	
	A. [illegible] (Specify)					

Deductible: See 70-16 each occurrence $ aggregate each occupancy
If no deductible stated above, the deductible shall be $100 each occurrence, $100 aggregate each occupancy

SECTION II LIABILITY COVERAGE	Bodily Injury and Property Damage Liability Combined Single Limit	$ 1,000,000	each occurrence	$ 1,000,000	aggregate
	Bodily Injury Liability	$	each occurrence	$	aggregate
	Property Damage Liability	$	each occurrence	$	aggregate
	Premises Medical Payments	$ 1,000	each person	$	each accident
	Addl. Cov (Specify) PI-1				
SECT III	CRIME COVERAGE XX	As stated in the endorsement, made part of this Policy, if indicated by X			
SECT IV	BOILER AND MACHINERY COVERAGE ☐				

6 Forms and Endorsements made part of this policy at time of issue (See Forms Index)
a. Section I - Forms and Endorsements only: MP0315(4/80) MP0090(7/77) MP0127(12/79) IL0018(10/84) MP0013(10/83) 70-53 MP0014(10/83) MP0420(1/83) 70-627 70-640 70-16 No 520(9/65)
b. Section II - Forms and Endorsements only: GL0104(7/66) GL9918(3/83) GL0032(4/84) GL2133(2/85) 70-1656(7/85) GL0031(4/84) CGL-1 MP-1 PI-1 GL0300(7/81) 70-260 73-3010
c. Section III - Forms and Endorsements only: MP0450(12/79) MP5231(7/77) MP0307(7/77)
d. Section IV - Forms and Endorsements only:

7 Mortgagee: (Name and Address) Bldg 1)Community Bank, P O Box 6807 Greenville, SC 29602

8 The Total Advance Premium is $ [redacted] and is payable $ [redacted] at inception, and $ XXXXXXXXXX at each anniversary.
Unless indicated by an X in the box below as "NOT APPLICABLE", the premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date. ☐ NOT APPLICABLE

THIS POLICY PROVIDES LIMITED COVERAGE FOR POLLUTION LIABILITY. READ YOUR POLICY CAREFULLY.

Countersigned By: _____ Authorized Agent

[illegible] REV 10 84 HOME OFFICE COPY

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COMPREHENSIVE GENERAL LIABILITY INSURANCE COVERAGE PART

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

HARRISBURG, PENNSYLVANIA

SCHEDULE

Policy No.

GENERAL LIABILITY HAZARDS

DESCRIPTION OF HAZARDS	CODE NO.	PREMIUM BASES	RATES BODILY INJURY	RATES PROPERTY DAMAGE	ADVANCE PREMIUM BODILY INJURY	ADVANCE PREMIUM PROPERTY DAMAGE
Premises—Operations	Indicate Subline	(a) Area (sq ft) (b) Frontage (c) Remuneration (d) Receipts (e) No Units	(a) Per 100 sq ft. of Area (b) Per linear ft. Per $100 of Remuneration (c) Per $100 of Receipts Per Unit			
See 70-260					18,192	Incl
Escalators (Number at Premises)	Subline 314	Number Insured	Per Landing			
Cov Subj to Audit						
Independent Contractors	Subline 315	Cost	Per $100 of Cost			
Construction operations-contracto, not railroads-excluding operation. on board ships Loc 1)T39-999	6291	3,000,000	.044	Incl.		
Products/Completed Operations	Subline 316	(a) Receipts	(a) Per $1,000 of Receipts			
Excluded						
				Total Advance B.I. and P.D. Premiums	19512	Incl.
				Total Advance Premium	$ 19512	

Location of all premises owned by, rented to or controlled (ENTER "SAME" IF SAME AS ITEM 1. OF DECLARATIONS) by the named insured See MP1205

Interest of named insured in such premises Owner "OWNER", "GENERAL LESSEE" OR "TENANT"

Part occupied by named insured Entire

The foregoing discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein.

When used as a premium basis

"admissions" means the total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;

"cost" means the total cost to the named insured with respect to operations performed for the named insured during the policy period by independent contractors of all work let or sublet in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;

"receipts" means the gross amount of money charged by the named insured for such operations by the named insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures and includes taxes other than taxes which the named insured collects as a separate item and remits directly to a governmental division;

"remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the named insured, other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime, bonus, or limitation of remuneration rule applicable in accordance with the manuals in use by the company;

"sales" means the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period, not charged during the policy period for installation, service or repair, and includes taxes, other than taxes which the named insured and such others collect separately and remit directly to a governmental division.

Form CGL 1 Rev 11 84

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PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

EXTENSION SCHEDULE

Policy No.

GENERAL LIABILITY HAZARDS

DESCRIPTION OF HAZARDS	CODE NO.	PREMIUM BASES	RATES		ADVANCE PREMIUMS	
			Bodily Injury	Property Damage	Bodily Injury	Property Damage
Premises – Operations		(a) Area (sq. ft.) (b) Frontage (c) Remuneration (d) Receipts (e) No. Units	(a) Per 100 sq. ft. of Area (b) Per lineal ft. (c) Per $100 of Remuneration (d) Per $100 of Receipts (e) Per Unit			
Insulation work-installation or application of accoustical or thermal insulating material in buildings or within building walls-NOC						
1) T39-999	(313)	15161	)800,000	.679	Incl	5432 Incl
2)T09-999	(313)	15161	c)70,000	2.203	Incl	1542 Incl
3)T32-999	(313)	15161	c)600,000	1.436	Incl	8616 Incl
4)T10-999	(313)	15161	c)80,000	1.929	Incl	1543 Incl
5) T16-999	(313)	15161	c)If Any	1.304	Incl	--
6) T41-999	(313)	15161	c)10,000	1.502	Incl	150 Incl
7) T45-999	(313)	15161	cOIf Any	1.493	Incl	-- --
8) T23-999	(313)	15161	c)If Any	1.107	Incl	-- --
Contractors Construction or Erection-executive supervisors exercising supervision through superintendents and foremen--not direct supervision						
Loc 1)T39-999	(313)	15192	c)26,000	1.297	Incl	337. Incl
Loc 2)T09-999	(313)	15192	c)If Any	8. 691	Incl	-- --
Loc 3)T32-999	(313)	15192	c)if Any	2.352	Incl	-- --
Loc 4)T10-999	(313)	15192	c)If Any	3.659	Incl	-- --
Loc 9)T01-999	(313)	15192	c)If Any	8.451	Incl	-- --
Air Conditioning, Heating or Refrigeration Systems or Combined heating and Air cond Systems including duct work and piping-installation, servicing or repair-including shop and repair-including shop and retail stores or display rooms						
Loc 1)T39-999		17140	c)50,000	1.144	Incl	572. Incl.
Paper Hanging						
Loc 1) T39-999	(313)	17235	c)If Any	.928	Incl	--
Loc 3)T32-999	(313)	17235	c)if Any	2.844	Incl	-- --
Loc 4)T10-999	(313)	17235	c)If Any	1.869	Incl	-- --
Loc 9)T01-999	(313)	17235	c)If Any	3.570	Incl	-- --

Form 79-260

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CHANGE ENDORSEMENT

MP 12 01 (Ed. 02 79)

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW:

ENDORSEMENT EFFECTIVE DATE	POLICY NUMBER	TERM YRS	FROM	TO
3-31-86	516 50 28 53 7	1	3-31-86	3-31-87

COMPANY Pa Nat Mut Cas Ins Co.

INSURED'S NAME AND MAILING ADDRESS

Covil Corporation, Inc.
P O Box 1804
Greenville, SC 29602

AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADDRESS

Sam J Crain & Co., Inc.

PRODUCER CODE 22-6729

POLICY CHANGES

Amending policy to delete products form GL0031(4/84), and Add GI2104(7/66) Products hazard exclusion as it was left off at renewal.
No change in rates or premiums.

Insured's Signature

SPECIFY FORM NOS. AND EDITION DATES AFFECTED BY POLICY CHANGES:

Pro Rata 100%

SECTION I—PROPERTY COVERAGE

Coverage Description	Loc. No.	Bldg. No.	LIMITS OF LIABILITY Previous	LIMITS OF LIABILITY New	RATES Previous	RATES New	PREMIUMS Previous	PREMIUMS New	☐ Add'l ☐ Return
			$	$			$	$	$
			$	$			$	$	$
			$	$			$	$	$
			$	$			$	$	$

SECTION II—LIABILITY COVERAGE

COVERAGE	LIMITS OF LIABILITY Previous	LIMITS OF LIABILITY New	PREMIUMS Previous	PREMIUMS New	☐ Add'l ☐ Return
SMP Liability Insurance Form: Bodily Injury and Property Damage Liability (Combined Single Limit)	$ ea. Occurrence / $ Aggregate	$ ea. Occurrence / $ Aggregate	$	$	$
☐ Premises Medical Payments ☐ SMP Liability Insurance Form ☐ Medical Payments Coverage Part	$ ea. Person / $ ea. Accident	$ ea. Person / $ ea. Accident	$	$	$
☐ Forms other than SMP Liability Insurance Form Specify Coverage Part	BODILY INJURY LIABILITY: $ ea. Occurrence / $ Aggregate	$ ea. Occurrence / $ Aggregate	$	$	$
	PROPERTY DAMAGE LIABILITY: $ ea. Occurrence / $ Aggregate	$ ea. Occurrence / $ Aggregate	$	$	$
☐ Revised Dual Limits:					

INSTALLMENT PAYMENT PREMIUMS

	Previous Installments	Additional Premium	Return Premium	Revised Installments
Doc #1 #015 #6567 5-23-86 mt				
Dates of subsequent installments, 2.	$	$	$	$
if payable in annual installments: 3.	$	$	$	$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT: 3-31-86		$	$	
Total for remainder of policy term:		$ NC	$ NC	

MP 12 01 (Ed. 02 79) _____ Agency, By _____

GL 21 04
(Ed. 07 66)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective | Policy No. | Endorsement No.

Named Insured

Countersigned by
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following

COMPREHENSIVE GENERAL LIABILITY INSURANCE
SMP LIABILITY INSURANCE

EXCLUSION

(Completed Operations Hazard and Products Hazard)

It is agreed that such insurance as is afforded by the Bodily Injury Liability Coverage and the Property Damage Liability Coverage does not apply to bodily injury or property damage included within the Completed Operations Hazard or the Products Hazard.

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PREMISES MEDICAL PAYMENTS INSURANCE COVERAGE PART

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

HARRISBURG, PENNSYLVANIA

HOME OFFICE COPY

SCHEDULE General—Automobile Liability Policy No.

	COVERAGE	ADVANCE PREMIUM
(a) Premises and operations	15161, 15192, 17140,17235	$
(b) Escalators		$
(c) Sports activities		$
	Total Advance Premium	$ 66.

I **COVERAGE E—PREMISES MEDICAL PAYMENTS**

The company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **named insured** is afforded coverage for **bodily injury** liability under this policy.

Exclusions

This insurance does not apply:

(a) to **bodily injury**

(1) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**, or

(ii) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**;

but this exclusion does not apply to the parking of an automobile on the **insured premises**, if such **automobile** is not owned by or rented or loaned to any **insured**;

(2) arising out of (i) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed, demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (ii) the operation or use of any snowmobile or trailer designed for use therewith;

(3) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any watercraft owned or operated by or rented or loaned to any **insured**, or

(ii) any other watercraft operated by any person in the course of his employment by any **insured**;

but this exclusion does not apply to watercraft while ashore on the **insured premises**; or

(4) arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to any **insured**;

(b) to **bodily injury**

(1) included within the **completed operations hazard** or the **products hazard**;

(2) arising out of operations performed for the **named insured** by independent contractors other than (i) maintenance and repair of the **insured premises** or (ii) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage (i) in violation of any statute, ordinance or regulation, (ii) to a minor, (iii) to a person under the influence of alcohol or (iv) which causes or contributes to the intoxication of any person, if the **named insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the **named insured** is such an owner or lessor;

(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(c) to **bodily injury**

(1) to the **named insured**, any partner therein, any tenant or other person regularly residing on the **insured premises** or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;

(2) to any other tenant if the **bodily injury** occurs on that part of the **insured premises** rented from the **named insured** or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the **insured premises** and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the **insured premises** or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such **bodily injury** are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest unless a premium charge is entered for sport activities in the policy with respect to Premises Medical Payments Coverage;

to any **medical expense** for services by the **named insured**, any employee thereof or any person or organization under contract to the **named insured** to provide such services.

LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage stated in the declarations as applicable to "each person" is the limit of the company's liability for all **medical expense** for **bodily injury** to any one person as the result of any one accident, but subject to the above provision respecting "each person", the total liability of the company under Premises Medical Payments Coverage for all **medical expense** for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the declarations as applicable to "each accident".

When more than one medical payments coverage afforded by this policy applies to the loss, the company shall not be liable for more than the amount of the highest applicable limit of liability.

II **ADDITIONAL DEFINITIONS**

When used in reference to this insurance (including endorsements forming part of the policy):

"**insured premises**" means all premises owned by or rented to the **named insured** with respect to which the **named insured** is afforded coverage for **bodily injury** liability under this policy, and includes the ways immediately adjoining on land;

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

IV. **POLICY PERIOD; TERRITORY**

This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

V **ADDITIONAL CONDITION**

Medical Reports; Proof and Payment of Claim

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

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GL 99 17
(Ed. 03 81)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.
(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE

AMENDMENT—LIMITS OF LIABILITY

(Single Limit)

(Individual Coverage Aggregate Limit)

SCHEDULE

Coverage	Limits of Liability
Bodily Injury Liability and Property Damage Liability	$1,000,000 each occurrence $1,000,000 aggregate

It is agreed that the provisions of the policy captioned "LIMITS OF LIABILITY" relating to Bodily Injury Liability and Property Damage Liability are amended to read as follows:

LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the company's liability is limited as follows:

Bodily Injury Liability and Property Damage Liability:

(a) The limit of liability stated in the Schedule of this endorsement as applicable to "each occurrence" is the total limit of the company's liability for all damages including damages for care and loss of services because of bodily injury and property damage sustained by one or more persons or organizations as a result of any one occurrence, provided that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province such limit of liability shall be applied to provide the separate limits required by such law for Bodily Injury Liability and Property Damage Liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the company's liability.

(b) Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all bodily injury and property damage which occurs during each annual period while this policy is in force commencing from its effective date and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Schedule of this endorsement as "aggregate":

(1) all property damage arising out of premises or operations rated on a remuneration basis or Contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;

(2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) if Products—Completed Operations insurance is afforded, all bodily injury and property damage included within the completed operations hazard and all bodily injury and property damage included within the products hazard;

(4) if Contractual Liability Insurance is afforded, all property damage for which liability is assumed under any contract to which the Contractual Liability Insurance applies.

Such aggregate limit shall apply separately:

(i) to the property damage described in subparagraphs (1) and (2) and separately with respect to each project away from premises owned by or rented to the named insured;

(ii) to the sum of the damages for all bodily injury and property damages described in subparagraph (3); and

(iii) to the property damage described in subparagraph (4) and separately with respect to each project away from premises owned by or rented to the named insured.

(c) For the purpose of determining the limit of the company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general condition shall be considered as arising out of one occurrence.

The Attaching Clause need be completed only when any of these endorsements are issued subsequent to preparation of the policy.

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

Policy . . . . . Issued to . . . . . .

Effective . . . . . Agent . . . . . .

. . . . . Authorized Representative . . . . . .

SPECIAL NAMED INSURED ENDORSEMENT

It is agreed that the person(s) or organization(s) named in the Declarations of this policy is(are) as follows:

Covil Corporation, Inc.
Covil Residential Insulation, Inc.
Covil Construction Co., Inc. (Dormant Corp)
C & J Realty Co., Inc. (Dormant Corp)
Industrial and Associated, Inc. (Dormant Corp)
John Hamrick Link - President
James P Covil-Vice President
Yvonne W Wells - Corporate Secretary and Treasurer
Charles McWhorter - Assistant Corporate Secretary

It is further agreed that all named insureds are owned and controlled by the same financial interest.

It is further agreed that the inclusion of more than one insured shall not operate to increase the limits of the Company's liability.

Form 70-53 (Rev. 4/84)

ELECTRONICALLY FILED - 2020 Apr 22 6:49 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

ELECTRONICALLY FILED - 2020 Apr 22 6:49 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

GL 03 00
(Ed. 07 81)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE
SMP LIABILITY INSURANCE

DEDUCTIBLE LIABILITY INSURANCE

It is agreed that:

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on behalf of the insured, applies only to the amount of damages in excess of any deductible amounts stated in the schedule below as applicable to such coverages, and the limit of liability shown in this policy as being applicable to "each occurrence" for such coverages shall be reduced by the amount of such deductible. The limit of liability shown in this policy as "aggregate", if any, for such coverages shall not be reduced by the application of such deductible amount.

   The deductible amounts stated in the schedule apply as follows:

   (a) **PER CLAIM BASIS**—if the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of bodily injury sustained by one person, or to all property damage sustained by one person or organization, as the result of any one occurrence.

   (b) **PER OCCURRENCE BASIS**—if the deductible is on a "per occurrence" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of all bodily injury or property damage as the result of any one occurrence, regardless of the number of persons or organizations who sustain damages because of that occurrence.

3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the insured's duties in the event of an occurrence apply irrespective of the application of the deductible amount.

4. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the named insured shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

SCHEDULE

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	$	per claim
	$	per occurrence
Property Damage Liability	$ 1,000	per claim
	$	per occurrence

APPLICATION OF ENDORSEMENT (Enter here any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to all loss however caused):—

SPECIAL MULTI-PERIL POLICY
NON-ASSESSABLE

Pennsylvania National Insurance Companies

Penn-America National Mutual Casualty Insurance Company
P.O. Box 2361 • Harrisburg, PA 17105

POLICY NO. 515 50 28 53-8

REGIONAL OFFICE: SERO 025

IN LIEU OF 515 50 28 53-7

ITEM 1. INSURED'S NAME AND MAILING ADDRESS (LAST NAME FIRST)

Covil Corporation, Inc. (See 70-53
P OBox 18[illegible]4
Greenville, Greenville, SC 29602

TRAD PLAN 99
RISK TYPE 3 RISK CLASS 2093 EMPLOYEE NUMBER 69[illegible]7

ITEM 2. POLICY PERIOD FROM: 3/31/87 TO 3/31/88
12:01 AM STANDARD TIME AT LOCATION OF DESIGNATED PREMISES

AGENCY: Sam J Crain & Co.,Inc.
AGENCY NUMBER 22 6729
ISSUING DATE 4/8/87 PRODUCER I.D.

In Consideration of the premium insurance is provided the named insured with respect to the designated premises shown in Item 4 below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof.

3. Audit Period: Annual, unless otherwise stated: The Named Insured is: ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other:

4. Designated Premises (ENTER "SAME" IF SAME LOCATION AS ITEM 1 ABOVE) — Tax Dist. — Occupancy of Premises

1. 131 Pensley Cir. Greenville, Greenville, SC — Warehouse
2. Same — Warehouse
3.
4.

Multiple buildings or premises as designated on Supplemental Declarations attached.

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

	COVERAGES	CONSTRUCTION % APPLICABLE	Bldg. No.	Loc. No.	LIMITS OF LIABILITY	Bldg. No.	Loc. No.	Bldg. No.
			1					
SECTION I PROPERTY COVERAGE	Building(s)	80	$ 89 [illegible]	1	$	$	$	
	Personal Property of the Insured	80	$ 1 [illegible]00 000		$	$	$	
	Personal Property of Others		$		$	$	$	
	Addl. Cov. (Specify) MP0420							

Deductible: $ See 70-627 each occurrence, $ See 70-627 aggregate each occurrence.
If no deductible stated above, the deductible shall be $100 each occurrence, $1,000 aggregate each occurrence.

SECTION II LIABILITY COVERAGE	Bodily Injury and Property Damage Liability Combined Single Limit	$ 0	each occurrence	$	aggregate
	Bodily Injury Liability	$	each occurrence	$	aggregate
	Property Damage Liability	$	each occurrence	$	aggregate
	Premises Medical Payments	$ 1,000	each person	$	each accident
	Addl. Cov. (Specify) PI-1				

SECT. III CRIME COVERAGE ☐ NOT APPLICABLE
SECT. IV BOILER AND MACHINERY COVERAGE ☐

As stated in the endorsement, made part of this Policy, if indicated by ☒.

6. Forms and Endorsements made part of this policy at time of issue (Insert No. and Ed. Date):
a. Section I - Forms and Endorsements only: MP0315 4/80 MP0090 7/77 MP0127 4/86 IL0018 10/84 MP0013 10/83 70-53 MP0014 10/83 MP0420 1/83 70-627 70-640 70-16 MO.520 9/65 70-1911 9/86 IL0928 5/86
b. Section II - Forms and Endorsements only: GL0104 7/66 GL9918 3/83 GL0032 4/84 70-1656 7/85 CGL-1 MP-1 PI-1 GL0300 7/81 70-260 73-3010
c. Section III - Forms and Endorsements only: MP0450 12/79 MP5231 7/77 MP0307 7/77 IL0249 9/86 GL2104 7/66
d. Section IV - Forms and Endorsements only: MP2405 7/77

7. Mortgagee: (Name and Address) Bldg. 1) Community Bank, P O Box 6807 Loc. 1) Bldg. 1) First Federal of SC Greenville, SC 29602 2304 W. Parker Rd. G

8. The Total Advance Premium is $ and is payable $ at inception, and $ at each anniversary.
Unless indicated by an X in the box below as "NOT APPLICABLE", the premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date. ☐ NOT APPLICABLE

THIS POLICY PROVIDES LIMITED COVERAGE FOR POLLUTION! LIABILITY. READ YOUR POLICY CAREFULLY!

Countersigned By: Authorized Agent

C[illegible] D BY SR

PCA [illegible] (REV. 10/84) HOME OFFICE COPY

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ELECTRONICALLY FILED - 2020 Apr 22 6:49 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

The Attaching Clause need be completed only when any of these endorsements are issued subsequent to preparation of the policy.

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

Policy Number Effective Expiring Issued to

Authorized Representative

SPECIAL NAMED INSURED ENDORSEMENT

It is agreed that the person(s) or organization(s) named in the Declarations of this policy is(are) as follows:

Covil Corp.,Inc. Covil Residentail Insulation, Inc. CovilConst. Co., Inc. (Dorman Corp.) Industrial and Assoc. Inc. (Dorman Corp.) John Hamrick Lin - Pres. James P. Covil-Vice Pres. Yvonne W. Wells-Corporate Sec. and Treas. Charles McWhorter Assist. Corp. Sec.

It is further agreed that all named insureds are owned and controlled by the same financial interest.

It is further agreed that the inclusion of more than one insured shall not operate to increase the limits of the Company's liability.

Form 70-53 (Rev. 4/64)

GL 21 04
(Ed. 07 66)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following
COMPREHENSIVE GENERAL LIABILITY INSURANCE
SMP LIABILITY INSURANCE

EXCLUSION

(Completed Operations Hazard and Products Hazard)

It is agreed that such insurance as is afforded by the Bodily Injury Liability Coverage and the Property Damage Liability Coverage does not apply to bodily injury or property damage included within the Completed Operations Hazard or the Products Hazard.

ELECTRONICALLY FILED - 2020 Apr 22 6:49 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

ELECTRONICALLY FILED - 2020 Apr 22 2:42 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

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

ELECTRONICALLY FILED - 2020 Nov 02 2:42 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001926

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.)

ELECTRONICALLY FILED - 2018 Nov 02 02:42 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

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 FILED - 2019 Apr 19 8:34 PM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF HAMPTON)	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**

DAVID D. ROLLINS *Plaintiff,* v. **AIR & LIQUID SYSTEMS CORPORATION,** individually and as successor-in-interest to BUFFALO PUMPS **ARMSTRONG INTERNATIONAL, INC.** **ASTENJOHNSON, INC.,** individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO. **AURORA PUMP COMPANY** **CARAUSTAR INDUSTRIES, INC.,** sued individually and as successor in-interest-to STAR PAPER TUBE, INC. **CELANESE CORPORATION** **CLEAVER-BROOKS, INC.,** f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION **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. **COVIL CORPORATION** **CRANE CO.** **DEZURIK, INC.**	**C/A NO.** 2019-CP-25-00118 In Re: Asbestos Personal Injury Litigation Coordinated Docket Living Mesothelioma ***AMENDED COMPLAINT*** (Jury Trial Demanded)

ELECTRONICALLY FILED - 2019 Apr 10 8:34 AM - HAMPTON - COMMON PLEAS - CASE#2019CP2500126

THE DOW CHEMICAL COMPANY)
)
DANIEL INTERNATIONAL CORPORATION)
)
E. I. DU PONT DE NEMOURS AND COMPANY)
)
FLOWSERVE CORPORATION)
)
FLOWSERVE US INC.)
)
FLUOR CONSTRUCTORS INTERNATIONAL,)
f/k/a/ FLUOR CORPORATION)
)
FLUOR CONSTRUCTORS INTERNATIONAL, INC.)
)
FLUOR DANIEL SERVICES CORPORATION)
)
FLUOR ENTERPRISES, INC.)
)
FMC CORPORATION)
)
FOSTER WHEELER ENERGY CORPORATION)
)
GABRIEL PHENOXIES, INC., sued)
individually and as successor in-interest-to)
INCHEM CORPORATION)
)
GARDNER DENVER, INC.)
)
GENERAL ELECTRIC COMPANY)
)
THE GORMAN-RUPP COMPANY)
)
GOULDS PUMPS, INCORPORATED)
)
GRINNELL, LLC,)
d/b/a GRINNELL CORPORATION)
)
INGERSOLL-RAND COMPANY)
)

ELECTRONICALLY FILED - 2019 Apr 12 8:34 AM - HAMPTON - COMMON PLEAS - CASE#2019CP2500128

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

JOHN CRANE, INC.

MOR PPM, INC., f/k/a POWER & PLANT MAINTENANCE COMPANY, INC.

NEWCO VALVES, LLC, d/b/a NEWMANS

PFIZER, INC.

RESOLUTE FP US INC., individually and successor-in-interest to BOWATER, INC.

RILEY POWER, INC., f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.

SCAPA WAYCROSS, INC.

SEAL & DESIGN, INC., HIGBEE DIVISION, sued individually and as successor in-interest-to HIGBEE, INC.

SPIRAX SARCO, INC.

SPRINGS GLOBAL US, INC.

SPRING INDUSTRIES, INC.

SPX COOLING TECHNOLOGIES, INC., individually and successor-in-interest to MARLEY COOLING TOWERS CO.

STARR DAVIS COMPANY, INC.

STARR DAVIS COMPANY OF S.C., INC.

ELECTRONICALLY FILED - 2019 Apr 12 8:49 AM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118

SOS INTERNATIONAL, LLC)
)
SOUTHERN INSULATION COMPANY)
)
SULZER PUMPS (US), INC.)
)
VELAN VALVE CORP.)
)
VIKING PUMP, INC.)
)
WARREN PUMPS, LLC)
)
WEIR VALVES & CONTROLS USA, INC., individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.)
)
ZURN INDUSTRIES, LLC, individually and as successor-in-interest to ZURN INDUSTRIES, INC.)
)
Defendants.)

GENERAL ALLEGATIONS

Plaintiff DAVID D. ROLLINS, (hereinafter "Plaintiff"), sues the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

1. Plaintiff David D. Rollins has been diagnosed with mesothelioma.

2. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants' conduct in:

(a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;

(b) Contracting to supply services or things in the State;

(c) Commission of a tortious act in whole or in part in this State;

ELECTRONICALLY FILED - 2019 Apr 19 8:34 AM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118

(d) Having an interest in, using, or possessing real property in this State; and/or

(e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Plaintiff's claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

4. Plaintiff's claims against the Premises Defendants, as defined herein, arise out of Defendants' ownership and/or control of real property located in South Carolina and the purchase and use of asbestos-containing products on their premises located in South Carolina.

5. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff David D. Rollins to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

6. Plaintiff David D. Rollins' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

7. Plaintiff David D. Rollins was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

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8. Plaintiff David D. Rollins worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

9. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiff's remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
AIR & LIQUID SYSTEMS CORPORATION	individually and as successor-in-interest to BUFFALO PUMPS
ASTENJOHNSON, INC.	individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO.
CARAUSTAR INDUSTRIES, INC.	sued individually and as successor in-interest-to STAR PAPER TUBE, INC.
CLEAVER-BROOKS, INC.	f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION
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.

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DEFENDANT	ALTERNATE ENTITY
FLUOR CONSTRUCTORS INTERNATIONAL	f/k/a FLUOR CORPORATION
GABRIEL PHENOXIES, INC.	sued individually and as successor in-interest-to INCHEM CORPORATION
GRINNELL, LLC	d/b/a GRINNELL CORPORATION
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
MOR PPM, INC.	f/k/a POWER & PLANT MAINTENANCE COMPANY, INC.
NEWCO VALVES, LLC	d/b/a NEWMANS
RESOLUTE FP US INC.	individually and successor-in-interest to BOWATER, INC.
RILEY POWER, INC.	f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.
SEAL & DESIGN, INC., HIGBEE DIVISION	sued individually and as successor in-interest-to HIGBEE, INC., f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC.
SPX COOLING TECHNOLOGIES, INC.	individually and successor-in-interest to MARLEY COOLING TOWERS CO.
WEIR VALVES & CONTROLS USA, INC.	individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.
ZURN INDUSTRIES, LLC	individually and as successor-in-interest to ZURN INDUSTRIES, INC.

10. Plaintiff has been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their "alternate entities" were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in

ELECTRONICALLY FILED - 2019 Apr 12 8:34 AM - HAMPTON - COMMON PLEAS - CASE#2019CP2500218

the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

11. Plaintiff has been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

12. As a direct and proximate result of the conduct as alleged within, Plaintiff David D. Rollins has suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

13. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

14. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins has incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

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THE PARTIES

15. The Plaintiff David D. Rollins is currently a resident of the State of South Carolina. He was exposed to asbestos during the course of his career, including but not limited to, various job sites located in South Carolina.

16. The Defendants that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material. Defendants that owned and/or controlled the work sites where Plaintiff David D. Rollins experienced occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity are referred to herein as the "Premises Defendants."

17. Defendant, **AIR & LIQUID SYSTEMS CORPORATION** was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps. AIR & LIQUID SYSTEMS CORPORATION is sued as a Product Defendant. Plaintiff's claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

18. Defendant, **ARMSTRONG INTERNATIONAL, INC.** was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto,

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ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, and/or products, materials or equipment foreseeably intended for use with asbestos and/or asbestos-containing products, including, but not limited to, asbestos-containing Armstrong steam traps and strainers. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

19. Defendant, **ASTENJOHNSON, INC.,** individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO. was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, ASTENJOHNSON, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Asten felt. ASTENJOHNSON, INC. is sued as a Product Defendant. Plaintiff's claims against ASTENJOHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

20. Defendant, **AURORA PUMP COMPANY** was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, AURORA PUMP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Aurora pumps. AURORA PUMP COMPANY is sued as a Product Defendant. Plaintiff's claims

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against AURORA PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

21. Defendant, **CARAUSTAR INDUSTRIES, INC.** sued individually and as successor in-interest-to STAR PAPER TUBE, INC. was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CARAUSTAR INDUSTRIES, INC., owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Star Paper Tube facilities in Rock Hill, South Carolina. CARAUSTAR INDUSTRIES, INC. is sued as a Premise Defendant. Plaintiff's claims against CARAUSTAR INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **CELANESE CORPORATION** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CELANESE CORPORATION, owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Hoechst Celanese facilities in Rock Hill, South Carolina and Spartanburg, South Carolina. CELANESE CORPORATION is sued as a Premise Defendant. Plaintiff's claims against CELANESE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **CLEAVER-BROOKS, INC.**, f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing

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products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers. CLEAVER-BROOKS, INC., is sued as a Product Defendant. Plaintiff's claims against CLEAVER-BROOKS, INC., arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **CNA HOLDINGS LLC** was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, CNA HOLDINGS LLC, owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Hoechst Celanese facilities in Rock Hill, South Carolina and Spartanburg, South Carolina. CNA HOLDINGS LLC is sued as a Premise Defendant. Plaintiff's claims against CNA HOLDINGS LLC arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **COVIL CORPORATION** was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. COVIL CORPORATION is sued as a Product Defendant. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **CRANE CO.** was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or

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retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves, as well as, Jenkins valves. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **DEZURIK, INC.** was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, DEZURIK, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Dezurik valves. DEZURIK, INC. is sued as a Product Defendant. Plaintiff's claims against DEZURIK, INC. arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **THE DOW CHEMICAL COMPANY** was and is a Delaware corporation with its principal place of business in Michigan. At all times material hereto, THE DOW CHEMICAL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. THE DOW CHEMICAL COMPANY, also owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, THE DOW CHEMICAL COMPANY facility in Charlotte, North Carolina. THE DOW CHEMICAL COMPANY is sued as a Premise Defendant. Plaintiff's claims against THE DOW CHEMICAL COMPANY, arise out of this Defendant's business activities in the State of South Carolina.

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29. Defendant, **DANIEL INTERNATIONAL CORPORATION** was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **E. I. DU PONT DE NEMOURS AND COMPANY** was and is a Delaware with its principal place of business in Delaware. At all times material hereto, E. I. DU PONT DE NEMOURS AND COMPANY owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Du Pont May Plant facility in Camden, South Carolina. E. I. DU PONT DE NEMOURS AND COMPANY is sued as a Premise Defendant. Plaintiff's claims against E. I. DU PONT DE NEMOURS AND COMPANY arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **FLOWSERVE CORPORATION** was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durco pumps and valves. FLOWSERVE CORPORATION is sued as a Product Defendant.

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Plaintiff's claims against FLOWSERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **FLOWSERVE US INC.** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE US INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves. FLOWSERVE US INC. is sued as a Product Defendant. Plaintiff's claims against FLOWSERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR CONSTRUCTORS INTERNATIONAL is sued as a Product Defendant. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed

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substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **FLUOR DANIEL SERVICES CORPORATION** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. Plaintiff's claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **FLUOR ENTERPRISES, INC.** was and is a California corporation with its principal place of business in California. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. Plaintiff's claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

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37. Defendant, **FMC CORPORATION** was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Chicago pumps and Peerless pumps. FMC CORPORATION is sued as a Product Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and steam air ejectors. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **GABRIEL PHENOXIES, INC.**, sued individually and as successor in-interest-to INCHEM CORPORATION was and is a North Carolina corporation with its principal place of business in Ohio. At all times material hereto, GABRIEL PHENOXIES, INC., owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, InChem facilities in Rock Hill, South Carolina. GABRIEL

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PHENOXIES, INC. is sued as a Premise Defendant. Plaintiff's claims against GABRIEL PHENOXIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **GARDNER DENVER, INC.** was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner Denver compressors. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **GENERAL ELECTRIC COMPANY** was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **THE GORMAN-RUPP COMPANY** was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GORMAN-RUPP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing

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Gorman-Rupp pumps, air ejectors, and distilling plants. THE GORMAN-RUPP COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GORMAN-RUPP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **GOULDS PUMPS, INCORPORATED** was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **GRINNELL, LLC** was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell valves. GRINNELL, LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL, LLC arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **INGERSOLL-RAND COMPANY** was and is an New Jersey corporation with its principal place of business in North Carolina. At all times material hereto, INGERSOLL-RAND COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited

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to, asbestos-containing Ingersoll-Rand compressors and pumps. INGERSOLL-RAND COMPANY is sued as a Product Defendant. Plaintiff's claims against INGERSOLL-RAND COMPANY arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **INTERNATIONAL PAPER COMPANY** was and is a New York corporation with its principal place of business in Tennessee. At all times material hereto, INTERNATIONAL PAPER COMPANY owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the International Paper Mill a/k/a Eastover in Columbia, South Carolina. INTERNATIONAL PAPER COMPANY is sued as a Premise Defendant. Plaintiff's claims against INTERNATIONAL PAPER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **ITT LLC** was and is an Indiana limited liability company with its principal place of business in New York. At all times material hereto, ITT LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing McDonnell and Miller valves. ITT LLC is sued as a Product Defendant. Plaintiff's claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **JOHN CRANE, INC.** was and is a Delaware company with its principal place of business in Illinois. At all times material hereto, JOHN CRANE, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing John Crane

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gaskets and packing. JOHN CRANE, INC. is sued as a Product Defendant. Plaintiff's claims against JOHN CRANE, INC. arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **MOR PPM, INC.**, f/k/a POWER & PLANT MAINTENANCE COMPANY, INC. was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, MOR PPM, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. MOR PPM, INC. is sued as a Product Defendant. Plaintiff's claims against MOR PPM, INC. arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **NEWCO VALVES, LLC** was and is a Texas limited liability company with its principal place of business in Texas. At all times material hereto, NEWCO VALVES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing O.I.C. valves. NEWCO VALVES, LLC is sued as a Product Defendant. Plaintiff's claims against NEWCO VALVES, LLC arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **PFIZER, INC.** was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-contaminated talc. PFIZER, INC. is sued as a

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Product Defendant. Plaintiff's claims against PFIZER, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **RESOLUTE FP US INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, RESOLUTE FP US INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Bowater Paper Mill in Catawba, South Carolina. RESOLUTE FP US INC. is sued as a Premise Defendant. Plaintiff's claims against RESOLUTE FP US INC. arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **RILEY POWER, INC.**, f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC. was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley boilers. RILEY POWER, INC. is sued as a Product Defendant. Plaintiff's claims against RILEY POWER, INC. arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **SCAPA WAYCROSS, INC.** was and is a Georgia corporation with its principal place of business in Pennsylvania. At all times material hereto, SCAPA WAYCROSS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Scapa dryer

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felt. SCAPA WAYCROSS, INC. is sued as a Product Defendant. Plaintiff's claims against SCAPA WAYCROSS, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **SEAL & DESIGN, INC.**, HIGBEE DIVISION, sued individually and as successor in-interest-to HIGBEE, INC., f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC. was and is a New York corporation with its principal place of business in New York. At all times material hereto, SEAL & DESIGN, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing gasket material. SEAL & DESIGN, INC. is sued as a Product Defendant. Plaintiff's claims against SEAL & DESIGN, INC. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **SPIRAX SARCO, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **SPRINGS GLOBAL US, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPRINGS GLOBAL US, INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various

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facilities, including but not limited to, Springs Mill facilities in Fort Mills South Carolina and Lancaster, South Carolina. SPRINGS GLOBAL US, INC. is sued as a Premise Defendant. Plaintiff's claims against SPRINGS GLOBAL US, INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **SPRING INDUSTRIES, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPRING INDUSTRIES, INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Springs Mill facilities in Fort Mills South Carolina and Lancaster, South Carolina. SPRING INDUSTRIES, INC. is sued as a Premise Defendant. Plaintiff's claims against SPRING INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **SPX COOLING TECHNOLOGIES, INC.**, was and is a Delaware corporation with its principal place of business in Kansas. At all times material hereto, SPX COOLING TECHNOLOGIES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers. SPX COOLING TECHNOLOGIES, INC. is sued as a Product Defendant. Plaintiff's claims against SPX COOLING TECHNOLOGIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **STARR DAVIS COMPANY, INC.** was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. mined, manufactured, processed, imported, converted,

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compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **STARR DAVIS COMPANY OF S.C., INC.** was and is a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **SOS INTERNATIONAL, LLC** was and is a Delaware Limited Liability Company with its principal place of business in Virginia. At all times material hereto, SOS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. SOS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against SOS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

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63. Defendant, **SOUTHERN INSULATION COMPANY** was and is a South Carolina Company with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. SOUTHERN INSULATION COMPANY is sued as a Product Defendant. Plaintiff's claims against SOUTHERN INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **SULZER PUMPS (US), INC.** was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, SULZER PUMPS (US), INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sulzer/Bingham pumps. SULZER PUMPS (US), INC. is sued as a Product Defendant. Plaintiff's claims against SULZER PUMPS (US), INC. arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **VELAN VALVE CORP.** was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves.

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VELAN VALVE CORP. is sued as a Product Defendant. Plaintiff's claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **VIKING PUMP, INC.** was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps. VIKING PUMP, INC. is sued as a Product Defendant. Plaintiff's claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **WARREN PUMPS, LLC** was and is a Delaware Limited Liability Company with its principal place of business in Massachusetts. At all times material hereto, WARREN PUMPS, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Warren pumps. WARREN PUMPS, LLC is sued as a Product Defendant. Plaintiff's claims against WARREN PUMPS, LLC. arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **WEIR VALVES & CONTROLS USA, INC.** was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, WEIR VALVES & CONTROLS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves. WEIR VALVES &

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CONTROLS USA, INC. is sued as a Product Defendant. Plaintiff's claims against WEIR VALVES & CONTROLS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **ZURN INDUSTRIES, LLC** was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers. ZURN INDUSTRIES LLC is sued as a Product Defendant. Plaintiff's claims against ZURN INDUSTRIES LLC arise out of this Defendant's business activities in the State of South Carolina.

70. Plaintiff David D. Rollins experienced further occupational exposure as a result of employees working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants CARAUSTAR INDUSTRIES, INC.; CELANESE CORPORATION; CNA HOLDINGS LLC; THE DOW CHEMICAL COMPANY; E. I. DU PONT DE NEMOURS AND COMPANY; GABRIEL PHENOXIES, INC.; INTERNATIONAL PAPER COMPANY; RESOLUTE FP US INC.; SPRINGS GLOBAL US, INC.; and SPRING INDUSTRIES, INC. (collectively, hereinafter the "Premises Defendants"). All other Defendants, manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material.

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BACKGROUND FACTS

71. Plaintiff David D. Rollins brings this action for monetary damages as a result of contracting an asbestos-related disease.

72. Plaintiff was diagnosed with malignant Mesothelioma on or about January 17, 2019.

73. Plaintiff's mesothelioma was caused by his exposure to asbestos during the course of his employment. Additionally, Plaintiff's mesothelioma was caused by his exposure to asbestos brought home on the person and clothes of his father, Earnest Rollins; his mother, Nell Ashworth; his step-father, Robert Ashworth; and other persons.

74. During his work history, Plaintiff was exposed to Defendants' asbestos-containing products through his work as a laborer, pipe fitter, welder, and carpenter from approximately 1988 to 2001 at various industrial jobsites primarily in South Carolina. Plaintiff assisted with maintenance repairs throughout the facilities where he worked on various equipment, including pumps, valves, steam traps, boilers, turbines, cooling towers, and digesters. He replaced valves, valve stem packing, valve flange gaskets, pumps, pump stem packing, pump flange gaskets, bearings and gaskets throughout the facilities where he worked, including the cooling tower pumps. All of these activities exposed Plaintiff to asbestos.

75. During his work history, Plaintiff worked on new construction, renovations, and additions. Plaintiff was further exposed through his work around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked closely to a variety of trades that were working on turbine generators, boilers, and often worked near tradesmen working on valves, steam traps, pumps and other equipment. All of these activities exposed Plaintiff to asbestos.

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76. Plaintiff's father, Earnest Rollins, worked in maintenance in industrial facilities in South Carolina from approximately 1973 to 1978. Earnest Rollins was exposed to asbestos through his own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. oAs Earnest Rollins conducted his work duties, dust was created by his working with and around asbestos and asbestos-containing products that would permeate his person and clothing. This dust contained asbestos fiber. Earnest Rollins would carry this asbestos dust on his person and clothing home with him where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his father's person and clothing.

77. Plaintiff's step-father, Robert Ashworth, worked in maintenance in industrial facilities in South Carolina from approximately 1980 to 1991. Robert Ashworth was exposed to asbestos through his own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Robert Ashworth conducted his work duties, dust was created by his working with and around asbestos and asbestos-containing products that would permeate his person and clothing. This dust contained asbestos fiber. Robert Ashworth would carry this asbestos dust on his person and clothing home with him where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his step-father's person and clothing.

78. Plaintiff's mother, Nell Ashworth, worked in maintenance in industrial facilities in South Carolina from approximately 1973 to the early 1980s. Nell Ashworth was exposed to asbestos through her own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Nell Ashworth conducted her work duties, dust was created by her working with and around asbestos and asbestos-containing

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products that would permeate her person and clothing. This dust contained asbestos fiber. Nell Ashworth would carry this asbestos dust on her person and clothing home with her where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his mother's person and clothing.

79. Plaintiff David D. Rollins' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

80. Plaintiff David D. Rollins was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

81. Plaintiff is informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

82. As a direct and proximate result of the conduct as alleged within, Plaintiff David D. Rollins suffers permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

83. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court

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and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

84. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff has incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff's Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

85. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

86. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

87. At all times herein mentioned, Defendants and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed,

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modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff and others similarly situated, (hereinafter collectively called "exposed persons"), while being used for their intended purpose and in a manner that was reasonably foreseeable.

88. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos and asbestos-containing products from causing Plaintiff David D. Rollins' mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by

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Plaintiff. Defendants and/or their "alternate entities" had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

89. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

90. At all times relevant, Defendants and/or their "alternate entities" were aware of their asbestos and asbestos-containing products' defect but failed to adequately warn Plaintiff David D. Rollins, Plaintiff's family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants' products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

91. Plaintiff David D. Rollins, Plaintiff's family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

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92. Plaintiff David D. Rollins suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

93. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff's injuries, and all damages thereby sustained by Plaintiff David D. Rollins. Plaintiff therefore seeks all compensatory damages in order to make them whole, according to proof.

94. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff David D. Rollins and others similarly situated.

95. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung

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damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

96. Defendants and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants and their "alternate entities," each of them, knew that members of the general public and other "exposed persons," who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

97. The above-referenced conduct of Defendants and their "alternate entities," was motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their "alternate entities," and each of them consciously disregarded the safety of "exposed persons" in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to "exposed persons" without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff.

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98. Plaintiff David D. Rollins and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

99. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set forth herein.

100. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

FOR A SECOND CAUSE OF ACTION
(Product Liability: Strict Liability - S.C. Code Ann. sec. 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Allege as Follows:

101. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

102. Plaintiff David D. Rollins suffers from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with

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asbestos products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

103. Defendants' conduct and defective products as described above were a direct cause of Plaintiff's injuries, and the injuries and damages thereby sustained by Plaintiff.

104. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public *without adequate warnings or proper use instructions, was done in a conscious disregard* and indifference to the safety and health of Plaintiff and others similarly situated.

105. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

106. Plaintiff David D. Rollins, Plaintiff's family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

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107. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

108. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

109. The defect existed in the said products at the time they left the possession of defendants, their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed

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persons," including Plaintiff herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

110. Plaintiff David D. Rollins and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

111. Defendants' defective products as described above were a direct cause of Plaintiff David D. Rollins' injuries, and the damages thereby sustained.

112. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff David D. Rollins and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers.

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This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

113. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

114. The above-referenced conduct of Defendants and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff David D. Rollins and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

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115. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

116. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

117. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

118. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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119. Prior to and during all relevant times Defendants employed workers (hereinafter "employees") in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff David D. Rollins, Plaintiff's family members, and others worked and/or spent time as alleged above.

120. At all times herein mentioned, Defendants' employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff David D. Rollins was exposed.

121. Employees handling and disturbing asbestos-containing products in Plaintiff David D. Rollins, Plaintiff's family members and others' vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

122. Employees handling and disturbing asbestos-containing products in Plaintiff David D. Rollins', Plaintiff's family members and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

123. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

124. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff David D. Rollins, who also inhaled those fibers,

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and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff David D. Rollins.

125. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

126. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Plaintiff David D. Rollins.

127. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff David D. Rollins that he was being exposed to asbestos, failed to adequately warn Plaintiff David D. Rollins of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

128. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff David D. Rollins.

129. Defendants' employees owed Plaintiff David D. Rollins a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause him harm.

130. Defendants' employees breached this duty of care as described above.

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131. At all times mentioned, Plaintiff David D. Rollins was unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

132. As a direct result of the Defendants' employees conduct, Plaintiff David D. Rollins' exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff and the damages and injuries as complained of herein by Plaintiff David D. Rollins.

133. The risks herein alleged and the resultant damages suffered by the Plaintiff David D. Rollins were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

134. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Plaintiff David D. Rollins.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premise Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Defendants, and Allege as Follows:

135. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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136. Prior to and during all relevant times, Defendants employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff David D. Rollins, Plaintiff's family members, and others worked and/or spent time.

137. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

138. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff David D. Rollins and settled onto Plaintiff David D. Rollins, Plaintiff's family members, and others' clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff David D. Rollins would be exposed to dangerous asbestos dust beyond the present.

139. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons, including Plaintiff David D. Rollins.

140. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff David D. Rollins, Plaintiff's family

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members, and others frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

141. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

142. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto including Plaintiff David D. Rollins were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

143. At all times herein mentioned, Plaintiff David D. Rollins was unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

144. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

145. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its

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employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff David D. Rollins, Plaintiff's family members, and others, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

146. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

147. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by defendants.

148. Defendants failed to warn its employees and bystanders thereto, including Plaintiff David D. Rollins, Plaintiff's family members, and others, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

149. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff David D. Rollins became exposed to and inhaled asbestos fibers, which was a

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substantial factor in causing Plaintiff to develop asbestos-related mesothelioma, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. 36-2-314)

As a Fifth Distinct Cause of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:

150. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

151. Each of the Defendants impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

152. The implied warranty made by the Defendants that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff David D. Rollins, Plaintiff's family members, and others carried out their duties and was inhaled by Plaintiff David D. Rollins.

153. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff David D. Rollins was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently developed mesothelioma, causing Plaintiff David D. Rollins to suffer all damages attendant thereto.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Allege as Follows:

154. Plaintiff repeats and re-allege the portions of the above paragraphs where relevant.

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155. That during, before and after Plaintiff David D. Rollins' exposure to asbestos products manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Plaintiff in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff David D. Rollins. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

156. The foregoing representations were material conditions precedent to Plaintiff David D. Rollins' continued exposure to asbestos-containing products. Defendants each intended that Plaintiff act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

157. As a direct and proximate result of Plaintiff David D. Rollins' reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiff's actual damages according to proof, including Plaintiff's pain & suffering, as well as medical bills;

2. For loss of earnings according to proof;

3. For loss of care, comfort and society;

4. For punitive damages according to proof;

5. For plaintiff's cost of suit herein;

6. For damages for fraudulent misrepresentation according to proof; and

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

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

s/Theile B. McVey
Theile B. McVey (SC Bar 16682)
tmcvey@kassellaw.com
Jamie Rae Rutkoski (SC Bar 103270)
jrutkoski@kassellaw.com
John D.Kassel (SC Bar 3286)
jkassel@kassellaw.com
KASSEL MCVEY, ATTORNEYS AT LAW
1330 Laurel Street
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar 77935)
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
jholder@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFF

April 10, 2019

Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Apr 08 3:51 PM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HAMPTON	**FOURTEENTH JUDICIAL CIRCUIT**
David D. Rollins,	**C/A No.: 2019-CP-25-00118**
Plaintiff,	**In Re:** **Asbestos Personal Injury Litigation** **Coordinated Docket** **Living Mesothelioma**
v.	
Air & Liquid Systems, *et al.*,	
Defendants.	

YOU WILL PLEASE TAKE NOTICE that Plaintiff has filed the attached Pathology Report in connection with the above-referenced action on 8 April 2019.

s/Theile B. McVey
Theile B. McVey (SC Bar 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar 03286)
jkassel@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202
803-256-4242
803-256-1952 (Facsimile)
Other email: emoultrie@kasselaw.com

Jonathan M. Holder (SC Bar 77935)
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
214-722-5990
214-722-5991 (Facsimile)
jholder@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFF

April 8, 2019

Columbia, South Carolina.

Piedmont Medical Center
222 S. Herlong Avenue
Rock Hill, SC 29732-1158

Patient:	ROLLINS, DAVID D	Attending Provider:	PACELLO APRN,MELISSA A
MRN #:	30280	Admission Date:	1/15/2019
Account #:	110639572	Discharge Date:	1/17/2019
DOB/Age/Sex:	11/12/1973 / 45 years / Male	Lab Medical Director(s):	Robert E. Thomas Jr., MD

Pathology

Accession:	373-SU-19-000393		
Collected Date/Time:	1/15/2019 09:13 EST		
Received Date/Time:	1/15/2019 09:27 EST	Pathologist	THOMAS JR MD,ROBERT E

SURGICAL PATHOLOGY REPORT – 1/17/2019 11:00 EST – Auth (Verified)

DIAGNOSIS:

A - RIGHT PLEURAL NODULE, BIOPSY #1
--MALIGNANT MESOTHELIOMA, EPITHELIOID TYPE

B - RIGHT PLEURAL NODULE, BIOPSY #2
--MALIGNANT MESOTHELIOMA, EPITHELIOID TYPE
--IMMUNOHISTOCHEMICAL PROFILE
--CALRETININ POSITIVE
--WT1 POSITIVE
--CEA NEGATIVE
--CK7 POSITIVE
--CK20 NEGATIVE
--TTF-1 NEGATIVE
--NAPSIN A NEGATIVE
--CDX2 NEGATIVE

C - RIGHT PLEURAL NODULE, BIOPSY #3
--MALIGNANT MESOTHELIOMA

COMMENT: The tumor is an epithelial malignancy with immunohistochemical staining features compatible with epithelioid mesothelioma which has papillary and tubular growth patterns. Case reviewed by Dr. Stone.

COMMENT: Appropriate controls have been performed.

ROBERT E THOMAS JR
(Electronic signature)
Signed on: 01/17/2019 11:00 EST
RET/CB

SPECIMEN SOURCE:

A Right pleural nodule
B Right pleural node #2
C Right pleural nodule #3

CLINICAL INFORMATION:

Diagnosis/Clinical Information: Right Pleural Effusion
Procedure: Right VATS

Report Request ID: 165716801 *Printed:* 2/1/2019 13:42 CST

ELECTRONICALLY FILED - 2019 Apr 08 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2019CP2500118
2020 Apr 22 6:49 PM - HAMPTON - COMMON PLEAS - CASE#2020CP4901226

Piedmont Medical Center
222 S. Herlong Avenue
Rock Hill, SC 29732-1158

Patient:	ROLLINS, DAVID D	**Attending Provider:**	PACELLO APRN,MELISSA A
MRN #:	30280	**Admission Date:**	1/15/2019
Account #:	110639572	**Discharge Date:**	1/17/2019
DOB/Age/Sex:	11/12/1973 / 45 years / Male	**Lab Medical Director(s):**	Robert E. Thomas Jr., MD

Pathology

Accession:	373-SU-19-000393		
Collected Date/Time:	1/15/2019 09:13 EST		
Received Date/Time:	1/15/2019 09:27 EST	Pathologist	THOMAS JR MD,ROBERT E

GROSS EXAMINATION:

A - Received fresh for intraoperative consultation labeled pleural mass are multiple tan-pink soft tissue fragments, 1.0 x 0.6 x 0.3 cm in aggregate. The specimen is entirely submitted for frozen section evaluation. The frozen section remnant is submitted in one cassette labeled FSA.

B - Received fresh labeled right pleural nodule is an ovoid 1.0 x 0.5 x 0.3 cm portion of glistening, pink-tan soft tissue which is entirely submitted for routine processing in one cassette.

C - Received in Formalin labeled right pleural nodules is a 1.5 x 0.6 x 0.3 cm aggregate of tan-pink soft tissue fragments admixed with a small amount of blood clot. The specimen is entirely submitted in one cassette.

RET/CB

INTRAOPERATIVE FROZEN CONSULTATION:

FSA - RIGHT PLEURAL NODULE, BIOPSY
--POSITIVE FOR MALIGNANCY
--ADENOCARCINOMA VS. MESOTHELIOMA
--PERFORMED BY DR. THOMAS
--DISCUSSED WITH DR. ZAKOW AT 9:27 A.M. ON 1/14/19

ELECTRONICALLY FILED - 2019 Apr 08 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2019CP2500118
2020 Apr 22 6:49 PM - HAMPTON - CASE#2020CP4901226

ELECTRONICALLY FILED - 2020 Apr 22 6:49 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

- - -

ROBERT ASHWORTH and NELL ASHWORTH,	:	
	:	Civil Action No.:
Plaintiff,	:	
	:	N17C-04-003 ASB
vs.	:	
	:	
AIR & LIQUID SYSTEMS CORP., et al.,	:	
	:	
Defendant.	:	

DEPOSITION OF ROBERT ASHWORTH

DATE TAKEN: August 2, 2017

TIME BEGAN: 12:00 p.m.

TIME ENDED: 5:10 p.m.

LOCATION: Fairfield Inn & Suites
578 Galleria Boulevard
Rock Hill, South Carolina 29730

REPORTED BY: Tami I. Watters, RPR, CRR

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A No, sir.

Q And you talked about there being a door to the digester?

A The top. You got one at the top and the bottom really.

Q Okay. And -- you know, don't let me put words in your mouth, but sounds like similar to the boiler doors?

A Right.

Q And do you know who made the roped seal on the doors that was put on?

A No, sir.

Q Okay.

A I don't know.

Q All right. So that was your first time at the Bowater plant?

A Yeah.

Q And then the next entry on the -- on the Social Security records is for Beta Construction beginning in 1986 and working through 1988.

And I gather -- was your work for Beta all at the Bowater plant?

A Right.

Q And what do you remember doing for Beta?

A Pipework.

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Q And I see that in 1986 it shows an income of roughly $3200 for Beta Construction. We're on page 4 of the Social Security records.

So were you there just part time, part of 1986?

A No. That's when I went in and it changed names. Then went to Power Plant Maintenance.

Q Okay. Okay. Well, the first entry for Power Plant Maintenance is 1988. I mean, I -- I'm not trying to talk you out of your testimony, but are you saying that in -- beginning in 1986 you were basically full time at Bowater?

A Yeah. That's when I went -- started working for them, yeah.

Q So you said your work for Beta Construction was pipework.

A Right.

Q What specifically do you remember doing for Beta Construction?

A That was working on the pumps, and we worked on the boiler, too. That's when I was talking about changing the sight glasses.

Q Okay. And then -- I mean, I'm going to stay at Bowater, but I want to ask you about the next one on there. It says AMC of Rock Hill.

A Yes.

Q Do you recall working for them?

A Yeah. That was shutdown. That's -- really, AMC was another name for Southeastern. They had two -- used two different names.

Q Okay. So was that work for AMC at the Bowater plant?

A Yes, sir. Shut it down.

Q The first entry is 1986, and the second entry is 1995.

Were they both at Bowater?

A I think one of them's at Spring's in Lancaster. Had shutdowns there, too.

Q Okay. What do you remember doing as part of the shutdowns at Bowater for AMC?

A Worked in the boiler, you know, putting sight glasses, the door, take up the insulation off the outside.

Q Okay. And at the previous locations where you testified that you had to replace the seal on the sight glasses --

A Right.

Q -- and the doors on the boilers, you said you couldn't recall who made the roped seal.

Would the same be true for your work with

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UNITED STATES DISTRICT COURT
DENVER D. TAYLOR & JANICE TAYLOR
Plaintiffs,
vs. CASE NO.
2018-CP-40-04940

AIR & LIQUID SYSTEMS CORPORATION, ET AL,

Defendants.

DEPOSITION OF: DAVID DWAYNE ROLLINS
DATE: February 18, 2019
TIME: 10:00 a.m.
LOCATION: Offices of
Wingate by Wyndham
760 Galleria Boulevard
Rock Hill, SC

TAKEN BY: Counsel for the PLAINTIFFS
REPORTED BY: SARAH E. YOUNG COURT REPORTER

APPEARANCES OF COUNSEL:
ATTORNEYS FOR PLAINTIFF
DENVER D. TAYLOR & JANICE TAYLOR:

DEAN OMAR BRANHAM
BY: KEVIN W. PAUL
DAVID HUMEN
302 North Market St., Suite 300
Dallas, TX 75202
214-722-5990
Kpaul@dobllp.com
Dhumen@dobllp.com

ATTORNEYS FOR DEFENDANT
FLOWSERVE US, INC.:

ROBINSON GRAY STEPP & LAFFITTE, LLC
BY: RACHEL M. HUTCHENS
1310 Gadsden St.
Columbia, SC 29211
803-929-1400
Rhutchens@robinsongray.com

ATTORNEYS FOR THE DEFENDANT
CARVER PUMP COMPANY; GARDNER DENVER, INC.; VIKING PUMP, INC.:
FOX ROTHSCHILD, LLP
BY: STEPHANIE G. FLYNN
2 W. Washington St., Suite 1100
Greenville, SC 29601
864-751-7600
Sgflynn@foxrothschild.com

ATTORNEYS FOR THE DEFENDANT
YORK INTERNATIONAL CORP.; ZURN INDUSTRIES, LLC; WEIS VALVES & CONTROLS:
NELSON & MULLINS
BY: DAVID G. TRAYLOR, JR.
Meridian/17th Floor
1320 Main St.
Columbia, SC 29201
803-255-9439
David.traylor@nelsonmullins.com

ATTORNEYS FOR DEFENDANT
AIR & LIQUID SYSTEMS CORP.; AURORA PUMP COMPANY; GOULDS PUMPS, LLC; ITT, LLC:
NELSON & MULLINS
BY: JASE GLENN
1320 Main St.
Columbia, SC 29201
803-255-9654
Jase.glenn@nelsonmullins.com

ATTORNEYS FOR THE DEFENDANT
MCNEIL & NRM:
THE VAN WINKLE LAW FIRM
BY: STEPHEN B. WILLIAMSON
11 N. Market St.
Asheville, NC 28801
828-258-2991
Swilliamson@vwlawfirm.com

ATTORNEYS FOR THE DEFENDANT
RILEY POWER, INC.:
PIERCE, SLOAN, WILSON, KENNEDY & EARLY, LLC:
BY: DANIEL F. LYNCH, IV
321 East Bay St.
Charleston, SC 29413
843-722-7733
Daniellynch@piercesloan.com

ATTORNEYS FOR DEFENDANT

MILLBERG, GORDON, STEWART
BY: PETER N. BORDEN
1101 Haynes St., Suite 104
Raleigh, NC 27604
919-436-6423
PBorden@mgsattorneys.com

ATTORNEYS FOR THE DEFENDANT
FRITO-LAY:

HAWKINS PARNELL THACKSTON & YOUNG, LLP
BY: E. ELAINE SHOFNER
4000 SunTrust Plaza
303 Peachtree St. NE
Atlanta, GA 30308
404-614-7445
Eshofner@hptylaw.com

ATTORNEYS FOR THE DEFENDANT
CBS CORP., FOSTER WHEELER ENERGY CORP.; INGERSOLL-RAND COMPANY; SPIRAX SARCO, INC.:
EVERT WEATHERSBY HOUFF
BY: ANDREW S. ROGERS
3455 Peachtree Rd. NE, Suite 1550
Atlanta, GA 30326
678-651-1200
Asrogers@ewhlaw.com

ATTORNEYS FOR DEFENDANT
THE GORMAN-RUPP COMPANY; DANIEL INTERNATIONAL, CORP.; FLUOR ENTERPRISE, INC.; FLUOR DANIEL SERVICES CORP.; FLUOR INTERNATIONAL CONSTRUCTION, INC.:
HAYNSWORTH SINKLER BOYD, PA
BY: MOFFATT G. MCDONALD
ONE North Main, 2nd Floor
Greenville, SC 29601
864-240-3214
Mmcdonald@hsblawfirm.com

ATTORNEYS FOR THE DEFENDANT
JOHN CRANE, INC.:
RICHARDSON PLOWDEN
BY: MEGAN C. WHITE
235 Magrath Darby Boulevard, Suite 100
Mount Pleasant, SC 29464
843-714-2621
Mwhite@richardsonplowden.com

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technically your stepdad, but you call him dad because he raised you, right?
A. He raised me. Yes, sir.
Q. And now, did Mr. Ashworth, your dad, did he have the occasion to work with Mr. Taylor as well?
A. He was Mr. Taylor's supervisor most of -- most of the time they worked together.
Q. Okay. And do you recall some of the plants that he worked at during the time you were a kid? Your dad, that is.
DEFENSE COUNSEL: Form.
THE WITNESS: Oh, yeah. He worked mainly at Bowater, Celanese, Springs Mills. He worked all -- he's worked a lot of places, but he worked mainly out of Bowater.
BY MR. PAUL:
Q. Okay. Now, Mr. Ashworth, I mean I call him Mr. Ashworth, your dad's given a deposition, am I right?
A. Yes, sir, he has gave a deposition right here in this motel.
Q. Okay. And was that in regards to an asbestos-related disease that he had?
A. Yes, sir, he had asbestos-related

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cancer.
Q. And is he still with us today?
A. No, sir, he died Thanksgiving of 2018.
Q. I'd like to first ask you, do you recall when the first year it is that your stepdad moved in with you?
A. It was about '79.
Q. Okay. And you were born in '70 -- in November of '73, right?
A. Yes, sir.
Q. So you were about six years old?
A. Yeah.
Q. Okay. And now, when you were -- have you read -- have you had the occasion to read your dad's deposition by any chance?
A. No.
Q. Okay. But it is out there, right?
A. Yeah, it's out there.
Q. Okay. Did you ever have the occasion to talk about his lawsuit or anything like that when he was dealing with whatever he was doing with as far as asbestos disease?
A. No, he was kindly a quiet person and never -- he never even let on how much pain he was in, all the way down to the very end.

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Q. Okay. I'm sorry for your loss, sir.
A. Thank you.
Q. Now, I'm going to continue to introduce you. Obviously, you have some children. One of them's in the room here today, is that right?
A. Yes, sir, I've got some wonderful children.
Q. And how many kids do you got?
A. I've got three.
Q. And their names?
A. There's Brittany is my oldest. And you've got Taylor, she's my middle. And I've got Damian, who is my son, my baby.
Q. Okay. And the -- in the same order, we have Brittany, she's 25, right?
A. Yes, sir.
Q. And Taylor, she's 23?
A. 23, yeah.
Q. And Damian's 17, right?
A. Yes, sir.
Q. And Damian still lives with you, correct?
A. Yes, sir. And Taylor lives with me.
Q. Okay, and Taylor.
A. And her -- her baby.

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Q. Ansley, right?
A. And -- no, that's Warren.
Q. Oh, okay.
A. He lives with me, and her husband lives with me.
Q. Got you. So you take care of a lot of people still, right?
A. Yes, sir, I try.
(PLF. EXH. 1, Photograph, was marked for identification.)
BY MR. PAUL:
Q. Let me hand you what I've marked, pre-marked as Plaintiff's Exhibit Number 1. And if you hold up for the camera, they'll just zoom in real fast. And is this -- are these your kids?
A. Yes, sir. That was this past summer at the beach.
Q. Wow. Which beach did you guys go to?
A. Myrtle Beach.
Q. Not too far of a drive, am I right?
A. I went to -- it was North Myrtle Beach. It wasn't that far. But they had a great time.
Q. Yeah. And how often do you, as a family, get to go out and vacation with your kids?
A. Well, I send them, and I can't -- if I

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moved into the house?
A. Yes, he's worked at Duke Power. He worked Springs. He worked Celanese, Bowater. I mean --
Q. And who was he working for when he was going to all those plants?
A. He worked for B and K, Beta, PPM, I'm wanting to say Vanderbilt or something like that. He's worked for AME, AMC, Southeastern Industrial. He's had a lot of jobs.
Q. Okay. So all over?
A. Yeah.
Q. And -- and he was a supervisor, am I right?
A. Yes, sir.
Q. And now, during the timeframe that y'all were driving him to -- to work, what is your understanding of the type of products or work that he was doing at each one of these plants?
DEFENSE COUNSEL: Objection to form.
THE WITNESS: Say that again.
BY MR. PAUL:
Q. Yeah. Just getting into the timeframe that y'all were driving your dad to work each day and picking him up, I was just asking his general

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-- if you know his general work duties of what he was doing on a daily basis?
A. He was --
DEFENSE COUNSEL: Same objection.
THE WITNESS: He was a pipefitter welder supervisor. And he was responsible for all the pipefitters and stuff on the job, tearing off insulation, replacing valves, rebuilding valves, doing millwright work, stuff like that. He was a -- they call it a mechanical supervisor is what it was.
BY MR. PAUL:
Q. And do you believe that he had the occasion to work with asbestos-containing products while he was at those various locations?
A. Yes, sir.
DEFENSE COUNSEL: Object to the form.
BY MR. PAUL:
Q. Now, when you'd pick him up at the end of the day, you described the conditions of his clothes, right?
A. Yes, sir.
Q. And what were those?
A. Real nasty and dirt -- dirty and dusty and just stink, stink, stink.

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Q. Like when you say stink, was there a distinct smell to like the Bowater plant?
A. He brought home -- our -- our car smelled like Bowater. And I -- he would bring it into the house with his clothes. And it just -- that was a everyday thing. And my mama and all of us or anybody say something, he'll say that's the smell of money right there. That's the smell of money.
Q. Now, you mentioned he'd get in the car and he was really dusty, right?
A. Yes, sir.
Q. Where would that dust go?
DEFENSE COUNSEL: Objection to form.
THE WITNESS: It would go whoever breathed it.
BY MR. PAUL:
Q. And you mentioned cloth seats. Did any of that dust get on the cloth seats?
A. Yes, sir.
Q. Do you believe that there were occasions that you had the occasion to breathe in the dust that was on the cloth seats and in the vehicles?
A. Oh, yeah.

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DEFENSE COUNSEL: Objection to form.
BY MR. PAUL:
Q. And how often would that occur?
A. About every day.
DEFENSE COUNSEL: Form.
BY MR. PAUL:
Q. Okay. And there was only one family car, am I right?
A. One family car up to about the mid or late '80s.
Q. Okay. And do you believe that you breathed in the dust that was in your dad's -- in your family's car during those occasions between 1979 and 1991?
DEFENSE COUNSEL: Object to form.
THE WITNESS: Yes, sir.
BY MR. PAUL:
Q. Okay. Now, you mentioned that he would come home and -- and his clothes were dusty, obviously, because he was already in the car, right?
A. Yes, sir.
Q. And you mentioned he would pass out sometimes on the couch?
A. Yes, sir.

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Q. And what type of couch do you recall y'all having?
A. We had them old, like a wood frame with felt cushions.
Q. Okay.
A. Cloth, felt cushions.
Q. And did the -- did the dust on his clothes get on those felt cushions?
A. All the time.
Q. And did you have to ever -- did you ever have to clean up the house and --
A. Yes, sir, we had to take --
Q. -- clean those cushions?
A. We had to take the cushions and beat them out, beat them out so it didn't get on our clothes. But little did we know, we're breathing it.
Q. And you breathed it in, right?
A. Yes, sir.
DEFENSE COUNSEL: Objection to form.
BY MR. PAUL:
Q. And what was happening -- what was being beat out by the pillows?
A. All the dust that he bring home on him and lay down on that couch and go to sleep.

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Q. And could you --
DEFENSE COUNSEL: Objection to form.
BY MR. PAUL:
Q. And could you see that dust in the air when you beat the pillow out?
A. Yes, sir.
DEFENSE COUNSEL: Objection to form.
BY MR. PAUL:
Q. And about how often would you, personally, between '79 and '91 when you moved out participate in helping to clean up the couch areas and the other areas where you believe your dad brought dust home to?
DEFENSE COUNSEL: Object to the form.
THE WITNESS: We did it every day. Every day when we got home from school, we had to do our chores and stuff before we could go out or do anything else because my -- like I said, my mom, she worked. She took care of us. My dad worked. He worked, like I said, 16, 18, 20 hours a day sometimes. And when he gets home, he's tired. He ain't doing nothing. But when my mom gets home, she changes her clothes, takes a shower, change her clothes and she's off to night school.
BY MR. PAUL:

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Q. Okay. And did you guys have a laundry machine during the time when your dad first moved in?
A. No, sir.
Q. So how -- who was in -- who was responsible of -- of washing the clothes during that timeframe?
A. We all were. We had to bag them up. We threw them in a room by the back door, and it'd all be in a pile until say Wednesdays and Saturdays, I think it was, we'd do laundry. And we all had to put them in trash bags and then throw them in the car, take them to the laundromat with my mom and then go and dump them out, throw these clothes over here, and throw these clothes over there, shake them out before we put them in the washing machine, stuff like that.
Q. And when you shook out the clothes, were there any conditions created?
A. Yes, sir.
DEFENSE COUNSEL: Form.
BY MR. PAUL:
Q. And what -- and what were those?
A. Dusty.
DEFENSE COUNSEL: Form.

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BY MR. PAUL:
Q. And did you -- did that dust --
A. And dirty.
Q. Did that dust get in the air?
A. Yes, sir.
DEFENSE COUNSEL: Form.
BY MR. PAUL:
Q. And do you believe that you breathed in that dust?
A. Yes, sir.
DEFENSE COUNSEL: Objection to form.
BY MR. PAUL:
Q. Now, how often -- now, did you personally do the laundry yourself?
A. Yeah, we got to later on when we got the washing machine, probably mid '80s, something like that, mid to late '80s. And we got a washing machine and dryer, so then it was a daily basis of separating his clothes, our clothes, shaking things out, putting them in, doing it like that.
Q. And that was after the mid-'80s when you got the laundry machine at your house, right?
A. Yes, sir.
Q. How often would -- before you got this washing machine, how often would you and your

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BE&K CONSTRUCTION CO.

P. O. Box 36 • Catawba, South Carolina 29704

CONTRACT NO. 4192-F-6410
DATE: 2-26-86

SUBCONTRACT AGREEMENT

This Agreement made this 26th of May, 1986 by and between Bowater Carolina Company of Catawba, South Carolina, by and through its duly authorized agent, BE&K Construction Company of Birmingham, Alabama, (hereinafter called "Contractor"), and COVIL CORPORATION of GREENVILLE, SOUTH CAROLINA(hereinafter called "Subcontractor"), Whereby Subcontractor agrees to perform the work outlined under "Scope of Work" for the consideration set forth below.

ARTICLE I - SCOPE OF WORK

Subcontractor shall perform the following described work on the property of Bowater Carolina Company (hereinafter called "Owner"), located at Cureton Ferry Road, Catawba,South Carolina:

Furnish all supervision, labor, equipment, tool, materials, (except as noted), and incidentals required to supply and install all insulation on required piping systems.

All work performed herein shall be in strict accordance with the drawings,and other documents as listed on Subcontract Documents List, Subcontract Agreement No. 4192-F-6410 attached hereto.

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satisfactory to Contractor, and furnished as a condition to receiving any payment. Subcontractor shall hold Contractor and Owner harmless from and promptly satisfy and and all liens and claims by others for payment arising out of labor and materials furnished by Subcontractor.

ARTICLE VIII - LIABILITY FOR INJURIES AND CLAIMS

(a) Subcontractor hereby assumes exclusive liability for and shall indemnify and hold harmless Contractor and its subsidiary and affiliated companies and Owner from and against any and all claims, suits, losses, or damage arising out Subcontractor's performance of this work whether or not contributed to, or alleged to have been contributed to, by the active, passive, or affirmative negligence, or breach of any statutory duty, whether non-delegable or otherwise, on the part of the party seeking indemnity hereunder.

(b) Subcontractor shall effectively secure and protect its materials and work and that of Contractor, Owner, and other subcontractors, and shall bear and be liable for all loss and/or damage of any kind in connection therewith resulting directly or indirectly from any act or omission during the performance of this Subcontract by Subcontractor, its subcontractors, agents, or employees.

(c) It is agreed that Contractor shall not be responsible should any of Subcontractor's work or materials be damaged and/or destroyed as a result of the act, or failure to act, of another of Contractor's subcontractors, and that, in the event of such circumstance, Subcontractor's exclusive remedy shall be against the subcontractor responsible.

ARTICLE IX - LABOR WARRANTY

Subcontractor warrants that it will employ men and means in such a manner that the work will be prosecuted efficiently and in a timely manner, and that it will not interfere with work of Contractor or other contractors working at the construction site. In the event of a slowdown, work stoppage, or strike by Subcontractor's employees or any employees of its subcontractors, Subcontractor shall take every reasonable step to prosecute the work without any delays, and any time lost as a result of such slowdowns, work stoppages, or strikes shall not be considered an excusable delay under this Agreement.

ARTICLE X - INSURANCE

(a) The following insurance coverages shall be secured, paid for and maintained by owner for the benefit of Owner, Contractor, Subcontractors, and Sub-subcontractors and shall apply only to operations of Subcontractor incidental to the work at and from the job site. It shall not apply to operations of the Subcontractor at its regularly established main or branch office, factory, warehouse or similar place or other non-related sites. Except for "completed operations", which shall extend for two (2) years following completion, coverage shall terminate upon completion of the work of the Subcontractor.

(1) Comprehensive General Liability

Limits of Liability - $500,000 combined single limits. including

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aggregates, bodily injury and property damages.

Contractual Liability

Completed Operations extended for a period of two (2) years after final acceptance by the Owner of the completed project.

Incidental Malpractice Coverage

Broad Form Property Damage

Personal Injury Coverage

Host Liquor Law Liability

Blanket Explosion, Collapse, and Underground

Non-owned Watercraft

Employees as Additional Insureds

(2) Workman's Compensation

Coverage A - Statutory

Coverage B - Employer Liability $100,000 per person and $500,000 each occurrence

All States Coverage

U.S. Longshoremen's and Harborworker's Act Coverage

(3) Umbrella Excess Liability Insurance, for the benefit of the Owner, Contractor, Subcontractor, and Sub-subcontractor following the terms and conditions of the primary employer's liability and Comprehensive General Liability policies with respect to the work performed at the project site shall be secured, paid for and maintained by the Owner, and shall be in excess of the limits of liability as shown above. The umbrella policies will be for combined single limit of $25,000,000 per occurrence.

(4) Builder's Risk Insurance covering the work and materials, equipment and supplies on hand, in transit or stored off site, including materials, equipment and supplies to be incorporated into the work and to the full value of all such property. Owner, Contractor, Subcontractor, and Sub-subcontractors shall be named insureds and such insurance shall contain a waiver of subrogation. Owner may select such deductibles as are acceptable to Owner but such deductibles shall be for Owner's account and not charged to Subcontractor. In addition, the Builder's Risk Insurance:

A. Will not cover any tools owned or rented by Subcontractor.

B. Will provide that all salvages, recoveries and payments recovered

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or received subsequent to a loss settlement under this insurance shall inure to the benefit of the Owner only.

C. Owner shall have full power to adjust and settle any insurance claim under any insurance provided pursuant to Subdivision (a). All proceeds of any insurance policies payable in connection with damage or destruction of the work and/or any material or equipment prior to final acceptance shall be paid to Owner. Payments for the repair and/or replacement shall be made by Owner in accordance with terms of Article III of this Subcontract Agreement. All insurance proceeds shall be retained by Owner as Owner's property.

(b) Subcontractor shall furnish and maintain, at its own expense, Comprehensive Automobile Liability Insurance covering the use of all owned, or hired automobiles and shall furnish Contractor with original and three (3) copies of the Certificate of Insurance showing such coverage with limits of not less than:

(1) Bodily Injury Liability and Property Damage Liability
$ 1,000,000 Combined single limit

(c) All certificates must stipulate that the policies will not be canceled or changed without sixty (60) days prior written notice by registered mail to Contractor, and stipulate that the Owner and Contractor, all their directors, officers, and employees are Additional Insureds as respects work operations in connection with the subcontract.

(d) Subcontractor shall carry equipment floater insurance on its construction equipment, whether rented or owned. Subcontractor hereby waives its right of recovery against Contractor and/or Owner for loss or damage to such construction equipment. Owner shall not be responsible or liable for any losses, damage or expenses in excess of the insurance required under this Article X (d).

(e) The Subcontractor shall bear (i) all cost, risk, and liability relating to loss, damage or injury incurred by third parties arising out of the operating of vehicles covered by the insurance required by Article X (b), by reason of liability imposed on Contractor by law; and (ii) all cost, risk and liability relating to loss, damage or injury to the equipment covered by the insurance required by Article X (d).

(f) Subcontractor shall cooperate with and assist the insurance companies issuing any of the policies of insurance mentioned above, in the preparation of necessary payroll audits for the purpose of determining premiums and shall allow the audit of their books and payroll records at least once a month and shall keep separate records relating to this program in such form and manner as may be reasonably directed by the insurance companies.

(g) An insurance manual containing the insurance program will be issued to each Subcontractor, and by reference thereto, the manual is hereby incorporated into, and made a part of, this Subcontract Agreement. The information set forth is an outline of the coverages afforded by the Owner. Further details of the insurance contracts are available upon request.

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(h) In consideration of Owner providing the insurance described above, Subcontractor agrees to execute an assignment for the benefit of the Owner of all return premiums, premium refunds, dividends, and any other monies due or to become due to the Subcontractor in connection with said insurance.

(i) Subcontractor shall assist and cooperate fully with the reporting and adjustment and litigation of all claims or suits arising out of operations under this Subcontract Agreement and shall promptly report any and all such claims, Workman's Compensation or other, directly to the insurance carrier with other distribution as directed by Contractor.

(j) Subcontractor is specifically charged with the responsibility of conducting its construction operation in such a manner as to provide safe working conditions for all its employees engaged on this project and to provide protection for all others who might come into contact with these operations.

(k) Subcontractor shall take such safety measures and precautions as are required by law or ordinance, and shall cooperate with safety engineers of Contractor and Owner's insurance companies and comply with their recommendations so that the work will be completed with the greatest degree of safety.

(l) Owner may elect not to purchase the insurance called for under Article X (a) (4) above and self insure the risks which would have been covered under such insurance. If Owner elects not to purchase such insurance, Owner shall be responsible for, bear all loss and indemnify Subcontractor from all loss as provided in Article X (a) (4).

ARTICLE XI - TAXES

Subcontractor has included in the contract price, and accepts exclusive liability for, and agrees to protect, indemnify and hold harmless Contractor from any liability in respect to:

(a) All taxes and/or contributions imposed upon or measured by earnings of Subcontractor's employees by the Federal Social Security act, any Unemployment Compensation Law or similar law in any state, county, city or political subdivision thereof with respect to the employees of Subcontractor and any subcontractor or supplier of Subcontractor, employed in the performance of this Agreement,

(b) All applicable sales, use, or excise taxes that may be assessed against materials, supplies, equipment or labor used or furnished in performance of this Agreement;

(c) All gross receipts or similar taxes measured by the value of this Agreement; and

(d) All personal property or ad valorem taxes on Subcontractor's tools, equipment or other property used in the performance of this Agreement.

ARTICLE XII - PERMITS - GOVERNMENT REGULATIONS

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Bwater Project - Labor

W/E	Reg.	O.T.
3-16-86	1216.00	
3-23	1958.00	
4-3	2496.13	
4-6	2106.00	
4-13	4207.00	
4-20	6526.00	
4-27	10,440.15	
5-4	15,808.45	506.30
5-11	14,632.75	
5-18	13,777.80	958.40
5-25	16,579.85	405.00
5-25	133.00	
6-1	15,860.10	
6-8	19,945.25	2193.55
6-15	22,132.17	1208.03
6-22	23,748.86	
6-29	23,151.82	433.21
7-6	21,231.91	
7-13	21,067.22	
7-20	21,068.95	
7-27	18,104.63	
8-3	15,335.96	3362.05
8-10	16,078.41	3479.33
8-17	10,708.44	64.13

- cont -

W/E	Total Regular Reg.	O.T.
8-24-86	11,643.36	
8-31-	12,832.23	
9-7	8200.58	
9-14	10,227.81	
9-21	10,215.66	179.63
9-28	10,339.99	
10-5	11,318.50	
10-12	11,825.40	
10-19	12,151.56	
10-26	11,206.27	
11-2	9819.95	
11-9	9592.63	
	(447,688.82)	(12,789.63)
11-16	2882.95	
11-23	1135.80	
11-30	73.05	
12-7	110.75	
12-14	214.70	
12-21	101.20	
12-28	506.00	
	(452,713.27)	(12,789.63)
1-25-87	115.50	
	(452,828.77)	(12,789.63)

Total Regular + Overtime ($465,618.40)

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BOWATER CAROLINA COMPANY **Interoffice Memo**

Reference:

To: Mr. David Mantooth
Covil Corporation

Date: November 10, 1986

From: D. L. Chappell

Copies to:

Subject: Contract Information - Covil Corporation

Per your request for audit information:

The total commitment of contract not to exceed 1.2 million dollars for insulation requirements of P. O. 4192-F6410.

For further information or assistance, please have your audit personnel request information in writing.

DLC:mpc

cc: Mr. L. M. Plaza
Mr. J. E. Kirby

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INSURANCE PROTECTION FOR PRODUCTS LIABILITY AND COMPLETED OPERATIONS — WHAT EVERY LAWYER SHOULD KNOW

*Roger C. Henderson**

There have been many recent changes in the field of tort law,[1] but none as personal and important to each member of our society as the changes in tort liability theories for injuries associated with products and related services. It is difficult, if not impossible, to conceive of an individual in America today who is not exposed to some serious risk of injury from such a source, and, of course, the source is likewise exposed to a correlative liability.[2] It is this latter exposure and the means of protecting against it that is the subject of this article.

Although trial lawyers and judges are the natural objects of an article dealing with anything so fraught with litigation, it is hoped that the office practitioner will also find this of value in the way of preventive law practice. Certainly not every manufacturer that is sued on a products liability theory is a giant automobile manufacturer or chemical company in a distant location. There are many small and medium size manufacturers, not to mention wholesalers and retailers, whether in the form of sole proprietorships, partnerships or corporations, that are subject to suits for products liability. One wonders how many of these entities are aware of the extent of their exposure and whether they are prop-

* B.B.A., 1960, University of Texas; LL.B., 1965, University of Texas; LL.M., 1969, Harvard. Member of the Texas and American Bar Associations. Associate Professor of Law, University of Nebraska.

1 *See* R. KEETON, VENTURING TO DO JUSTICE (1969).

2 This exposure has but recently been labeled "products liability." As long as the basis of liability of the source of the product was restricted to negligence, the victim's cause of action was merely another personal injury or property damage suit, and seemed to call for no special name to distinguish it. Even the early food cases, *e.g.*, Jacob E. Decker & Sons, Inc. v. Capps, 139 Tex. 609, 164 S.W.2d 828 (1942), which recognized strict liability against the manufacturer without regard to privity, were not given a special name. With the advent, however, of strict liability as to defective products, whether one talks in terms of warranties or RESTATEMENT SECOND OF TORTS § 402A (1965), (*see* Greenman v. Yuba Power Products, 59 Cal. 2d 57, 63, 27 Cal Rptr. 697, 701, 377 P.2d 897, 901 (1962)), the term "products liability" developed to denote, not necessarily a particular theory of action since all three theories are subsumed by the term, but a certain class of cases involving the marketing of unreasonably dangerous products. The term "Products Hazard" has been used in insurance policies to denominate the applicable coverage, regardless of theory of liability.

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erly protected by insurance. Because of the broad nature of the exposure, the complexities of insurance coverages,[3] and resulting diversions in court decisions, the lawyer has a special obligation to educate himself as to the problems in this area and counsel his clients in regard thereto. One of the purposes of this article is to help prepare the lawyer for that task.

I. PRODUCTS HAZARD AND COMPLETED OPERATIONS

A. Development of Coverage

The development of insurance protection for products liability, denominated "Products Hazard" coverage,[4] has paralleled the development of the modern rules for products liability.[5] One writer states that the coverage was offered as early as 1890,[6] but it took the burgeoning common law to bring it to its present full-blown status.[7] Prior to the expansion of the common law theories of

[3] The policy provisions defining coverage for products liability and completed operations led the Supreme Court of New Hampshire in Peerless Ins. Co. v. Clough, 105 N.H. 76, 83, 193 A.2d 444, 449 (1963) to say: [T]he plaintiff [insurer] gave the defendant coverage in a single, simple sentence easily understood by the common man in the market place. It attempted to take away a portion of this same coverage in paragraphs and language which even a lawyer, be he from Philadelphia or Bungy, would find it difficult to comprehend." For other cases criticising policy provisions in regard to such coverage, *see* Ocean Accident & Guar. Corp. v. Aconomy Erectors, Inc., 224 F.2d 242, 247 (7th Cir. 1955); Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 691, 63 Cal. Rptr. 382, 390, 433 P.2d 174, 180 (1967); Hays v. Pacific Indem. Group, 8 Cal. App. 3d 158, 163, 86 Cal. Rptr. 815, 817 (1970); Maretti v. Midland Nat'l Ins. Co., 42 Ill. App. 2d 17, 28, 190 N.E.2d 597, 602 (1963); American Sponge & Chamois Co. v. Atlantic Mut. Ins. Co., 29 App. Div. 2d 749, 750, 287 N.Y.S.2d 199, 200 (1st Dep't 1968); Brainard v. Aetna Cas. & Sur. Co., 187 N.Y.S.2d 435, 437 (Sup. Ct. 1959).

[4] *See* note 2 *supra*.

[5] *See, e.g.*, Liberty Mut. Ins. Co. v. Hercules Powder Co., 224 F.2d 293, 295 (3rd Cir. 1955); Nielson v. Travelers Indem. Co., 174 F. Supp. 648, 653 (N.D. Iowa 1959), *aff'd on opinion below*, 277 F.2d 455 (8th Cir. 1960).

[6] "It appears that products liability insurance was first written in England about 1890, to insure pie bakers against liability for accidents that sometimes happened when roach powder inadvertently got into pie dough. The insurance was known as 'poison insurance' in those days. It is sometimes still called that." Andersen, *Current Problems On Products Liability Law and Products Liability Insurance*, 31 Ins. Counsel J. 436, 441 (1964).

[7] "In the present climate of the law, many modern manufacturers have retreated from their former status as self-insurers. Products liability insurance, cautiously and hesitantly written shortly before the mid-Twenties as the result of demands of manufacturers for coverage, has

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liability for injuries arising from unreasonably dangerous products, there was not much need for such insurance coverage. The manufacturer could only be sued for negligence, and this alone was an insurmountable burden for the plaintiff in many cases. Even if the plaintiff could marshal the necessary evidence, there was the privity barrier. Thus, the greatest risk that a manufacturer suffered, aside from employer's liability, was for injuries to third persons arising out of conditions or activities on or near his premises and for operations away from such premises but related thereto. Insurance protection for such risks was readily available in the form of what is now called "Premises and Operations" coverage.[8] This coverage, as indicated, however, applied only to injuries occurring on, or adjacent to, the described premises,[9] and during the progress of operations away from the premises.[10] If the injury occurred away from the premises and after operations had been completed, there was no coverage.[11]

By describing the premises and defining the operations of the insured, the insurer limited the risks insured against. The premises and operations coverage was not particularly designed to meet the limited exposure of a manufacturer for products liability based on negligence although it is clear that such an injury occurring on the premises or during covered operations would be within the policy terms. An injury resulting from a product or completed operation away from the premises could only be said to be covered under the premises and operations clause by manipulating the word accident to mean the negligent act or omission instead of the

now become a major phase of insurance underwriting." Miller, *Liability of a Manufacturer for Harm Done by a Product*, 3 SYR. L. REV. 106, 124 (1951).

[8] For a general discussion of premises and operations coverage, *see* 7A J. APPLEMAN, INSURANCE LAWS AND PRACTICE §§ 4493.2, 4493.3 (1962).

[9] *See* Graustein & Co. v. Employers' Liab. Assur. Corp., Ltd., 214 Mass. 421, 101 N.E. 1073 (1913), holding, in an action on a policy covering injuries to third persons within or on the premises of insured, or ways adjacent thereto, that the words "elsewhere in service of employers" did not mean anywhere that the insured was engaged in doing any of its business, but was confined to the location of insured's premises.

[10] *See* Camden & Atl. Tel. Co. v. United States Cas. Co., 227 Pa. 242, 75 A. 1077 (1910), construing coverage for telephone company's operations provided the injuries were suffered "during the immediate doing of the work of construction."

[11] *See* Kelly-Dempsey & Co. v. Century Indem. Co., 77 F.2d 85 (10th Cir. 1935), holding indemnity policy insuring pipe line construction company against liability for injuries resulting from business operations not to cover injury resulting from explosion of dynamite cap left on pipe line by insured's employee, where at time of injury insured had finished construction of pipe line and surrendered possession and control thereof.

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injury caused by such conduct. This construction was a departure from accepted tort analysis and was easily blocked by defining the word accident in the policy. Thus, with the fall of the privity requirement and development of strict products liability, a new coverage was in order. This coverage, products hazard coverage, was supplied by simply adding to the existing premises and operations coverage a provision for injuries caused by products away from the premises and after the insured had relinquished possession of them. At the same time, and usually under the same paragraph entitled simply "Products Hazards" or "Products Hazards (Including Completed Operations)," coverage was provided for operations that had been completed or abandoned and which had taken place away from the described premises. As will be discussed later, this physical arrangement proved to be an unhappy choice for insurance companies.

The above dichotomy in coverage was perpetuated in the original standard Comprehensive General Liability policy adopted by most casualty companies after World War II, and, with some refinements, continued in the 1966 revised standard Comprehensive General Liability policy produced by the underwriting and policy drafting committees of the Mutual Insurance Rating Bureau and the National Bureau of Casualty Underwriters. In addition to the Comprehensive General Liability policy, one can obtain products hazard and completed operations coverage in connection with the following types of policies: (1) Comprehensive General-Automobile; (2) Manufacturers' and Contractors' Liability; (3) Schedule Liability; (4) Garage Liability; and (5) Owners', Landlords', and Tenants'. This does not mean, however, that when one purchases one of the above policies that products hazard and completed operations coverage is automatically included. On the contrary, this coverage has to be specifically purchased by the insured by so electing on the face of the policy or by purchasing an endorsement which either adds the coverage to or deletes the exclusion of the coverage under the basic policy. For example, the name of the standard Manufacturers' and Contractors' Liability policy would lead one to believe that products hazard and completed operations coverage is included, but, in fact, it is expressly excluded. Thus, one should be very careful in counseling his client to ensure that the desired coverage is obtained.[12]

[12] By way of further clarification in analyzing policy forms, it is worth noting that most insurers now have a form called the General Liability Automobile Policy, which is a standard form and is referred to as the Jacket. Included in the Jacket are the general definitions, conditions, and other materials that apply to liability policies in general. The Jacket is then assembled with standard inserts called Coverage Parts to form a complete policy. These inserts provide the specific insurance

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B. The Scope and Interrelationship of Products Hazard and Completed Operations Coverage

Prior to 1966, the typical products hazard provision, in its entirety, appeared in most policies as follows:

> Division 4. Products hazard
> (1) The handling or use of, the existence of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured, other than equipment rented to or located for use of others but not sold, if the accident occurs after the insured has relinquished possession thereof to others and away from the premises owned, rented or controlled by the insured or on premises for which the classification stated in division 1 of the declarations excludes any part of the foregoing;
> (2) Operations, if the accident occurs after such operations have been completed or abandoned at the place of occurrence thereof and away from premises owned, rented or controlled by the insured, except (a) pick-up and delivery, (b) the existence of tools, uninstalled equipment and abandoned or unused materials and (c) operations for which the classification stated in division 1 of the declarations specifically includes completed operations; provided, operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to a service or maintenance agreement.[13]

As previously explained this provision was designed to complement the premises and operations coverage by defining where the latter stopped and where the products hazard and completed operations coverage began.[14] To illustrate how these coverages fit together, assume a tire manufacturer owns some of its retail outlets or dealers and that it has a liability policy providing premises and operations coverage, but excluding products hazard and completed operations coverage. Assume further that a company-owned dealer was engaged in mounting a new tire on a customer's car at the dealer's place of business and that the tire exploded due to a defect in manufacture, injuring the customer who was standing nearby. Even though the manufacturer would be subject to a cause of action based on a products liability theory, the loss will come

coverage desired by the insured such as Comprehensive General Liability, Manufacturers' and Contractors' Liability, and Owners,' Landlords,' and Tenants' Liability. By proceeding in this fashion insurers attempt to achieve standardization and efficiency in underwriting operations, but to those not familiar with the relationship, and nonrelationship, of the different parts of this type of policy arrangement, it appears to be a successful attempt at obfuscation by insurers. *See* note 3 *supra*.

[13] 1 CCH Products Liab. Rep. ¶ 3530 (1970). *See also* Ocean Accid. & Guar. Corp. v. Aconomy Erectors, 224 F.2d 242, 244-45 (7th Cir. 1955).

[14] *See* Dixie Furniture Co. v. Central Surety & Ins. Co., 173 F. Supp. 862, 866 (E.D. Ark. 1959).

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under his premises and operations coverage. The same would be true if the dealer relinquished possession of the tire to the customer, but due to an innate instinct the customer stopped his car on the edge of the dealer's premises and gave the tire a sharp kick only to have it explode and injure him. Paragraph (1) of the products hazard exclusion only comes into play where the dealer relinquishes possession of the tire *and* the injury occurs away from his premises.[15] From this it can be seen that the products hazard coverage parallels the common law exposure in regard to products liability only so far. The coverage is dependent on the location of the accident and the possession of the product, factors which are usually irrelevant to the common law theories of products liability.

The above illustrates how paragraph (1) of the products hazard provision relates to the premises and operations coverage. Unfortunately, however, due to the language and location of paragraph (2) of the products hazard provision, the relationship of that paragraph to paragraph (1) and to the premises and operations coverage is far from clear. If one construes the word "operations" in its broadest sense, there is an unmistakable overlap between paragraphs (1) and (2) because "operations" certainly encompasses the "handling or use of" products. This can be shown by pursuing the above illustration further. Assume the dealer receives a telephone call from a customer who is stranded on the highway with a blown-out tire. The dealer takes a new tire to the customer, mounts it, and, as he drives away, the tire explodes and injures the customer as the latter gives it a kick. This situation obviously involves the handling or use of a product, but it can also be said to involve an operation. Thus, it can fit just as comfortably under the language of paragraph (1) or (2),[16] and there appears to be no

[15] Where a liquefied petroleum gas dealer sold propane gas which did not contain the required odorizing agent, and which later exploded when a match was ignited in a house which unknowingly had become filled with the undetectable gas, the cause of action clearly fell within the products hazard exclusion. Bramlett v. Pan American Fire & Cas. Co., 391 P.2d 256 (Okla. 1964).

[16] *See* Tidewater Assoc. Oil Co. v. Northwestern Cas. Co., 264 F.2d 879 (9th Cir. 1959), where the insured sold stove oil contaminated with gasoline which later exploded on ignition. The court classified the injury as arising out of a completed operation, but it would be just as logical to say that the injury arose from handling or selling a product, after possession was relinquished and away from the insured's premises.

In Inductotherm v. New Jersey Mfrs. Cas. Ins. Co., 83 N.J. Super. 464, 200 A.2d 358 (L. Div. 1964), the manufacturer-insured supplied defective ceramic crucibles for use in conjunction with an induction melting unit which it leased. The bottoms failed on the crucibles, splattering molten bronze on the persons using them. Even though

advantage or disadvantage in selecting one or the other in this case.[17]

Any time a person handles or uses goods or products which he manufactures, sells, handles or distributes this involves an operation, but not all operations involve products as one normally thinks of the word, and herein lies the source of the dispute as to how paragraph (2) relates to the premises and operations coverage. As one court has noted:

> The products hazard provision does not usually give rise to unusual difficulty as to liability insurance coverage where there is only involved the manufacture or sale of what is commonly known and regarded as a product. Where the transaction involves . . . the erection of a structure and the contractor furnishes material for the structure, greater difficulty is encountered as to liability insurance coverage under the products hazard provision. However, when the contract involves . . . the rendering of services which do not involve the furnishing or supplying of any product or material, the question of liability insurance coverage under the products hazard provision becomes most difficult.[18]

The question that plagued the completed operations subdivision embodied in paragraph (2) is: was it meant to cover pure service operations? It was clear that paragraph (1) could only apply where a product was involved. Paragraph (2) could also apply where products were involved in the operation, but was it limited to that situation? This became a very important question where products hazard coverage was excluded from a comprehensive risk type policy containing premises and operations coverage.[19] Any opera-

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the court decided that the accident was excluded because it involved operations which were completed and away from the insured's premises, it surely arose out of a product which the insured handled or distributed as defined in paragraph (1).

[17] Because of the exception in paragraph (1) "other than equipment rented to or located for use of others but not sold," paragraph (2) would not duplicate the coverage in those fact situations unless one reads this exception into paragraph (2), as did the court in Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 63 Cal. Rptr. 382, 433 P.2d 174 (1967).

In some policies the exception is worded "but shall not include any vending machine or any property . . . rented to or located for use of others but not sold." *See* Peerless Ins. Co. v. Clough, 105 N.H. 76, 81, 193 A.2d 444, 448 (1963).

[18] Nielson v. Travelers Indem. Co., 174 F. Supp. 648, 653-54 (N.D. Iowa 1959), *aff'd on opinion below*, 227 F.2d 455 (8th Cir. 1960).

[19] *See, e.g.*, Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 685, 63 Cal. Rptr. 382, 386, 443 P.2d 174, 178 (1967). No case could be found where an insured had purchased products hazard and completed operations coverage without also purchasing premises and operations coverage, although this would be advisable,

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tions not specifically excluded would be covered. In resolving this question great emphasis was usually placed on the fact that the completed operations provision was a subdivision of the policy section captioned either "Products,"[20] "Products Hazard,"[21] "Products-Completed Operations,"[22] or "Products Hazards (Including Completed Operations),"[23] the inference being that the provision was meant to cover only those operations which involved products in the ordinary sense of the word.[24] Other factors that influenced the courts were: (1) the completed operations hazard was tied in by hyphen, format and premium charge with the products hazard in the description of risks section of the policy and one could not insure against risks arising from completed operations separate and apart from products liability;[25] (2) the singular nature of the word "Hazard" in "Products-Completed Operations Hazard;"[26] (3) the premium for the products and completed operations coverage was determined by "the gross amount of money . . . charged for all goods and products sold;"[27] (4) the language and arrangement of the policy would lead the ordinary person to believe he had coverage for risks arising from completed operations;[28] and, (5) at the

as where a business is being terminated. 1 CCH, PRODUCTS LIAB. REP. ¶ 3520 (1970). If this were the case, would a court say that there was no coverage for service operations not involving products since the products hazard and completed operations coverage dealt only with products? Unless the court found the policy ambiguous this would be the logical result.

[20] *See, e.g.*, McAllister v. Century Indem. Co., 24 N.J. Super. 289, 94 A.2d 345 (App. Div. 1953), *aff'd mem.*, 12 N.J. 395, 97 A.2d 160 (Brennan, J., dissenting).

[21] *See, e.g.*, Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 63 Cal. Rptr. 382, 433 P.2d 174 (1967).

[22] *See, e.g.*, New Amsterdam Cas. Co. v. Addison, 169 So. 2d 877 (Fla. Ct. App. 1964).

[23] *See, e.g.*, Clements v. Aetna Cas. & Sur. Co., 15 Ohio Misc. 252, 42 Ohio Op. 2d 355, 236 N.E.2d 799 (Ct. C.P. 1968).

[24] Just what the courts mean by products "in the ordinary sense of the word" is not susceptible to precise definition, but in Kammeyer v. Concordia Telephone Co., 446 S.W.2d 486, 489 (Mo. Ct. App. 1969), the court said that "any effort to define 'product' as the end result of any activity will be rejected. . . ."

[25] Peerless Ins. Co. v. Clough, 105 N.H. 76, 82, 193 A.2d 444, 448 (1963); McNally v. American States Ins. Co., 308 F.2d 438, 444 (6th Cir. 1962).

[26] New Amsterdam Cas. Co. v. Addison, 169 So. 2d 877, 880 (Fla. Ct. App. 1964).

[27] Morris v. Western Cas. & Sur. Co., 421 S.W.2d 19, 26 (Mo. Ct. App. 1967).

[28] Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 691, 63 Cal. Rptr. 382, 390, 433 P.2d 174, 182 (1967); Rafiner Elevator Works v. Michigan Mut. Liab. Co., 392 S.W.2d 240, 242 (Mo. 1965).

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very least, the policy was ambiguous and should be construed against the insurance company.[29]

The majority of courts[30] facing this issue followed the view that the completed operations provision does not apply to an insured's business if it involves services only, or if the product composes but

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In Lumbermens Mut. Cas. Co. v. Pattee, 108 N.H. 298, 234 A.2d 537, 539 (1967), where the policy contained an endorsement defining completed operations to include "any act or omission in connection with operations performed by or on behalf of the named insured on the premises or elsewhere, whether or not goods or products are involved in such operations," the court still held that the provision applied only to those operations involving products. "Since the 'interpretative endorsement' is also boldly headed 'Products-Completed Operations Hazard,' the insured would have no more reason to think that it applied to him than he would the other provisions relating to the same hazard."

[29] Hoffman & Klemperer Co. v. Ocean Accid. & Guar. Corp., 292 F.2d 324, 328 (7th Cir. 1961).

[30] McNally v. American States Ins. Co., 308 F.2d 438 (6th Cir. 1962) (elevator maintenance service); Hoffman & Klemperer Co. v. Ocean Accid. & Guar. Corp., 292 F.2d 324 (7th Cir. 1961) (cleaning and tuckpointing buildings); Nielson v. Travelers Indem. Co., 174 F. Supp. 648 (N.D. Iowa 1959), *aff'd on opinion below*, 277 F.2d 455 (8th Cir. 1960) (excavating for sewer); R & O Elevator Co. v. Bituminous Cas. Corp., 194 F. Supp. 452 (D. Minn. 1960), *aff'd*, 293 F.2d 179 (8th Cir. 1961) (elevator maintenance); Hercules Co. v. Royal Indem. Co., 171 F. Supp. 746 (S.D.N.Y. 1959) (cleaning ship's hold); Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 63 Cal. Rptr. 382, 433 P.2d 174 (1967) (cleaning swimming pool); Hays v. Pacific Indem. Group, 8 Cal. App. 3d 158, 86 Cal. Rptr. 815 (1970) (installation of garage door); Miller Electric Co. v. Employers' Liab. Assur. Corp., 171 So. 2d 40 (Fla. Ct. App. 1965) (installation of electrical distribution system); New Amsterdam Cas. Co. v. Addison, 169 So. 2d 877 (Fla. Ct. App. 1964) (electrical contracting); Maretti v. Midland Nat'l Ins. Co., 42 Ill. App. 2d 17, 190 N.E.2d 597 (1963) (fireworks exhibition); Kendrick v. Mason, 234 La. 271, 99 So. 2d 108 (1958) (installation of sewer system); Poynter v. Fidelity & Cas. Co., 140 So. 2d 42 (La. Ct. App. 1962) (repair of heating system in trailer); Swillie v. General Motors Corp., 133 So. 2d 813 (La. Ct. App. 1961) (installation of brake line); King v. Mason, 95 So. 2d 705 (La. Ct. App. 1957), *aff'd per curiam*, 234 La. 299, 99 So. 2d 117 (1958) (installation of sewer system); Rafiner Elevator Works v. Michigan Mut. Liab. Co., 392 S.W.2d 240 (Mo. 1965) (elevator maintenance); Kammeyer v. Concordia Telephone Co., 446 S.W.2d 486 (Mo. Ct. App. 1969) (removing old telephone equipment); Morris v. Western Cas. & Sur. Co., 421 S.W.2d 19 (Mo. Ct. App. 1967) (electrical wiring); Kissel v. Aetna Cas. & Sur. Co., 380 S.W.2d 497 (Mo. Ct. App. 1964) (excavating by general contractor); Lumbermens Mut. Cas. Co. v. Pattee, 108 N.H. 298, 234 A.2d 537 (1967) (plumbing business); Peerless Ins. Co. v. Clough, 105 N.H. 76, 193 A.2d 444 (1963) (building contractor); McAllister v. Century Indem. Co., 24 N.J. Super. 289, 94 A.2d 345 (App.

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a minimal part of the business,[31] despite the fact that in so doing it made the completed operations provision redundant to the coverage already provided in paragraph (1).[32] The minority took the position, for which the insurance companies argued, that the completed operations provision covered all types of operations regardless of the involvement of a product.[33] The latter view is more in keeping with the intent of the drafters of the policy terms, and, notwithstanding the ambiguity that might have been created by the arrangement of the policy provisions, it is more in keeping with the basic concept that the products hazard and completed operations coverages only apply when the insured is finished with the product or through with operations.[34]

Div. 1953, *aff'd mem.*, 12 N.J. 395, 97 A.2d 160 (Brennan, J. dissenting) (excavating and installation of oil tank under sidewalk); Johnson v. National Union Fire Ins. Co., 56 Misc. 2d 983, 289 N.Y.S.2d 852 (Sup. Ct. 1968) (building contractor); Clements v. Aetna Cas. & Sur. Co., 15 Ohio Misc. 252, 42 Ohio Op. 2d 355, 236 N.E.2d 799 (Ct. C.P. 1968) (backfilling ditch). *See* Gehrlein Tire Co. v. American Emp. Ins. Co., 243 F. Supp. 577 (W.D. Pa. 1964), *aff'd per curiam*, 348 F.2d 918 (3d Cir. 1965) (mounting tires on rims).

[31] Similarly, if the business of the insured may be severed into operations not related to a product, only those operations that do involve a product are subject to the completed operations provision. Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 691, 63 Cal. Rptr. 382, 390, 433 P.2d 174, 182 (1967).

[32] "The Kendrick decision [following the majority rule] not only ignores the express language of the 'operations' definition under 'Products Hazard' but also renders that whole definition of no effect when considering the activities as here of a construction contractor." Neumann v. Wisconsin Nat. Gas Co., 27 Wis. 2d 410, 423, 134 N.W.2d 474, 481 (1965). *See also* Waterman S. S. Corp. v. Snow, 222 F. Supp. 892, 898 (D. Ore. 1963).

[33] Green v. Aetna Ins. Co., 397 F.2d 614 (5th Cir. 1968) (drill repair service); Orchard v. Agricultural Ins. Co., 228 F. Supp. 564 (D. Ore. 1964) (automobile parts business); American Policyholders' Ins. Co. v. McClinton, 100 N.J. Super. 169, 241 A.2d 462 (Ch. Div. 1968) (plumbing business); Neumann v. Wisconsin Natural Gas Co., 27 Wis. 2d 410, 134 N.W.2d 474 (1965) (excavation); Waterman S. S. Corp. v. Snow, 222 F. Supp. (D. Ore. 1963) (fumigating ship's hold); Clauss v. American Auto & Ins. Co., 175 F. Supp. 641 (E.D. Pa. 1959) (sewer construction). *See* Smedley Co. v. Employers' Mut. Liab. Ins. Co., 143 Conn. 510, 123 A.2d 755 (1956) (operation of public warehouse); Dickert v. Allstate Ins. Co., 121 Ga. App. 766, 175 S.E.2d 98 (1970) (installation of home appliances); Baker v. Maryland Cas. Co., 73 R.I. 411, 56 A.2d 920 (1948) (cesspool cleaning); Butler v. United States Fidelity & Guar. Co., 197 Tenn. 614, 277 S.W.2d 348 (1955) (repairing residences); Pan American Ins. Co. v. Cooper Butane Co., 157 Tex. 102, 300 S.W.2d 651 (1957) (installing, servicing and repairing liquified petroleum gas systems).

[34] Andersen, *Current Problems in Products Liability Law and Products Liability Insurance*, 31 INS. COUNSEL J. 436, 442 (1964).

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The basis for the ambiguity discussed above lies in the way the parties to the insurance view their exposure to the risk. An insurer that writes an ordinary public liability policy does not want a risk extending without end as a result of work performed or merchandise sold.[85] The underwriting considerations are different for this type of risk which, in turn, give rise to different premium rates.[86] On the contrary, a businessman does not necessarily think of his exposure on this basis and expects his insurance to cover any injuries arising out of an operation or product, regardless of whether he is finished with it. He does not categorize his association with the operation or product as does his insurer. While the dichotomy is logical to the insurer, it is arbitrary to the insured, and not one which he would usually expect. Thus, an insurer has a duty in drafting its policies to clearly delineate the hazards which it purports to protect against.

In the 1966 revision of the standard Comprehensive General Liability policy, the insurance industry has taken steps to eliminate the confusion caused by tying the completed operations provision to the products hazard provision. In the revised standard policy the description of hazards lists completed operations and products as separate hazards to be insured against. The premium for the former is based on receipts while the premium for the latter is based on sales. Moreover, the definition of each hazard is separated completely from the other. To date there are no cases reported construing the new provisions, but the above changes would seem to meet the objections that were raised in regard to the old policies.[87]

C. Products Liability Coverage

1. *Risks Included In Products Hazards*

When the products hazard provision was originally designed to include both protection for risks arising from products and completed operations it was not so important to define exactly what risks in regard to products were intended to be covered. As discussed in the previous section, it became very important to know whether or not a product was involved, but once it was determined that there was a product involved very little attention was devoted to whether it fell under paragraph (1) or (2) because both were

[85] 7A J. Appleman, Insurance Law and Practice § 4508, at 98 (1962).

[86] *Id.*; Sorensen, *What a Lawyer Ought to Know About Products Liability Insurance Coverage*, 1968 Trial Lawyers Guide 322, 326 (1968).

[87] It should be pointed out that not all insurers use the same forms, but there is a great deal of uniformity because most companies are members of or subscribe to rating boards, such as the Mutual Insurance Rating Bureau and National Bureau of Casualty Underwriters, and use the forms promulgated by these organizations.

usually interpreted to cover risks arising from products. If a retailer committed an act of negligence in selling or delivering a perfectly good product, this conduct could be classified as a risk arising out of the handling of a product or an operation. The retailer either had both coverages or neither since they were always sold together.

Under the 1966 revision, it is now possible to buy one coverage without the other and it has now become very important for the insured to know exactly what risks each of these two coverages purports to protect against. It is clear that the new products hazard provision will protect against defective products, breached warranties and misrepresentations[38] and it should now be clear that the new completed operations provision covers services not involving goods or products.[39] But what coverage should our negligent retailer mentioned above have? Should he have purchased only the products hazard coverage or should he have also purchased the completed operations coverage? He cannot answer these questions until he knows exactly what risks are covered by each. At present there is no clear answer.[40]

The language adopted by insurers in defining the risks insured against under the products hazard provision has been the source of differing opinions. The early policies provided:

> This policy does not cover any accident . . . caused directly or indirectly by the possession, consumption, handling or use, elsewhere than upon the premises described in the schedule of statements, of any goods, article or produce, manufactured, handled or distributed by the assured unless covered hereunder by written permit endorsed on this policy.[41]

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[38] The revised standard products hazard coverage protects against "bodily injury and property damage arising out of the named insured's products or reliance upon a misrepresentation or warranty made at any time with respect thereto."

[39] *See* note 37 and accompanying text *supra*.

[40] By solving one problem, whether the completed operations provision applied to services not involving goods or products, the insurers have exposed another problem. Perhaps the insurance industry had the correct approach originally by combining the two coverages and selling it under the one heading, but erred only in the name identifying it. The objections raised by the courts might have been met by changing the name to "Completed Operations (Including but not limited to Products Hazards)." Another alternative would have been to include both coverages in one paragraph reading: "Operations, including but not limited to those involving goods or products of the named insured after possession has been relinquished, if such operations have been completed or abandoned at the place of occurrence thereof, and away from premises, etc."

[41] *See* Loveman, Joseph & Loeb v. New Amsterdam Cas. Co., 233 Ala. 518, 520, 173 So. 7, 8 (1937).

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This language was subsequently simplified by referring to accidents caused by "the handling or use of, the existence of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured."[42] Some shortened it even further by merely referring to accidents caused by "goods or products manufactured, sold, handled or distributed by the named insured."[43]

The words "handling or use of" would seem to include any theory of tort liability in regard to a product which caused bodily injury or property damage away from the premises and after the insured relinquished possession of it. Yet, it was not infrequently argued that the negligence of one in handling or using a product in which he dealt was independent of and unrelated to the product, even though one cause in fact of the injury was the product. The end to be achieved by such an argument was, of course, that the products hazard exclusion was inapplicable. For example, in *Lessak v. Metropolitan Casualty Insurance Co.*[44] it was argued that there was no defective condition in the product, nor any breach of warranty, and that the negligence of the storeowner in selling ammunition for a BB gun to a minor was not excluded by the products hazard provision. The court accepted this argument, and in so doing gave a narrow construction to the products hazard provision to the effect that it did not apply to mere negligence in the sale of a product as this was not a risk inherent in the product itself. The latter risk, however, was already covered by the language "the existence of any condition in or a warranty of goods or products." Thus, the result of the decision was to delete the words "the handling or use of" from the policy.[45]

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[42] *See* note 13 and accompanying text *supra*.

[43] *See* Diversified Products Co. v. Fidelity & Cas. Co., 355 F.2d 846 (6th Cir. 1966).

[44] 168 Ohio St. 153, 151 N.E.2d 730 (1958).

[45] For another court indicating approval of this view, *see* Employers Liab. Assur. Corp. v. Youghiogheny & Ohio Coal Co., 214 F.2d 418 (8th Cir. 1954) (where it was alleged, *inter alia*, that coal was negligently loaded on a railroad car so that when an attempt was made to open the door, it fell off causing severe personal injuries, and the court held that such negligence was not related to the insured's product). *But see* Mohawk Valley Fuel Co. v. Home Indem. Co., 8 Misc. 2d 445, 165 N.Y.S.2d 357 (Sup. Ct. 1957) (negligent delivery of fuel to wrong address, which resulted in a fire when fuel was discharged through an intake valve onto the cellar floor, was held to be "handling" of a product); Bitts v. General Accident Fire & Life Assur. Corp., 282 F.2d 542 (9th Cir. 1960) (failure to warn of the characteristics of refrigerator coil and dangerous consequences of opening same constituted negligence arising out of the handling of a product). *See also* Employers Mut. Liab. Ins. Co., v. Underwriters at Lloyd's, 177 F.2d 249, 251 (7th Cir. 1949) (where the court refused to limit the products hazard provision to risks arising out of defective products).

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Although there have been other cases[46] which have carried the narrow construction in *Lessak* over to those policies which define the products hazard as risks "arising out of goods or products manufactured, sold, handled or distributed by the named insured" the more tenable approach was taken in *Hagen Supply Corp. v. Iowa National Mutual Insurance Co.*[47] This case involved a mail order house which was found to be negligent in selling a tear gas device to a minor. In answer to the argument that the products hazard provision should be limited to defective products, the court rejected the *Lessak* position and held that there were many acts or omissions that would subject a manufacturer or seller to liability, to wit: failure to warn, defective workmanship, negligent design, illegal sale, misrepresentation, inadequate testing, and inherently dangerous objects. The court thus concluded that the illegal sale of the tear gas device was within the products hazard provision.

By giving the products hazard provision a broad construction so that it covers any injury caused in fact by a product manufactured, sold, handled or distributed by the insured, one eliminates the near hopeless task of trying to determine if the injury falls within a risk arising out of the product itself.[48] Moreover, it will be consistent with what the insured reasonably expects to receive by way of insurance coverage. A retailer would be covered by the

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In Tidewater Assoc. Oil Co. v. Northwest Cas. Co., 264 F.2d 879, 881-82 (9th Cir. 1959), the insured delivered contaminated fuel oil when his truck driver failed to clean a hose which had previously been used to pump gasoline. The oil exploded and the insured argued that the injured party's "allegations of negligence are directed to the use of faulty equipment or the negligence of the truck driver and do not pertain to a product of the insured or a defect in a product manufactured by the insured;" thus they fell outside the products hazard exclusion. The court held that "whatever pre-existing negligence may have occurred, the immediate cause of the accident was the handling and use of the insured's contaminated product away from the insured's premises and after the insured had relinquished possession."

[46] *See* McGinnis v. Fidelity & Cas. Co., 276 Cal. App. 2d 15, 80 Cal. Rptr. 482 (Cal. Ct. App. 1969) (insured sold gun powder to fifteen year old boy); Thibodeaux v. Parks Equip. Co., 140 So. 2d 215 (La. Ct. App. 1962) (failure to warn of characteristics of valve and failure to give proper instructions for installation and use of same); Brant v. Citizens Mut. Auto Ins. Co., 4 Mich. App. 596, 145 N.W.2d 410 (1966) (insured delivered different type of stove than one ordered, resulting in asphyxiation).

[47] 331 F.2d 199 (8th Cir. 1964).

[48] Once liability is established under tort law where a product is the cause in fact of the injury, one should not look further to determine whether the loss falls within the products hazard provision if the accident happens after the insured has relinquished possession of the product and away from the premises. To hold otherwise will lead to analysis so abstruse as to rival that found in proximate cause.

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products hazard provision regardless of whether he negligently sells to a minor, as above, sells or delivers a product different from that requested,[49] or fails to warn in regard to a dangerous characteristic.[50] All of these are commonly termed products liability cases even though the product itself may be perfect. A supplier of products should be covered for these risks when he purchases coverage denominated products hazard, and should understand that he has no such coverage if he refuses it. This would leave the completed operations provision to cover those services not involving products and any duplication in coverage between the two would be avoided. If this construction is not followed, a prospective insured dealing with products would have to take both coverages to be sure he is fully protected and this he should not be required to do. The products hazard provision should not be limited to certain classes of transactions involving the insured and his products, but should be extended to all hazards related to an insured's products which actually cause injuries away from the insured's premises and after possession of the products is relinquished by him.

2. *What Constitutes Goods or Products Manufactured, Sold, Handled or Distributed By the Insured?*

What are "goods or products"? These two words standing alone have a meaning which is most commonly associated with the commercial world. They are most often thought of as some tangible or material units in which one trades. The qualifying words "manufactured, sold, handled[51] or distributed" really do not broaden the ordinary meaning associated with these words, but limit "goods or

[49] *See, e.g.*, Orchard v. Agricultural Ins. Co., 228 F. Supp. 564 (1964) *aff'd per curiam*, 340 F.2d 948 (9th Cir. 1965) (delivery of different rear axle bearing from that ordered held to be within products hazard provision). *See also* American Emp. Ins. Co. v. Knox-Tenn Equip Co., 52 Tenn. App. 643, 377 S.W.2d 573 (1963) (furnishing wrong size drill bits covered by products hazard provision).

[50] *See, e.g.*, Inductotherm Corp. v. New Jersey Mfrs. Cas. Ins. Co., 83 N.J. Super. 464, 200 A.2d 358 (L. Div. 1964) (failure to warn of danger inherent in use of product within products hazard provision).

[51] The word "handled" standing alone does not necessarily have the commercial connotation associated with the others, but, because of the basis of the liability the products hazard provision is designed to protect against, it is reasonable to give it a construction consistent with the others. For such an interpretation see Smedley Co. v. Employers Mut. Liab. Ins. Co., 143 Conn. 510, 515, 123 A.2d 755, 758 (1956) where the court held that the intent of the drafters was to restrict the word "handled" to mean "to buy and sell; to deal, or trade, in."

products" to those in which the insured trades or deals.[52] This is best illustrated in *Liberty Mutual Insurance Co. v. Hercules Powder Co.*[53] where a sealed aluminum tube was, in its use by the insured, repeatedly plunged into a mass of molten explosive material for experimental purposes. Thereafter the tube was sent to another concern to have work performed on it and was to be returned to the insured upon completion of this work. While the work was being performed the tube exploded. In answer to the insurer's argument that the tube constituted goods or a product handled by the insured the court pointed out that the basis of products liability was the responsibility placed on one who sends goods or products out into the channels of trade for use by others and that a piece of equipment sent by a manufacturer to a laboratory for processing was not such goods or product. The court likened the tube to a wrench or jack or any other of the numerous pieces of paraphernalia about a laboratory or factory.

While the *Hercules* case shows that it is necessary to actually trade or deal in an item, it is not necessary that this be the product or goods in which one primarily deals. In *Liberty Mutual Insurance Co. v. Gwin*[54] a bottled gas dealer provided empty gas cylinders at his cost to customers without any obligation to return them regardless of whether they purchased gas from the dealer to fill them. When one of these bottles exploded it was held to be "goods" under the Alabama Sales Act, and, therefore, to be within the products hazard provision. In fact, it has been held that even a brief excur-

[52] *See* Gehrlein Tire Co. v. American Emp. Ins. Co., 243 F. Supp. 577 (W.D. Pa. 1964), *aff'd per curiam*, 348 F.2d 918 (3d Cir. 1965) (tire dealer who mounted tires on rims, both of which were brought to him by a customer, was not engaged in manufacturing, selling, handling, or distributing a product); Smedley Co. v. Employers Mut. Liab. Ins. Co., 143 Conn. 510, 123 A.2d 755 (1956) (public warehouse operator who delivered from storage different product than ordered was not engaged in manufacturing, selling, handling or distributing products); Swillie v. General Motors Corp., 133 So. 2d 813 (La. Ct. App. 1961) (original manufacturer of Natchez Double Loadster was not engaged in manufacturing, selling, handling or distributing a product while installing a Loadster for a third party who purchased it from intermediate source); Lieberman v. New Amsterdam Cas. Co., 284 App. Div. 1051, 135 N.Y.S.2d 850 (1954), *motions for reargument and leave to appeal denied*, 285 App. Div. 830, 137 N.Y.S.2d 840 (1955) (hubcap replaced after repairing flat tire was not a product manufactured, sold, handled, or distributed by service station operator); Philadelphia Fire & Marine Ins. Co. v. Grandview, 42 Wash. 2d 357, 255 P.2d 540 (1953) (city did not manufacture, sell, handle or distribute methane gas which, as a result of city's negligence, was allowed to enter homes through city water mains).

[53] 224 F.2d 293 (3d Cir. 1955).

[54] 370 F.2d 297 (5th Cir. 1966), *cert. denied*, 388 U.S. 910 (1967).

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sion into the stream of commerce will cause one to be classified as a manufacturer, seller, handler or distributor of goods or products regardless of how foreign this occasional venture may be to his normal activities. In *Smith v. Maryland Casualty Co.*,[55] the court held that a sling shot sold at a church bazaar was a product sold by the church and coverage was excluded by the products hazard provision when the sling shot broke, causing personal injuries. Thus, it can be seen that the stream of commerce has some unexpected bends in it.

Certainly the court in *Hercules* was sound in relying on the common law basis of products liability for its decision, and this should continue to be the approach for determining what constitutes "goods or products." As the common law changes, the insurance protection should change with it. For example, who would have thought a decade ago that a house might be classified as a product for purposes of imposing strict liability for defects on the builder? Yet, this has happened[56] because of changes in the home building industry. At one time most houses were built for the landowner by a contractor on an individual basis and houses were not considered a product.[57] Today when many homes are built by developers and contractors on subdivided property which they own and then sold on the open market, there is no reason not to think of such houses as products, and these should come under the products hazard provision.[58]

In order to complete the discussion of the definition of "goods or products" two policy provisions need to be briefly mentioned. Prior to 1966 some policies[59] provided that goods or products in-

[55] 246 Md. 485, 229 A.2d 120 (1967).

[56] *See, e.g.*, Humber v. Morton, 426 S.W.2d 554 (Tex. 1968); House v. Thornton, 457 P.2d 199 (Wash. 1969).

[57] *See* Kissel v. Aetna Cas. & Sur. Co., 380 S.W.2d 497 (Mo. Ct. App. 1964).

[58] *See* Peerless Ins. Co. v. Clough, 105 N.H. 76, 82, 103 A.2d 444, 448 (1963) (where the court noted, in holding the insured building contractor did not deal in products, that he was building houses on a cost-plus basis on land owned by others). *But see* Johnson v. Nat'l Union Fire Ins. Co., 56 Misc. 2d 983, 289 N.Y.S.2d 852 (Sup. Ct. 1968) (where the court refused to recognize any distinction based on whether the insured built houses under contract on land owned by another as opposed to building houses on his own land and then transferring the improved property to purchasers, and held: "Though houses built constitute part of the gross national 'product' and in the broad sense of the word are the 'product' of the labor of the various trades engaged in their construction, they are not 'products' in common parlance." Id. at 990, 289 N.Y.S.2d at 858.).

[59] For such a policy, *see* Liberty Mut. Ins. Co. v. Gwin, 370 F.2d 297 (5th Cir. 1966), *cert. denied*, 388 U.S. 910 (1967).

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cluded any container thereof, other than a vehicle.[60] This has been carried forward in the 1966 revised standard forms and should cover any container, regardless of whether it is the immediate container, such as a bottle, or a secondary container, such as a paper carton which contains the bottle which in turn contains the goods or product. The second provision deals with goods or products which are furnished for use of others, but not sold, such as rented, leased or bailed equipment or property. The 1966 revised standard policies carry forward this exception by using the language "'named insured's products' shall not include a vending machine or any property . . .[61] rented to or located for use of others but not sold." Thus, even though the courts have held that persons engaged in the equipment rental or leasing business are subject to products liability actions,[62] the products hazard coverage is not what such a person should purchase for protection. He would be protected under a premises and operations provision[63] and this is what he should buy.

3. *Relinquishment of Possession*

The word "possession" in the phrase "relinquishment of possession" in the products hazard provision was a source of dispute in the pre-1966 policies. Was it sufficient that the insured relinquished physical control, sometimes referred to as custody, or did he also have to relinquish his proprietary rights of control? There was no unanimity on the answer to this question. There were two authoritative cases that considered this problem and, even though they involved almost identical facts, they reached opposite results. In 1960 the Ninth Circuit Court of Appeals decided *General Casualty Co.*

[60] For a discussion of what constitutes a "vehicle," *see* Employers Liab. Assur. Corp. v. Youghiogheny & Ohio Coal Co., 214 F.2d 418 (8th Cir. 1954).

[61] Containers are excepted.

[62] *See, e.g.*, Price v. Shell Oil Co., 2 Cal. 3d 245, 85 Cal. Rptr. 178, 466 P.2d 722 (1970) (holding commercial lessor or bailor of chattels to be subject to strict products liability actions).

[63] In Insurance Co. of North America v. Electronic Purification Co., 67 Cal. 2d 679, 686, 63 Cal. Rptr. 382, 386, 433 P.2d 174, 178 (1967), the court rejected the insurer's argument that the exception of rented products from the products hazard provision contemplated an absolute exclusion from any coverage whatsoever under the comprehensive risk policy in question, and that additional protection must be purchased to insure a risk of liability related to rented goods. The court concluded "that since rented products are excepted from the products hazard exclusion, they come within the general coverage." *Accord*, Aetna Ins. Co. v. Loxahatchee Marina, Inc., 236 So. 2d 12 (Fla. Ct. App. 1970).

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v. Azteca Films, Inc.[64] which involved the sale by the insured of used motion picture films to a cellulose scrap dealer. The insured would ship the used film to the dealer in containers owned by the latter and it was the practice of the dealer to examine the used film, pay for what he could use and destroy the remainder. In this case the insured had delivered the film to a common carrier and it caught fire destroying certain property. Physical possession had been relinquished by the insured, but title had not passed to the dealer at the time of the loss. Applying California law the court determined that the policy should be interpreted as understood by a reasonably prudent person and that under this test the word "possession" contained no ambiguity, but would be understood to mean actual or physical possession.[65]

Six years later the Second Circuit held, with one dissent, in a factually similar case, *National Screen Service Corp. v. United States Fidelity and Guaranty Co.*,[66] that under New York law there was an ambiguity in the word "possession" as used in the policy and that the New York courts would give a broad construction to it so as to include constructive as well as actual possession.[67] The *Azteca* case was the sounder of the two if one approaches the question from the standpoint of what an ordinary insured under this type of policy would expect. A lawyer might be expected to understand the difference between custody and possession, but to most people they are synonymous. Moreover, this interpretation was more in keeping with the overall design of the products hazard provision. It was the insurers who chose to make a distinction in coverage based on where the accident happened and whether or

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[64] 278 F.2d 161 (9th Cir.), *cert. denied*, 364 U. S. 863 (1960).

[65] The court buttressed this interpretation by noting that the products hazard provision contained an exception as to "equipment or other property rented to or located for the use of others but not sold," and reasoned that if one construed the word "possession" to mean constructive possession it would render this exception "nugatory if not absurd, for if the exclusion must relate to property 'sold' and off the premises, it is completely unnecessary to except therefrom property rented to or located for the use of others but not sold." *Id.* at 168. The court concluded by saying that the inescapable implication was that there were certain types of unsold property other than equipment rented to or located for use of others, as here, which were meant to be excluded by the products hazard provision.

[66] 364 F.2d 275 (2d Cir.), *cert. denied*, 385 U. S. 958 (1966).

[67] For other cases construing the word "possession" to mean constructive possession as well as actual possession, *see* Canadian Radium & Uranium Corp. v. Indemnity Ins. Co., 348 Ill. App. 171, 108 N.E.2d 515 (1952); Boeing Airplane Co. v. Firemen's Fund Indem. Co., 44 Wash. 2d 488, 268 P.2d 654 (1954).

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not the insured was through with the product or operation.[68] From an underwriting standpoint the mere passage of the proprietary right to control would not appear to have had any effect on costs of investigation and settlement of claims. It was not legal title that concerned the insurers; it was the added burden of administering claims when the insured was not around to help with the process that counted. If the passage of legal title, that is, the relinquishment of the proprietary right to control, was the test, then it would be possible for title to pass and the insured still have physical possession of the property, and surely this was not a "relinquishment of possession" within the meaning of the policy.[69]

In any event the insurance industry has taken steps to solve this problem by inserting the word "physical" immediately prior to the word "possession" in the 1966 revised standard provisions and for those companies adopting these forms their intent should be abundantly clear.

D. Completed Operations

Prior to 1966 there was diversion in court decisions as to whether the completed operations provision applied to pure service operations or merely to those service operations involving goods or products.[70] The insurance industry has attempted to clear up this problem by rearranging the policy provisions,[71] and, as it was previously submitted, the completed operations provision should now be construed to cover only those operations which do not involve goods or products manufactured, sold, handled or distributed by the insured.[72] This would leave the products hazard provision to cover any injury which is caused in fact by a product, and, thus hopefully simplify, at least from the insured's standpoint, what could otherwise become a very confusing and misleading situation. With this perspective of the completed operations hazard, one needs to turn to another problem which has arisen under this provision: when is an operation completed? In the early policies there was no elaboration on what was meant by the seemingly innocent word "completed," but the question was soon raised.

Where an insured begins an operation and the evidence shows that it is still in progress, as in *Lloyd's Casualty Insurer v. McCrary*,[73] the answer is self-evident. In that case the insured installed

[68] *See* notes 34-36 and accompanying text *supra*.
[69] *See* Bituminous Cas. Corp. v. Horn Lumber Co., 283 F. Supp. 365 (W.D. Ark. 1968).
[70] *See* notes 30-33 and accompanying text *supra*.
[71] *See* note 37 and accompanying text *supra*.
[72] *See* note 39 and accompanying text *supra*.
[73] 149 Tex. 172, 229 S.W.2d 605 (1950).

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a butane gas system in a house, but the pressure gauge, valve and fittings on the gas storage tanks did not operate properly. The insured knew this and intended to return to the home and correct these defects, but in the meantime fire resulted from a leak in the system, destroying the home. The combination of the deficiencies and the insured's intentions clearly showed the job was not completed, and therefore was not excluded.[74]

Had the insured in *McCrary* thought that he was through and not intended to return, however, regardless of the defects or his knowledge of such, some courts under the early policies would have held that the operation was not complete because of the existing defects. In *Daniel v. New Amsterdam Casualty Company*[75] the insured, a plumber, was employed to convert a hot water heater so that it could be used as a stove or room heater. In performing the work the insured sealed the water tank, but left some water inside. The work was accepted and paid for by the customer. Upon lighting the heater the water turned to steam, expanded, and caused the heater to explode, seriously injuring the customer's wife. The court, in construing the completed operations clause, said:

> Completion is an independent fact which cannot be determined by the act or intention of a workman who may cease work regarding the job as completed, nor wholly by the conduct of the owner who without knowledge of the condition pays off before actual completion. . . .
>
> We do not consider that the work is complete within the meaning of the insurance contract so long as the workman has omitted or altogether failed to perform some substantial requirement essential to its functioning, the performance of which the owner still has a contractual right to demand.[76]

The *Daniel* case was not cited by the New York Court of Appeals two years later when it took the opposite view on this issue in *Berger Brothers Electric Motors, Inc. v. New Amsterdam Casualty Co.*[77] In this case the insured negligently connected electrical wiring so that the motors and fans on certain turkey egg incubators

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[74] For other cases where the operations were held not to be completed, *see* General Cas. Co. v. Larson, 196 F.2d 170 (8th Cir. 1952) (cleaning and servicing furnace); Connecticut Co. v. Mongillo, 144 Conn. 200, 128 A.2d 528 (1957) (removal of trolley poles and filling holes); Arnold v. Edelman, 393 S.W.2d 231 (Mo. 1965) (installation of revolving doors); Employers Mut. Cas. Co. v. Hetner, 254 S.W.2d 565 (Tex. Civ. App. 1952) (temporary installation of gas heating unit); Boeing Airplane Co. v. Firemen's Fund Indem. Co., 44 Wash. 2d 488, 268 P.2d 654 (1954) (modifying aircraft under government contract).

[75] 221 N.C. 75, 18 S.E.2d 819 (1942).

[76] *Id.* at 77, 18 S.E.2d at 820.

[77] 293 N.Y. 523, 58 N.E.2d 717 (1944).

operated in the wrong direction, resulting in the ruin of 17,000 turkey eggs. The court held that the work was completed within the terms of the policy at the time of the accident:

> This must be so unless we yield to the plaintiff's contention and hold that the work was not completed at that time because the wiring was defective; but so to construe the language of the excluding clauses would deprive them of all meaning and purpose. By these clauses the parties intended to limit the casualty company's liability to accidents occurring during the progress of the work and to exclude liability for accidents occurring, after the work was completed, as the result of defective workmanship. If that be not the meaning of the plain language used, the insurer would remain liable indefinitely for defective workmanship upon the theory that defective work is never complete until the defect is discovered and corrected.[78]

In view of the fact that liability without fault for injuries resulting from services has yet to be imposed in this country, the *Berger* view has to be the correct one if the completed operations provision applies to pure service operations. If one were covered elsewhere, as under the premises and operations coverage, for risks contemplated under the completed operations clause, that is, liability for faulty work that has been completed, there would never be any need for purchase of this coverage by one who renders services not involving products. In other words, the only time liability is going to be imposed is when fault is involved in the operation and if fault prevents the operation from being complete, the coverage is illusory.

Despite the *Berger* decision some courts continued to follow the view espoused in *Daniel*,[79] which caused the insurance companies to add the following proviso to the completed operations section: "[O]perations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to a service or maintenance agreement." This was not entirely satisfactory[80] so in the 1966 revision the question of

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[78] *Id.* at 527, 58 N.E.2d at 718.

[79] *See* Hardware Mut. Cas. Co. v. Schantz, 186 F.2d 868 (5th Cir. 1951) (negligent repair of hoist rendered work incomplete); Hercules Co. v. Royal Indem. Co., 171 F. Supp. 746 (S.D.N.Y. 1959) (negligence in cleaning ship's hold resulting in clogged bilge pumps prevented work from being complete). For cases rejecting this view, *see* Baker v. Maryland Cas. Co., 73 R.I. 411, 56 A.2d 920 (1948) (negligeneca in improperly replacing lid on cesspool after cleaning); Butler v. United States Fidelity & Guar. Co., 197 Tenn. 614, 277 S.W.2d 348 (1955) (negligence in repairing porch).

[80] In Fidelity & Cas. Co. v. Fratarcangelo, 201 Va. 672, 112 S.E.2d 892 (1960), the court ignored the new clause in the completed operations provision and held: "[T]he 'operation' which consisted of the alleged

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when an operation is completed received very thorough treatment. There is little room for controversy under the new provision which now reads:

> "[C]ompleted operations hazard" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
>
> (1) When all operations to be performed by or on behalf of the named insured under the contract have been completed,
>
> (2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed, or
>
> (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
>
> Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

In connection with the 1966 revised standard completed operations provision two things should be pointed out. First, the clause "or reliance upon a representation or warranty made at any time with respect thereto" was added to cover the situation where some

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negligent act of plugging the outlets in the stove, was not 'completed' until King, to whom the stove was sold, had an opportunity to put it to use." *See also* Lumbermens Mut. Cas. Co. v. Town of Pound Ridge, 362 F.2d 430 (2d Cir. 1966) (ice and snow had been removed from streets, but the court held that the job was not completed because the city would periodically check to see if the streets needed to be sanded); Vito v. General Mut. Ins. Co., 15 App. Div. 2d 289, 223 N.Y.S.2d 431 (3d Dep't 1962) (insured agreed to keep a customer's propane tanks filled, as well as service and examine the tanks from time to time and the court held that, when further operations are constantly required, this situation is not covered by the new provision).

An earlier problem evidenced by Heyward v. American Cas. Co., 129 F. Supp. 4 (E.D.S.C. 1955) had not been resolved either. The insured in that case had a contract to do plumbing work on a multi-unit housing project. Units were occupied as they became usable. An explosion occurred in one of the occupied units in which the work had been completed and the court held that the work in all the units had to be completed before the completed operations provision would apply.

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courts were holding that a misrepresentation or warranty could not be considered as completed until acted upon by the person to whom it was made.[81] This was an intolerable construction since injury and reliance were simultaneous and thus always occurred prior to an operation being completed. There should be no doubt now that misrepresentations and warranties in regard to operations are included if that operation is otherwise complete. Second, the revised standard provision does not include bodily injury or property damage arising out of:

(a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,
(b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
(c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations."

These excepted situations will be covered under the premises and operations provision.

II. "BUSINESS RISK" EXCLUSION

In the 1966 revision a new provision, commonly referred to as the "Business Risk" exclusion, was added to the products hazard and completed operations coverages. This provision excludes:

> bodily injury or property damage resulting from the failure of the named insured's products or work completed by or for the named insured to perform the function or serve the purpose intended by the named insured, if such failure is due to a mistake or deficiency in any design, formula, plan, specifications, advertising material or printed instructions prepared or developed by any insured; but this exclusion does not apply to bodily injury or property damage resulting from the active malfunctioning of such products or work.

This exclusion attempts to eliminate from the products hazard and completed operations coverage losses caused by management in the planning stages unless the loss was caused by an active malfunction of the product or operation. For example, where an automobile suspension system is negligently designed so as to cause

[81] Reed Roller Bit Co. v. Pacific Emp. Ins. Co., 198 F.2d 1 (5th Cir. 1952), *cert. denied*, 344 U. S. 920 (1953); Waterman S. S. Co. v. Snow, 222 F. Supp. 892 (D. Ore. 1963), *aff'd per curiam*, 331 F.2d 852 (9th Cir. 1964); Eastcoast Equipment Co. v. Maryland Cas. Co., 207 Pa. Super. 383, 218 A.2d 91 (1966).

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the driver to lose control at certain speeds this would be an error in the planning stage, but would fall within the exception as to active malfunction of the product.

Although this provision received much attention when it came out there are no reported cases construing it. This is somewhat surprising because it is certainly no mean task to decide whether a mistake or error was made in the planning stage in many businesses since the planning and production stages are inextricably intertwined. The decision as to when a product or operation actively malfunctions is no less fraught with difficulty.[82] For example, in a recent California case[83] a manufacturer was sued for defective design of an earth moving machine. The machine was built in such a way that the driver could not see behind him and a workman was killed when the machine was backed over him. The manufacturer was allegedly negligent in failing to install a rear view mirror so that the driver could see behind him and in failing to have an audible warning device so fellow employees would know the machine was moving in reverse. Was this injury caused by an active malfunction of the machine? The product was not malfunctioning in the sense that it was properly performing the work of spreading and tamping earth as it was designed to do. When viewing it from a broader perspective, however, it can be argued that it was not capable of performing the work without creating unreasonable risks and thus it was malfunctioning in that sense. From here one can go on to ponder the harder question of when a "malfunction" is active as opposed to inactive. Without pursuing the matter further, it can readily be seen that there are many tortious acts which will cause difficulty in the application of this provision. More important than this, however, is the question of whether the insurance industry should attempt such an exclusion in the first place.

In order to raise the issue more precisely, imagine the situation where a person injures himself by moving his body against a negligently designed sharp or pointed portion of a product, which is stationary at the time of the accident, such as an automobile bumper, door handle, or window glass. These defects were, by assumption, created in the planning stage and one would be hard pressed to rationalize the injuries into the category of resulting from an active malfunction of the product. Thus, they would appear to be excluded. Why should one not be allowed to insure against such risks to persons and property evolving from the plan-

[82] For a discussion of some potential problems under this provision, *see* Sorensen, *What A Lawyer Ought to Know About Products Liability Insurance Coverage*, 1968 TRIAL LAWYERS GUIDE 322.

[83] Pike v. Frank G. Hough, 2 Cal. 3d 465, 85 Cal Rptr. 629, 467 P.2d 229 (1970).

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ning stage? It is submitted that there are no tenable distinctions between errors in planning and production resulting in physical damage which should prevent one from insuring against the former. If liability is imposed on the fault basis of negligence, the standard is one of ordinary care in each situation. If liability is imposed on a non-fault basis, that is, warranty or strict liability, the reason for the defect is irrelevant and the question of what stage of the business it arose from is likewise irrelevant.[84]

The insurance industry evidently feels that the risks of bodily injury or property damage arising from the planning stage of business are a business risk of the insured, that is, a responsibility which he must undertake just as he does for other business decisions. There is, however, a difference between insuring against economic risks arising from the market place which subject the businessman to ruin for faulty planning or judgment and risks to others for bodily injury or property damage arising from faulty planning or judgment. The former is not the type of loss that we attempt to shift under our economic system. To do so would seem to effect an indirect, but drastic change in the system itself. Perhaps we approach such a change when we deviate from the fault principle in favor of strict liability as a different moral basis for shifting the loss is emphasized. The test is no longer one of determining whether an unreasonable risk has been created, but is best expressed by the rhetorical question: "Who shall pay when the benefits to the many come at a high cost to the few?"[85] This emerging theory of products liability is based on the concept that the supplier is best able to distribute losses arising from defective or unreasonably dangerous products, thus making him an initial insurer. But this is limited to physical damage, as under the fault basis, and does not extend to all economic loss. The process at the planning stage out of which defectively designed or otherwise deficient work is produced may be the same as where a "business" decision is made which subjects the supplier to financial risks arising from our exchange oriented economic system. It is the consequences of this process and not the process itself which should concern the insurers. It is the imposition of liability for physical damage caused by deficient work placed in the stream of commerce and not the stage of business organization out of which the deficiency arises that is of concern. This would seem to hold true re-

[84] *Id.* at 477, 85 Cal. Rptr. at 637, 467 P.2d at 237 (where the court recognized that strict products liability may be imposed for defects in design and that there is no reason to attempt a distinction based on the source of the defect).

[85] Keeton, *Products Liability—Liability Without Fault and the Requirement of a Defect*, 41 TEXAS L. REV. 855, 867 (1963).

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gardless of whether the product or work is defective or unreasonably dangerous. Suppliers should not be obliged to assume tort liability for damages without the opportunity to, in effect, re-insure. Thus, the insurance industry would do well to eliminate the "Business Risk" exclusion from the policy.

III. DAMAGE TO PROPERTY OTHER THAN THE PRODUCT OR WORK ITSELF

The products hazard and completed operations provisions are not intended to cover damage to the insured's products or work project out of which an accident arises.[86] The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to property other than to the product or completed work itself, and for which the insured may be found liable. The insured, as a source of goods or services, may be liable as a matter of contract law to make good on products or work which is defective or otherwise unsuitable because it is lacking in some capacity. This may even extend to an obligation to completely replace or rebuild the deficient product or work. This liability, however, is not what the coverages in question are designed to protect against. The coverage is for tort liability for physical damages to others and not for contractual liability of the insured for economic loss because the product or completed work is not that for which the damaged person bargained.[87]

This limitation on the type of property damage covered was expressed in the policies prior to 1966 by language which excluded coverage for injury to or destruction of "any goods, products or containers thereof manufactured, sold, handled or distributed or premises alienated by the named insured, or work completed by or for the named insured, out of which the accident arises."[88] Where a product or work project was looked upon as an undivided whole there was little difficulty in the application of this provision. For

[86] Andersen, *Current Problems in Products Liability Law and Products Liability Insurance*, 31 INS. COUNSEL J. 436, 443 (1964).

[87] *See* Aetna Ins. Co. v. State Motors, Inc., 109 N.H. 120, 244 A.2d 64 (1968) where the insured represented that certain cars were fit for use as taxi cabs. The representations proved to be false, and the customer sued the insured for damages for repair and replacement costs, loss of use, loss of business, injury to reputation, inconvenience and other losses. The court held there was no coverage under the policy which clearly stated that there had to be physical injury to tangible property other than to the insured's goods or products before there would be coverage.

[88] *See* 1 CCH PRODUCTS LIAB. REP. ¶ 3550 (1970).

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example, where a grain elevator developed leaks[89] or collapsed[90] or where a foundation wall on a home collapsed[91] it was clear that the damage to the work product was caused by an accident or occurrence arising out of the work itself.[92] Conversely, where the product or work project resulted in physical damage to property which was clearly independent of and unrelated to the product itself there was little problem.

Not all products, however, were looked upon as an undivided whole, but were considered by some courts as being comprised of components. Where this view was taken a question arose as to whether the insurer would be liable for damages caused to one component by another component.[93] In *S. L. Rowland Construction Co. v. St. Paul Fire and Marine Insurance Co.*,[94] the insurer was held liable under the products hazard and completed operations coverages for fire damage to a home constructed by the insured caused by the placement of a joist or header too near the firebox of a fireplace. The court reasoned that the exclusionary clause in question did not apply to the entire house as being the product of the insured, but that it applied only to the component parts thereof out of which the accident arose. This view was not universally accepted,[95] but did cause enough concern to insurers that it was remedied in 1966. Now the revised standard policy provides that the products hazard and completed operations provisions do not apply

[89] Employers Cas. Co. v. Brown-McKee, Inc., 430 S.W.2d 21 (Tex. Civ. App. 1968).

[90] Maryland Cas. Co. v. Knorpp, 370 S.W.2d 898, 901 (Tex. Civ. App. 1963) (Chapman, J., concurring).

[91] McGann v. Hobbs Lumber Co., 150 W. Va. 364, 145 S.E.2d 476 (1965).

[92] For other cases where the courts concluded that the damage was to the product or work itself, *see* Aetna Cas. & Sur. Co. v. Harvey W. Hottel, Inc., 289 F.2d 457 (D.C. Cir. 1961) (repairs to air-conditioning system); Volf v. Ocean Accid. & Guar. Corp., Ltd., 50 Cal. 2d 373, 325 P.2d 987 (1958) (cost of replacing stucco); Rafeiro v. American Employer's Ins. Co., 5 Cal. App. 3d 799, 85 Cal. Rptr. 701 (1970) (repair and replacement of defective materials and workmanship); Bryan Const. Co. v. Employers' Surplus Lines Ins. Co., 110 N. J. Super. 181, 264 A.2d 752 (Ch. Div. 1970) (design and construction defects in building); Waite v. Aetna Cas. & Sur. Co., 467 P.2d 847 (Wash. 1970) (destruction of fairlead, a device over which lines were strung for the pulling of logs).

[93] Even the insurance industry was not sure of the answer to this question. *See* Volf v. Ocean Accid. & Guar. Corp., Ltd., 50 Cal. 2d 373, 380, 325 P.2d 987, 992 (1958) (Carter, J., dissenting).

[94] 72 Wash. 2d 682, 434 P.2d 725 (1967).

[95] The court in Blackfield v. Underwriters at Lloyd's, 245 Cal. App. 2d 271, 53 Cal. Rptr. 838 (1966) adopted the view that a house was comprised of component parts and if one part damaged other parts then

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(j) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

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(l) to property damage to the named insured's products arising out of such products or any part of such products;

(m) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith . . . .

Another problem with the pre-1966 version of the exclusion in question, which was much more serious, arose in regard to deficient products or work which did not cause physical damage, as such, to other property, but, when used in connection with other property, adversely affected the value or use of the other property. In 1954 the Minnesota Supreme Court had before it a case[96] where the insured sold plaster to a contractor who, in turn, applied it to the wall of a hospital the latter was constructing. The plaster shrank and cracked and had to be replaced by the contractor. The contractor sued the insured for breach of warranty and the insured brought an action for declaratory judgment against its insurer who had refused to defend. The court rejected the argument that the plaster lost its identity as goods or a product after it had been applied to the wall and ceiling of the building, but did hold that the building had sustained damage by way of a lower market value and that this was covered by the policy.[97] This decision led other courts to apply the same analysis and come to the same conclusion in other cases where the product was used in close connection with other property.[98] One of the most perplexing situations

the damage to the latter was not excluded. For courts expressly rejecting this view, *see* Pittsburgh Bridge & Iron Works v. Liberty Mut. Ins. Co., 311 F. Supp. 1079 (W.D. Pa. 1970) (construction of tramway); Kendall Plumbing, Inc. v. St. Paul Mercury Ins. Co., 189 Kan. 528, 370 P.2d 396 (1962) (installation of electrical refrigeration system). *See also* Home Indem. Co. v. Miller, 399 F.2d 78 (8th Cir. 1968); Liberty Building Co. v. Royal Indem. Co., 177 Cal. App. 2d 583, 2 Cal. Rptr. 329 (1960); Vobill Homes, Inc. v. Hartford Accid. & Indem. Co., 179 So. 2d 496 (La. App. 1965); all of which involved home construction situations.

[96] Hauenstein v. Saint Paul-Mercury Indem. Co., 242 Minn. 354, 65 N.W.2d 122 (1954).

[97] The measure of damages was held to be "the diminution in the market value of the building, or the cost of removing the defective plaster and restoring the building to its former condition plus any loss from deprival of use, whichever is the lesser." *Id.* at 358, 65 N.W.2d at 125.

[98] *See* Bowman Steel Corp. v. Lumbermens Mut. Cas. Co., 364 F.2d 246 (3d Cir. 1966) (diminution in market value of building due to discoloration and separation of asbestos felt bonded onto steel sheets used in

in this regard arose in connection with the seed cases. In one case an insured supplied a variety of wheat seed less productive than that ordered and the court held that the prospective wheat crop was not merely the seed in changed form and thus excluded, but that, by virtue of the germination process, a transformation took place so as to constitute the wheat crop a separate and distinct entity from the original seed wheat.[99] The insurer was held liable for the diminution in the wheat crop. In another case, an insured sold cranberry seed beans which were not suitable for the growing conditions where the beans were intended to be planted.[100] The insurer was held liable for the market value of the loss of use of the land where the beans were planted when they failed to germinate. Suffice it to say that the insurance industry had not expected to provide coverage for commercial law type damages arising out of a breach of a sales warranty under the products hazard and completed operations provisions.[101]

Under the pre-1966 versions of the products hazard and completed operations provisions it was not clearly stated in the policies that consequential damages to other property as a result of deficient products or work without physical damage was not covered, as contended by the insurers. This the insurance industry has

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construction of the building); Bundy Tubing Co. v. Royal Indem. Co., 298 F.2d 151 (6th Cir. 1962) (cost of reconstructing defective radiant heating units installed in concrete floors of houses); Pittsburgh Plate Glass Co. v. Fidelity & Cas. Co., 281 F.2d 538 (3d Cir. 1960) (cost of refurbishing venetian blinds when paint sold by insured and applied to the blinds flaked and peeled off); Geddes & Smith, Inc. v. Saint Paul-Mercury Indem. Co., 51 Cal. 2d 558, 334 P.2d 881 (1959) (cost of removal of defective doors and loss of use of houses in which the doors were installed); Beacon Textiles Corp. v. Employers Mut. Liab. Ins. Co., 355 Mass. 643, 246 N.E.2d 671 (1969) (cost of manufacturing sweaters from yarn which proved to be defective); Ramco, Inc. v. Pacific Ins. Co., 249 Ore. 666, 439 P.2d 1002 (1968) (loss of motel business due to defective electric baseboard heaters); Dakota Block Co. v. Western Cas. & Sur. Co., 81 S.D. 213, 132 N.W.2d 826 (1965) (diminution in market value of building due to fading, discoloring and cracking of exterior walls).

[99] St. Paul Fire & Marine Ins. Co. v. Northern Grain Co., 365 F.2d 361 (8th Cir. 1966).

[100] Economy Mills of Elwell, Inc. v. Motorists Mut. Ins. Co., 8 Mich. App. 451, 154 N.W.2d 659 (1967).

[101] Some courts refused recovery in the seed cases on the grounds that there was no "accident" which caused an injury or damages to property. Stevens Industries, Inc. v. Maryland Cas. Co., 391 F.2d 411 (5th Cir.), *cert. denied*, 392 U. S. 926 (1968); E. K. Hardison Seed Co. v. Continental Cas. Co., 56 Tenn. App. 644, 410 S.W.2d 729 (1967); St. Paul-Mercury Ins. Co. v. Sugarland Industries, Inc., 406 S.W.2d 778 (Tex. Civ. App. 1966).

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sought to clarify in the revised standard policies by providing that "damages" includes the loss of use of property resulting from property damage, and then defining "property damage" to mean "injury to or destruction of tangible property." By this it is intended that consequential damages such as loss of use, loss of good will, or diminution in market value will be covered if there is physical damage to tangible property other than the product or completed work, but that such consequential damages alone, without physical damage to other property caused by the product or completed work, will not be covered.

Lastly, it should be noted that the cost of withdrawing defective or deficient products or work from the market, which can be substantial, is not covered by the products hazard or completed operations provisions as the revised standard policy has an express exclusion in regard

> (n) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein . . . .

This is true even though the policy also makes it a condition of the insurer's liability that the insured "shall promptly take at his expense all reasonable steps to prevent other bodily injury or property damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this policy." This is the so-called sistership exclusion, and, as has been noted,[102] a void has been created in available insurance coverage by virtue of this exclusion.[103]

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[102] Sorensen, *supra* note 82, at 325.

[103] Evidently very few insurance companies are providing any coverage at all for products withdrawal expense. The author has found only one such policy and that was offered by the Fireman's Fund American group which provided coverage for expenses paid by the insured for the withdrawal of products named in the declarations where such withdrawal is made necessary by reason of determination by the insured or by any ruling of any governmental body that the use or consumption of such products shall result in bodily injury, sickness, disease, or death solely because of error or inadvertent omission in the manufacture or labeling of products. The author has been unable to find any insurer offering such a policy covering property damage. Perhaps an insurer such as Lloyd's of London would underwrite coverage for withdrawal expense on an individual basis.

IV. CONCLUSION

To date there have been no reported cases construing the 1966 revised standard products hazard and completed operations provisions. In order to clarify the intent behind these provisions emphasis has been placed on analyzing and categorizing the problems and relevant judicial opinions concerning prior versions of these provisions. By approaching the subject in this manner, it is hoped that the resolution of future disputes, which are inevitable, will be facilitated. There is still, however, no substitute for familiarizing oneself with the details of a particular policy. This is most crucial in preventative law practice so that the client can be assured of receiving the protection he needs prior to a loss rather than searching the policy afterwards in an attempt to find coverage. Again, it is hoped that this article will be of assistance to counsel in that process, too.

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	CASE NO.: 2020-CP-40-01226
COVIL CORPORATION, by and through its duly appointed Receiver, Peter D. Protopapas, Plaintiff, v. PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Defendant.	**DEFENDANT PENN NATIONAL'S MEMORANDUM OF LAW IN OPPOSITION TO COVIL'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through its undersigned counsel, respectfully submits this Memorandum of Law in Opposition to Plaintiff Covil Corporation's ("Covil") Motion for Partial Summary Judgment. In addition to any supplemental memoranda, affidavits, arguments of counsel, relevant case law considered by the Court, and other relevant materials before the Court, Penn National submits as follows:

SUMMARY

Since at least 2018, Covil has been engaged in litigation regarding the insurance coverage afforded to it under certain liability insurance policies for claims asserted against Covil in various asbestos lawsuits.[1] To date, such litigation has primarily involving three of

[1] These other coverage actions are captioned *Zurich Am. Ins. Co.* et al. *v. Covil Corp*. et al., C.A. No. 1:18-cv-932 ("*Zurich v. Covil*"), filed November 6, 2018, in the U.S. District Court for the Middle District of North Carolina; *Covil Corp. by its Duly Appointed Receiver, Peter D. Protopapas v. Zurich Am. Ins. Co.*, C.A. No. 7:18-cv-03291-BHH ("*Covil v. Zurich*"), filed November 27, 2018, and removed to the U.S. District Court for the District of South Carolina on December 6, 2018; and *Peter D. Protopapas as Receiver for Covil Corp. v. Zurich Am. Ins. Co.* et al., C.A. No. 3:19-cv-1635-BHH ("*Covil v. Zurich II*"), filed April 24, 2019, and removed to the U.S. District Court for the District of South Carolina on June 6, 2019 (collectively, the "Other Insurers Coverage Actions").

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Covil's other liability insurers—Zurich, USF&G, and Sentry.[2] More recently, on April 27, 2020, Covil filed another insurance coverage action seeking similar coverage determinations under the policies issued by Penn National[3] as to an unspecified number of unidentified asbestos claims and lawsuits against Covil; and on May 1, 2020, Penn National filed its own insurance coverage declaratory judgment action seeking declarations as to coverage under its policies with respect to thirty-four (34) specifically-identified asbestos lawsuits against Covil.[4]

Throughout the course of this coverage litigation Covil has consistently attempted to avoid federal jurisdiction and secure coverage determinations from the Receivership Court. In response to such efforts, Judge Hendricks (who presides over three of the Federal Coverage Actions) has denied Covil's motion to remand in *Covil v. Zurich*, and then entered an Order and Opinion on February 27, 2020, in which she "enjoin[ed] the Receiver [for Covil] from further pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued to Covil by the Insurers." [D.E. 105, *Covil v. Zurich*, C.A. No. 7:18-cv-03291-BHH (D.S.C.)][5] Similarly, Judge Eagles (who presides over *Zurich v. Covil*) has denied Covil's motion to dismiss, or, in the alternative, to stay or abstain in the action

[2] Penn National was briefly named as a third-party defendant in *Zurich v. Covil* pending in the U.S. District Court for the Middle District of North Carolina. However, the claims against Penn National have been dismissed. [D.E. 297, *Zurich v. Covil*, C.A. No. 1:18-cv-932 (M.D.N.C.)]. A true and accurate copy of the Order entered by Judge Eagles in *Zurich v. Covil* is attached hereto as **Exhibit 1**.

[3] Penn National issued a Comprehensive General Liability policy, policy no. 515 50 28 53, to Covil effective from March 31, 1986 to March 31, 1987 (the "1986-1987 Penn National policy"), and one renewal policy period from March 31, 1987 to March 31, 1988 (the "1987-1988 Penn National policy") (collectively, "Penn National policies").

[4] These coverage actions are captioned *Covil Corp., by and through its duly appointed Receiver Peter D. Protopapas v. Pennsylvania Nat'l Mut. Cas. Ins. Co.* et al., C.A. No. 2020-CP-40-02098 ("*Covil v. Penn National*") filed on April 27, 2019, and which Penn National anticipates removing to the U.S. District Court for the District of South Carolina; and *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Covil Corp., by and through its Receiver Peter D. Protopapas*, C.A. No. 6:20-cv-1729-BHH ("*Penn National v. Covil*"), in the U.S. District Court for the District of South Carolina (collectively, the "Penn National Coverage Actions"). A true and accurate copy of the Complaint for Declaratory Judgment in *Penn National v. Covil* is attached hereto as **Exhibit 2**. The Other Insurers Coverage Actions and the Penn National Coverage Actions will be collectively referred to herein as the "Federal Coverage Actions".

[5] A true and accurate copy of the Order entered by Judge Hendricks in *Zurich v. Covil* is attached hereto as **Exhibit 3**.

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before her. [D.E. 67 and 84, *Zurich v. Covil*, C.A. No. 1:18-cv-932 (M.D.N.C.)]

The present action is yet another attempt by Covil to seek declarations as to insurance coverage outside of the pending Federal Coverage Actions. In a transparent attempt to avoid federal jurisdiction, Covil frames its claim in the Complaint filed in this action as a claim for breach of contract for which it claims entitlement to "damages in such amount as may be proven at trial but not greater than $74,999.99." [Compl., ¶ 18] However, the relief sought by Covil in its present motion for partial summary judgment belies the true purpose of this action. Specifically, Covil requests that this Court declare that Penn National was required to provide insurance coverage under the Penn National policies issued to Covil for the settlement in one of the asbestos lawsuits[6] which is also at issue in the Federal Coverage Actions. Because the relief sought by Covil in the present motion is the subject of the pending Federal Coverage Actions, this Court should decline to rule on Covil's motion at this time, and stay this matter pending a resolution of the Federal Coverage Actions.[7]

However, even if this Court were inclined to consider Covil's motion at this time, Covil would not be entitled to the relief that it seeks for two reasons. First, Covil is not entitled to a declaration that coverage is afforded under the policies issued by Penn National to Covil for the settlement entered into by Covil in the *Rollins* Asbestos Action because Covil failed to comply with the conditions for coverage under the Penn National policies. Specifically, Covil failed to provide any notice of the *Rollins* Asbestos Action until January 27, 2020, despite the fact that Covil had been served with the Amended Complaint in the *Rollins* Asbestos Action

[6] The asbestos lawsuit at issue in this action is captioned *David D. Rollins v. Covil Corp.* et al, C.A. No. 2019-CP-25-0118 (the "*Rollins* Asbestos Action"), filed in Hampton County, South Carolina.

[7] Given the nature of the relief sought by Covil in its motion for partial summary judgment, and the potential for entanglement between a ruling on the coverage issues raised by Covil in its motion in this action and the issues before the federal court in the Federal Coverage Actions, Penn National has filed contemporaneously herewith a motion to stay this action pending resolution of the Federal Coverage Actions.

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over nine (9) months earlier on April 25, 2019, and had already filed an Answer, completed written discovery, and participated in numerous depositions. In fact, the Scheduling Order entered by the Court in the *Rollins* Asbestos Action set a deadline of February 7, 2020, for the filing of summary judgment motions (just eleven (11) days after Penn National first received notice of the lawsuit) and set trial for March 23, 2020 (just eight (8) weeks after Penn National's first notice of the lawsuit).

Furthermore, Covil entered into a settlement in the *Rollins* Asbestos Action at a mediation conducted in such action on February 25, 2020, having just notified Penn National of the lawsuit on January 27, 2020, and having notified Penn National of the mediation on February 10, 2020. Given the late notice of the mediation and lack of sufficient information and documentation provided by Covil to Penn National prior to the mediation, Penn National was unable to evaluate its potential coverage obligation or Covil's potential liability or damages prior to the mediation. As such, Covil is not entitled to a declaration that coverage is afforded under the policies issued by Penn National to Covil for the settlement entered into by Covil in the *Rollins* Asbestos Action because Covil failed to comply with the notice conditions for coverage under the policies.

Second, even if this Court were inclined to consider Covil's motion at this time and find that Covil's failure to comply with the notice conditions in the Penn National policies does not bar coverage under the policies for Covil's settlement in the *Rollins* Asbestos Action, Covil would not be entitled to the relief that it seeks because the "Completed Operations Hazard and Products Hazard" exclusion in the Penn National policies bars coverage for the claims asserted against Covil in such action. The only exposure that Covil identifies with respect to Mr. Rollins as contributing to his diagnosis with mesothelioma is "take home" exposure via his step-father, Robert Ashworth, who is alleged to have worked at the Bowater Paper Mill ("Bowater")

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in Catawba, South Carolina, while Covil allegedly performed piping system and insulation work at Bowater between March 11, 1986 and January 25, 1987. Such exposure falls within the "products hazard" exclusion and/or the "completed operations hazard" in the policies issued by Penn National to Covil, and therefore, is excluded under the "Completed Operations Hazard and Products Hazard" exclusion in the Penn National policies.

Accordingly, even if this Court were to consider the merits of Covil's motion for partial summary judgment in this matter, it should deny Covil's motion because Covil is not entitled to coverage under the Penn National policies for the settlement that it entered into with the plaintiff in the *Rollins* Asbestos Action.[8]

STATEMENT OF FACTS

Because the Statement of Facts in Covil's Motion for Partial Summary Judgment ignores key facts relevant to its motion, Penn National provides the following brief summary of the events leadings up to the settlement entered into by Covil in the *Rollins* Asbestos Action, as well as the relevant policy provisions in the Penn National policies.

I. Late Notice of the *Rollins* Asbestos Action

The *Rollins* Asbestos Action was filed against Covil (among others) on April 5, 2019, alleging that Mr. Rollins suffered from mesothelioma as a result of exposure to asbestos.[9] On April 10, 2019, an Amended Complaint was filed in the *Rollins* Asbestos Action, which was served on Covil on April 25, 2019.[10] Peter D. Protopapas entered a special appearance

[8] To the extent that this Court decides to address Covil's motion at this time and does not believe that the motion should be denied based on the record before the Court, such motion is premature because discovery in this case (which was filed less than two (2) months ago) has understandably not yet been completed, and therefore, should be denied on this alternative basis.

[9] A true and accurate copy of the original Complaint filed in the *Rollins* Asbestos Action is attached hereto as **Exhibit 4**.

[10] A true and accurate copy of the email sent on behalf of the Receiver for Covil dated January 27, 2020, attaching the Amended Complaint in the *Rollins* Asbestos Action is attached hereto as **Exhibit 5**.

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as Receiver for Covil on May 13, 2019, and Covil filed an Answer to the Amended Complaint on May 28, 2019, through defense counsel retained by other insurers to whom Covil had tendered the *Rollins* Asbestos Action at that time.[11] Covil did not provide notice to Penn National of the *Rollins* Asbestos Action at that time.

On February 18, 2019, and then on June 6, 2019 (again, before any notice was provided by Covil to Penn National of the *Rollins* Asbestos Action), Mr. Rollins was deposed, and the parties engaged in other fact and expert discovery as required by the Master Asbestos Discovery/ Scheduling Order.[12] It was not until the pleadings had been closed and discovery (both fact and also expert) had long since been completed before Covil (through its Receiver) sent its first notice of Penn National of the *Rollins* Asbestos Action on January 27, 2020. In fact, the "notice" provided by Covil at that time consisted of an email sent by the Receiver's Office to various counsel for different insurers for Covil. [*See* Ex. 5] In that email, the Receiver stated "[a]s you know, Peter D. Protopapas, as Receiver for Covil Corporation, was served via process on **April 25, 2019** with the attached lawsuit captioned **ROLLINS vs. Air & Liquid, et al (Case Number 2019-CP-25-00118**" and that the matter "**IS SET FOR TRIAL** on **March 23, 2020**." [*Id.*] The email goes on to "request[] that the insurers provide and/or continue to provide a defense to Covil Corporation in these asbestos lawsuits." [*Id.*]

Contrary to the statement in the email sent by the Receiver on January 27, 2020, Penn National was not aware that Covil had been served in the *Rollins* Asbestos Action on April 25, 2019. Rather, the email to counsel for Penn National was the first notice that Penn National (or its counsel) had received with regard to the *Rollins* Asbestos Action. However,

[11] True and accurate copies of the Notice of Special Appearance filed by the Receiver for Covil and the Answer to the Amended Complaint filed on behalf of Covil are attached hereto as **Exhibits 6** and **7** (respectively).

[12] True and accurate copies of cover pages for the depositions of Mr. Rollins as well as the Asbestos Master Discovery/ Scheduling Order are attached hereto as **Exhibits 8** and **9** (respectively).

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based upon the language in the email sent by the Receiver, it appears that such email was sent to counsel for other insurers for Covil to whom prior notice had been given and who were defending Covil in the *Rollins* Asbestos Action. Then, on February 3, 2020, counsel for the Receiver sent a letter to Penn National, attaching the Amended Complaint in the *Rollins* Asbestos Action, and indicating that "Covil hereby tenders this suit to [Penn National]."[13]

Then, on February 10, 2020, the Receiver wrote to counsel for Penn National to advise that a mediation had been scheduled for February 25, 2020, in the *Rollins* Abestos Action, to which counsel for Penn National responded, indicating that he would forward the notice to Penn National for discussion.[14] Covil provided this notice of the mediation in the *Rollins* Asbestos Action to Penn National just twelve (12) business days before the date of the mediation, expecting Penn National to participate in a settlement in an action that had been litigated for nearly ten (10) months without any prior notice to (and hence, participation by) Penn National in such action.

Despite the untimely notice of the *Rollins* Asbestos Action and the mediation, Penn National responded to the notice on February 14, 2020, advising that it had located and contacted defense counsel for Covil in the action (who had been retained by other insurers who had been provided notice of the action) and had requested copies of discovery for review and evaluation.[15] However, given that Penn National was unable to evaluate coverage due to the limited information provided to Penn National at that time, Penn National also requested that Covil execute an attached Non-Waiver Agreement in order to allow Penn National to investigate

[13] A true and accurate copy of letter dated February 3, 2020, sent by counsel for the Receiver is attached hereto as **Exhibit 10**.

[14] A true and accurate copy of the email exchange between the Receiver and counsel for Penn National is attached hereto as **Exhibit 11**.

[15] A true and accurate copy of the letter sent by Penn National to the Receiver is attached hereto as **Exhibit 12**.

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the matter without either party waiving any rights under the Penn National policies. [*See* Ex. 12]

Given the late notice of the mediation and lack of sufficient information and documentation provided by Covil to Penn National prior to the mediation, Penn National was unable to evaluate its potential coverage obligation or the liability and damages exposure for Covil prior to the mediation. As such, although a representative of Penn National attended the mediation, and expressed a willingness to contribute some amount to the settlement on behalf of Covil, Penn National was not in a position to contribute the amount requested by Covil (and for which recovery is apparently sought in this action). Specifically, as alleged in the Complaint filed by Covil in this action, Penn National declined to contribute $50,000 to the settlement, which Covil alleges resulted in "other Covil assets" being expended to resolve the action. [Compl., ¶¶ 12–13]

II. The Penn National Policies

Penn National issued liability insurance policies, policy no. 515 50 28 53, to Covil with annual policy periods from March 31, 1986 to March 31, 1988 (the "Penn National policies"). In relevant part to the present motion, the Penn National policies included the following conditions for coverage to be afforded under the policies:[16]

> **CONDITIONS APPLICABLE TO SECTION II**
>
> ***
>
> **4. Insured's Duties in the Event of Occurrence, Claim or Suit.**
>
> (a) In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable,
>
> (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

[16] Penn National, after performing an exhaustive search of policy documents relating to the policies that it issued to Covil, was able to identify the policy materials attached hereto as **Exhibit 13**.

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

[Ex. 13, pp. 34, 79]

The Penn National policies also include the following "Completed Operations Hazard and Products Hazard" exclusion and related definitions:

> **EXCLUSION**
>
> **(Completed Operations Hazard and Products Hazard)**
>
> It is agreed that such insurance as is afforded by the Bodily Injury Liability Coverage and the Property Damage Liability Coverage does not apply to **bodily injury** or **property damage** included within the **Completed Operations Hazard** or the **Products Hazard**.
>
> ***
>
> "**completed operations hazard**" includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured.
>
> ***
>
> "**named insured's products**" means goods or products manufactured, sold, handled or distributed by the **named insured** or by others trading under his name, including any container thereof (other than a vehicle), but "**named insured's products**" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;
>
> ***
>
> "**products hazard**" includes **bodily injury** and **property damage** arising out of the **named insured's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others;

[Ex. 13, pp. 30, 36, 68, 81]

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ANALYSIS

I. Given the Relief Requested by Covil in Its Motion for Partial Summary Judgment, the Court Should Stay this Action Pending Resolution of the Related Coverage Issues in the Federal Coverage Actions.

In conjunction with this Memorandum of Law in Opposition to Covil's Motion for Partial Summary Judgment, Penn National has filed a Motion to Stay the present action pending resolution of the related coverage issues in the pending Federal Coverage Actions. Although Covil frames its claim in this action as a breach of contract claim for which it seeks "damages in such amount as may be proven at trial but not greater than $74,999.99" [Compl., ¶ 18]; it is clear based upon the relief sought by Covil in its motion for partial summary judgment that Covil seeks declarations from this Court as to the coverage under its insurance policies. Specifically, Covil requests in its motion that this Court declare that Penn National was required to provide insurance coverage under the Penn National policies issued to Covil for the settlement in the *Rollins* Asbestos Action. [Covil Corp.'s Motion for Partial Summary Judgment, p. 3] To reach this conclusion, Covil asks this Court to find that the "Completed Operations Hazard and Products Hazard" exclusion does not apply to bar coverage for the claims asserted against Covil in the *Rollins* Asbestos Action. [*Id.* at p. 9][17]

This coverage issue as well as several other coverage issues that would impact Penn National's potential coverage obligation to Covil in the *Rollins* Asbestos Action are already at issue in the Federal Coverage Actions. For example, as Judge Hendricks noted in her Order enjoining Covil "from further pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued to Covil

[17] Covil also completely ignores numerous other coverage issues raised by the parties and are currently before the federal courts in the pending Federal Coverage Actions and which impact Penn National's potential obligation to provide coverage, such as the requirement that Covil provide timely notice of a claim in order to be entitled to coverage for such claim, the question of allocation of any damages potentially covered under the policies, etc.

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by the Insurers," among the issues to be addressed in the Other Insurers Coverage Actions is "the manner in which it should be determined whether injuries in underlying asbestos actions are within the products and completed operations hazard of the policies." [Ex. 3] This issue is the precise issue that Covil attempts to place before this Court. Similarly, in the Penn National Coverage Actions, one of the issues before the court is "whether policy exclusions barring coverage for 'bodily injury' included in the 'completed operations hazard' and the 'products hazard' apply to bar coverage for the claims asserted against Covil in the lawsuits." [D.E. 1, ¶ 1, *Penn National v. Covil*, C.A. No. 6:20-cv-1729-BHH (D.S.C.)]

In South Carolina, trial courts retain the authority to stay an action subject to review for abuse of discretion. *See, e.g.*, *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 328 S.E.2d 621 (1985) (holding that trial court abused discretion in denying stay); 4 S.C. JUR. ACTION § 40 ("The granting or denying of a motion for a stay of an action is in the discretionary power of the court, subject to review for abuse of discretion."); *see also Rhines v. Weber*, 544 U.S. 269, 276 (2005) ("District courts do ordinarily have authority to issue stays where such a stay would be a proper exercise of discretion." (citations omitted)). In fact, stays have been employed in a variety of circumstances in South Carolina, including, importantly, situations where resolution of a controlling issue is pending in another proceeding. *See, e.g.*, 4 S.C. JUR. Action § 40 (citing *Piedmont Press Ass'n v. Record Pub. Co.*, 156 S.C. 43, 152 S.E. 721 (1930)). Moreover, it is widely held that trial courts may grant a stay to "provide for the efficient and economic use of judicial resources." 1 AM. JUR. 2d Actions § 68. Such is the case here.

Covil seeks a judicial declaration as to coverage issues which are already at issue in the Federal Coverage Actions. In fact, Covil's conduct in pursuing this action as to the *Rollins* Asbestos Action alone, and affirmatively alleging that it was only seeking damages

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less than $74,999.99, demonstrates its ongoing efforts to avoid federal jurisdiction in seeking judicial declarations regarding coverage for the asbestos lawsuits. Given the pending actions at the time that Covil filed the present action, which address the coverage issues raised by Covil in the present action, it is clear that Covil is attempting to engage in forum shopping by filing this action rather than simply asserting a third-party claim against Penn National in the actions currently pending before Judge Hendricks, and asking that Judge Hendricks determine Covil's rights under the Penn National policies with regard to the *Rollins* Asbestos Action (as well as any other asbestos lawsuits pending against Covil). Instead, Covil chose to file this action as well as another coverage action in South Carolina state court (which Penn National anticipates removing to the U.S. District Court for the District of South Carolina).

Judge Hendricks has already rejected Covil's efforts to have coverage issues decided in underlying tort suits. [D.E. 105, *Covil v. Zurich*] Similarly, this Court should reject Covil's efforts to engage in piecemeal coverage litigation which presents the risk of inconsistent decisions on the coverage issues that it now seeks to have declared by this Court, but which are also before Judge Hendricks in the Federal Coverage Actions. Rather, this Court should stay the present action pending resolution of the coverage issues which are currently before Judge Hendricks. This course of action would conserve judicial resources and avoid any potential for inconsistent decisions. Upon resolution of the coverage issues in the Federal Coverage Actions, the parties could then proceed forward with Covil's breach of contract claim in the present action.

II. Late Notice of the *Rollins* Asbestos Action

To the extent that the Court is inclined to consider the substance of Covil's motion at this time, Covil is not entitled to a declaration that coverage is afforded under the policies issued by Penn National for the settlement entered into by Covil in the *Rollins* Asbestos Action

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because Covil failed to comply with the notice conditions for coverage under such policies. This issue is completely ignored by Covil in its motion for partial summary judgment, but is fatal to its claim for coverage under the Penn National policies.

Under South Carolina law, the failure of an insured to comply with policy conditions requiring that the insured provide timely notice or forward suit papers and/or cooperate with the insurer with respect to a claim or lawsuit under a liability insurance policy will bar coverage for such insured under the policy. *See e.g. Prior v. S.C. Med. Malpractice Liab. Ins. Joint Underwriting Ass'n*, 305 S.C. 247, 250, 407 S.E.2d 655, 657 (Ct. App. 1991) (quoting *Lee v. Metro. Life Ins. Co.*, 180 S.C. 475, 186 S.E. 376 (S.C. 1936)) (holding that the insured was not entitled to coverage where he failed to provide timely notice of the claim and also failed to forward suit papers until approximately four months after he had received them); *Tucker v. State Farm Mut. Auto. Ins. Co.*, 232 S.C. 615, 616, 103 S.E.2d 272, 273 (1958) (finding that the insured's breach of the cooperation clause relieved the insurer of its coverage obligation under the policy). Although it has been held that the insurer must show "substantial prejudice" from the delayed notice in order to be relieved of its coverage obligations if the rights of innocent third-parties are jeopardized by a failure of the insured to comply with the notice conditions, no such showing must be made where the rights of innocent third-parties are not jeopardized. *Prior*, 305 S.C. at 250, 407 S.E.2d at 657 (holding that the cases upon which the insured relied that required a showing of "substantial prejudice" involved "innocent third parties", and therefore, did not apply where the injured party had been paid her judgment).

The case of *Prior v. S.C. Med. Malpractice Liab. Ins. Joint Underwriting Ass'n*, 305 S.C. 247, 407 S.E.2d 655 (Ct. App. 1991) is instructive. In the *Prior* case, William F. Prior ("Prior"), a medical doctor, brought a declaratory judgment action against his professional liability

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insurance carrier, S.C. Medical Malpractice Liability Insurance Joint Underwriting Association (JUA), to determine if JUA owed a duty to defend Prior in a medical malpractice action and seeking indemnification for the judgment entered against Prior in the malpractice action. *Id.* at 248, 407 S.E.2d at 656. Prior's patient brought suit against Prior on May 1, 1986; however, Prior did not advise JUA of the lawsuit at that time, but instead hired his own attorney to defend the suit. *Id.* After the attorney retained directly by Prior withdrew from the case in August 1986, Prior forwarded the suit papers to JUA on August 21, 1986. *Id.* At that time, JUA began to defend Prior, but under a reservation of rights to later disclaim coverage. *Id.* JUA subsequently withdrew its defense of Prior on several grounds, including Prior's breach of its duty to notify JUA of the lawsuit in a prompt fashion and forward suit papers immediately to JUA. *Id.* The case then proceeded to trial in October 1986, with the jury returning a verdict against Prior in the amount of $15,000 in actual damages and $80,000 in punitive damages. *Id.* After the case was affirmed on appeal, Prior brought the declaratory judgment action against JUA seeking indemnification. *Id.*

On appeal in the declaratory judgment action, the court held that Prior was not entitled to coverage under the policy issued by JUA because Prior failed to timely notify JUA of the lawsuit. *Id.* at 249–50, 407 S.E.2d at 657. In so holding, the court held that "[n]o rule of law is more firmly established in this jurisdiction than that one suing on a policy of insurance, where the notice required by the policy is not timely given, cannot recover…." *Id.* (quoting *Lee v. Metropolitan Life Ins. Co.*, 180 S.C. 475, 486, 186 S.E. 376, 381 (1936)) (internal quotes omitted). Further, the court rejected Prior's argument that JUA was required to show that it had been "substantially prejudiced" by the delay in order to deny coverage because "[t]he cases upon which Prior relies … involve innocent third parties. Here there is no innocent third party beneficiary. The Patient has been paid her judgment." *Id.* (citing *Lee v. Metropolitan Life Ins. Co.*, 180 S.C. at 487, 186 S.E. at 381.

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"[T]he failure to give the required notice in the allotted time is fatal to the right of recovery, even if it be shown that the insurance company has suffered no harm by the delay.")).

The facts of our case are even more egregious than the *Prior* case. Covil did not provide any notice or forward any suit papers in the *Rollins* Asbestos Action to Penn National until January 27, 2020—over nine (9) months after it had been served with the complaint in such action. [Ex. 5] Then, less than a month after providing Penn National with its first notice of the *Rollins* Asbestos Action, and while Penn National was still in the process of gathering information from the defense counsel retained by other insurers to whom Covil had provided timely notice, Covil settled the claims asserted against it during the course of a mediation conducted on February 25, 2020 (of which Penn National was given even less notice). [Ex. 12] Covil alleges that it contributed $50,000 to the settlement secured by its other insurers (again, to whom Covil appears to have provided timely notice) in order to resolve the claims asserted against it in the *Rollins* Asbestos Action, although it has not provided the full settlement amount.

As a condition for coverage, the Penn National policies require that "[i]f claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative." [Ex. 13, pp. 34, 79] However, Covil failed to comply with this condition for coverage under the policies. Further, given that Covil and its other insurers are funding the settlement at issue, the rights of an innocent third-party are not jeopardized by Covil's failure to comply with the notice conditions in the policies. Therefore, Covil is not entitled to coverage under the Penn National policies for the settlement in *Rollins* Asbestos Action because it failed to comply with the conditions for coverage under the policies regardless of whether Penn National was "substantially prejudiced" by Covil's untimely notice (which it was).

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Further, to the extent that this Court believes that "substantial prejudice" must be shown, the facts of this case demonstrate that Penn National was "substantially prejudiced" by Covil's failure to provide timely notice. By the time that Covil provided notice to Penn National, Covil had already filed an Answer on May 28, 2019 [Ex. 7], completed written discovery, and participated in depositions in the case. In fact, under the Master Asbestos Discovery/ Scheduling Order, the following deadlines had already expired by the time that Penn National was first put on notice of the *Rollins* Asbestos Action on January 27, 2020—nine (9) months after Covil had been served with the Amended Complaint and eight (8) months after Covil had filed its Answer:

- Plaintiff's Deposition (June 19, 2029)
- Defendants Answer Master Discovery (July 12, 2019)
- Designate Fact Witnesses (August 8, 2019)
- Designate Expert Witnesses (August 8, 2019)
- Deposition of Plaintiff's fact witnesses except for family members who do not have product identification testimony (January 13, 2020)
- Deposition of Defendants' fact witnesses except for Defendants' 30(b)(6) witnesses (January 13, 2020)

[Ex. 9]

Additionally, the Pre-trial Scheduling Order entered by the Court in the *Rollins* Asbestos Action set a deadline of February 7, 2020, for the filing of motions for summary judgment (which was just eleven (11) days after Penn National had received its first notice of the action) and set trial for March 23, 2020 (just eight (8) weeks after Penn National's first notice of the action).[18]

Adding to the prejudice to Penn National, the parties in the *Rollins* Asbestos Action

[18] A true and accurate copy of the Scheduling Order is attached hereto as **Exhibit 14**.

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participated in a mediation on February 25, 2020, less than a month after Penn National received its first notice of the action. In fact, Covil did not provide notice of the mediation to Penn National until February 10, 2020, providing it even less time to gather the necessary information and documents in order to evaluate the matter for potential settlement. [Ex.12] As such, although a representative of Penn National attended the mediation, and expressed a willingness to contribute toward settlement on behalf of Covil, Penn National was not in a position to contribute the amount requested by Covil at the mediation. Covil proceeded to settle the claims asserted against it in the *Rollins* Asbestos Action, allegedly contributing $50,000 toward such settlement (for which recovery is sought in this action).

Under these facts, Penn National was "substantially prejudiced" by Covil's untimely notice in this matter. By the time Covil provided any notice of the *Rollins* Asbestos Action, the litigation had been pending for over nine (9) months with discovery all but completed, and a trial date just eight (8) weeks away. Then, the parties engaged in a mediated settlement conference with notice of just twelve (12) business days to Penn National—during which Covil and its other insurers (to whom timely notice was provided) settled the claims against Covil in the *Rollins* Asbestos Action—precluding Penn National from meaningfully participating in the mediation given the untimely notice and lack of information and documentation provided by Covil to Penn National prior to the mediation. Under these facts, even if "substantial prejudice" is required to bar coverage for Covil under the Penn National policies based upon its failure to comply with the notice conditions in the policies (which is denied), this Court should find as a matter of law that Penn National was "substantially prejudiced" by Covil's untimely notice such that Covil is not entitled to coverage under the Penn National policies for the settlement that it entered into with the plaintiff in the *Rollins* Asbestos Action.

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III. The "Completed Operations Hazard and Products Hazard" Exclusion Bars Coverage for the Claims Asserted Against Covil in the *Rollins* Asbestos Action.

In the alternative, and to the extent that the Court is inclined to consider Covil's motion on the merits at this time and finds that Covil's failure to comply with the notice conditions in the Penn National policies does not bar coverage for the claims asserted against Covil in the *Rollins* Asbestos Action, Covil is also not entitled to the relief that it seeks because the "Completed Operations Hazard and Products Hazard" exclusion in the Penn National policies bars coverage for the claims asserted against Covil in such action. The Penn National policies contain the "Completed Operations Hazard and Products Hazard" exclusion which bars coverage for "bodily injury" included in the "completed operations hazard" and the "products hazard". [Ex. 13, pp. 30, 68]

In its motion for partial summary judgment, Covil correctly quotes the language from the "Completed Operations Hazard and Products Hazard" exclusion as well as the definitions of the "completed operations hazard" and the "products hazard" in the Penn National policies.[19] However, Covil then proceeds to only analyze and offer argument with regard to the exclusion as it relates to "completed operations hazard", making the purely conclusory statement that "Penn National therefore cannot show that the *Rollins* Action, and the Receiver's resulting settlement of Rollins' claim for bodily injury, is within either the 'products hazard' or the 'completed operations hazard' of the March 31, 1986 to March 31, 1987 Penn National policy."

[19] Covil states in its motion that the policies produced by Penn National in response to a subpoena served in another case are incomplete, and do not contain their definitions of "products hazard" or "completed operations hazard." During the course of responding to discovery in this action, Penn National has been able to locate standard forms identified in the Declarations Pages for the Penn National policies, including those forms that include the policies' definitions of the "completed operations hazard" and the "products hazard", and has attached the same hereto as **Exhibit 13**. The definitions in the standard forms mirror the definitions quoted by Covil in its motion.

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As conceded by Covil, the "Completed Operations Hazard and Products Hazard" exclusion bars coverage under the Penn National policies for bodily injury included in either the "completed operations hazard" **or** the "products hazard". Accordingly, in order for the exclusion to apply, Penn National need only show that a claim falls within either the "completed operations hazard" or the "products hazard". The Penn National policies define the "products hazard" to include "bodily injury" arising out of the Covil's products or reliance upon a representation or warranty made with respect thereto if the "bodily injury" occurs away from premises owned by or rented to the Covil and after physical possession of such products has been relinquished to others.

South Carolina follows the "basic principle that insurance policies are contracts to be interpreted in accord with contract law." *Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 512–53, 717 S.E.2d 589, 595 (2011). The court's "role in interpreting a contract is to enforce the parties' intent. [The court] look[s] first to the language of the contract. If that language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect … [and] [i]n such instances, [the court] must enforce the language as written …." *McCord v. Laurens Cty. Health Care Sys.*, No. 2017-001064, 2020 WL 86744, at *2 (S.C. Ct. App. Jan. 8, 2020) (internal quotations omitted).

Based upon the plain and unambiguous language of the "Completed Operations Hazard and Products Hazard" exclusion, coverage is barred under the Penn National policies for "bodily injury" arising out of Covil's products if the "bodily injury" occurs away from premises owned by or rented to Covil and after physical possession of such products has been relinquished to others. Here, the only exposure that Covil identifies with respect to Mr. Rollins as contributing

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to his diagnosis with mesothelioma is "take home" exposure via his step-father, Mr. Ashworth, who is alleged to have been present at Bowater, while Covil performed piping system and insulation work between March 11, 1986 and January 25, 1987, under a subcontract which required Covil to "[f]urnish all supervision, labor, equipment and tools, materials (except as noted), and incidentals required to supply and install all insulation on required piping systems." [Covil's Motion for Partial Summary Judgment, p. 5] Covil does not contend that Mr. Rollins was ever present at Bowater while Covil was allegedly performing operations at the facility, but rather contends that Mr. Rollins was exposed to asbestos dust that his stepfather brought home with him when he returned home from work at Bowater during the relevant time-period.

Under these facts, the "bodily injury" alleged falls within the "products hazard" in the Penn National policy effective from March 31, 1986 to March 31, 1987, because such "bodily injury" is alleged to have arisen from Covil's products away from premises owned by or rented to Covil and after physical possession of such products had been relinquished to others during that time period. Accordingly, coverage for the claims asserted against Covil in the *Rollins* Asbestos Action is barred by the "Completed Operations Hazard and Products Hazard" exclusion in the 1986-1987 Penn National policy.

Additionally, although Covil does not address the application of the exclusion under the Penn National policy effective from March 31, 1987 to March 31, 1988, in its motion, coverage is also excluded for the claims asserted against Covil in the *Rollins* Asbestos Action pursuant to the "Completed Operations Hazard and Products Hazard" exclusion under the 1987-1988 Penn National policy. Even accepting the facts alleged by Covil for purposes of responding to its motion, Mr. Rollins was exposed to "take home" asbestos exposure between March 11, 1986 and January 25, 1987. [Covil's Motion for Partial Summary Judgment, p. 5] Therefore,

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the alleged asbestos exposure ended prior to the inception of the 1987-1988 Penn National policy on March 31, 1987. Accordingly, Mr. Rollins' alleged injury would not only be excluded as within the "products hazard" for the reasons set forth above as to the 1986-1987 Penn National policy, but would also be excluded as within the "completed operations hazard" because the alleged injury arose out of Covil's operations and occurred after such operations had been completed and away from premises owned by or rented to Covil (i.e. the "completed operations hazard"). *See Wallace & Gale*, 385 F.3d 820, 834 (4th Cir. 2004) (holding that if a claimant's initial exposure occurred while the insured was still conducting operations, the loss would not fall within the "completed operations hazard", but that if the exposure began during operations and continued after operations were complete, then the injury occurring during the policy in effect after operations were complete would fall within the "completed operations hazard").[20]

Therefore, in the alternative, even if this Court is inclined to consider Covil's motion at this time and finds that Covil's failure to comply with the notice conditions in the policies issued by Penn National does not bar coverage for the claims asserted against Covil

[20] It should also be noted that, to the extent any coverage could arguably be afforded under the Penn National policies for the claims against Covil in the *Rollins* Asbestos Action, any coverage obligation would be limited to Penn National's "pro-rata/time-on-risk" share of covered damages. *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 45, 717 S.E.2d 589, 591 (2011). Under the "pro-rata/ time-on-risk" allocation method, each insurer with a policy in effect during the time that covered damage progressed is only liable for its "pro-rata" share of any covered damage based upon its "time on the risk." *Id.* at 66, 717 S.E.2d at 603; *see also Rossello v. Zurich Am. Ins. Co.*, 2020 WL 1650385, at *4 (Md. Apr. 3, 2020) (noting that "[t]he majority of other states addressing the issue have adopted the pro rata approach" and citing *Crossmann* among other cases). In *Crossmann*, the court held that the proper method to calculate each insurer's "pro-rata" share is to construct a "basic formula" with the numerator representing the number of years each insurer provided coverage and the denominator representing the total number of years during which the damage progressed, which fraction is then multiplied by the covered damages. *Id.* at 64–65, 717 S.E.2d at 602. In this way, "each triggered insurer is responsible for a share of the total loss that is proportionate to its time on the risk," and the policyholder (or the tort plaintiff) bears the risk that there is a lack of insurance available for any given year along the "trigger spread". *Id.* Accordingly, even if Penn National owed any indemnity coverage to Covil (which is denied), such coverage obligation would be limited to Penn National's "pro-rata" share of the settlement. Based on the allegations in the complaint in the *Rollins* Asbestos Action, Mr. Rollins was first exposed to asbestos dust in 1973, and so his alleged "bodily injury" began in 1973 and continues to present date, resulting in a 47 year trigger spread. Even if both of the Penn National policies provided coverage for the *Rollins* Asbestos Lawsuit, Penn National's "pro-rata" share of any settlement would only be 4.3%. Covil completely ignores this limitation on Penn National's indemnity obligation in its motion, and fails to provide information regarding the total amount of the settlement entered into by Covil in the *Rollins* Asbestos Action.

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in the *Rollins* Asbestos Action, Covil is also not entitled to the relief that it seeks because the "Completed Operations Hazard and Products Hazard" exclusion in the Penn National policies bars coverage for the claims asserted against Covil in such action.

IV. Granting of Summary Judgement is Premature Because Penn National Has Not Had a Full and Fair Opportunity to Complete Discovery.

Covil's Motion for Partial Summary Judgment should be denied based on the record before the Court. However, even if the motion appeared to have merit, it is premature insofar as discovery in this case has yet to be completed. This action was filed just over two (2) months ago. Accordingly, the parties have not had the opportunity to complete discovery in this matter. To the extent that the Court does not stay this action pending resolution of the coverage issues raised in the Federal Coverage Actions, Penn National will need to engage in discovery in this action, including, but not limited to, Covil's tender of the *Rollins* Asbestos Action to Penn National and other insurers and the reason for the failure to delay tendering this matter to Penn National, the nature and timing of the alleged asbestos exposure in such action, the settlement entered into by Covil in such action, including the total amount of the settlement and the amount (if any) that Covil itself paid to settle such action, etc.

In South Carolina, summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Doe v. Batson*, 345 S.C. 316, 321–22 (2001); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112 (1991). A summary judgment motion may be deemed premature if "(1) [the nonmovant can] demonstrate[] a likelihood that further discovery would uncover additional relevant evidence, and (2) [the nonmovant is] not dilatory in seeking discovery." *Id.* Such is the case here. This case has only been pending for two (2) months, and there is a strong likelihood that further discovery will uncover additional evidence regarding that Penn National's defense that the *Rollins* Asbestos Action was not timely

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tendered to Penn National, the evidence of alleged asbestos exposure in the such action, and/or the settlement entered into by Covil in the action. To permit summary judgment to be entered without affording Penn National the opportunity to engage in discovery would be unjust.

Thus, Penn National has presented evidence sufficient to deny Covil's motion for partial summary judgment even on this incomplete record. Nonetheless, Covil's motion is premature. Penn National, through no fault of its own, has not had a full or fair opportunity to complete discovery in this case, given that this matter was filed just over two (2) months ago, combined with Penn National's position that this action should be stayed pending resolution of coverage issues in the related Federal Coverage Actions. Such additional discovery will serve to reinforce Penn National's defenses in this action.

CONCLUSION

Accordingly, for the reasons set forth above, Penn National requests that this Court stay the present matter pending the resolution of the insurance coverage issues raised by Covil in its motion for partial summary judgment. To the extent that this Court is not inclined to stay this matter and addresses the substance of Covil's motion at this time, Penn National requests that this Court deny Covil's motion because Covil is not entitled to coverage under the policies issued by Penn National for the claims asserted against Covil in the *Rollins* Asbestos Action both because Covil failed to timely provide notice of such action to Penn National as required as a condition for coverage under the Penn National policies and also because the "Completed Operations Hazard and Products Hazard" exclusion bar coverage for such claims. Finally, to the extent that the Court is inclined to address the substance of Covil's motion and does not believe that Covil's motion can be denied based upon the record before the Court at this time, Penn National requests that

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the Court decline to rule on the motion at this time in order to allow Penn National sufficient time to complete discovery in this matter in order to more fully respond to Covil's motion.

This the 8th day of May, 2020.

/s/ David G. Harris II
David G. Harris II
S.C. Bar No. 101951
dharris@goldbergsegalla.com
David L. Brown (*pro hac vice application to be submitted*)
N.C. State Bar No. 18942
dbrown@goldbergsegalla.com
Brady A. Yntema (*pro hac vice application to be submitted*)
N.C. State Bar No. 25771
byntema@goldbergsegalla.com
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, North Carolina 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950

Attorneys for Defendant Pennsylvania National Mutual Casualty Insurance Company

EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ZURICH AMERICAN INSURANCE COMPANY,	)	
Plaintiff,	)	
v.	)	1:18-CV-932
COVIL CORPORATION, et al.,	)	
Defendants.	)	

ORDER

Penn National has moved to dismiss Hartford's Third-Party Complaint and Covil's Third Party Demand, based both on lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). The Court previously denied the motion in part and withheld ruling in part. *See* Doc. 227.

Since that time, Hartford has taken a voluntary dismissal of its claims against Penn National. Doc. 264. Those claims having already been dismissed, Penn National's motion to dismiss Hartford's third-party complaint will be denied as moot.

Also after the Court's original order, Covil has stipulated that there are no issues related to insurance coverage by Penn National for the judgment in the case of *Finch v. Covil*, No. 1:16-CV-1077, Doc. 283, and Covil has taken the position that the Court should decline to exercise subject matter jurisdiction to resolve any coverage issues beyond those arising from the Finch judgment. *See* Doc. 256 at 4–5. Upon consideration, the Court agrees, in the exercise of its discretion, that it would be inappropriate to exercise subject matter jurisdiction over the hypothetical coverage

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disputes between Covil and Penn National. Neither party has explained to the Court how any coverage dispute would affect any particular case, and both parties agree that this Court should not decide the coverage disputes. Therefore, Penn National's motion to dismiss the third-party claims against Penn National will be granted pursuant to Federal Rule of Civil Procedure 12(b)(1), and those claims will be dismissed without prejudice.

Covil and Penn National recently filed a joint motion for clarification. Doc. 294. In view of the Court's rulings on the pending motions, that motion is now moot. To the extent Covil needs information from Penn National to pursue claims and defenses in this case against other parties, it will need to seek it in the same way it would obtain such information from any non-party. While the Court does not approve of Penn National's unilateral refusal to participate in mediation during a time when it was undoubtedly a party to this litigation, a refusal which is in violation of the Court's Local Rules, the Court will not impose any sanction in view of the Court's understanding that Penn National is or will be subject to mediation orders in any pending state cases in South Carolina where its coverage it at issue.

It is **ORDERED** that:

1. The joint motion for clarification by the Receiver for Covil Corporation and Penn National, Doc. 294, is **DENIED as moot**.
2. Penn National's motion to dismiss Covil's third-party demand, Doc. 170, is **GRANTED** and Covil's claims against Penn National are **DISMISSED without prejudice**.

3. Penn National's motion to dismiss Hartford's third-party claims, Doc. 132, is **DENIED as moot**.

4. The Clerk shall terminate this case as to Penn National. If Penn National seeks immediate entry of judgment, it may submit a proposed judgment to the Court's case manager, after consulting with counsel for Hartford and for Covil as to form and conveying any disagreements, should there be any.

This the 22nd day of April, 2020.

UNITED STATES DISTRICT JUDGE

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EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CASE NO. _____

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Plaintiff, v. COVIL CORPORATION, by and through its Receiver PETER D. PROTOPAPAS, Defendant.	**PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY'S COMPLAINT FOR DECLARATORY RELIEF**

NOW COMES Plaintiff Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through its undersigned counsel, and pursuant to Rule 57 of the Federal Rules of Civil Procedure and the provisions of 28 U.S.C. § 2201, and alleges and says as follows:

PRELIMINARY STATEMENT

1. Pursuant to 28 U.S.C. § 2201, Penn National seeks a declaration and adjudication concerning the rights, obligations, and liabilities of the parties under two policies of insurance issued by Penn National to Defendant Covil Corporation with respect to a series of lawsuits asserted against Covil Corporation ("Covil") alleging damages as a result of alleged occupational asbestos exposures. Covil, operating through its Receiver, Peter D. Protopapas, ("Receiver"), has tendered these lawsuits to Penn National seeking a defense and, in some cases, indemnification. Penn National seeks judicial declarations with respect to its coverage obligations on these suits, particularly (1) whether Covil has complied with its duties precedent to coverage under the Penn National policies at issue, such as the duty to timely notify Penn National of the asbestos claims against it and to cooperate with Penn National in the defense of such claims, (2) whether coverage

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was triggered during the policy periods under the Penn National policies by the claims asserted against Covil in the lawsuits, (3) whether policy exclusions barring coverage for "bodily injury" included in the "completed operations hazard" and the "products hazard" apply to bar coverage for the claims asserted against Covil in the lawsuits, (4) if coverage is afforded, the manner in which South Carolina's "pro-rata/time-on-risk" allocation method applies to determine the share of any covered loss that Penn National may be required to indemnify under the Penn National policies, and (5) whether coverage under the Penn National policies is limited to a single $1 million per occurrence limit under each of the policies for all of the claims at issue in the lawsuits.

PARTIES, JURISDICTION, AND VENUE

2. Penn National is, and at all times herein was, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and operates its principal place of business in the Commonwealth of Pennsylvania. At all times relevant to the instant action, Penn National was and remains licensed and authorized to engage in the business of insurance in the State of South Carolina.

3. Upon information and belief, Defendant Covil Corporation ("Covil") is a forfeited corporation that was organized under the laws of the State of South Carolina and operated its principal place of business in the State of South Carolina. Upon information and belief, Covil is now represented by and through its purported Receiver, Peter D. Protopapas. Upon information and belief, Mr. Protopapas is a resident and citizen of the State of South Carolina.

4. Jurisdiction over the claims contained herein is invoked pursuant to 28 U.S.C. § 1332(a)(1) and (c) in that there is complete diversity of citizenship between the Plaintiff and all Defendants and the amount in controversy exceeds the sum of $75,000.

5. This action properly lies in the United States District Court for the District of

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South Carolina pursuant to 28 U.S.C. § 1391(b)(1) and (2) because the Penn National policies were issued to Covil, which at that time was incorporated in South Carolina and operated its principal place of business in Greenville County, South Carolina, and Covil's purported Receiver resides and operates his principal place of business, upon information and belief, in South Carolina. Further, nearly all of the lawsuits asserted against Covil that Covil has tendered to Penn National for defense and indemnity payments are venued in the state and federal courts of South Carolina.

THE PENN NATIONAL POLICIES

6. This declaratory judgment action pertains to an actual controversy over potential coverage under two commercial general liability insurance policies, policy no. 515 50 28 53, issued by Penn National to "Covil Corporation, Inc." for the successive annual policy periods of March 31, 1986 through March 31, 1988 (the "Penn National Policies"). The Penn National Policies each contain a $1 million limit per occurrence and are subject to an aggregate limit of $1 million.

7. Penn National, after performing an exhaustive search of policy documents relating to the first policy that it issued to Covil, effective from March 31, 1986 to March 31, 1987 (the "1986-87 Policy"), was able to identify the policy materials attached hereto as **Exhibit A**.

8. Penn National, after performing an exhaustive search of policy documents relating to the second policy that it issued Covil, effective from March 31, 1987 to March 31, 1988 (the "1987-88 Policy"), was able to identify the policy materials attached hereto as **Exhibit B**.

9. By commencing this action, Penn National does not waive any requirement that Covil prove the existence, terms, and conditions of the Penn National Policies or any requirement that Covil prove the existence that the underlying actions satisfy the coverage provisions of the Penn National Policies.

10. Penn National is informed and believes that other insurance carriers may have

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issued commercial general liability policies for the time periods before the Penn National Policies became effective and after their coverage expired. Specifically, Penn National is informed and believes that the following insurers issued commercial general liability policies for time periods before, after, or at the same time that the Penn National Policies were in effect: Zurich American Insurance Company, as successor in interest to Maryland Casualty Company and Northern Insurance Company of New York, 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, and Hartford Accident and Indemnity Company. Penn National reserves the right to amend its complaint to add as parties any insurance carriers or their successors-in-interest that issued Covil insurance coverage for the time periods before and after the effective dates of its policies to adjudicate any allocation or coverage issues.

11. Each of the Penn National Policies contains the following conditions for coverage:

SPECIAL MULTI-PERIL POLICY CONDITIONS AND DEFINITIONS

***

CONDITIONS APPLICABLE TO SECTION II

***

4. Insured's Duties in the Event of Occurrence, Claim or Suit.

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

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

(c) The **insured** shall cooperate with the Company and, upon the Company's

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

12. Each of the Penn National Policies contains the following Insuring Agreement:

I. COVERAGE A—BODILY INJURY LIABILITY
COVERAGE B—PROPERTY DAMAGE LIABILITY

The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of

Coverage A. **bodily injury** or
Coverage B. **property damage**

to which this insurance applies, caused by an **occurrence**, and the company shall have the right and duty to defend any suit against the **insured** seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

13. The Penn National Policies define the "bodily injury", "occurrence", and "property damage" as follows:

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

* * *

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

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

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* * *

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

14. Each of the Penn National Policies contains the following exclusion, added by endorsement, for losses resulting from completed operations:

EXCLUSION

(Completed Operations Hazard and Products Hazard)

It is agreed that such insurance as is afforded by the Bodily Injury Liability Coverage and the Property Damage Liability Coverage does not apply to **bodily injury** or **property damage** included within the **Completed Operations Hazard** or the **Products Hazard**.

15. The Penn National Policies define the "Completed Operations Hazard" and the "Products Hazard" as follows:

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

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

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

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

Operations which may require further service or maintenance work, or correction,

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repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of

(a) operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof,

(b) the existence of tools, uninstalled equipment or abandoned or unused materials, or

(c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

* * *

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

16. The Penn National Policies include the following "Limits of Liability" provision:

III. LIMITS OF LIABILITY

Regardless of the number of (1) **insureds** under this policy, (2) persons or organizations who sustain **bodily injury** or **property damage**, or (3) claims made or suits brought on account of **bodily injury** or **property damage**, the company's liability is limited as follows:

Coverage A—The total liability of the company for all damages, including damages for care and loss of services, because of **bodily injury** sustained by one or more persons as the result of any one occurrence shall not exceed the limit of **bodily injury** liability stated in the declarations as applicable to "each occurrence".

Subject to the above provision respecting "each **occurrence**", the total liability of the company for all damages because of (1) all **bodily injury** included within the **completed operations hazard** and (2) all **bodily injury** included within the **products hazard** shall not exceed the limit of **bodily injury** liability stated in the declarations as "aggregate".

***

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> **Coverages A and B**—For the purpose of determining the limit of the combined liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

THE UNDERLYING ACTIONS

17. Covil is, upon information and belief, a forfeited corporation. While it was active and in business, Covil's primary business was, upon information and belief, the manufacture and installation of insulation.

18. Covil has been named as a defendant in a series of lawsuits asserted by former employees and others alleging that exposure to Covil's products resulted in exposure to asbestos that caused bodily harm.

19. Attached as **Exhibit C** is a list of the underlying asbestos actions in which Covil has been named as a defendant that Covil has tendered to Penn National for defense and, in some instances, indemnity coverage ("Underlying Actions"). Penn National will amend **Exhibit C** as it becomes aware of any further lawsuits under which it seeks a declaration of rights.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment – Violation of Notice Condition)

20. Penn National restates, re-alleges, and incorporates by reference its allegations stated in paragraphs 1-19 as though fully set forth herein.

21. The Penn National Policies impose certain duties onto the insured as a condition for coverage under the policies, including as relevant here, the duty to provide notice to Penn National of an "occurrence" as soon as practicable and "immediately forward to Penn National every demand, notice, summons, or other process received by him or his representative" if a claim is made or suit is brought against the insured and to cooperate with Penn National in the defense of such claim or suit.

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22. Accordingly, to the extent that Covil failed to notify Penn National of an "occurrence" as soon as practicable and immediately forward to Penn National any demand, notice, summons, or other legal process received by Covil or cooperate with Penn National in the defense of any of the Underlying Actions, Covil violated the conditions for coverage under the Penn National Policies.

23. Covil's failure to comply with its duties under the Penn National Policies has resulted in Covil's settlement of some of the Underlying Actions, entry of judgment against Covil and/or other resolution of some of the Underlying Actions before Penn National was aware that the Underlying Actions against Covil had been filed and/or before Penn National had been provided with sufficient information or documents with respect to the Underlying Actions to adequately analyze and consider coverage under the Penn National Policies or Covil's potential liability.

24. As to these Underlying Actions, Covil violated its duties under the Penn National Policies and as recognized under South Carolina law, which resulted in substantial prejudice to Penn National.

25. Penn National requests this Court to declare the rights, obligations, and liabilities of the parties under the Penn National Policies with respect to the Underlying Actions in which Covil failed to comply with the conditions for coverage, including its failure to satisfy its duties under the policies to provide timely notice and immediately forward suit papers to Penn National and/or to cooperate with Penn National in the defense of the Underlying Actions. Specifically, Penn National is entitled to a judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring and adjudging that it owes Covil no duty to defend or indemnify in the Underlying Actions because of Covil's violation of its duties under Penn National

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Policies and South Carolina law.

26. This action is ripe for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure as authorized by 28 U.S.C. § 2201. A final ruling by this Court will determine the rights and obligations of the parties and will settle the controversy between them as to these insurance coverage issues.

27. Accordingly, Penn National requests that this Court declare the relative rights, duties and obligations of the parties to this action under the Penn National Policies with regard to the Underlying Actions of which Covil failed to timely notify Penn National and immediately forward suit papers to Penn National and/or cooperate with Penn National in the defense of such actions, as required under the Penn National Policies. Specifically, Penn National requests that the Court declare that Penn National has no obligation to provide coverage to Covil under the Penn National Policies, including a duty to defend or indemnify Covil in those actions, because of Covil's violations of its duties under the Penn National Policies, which resulted in substantial prejudice to Penn National.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment –
Trigger of Coverage)

28. Penn National restates, re-alleges, and incorporates by reference its allegations stated in paragraphs 1-27 as though fully set forth herein.

29. Pursuant to the terms of the "Insuring Agreement" for Coverage A – Bodily Injury, the Penn National Policies only provide coverage for "bodily injury" caused by "occurrence".

30. The Penn National Policies define "bodily injury" as "bodily injury, sickness or disease sustained by any person which occurs during the policy period."

31. Accordingly, the Penn National Policies only provide coverage for "bodily injury"

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sustained by any person which occurs during the policy period.

32. To the extent the plaintiff's "bodily injury" for which recovery is sought in an Underlying Action listed in **Exhibit C** did not occur during the policy periods for the Penn National Policies, Covil would not be entitled to coverage for such Underlying Action under the Penn National Policies.

33. Penn National requests this Court to declare the rights, obligations, and liabilities of the parties under the Penn National Policies with respect to the Underlying Actions in which the "bodily injury" claimed did not occur during the policy periods for the Penn National Policies. Specifically, Penn National is entitled to a judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring and adjudging that it owes Covil no duty to defend or indemnify Covil in such Underlying Actions because the "bodily injury" for which recovery is sought did not occur during the policy periods for the Penn National Policies.

34. This action is ripe for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure as authorized by 28 U.S.C. § 2201. A final ruling by this Court will determine the rights and obligations of the parties and will settle the controversy between them as to these insurance coverage issues.

35. Accordingly, Penn National requests that this Court declare the relative rights, duties and obligations of the parties to this action under the Penn National Policies with regard to the Underlying Actions in which the "bodily injury" for which recovery is sought did not occur during the policy periods for the Penn National Policies. Specifically, Penn National requests that the Court declare that Penn National has no obligation to provide coverage to Covil under the Penn National Policies for the claims at issue in such Underlying Actions, including a duty to defend or indemnify Covil in such actions.

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THIRD CLAIM FOR RELIEF
(Declaratory Judgment –
Application of Completed Operations Hazard and Products Hazard)

36. Penn National restates, re-alleges, and incorporates by reference its allegations stated in paragraphs 1-35 as though fully set forth herein.

37. The Penn National Policies each contain a Completed Operations Hazard and Products Hazard Exclusion, which excludes coverage for "bodily injury" included in the "completed operations hazard" or the "products hazard". As such, the Penn National Policies exclude coverage for claims for asbestos-related injuries included in the "completed operations hazard" or the "products hazard".

38. The Penn National Policies define the "completed operations hazard" to include "bodily injury" arising out of operations (including materials, parts, or equipment furnished in connection with the operations) if the "bodily injury" occurred after such operations had been completed or abandoned and occurred away from premises owned by or rented to Covil. Operations are deemed completed under the Penn National Policies as the earliest of the following times: (1) when all operations to be performed by or on behalf of Covil under the contract have been completed, (2) when all operations to be performed by or on behalf of Covil at the site of the operations have been completed, (3) when the portion of the work out of which the injury arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project. Under the terms of the Penn National Policies, operations which may require further service or maintenance work, or correction, repair, or replacement because of any defect or deficiency, but which are otherwise complete, are deemed completed.

39. The Penn National Policies define the "products hazard" to include "bodily injury"

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arising out of Covil's products or reliance upon a representation or warranty made at any time with respect thereto if the "bodily injury" occurs away from premises owned by or rented to Covil and after physical possession of such products has been relinquished to others.

40. Accordingly, to the extent a plaintiff's claim in an Underlying Action listed in **Exhibit C** is for "bodily injury" arising out of Covil's operations and such "bodily injury" occurred after Covil's operations were completed or abandoned and occurred away from premises owned by or rented to Covil, coverage would be excluded for such claim under the "Completed Operations Hazard and Products Hazard" exclusion. Additionally, to the extent that a plaintiff's claim in an Underlying Action listed in **Exhibit C** is for "bodily injury" arising out of Covil's products and occurred away from premises owned or rented to Covil and after physical possession of such products has been relinquished to others, coverage would also be excluded for such claim under the "Completed Operations Hazard and Products Hazard" exclusion.

41. Penn National requests this Court to declare the rights, obligations, and liabilities of the parties under the Penn National Policies with respect to the Underlying Actions to which the Completed Operations Hazard and Products Hazard Exclusion is applicable. Specifically, Penn National is entitled to a judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring and adjudging that it owes Covil no duty to defend or indemnify Covil in such UnderlyingActions because coverage for these actions is excluded under the Penn National Policies by operation of the "Completed Operations Hazard and Products Hazard" exclusion.

42. This action is ripe for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure as authorized by 28 U.S.C. § 2201. A final ruling by this Court will determine the rights and obligations of the parties and will settle the controversy

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between them as to these insurance coverage issues.

43. Accordingly, Penn National requests that this Court declare the relative rights, duties and obligations of the parties to this action under the Penn National Policies with regard to the Underlying Actions to which the "Completed Operations and Products Hazard" exclusion is applicable. Specifically, Penn National requests that the Court declare that Penn National has no obligation to provide coverage to Covil under the Penn National Policies for the claims at issue in such Underlying Actions, including a duty to defend or indemnify Covil in such actions.

FOURTH CLAIM FOR RELIEF
(Declaratory Relief – Allocation of Loss)

44. Penn National restates, re-alleges, and incorporates by reference its allegations stated in paragraphs 1-43 as though fully set forth herein.

45. In the alternative, to the extent that coverage exists under the Penn National Policies for any of the damages claimed in the Underlying Actions, Penn National would only be obligated to indemnify Covil for those damages occurring during the policy periods for the Penn National Policies.

46. The Penn National Policies only provide coverage for those "bodily injury" or "property damage" that occurred during their respective policy periods.

47. In progressive injury cases, South Carolina law provides that an insurer is only responsible for those damages that occurred during its policy period. Where it is impossible to know the exact measure of damages attributable to the injury during the insurer's policy period, South Carolina courts apply a default "pro-rata/time-on-risk" allocation formula that consists of a numerator representing the number of years an insurer provided coverage and a denominator representing the total number of years during which the damage progressed, which fraction is multiplied by the total amount the insured has become liable to pay as damages for the entire

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progressive injury ("South Carolina Time-on-Risk Allocation Formula").. Under that allocation method, to the extent that coverage is afforded under the Penn National Policies for any of the claims at issue in the Underlying Actions and it is not possible to know the exact measure of damages attributable to the injuries at issue in the Underlying Actions during the policy periods for the Penn National Policies, Penn National's indemnity obligation would be limited to its share of any damages awarded against Covil in the Underlying Actions as calculated under the South Carolina Time-on-Risk Formula.

48. Penn National requests this Court to declare the rights, obligations, and liabilities of the parties under the Penn National Policies with respect to the Underlying Actions. Specifically, Penn National is entitled to a judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, declaring and adjudging that, to the extent that the Underlying Actions are covered under the Penn National Policies, that Penn National is responsible only for those damages that occurred during its policy periods under the Penn National Policies, or, to the extent that it is not possible to know the exact measure of damages attributable to the injuries at issue in the Underlying Actions during the policy periods for the Penn National Policies, Penn National is responsible only for its share of damages awarded against Covil in the Underlying Actions as calculated based upon the South Carolina Time-on-Risk Formula outlined above. Penn National further seeks a declaration in the alternative that to the extent that coverage is afforded under the Penn National Policies for any of the damages claimed in the Underlying Actions, coverage under the Penn National Policies should be limited to a single $1 million "per occurrence" limit under each of the Policies for all of the claims asserted against Covil in the Underlying Actions. Pursuant to the terms of the Penn National Policies, Penn National is not responsible for losses exceeding this limit of liability regardless of the number of

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insureds under the Penn National Policies, persons or organizations who sustain bodily injury or property damage, or claims made or suits brought on account of bodily injury or property damage.

49. This action is ripe for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure as authorized by 28 U.S.C. § 2201. A final ruling by this Court will determine the rights and obligations of the parties and will settle the controversy between them as to these insurance coverage issues.

50. Accordingly, Penn National requests that this Court declare the relative rights, duties and obligations of the parties to this action under the Penn National Policies with regard to the Underlying Actions. Specifically, in the alternative, Penn National requests that, to the extent that Covil can establish that coverage is afforded under the Penn National Policies for the claims at issue in the Underlying Actions, that:

a. Penn National is required only to pay for those damages that occurred during its policy period, or, to the extent that it is not possible to know the exact measure of damages attributable to the injuries at issue in the Underlying Actions during the policy periods for the Penn National Policies, Penn National is responsible only for its share of damages awarded against Covil in the Underlying Actions as calculated based upon the South Carolina Time-on-Risk Formula; and

b. Penn National's liability for all of the claims asserted against Covil in the Underlying Actions is limited to the $1 million per occurrence liability limit set forth in the Penn National Policies regardless of the number of insureds under the Penn National Policies, persons or organizations who sustain bodily injury or property damage, or claims made or suits brought on account of "bodily injury" or "property damage".

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WHEREFORE, Plaintiff Pennsylvania National Mutual Casualty Insurance Company requests that the Court:

1. Declare and decree as follows:

   a. That the Penn National Policies do not provide coverage to Covil for the claims asserted against Covil in the Underlying Actions such that Penn National owes no duty to defend or indemnify Covil in the Underlying Actions.

2. In the alternative, should the Court find that coverage is afforded under the Penn National Policies for some of the claims at issue in the Underlying Actions, Penn National requests that the Court declare and decree as follows:

   a. Penn National is required only to pay for those damages that occurred during its policy period, or, to the extent that that it is not possible to know the exact measure of damages attributable to the injuries at issue in the Underlying Actions during the policy periods for the Penn National Policies, Penn National is responsible only for its share of damages awarded against Covil in the Underlying Actions as calculated based upon the South Carolina Time-on-Risk Formula;

   b. Penn National's liability for all of the claims asserted against Covil in the Underlying Actions is limited to the $1 million per occurrence limit of liability set forth in the Penn National Policies regardless of the number of insureds under the Penn National Policies, persons or organizations who sustain bodily injury or property damage, or claims made or suits brought on account of bodily injury or property damage.

3. Tax the costs of this action against Covil;

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4. Award Penn National any and all attorneys' fees as are collectible at law;

5. Grant a trial by jury on all issues so triable; and

6. Award Penn National such other and further relief as the Court may deem just and proper.

This the 1st day of May, 2020.

/s/ David G. Harris II
David G. Harris II
S.C. Federal Bar No. 12039
dharris@goldbergsegalla.com
David L. Brown (*pro hac vice application to be submitted*)
N.C. State Bar No.18942
dbrown@goldbergsegalla.com
Brady A. Yntema (*pro hac vice application to be submitted*)
N.C. State Bar No.25771
byntema@goldbergsegalla.com
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, North Carolina 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950

Attorneys for Plaintiff Pennsylvania National Mutual Casualty Insurance Company

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the registered participants as identified on the Notice of Electronic Filing (NEF).

This the 1st day of May, 2020.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II
David G. Harris II
S.C. Federal Bar No. 12039
dharris@goldbergsegalla.com
701 Green Valley Road, Suite 310
Greensboro, North Carolina 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950

Attorney for Plaintiff Pennsylvania National Mutual Casualty Insurance Company

EXHIBIT 3

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

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

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*Id.* at 126.)

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

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

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

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

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

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

(*Id.* at 135–36.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

February 27, 2020
Greenville, South Carolina

EXHIBIT 4

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

DAVID D. ROLLINS

Plaintiff

v.

AIR & LIQUID SYSTEMS CORPORATION;
ARMSTRONG INTERNATIONAL, INC.;
ASTENJOHNSON, INC.;
AURORA PUMP COMPANY;
CARAUSTAR INDUSTRIES, INC.;
CELANESE CORPORATION;
CLEAVER-BROOKS, INC.;
CNA HOLDINGS LLC;
COVIL CORPORATION;
CRANE CO.;
DEZURIK, INC.;
THE DOW CHEMICAL COMPANY
DANIEL INTERNATIONAL CORPORATION;
E. I. DU PONT DE NEMOURS AND COMPANY;
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;
GABRIEL PHENOXIES, INC.;
GARDNER DENVER, INC.;
GENERAL ELECTRIC COMPANY;
GORMAN-RUPP COMPANY;
GOULDS PUMPS, INCORPORATED;
GRINNELL, LLC;
INGERSOLL-RAND COMPANY;
INTERNATIONAL PAPER COMPANY;
ITT LLC;

C/A NO. 2019-CP-25-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

Jury Trial Demanded

SUMMONS

ELECTRONICALLY FILED - 2019 Apr 05 4:30 PM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118
ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

JOHN CRANE, INC.;)
MOR PPM, INC.;)
NEWCO VALVES, LLC;)
PFIZER, INC.;)
RESOLUTE FP US INC.;)
RILEY POWER, INC.;)
SCAPA WAYCROSS, INC.;)
SEAL & DESIGN, INC.;)
SPIRAX SARCO, INC.;)
SPRINGS GLOBAL US, INC.;)
SPRING INDUSTRIES, INC.;)
SPX COOLING TECHNOLOGIES, INC.;)
STARR DAVIS COMPANY, INC.;)
STARR DAVIS COMPANY OF S.C., INC.;)
SOS INTERNATIONAL, LLC;)
SOUTHERN INSULATION COMPANY;)
SULZER PUMPS (US), INC.;)
VELAN VALVE CORP.;)
VIKING PUMP, INC.;)
WARREN PUMPS, LLC;)
WEIR VALVES & CONTROLS USA, INC.;)
ZURN INDUSTRIES, LLC;)
)

Defendants.

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the 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, judgment by default will be rendered against you for the relief demanded in the complaint.

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Respectfully submitted,

s/Theile B. McVey

Theile B. McVey (SC Bar 16682)
KASSEL MCVEY, ATTORNEYS AT LAW
1330 Laurel Street
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar 77935)
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
jholder@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 5, 2019

Columbia, South Carolina.

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STATE OF SOUTH CAROLINA) **)** **COUNTY OF HAMPTON)**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT**
DAVID D. ROLLINS Plaintiff, v. **AIR & LIQUID SYSTEMS CORPORATION,** individually and as successor-in-interest to BUFFALO PUMPS **ARMSTRONG INTERNATIONAL, INC.** **ASTENJOHNSON, INC.,** individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO. **AURORA PUMP COMPANY** **CARAUSTAR INDUSTRIES, INC.,** sued individually and as successor in-interest-to STAR PAPER TUBE, INC. **CELANESE CORPORATION** **CLEAVER-BROOKS, INC.,** f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION **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. **COVIL CORPORATION** **CRANE CO.** **DEZURIK, INC.** **THE DOW CHEMICAL COMPANY**	**C/A NO.** In Re: Asbestos Personal Injury Litigation Coordinated Docket Living Mesothelioma **COMPLAINT** (Jury Trial Demanded)

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DANIEL INTERNATIONAL CORPORATION

E. I. DU PONT DE NEMOURS AND COMPANY

FLOWSERVE CORPORATION

FLOWSERVE US INC.

FLUOR CONSTRUCTORS INTERNATIONAL, f/k/a/ FLUOR CORPORATION

FLUOR CONSTRUCTORS INTERNATIONAL, INC.

FLUOR DANIEL SERVICES CORPORATION

FLUOR ENTERPRISES, INC.

FMC CORPORATION

FOSTER WHEELER ENERGY CORPORATION

GABRIEL PHENOXIES, INC., sued individually and as successor in-interest-to INCHEM CORPORATION

GARDNER DENVER, INC.

GENERAL ELECTRIC COMPANY

THE GORMAN-RUPP COMPANY

GOULDS PUMPS, INCORPORATED

GRINNELL, LLC, d/b/a GRINNELL CORPORATION

INGERSOLL-RAND COMPANY

INTERNATIONAL PAPER COMPANY

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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

JOHN CRANE, INC.

MOR PPM, INC., f/k/a POWER & PLANT MAINTENANCE COMPANY, INC.

NEWCO VALVES, LLC, d/b/a NEWMANS

PFIZER, INC.

RESOLUTE FP US INC., individually and successor-in-interest to BOWATER, INC.

RILEY POWER, INC., f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.

SCAPA WAYCROSS, INC.

SEAL & DESIGN, INC., HIGBEE DIVISION, sued individually and as successor in-interest-to HIGBEE, INC.

SPIRAX SARCO, INC.

SPRINGS GLOBAL US, INC.

SPRING INDUSTRIES, INC.

SPX COOLING TECHNOLOGIES, INC., individually and successor-in-interest to MARLEY COOLING TOWERS CO.

STARR DAVIS COMPANY, INC.

STARR DAVIS COMPANY OF S.C., INC.

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SOS INTERNATIONAL, LLC)
)
SOUTHERN INSULATION COMPANY)
)
SULZER PUMPS (US), INC.)
)
VELAN VALVE CORP.)
)
VIKING PUMP, INC.)
)
WARREN PUMPS, LLC)
)
WEIR VALVES & CONTROLS USA, INC., individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.)
)
ZURN INDUSTRIES, LLC, individually and as successor-in-interest to ZURN INDUSTRIES, INC.)
)
Defendants.)

GENERAL ALLEGATIONS

Plaintiff DAVID D. ROLLINS, (hereinafter "Plaintiff"), sues the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

1. Plaintiff David D. Rollins has been diagnosed with mesothelioma.

2. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants' conduct in:

(a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;

(b) Contracting to supply services or things in the State;

(c) Commission of a tortious act in whole or in part in this State;

(d) Having an interest in, using, or possessing real property in this State; and/or

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(e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Plaintiff's claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

4. Plaintiff's claims against the Premises Defendants, as defined herein, arise out of Defendants' ownership and/or control of real property located in South Carolina and the purchase and use of asbestos-containing products on their premises located in South Carolina.

5. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff David D. Rollins to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

6. Plaintiff David D. Rollins' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

7. Plaintiff David D. Rollins was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

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8. Plaintiff David D. Rollins worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

9. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiff's remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
AIR & LIQUID SYSTEMS CORPORATION	individually and as successor-in-interest to BUFFALO PUMPS
ASTENJOHNSON, INC.	individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO.
CARAUSTAR INDUSTRIES, INC.	sued individually and as successor in-interest-to STAR PAPER TUBE, INC.
CLEAVER-BROOKS, INC.	f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION
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.

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DEFENDANT	ALTERNATE ENTITY
FLUOR CONSTRUCTORS INTERNATIONAL	f/k/a FLUOR CORPORATION
GABRIEL PHENOXIES, INC.	sued individually and as successor in-interest-to INCHEM CORPORATION
GRINNELL, LLC	d/b/a GRINNELL CORPORATION
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
MOR PPM, INC.	f/k/a POWER & PLANT MAINTENANCE COMPANY, INC.
NEWCO VALVES, LLC	d/b/a NEWMANS
RESOLUTE FP US INC.	individually and successor-in-interest to BOWATER, INC.
RILEY POWER, INC.	f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.
SEAL & DESIGN, INC., HIGBEE DIVISION	sued individually and as successor in-interest-to HIGBEE, INC., f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC.
SPX COOLING TECHNOLOGIES, INC.	individually and successor-in-interest to MARLEY COOLING TOWERS CO.
WEIR VALVES & CONTROLS USA, INC.	individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.
ZURN INDUSTRIES, LLC	individually and as successor-in-interest to ZURN INDUSTRIES, INC.

10. Plaintiff has been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their "alternate entities" were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in

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the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

11. Plaintiff has been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

12. As a direct and proximate result of the conduct as alleged within, Plaintiff David D. Rollins has suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

13. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

14. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins has incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

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THE PARTIES

15. The Plaintiff David D. Rollins is currently a resident of the State of South Carolina. He was exposed to asbestos during the course of his career, including but not limited to, various job sites located in South Carolina.

16. The Defendants that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material. Defendants that owned and/or controlled the work sites where Plaintiff David D. Rollins experienced occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity are referred to herein as the "Premises Defendants."

17. Defendant, **AIR & LIQUID SYSTEMS CORPORATION** was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps. AIR & LIQUID SYSTEMS CORPORATION is sued as a Product Defendant. Plaintiff's claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

18. Defendant, **ARMSTRONG INTERNATIONAL, INC.** was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto,

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ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, and/or products, materials or equipment foreseeably intended for use with asbestos and/or asbestos-containing products, including, but not limited to, asbestos-containing Armstrong steam traps and strainers. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

19. Defendant, **ASTENJOHNSON, INC.,** individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO. was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, ASTENJOHNSON, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Asten felt. ASTENJOHNSON, INC. is sued as a Product Defendant. Plaintiff's claims against ASTENJOHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

20. Defendant, **AURORA PUMP COMPANY** was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, AURORA PUMP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Aurora pumps. AURORA PUMP COMPANY is sued as a Product Defendant. Plaintiff's claims

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against AURORA PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

21. Defendant, **CARAUSTAR INDUSTRIES, INC.** sued individually and as successor in-interest-to STAR PAPER TUBE, INC. was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CARAUSTAR INDUSTRIES, INC., owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Star Paper Tube facilities in Rock Hill, South Carolina. CARAUSTAR INDUSTRIES, INC. is sued as a Premise Defendant. Plaintiff's claims against CARAUSTAR INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **CELANESE CORPORATION** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CELANESE CORPORATION, owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Hoechst Celanese facilities in Rock Hill, South Carolina and Spartanburg, South Carolina. CELANESE CORPORATION is sued as a Premise Defendant. Plaintiff's claims against CELANESE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **CLEAVER-BROOKS, INC**., f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing

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products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers. CLEAVER-BROOKS, INC., is sued as a Product Defendant. Plaintiff's claims against CLEAVER-BROOKS, INC., arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **CNA HOLDINGS LLC** was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, CNA HOLDINGS LLC, owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Hoechst Celanese facilities in Rock Hill, South Carolina and Spartanburg, South Carolina. CNA HOLDINGS LLC is sued as a Premise Defendant. Plaintiff's claims against CNA HOLDINGS LLC arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **COVIL CORPORATION** was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. COVIL CORPORATION is sued as a Product Defendant. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **CRANE CO.** was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or

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retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves, as well as, Jenkins valves. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **DEZURIK, INC.** was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, DEZURIK, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Dezurik valves. DEZURIK, INC. is sued as a Product Defendant. Plaintiff's claims against DEZURIK, INC. arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **THE DOW CHEMICAL COMPANY** was and is a Delaware corporation with its principal place of business in Michigan. At all times material hereto, THE DOW CHEMICAL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. THE DOW CHEMICAL COMPANY, also owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, THE DOW CHEMICAL COMPANY facility in Charlotte, North Carolina. THE DOW CHEMICAL COMPANY is sued as a Premise Defendant. Plaintiff's claims against THE DOW CHEMICAL COMPANY, arise out of this Defendant's business activities in the State of South Carolina.

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29. Defendant, **DANIEL INTERNATIONAL CORPORATION** was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **E. I. DU PONT DE NEMOURS AND COMPANY** was and is a Delaware with its principal place of business in Delaware. At all times material hereto, E. I. DU PONT DE NEMOURS AND COMPANY owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Du Pont May Plant facility in Camden, South Carolina. E. I. DU PONT DE NEMOURS AND COMPANY is sued as a Premise Defendant. Plaintiff's claims against E. I. DU PONT DE NEMOURS AND COMPANY arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **FLOWSERVE CORPORATION** was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durco pumps and valves. FLOWSERVE CORPORATION is sued as a Product Defendant.

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Plaintiff's claims against FLOWSERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **FLOWSERVE US INC.** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE US INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves. FLOWSERVE US INC. is sued as a Product Defendant. Plaintiff's claims against FLOWSERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR CONSTRUCTORS INTERNATIONAL is sued as a Product Defendant. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed

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substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **FLUOR DANIEL SERVICES CORPORATION** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. Plaintiff's claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **FLUOR ENTERPRISES, INC.** was and is a California corporation with its principal place of business in California. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. Plaintiff's claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

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37. Defendant, **FMC CORPORATION** was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Chicago pumps and Peerless pumps. FMC CORPORATION is sued as a Product Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and steam air ejectors. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **GABRIEL PHENOXIES, INC.**, sued individually and as successor in-interest-to INCHEM CORPORATION was and is a North Carolina corporation with its principal place of business in Ohio. At all times material hereto, GABRIEL PHENOXIES, INC., owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, InChem facilities in Rock Hill, South Carolina. GABRIEL

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PHENOXIES, INC. is sued as a Premise Defendant. Plaintiff's claims against GABRIEL PHENOXIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **GARDNER DENVER, INC.** was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner Denver compressors. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **GENERAL ELECTRIC COMPANY** was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **THE GORMAN-RUPP COMPANY** was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GORMAN-RUPP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing

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Gorman-Rupp pumps, air ejectors, and distilling plants. THE GORMAN-RUPP COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GORMAN-RUPP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **GOULDS PUMPS, INCORPORATED** was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **GRINNELL, LLC** was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell valves. GRINNELL, LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL, LLC arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **INGERSOLL-RAND COMPANY** was and is an New Jersey corporation with its principal place of business in North Carolina. At all times material hereto, INGERSOLL-RAND COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited

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to, asbestos-containing Ingersoll-Rand compressors and pumps. INGERSOLL-RAND COMPANY is sued as a Product Defendant. Plaintiff's claims against INGERSOLL-RAND COMPANY arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **INTERNATIONAL PAPER COMPANY** was and is a New York corporation with its principal place of business in Tennessee. At all times material hereto, INTERNATIONAL PAPER COMPANY owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the International Paper Mill a/k/a Eastover in Columbia, South Carolina. INTERNATIONAL PAPER COMPANY is sued as a Premise Defendant. Plaintiff's claims against INTERNATIONAL PAPER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **ITT LLC** was and is an Indiana limited liability company with its principal place of business in New York. At all times material hereto, ITT LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing McDonnell and Miller valves. ITT LLC is sued as a Product Defendant. Plaintiff's claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **JOHN CRANE, INC.** was and is a Delaware company with its principal place of business in Illinois. At all times material hereto, JOHN CRANE, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing John Crane

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gaskets and packing. JOHN CRANE, INC. is sued as a Product Defendant. Plaintiff's claims against JOHN CRANE, INC. arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **MOR PPM, INC.**, f/k/a POWER & PLANT MAINTENANCE COMPANY, INC. was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, MOR PPM, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. MOR PPM, INC. is sued as a Product Defendant. Plaintiff's claims against MOR PPM, INC. arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **NEWCO VALVES, LLC** was and is a Texas limited liability company with its principal place of business in Texas. At all times material hereto, NEWCO VALVES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing O.I.C. valves. NEWCO VALVES, LLC is sued as a Product Defendant. Plaintiff's claims against NEWCO VALVES, LLC arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **PFIZER, INC.** was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-contaminated talc. PFIZER, INC. is sued as a

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Product Defendant. Plaintiff's claims against PFIZER, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **RESOLUTE FP US INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, RESOLUTE FP US INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Bowater Paper Mill in Catawba, South Carolina. RESOLUTE FP US INC. is sued as a Premise Defendant. Plaintiff's claims against RESOLUTE FP US INC. arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **RILEY POWER, INC.**, f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC**.** was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley boilers. RILEY POWER, INC. is sued as a Product Defendant. Plaintiff's claims against RILEY POWER, INC. arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **SCAPA WAYCROSS, INC.** was and is a Georgia corporation with its principal place of business in Pennsylvania. At all times material hereto, SCAPA WAYCROSS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Scapa dryer

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felt. SCAPA WAYCROSS, INC. is sued as a Product Defendant. Plaintiff's claims against SCAPA WAYCROSS, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **SEAL & DESIGN, INC.**, HIGBEE DIVISION, sued individually and as successor in-interest-to HIGBEE, INC., f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC. was and is a New York corporation with its principal place of business in New York. At all times material hereto, SEAL & DESIGN, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing gasket material. SEAL & DESIGN, INC. is sued as a Product Defendant. Plaintiff's claims against SEAL & DESIGN, INC. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **SPIRAX SARCO, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **SPRINGS GLOBAL US, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPRINGS GLOBAL US, INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various

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facilities, including but not limited to, Springs Mill facilities in Fort Mills South Carolina and Lancaster, South Carolina. SPRINGS GLOBAL US, INC. is sued as a Premise Defendant. Plaintiff's claims against SPRINGS GLOBAL US, INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **SPRING INDUSTRIES, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPRING INDUSTRIES, INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Springs Mill facilities in Fort Mills South Carolina and Lancaster, South Carolina. SPRING INDUSTRIES, INC. is sued as a Premise Defendant. Plaintiff's claims against SPRING INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **SPX COOLING TECHNOLOGIES, INC.**, was and is a Delaware corporation with its principal place of business in Kansas. At all times material hereto, SPX COOLING TECHNOLOGIES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers. SPX COOLING TECHNOLOGIES, INC. is sued as a Product Defendant. Plaintiff's claims against SPX COOLING TECHNOLOGIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **STARR DAVIS COMPANY, INC.** was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. mined, manufactured, processed, imported, converted,

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compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **STARR DAVIS COMPANY OF S.C., INC.** was and is a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **SOS INTERNATIONAL, LLC** was and is a Delaware Limited Liability Company with its principal place of business in Virginia. At all times material hereto, SOS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. SOS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against SOS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

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63. Defendant, **SOUTHERN INSULATION COMPANY** was and is a South Carolina Company with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. SOUTHERN INSULATION COMPANY is sued as a Product Defendant. Plaintiff's claims against SOUTHERN INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **SULZER PUMPS (US), INC.** was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, SULZER PUMPS (US), INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sulzer/Bingham pumps. SULZER PUMPS (US), INC. is sued as a Product Defendant. Plaintiff's claims against SULZER PUMPS (US), INC. arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **VELAN VALVE CORP.** was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves.

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VELAN VALVE CORP. is sued as a Product Defendant. Plaintiff's claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **VIKING PUMP, INC.** was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps. VIKING PUMP, INC. is sued as a Product Defendant. Plaintiff's claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **WARREN PUMPS, LLC** was and is a Delaware Limited Liability Company with its principal place of business in Massachusetts. At all times material hereto, WARREN PUMPS, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Warren pumps. WARREN PUMPS, LLC is sued as a Product Defendant. Plaintiff's claims against WARREN PUMPS, LLC. arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **WEIR VALVES & CONTROLS USA, INC.** was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, WEIR VALVES & CONTROLS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves. WEIR VALVES &

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CONTROLS USA, INC. is sued as a Product Defendant. Plaintiff's claims against WEIR VALVES & CONTROLS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **ZURN INDUSTRIES, LLC** was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers. ZURN INDUSTRIES LLC is sued as a Product Defendant. Plaintiff's claims against ZURN INDUSTRIES LLC arise out of this Defendant's business activities in the State of South Carolina.

70. Plaintiff David D. Rollins experienced further occupational exposure as a result of employees working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants CARAUSTAR INDUSTRIES, INC.; CELANESE CORPORATION; CNA HOLDINGS LLC; THE DOW CHEMICAL COMPANY; E. I. DU PONT DE NEMOURS AND COMPANY; GABRIEL PHENOXIES, INC.; INTERNATIONAL PAPER COMPANY; RESOLUTE FP US INC.; SPRINGS GLOBAL US, INC.; and SPRING INDUSTRIES, INC. (collectively, hereinafter the "Premises Defendants"). All other Defendants, manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material.

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BACKGROUND FACTS

71. Plaintiff David D. Rollins brings this action for monetary damages as a result of contracting an asbestos-related disease.

72. Plaintiff was diagnosed with malignant Mesothelioma on or about January 17, 2019.

73. Plaintiff's mesothelioma was caused by his exposure to asbestos during the course of his employment. Additionally, Plaintiff's mesothelioma was caused by his exposure to asbestos brought home on the person and clothes of his father, Earnest Rollins; his mother, Nell Ashworth; his step-father, Robert Ashworth; and other persons.

74. During his work history, Plaintiff was exposed to Defendants' asbestos-containing products through his work as a laborer, pipe fitter, welder, and carpenter from approximately 1988 to 2001 at various industrial jobsites primarily in South Carolina. Plaintiff assisted with maintenance repairs throughout the facilities where he worked on various equipment, including pumps, valves, steam traps, boilers, turbines, cooling towers, and digesters. He replaced valves, valve stem packing, valve flange gaskets, pumps, pump stem packing, pump flange gaskets, bearings and gaskets throughout the facilities where he worked, including the cooling tower pumps. All of these activities exposed Plaintiff to asbestos.

75. During his work history, Plaintiff worked on new construction, renovations, and additions. Plaintiff was further exposed through his work around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked closely to a variety of trades that were working on turbine generators, boilers, and often worked near tradesmen working on valves, steam traps, pumps and other equipment. All of these activities exposed Plaintiff to asbestos.

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76. Plaintiff's father, Earnest Rollins, worked in maintenance in industrial facilities in South Carolina from approximately 1973 to 1978. Earnest Rollins was exposed to asbestos through his own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Earnest Rollins conducted his work duties, dust was created by his working with and around asbestos and asbestos-containing products that would permeate his person and clothing. This dust contained asbestos fiber. Earnest Rollins would carry this asbestos dust on his person and clothing home with him where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his father's person and clothing.

Commented [NC1]: David – Not sure who else we need these paragraphs for. Do we have more info about the father? Name and actual job occupation? Do you have a complete list of job sites for father?

77. Plaintiff's step-father, Robert Ashworth, worked in maintenance in industrial facilities in South Carolina from approximately 1980 to 1991. Robert Ashworth was exposed to asbestos through his own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Robert Ashworth conducted his work duties, dust was created by his working with and around asbestos and asbestos-containing products that would permeate his person and clothing. This dust contained asbestos fiber. Robert Ashworth would carry this asbestos dust on his person and clothing home with him where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his step-father's person and clothing.

78. Plaintiff's mother, Nell Ashworth, worked in maintenance in industrial facilities in South Carolina from approximately 1973 to the early 1980s. Nell Ashworth was exposed to asbestos through her own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Nell Ashworth conducted her work duties, dust was created by her working with and around asbestos and asbestos-containing

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products that would permeate her person and clothing. This dust contained asbestos fiber. Nell Ashworth would carry this asbestos dust on her person and clothing home with her where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his mother's person and clothing.

79. Plaintiff David D. Rollins' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

80. Plaintiff David D. Rollins was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

81. Plaintiff is informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

82. As a direct and proximate result of the conduct as alleged within, Plaintiff David D. Rollins suffers permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

83. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court

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and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

84. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff has incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff's Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

85. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

86. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

87. At all times herein mentioned, Defendants and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed,

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modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff and others similarly situated, (hereinafter collectively called "exposed persons"), while being used for their intended purpose and in a manner that was reasonably foreseeable.

88. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos and asbestos-containing products from causing Plaintiff David D. Rollins' mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by

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Plaintiff. Defendants and/or their "alternate entities" had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

89. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

90. At all times relevant, Defendants and/or their "alternate entities" were aware of their asbestos and asbestos-containing products' defect but failed to adequately warn Plaintiff David D. Rollins, Plaintiff's family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants' products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

91. Plaintiff David D. Rollins, Plaintiff's family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

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92. Plaintiff David D. Rollins suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

93. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff's injuries, and all damages thereby sustained by Plaintiff David D. Rollins. Plaintiff therefore seeks all compensatory damages in order to make them whole, according to proof.

94. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff David D. Rollins and others similarly situated.

95. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung

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damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

96. Defendants and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants and their "alternate entities," each of them, knew that members of the general public and other "exposed persons," who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

97. The above-referenced conduct of Defendants and their "alternate entities," was motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their "alternate entities," and each of them consciously disregarded the safety of "exposed persons" in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to "exposed persons" without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff.

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98. Plaintiff David D. Rollins and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

99. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set forth herein.

100. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

FOR A SECOND CAUSE OF ACTION
(Product Liability: Strict Liability - S.C. Code Ann. sec. 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Allege as Follows:

101. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

102. Plaintiff David D. Rollins suffers from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with

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asbestos products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

103. Defendants' conduct and defective products as described above were a direct cause of Plaintiff's injuries, and the injuries and damages thereby sustained by Plaintiff.

104. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

105. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

106. Plaintiff David D. Rollins, Plaintiff's family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

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107. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

108. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

109. The defect existed in the said products at the time they left the possession of defendants, their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed

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persons," including Plaintiff herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

110. Plaintiff David D. Rollins and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

111. Defendants' defective products as described above were a direct cause of Plaintiff David D. Rollins' injuries, and the damages thereby sustained.

112. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff David D. Rollins and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers.

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This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

113. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

114. The above-referenced conduct of Defendants and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff David D. Rollins and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

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115. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

116. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

117. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

118. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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119. Prior to and during all relevant times Defendants employed workers (hereinafter "employees") in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff David D. Rollins, Plaintiff's family members, and others worked and/or spent time as alleged above.

120. At all times herein mentioned, Defendants' employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff David D. Rollins was exposed.

121. Employees handling and disturbing asbestos-containing products in Plaintiff David D. Rollins, Plaintiff's family members and others' vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

122. Employees handling and disturbing asbestos-containing products in Plaintiff David D. Rollins', Plaintiff's family members and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

123. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

124. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff David D. Rollins, who also inhaled those fibers,

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and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff David D. Rollins.

125. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

126. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Plaintiff David D. Rollins.

127. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff David D. Rollins that he was being exposed to asbestos, failed to adequately warn Plaintiff David D. Rollins of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

128. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff David D. Rollins.

129. Defendants' employees owed Plaintiff David D. Rollins a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause him harm.

130. Defendants' employees breached this duty of care as described above.

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131. At all times mentioned, Plaintiff David D. Rollins was unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

132. As a direct result of the Defendants' employees conduct, Plaintiff David D. Rollins' exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff and the damages and injuries as complained of herein by Plaintiff David D. Rollins.

133. The risks herein alleged and the resultant damages suffered by the Plaintiff David D. Rollins were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

134. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Plaintiff David D. Rollins.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premise Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Defendants, and Allege as Follows:

135. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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136. Prior to and during all relevant times, Defendants employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff David D. Rollins, Plaintiff's family members, and others worked and/or spent time.

137. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

138. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff David D. Rollins and settled onto Plaintiff David D. Rollins, Plaintiff's family members, and others' clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff David D. Rollins would be exposed to dangerous asbestos dust beyond the present.

139. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons, including Plaintiff David D. Rollins.

140. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff David D. Rollins, Plaintiff's family

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members, and others frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

141. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

142. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto including Plaintiff David D. Rollins were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

143. At all times herein mentioned, Plaintiff David D. Rollins was unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

144. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

145. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its

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employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff David D. Rollins, Plaintiff's family members, and others, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

146. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

147. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by defendants.

148. Defendants failed to warn its employees and bystanders thereto, including Plaintiff David D. Rollins, Plaintiff's family members, and others, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

149. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff David D. Rollins became exposed to and inhaled asbestos fibers, which was a

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substantial factor in causing Plaintiff to develop asbestos-related mesothelioma, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. 36-2-314)

As a Fifth Distinct Cause of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:

150. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

151. Each of the Defendants impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

152. The implied warranty made by the Defendants that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff David D. Rollins, Plaintiff's family members, and others carried out their duties and was inhaled by Plaintiff David D. Rollins.

153. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff David D. Rollins was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently developed mesothelioma, causing Plaintiff David D. Rollins to suffer all damages attendant thereto.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Allege as Follows:

154. Plaintiff repeats and re-allege the portions of the above paragraphs where relevant.

ELECTRONICALLY FILED - 2019 Apr 05 4:30 PM - HAMPTON - COMMON PLEAS - CASE#2019CP250118
ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

155. That during, before and after Plaintiff David D. Rollins' exposure to asbestos products manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Plaintiff in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff David D. Rollins. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

156. The foregoing representations were material conditions precedent to Plaintiff David D. Rollins' continued exposure to asbestos-containing products. Defendants each intended that Plaintiff act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

157. As a direct and proximate result of Plaintiff David D. Rollins' reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiff's actual damages according to proof, including Plaintiff's pain & suffering, as well as medical bills;
2. For loss of earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For plaintiff's cost of suit herein;
6. For damages for fraudulent misrepresentation according to proof; and

ELECTRONICALLY FILED - 2019 Apr 05 4:30 PM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118
ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

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

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

s/Theile B. McVey
Theile B. McVey (SC Bar 16682)
KASSEL MCVEY, ATTORNEYS AT LAW
1330 Laurel Street
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 77935)
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
jholder@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFF

April 5, 2019

Columbia, South Carolina

EXHIBIT 5

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

From: Lindsay Valek <Lindsay@rplegalgroup.com>
Sent: Monday, January 27, 2020 12:54 PM
To: WBulfer@teaguecampbell.com; amanu.nwaomah@zurichna.com; TStanley@turnerpadget.com; JWilkerson@turnerpadget.com; rkneece@turnerpadget.com; agjones@turnerpadget.com; egollogly@kg-law.com; logburn@kg-law.com; wdavis@brblegal.com; mnorton@brblegal.com; GBEGLEY@travelers.com; afrankel@stblaw.com; mforshaw@stblaw.com; fbenedek@pnat.com; Yntema, Brady A.; Harris, David G.
Cc: Ashley Brathwaite; Curtis Shipley; Leslie Packer; Peter Protopapas; Jescelyn Spitz; Zoe Anderson
Subject: ROLLINS vs. Air & Liquid, et al - Sent on behalf of Peter D. Protopapas
Attachments: 11.18.2019 Docketing Order setting Rollins for Trial.pdf; 4.10.2019 Amended Summons and Complaint.pdf

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

SENT ON BEHALF OF PETER D. PROTOPAPAS

As you know, Peter D. Protopapas, as Receiver for Covil Corporation, was served via process server on **April 25, 2019** with the attached lawsuit captioned **ROLLINS vs. Air & Liquid, et al (Case Number 2019-CP-25-00118).**

This matter is pending in **HAMPTON** County, South Carolina **AND IS SET FOR TRIAL** on **March 23, 2020** (please see attached order for date certain).

Again, the Receiver respectfully requests that the insurers provide and/or continue to provide a defense to Covil Corporation in these asbestos lawsuits. To the extent that a defense will not be provided, please advise so that I can take the actions necessary to protect Covil Corporation.

Best regards,

Peter D. Protopapas

Lindsay H. Valek
Paralegal
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, SC 29201
803-978-6111

ELECTRONICALLY FILED - 2019 May 10 12:27 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4300118

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HAMPTON	)	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**
David D. Rollins,	)	**Civil Action No.: 2019-CP-25-00118**
	)	
Plaintiff,	)	
	)	
v.	)	**DOCKETING ORDER**
	)	
AIR & LIQUID SYSTEMS CORPORATION, *etc., et al.*	)	
	)	
Defendants.	)	

By Order of the South Carolina Supreme Court dated May 28, 2019, the undersigned was appointed to serve as the Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation filed within the South Carolina state court system, which includes the issuance of scheduling orders and scheduling cases for trial. The instant matter is an asbestos litigation case pending in Hampton County, South Carolina.

IT IS HEREBY ORDERED that this case shall begin trial in the Court of Common Pleas, Richland County, South Carolina on March 23, 2020.

IT IS SO ORDERED.

_____

The Honorable Jean H. Toal, Acting Circuit Court Judge,
Retired Chief Justice of the S.C. Supreme Court

November 15, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2020 May 08 12:27 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4301218

ELECTRONICALLY FILED - 2019 Nov 13 12:27 PM - RICHLAND - COMMON PLEAS - CASE#2019CP2500118

Hampton Common Pleas

Case Caption: David D Rollins VS Air & Liquid Systems Corporation , defendant, et al

Case Number: 2019CP2500118

Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

ELECTRONICALLY FILED – 2019-05-08 8:29 AM - HAMPTON - COMMON PLEAS - CASE#2019CP2500118

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

DAVID D. ROLLINS

Plaintiff

v.

AIR & LIQUID SYSTEMS CORPORATION;
ARMSTRONG INTERNATIONAL, INC.;
ASTENJOHNSON, INC.;
AURORA PUMP COMPANY;
CARAUSTAR INDUSTRIES, INC.;
CELANESE CORPORATION;
CLEAVER-BROOKS, INC.;
CNA HOLDINGS LLC;
COVIL CORPORATION;
CRANE CO.;
DEZURIK, INC.;
THE DOW CHEMICAL COMPANY
DANIEL INTERNATIONAL CORPORATION;
E. I. DU PONT DE NEMOURS AND COMPANY;
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;
GABRIEL PHENOXIES, INC.;
GARDNER DENVER, INC.;
GENERAL ELECTRIC COMPANY;
GORMAN-RUPP COMPANY;
GOULDS PUMPS, INCORPORATED;
GRINNELL, LLC;
INGERSOLL-RAND COMPANY;
INTERNATIONAL PAPER COMPANY;
ITT LLC;

C/A NO. 2019-CP-25-00118

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

Jury Trial Demanded

AMENDED SUMMONS

ELECTRONICALLY FILED – 2021-09-May-08 8:24 AM - FAIR LAWN – COMMON PLEAS – CASE #2021-CP-25-01226

JOHN CRANE, INC.;)
MOR PPM, INC.;)
NEWCO VALVES, LLC;)
PFIZER, INC.;)
RESOLUTE FP US INC.;)
RILEY POWER, INC.;)
SCAPA WAYCROSS, INC.;)
SEAL & DESIGN, INC.;)
SPIRAX SARCO, INC.;)
SPRINGS GLOBAL US, INC.;)
SPRING INDUSTRIES, INC.;)
SPX COOLING TECHNOLOGIES, INC.;)
STARR DAVIS COMPANY, INC.;)
STARR DAVIS COMPANY OF S.C., INC.;)
SOS INTERNATIONAL, LLC;)
SOUTHERN INSULATION COMPANY;)
SULZER PUMPS (US), INC.;)
VELAN VALVE CORP.;)
VIKING PUMP, INC.;)
WARREN PUMPS, LLC;)
WEIR VALVES & CONTROLS USA, INC.;)
ZURN INDUSTRIES, LLC;)
)
Defendants.)

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the 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, judgment by default will be rendered against you for the relief demanded in the complaint.

ELECTRONICALLY FILED – 2019-04-10 8:24 AM - RICHLAND – COMMON PLEAS – CASE#2019CP4001226

Respectfully submitted,

s/Theile B. McVey

Theile B. McVey (SC Bar 16682)
tmcvey@kassellaw.com
Jamie R. Rutkoski
jrutkoski@kassellaw.com
John D. Kassel
jkassel@kassellaw.com
KASSEL MCVEY, ATTORNEYS AT LAW
1330 Laurel Street
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar 77935)
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
jholder@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 10, 2019

Columbia, South Carolina.

ELECTRONICALLY FILED – 2020-09-14 08:24 AM - HAMPTON – COMMON PLEAS – CASE#2019CP2500118

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HAMPTON	)	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**

DAVID D. ROLLINS Plaintiff, v. **AIR & LIQUID SYSTEMS CORPORATION,** individually and as successor-in-interest to BUFFALO PUMPS **ARMSTRONG INTERNATIONAL, INC.** **ASTENJOHNSON, INC.,** individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO. **AURORA PUMP COMPANY** **CARAUSTAR INDUSTRIES, INC.,** sued individually and as successor in-interest-to STAR PAPER TUBE, INC. **CELANESE CORPORATION** **CLEAVER-BROOKS, INC.,** f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION **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. **COVIL CORPORATION** **CRANE CO.** **DEZURIK, INC.**	)	**C/A NO.** 2019-CP-25-00118 In Re: Asbestos Personal Injury Litigation Coordinated Docket Living Mesothelioma **AMENDED COMPLAINT** (Jury Trial Demanded)

ELECTRONICALLY FILED – 2021-09-May 08 8:29 AM - RAGMR POND – COMMON PLEAS – CASE#2019CP2500122

THE DOW CHEMICAL COMPANY

DANIEL INTERNATIONAL CORPORATION

E. I. DU PONT DE NEMOURS AND COMPANY

FLOWSERVE CORPORATION

FLOWSERVE US INC.

FLUOR CONSTRUCTORS INTERNATIONAL,
f/k/a/ FLUOR CORPORATION

FLUOR CONSTRUCTORS INTERNATIONAL, INC.

FLUOR DANIEL SERVICES CORPORATION

FLUOR ENTERPRISES, INC.

FMC CORPORATION

FOSTER WHEELER ENERGY CORPORATION

GABRIEL PHENOXIES, INC., sued individually and as successor in-interest-to INCHEM CORPORATION

GARDNER DENVER, INC.

GENERAL ELECTRIC COMPANY

THE GORMAN-RUPP COMPANY

GOULDS PUMPS, INCORPORATED

GRINNELL, LLC,
d/b/a GRINNELL CORPORATION

INGERSOLL-RAND COMPANY

ELECTRONICALLY FILED – 2021-09-May-08 8:29 AM - RAOMR POND – COMMON PLEAS – CASE#2019CP2501226

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

JOHN CRANE, INC.

MOR PPM, INC., f/k/a POWER & PLANT MAINTENANCE COMPANY, INC.

NEWCO VALVES, LLC, d/b/a NEWMANS

PFIZER, INC.

RESOLUTE FP US INC., individually and successor-in-interest to BOWATER, INC.

RILEY POWER, INC., f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.

SCAPA WAYCROSS, INC.

SEAL & DESIGN, INC., HIGBEE DIVISION, sued individually and as successor in-interest-to HIGBEE, INC.

SPIRAX SARCO, INC.

SPRINGS GLOBAL US, INC.

SPRING INDUSTRIES, INC.

SPX COOLING TECHNOLOGIES, INC., individually and successor-in-interest to MARLEY COOLING TOWERS CO.

STARR DAVIS COMPANY, INC.

STARR DAVIS COMPANY OF S.C., INC.

ELECTRONICALLY FILED – 2021-09-May-08 8:24 AM - RAOMR - 02 - COMMON PLEAS – CASE#2021CP2500122

SOS INTERNATIONAL, LLC

SOUTHERN INSULATION COMPANY

SULZER PUMPS (US), INC.

VELAN VALVE CORP.

VIKING PUMP, INC.

WARREN PUMPS, LLC

WEIR VALVES & CONTROLS USA, INC., individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.

ZURN INDUSTRIES, LLC, individually and as successor-in-interest to ZURN INDUSTRIES, INC.

Defendants.

GENERAL ALLEGATIONS

Plaintiff DAVID D. ROLLINS, (hereinafter "Plaintiff"), sues the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

1. Plaintiff David D. Rollins has been diagnosed with mesothelioma.

2. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants' conduct in:

(a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;

(b) Contracting to supply services or things in the State;

(c) Commission of a tortious act in whole or in part in this State;

ELECTRONICALLY FILED – 2021-09-May 08 8:29 AM - RICHLAND – COMMON PLEAS – CASE#2021CP4001226

(d) Having an interest in, using, or possessing real property in this State; and/or

(e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Plaintiff's claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

4. Plaintiff's claims against the Premises Defendants, as defined herein, arise out of Defendants' ownership and/or control of real property located in South Carolina and the purchase and use of asbestos-containing products on their premises located in South Carolina.

5. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff David D. Rollins to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

6. Plaintiff David D. Rollins' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

7. Plaintiff David D. Rollins was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

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8. Plaintiff David D. Rollins worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

9. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiff's remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
AIR & LIQUID SYSTEMS CORPORATION	individually and as successor-in-interest to BUFFALO PUMPS
ASTENJOHNSON, INC.	individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO.
CARAUSTAR INDUSTRIES, INC.	sued individually and as successor in-interest-to STAR PAPER TUBE, INC.
CLEAVER-BROOKS, INC.	f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION
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.

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DEFENDANT	ALTERNATE ENTITY
FLUOR CONSTRUCTORS INTERNATIONAL	f/k/a FLUOR CORPORATION
GABRIEL PHENOXIES, INC.	sued individually and as successor in-interest-to INCHEM CORPORATION
GRINNELL, LLC	d/b/a GRINNELL CORPORATION
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
MOR PPM, INC.	f/k/a POWER & PLANT MAINTENANCE COMPANY, INC.
NEWCO VALVES, LLC	d/b/a NEWMANS
RESOLUTE FP US INC.	individually and successor-in-interest to BOWATER, INC.
RILEY POWER, INC.	f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC.
SEAL & DESIGN, INC., HIGBEE DIVISION	sued individually and as successor in-interest-to HIGBEE, INC., f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC.
SPX COOLING TECHNOLOGIES, INC.	individually and successor-in-interest to MARLEY COOLING TOWERS CO.
WEIR VALVES & CONTROLS USA, INC.	individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.
ZURN INDUSTRIES, LLC	individually and as successor-in-interest to ZURN INDUSTRIES, INC.

10. Plaintiff has been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their "alternate entities" were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in

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the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

11. Plaintiff has been informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

12. As a direct and proximate result of the conduct as alleged within, Plaintiff David D. Rollins has suffered permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

13. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

14. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins has incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

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THE PARTIES

15. The Plaintiff David D. Rollins is currently a resident of the State of South Carolina. He was exposed to asbestos during the course of his career, including but not limited to, various job sites located in South Carolina.

16. The Defendants that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material. Defendants that owned and/or controlled the work sites where Plaintiff David D. Rollins experienced occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity are referred to herein as the "Premises Defendants."

17. Defendant, **AIR & LIQUID SYSTEMS CORPORATION** was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps. AIR & LIQUID SYSTEMS CORPORATION is sued as a Product Defendant. Plaintiff's claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

18. Defendant, **ARMSTRONG INTERNATIONAL, INC.** was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto,

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ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, and/or products, materials or equipment foreseeably intended for use with asbestos and/or asbestos-containing products, including, but not limited to, asbestos-containing Armstrong steam traps and strainers. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

19. Defendant, **ASTENJOHNSON, INC.,** individually and as successor-in-interest to ASTEN GROUP, INC. and ASTEN-HILL MANUFACTORING CO. was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, ASTENJOHNSON, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Asten felt. ASTENJOHNSON, INC. is sued as a Product Defendant. Plaintiff's claims against ASTENJOHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

20. Defendant, **AURORA PUMP COMPANY** was and is a Delaware corporation with its principal place of business in Illinois. At all times material hereto, AURORA PUMP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Aurora pumps. AURORA PUMP COMPANY is sued as a Product Defendant. Plaintiff's claims

ELECTRONICALLY FILED – 2021-09-May-08 8:29 AM - RAOUL POND – COMMON PLEAS – CASE#2021CP2601226

against AURORA PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

21. Defendant, **CARAUSTAR INDUSTRIES, INC.** sued individually and as successor in-interest-to STAR PAPER TUBE, INC. was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CARAUSTAR INDUSTRIES, INC., owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Star Paper Tube facilities in Rock Hill, South Carolina. CARAUSTAR INDUSTRIES, INC. is sued as a Premise Defendant. Plaintiff's claims against CARAUSTAR INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **CELANESE CORPORATION** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CELANESE CORPORATION, owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Hoechst Celanese facilities in Rock Hill, South Carolina and Spartanburg, South Carolina. CELANESE CORPORATION is sued as a Premise Defendant. Plaintiff's claims against CELANESE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **CLEAVER-BROOKS, INC**., f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing

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products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers. CLEAVER-BROOKS, INC., is sued as a Product Defendant. Plaintiff's claims against CLEAVER-BROOKS, INC., arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **CNA HOLDINGS LLC** was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, CNA HOLDINGS LLC, owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Hoechst Celanese facilities in Rock Hill, South Carolina and Spartanburg, South Carolina. CNA HOLDINGS LLC is sued as a Premise Defendant. Plaintiff's claims against CNA HOLDINGS LLC arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **COVIL CORPORATION** was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. COVIL CORPORATION is sued as a Product Defendant. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **CRANE CO.** was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or

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retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves, as well as, Jenkins valves. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **DEZURIK, INC.** was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, DEZURIK, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Dezurik valves. DEZURIK, INC. is sued as a Product Defendant. Plaintiff's claims against DEZURIK, INC. arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **THE DOW CHEMICAL COMPANY** was and is a Delaware corporation with its principal place of business in Michigan. At all times material hereto, THE DOW CHEMICAL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. THE DOW CHEMICAL COMPANY, also owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, THE DOW CHEMICAL COMPANY facility in Charlotte, North Carolina. THE DOW CHEMICAL COMPANY is sued as a Premise Defendant. Plaintiff's claims against THE DOW CHEMICAL COMPANY, arise out of this Defendant's business activities in the State of South Carolina.

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29. Defendant, **DANIEL INTERNATIONAL CORPORATION** was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **E. I. DU PONT DE NEMOURS AND COMPANY** was and is a Delaware with its principal place of business in Delaware. At all times material hereto, E. I. DU PONT DE NEMOURS AND COMPANY owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Du Pont May Plant facility in Camden, South Carolina. E. I. DU PONT DE NEMOURS AND COMPANY is sued as a Premise Defendant. Plaintiff's claims against E. I. DU PONT DE NEMOURS AND COMPANY arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **FLOWSERVE CORPORATION** was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durco pumps and valves. FLOWSERVE CORPORATION is sued as a Product Defendant.

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Plaintiff's claims against FLOWSERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **FLOWSERVE US INC.** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWSERVE US INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves. FLOWSERVE US INC. is sued as a Product Defendant. Plaintiff's claims against FLOWSERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR CONSTRUCTORS INTERNATIONAL is sued as a Product Defendant. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed

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substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR CONSTRUCTORS INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **FLUOR DANIEL SERVICES CORPORATION** was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. Plaintiff's claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **FLUOR ENTERPRISES, INC.** was and is a California corporation with its principal place of business in California. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. Plaintiff's claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

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37. Defendant, **FMC CORPORATION** was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Chicago pumps and Peerless pumps. FMC CORPORATION is sued as a Product Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and steam air ejectors. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **GABRIEL PHENOXIES, INC.**, sued individually and as successor in-interest-to INCHEM CORPORATION was and is a North Carolina corporation with its principal place of business in Ohio. At all times material hereto, GABRIEL PHENOXIES, INC., owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, InChem facilities in Rock Hill, South Carolina. GABRIEL

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PHENOXIES, INC. is sued as a Premise Defendant. Plaintiff's claims against GABRIEL PHENOXIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **GARDNER DENVER, INC.** was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner Denver compressors. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **GENERAL ELECTRIC COMPANY** was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **THE GORMAN-RUPP COMPANY** was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GORMAN-RUPP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing

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Gorman-Rupp pumps, air ejectors, and distilling plants. THE GORMAN-RUPP COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GORMAN-RUPP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **GOULDS PUMPS, INCORPORATED** was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **GRINNELL, LLC** was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell valves. GRINNELL, LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL, LLC arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **INGERSOLL-RAND COMPANY** was and is an New Jersey corporation with its principal place of business in North Carolina. At all times material hereto, INGERSOLL-RAND COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited

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to, asbestos-containing Ingersoll-Rand compressors and pumps. INGERSOLL-RAND COMPANY is sued as a Product Defendant. Plaintiff's claims against INGERSOLL-RAND COMPANY arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **INTERNATIONAL PAPER COMPANY** was and is a New York corporation with its principal place of business in Tennessee. At all times material hereto, INTERNATIONAL PAPER COMPANY owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the International Paper Mill a/k/a Eastover in Columbia, South Carolina. INTERNATIONAL PAPER COMPANY is sued as a Premise Defendant. Plaintiff's claims against INTERNATIONAL PAPER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **ITT LLC** was and is an Indiana limited liability company with its principal place of business in New York. At all times material hereto, ITT LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing McDonnell and Miller valves. ITT LLC is sued as a Product Defendant. Plaintiff's claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **JOHN CRANE, INC.** was and is a Delaware company with its principal place of business in Illinois. At all times material hereto, JOHN CRANE, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing John Crane

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gaskets and packing. JOHN CRANE, INC. is sued as a Product Defendant. Plaintiff's claims against JOHN CRANE, INC. arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **MOR PPM, INC.**, f/k/a POWER & PLANT MAINTENANCE COMPANY, INC. was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, MOR PPM, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. MOR PPM, INC. is sued as a Product Defendant. Plaintiff's claims against MOR PPM, INC. arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **NEWCO VALVES, LLC** was and is a Texas limited liability company with its principal place of business in Texas. At all times material hereto, NEWCO VALVES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing O.I.C. valves. NEWCO VALVES, LLC is sued as a Product Defendant. Plaintiff's claims against NEWCO VALVES, LLC arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **PFIZER, INC.** was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-contaminated talc. PFIZER, INC. is sued as a

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Product Defendant. Plaintiff's claims against PFIZER, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **RESOLUTE FP US INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, RESOLUTE FP US INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Bowater Paper Mill in Catawba, South Carolina. RESOLUTE FP US INC. is sued as a Premise Defendant. Plaintiff's claims against RESOLUTE FP US INC. arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **RILEY POWER, INC.**, f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC**.** was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley boilers. RILEY POWER, INC. is sued as a Product Defendant. Plaintiff's claims against RILEY POWER, INC. arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **SCAPA WAYCROSS, INC.** was and is a Georgia corporation with its principal place of business in Pennsylvania. At all times material hereto, SCAPA WAYCROSS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Scapa dryer

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felt. SCAPA WAYCROSS, INC. is sued as a Product Defendant. Plaintiff's claims against SCAPA WAYCROSS, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **SEAL & DESIGN, INC.**, HIGBEE DIVISION, sued individually and as successor in-interest-to HIGBEE, INC., f/k/a HIGBEE GASKETS AND SEALING PRODUCTS, INC. was and is a New York corporation with its principal place of business in New York. At all times material hereto, SEAL & DESIGN, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing gasket material. SEAL & DESIGN, INC. is sued as a Product Defendant. Plaintiff's claims against SEAL & DESIGN, INC. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **SPIRAX SARCO, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **SPRINGS GLOBAL US, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPRINGS GLOBAL US, INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various

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facilities, including but not limited to, Springs Mill facilities in Fort Mills South Carolina and Lancaster, South Carolina. SPRINGS GLOBAL US, INC. is sued as a Premise Defendant. Plaintiff's claims against SPRINGS GLOBAL US, INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **SPRING INDUSTRIES, INC.** was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPRING INDUSTRIES, INC. owned and/or controlled premises at/from which Plaintiff David D. Rollins was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, Springs Mill facilities in Fort Mills South Carolina and Lancaster, South Carolina. SPRING INDUSTRIES, INC. is sued as a Premise Defendant. Plaintiff's claims against SPRING INDUSTRIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **SPX COOLING TECHNOLOGIES, INC.**, was and is a Delaware corporation with its principal place of business in Kansas. At all times material hereto, SPX COOLING TECHNOLOGIES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers. SPX COOLING TECHNOLOGIES, INC. is sued as a Product Defendant. Plaintiff's claims against SPX COOLING TECHNOLOGIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **STARR DAVIS COMPANY, INC.** was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. mined, manufactured, processed, imported, converted,

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compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **STARR DAVIS COMPANY OF S.C., INC.** was and is a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **SOS INTERNATIONAL, LLC** was and is a Delaware Limited Liability Company with its principal place of business in Virginia. At all times material hereto, SOS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. SOS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against SOS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

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63. Defendant, **SOUTHERN INSULATION COMPANY** was and is a South Carolina Company with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation. SOUTHERN INSULATION COMPANY is sued as a Product Defendant. Plaintiff's claims against SOUTHERN INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **SULZER PUMPS (US), INC.** was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, SULZER PUMPS (US), INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sulzer/Bingham pumps. SULZER PUMPS (US), INC. is sued as a Product Defendant. Plaintiff's claims against SULZER PUMPS (US), INC. arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **VELAN VALVE CORP.** was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves.

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VELAN VALVE CORP. is sued as a Product Defendant. Plaintiff's claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **VIKING PUMP, INC.** was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps. VIKING PUMP, INC. is sued as a Product Defendant. Plaintiff's claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **WARREN PUMPS, LLC** was and is a Delaware Limited Liability Company with its principal place of business in Massachusetts. At all times material hereto, WARREN PUMPS, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Warren pumps. WARREN PUMPS, LLC is sued as a Product Defendant. Plaintiff's claims against WARREN PUMPS, LLC. arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **WEIR VALVES & CONTROLS USA, INC.** was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, WEIR VALVES & CONTROLS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves. WEIR VALVES &

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CONTROLS USA, INC. is sued as a Product Defendant. Plaintiff's claims against WEIR VALVES & CONTROLS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **ZURN INDUSTRIES, LLC** was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers. ZURN INDUSTRIES LLC is sued as a Product Defendant. Plaintiff's claims against ZURN INDUSTRIES LLC arise out of this Defendant's business activities in the State of South Carolina.

70. Plaintiff David D. Rollins experienced further occupational exposure as a result of employees working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants CARAUSTAR INDUSTRIES, INC.; CELANESE CORPORATION; CNA HOLDINGS LLC; THE DOW CHEMICAL COMPANY; E. I. DU PONT DE NEMOURS AND COMPANY; GABRIEL PHENOXIES, INC.; INTERNATIONAL PAPER COMPANY; RESOLUTE FP US INC.; SPRINGS GLOBAL US, INC.; and SPRING INDUSTRIES, INC. (collectively, hereinafter the "Premises Defendants"). All other Defendants, manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material.

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BACKGROUND FACTS

71. Plaintiff David D. Rollins brings this action for monetary damages as a result of contracting an asbestos-related disease.

72. Plaintiff was diagnosed with malignant Mesothelioma on or about January 17, 2019.

73. Plaintiff's mesothelioma was caused by his exposure to asbestos during the course of his employment. Additionally, Plaintiff's mesothelioma was caused by his exposure to asbestos brought home on the person and clothes of his father, Earnest Rollins; his mother, Nell Ashworth; his step-father, Robert Ashworth; and other persons.

74. During his work history, Plaintiff was exposed to Defendants' asbestos-containing products through his work as a laborer, pipe fitter, welder, and carpenter from approximately 1988 to 2001 at various industrial jobsites primarily in South Carolina. Plaintiff assisted with maintenance repairs throughout the facilities where he worked on various equipment, including pumps, valves, steam traps, boilers, turbines, cooling towers, and digesters. He replaced valves, valve stem packing, valve flange gaskets, pumps, pump stem packing, pump flange gaskets, bearings and gaskets throughout the facilities where he worked, including the cooling tower pumps. All of these activities exposed Plaintiff to asbestos.

75. During his work history, Plaintiff worked on new construction, renovations, and additions. Plaintiff was further exposed through his work around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked closely to a variety of trades that were working on turbine generators, boilers, and often worked near tradesmen working on valves, steam traps, pumps and other equipment. All of these activities exposed Plaintiff to asbestos.

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76. Plaintiff's father, Earnest Rollins, worked in maintenance in industrial facilities in South Carolina from approximately 1973 to 1978. Earnest Rollins was exposed to asbestos through his own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. oAs Earnest Rollins conducted his work duties, dust was created by his working with and around asbestos and asbestos-containing products that would permeate his person and clothing. This dust contained asbestos fiber. Earnest Rollins would carry this asbestos dust on his person and clothing home with him where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his father's person and clothing.

77. Plaintiff's step-father, Robert Ashworth, worked in maintenance in industrial facilities in South Carolina from approximately 1980 to 1991. Robert Ashworth was exposed to asbestos through his own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Robert Ashworth conducted his work duties, dust was created by his working with and around asbestos and asbestos-containing products that would permeate his person and clothing. This dust contained asbestos fiber. Robert Ashworth would carry this asbestos dust on his person and clothing home with him where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his step-father's person and clothing.

78. Plaintiff's mother, Nell Ashworth, worked in maintenance in industrial facilities in South Carolina from approximately 1973 to the early 1980s. Nell Ashworth was exposed to asbestos through her own work and from working around other trades, including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. As Nell Ashworth conducted her work duties, dust was created by her working with and around asbestos and asbestos-containing

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products that would permeate her person and clothing. This dust contained asbestos fiber. Nell Ashworth would carry this asbestos dust on her person and clothing home with her where it would become airborne again. There, Plaintiff David D. Rollins would be repeatedly exposed to this asbestos dust from his mother's person and clothing.

79. Plaintiff David D. Rollins' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

80. Plaintiff David D. Rollins was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

81. Plaintiff is informed and believe, and thereon allege, that progressive lung disease, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

82. As a direct and proximate result of the conduct as alleged within, Plaintiff David D. Rollins suffers permanent injuries, including, but not limited to, mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

83. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff David D. Rollins incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court

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and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

84. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff has incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff's Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

85. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

86. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

87. At all times herein mentioned, Defendants and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed,

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modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff and others similarly situated, (hereinafter collectively called "exposed persons"), while being used for their intended purpose and in a manner that was reasonably foreseeable.

88. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos and asbestos-containing products from causing Plaintiff David D. Rollins' mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by

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Plaintiff. Defendants and/or their "alternate entities" had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

89. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

90. At all times relevant, Defendants and/or their "alternate entities" were aware of their asbestos and asbestos-containing products' defect but failed to adequately warn Plaintiff David D. Rollins, Plaintiff's family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants' products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

91. Plaintiff David D. Rollins, Plaintiff's family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

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92. Plaintiff David D. Rollins suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

93. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff's injuries, and all damages thereby sustained by Plaintiff David D. Rollins. Plaintiff therefore seeks all compensatory damages in order to make them whole, according to proof.

94. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff David D. Rollins and others similarly situated.

95. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung

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damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

96. Defendants and their "alternate entities" were aware that members of the general public and other "exposed persons," who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants and their "alternate entities," each of them, knew that members of the general public and other "exposed persons," who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

97. The above-referenced conduct of Defendants and their "alternate entities," was motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their "alternate entities," and each of them consciously disregarded the safety of "exposed persons" in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to "exposed persons" without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff.

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98. Plaintiff David D. Rollins and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

99. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set forth herein.

100. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

FOR A SECOND CAUSE OF ACTION
(Product Liability: Strict Liability - S.C. Code Ann. sec. 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Allege as Follows:

101. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

102. Plaintiff David D. Rollins suffers from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with

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asbestos products. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

103. Defendants' conduct and defective products as described above were a direct cause of Plaintiff's injuries, and the injuries and damages thereby sustained by Plaintiff.

104. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff and others similarly situated.

105. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

106. Plaintiff David D. Rollins, Plaintiff's family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

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107. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

108. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

109. The defect existed in the said products at the time they left the possession of defendants, their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed

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persons," including Plaintiff herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

110. Plaintiff David D. Rollins and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

111. Defendants' defective products as described above were a direct cause of Plaintiff David D. Rollins' injuries, and the damages thereby sustained.

112. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff David D. Rollins and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers.

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This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

113. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

114. The above-referenced conduct of Defendants and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff David D. Rollins and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

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115. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

116. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

117. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

118. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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119. Prior to and during all relevant times Defendants employed workers (hereinafter "employees") in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff David D. Rollins, Plaintiff's family members, and others worked and/or spent time as alleged above.

120. At all times herein mentioned, Defendants' employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff David D. Rollins was exposed.

121. Employees handling and disturbing asbestos-containing products in Plaintiff David D. Rollins, Plaintiff's family members and others' vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

122. Employees handling and disturbing asbestos-containing products in Plaintiff David D. Rollins', Plaintiff's family members and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

123. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

124. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff David D. Rollins, who also inhaled those fibers,

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and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff David D. Rollins.

125. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

126. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Plaintiff David D. Rollins.

127. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff David D. Rollins that he was being exposed to asbestos, failed to adequately warn Plaintiff David D. Rollins of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

128. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff David D. Rollins.

129. Defendants' employees owed Plaintiff David D. Rollins a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause him harm.

130. Defendants' employees breached this duty of care as described above.

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131. At all times mentioned, Plaintiff David D. Rollins was unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

132. As a direct result of the Defendants' employees conduct, Plaintiff David D. Rollins' exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff and the damages and injuries as complained of herein by Plaintiff David D. Rollins.

133. The risks herein alleged and the resultant damages suffered by the Plaintiff David D. Rollins were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

134. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Plaintiff David D. Rollins.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premise Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Defendants, and Allege as Follows:

135. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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136. Prior to and during all relevant times, Defendants employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff David D. Rollins, Plaintiff's family members, and others worked and/or spent time.

137. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

138. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff David D. Rollins and settled onto Plaintiff David D. Rollins, Plaintiff's family members, and others' clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff David D. Rollins would be exposed to dangerous asbestos dust beyond the present.

139. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons, including Plaintiff David D. Rollins.

140. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff David D. Rollins, Plaintiff's family

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members, and others frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

141. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

142. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto including Plaintiff David D. Rollins were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

143. At all times herein mentioned, Plaintiff David D. Rollins was unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

144. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

145. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its

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employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff David D. Rollins, Plaintiff's family members, and others, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

146. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

147. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by defendants.

148. Defendants failed to warn its employees and bystanders thereto, including Plaintiff David D. Rollins, Plaintiff's family members, and others, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

149. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff David D. Rollins became exposed to and inhaled asbestos fibers, which was a

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substantial factor in causing Plaintiff to develop asbestos-related mesothelioma, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties - S.C. Code Ann. 36-2-314)

As a Fifth Distinct Cause of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:

150. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

151. Each of the Defendants impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

152. The implied warranty made by the Defendants that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff David D. Rollins, Plaintiff's family members, and others carried out their duties and was inhaled by Plaintiff David D. Rollins.

153. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff David D. Rollins was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently developed mesothelioma, causing Plaintiff David D. Rollins to suffer all damages attendant thereto.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Allege as Follows:

154. Plaintiff repeats and re-allege the portions of the above paragraphs where relevant.

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155. That during, before and after Plaintiff David D. Rollins' exposure to asbestos products manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Plaintiff in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff David D. Rollins. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

156. The foregoing representations were material conditions precedent to Plaintiff David D. Rollins' continued exposure to asbestos-containing products. Defendants each intended that Plaintiff act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

157. As a direct and proximate result of Plaintiff David D. Rollins' reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiff's actual damages according to proof, including Plaintiff's pain & suffering, as well as medical bills;

2. For loss of earnings according to proof;

3. For loss of care, comfort and society;

4. For punitive damages according to proof;

5. For plaintiff's cost of suit herein;

6. For damages for fraudulent misrepresentation according to proof; and

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

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

s/Theile B. McVey
Theile B. McVey (SC Bar 16682)
tmcvey@kassellaw.com
Jamie Rae Rutkoski (SC Bar 103270)
jrutkoski@kassellaw.com
John D.Kassel (SC Bar 3286)
jkassel@kassellaw.com
KASSEL MCVEY, ATTORNEYS AT LAW
1330 Laurel Street
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar 77935)
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
T: 214-722-5990
F: 214-722-5991
jholder@dobslegal.com
Other email: tgilliland@dobslegal.com

ATTORNEYS FOR PLAINTIFF

April 10, 2019

Columbia, South Carolina

EXHIBIT 6

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STATE OF SOUTH CAROLINA COUNTY OF HAMPTON	IN THE COURT OF COMMON PLEAS
David D. Rollins, Plaintiffs, Vs. Air & Liquid Systems Corporation, et al. Defendants.	Case No.: 2019-CP-25-00118 NOTICE OF SPECIAL APPEARANCE OF PETER D. PROTOPAPAS

TO: CLERK OF COURT

Peter D. Protopapas of the law firm of Rikard & Protopapas LLC enters this special appearance as Receiver for Defendant Covil Corporation. Please have the Court records reflect that the undersigned Receiver for Covil Corporation should receive all notices, schedules, orders and correspondence from the Court regarding this matter.

RIKARD & PROTOPAPAS, LLC

s/ Peter D. Protopapas
Peter D. Protopapas SC BAR 68304
RECEIVER
Rikard & Protopapas, LLC
PO Box 5640
Columbia, South Carolina 29250
803.978.6111 (p)
803.978.6112 (f)
pdp@rplegalgroup.com

May 13, 2019

EXHIBIT 7

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	C.A. NO.: 2019-CP-25-00118
	)	
DAVID D. ROLLINS,	)	
	)	
Plaintiff,	)	
	)	**COVIL CORPORATION'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**
v.	)	
	)	
AIR & LIQUID SYSTEMS CORPORATION, individually and as successor-in-interest to BUFFALO PUMPS, et al.,	)	
	)	
	)	

Defendant Covil Corporation (Covil) presents the following answer and defenses to Plaintiff's Amended Complaint. Any allegation in the Amended Complaint not specifically admitted herein is denied. In addition, Covil more specifically states as follows:

RESPONSE TO "GENERAL ALLEGATIONS"

1. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 1 of the Amended Complaint and, therefore, denies the same.

2. The allegations in paragraph 2 of the Amended Complaint, including all subparts, are legal conclusions to which no response is required. To the extent that a response is required, Covil denies the allegations in paragraph 2 as they relate to Covil. To the extent that the allegations in paragraph 2 relate to defendants other than Covil, Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Amended Complaint and, therefore, denies the same.

3. Covil denies the allegations in paragraph 3 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 3 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

4. Covil denies the allegations in paragraph 4 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 4 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

5. Paragraph 5 of the Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, Covil denies the allegations in paragraph 5 as they relate to Covil. To the extent that the allegations in paragraph 5 relate to defendants other than Covil, Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 of the Amended Complaint and, therefore, denies the same.

6. Covil denies the allegations in paragraph 6 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 6 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

7. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 7 of the Amended Complaint and, therefore, denies the same.

8. Covil denies the allegations in paragraph 8 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 8 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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9. Covil denies the allegations in paragraph 9 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 9 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

10. In response to the allegations in paragraph 10 of the Amended Complaint, Covil admits that it was a corporation formed under the laws of the State of South Carolina, and that it forfeited its corporate authority to transact business in 1993. Except as expressly admitted, the allegations in paragraph 10 are denied.

11. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 11 of the Amended Complaint and, therefore, denies the same.

12. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 12 of the Amended Complaint and, therefore, denies the same.

13. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 13 of the Amended Complaint and, therefore, denies the same.

14. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 14 of the Amended Complaint and, therefore, denies the same.

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RESPONSE TO "THE PARTIES"

15. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 15 of the Amended Complaint and, therefore, denies the same.

16. In response to the allegations in paragraph 16, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself in the State of South Carolina. Covil denies the remaining allegations in paragraph 16 of the Amended Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 16 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

17. The allegations in paragraph 17 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 17 could be construed to relate to Covil, Covil denies those allegations.

18. The allegations in paragraph 18 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 18 could be construed to relate to Covil, Covil denies those allegations.

19. The allegations in paragraph 19 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 19 could be construed to relate to Covil, Covil denies those allegations.

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20. The allegations in paragraph 20 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 20 could be construed to relate to Covil, Covil denies those allegations.

21. The allegations in paragraph 21 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 21 could be construed to relate to Covil, Covil denies those allegations.

22. The allegations in paragraph 22 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 22 could be construed to relate to Covil, Covil denies those allegations.

23. The allegations in paragraph 23 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 23 could be construed to relate to Covil, Covil denies those allegations.

24. The allegations in paragraph 24 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 24 could be construed to relate to Covil, Covil denies those allegations.

25. In response to the allegations in paragraph 25, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself in the State of South Carolina. Covil denies the remaining allegations in paragraph 25 of the Amended Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 25 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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26. The allegations in paragraph 26 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 26 could be construed to relate to Covil, Covil denies those allegations.

27. The allegations in paragraph 27 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 27 could be construed to relate to Covil, Covil denies those allegations.

28. The allegations in paragraph 28 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 28 could be construed to relate to Covil, Covil denies those allegations.

29. The allegations in paragraph 29 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 29 could be construed to relate to Covil, Covil denies those allegations.

30. The allegations in paragraph 30 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 30 could be construed to relate to Covil, Covil denies those allegations.

31. The allegations in paragraph 31 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 31 could be construed to relate to Covil, Covil denies those allegations.

32. The allegations in paragraph 32 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 32 could be construed to relate to Covil, Covil denies those allegations.

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33. The allegations in paragraph 33 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 33 could be construed to relate to Covil, Covil denies those allegations.

34. The allegations in paragraph 34 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 34 could be construed to relate to Covil, Covil denies those allegations.

35. The allegations in paragraph 35 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 35 could be construed to relate to Covil, Covil denies those allegations.

36. The allegations in paragraph 36 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 36 could be construed to relate to Covil, Covil denies those allegations.

37. The allegations in paragraph 37 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 37 could be construed to relate to Covil, Covil denies those allegations.

38. The allegations in paragraph 38 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 38 could be construed to relate to Covil, Covil denies those allegations.

39. The allegations in paragraph 39 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 39 could be construed to relate to Covil, Covil denies those allegations.

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40. The allegations in paragraph 40 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 40 could be construed to relate to Covil, Covil denies those allegations.

41. The allegations in paragraph 41 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 41 could be construed to relate to Covil, Covil denies those allegations.

42. The allegations in paragraph 42 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 42 could be construed to relate to Covil, Covil denies those allegations.

43. The allegations in paragraph 43 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 43 could be construed to relate to Covil, Covil denies those allegations.

44. The allegations in paragraph 44 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 44 could be construed to relate to Covil, Covil denies those allegations.

45. The allegations in paragraph 45 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 45 could be construed to relate to Covil, Covil denies those allegations.

46. The allegations in paragraph 46 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 46 could be construed to relate to Covil, Covil denies those allegations.

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47. The allegations in paragraph 47 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 47 could be construed to relate to Covil, Covil denies those allegations.

48. The allegations in paragraph 48 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 48 could be construed to relate to Covil, Covil denies those allegations.

49. The allegations in paragraph 49 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 49 could be construed to relate to Covil, Covil denies those allegations.

50. The allegations in paragraph 50 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 50 could be construed to relate to Covil, Covil denies those allegations.

51. The allegations in paragraph 51 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 51 could be construed to relate to Covil, Covil denies those allegations.

52. The allegations in paragraph 52 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 52 could be construed to relate to Covil, Covil denies those allegations.

53. The allegations in paragraph 53 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 53 could be construed to relate to Covil, Covil denies those allegations.

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54. The allegations in paragraph 54 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 54 could be construed to relate to Covil, Covil denies those allegations.

55. The allegations in paragraph 55 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 55 could be construed to relate to Covil, Covil denies those allegations.

56. The allegations in paragraph 56 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 56 could be construed to relate to Covil, Covil denies those allegations.

57. The allegations in paragraph 57 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 57 could be construed to relate to Covil, Covil denies those allegations.

58. The allegations in paragraph 58 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 58 could be construed to relate to Covil, Covil denies those allegations.

59. The allegations in paragraph 59 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 59 could be construed to relate to Covil, Covil denies those allegations.

60. The allegations in paragraph 60 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 60 could be construed to relate to Covil, Covil denies those allegations.

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61. The allegations in paragraph 61 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 61 could be construed to relate to Covil, Covil denies those allegations.

62. The allegations in paragraph 62 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 62 could be construed to relate to Covil, Covil denies those allegations.

63. The allegations in paragraph 63 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 63 could be construed to relate to Covil, Covil denies those allegations.

64. The allegations in paragraph 64 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 64 could be construed to relate to Covil, Covil denies those allegations.

65. The allegations in paragraph 65 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 65 could be construed to relate to Covil, Covil denies those allegations.

66. The allegations in paragraph 66 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 66 could be construed to relate to Covil, Covil denies those allegations.

67. The allegations in paragraph 67 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 67 could be construed to relate to Covil, Covil denies those allegations.

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68. The allegations in paragraph 68 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 68 could be construed to relate to Covil, Covil denies those allegations.

69. The allegations in paragraph 69 of the Amended Complaint are directed at parties other than Covil, and, therefore, no response from Covil is required. To the extent that the allegations in paragraph 69 could be construed to relate to Covil, Covil denies those allegations.

70. In response to the allegations in paragraph 70, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself in the State of South Carolina. Covil denies the remaining allegations in paragraph 70 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 70 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

RESPONSE TO "BACKGROUND FACTS"

71. In response to the allegations in paragraph 71, Covil denies that it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

72. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 72 of the Amended Complaint and, therefore, denies the same.

73. Covil denies the allegations in paragraph 73 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 73 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

74. Covil denies the allegations in paragraph 74 of the Amended Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 74 of the Amended Complaint and, therefore, denies the same.

75. Covil denies the allegations in paragraph 75 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 75 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

76. Covil denies the allegations in paragraph 76 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 76 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

77. Covil denies the allegations in paragraph 77 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 77 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

78. Covil denies the allegations in paragraph 78 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 78 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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79. Covil denies the allegations in paragraph 79 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 79 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

80. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 80 of the Amended Complaint and, therefore, denies the same.

81. Covil denies the allegations in paragraph 81 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 81 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

82. Covil denies the allegations in paragraph 82 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 82 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

83. Covil denies the allegations in paragraph 83 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 83 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

84. Covil denies the allegations in paragraph 84 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 84 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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RESPONSE TO "FIRST CAUSE OF ACTION"
(Product Liability: Negligence)

85. In response to the allegations in paragraph 85 of the Amended Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 84 as if fully repeated herein.

86. In response to the allegations in paragraph 86, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil denies the remaining allegations in paragraph 86 of the Amended Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 86 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

87. Covil denies the allegations in paragraph 87 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 87 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

88. Covil denies the allegations in paragraph 88 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 88 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

89. Covil denies the allegations in paragraph 89 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 89 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

90. Covil denies the allegations in paragraph 90 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 90 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

91. Covil denies the allegations in paragraph 91 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 91 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

92. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 92 of the Amended Complaint and, therefore, denies the same.

93. Covil denies the allegations in paragraph 93 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 93 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

94. Covil denies the allegations in paragraph 94 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 94 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

95. Covil denies the allegations in paragraph 95 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 95 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

96. Covil denies the allegations in paragraph 96 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 96 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

97. Covil denies the allegations in paragraph 97 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 97 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

98. Covil denies the allegations in paragraph 98 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 98 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

99. Covil denies the allegations in paragraph 99 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 99 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

100. Covil denies the allegations in paragraph 100 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 100 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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RESPONSE TO "SECOND CAUSE OF ACTION"
(Product Liability: Strict Liability – S.C. Code Ann. sec. 15-73-10, et seq.)

101. In response to the allegations in paragraph 101 of the Amended Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 100 as if fully repeated herein.

102. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 102 of the Amended Complaint and, therefore, denies the same.

103. Covil denies the allegations in paragraph 103 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 103 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

104. Covil denies the allegations in paragraph 104 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 104 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

105. Covil denies the allegations in paragraph 105 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 105 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

106. Covil denies the allegations in paragraph 106 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 106 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

107. Covil denies the allegations in paragraph 107 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 107 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

108. Covil denies the allegations in paragraph 108 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 108 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

109. Covil denies the allegations in paragraph 109 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 109 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

110. Covil denies the allegations in paragraph 110 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 110 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

111. Covil denies the allegations in paragraph 111 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 111 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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112. Covil denies the allegations in paragraph 112 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 112 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

113. Covil denies the allegations in paragraph 113 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 113 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

114. Covil denies the allegations in paragraph 114 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 114 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

115. Covil denies the allegations in paragraph 115 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 115 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

116. Covil denies the allegations in paragraph 116 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 116 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

117. In response to the allegations in paragraph 117, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to

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contractors or applied them itself. Covil denies the remaining allegations in paragraph 117 of the Amended Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 117 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same

RESPONSE TO "THIRD CAUSE OF ACTION"
(Vicarious Liability of Defendants Based upon Respondeat Superior)

118. In response to the allegations in paragraph 118 of the Amended Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 117 as if fully repeated herein.

119. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 119 of the Amended Complaint and, therefore, denies the same.

120. Covil denies the allegations in paragraph 120 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 120 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

121. Covil denies the allegations in paragraph 121 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 121 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

122. Covil denies the allegations in paragraph 122 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 122 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

123. Covil denies the allegations in paragraph 123 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 123 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

124. Covil denies the allegations in paragraph 124 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 124 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

125. Covil denies the allegations in paragraph 125 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 125 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

126. Covil denies the allegations in paragraph 126 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 126 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

127. Covil denies the allegations in paragraph 127 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 127 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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128. Covil denies the allegations in paragraph 128 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 128 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

129. Covil denies the allegations in paragraph 129 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 129 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

130. Covil denies the allegations in paragraph 130 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 130 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

131. Covil denies the allegations in paragraph 131 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 131 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

132. Covil denies the allegations in paragraph 132 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 132 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

133. Covil denies the allegations in paragraph 133 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 133 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

134. Covil denies the allegations in paragraph 134 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 134 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

RESPONSE TO "FOURTH CAUSE OF ACTION"
(Premises Liability: Negligence as to Premise Owner/Contractor)

135. In response to the allegations in paragraph 135 of the Amended Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 134 as if fully repeated herein.

136. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 136 of the Amended Complaint and, therefore, denies the same.

137. Covil denies the allegations in paragraph 137 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 137 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

138. Covil denies the allegations in paragraph 138 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 138 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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139. Covil denies the allegations in paragraph 139 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 139 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

140. Covil denies the allegations in paragraph 140 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 140 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

141. Covil denies the allegations in paragraph 141 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 141 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

142. Covil denies the allegations in paragraph 142 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 142 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

143. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 143 of the Amended Complaint and, therefore, denies the same.

144. Covil denies the allegations in paragraph 144 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 144 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

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145. Covil denies the allegations in paragraph 145 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 145 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

146. Covil denies the allegations in paragraph 146 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 146 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

147. Covil denies the allegations in paragraph 147 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 147 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

148. Covil denies the allegations in paragraph 148 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 148 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

149. Covil denies the allegations in paragraph 149 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 149 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

RESPONSE TO "FIFTH CAUSE OF ACTION"
(Product Liability: Breach of Implied Warranties – S.C. Code Ann. 36-2-314)

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150. In response to the allegations in paragraph 150 of the Amended Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 149 as if fully repeated herein.

151. Covil denies the allegations in paragraph 151 of the Amended Complaint to the extent that the allegations relate to Covil and, further, specifically denies that any implied warranty was made or breached, or that any alleged breach resulted in any damage to Plaintiff.

152. Covil denies the allegations in paragraph 152 of the Amended Complaint to the extent that the allegations relate to Covil and, further, specifically denies that any implied warranty was made or breached, or that any alleged breach resulted in any damage to Plaintiff.

153. Covil denies the allegations in paragraph 153 of the Amended Complaint to the extent that the allegations relate to Covil and, further, specifically denies that any implied warranty was made or breached, or that any alleged breach resulted in any damage to Plaintiff.

RESPONSE TO "SIXTH CAUSE OF ACTION"
(Fraudulent Misrepresentation)

154. In response to the allegations in paragraph 154 of the Amended Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 153 as if fully repeated herein.

155. Covil denies the allegations in paragraph 155 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 155 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

156. Covil denies the allegations in paragraph 156 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 156 are

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directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

157. Covil denies the allegations in paragraph 157 of the Amended Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 157 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies the same.

RESPONSE TO "PRAYER FOR RELIEF"

158. As to the allegations contained in the Prayer for Relief, Covil denies that it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

FOR A FIRST DEFENSE

1. Upon information and belief, the Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process; lack of subject matter jurisdiction; and/or lack of personal jurisdiction.

FOR A SECOND DEFENSE

2. The Amended Complaint fails to allege facts sufficient to state a cause of action against Covil, and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

3. Covil is a dissolved corporation and therefore lacks the capacity to sue or be sued.

FOR A FOURTH DEFENSE

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4. Upon information and belief, there is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FOR A FIFTH DEFENSE

5. Upon information and belief, the claims set forth in the Amended Complaint are barred by the applicable statutes of limitations and/or repose in this State or other states as may be applicable.

FOR A SIXTH DEFENSE

6. Covil alleges that Plaintiff's damages were the direct and proximate result of the negligent, reckless, willful, and wanton conduct of Plaintiff, which combined and concurred with any negligence or recklessness on the part of Covil, which is specifically denied and admitted solely for the purpose of this defense and no other, and the alleged damages of the Plaintiff would not have occurred if Plaintiff had not been guilty of such negligence, recklessness, willfulness, or wantonness. The Amended Complaint is barred to the extent that Plaintiff's contributory negligence and recklessness is more than 50% of the total negligence in this case. To the extent that Plaintiff's contributory negligence and recklessness is 50% or less of the total negligence in this case, which is denied and admitted solely for the purpose of this defense, the Plaintiff's recovery should be reduced by the percentage of his contributory negligence and recklessness.

FOR A SEVENTH DEFENSE

7. The claims set forth in the Amended Complaint are barred to the extent that there is another action pending between the same parties for the same claims.

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FOR AN EIGHTH DEFENSE

8. Upon information and belief, the Amended Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 et seq., of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006."

FOR A NINTH DEFENSE

9. Upon information and belief, Plaintiff's claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, collateral estoppel, and/or conditions precedent or subsequent.

FOR A TENTH DEFENSE

10. Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FOR AN ELEVENTH DEFENSE

11. By virtue of the doctrine of judicial estoppel, Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and, upon information and belief, is, therefore, precluded from alleging the material facts necessary to state a cause of action against Covil.

FOR A TWELFTH DEFENSE

12. Upon information and belief, venue is improper in this action. Covil reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

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FOR A THIRTEENTH DEFENSE

13. Covil would show that, among other things, Plaintiff's claim for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

FOR A FOURTEENTH DEFENSE

14. The alleged injuries to Plaintiff are barred by Section 15-73-10 et seq., of the South Carolina Code of Laws; therefore, Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

FOR A FIFTEENTH DEFENSE

15. Covil would show that any product allegedly distributed by, or for which Covil is alleged to have been liable, was altered or changed in some manner after it left the custody and possession of Covil.

FOR A SIXTEENTH DEFENSE

16. There has been no concert of action between Covil and any of the other named Defendants. The Defendants are not joint tortfeasors, and, therefore, Covil may not be held jointly and severally liable with the other named Defendants. Accordingly, Covil asserts that it is entitled to the benefit of the provisions set forth in S.C. Code § 15-38-15 in this action.

FOR SEVENTEENTH DEFENSE

17. To the extent that Plaintiff has received payment in satisfaction of any of the alleged injuries and/or claims against Covil, the Amended Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

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FOR AN EIGHTEENTH DEFENSE

18. There are no allegations against Covil stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like to meet the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A NINETEENTH DEFENSE

19. Plaintiff's claims are barred to the extent that any products for which Covil is or may be responsible were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

FOR A TWENTIETH DEFENSE

20. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

FOR A TWENTY-FIRST DEFENSE

21. Covil alleges that, upon information and belief, Plaintiff had actual knowledge of and voluntarily assumed the risk incident to his use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials that were known to him to be dangerous.

FOR A TWENTY-SECOND DEFENSE

22. Covil alleges that, upon information and belief, Plaintiff failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the Amended Complaint.

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FOR A TWENTY-THIRD DEFENSE

23. Covil alleges that if Plaintiff used the product or products for which Covil is alleged to be responsible, upon information and belief, the same was used for a purpose not intended by Covil and contrary to any instructions or normal method of using the same.

FOR A TWENTY-FOURTH DEFENSE

24. Covil alleges that if Plaintiff sustained any injuries or damages as set forth in the Amended Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others, and not Covil.

FOR A TWENTY-FIFTH DEFENSE

25. Covil would show that even if Plaintiff has suffered injuries as described by the Amended Complaint, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of Plaintiff's injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of Covil.

FOR A TWENTY-SIXTH DEFENSE

26. If Plaintiff sustained the injuries and/or damages alleged, which is specifically denied, then, upon information and belief, such injuries and/or damages were proximately caused by the acts and/or omissions of Plaintiff's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

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FOR A TWENTY-SEVENTH DEFENSE

27. Covil alleges that if Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action, including but not limited to product manufacturers that have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FOR A TWENTY-EIGHTH DEFENSE

28. If Plaintiff was exposed to any products for which Covil is alleged to have been responsible, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications, and laws; consequently, recovery by Plaintiff herein is barred.

FOR A TWENTY-NINTH DEFENSE

29. If it should be proven that Plaintiff, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products for which Covil is alleged to have been responsible, such materials, upon information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

FOR A THIRTIETH DEFENSE

30. If any products for which Covil is alleged to have been responsible and which give rise to Plaintiff's claims herein were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of Covil, and by reason thereof Covil is entitled to

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assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

FOR A THIRTY-FIRST DEFENSE

31. In the event that it is determined that any product for which Covil is alleged to have been responsible was dangerous, which danger is specifically denied, Covil was unaware of such danger as it would apply in any conceivable use of such products by Plaintiff; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold, used, and/or warnings provided. Further, such products were manufactured, distributed, sold, and used in conformity with the state of the art and/or prevailing industry standards at the time.

FOR A THIRTY-SECOND DEFENSE

32. Upon information and belief, Plaintiff has received payments from and granted releases to other parties, including but not limited to other parties to this action and other non-parties against whom Plaintiff has claimed liability in tort for the same injury for which Plaintiff claims that Covil is liable. Covil is entitled to setoff of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

FOR A THIRTY-THIRD DEFENSE

33. Upon information and belief, Plaintiff has failed, neglected, and/or refused to mitigate Plaintiff's damages, if any, and therefore, Plaintiff is barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FOR A THIRTY-FOURTH DEFENSE

34. The Amended Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

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FOR A THIRTY-FIFTH DEFENSE

35. The products for which Covil is alleged to have been responsible and/or which were sold and/or distributed by Covil were at all times reasonably fit and suitable for the purposes for which they were sold, and Covil denies that such products were in any way defective for the use for which they were sold.

FOR A THIRTY-SIXTH DEFENSE

36. To the extent that the Amended Complaint asserts a demand for punitive damages, Covil specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A THIRTY-SEVENTH DEFENSE

37. To the extent the Amended Complaint seeks punitive damages, Covil affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise, and inconsistent and, therefore, violate the

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due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A THIRTY-EIGHTH DEFENSE

38. Upon information and belief, Plaintiff was employed by a knowledgeable and sophisticated user/employer, and any duty that Covil may have had to warn him of any potential dangers incident to use of Covil's products, which duty is denied, was discharged by the employer's intervening duty to give him warning.

FOR A THIRTY-NINTH DEFENSE

39. Covil reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

FOR A FORTIETH DEFENSE

40. Covil incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded, or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

Covil, answering any and all crossclaims that may already have been asserted or which may be asserted in the future against Covil by any co-defendants and/or third-party defendants, says:

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1. In defense of any and all crossclaims, Covil incorporates herein as if restated fully all responses and defenses that it has asserted above or may assert in response to the allegations contained in the Amended Complaint.

2. The allegations against Covil in any and all crossclaims are denied.

3. Covil denies liability with respect to any and all crossclaims.

4. Covil denies that it has any indemnity or contribution liability to any other defendant or third-party defendant.

RESERVATION OF CROSSCLAIMS

All crossclaims for contribution and for indemnity by Covil against all co-defendants and third-party defendants are hereby reserved and implied.

JURY DEMAND

Covil requests a trial by jury on all issues so triable.

WHEREFORE, Covil prays the Court for the following relief:

1. That the Amended Complaint be dismissed with prejudice as to Covil;

2. That any and all crossclaims against Covil be dismissed with prejudice;

3. That Plaintiff and other defendants and/or third-party defendants have and recover nothing from Covil;

4. That the costs of this action be taxed against Plaintiff and/or other defendants and/or third-party defendants;

5. That any judgment against Covil be reduced by any amount that any employer of Plaintiff, his successors, or assigns would be entitled to receive therefrom by way of subrogation;

6. That there be a trial by jury on all issues of fact; and

7. For such other and further relief as the Court deems just and proper.

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Respectfully submitted, this the 28th day of May, 2019.

/s/ Ashley K. Brathwaite
Ashley K. Brathwaite
S.C. State Bar No. 76952
Ellis & Winters LLP
P.O. Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010
Ashley.Brathwaite@elliswinters.com

Counsel for Defendant Covil Corporation

EXHIBIT 8

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UNITED STATES DISTRICT COURT

DENVER D. TAYLOR & JANICE TAYLOR

Plaintiffs,

vs. CASE NO. 2018-CP-40-04940

AIR & LIQUID SYSTEMS CORPORATION, ET AL,

Defendants.

DEPOSITION OF: DAVID DWAYNE ROLLINS

DATE: February 18, 2019

TIME: 10:00 a.m.

LOCATION: Offices of
Wingate by Wyndham
760 Galleria Boulevard
Rock Hill, SC

TAKEN BY: Counsel for the PLAINTIFFS

REPORTED BY: SARAH E. YOUNG COURT REPORTER

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
DENVER D. TAYLOR & JANICE TAYLOR:

DEAN OMAR BRANHAM
BY: KEVIN W. PAUL
DAVID HUMEN
302 North Market St., Suite 300
Dallas, TX 75202
214-722-5990
Kpaul@dobllp.com
Dhumen@dobllp.com

ATTORNEYS FOR DEFENDANT
FLOWSERVE US, INC.:

ROBINSON GRAY STEPP & LAFFITTE, LLC
BY: RACHEL M. HUTCHENS
1310 Gadsden St.
Columbia, SC 29211
803-929-1400
Rhutchens@robinsongray.com

ATTORNEYS FOR THE DEFENDANT
CARVER PUMP COMPANY; GARDNER DENVER, INC.; VIKING PUMP, INC.:
FOX ROTHSCHILD, LLP
BY: STEPHANIE G. FLYNN
2 W. Washington St., Suite 1100
Greenville, SC 29601
864-751-7600
Sgflynn@foxrothschild.com

ATTORNEYS FOR THE DEFENDANT
YORK INTERNATIONAL CORP.; ZURN INDUSTRIES, LLC; WEIS VALVES & CONTROLS:
NELSON & MULLINS
BY: DAVID G. TRAYLOR, JR.
Meridian/17th Floor
1320 Main St.
Columbia, SC 29201
803-255-9439
David.traylor@nelsonmullins.com

Page 3

ATTORNEYS FOR DEFENDANT
AIR & LIQUID SYSTEMS CORP.; AURORA PUMP COMPANY; GOULDS PUMPS, LLC; ITT, LLC:
NELSON & MULLINS
BY: JASE GLENN
1320 Main St.
Columbia, SC 29201
803-255-9654
Jase.glenn@nelsonmullins.com

ATTORNEYS FOR THE DEFENDANT
MCNEIL & NRM:
THE VAN WINKLE LAW FIRM
BY: STEPHEN B. WILLIAMSON
11 N. Market St.
Asheville, NC 28801
828-258-2991
Swilliamson@vwlawfirm.com

ATTORNEYS FOR THE DEFENDANT
RILEY POWER, INC.:
PIERCE, SLOAN, WILSON, KENNEDY & EARLY, LLC:
BY: DANIEL F. LYNCH, IV
321 East Bay St.
Charleston, SC 29413
843-722-7733
Daniellynch@piercesloan.com

ATTORNEYS FOR DEFENDANT

MILLBERG, GORDON, STEWART
BY: PETER N. BORDEN
1101 Haynes St., Suite 104
Raleigh, NC 27604
919-436-6423
PBorden@mgsattorneys.com

Page 4

ATTORNEYS FOR THE DEFENDANT
FRITO-LAY:

HAWKINS PARNELL THACKSTON & YOUNG, LLP
BY: E. ELAINE SHOFNER
4000 SunTrust Plaza
303 Peachtree St. NE
Atlanta, GA 30308
404-614-7445
Eshofner@hptylaw.com

ATTORNEYS FOR THE DEFENDANT
CBS CORP., FOSTER WHEELER ENERGY CORP.; INGERSOLL-RAND COMPANY; SPIRAX SARCO, INC.:
EVERT WEATHERSBY HOUFF
BY: ANDREW S. ROGERS
3455 Peachtree Rd. NE, Suite 1550
Atlanta, GA 30326
678-651-1200
Asrogers@ewhlaw.com

ATTORNEYS FOR DEFENDANT
THE GORMAN-RUPP COMPANY; DANIEL INTERNATIONAL, CORP.; FLUOR ENTERPRISE, INC.; FLUOR DANIEL SERVICES CORP.; FLUOR INTERNATIONAL CONSTRUCTION, INC.:
HAYNSWORTH SINKLER BOYD, PA
BY: MOFFATT G. MCDONALD
ONE North Main, 2nd Floor
Greenville, SC 29601
864-240-3214
Mmcdonald@hsblawfirm.com

ATTORNEYS FOR THE DEFENDANT
JOHN CRANE, INC.:
RICHARDSON PLOWDEN
BY: MEGAN C. WHITE
235 Magrath Darby Boulevard, Suite 100
Mount Pleasant, SC 29464
843-714-2621
Mwhite@richardsonplowden.com

Page 5

ATTORNEYS FOR THE DEFENDANT
FLOWSERVE CORPORATION:

GALLIVAN WHITE & BOYD, PA
BY: ALLYSON TWILLEY
55 Beattie Pl. #1200
Greenville, SC 29601
864-271-5398
Atwilley@gwblawfirm.com

ATTORNEYS FOR DEFENDANT
INTERNATIONAL PAPER:
FORMAN, WATKINS & KRUTZ, LLP
BY: JEAN M. FOLSOM (via phone)
210 East Capital St., Suite 2200
Jackson, MS 39201
601-960-3169
Jean.folsom@formanwatkins.com

ATTORNEYS FOR THE DEFENDANT
THE LINCOLN ELECTRIC COMPANY; HOBART BROTHERS, LLC; LINDE, LLC:

EVERT, WEATHERSBY, HOUFF
BY: PHILIP A. KULINSKI (via phone)
120 E. Baltimore St., Suite 1300
Baltimore, MD 21202
443-573-8500
Pakulinski@ewhlaw.com

ATTORNEYS FOR THE DEFENDANT
BASF CORP and BASF CATALYST:

KERNODLE COLEMAN
BY: STEPHEN M. KOZICK (via phone)
914 Folly Rd., Suite 2
Charleston, SC 29422
843-795-3708
Skozick@kernodle.com

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ATTORNEYS FOR THE DEFENDANT
CNA HOLDINGS, LLC:

GORDON & REES
BY: BEVERLY M. BOND
2200 Ross Ave, Suite 4100 West
Dallas, TX 75201
Bbond@grsm.com

ATTORNEYS FOR THE DEFENDANT
BOWATER:

WOMBLE BOND DICKINSON
BY: VONNETTA L. BENJAMIN
271 17th St, NW
Atlanta, GA 30363
404-872-7000
Vonnetta.benjamin@wbd-us.com

ALSO PRESENT:
Alan Metts -- legal videographer
Brittany Hammonds

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MR. MCDONALD: This deposition is being taken pursuant to the South Carolina Rules, which provides that all objections except as to the form of the question are reserved. We'll stipulate that objection of one is good for all present, and that way the court reporter will only need to note, you know, counsel objections rather than trying to get everybody's name straight. And all appearances today are -- all Defendants are reserving all defenses that they've got in the case, I mean personal jurisdiction, door closing, things like that are not waived by an appearance today. And Mr. Rollins is being deposed, our understanding is, in Mr. Taylor's case as a co-worker, and that's the basis that we're proceeding under today.

MR. PAUL: Okay, and so stipulated on all the standard stipulations. And it's a little bit of an unusual circumstance, and obviously, Defendants' objections are note for the record. This is a brand new client who was just diagnosed that we found through Denver Taylor to be a co-worker, but Mr. Rollins was diagnosed with mesothelioma on January 17th. I was able to provide information as soon as I could, re-tendered him within a few days once we had him signed up as a client. And I'll do my best to be quick today, but we absolutely will be re-tendering him. The case will be filed. Complete opportunity for cross-examination by not only all Defendants in this room, all Defendants that will be futurely named in the case complaint.

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MR. MCDONALD: Okay. Sure.

THE VIDEOGRAPHER: We are on the record at 10:00 a.m. on February the 18th, 2019. This is the videotape deposition of David Rollins in the matter of Denver D. Taylor and Janice Taylor versus Air and Liquid Systems Corporation, et. al., Case Number 2018CP4004940. This deposition is being held at 760 Galleria Boulevard, Rock Hill, South Carolina. All counsel will be reflected on the stenographic record. Would the reporter please swear in the witness?

DAVID ROLLINS
being first duly sworn, testified as follows:

EXAMINATION

BY MR. PAUL:

Q. Good morning.
A. Good morning.
Q. How you doing today?
A. Oh, I'm doing it.

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Q. You a little tired?
A. I'm a little rough, feeling a little rough.
Q. Well, before I go through all the rules, we're not going to beat you up today. You need any breaks, just let anyone know.
A. Yes, sir.
Q. No one's going to tell you not to take a break.

Can you please just state your name for the record, sir?

A. David Dwayne Rollins.
Q. Okay. And how old are you?
A. I'm 45 years old.
Q. Is your date of birth November 12th, 1973?
A. Yes, sir.
Q. And were you born and raised in Rock Hill, South Carolina?
A. Yes, sir, born and raised.
Q. Now, before we get started, is this the first time that you've ever done a deposition before?
A. Yes, sir.
Q. Okay. Then I'll go through some quick

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	C/A NO. 2019-CP-25-00118

DAVID D. ROLLINS,

Plaintiff,

vs.

AIR & LIQUID SYSTEMS CORPORATION, et al.,

Defendants.

VIDEOTAPED DEPOSITION OF DAVID DWAYNE ROLLINS

(Taken by Plaintiff)

Fort Mill, South Carolina

Thursday, June 6, 2019

Reported in Stenotype by
Sandra Berkeland, Certified Court Reporter
Transcript produced by computer-aided transcription

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APPEARANCES

On behalf of the Plaintiff:

DEAN OMAR & BRANHAM, LLP
BY: JONATHAN MARSHALL HOLDER, ESQ.
302 N. Market Street
Suite 300
Dallas, Texas 75202
214-722-5990
jholder@dobslegal.com

On behalf of the Defendants, Air & Liquid Systems, Aurora Pump Co., Pfizer, Weir Valves & Controls & Zurn Industries, LLC:

NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: DAVID G. TRAYLOR, JR., ESQ.
Meridian
17th Floor
1320 Main Street
Columbia, South Carolina 29201
803-255-9439
david.traylor@nelsonmullins.com

On behalf of the Defendant, Flowserve Corp. f/k/a Duriron:

WOMBLE BOND DICKINSON, LLP
BY: CHARLES J. BAKER, III, ESQ.
5 Exchange Street
Charleston, South Carolina 29401
843-722-3400
chuck.baker@wbd-us.com

On behalf of the Defendant, Cleaver-Brooks:

WOMBLE BOND DICKINSON, LLP
BY: RYAN D. GILSENAN, ESQ.
5 Exchange Street
Charleston, South Carolina 29401
843-722-3400
ryan.gilsenan@wbd-us.com

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On behalf of the Defendant, General Electric Company & Foster Wheeler:

WHEELER TRIGG O'DONNELL, LLP
BY: ERIK D. NADOLINK, ESQ.
370 17th Street
Suite 4500
Denver, Colorado 80202-5647
303-244-1800
nadolink@wtotrial.com

On behalf of the Defendant, Riley Power, Inc.:

PIERCE SLOAN WILSON KENNEDY & EARLY, LLC
BY: DANIEL F. LYNCH, IV, ESQ.
The Blake-Grimke House
321 East Bay Street
Charleston, South Carolina 29401
843-722-7733
daniellynch@piercesloan.com

On behalf of the Defendant, Celanese:

PIERCE SLOAN WILSON KENNEDY & EARLY, LLC
BY: WILLIAM P. EARLY, ESQ.
The Blake-Grimke House
321 East Bay Street
Charleston, South Carolina 29401
843-722-7733
willearly@piercesloan.com

On behalf of the Defendant, MOR PPM, Inc.:

GALLIVAN, WHITE & BOYD, P.A.
BY: ALLYSON TWILLEY, ESQ.
55 Beattie Place
Suite 1200
Greenville, South Carolina 29601
864-271-9580
atwilley@GWBlawfirm.com

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On behalf of the Defendant,
John Crane:

RICHARDSON PLOWDEN & ROBINSON, P.A.
BY: MEGAN C. WHITE, ESQ.
235 Magrath Darby Boulevard
Suite 100
Mt. Pleasant, South Carolina
29464
843-714-2621
mwhite@richardsonplowden.com

On behalf of the Defendant,
Resolute FP:

PARKER POE ADAMS & BERNSTEIN, LLP
BY: JONATHAN E. HALL, ESQ.
PNC Plaza
301 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601
919-828-0564
jonathanhall@parkerpoe.com

On behalf of the Defendant,
The Dow Chemical Company:

MILLIGAN & HERNS, PC
BY: LOUIS P. HERNS, ESQ.
721 Long Point Road
Suite 401
Mount Pleasant, South Carolina
29464
843-971-6750
louis@milliganlawfirm.com

On behalf of the Defendant,
International Paper:

FORMAN WATKINS
BY: MARY CLIFT ABDALLA, ESQ.
210 East Capitol Street
Suite 2200
Jackson, Mississippi 39201-2375
601-960-8600
mary.abdalla@formanwatkins.com

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On behalf of the Defendant,
SPX Cooling Technologies:
MILLBERG GORDON STEWART, PLLC
BY: PETER BORDEN, ESQ.
Millberg Gordon Stewart PLLC
1101 Haynes Street
Suite 104
Raleigh, North Carolina 27604
919-836-0090
pborden@mgsattorneys.com

On behalf of the Defendant,
SCAPA:
HAWKINS PARNELL & YOUNG, LLP
BY: GEORGE W. FREEMAN, ESQ.
4514 Cole Avenue
Suite 500
Dallas, Texas 75205
214-780-5113
gfreeman@hpylaw.com

On behalf of the Defendant,
Springs Industries, Inc.:
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
BY: EVELYN A. NORTON, ESQ.
The Ogletree Building
300 North Main Street
Suite 500
Greenville, South Carolina 29601
864-271-1300
evelyn.norton@ogletree.com

On behalf of the Defendant,
Crane Company:
K&L GATES, LLP
BY: CHRISTOPHER JAROS, ESQ.
134 Meeting Street
Suite 500
Charleston, South Carolina 29401
843-579-5600
christopher.jaros@klgates.com
cranecodepo@klgates.com

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On behalf of the Defendant,
Starr Davis Companies:

PIERCE SLOAN WILSON KENNEDY & EARLY, LLC
BY: BENJAMIN C. SMOOT, II, ESQ.
The Blake-Grimke House
321 East Bay Street
Charleston, South Carolina 29401
843-722-7733
bensmoot@piercesloan.com

On behalf of the Defendant,
DuPont:

NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: DELL P. CHAPPELL, ESQ.
Meridian
17th Floor
1320 Main Street
Columbia, South Carolina 29201
803-255-9428
dell.chappell@nelsonmullins.com

On behalf of the Defendant,
The Gorman-Rupp Company, FMC Corporation on behalf of its former Chicago Pump and Peerless Pump businesses, Fluor Enterprises, Inc., Fluor Daniel Services Corporation, Fluor Constructors International, Inc.:

HAYNSWORTH SINKLER BOYD, PA
BY: SCOTT E. FRICK, ESQ.
One North Main Street
2nd Floor
Greenville, South Carolina 29601
864-240-3269
sfrick@hsblawfirm.com

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On behalf of the Defendant, AstenJohnson:

ROGERS TOWNSEND & THOMAS, PC
BY: E. DOUGLAS PRATT-THOMAS, ESQ.
177 Meeting Street
Suite 320
Charleston, South Carolina 29401
843-737-8668
douglas.pratt-thomas@rtt-law.com

On behalf of the Defendants, Goulds Pumps, LLC, Grinnell, LLC, ITT, LLC, DeZurik, Inc., & Sulzer Pumps (US), Inc.:

NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: ROBERT O. MERIWETHER, ESQ.
Meridian
17th Floor
1320 Main Street
Columbia, South Carolina 29201
803-255-9469
robert.meriwether@nelsonmullins.com

On behalf of the Defendant, Newco Valves, LLC, Velan Valve Corp., & Warren Pumps, LLC:

FOX ROTHSCHILD, LLP
BY: TIMOTHY PECK, ESQ.
300 N. Greene Street
Suite 1400
Greensboro, North Carolina 27401
336-378-5200
tpeck@foxrothschild.com

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On behalf of the Defendants, Armstrong International, Newco Valves, Velan Valves, Warren Pumps, Ingersoll-Rand, Gardner Denver, Viking Pump:

FOX ROTHSCHILD, LLP
BY: STEPHANIE G. FLYNN, ESQ.
2 W. Washington St.
Suite 1100
Greenville, South Carolina 29601
864-751-7607
sgflynn@foxrothschild.com

On behalf of the Defendant, Flowserve US, Inc.:

ROBINSON GRAY STEPP & LAFFITTE, LLC
BY: RACHEL M. HUTCHENS, ESQ.
1310 Gadsden Street
Columbia, South Carolina 29211
803-929-1400
rhutchens@robinsongray.com

APPEARANCE BY PHONE:
On behalf of the Defendant, Resolute FP US, Inc.:

REEG LAWYERS, LLC
BY: KURTIS B. REEG, ESQ.
939 N. Clay Avenue
Kirkwood, Missouri 63122
314-574-2287
kreeg@reeglawfirm.com

APPEARANCE BY PHONE:
On behalf of the Defendant, Covil Corporation:

ELLIS & WINTERS, LLP
BY: STEVEN A. SCOGGAN, ESQ.
300 North Greene Street
Suite 800
Greensboro, North Carolina 27401
336-389-5684
steven.scoggan@elliswinters.com

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APPEARANCE BY PHONE:
On behalf of the Defendant, Spirax Sarco, Inc.:

EVERT WEATHERSBY HOUFF
BY: ANDREW S. ROGERS, ESQ.
3455 Peachtree Road NE
Suite 1550
Atlanta, Georgia 30326
678-651-1200
asrogers@ewhlaw.com

ALSO PRESENT:

DEANDRE SHIVERS, Videographer

VIDEOTAPED DEPOSITION OF DAVID DWAYNE ROLLINS, a witness called on behalf of plaintiff, before Sandra Berkeland, Notary Public, in and for the State of South Carolina, at Wingate by Wyndham Rock Hill, 760 Galleria Boulevard, Rock Hill, South Carolina, on Thursday, the 6th day of June, 2019, commencing at 9:54 a.m.

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MR. HOLDER: Good morning. This is Jonathan Holder, counsel for the Rollins family, the plaintiffs in this action. I just wanted to put on some stipulations before we get going with the deposition of Mr. Rollins this morning.

First, this deposition is being taken pursuant to South Carolina rules of civil procedure and evidence. All objections as to form of the question are reserved for the time of trial, and an objection for one counsel can be good for all counsel present and on the phone.

Defense counsel may have some other specific objections they'd like to place on the record before we get started. Defense counsel?

MR. FRICK: This is Scott Frick. Defendants are reserving all rights including any objections and defenses based on lack of service and personal jurisdiction. Thank you.

MS. TROILLEY: Alison Troilley for MOR PPM, Incorporated. We have not yet filed our response to the complaint but we just want to state on the record that we're not waiving any defenses by appearing today.

DEFENSE COUNSEL: Just so it's clear for all defendants, the objection made by Scott is applicable

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EXHIBIT 9

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AMENDED EXHIBIT 6 TO OCT. 13, 2010 ASBESTOS MASTER DISCOVERY/SCHEDULING ORDER

In light of other asbestos trial settings, counsel is expected to cooperate in scheduling the various events, particularly depositions, addressed in this Order. The parties may modify these deadlines by agreement, and the court may suspend any of these deadlines in cases with a living mesothelioma Plaintiff or other appropriate circumstances.

45 days after filing Complaint

(a) Plaintiff shall answer Master Discovery. Plaintiff shall be under a continuing duty to supplement discovery responses as necessary.

(b) Plaintiff shall provide copies of all medical records in Plaintiff's possession, custody or control. Plaintiff shall provide defendants with the necessary authorizations to gather medical records.

FILED-CLERK OF COURT
2025 JUN 05 PM 4 00
GREENVILLE CO. S.C.
PAUL BOWSKENSIMER

75 days after filing Complaint

(a) Plaintiff deposition to be completed, if health permits.

(b) If Plaintiff's deposition occurs before Master Discovery responses are due, or have been provided to defendants, Plaintiff must provide defendants a work history sheet, any known testimony or discovery from Plaintiff in a previous asbestos related case, and all available medical and social security records at least two business days prior to deposition.

(c) Plaintiff shall provide all pathology materials already available to Plaintiff to the defense liaison as well as authorizations for pathology. No alteration or destruction of any pathology materials may occur without agreement of all parties or a court order. Pathology must be returned to Plaintiff within 60 days of receipt. In the event any defendant receives pathology before the Plaintiff, it should be produced to Plaintiff's counsel within the week it is received. Plaintiff must return the pathology to the defense liaison within 60 days of receipt.

45 days after Defendant's Answer is filed

(a) Defendant shall answer Master Discovery. Defendant shall be under a continuing duty to supplement discovery responses as necessary.

105 days after filing Complaint

(a) Plaintiff shall designate all fact witnesses expected to be called at trial. The designation should include a brief summary of expected testimony, whether the witness is a co-worker, family member, treating physician, or other fact witness. This list may be supplemented up to five days before the deadline to depose all Plaintiff's fact witnesses.

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(b) Plaintiff shall designate all expert witnesses expected to be called at trial. The designation should include a brief summary of the anticipated testimony. This list may be supplemented up to five days before the deadline to depose all Plaintiff's expert witnesses.

125 days after filing Complaint

(a) Counsel for Defendants shall designate all fact witnesses expected to be called at trial. The designation should include a brief summary of expected testimony, whether the witness is a co-worker, family member, treating physician, or other fact witness. This list may be supplemented up to five days before the deadline to depose Defendant's fact witnesses.

(b) Counsel for Defendants shall designate all expert witnesses and any of the Plaintiff's treating physicians expected to be called at trial. The designation should include a brief summary of the anticipated testimony. This list may be supplemented up to five days before the deadline to depose all Defendant's expert witnesses.

The following deadlines must be followed and met once the Court has assigned a trial date:

70 days before trial

(a) Depositions of Plaintiff's fact witnesses with the exception of family members who do not have product identification testimony who may be deposed up until the close of discovery or later if by agreement.

(b) Deposition of Defendants' fact witnesses completed, with the exception of Defendant's 30(b)(6) witnesses.

55 days before trial

(a) Defendants to file and serve dispositive motions.

45 days before trial

(a) Depositions of Plaintiff's expert witnesses completed.

(b) Depositions of Defendants' 30(b)(6) witnesses completed. This deadline can be extended by agreement with counsel for Plaintiff and the counsel for deponent.

30 days before trial

(a) Plaintiffs to file and serve response to Defendants' dispositive motions.

(b) Depositions of Defendants' expert witnesses completed.

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(c) Mediation completed. Each party shall have a person with final settlement authority present at the deposition, or accessible at all times by phone during the entire mediation.

(d) All discovery completed.

20 days before trial

(a) Defendants to file and serve Reply to Plaintiff's Response to Defendants' dispositive motions.

14 days before trial

(a) Parties to exchange final list of all witnesses to be called at trial.

7 days before trial

(a) Parties to exchange final exhibit lists. Exhibits are to be made available for exchange electronically on this date, upon request.

(b) Parties are to file Motions in Limine.

(c) Page/Line designations to be exchanged.

3 days before trial

(a) Parties to exchange any objections and counter page/line designations of depositions to be read at trial.

1 day before trial

(a) Parties to exchange any objections to counter page/line designations and any final counter-designations.

IT IS SO ORDERED.

D. Garrison Hill
Circuit Judge

June 25, 2015
Greenville, SC

EXHIBIT 10

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Morgan Lewis

1000 Louisiana Street
Suite 4000
Houston, TX 77002

TO:

Brady Yntema
David Harris
Goldberg Segalla
P.O. Box 727
Buffalo, NY 14201

Received
FEB 06 2020
CMR

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Morgan Lewis

Gabrielle R. Gonzalez
Legal Practice Assistant
+1.713.890.5126
gabrielle.gonzalez@morganlewis.com

February 3, 2020

Frank Benedek
Vice President, Claims
Penn National Insurance
2 North 2nd Street
Harrisburg, PA 17101

Boyd Wright
Senior Claims Examiner
Penn National Insurance
3200 Northline Avenue, Suite 300
Greensboro, NC 27408

Brady Yntema
David Harris
Goldberg Segalla
701 Green Valley Road, Suite 310
Greensboro, NC 27408

Brady Yntema
David Harris
Goldberg Segalla
P.O. Box 727
Buffalo, NY 14201

Re: *David D. Rollins v. Air & Liquid Systems Corporation, et al.*

Dear Counsel:

Please find a copy of the complaint in the above-referenced asbestos bodily injury lawsuit filed against Covil Corporation ("Covil").

Covil hereby tenders this suit to Pennsylvania National Mutual Casualty Insurance Company ("Penn National") for defense and indemnity, pursuant to the terms and conditions of the insurance policies issued to and/or covering Covil. We request Penn National to immediately advise in writing whether Penn National will accept Covil's tender of this suit and will provide a full and complete defense of this matter. Failure to respond will be deemed a denial of the contractual duties owed by Penn National to Covil.

We look forward to hearing from you shortly.

Sincerely,

Gabrielle R. Gonzalez
Legal Practice Assistant

Enclosure

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EXHIBIT 11

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ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

From: Yntema, Brady A.
Sent: Thursday, February 13, 2020 3:17 PM
To: 'Peter Protopapas'
Cc: Lindsay Valek; Jescelyn Spitz; Chisholm, Sylvia; Harris, David G.
Subject: RE: Rollins v Covil and Ashworth v. Covil

Thank you for notifying me as to the mediation date, which is the first notice of the mediation date that we/Penn National has received in these matters as they were tendered to Penn National less than 15 business days ago. I will forward this notice to my client for discussion. In the meantime, please do not hesitate to contact me with respect to this matter.

Regards,

Brady

Brady A. Yntema, Esq. | **Partner**
DIRECT 336.419.4904 | EXT 4904 | MOBILE 336.908.1946
701 Green Valley Road | Suite 310 | Greensboro, NC 27408

From: Peter Protopapas
Sent: Monday, February 10, 2020 6:36 PM
To: Yntema, Brady A.
Cc: Lindsay Valek ; Jescelyn Spitz
Subject: Rollins v Covil and Ashworth v. Covil

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Mr. Yntema

It is my understanding that I am to communicate with you in regard to claims against Covil that implicate Penn National's insurance coverage.

I write to advise Penn National that there is a mediation scheduled on February 25, 2020 in Charleston South Carolina in the cases of Rollins and Ashworth.

To date, Zurich has hired Ellis & Winters to defend Covil. During the course of the defense, Ellis & Winters has identified a number of exposures to asbestos that potentially implicate the Penn National policy period. Please advise if you wish access to Ellis & Winters information and if so, if your client will participate in the defense costs that Zurich has borne to date.

The trial judge for this matter requires that insurance companies attend mediations with full settlement authority. This requirement is echoed in South Carolina's ADR rules. Judges in South Carolina have sanctioned defendants/insurers that fail to comply with the ADR rules. Attached is an order granting sanctions for failure to participate in a mediation in a non-asbestos case.

To the extent that you have any questions, please feel free to contact me. Otherwise, please protect your insured.

Best regards

Peter D. Protopapas

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EXHIBIT 12

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North Carolina Claims Service Office
Penn National Insurance Claims Central Imaging
P.O. Box 1961
Harrisburg, PA 17105-1961
800-877.7366 phone
866.496.4764 fax

www.pennnationalinsurance.com

PENN NATIONAL INSURANCE

February 14, 2020

Peter Protopapas
Rikard & Protopapas
P.O. Box 5640
Columbia, SC 29250

RE: Nell Ashworth, Individually and as Personal Representative of the Estate of Robert J Ashworth v. Covil Corporation, Inc., et al
Hampton County SC Court of Common Pleas
Case # 2019 CP 2500325

David D Rollins v. Covil Corporation, Inc., et al
Hampton County SC Court of Common Pleas
Case # 2019 CP 2500118

Our Insured : Covil Corporation, Inc.
Claim # : pending

Dear Mr. Protopapas:

Penn National Mutual Casualty Insurance Company ("Penn National") received notice from your office of the above referenced pending litigation on January 27, 2020. Covil Corporation, Inc. ("Covil") counsel at Morgan Lewis in Houston, TX also provided copies of this litigation on February 6, 2020.

We were informed on February 13, 2020 by your office that mediation on the Ashworth and Rollins matters is set for February 25, 2020 in Charleston, SC. Your office did not provided any information on who defends Covil in these pending matters, nor was the time, location or name of mediator provided.

Penn National was able to locate and contact assigned defense counsel, whom we understand was engaged by another Covil insurer(s). We have requested copies of the discovery obtained to date on these cases for our review and evaluation.

However, since Penn National is unable to evaluate coverage in lieu of the limited information presently in our possession, attached you will find a Non-Waiver Agreement. The Non-Waiver Agreement is to be executed by you as Covil's Receiver and returned to our office in the enclosed envelope. An additional copy is provided for your records.

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In the interim, if there are any questions or need further assistance, please feel free to contact the undersigned. Thank you for your attention to this matter.

Sincerely,
Penn National Insurance

Boyd Wright
CPCU, ARM-P, AIC, AMIM
HO Senior Claim Examiner
1.800.877.7366 x 4297
1.866.496.4764 fax

enclosures

Cc:

Gabrielle Gonzalez
Morgan Lewis & Bockius
1000 Louisiana Street
Houston, TX 77002

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PENN NATIONAL INSURANCE

NON-WAIVER AGREEMENT

Claim # Pending

WHEREAS, Covil Corporation, Inc. of Greenville, SC (bankrupt entity), hereinafter called the Assured, holds a policy of insurance No. 525 502853 7 and 525 502853 8 issued by Penn National Mutual Casualty Insurance Company Harrisburg, PA, hereinafter called the Company, and the plaintiffs allege exposure to asbestos occurred at an unknown date and time in the matter of Robert Ashworth (case # 2019-CP-2500325) and David Rollins (case # 2019-CP-2500118) litigation filed in Hampton County, South Carolina Court of Common Pleas, in connection with which the said Assured is claiming coverage under the said policy, but the said Company contends, or may later contend, that the Assured is not entitled to such coverage in view of the fact that the claims were first tendered on January 27, 2020 and coverage has not been determined.

AND WHEREAS it appears that the interests of both the Assured and the Company may be better served and protected by an investigation of the facts and/or entering of defense on behalf of the Assured: Covil Corporation, Inc.

NOW, THEREFORE, it is understood and agreed between the Assured and the Company that the Company may, by its representative,

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proceed to investigate the said accident or undertake the defense of any suit resulting from the said accident, without prejudice to the rights of the said Company, and that no action heretofore or hereafter taken by the Company shall be construed as a waiver of the right of the Company, if in fact it has such right, to deny liability and withdraw from the case: also, that by the execution of this agreement the Assured does not waive any rights under this policy.

Executed in duplicate this _____day of _____, 20___.

By

SR HO CLAIM EXAMINER
Penn National Mutual Casualty Insurance Co.
COMPANY

_____
Covil Corporation, Inc. (Receiver Court appointed)
ASSURED

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. In Virginia, insurance benefits may also be denied.

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EXHIBIT 13-1

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SPECIAL MULTI-PERIL POLICY
NON-ASSESSABLE

PENNSYLVANIA NATIONAL...
Mutual Casualty
INSURANCE COMPANY
THIRD DERRY STREET, HARRISBURG, PENNSYLVANIA 17105

POLICY NO. 91 5 GL 2 6 5 3 7

ZERO #016
Covil Corporation, Inc. (See 70-53)
P O Box 1804
Greenville, Greenville, SC 29602

NEW | PLAN 99 | SYM 2 3 | NO. 1793 | EMPLOYEE NUMBER 6567

ITEM 2. POLICY PERIOD FROM 3-31-86 TO 3-31-87
12:01 AM STANDARD TIME AT LOCATION OF DESIGNATED PREMISES

AGENCY: Sam J Crain & Co., Inc.
AGENCY NUMBER 22 6729
ISSUANCE DATE 4-14-86 mt
PRODUCER ID

In consideration of the premium insurance is provided the named insured with respect to the designated premises shown in item 4 below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:

3 Policy Period: Annual, unless otherwise stated: The Named Insured is ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other:

4 Designated Premises (Form, Town, State, Location as Item 1 Above) | Tax Dist. | Occupancy of Premises
See MP1205 | | See MP1205
Multiple Locations or Premises as designated on Supplemental Declarations attached

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

	COVERAGES	Deductible Amount	LIMITS OF LIABILITY			
SECTION I PROPERTY COVERAGE	Building(s)	$	$		$	$
	Personal Property of the Insured	$	See MP1205		$	$
	Personal Property of Others	$	$		$	$
	All Other (Specify)					

Coverage Code: See 70-16

SECTION II LIABILITY COVERAGE					
	Bodily Injury and Property Damage Liability Combined Single Limit	$ 1,000,000	each occurrence	$ 1,000,000	aggregate
	Bodily Injury Liability	$	each occurrence	$	aggregate
	Property Damage Liability	$	each occurrence	$	aggregate
	Premises Medical Payments	$ 1,000	each person	$ 10,000	each accident
	Auto Use (Specify)				

SECT. III: PI-1 CRIME COVERAGE XX
SECT. IV: MOBILE AND MACHINERY COVERAGE ☐
As stated in the endorsement made part of this Policy if indicated by ☒

6 Forms and Endorsements in force as of date of this policy at time of issue (other than above)
a Section I - Forms and Endorsements only: MP0315(4/80) MP0090(7/77) MP0127(12/79) IL0018(10/84) MP0013(10/83) 70-53 MP0014(10/83) MP0420(1/83) 70-627 70-640 70-16 No 520(9/65)
b Section II - Forms and Endorsements only: GL0104(7/66) GL991R(3/83) GL0032(4/84) GL2133(2/85) 70-1656(7/85) GL0031(4/84) CGL-1 MP-1 PI-1 GL0300(7/81) 70-260 73-3010
c Section III - Forms and Endorsements only: MP0450(12/79) MP5231(7/77) MP0307(7/77)
d Section IV - Forms and Endorsements only

7 Mortgagee: Bldg 1)Community Bank, P O Box 6807 Greenville, SC 29602

8 Due Total Advance Premium is $ 35,268 and is payable $ 35,268 at inception, and $ XXXXXXXXXX at each anniversary.
If boxes indicated by an X in the box below as "NOT APPLICABLE", the premium for installments subsequent to the initial installment shall be subject to adjustment on the basis of the rates in effect at each anniversary date. ☐ NOT APPLICABLE

THIS POLICY PROVIDES LIMITED COVERAGE FOR POLLUTION LIABILITY. READ YOUR POLICY CAREFULLY.

Authorized Agent

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SCHEDULE Policy No.

GENERAL LIABILITY HAZARDS

DESCRIPTION OF HAZARDS	CODE NO.	PREMIUM BASES	RATES		ADVANCE PREMIUM	
			BODILY INJURY	PROPERTY DAMAGE	BODILY INJURY	PROPERTY DAMAGE
Premises—Operations	Indicate Subline	(a) Area (sq. ft.) (b) Frontage (c) Remuneration (d) Receipts (e) No. Units	(a) Per 100 sq. ft. of Area (b) Per linear ft. (c) Per $100 of Remuneration (d) Per $100 of Receipts (e) Per Unit			
Escalators (Number at Premises)	Subline 314	Number Insured	Per Landing			
Independent Contractors	Subline 315	Cost	Per $100 of Cost			
Products/Completed Operations	Subline 316	(a) Receipts	(a) Per $1,000 of Receipts			
				Total Advance B.I. and P.D. Premiums		
				Total Advance Premium		$

Location of all premises owned by, rented to or controlled (ENTER "SAME" IF SAME AS ITEM 1. OF DECLARATIONS) by the **named insured**

Interest of **named insured** in such premises "OWNER", "GENERAL LESSEE" OR "TENANT"

Part occupied by **named insured**

The foregoing discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein.

When used as a premium basis:

"admissions" means the total number of persons, other than employees of the **named insured**, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;

"cost" means the total cost to the **named insured** with respect to operations performed for the **named insured** during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;

"receipts" means the gross amount of money charged by the **named insured** for such operations by the **named insured** or by others during the policy period as are a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the **named insured** collects separate item and remits directly to a governmental division;

"remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the **named insured**, other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the company;

"sales" means the gross amount of money charged by the **named insured** or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the **named insured** and such others collect as a separate item and remit directly to a governmental division.

Form CGL-1 Rev. 11-85

INSURING AGREEMENT

I. **COVERAGE A—BODILY INJURY LIABILITY**
COVERAGE B—PROPERTY DAMAGE LIABILITY

The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of

Coverage A. **bodily injury** or

Coverage B. **property damage**

ch this insurance applies, caused by an **occurrence**, and the company shall e right and duty to defend any suit against the **insured** seeking damages on t of such **bodily injury** or **property damage**, even if any of the allegations of suit are groundless, false or fraudulent, and may make such investigation and s ement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

(a) to liability assumed by the **insured** under any contract or agreement except an **incidental contract**; but this exclusion does not apply to a warranty of fitness or quality of the **named insured's products** or a warranty that work performed by or on behalf of the **named insured** will be done in a workmanlike manner;

(b) to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of

(1) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**, or

(2) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**;

but this exclusion does not apply to the parking of an **automobile** on premises owned by, rented to or controlled by the **named insured** or the ways immediately adjoining, if such **automobile** is not owned by or rented or loaned to any **insured**;

(c) to **bodily injury** or **property damage** arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to **bodily injury** or **property damage** arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to any **insured**;

(e) to **bodily injury** or **property damage** arising out of the owner p, maintenance, operation, use, loading or unloading of

(1) any watercraft owned or operated by or rented or loa to any **insured**, or

(2) any other watercraft operated by any person in th urse of his employment by any **insured**;

(over)

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COMPREHENSIVE GENERAL LIABILITY INSURANCE COVERAGE PART

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

HARRISBURG, PENNSYLVANIA

SCHEDULE

Policy No.

GENERAL LIABILITY HAZARDS

DESCRIPTION OF HAZARDS	CODE NO.	PREMIUM BASES	RATES		ADVANCE PREMIUM	
			BODILY INJURY	PROPERTY DAMAGE	BODILY INJURY	PROPERTY DAMAGE
Premises--Operations	Subline Symbol	(a) Area, sq. ft. (b) Frontage (c) Remuneration (d) Receipts (e) No. Units	(a) Per 100 sq. ft. of Area (b) Per linear ft. (c) Per $100 of Remuneration (d) Per $100 of Receipts (e) Per Unit			
See 70-260					18,192	Incl
Escalators (Number of Premises)	Subline 314	Number Insured	Per Landing			
Cov Subj to Audit						
Independent Contractors	Subline 315	Cost	Per $100 of Cost			
Construction operations-contractor not railroads-excluding operations on board ships Loc 1)T39-999	16291	3,000,000	.044	Incl.	1320.	Incl.
Products/Completed Operations	Subline 316	(a) Receipts	(a) Per $1,000 of Receipts			
Excluded						
			Total Advance B I and P D Premiums		19512	Incl.
			Total Advance Premium		$ 19512	

Location of all premises owned by, rented to or controlled (ENTER "SAME" IF SAME AS ITEM 1. OF DECLARATIONS) by the named insured ~~See NP1205~~

Interest of named insured in such premises ~~Owner~~ "OWNER", "GENERAL LESSEE" OR "TENANT"

Part occupied by named insured ~~Entire~~

The foregoing discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein.

When used as a premium basis:

"admission" means the total number of persons other than employees of the named insured, admitted to the insured premises or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes.

"cost of work" means the total cost to the named insured with respect to operations performed for the named insured during the policy period by independent contractors of all work let or sublet in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractors, including all fees, allowances, bonuses or extras made, paid or due.

"receipts" means the gross amount of money charged by the named insured for such operations performed by the named insured or by others during the policy period as are included in gross receipts from billings, bookkeeping or similar systems, and includes taxes, other than taxes which the named insured collects as a separate item and remits directly to a governmental division.

"remuneration" means the entire remuneration earned during the policy period by all employees of the named insured, other than executive officers, except salaries, wages, overtime pay and bonuses paid to clerical office employees, and all compensation subject to any excluded classification rate applicable in accordance with the classifications and rules of the company.

"sales" means the gross amount of money charged by the named insured or by others trading under his name, including the cash value of all goods and products sold or distributed during the policy period and charged during the policy period to customers, excluding only the amount of any sales or excise taxes which the named insured are such others collect as a separate item and remit directly to a governmental division.

Form GL 0001 (Nov 11 84)

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but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the **named insured**;

(f) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(g) to **bodily injury** or **property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to

(1) liability assumed by the **insured** under an **incidental contract**, or

(2) expenses for first aid under the Supplementary Payments provision;

(h) to **bodily injury** or **property damage** for which the **insured** or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed

(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (ii) of this exclusion does not apply with respect to liability of the **insured** or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the **insured** or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** or to any obligation of the **insured** to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the **insured** under an **incidental contract**;

(k) to **property damage** to

(1) property owned or occupied by or rented to the **insured**,

(2) property used by the **insured**, or

(3) property in the care, custody or control of the **insured** or as to which the **insured** is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to **property damage** (other than to **elevators**) arising out of the use of an **elevator** at premises owned by, rented to or controlled by the **named insured**;

(l) to **property damage** to premises alienated by the **named insured** arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the **named insured** of any contract or agreement, or

(2) the failure of the **named insured's products** or work performed by or on behalf of the **named insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **named insured**;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **named insured's products** or work performed by or on behalf of the **named insured** after such products or work have been put to use by any person or organization other than an **insured**;

(n) to **property damage** to the **named insured's products** arising out of such products or any part of such products;

(o) to **property damage** to work performed by or on behalf of the **named insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **named insured's products** or work completed by or for the **named insured** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to **property damage** included within:

(1) the **explosion hazard** in connection with operations identified in this policy by a classification code number which includes the symbol "x",

(2) the **collapse hazard** in connection with operations identified in this policy by a classification code number which includes the symbol "c",

the **underground property damage hazard** in connection with operations identified in this policy by a classification code number which includes the symbol "u".

II. PERSONS INSURED

Each of the following is an **insured** under this insurance to the extent set forth below:

(a) if the **named insured** is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the **named insured** with respect to the conduct of such a business;

(b) if the **named insured** is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the **named insured** is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an employee of the **named insured**) or organization while acting as real estate manager for the **named insured**; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of **mobile equipment** registered under any motor vehicle registration law

(i) an employee of the **named insured** while operating any such equipment in the course of his employment, and

(ii) any other person while operating with the permission of the **named insured** any such equipment registered in the name of the **named insured** and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided that no person or organization shall be an **insured** under this paragraph (e) with respect to:

(1) **bodily injury** to any fellow employee of such person injured in the course of his employment, or

(2) **property damage** to property owned by, rented to, in charge of or occupied by the **named insured** or the employer of any person described in subparagraph (i).

This insurance does not apply to **bodily injury** or **property damage** arising out of the conduct of any partnership or joint venture of which the **insured** is a partner or member and which is not designated in this policy as a **named insured**.

III. LIMITS OF LIABILITY

Regardless of the number of (1) **insureds** under this policy, (2) persons or organizations who sustain **bodily injury** or **property damage**, or (3) claims made or suits brought on account of **bodily injury** or **property damage**, the company's liability is limited as follows:

Coverage A—The total liability of the company for all damages, including damages for care and loss of services, because of **bodily injury** sustained by one or more persons as the result of any one **occurrence** shall not exceed the limit of **bodily injury** liability stated in the declarations as applicable to "each **occurrence**".

Subject to the above provision respecting "each **occurrence**", the total liability of the company for all damages because of (1) all **bodily injury** included within the **completed operations hazard** and (2) all **bodily injury** included within the **products hazard** shall not exceed the limit of **bodily injury** liability stated in the declarations as "aggregate".

Coverage B—The total liability of the company for all damages because of all **property damage** sustained by one or more persons or organizations as the result of any one **occurrence** shall not exceed the limit of **property damage** liability stated in the declarations as applicable to "each **occurrence**".

Subject to the above provision respecting "each **occurrence**", the total liability of the company for all damages because of all **property damage** to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of **property damage** liability stated in the declarations as "aggregate":

(1) all **property damage** arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including **property damage** for which liability is assumed under any **incidental contract** relating to such premises or operations, but excluding **property damage** included in subparagraph (2) below;

(2) all **property damage** arising out of and occurring in the course of operations performed for the **named insured** by independent contractors and general supervision thereof by the **named insured**, including any such **property damage** for which liability is assumed under any **incidental contract** relating to such operations, but this subparagraph (2) does not include **property damage** arising out of maintenance or repairs at premises owned by or rented to the **named insured** or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) all **property damage** included within the **products hazard** and all **property damage** included within the **completed operations hazard**.

Such aggregate limit shall apply separately to the **property damage** described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the **named insured**.

Coverages A and B—For the purpose of determining the limit of the company's liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

IV. POLICY TERRITORY

This insurance applies only to **bodily injury** or **property damage** which occurs within the **policy territory**.

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

EXTENSION SCHEDULE

Policy No.

GENERAL LIABILITY HAZARDS

DESCRIPTION OF HAZARDS Premises — Operations	CODE NO.		PREMIUM BASES (a) Area (sq. ft.) (b) Frontage (c) Remuneration (d) Receipts (e) No. Units	RATES Bodily Injury (a) Per 100 sq. ft. of Area (b) Per linear ft. (c) Per $100 of Remuneration (d) Per $100 of Receipts (e) Per Unit	RATES Property Damage	ADVANCE PREMIUMS Bodily Injury	ADVANCE PREMIUMS Property Damage
Insulation work-installation or application of accoustical or thermal insulating material in buildings or within building walls-NOC							
Loc 1) T39-999	(313)	15161	c)800,000	.679	Incl	5432	Incl
Loc 2)T09-999	(313)	15161	c)70,000	2.203	Incl	1542	Incl
Loc 3)T32-999	(313)	15161	c)600,000	1.436	Incl	8616	Incl
Loc 4)T10-999	(313)	15161	c)80,000	1.929	Incl	1543	Incl
Loc 5) T16-999	(313)	15161	c)If Any	1.304	Incl	--	
Loc 6) T41-999	(313)	15161	c)10,000	1.502	Incl	150	Incl
Loc 7) T45-999	(313)	15161	cOIf Any	1.493	Incl	--	--
Loc 8) T23-999	(313)	15161	c)If Any	1.107	Incl	--	--
Contractors Construction or Erection-executive supervisors exercising supervision through superintendents and foremen--not direct supervision							
Loc 1)T39-999	(313)	15192	c)26,000	1.297	Incl	337.	Incl
Loc 2)T09-999	(313)	15192	c)If Any	8. 691	Incl	--	--
Loc 3)T32-999	(313)	15192	c)if Any	2.352	Incl	--	--
Loc 4)T10-999	(313)	15192	c)If Any	3.659	Incl	--	--
Loc 9)T01-999	(313)	15192	c)If Any	8.451	Incl	--	--
Air Conditioning, Heating or Refrigeration Systems or Combined heating and Air cond Systems including duct work and piping-installation, servicing or repair-including shop and repair-including shop and retail stores or display rooms							
Loc 1)T39-999		17140	c)50,000	1.144	Incl	572.	Incl.
Paper Hanging							
Loc 1) T39-999	(313)	17235	c)If Any	.928	Incl	--	
Loc 3)T32-999	(313)	17235	c)if Any	2.844	Incl	--	--
Loc 4)T10-999	(313)	17235	c)If Any	1.869	Incl	--	--
Loc 9)T01-999	(313)	17235	c)If Any	3 570	Incl	--	--

Form 79-260

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PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

HARRISBURG, PENNSYLVANIA

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SCHEDULE

General—Automobile Liability Policy No. ____

COVERAGE	LIMITS OF LIABILITY
P. Personal Injury Liability	$ 1,000 ,000 aggregate

The insurance afforded is only with respect to personal injury arising out of an offense included within such of the following groups of offenses as are indicated by specific premium charge or charges.

GROUPS OF OFFENSES	ADVANCE PREMIUM
A. False Arrest, Detention or Imprisonment, or Malicious Prosecution	$ 910
B. Libel, Slander, Defamation or Violation of Right of Privacy	$
C. Wrongful Entry or Eviction or Other Invasion of Right of Private Occupancy	$

Insured's Participation 0 %

Minimum Premium $ N/A

Total Advance Premium $ 910

Form PJ-1 Ed. 10-1-66 Rev. 1-1-73

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PREMISES MEDICAL PAYMENTS INSURANCE COVERAGE PART

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

HARRISBURG, PENNSYLVANIA

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SCHEDULE

General—Automobile Liability Policy No.

	COVERAGE	ADVANCE PREMIUM
(a) Premises and operations	15161, 15192, 17140, 17235	$ 66.
(b) Escalators		$
(c) Sports activities		$
	Total Advance Premium	$ 66.

I COVERAGE E—PREMISES MEDICAL PAYMENTS

The company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **named insured** is afforded coverage for **bodily injury** liability under this policy.

Exclusions

This insurance does not apply:

(a) **to bodily injury**

(1) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**, or

(ii) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**;

but this exclusion does not apply to the parking of an **automobile** on the **insured premises**, if such **automobile** is not owned by or rented or loaned to any **insured**;

(2) arising out of (i) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (ii) the operation or use of any snowmobile or trailer designed for use therewith;

(3) arising out of the ownership, maintenance, operation, use, loading or unloading of

(i) any watercraft owned or operated by or rented or loaned to any **insured**, or

(ii) any other watercraft operated by any person in the course of his employment by any **insured**;

but this exclusion does not apply to watercraft while ashore on the **insured premises**; or

(4) arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to any **insured**.

(b) **to bodily injury**

(1) included within the **completed operations hazard** or the **products hazard**;

(2) arising out of operations performed for the **named insured** by independent contractors other than (i) maintenance and repair of the **insured premises** or (ii) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage (i) in violation of any statute, ordinance or regulation, (ii) to a minor, (iii) to a person under the influence of alcohol or (iv) which causes or contributes to the intoxication of any person, if the **named insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the **named insured** is such an owner or lessor;

(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

(c) **to bodily injury**

(1) to the **named insured**, any partner thereof, any tenant or other person regularly residing on the **insured premises** or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;

(2) to any other tenant if the **bodily injury** occurs on that part of the **insured premises** rented from the **named insured** or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the **insured premises** and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the **insured premises** or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such **bodily injury** are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest unless a premium charge is entered for sport activities in the policy with respect to Premises Medical Payments Coverage;

(6) to any **medical expense** for services by the **named insured**, any employee thereof or any person or organization under contract to the **named insured** to provide such services.

II LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage stated in the declarations as applicable to "each person" is the limit of the company's liability for all **medical expense** for **bodily injury** to any one person as the result of any one accident, but subject to the above provision respecting "each person", the total liability of the company under Premises Medical Payments Coverage for all **medical expense** for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the declarations as applicable to "each accident".

When more than one medical payments coverage afforded by this policy applies to the loss, the company shall not be liable for more than the amount of the highest applicable limit of liability.

III ADDITIONAL DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

"**insured premises**" means all premises owned by or rented to the **named insured** with respect to which the **named insured** is afforded coverage for **bodily injury** liability under this policy, and includes the ways immediately adjoining on land;

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

IV POLICY PERIOD; TERRITORY

This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

V ADDITIONAL CONDITION

Medical Reports; Proof and Payment of Claim

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

Form MP 1 Ed. 10-1-66 Rev. [illegible]

SUPPLEMENTAL DECLARATIONS ENDORSEMENT

MP 12 05
(Ed. 07 77)

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

Loc. No.	Bldg. No.	DESIGNATED PREMISES (Address, City, State)	OCCUPANCY	SECTION I			
				COVERAGE	Forms and Endorsements Applicable	Coinsurance Percentage Applicable	Limits of Liability ($)
1	1	131 Pinsley Circle Berea Ind Park Greenville, Greenville, SC 29611	Office Whse	Bldg conts	MP0013 MP0014	80 80	893,000 900,000
1	2	Same as 1,1	Office Whse	Bldg Conts	MP0013 MP0014	80 80	5,000 2,000
2	1	Corner of 26th St and Lona St Jacksonville, Duvall, Fla.	Office warehouse	Bldg	MP0013	80	92,000
2	2	Same as 2,1	Office warehouse	Bldg	MP0013	80	131,000

MP 12 05 (Ed. 07 77)

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SOUTH CAROLINA AMENDATORY ENDORSEMENT
(Inland and Seacoast Territories)

MP 03 15
(Ed. 04 80)

The following clause is added with respect to coverage under Special Multi-Peril Policy:

General Building Form
Special Building Form
Builders' Risk Completed Value Form
Special Builders' Risk Completed Value Form
Condominium General Building Form
Condominium Special Building Form

Valuation Clause

With respect to loss to buildings insured against the perils of fire and lightning, the insured and the insurer:

(1) agree that the value of buildings described in this policy is as indicated in the schedule below, and

(2) fix the amount of insurance to be carried on the buildings in accordance with the schedule below.

AGREED VALUE OF BUILDINGS

Loc. No. 1	Bldg. No. 1	$ 893,000	Loc. No. 2	Bldg. No. 2	$ 131,000
Loc. No. 1	Bldg. No. 2	$ 5,000	Loc. No.	Bldg. No.	$
Loc. No. 2	Bldg. No 1	$ 92,000	Loc. No.	Bldg. No.	$

For Builders' Risk Completed Value Form and Special Builders' Risk Completed Value Form the Agreed Value of Buildings represents the value when completed.

This Endorsement must be attached to Change Endorsement when issued after the Policy is written.

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AMENDATORY ENDORSEMENT
PREJUDGMENT INTEREST

The following is added to the Supplementary Payments provision in this policy:

The Company will pay, in addition to the applicable limit of liability, prejudgment interest awarded against the **insured** on that part of the judgment the Company pays. If the Company makes an offer to pay the applicable limit of its liability, the Company will not pay any prejudgment interest based on that period of time after the offer.

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The Attaching Clause need be completed only when any of these endorsements are issued subsequent to preparation of the policy.

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

Policy Number . . . Effective . . . Expiring . . . Issued to . . .

Endorsement No. . . . Effective . . . Agent . . .

. . . Authorized Representative . . .

SPECIAL NAMED INSURED ENDORSEMENT

It is agreed that the person(s) or organization(s) named in the Declarations of this policy is(are) as follows:

Covil Corporation, Inc.
Covil Residential Insulation, Inc.
Covil Construction Co., Inc. (Dormant Corp)
C & J Realty Co., Inc. (Dormant Corp)
Industrial and Associated, Inc. (Dormant Corp)
John Hamrick Link - President
James P Covil-Vice President
Yvonne W Wells - Corporate Secretary and Tresurer
Charles McWhorter - Assistant Corporate Secretary

It is further agreed that all named insureds are owned and controlled by the same financial interest.

It is further agreed that the inclusion of more than one insured shall not operate to increase the limits of the Company's liability.

Form 70-53 (Rev. 4-84)

COINSURANCE CONTRACT

1987

REPLACEMENT COST COVERAGE ENDORSEMENT

MP 04 20
(Ed. 01 83)

This endorsement applies only with respect to the premises described in the following Schedule and affords insurance on a replacement cost basis only on the property described below

SCHEDULE

Location Of Premises Location No. Building No.	Property Covered on a Replacement Cost Basis (Specify Building or Personal Property of the Insured or both)
1, 1 1,2 2,1 2,2	Both

1. Replacement Cost Clause: The provisions of Section I of this policy applicable to the property described as covered on a replacement cost basis are amended to substitute the term "replacement cost (without deduction for depreciation)" for the term "actual cash value" wherever it appears in this policy, and the Coinsurance Clause of this endorsement supersedes and replaces all other Coinsurance Clauses otherwise applicable, subject in all other respects to the provisions of this endorsement and of Section I of this policy.
2. This policy does not cover the following property on a replacement cost basis:

   (a) stock (raw, in process or finished) or merchandise, including materials and supplies in connection therewith;

   (b) property of others;

   (c) household furniture or residential contents;

   (d) manuscripts;

   (e) paintings, etchings, pictures, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glassware and bric-a-brac, or other articles of art, rarity or antiquity.
3. The Company shall not be liable under this endorsement for any loss unless and until the damaged or destroyed property is actually repaired or replaced by the insured with due diligence and dispatch.
4. Coinsurance Clause: This Company shall not be liable for a greater proportion of any loss or damage to the property covered under this policy than the amount of liability under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the total of (a) the replacement cost (without deduction for depreciation) of that part of said property which is specifically described as covered on a replacement cost basis and (b) the actual cash value of that part of said property which is covered on an actual cash value basis at the time of loss.

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

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

   The value of property covered under Extensions of Coverage, and the cost of the removal of debris, shall not be considered in the determination of actual cash value or replacement cost when applying the Coinsurance Clause.
5. This Company's liability for loss on a replacement cost basis shall not exceed the smallest of the following amounts:

   (a) the amount of this policy applicable to the damaged or destroyed property;

   (b) the replacement cost of the property or any part thereof identical with such property on the same premises and intended for the same occupancy and use; or

   (c) the amount actually and necessarily expended in repairing or replacing said property or any part thereof.
6. The insured may elect to make claim under this policy in accordance with its provisions, disregarding this endorsement, except that the foregoing Coinsurance Clause shall apply, and the insured may make further claim for any additional liability brought about by this endorsement in accordance with its provisions, provided the Company is notified in writing within 180 days after loss of the insured's intent to make such further claim.

This Endorsement must be attached to Change Endorsement when issued after the Policy is written.

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

PENNSYLVANIA NATIONAL... Mutual Casualty INSURANCE COMPANY

DEDUCTIBLE ENDORSEMENT

		FIRE	ECE	VMM	AOP
Basis of Insurance	$	Full Coverage Rate			
Deductible Amount	$ See 70-16	Credit for Deductible Amount	See 70-16 %	See 70-16 %	See 70-16 %	See 70-16 %
Limit of Liability	$	Rate for Deductible Insurance after Credit			

1. Each claim for loss or damage (separately occurring) shall be adjusted separately and from each such adjusted claim the sum of the deductible specified above shall be deducted. In the event of any recovery and/or salvage on a loss which has been or is being or is about to be paid hereunder, such recovery and/or salvage shall accrue entirely to the benefit of this Company under this policy until the sum paid by them has been made up.

2. The deductible specified above shall apply separately to each:
   XX
   ☐ Occurrence
   ☐ Location (Indicate one) except
   ☐ Item

3. It is a condition of this policy that the deductible amount specified shall be solely at the risk of the insured, and shall not be covered under any other policy of insurance, except as provided in Paragraph 4.

4. No additional insurance shall be permitted unless permission is granted by the completion of the following:

   A. Permission is granted to carry additional insurance in the amount of $ applying to property situated at which shall be deemed to be concurrent insurance.

   B. When additional concurrent insurance is carried in accordance with Item A of this paragraph, the deductible amount specified herein shall apply to this policy, only to the extent of the pro rata proportion which this policy bears to the total permitted insurance.

   C. Additional insurance carried in accordance with the foregoing shall be added to the sum set forth in this policy as "Basis of Insurance" for the purpose of determining compliance with any coinsurance, contribution, average, or distribution clause.

   D. Additional insurance which is permitted by the terms of this endorsement shall not violate the conditions of Paragraph 3, whether or not such additional insurance contains a deductible clause.

   E. When additional insurance is not disclosed and permission granted hereunder, the full amount of the deductible shall apply to any losses apportioned to this policy.

5. In consideration of the reduced rate(s) at which this insurance is written, this company shall in no event be liable with respect to any one loss for an amount greater than its pro rata proportion of the sum set forth as "Limit of Liability," or if more than one location be insured hereunder with a specific "Limit of Liability" applicable to each location, in no event shall this company be liable with respect to any location for an amount greater than its pro rata proportion of the "Limit of Liability" applicable thereto.

6. It is a condition of this policy that any coinsurance, contribution, average or distribution clause, which may be a part hereof, shall apply to the full value of the property insured, without reduction for the amount of the deductible specified herein, and that such deductible shall apply after any penalty has been assessed by the application of such coinsurance, contribution, average or distribution clause. For the purpose of determining compliance with any such coinsurance, contribution, average or distribution clause, the sum set forth as "Basis of Insurance" shall be applied to the full value of the property as aforesaid.

Attached to and forming part of Policy No.

of the (Name of Insurance Company) Dated , 19

Agent

Form 70-627 (Ed. 5/80)

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

Pennsylvania National Insurance Companies

Pennsylvania National Mutual Casualty Insurance Company

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SUPPLEMENT TO DEDUCTIBLE ENDORSEMENT

1. The term "Occurrence" as contained in the deductible endorsement of this policy, shall be held to mean a single incident or event. When, however, the term "Occurrence" shall apply to loss or losses from windstorm if insured hereunder, it shall be held to mean a period of 48 consecutive hours.

2. When at the election of the policyholder, the deductible amount is applied to each location, the term "Location" insofar as such property is insured hereunder, shall be held to mean:

   A. each building, including contents thereof, to the extent they are insured hereunder, or

   B. a number of buildings including their contents, in a single group, and designated as a single location in this policy or in the application for insurance.

   C. (if any other basis mutually agreed upon, indicate hereunder)

   _____

   _____

   _____

   _____

   In the case of a policy written to cover more than one location subject to a deductible such locations will be designated in the policy.

3. The term "Item" shall be held to mean the individual descriptions of the property insured and designated by the terms "Items 1", "Item 2", etc. on the form attached to this policy.

All other terms and conditions of the policy remain unchanged.

Attached to and forming part of Policy No. _____,

of the _____ Dated _____, 19 _____.
(Name of Insurance Company)

_____ Agent

Form 70-640

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

Policy Number ..... Effective ..... Expiring ..... Issued to .....

Endorsement No. ..... Effective ..... Agent .....

Authorized Representative .....

AMENDATORY ENDORSEMENT

Supplemental Schedule - Deductible Endorsement

Location # 1

Item # 1 (Bldg)

Basis of Insurance	893,000
Deductible Amount	1,000
Limit of Liability	893,000
Company Participation	100%

Credit for Deductible Amount 16%

Location # 1

Item # 1 (contents)

Basis of Insurance	900,000
Deductible Amount	1,000
Limit of Liability	900,000
Company Participation	100%

Credit for Deductible Amount 16%

Location # 1

Item # 2(Bldg)

Basis of Insurance	5,000
Deductible Amount	1,000
Limit of Liability	5,000
Company Participation	100%

Credit for Deductible Amount 16%

Form 70-15

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

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(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

Policy Number ..... Effective ..... Expiring ..... Issued to .....

Endorsement No. ..... Effective ..... Agent .....

Authorized Representative .....

AMENDATORY ENDORSEMENT

Supplemental Schedule - Deductible Endorsement

Location # 1

Item # 2 (conts)

Basis of Insurance 2,000

Deductible Amount 1,000

Limit of Liability 2,000

Company Participation 100%

Credit for Deductible Amount 16%

Location 2

Item # 1 (Bldg)

Basis of Insurance 92,000

Deductible Amount 1,000

Limit of Liability 92,000

Company Participation 100%

Credit for Deductible Amount 16%

Location # 2

Item # 2

Basis of Insurance 131,000

Deductible Amount 1,000

Limit of Liability 131,000

Company Participation 100%

Credit for Deductible Amount 16%

Form 70-16

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

No. 520
Ala.-Fla.-S. C.
(Edition 9-65)

LOSS PAYABLE

It is stipulated that any loss due the Insured under this policy shall be held payable to Telephone Control Corp
302 Research Drive, Norcross, Georgia 30092
as their interest may appear, subject, nevertheless, to all conditions of the policy.

Note to Agents—The "attaching" portion may be torn off if the clause is attached when the policy is written.

Attached to and forming part of Policy No. 515 50 28 53-7 of the
Pa Nat Mut Cas Ins Co
NAME OF INSURANCE COMPANY
issued at its Sam J Crain & Co., Inc Agency.
Dated 4-14-86 mt

Agent

No. 520 (9-65) (Ala., Fla., S. C.)

No. 520 (9-65) (Ala., Fla., S. C.)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
DRUGGISTS LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
STOREKEEPERS INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
PREMISES MEDICAL PAYMENTS INSURANCE
GARAGE INSURANCE

AMENDMENT OF "ALCOHOLIC BEVERAGE" EXCLUSION—SOUTH CAROLINA

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

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This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective | Policy No. | Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the Policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE

AMENDMENT OF DEFINITION—INCIDENTAL CONTRACT

It is agreed that the definition of **incidental contract** is amended to include any easement or license agreement in connection with vehicle or pedestrian private railroad crossing at grade.

Instructions

The provisions of this endorsement may be incorporated into General Liability policies.

GL 99 18 03 83

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This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Additional Premium $ _____ Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE
STOREKEEPERS INSURANCE
SMP LIABILITY INSURANCE

Amendatory Endorsement

It is agreed that the exclusion relating to **bodily injury** to any employee of the **insured** is deleted and replaced by the following:

This insurance does not apply:

(i) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** for which the **insured** may be held liable as an employer or in any other capacity;

(ii) to any obligation of the **insured** to indemnify or contribute with another because of damages arising out of the **bodily injury;** or

(iii) to **bodily injury** sustained by the spouse, child, parent, brother or sister of an employee of the **insured** as a consequence of **bodily injury** to such employee arising out of and in the course of his employment by the **insured;**

This exclusion applies to all claims and suits by any person or organization for damages because of such **bodily injury** including damages for care and loss of services.

This exclusion does not apply to liability assumed by the **insured** under an **incidental contract.**

GL 00 32 04 84

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GL 21 33
(Ed. 7 85)

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This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.
(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective | Policy No. | Endorsement No.

Named Insured | Countersigned by _____ (Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
SMP LIABILITY INSURANCE
STOREKEEPERS INSURANCE

POLLUTION EXCLUSION

It is agreed that the exclusion relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants is replaced by the following:

(1) to **bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:

(a) at or from premises owned, rented or occupied by the **named insured;**

(b) at or from any site or location used by or for the **named insured** or others for the handling, storage, disposal, processing or treatment of waste;

(c) which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the **named insured** or any person or organization for whom the **named insured** may be legally responsible; or

(d) at or from any site or location on which the **named insured** or any contractors or subcontractors working directly or indirectly on behalf of the **named insured** are performing operations:

(i) if the pollutants are brought on or to the site or location in connection with such operations; or

(ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.

(2) to any loss, cost or expense arising out of any governmental direction or request that the **named insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

GL 21 33 02 85 Copyright, Insurance Services Office, Inc., 1984

GL 00 31
(Ed. 4 84)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Additional Premium $ _____ Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
DRUGGISTS LIABILITY INSURANCE
POLLUTION LIABILITY INSURANCE

Amendatory Endorsement

It is agreed that the exclusion relating to **bodily injury** to any employee of the **insured** is deleted and replaced by the following:

This insurance does not apply:

(i) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** for which the **insured** may be held liable as an employer or in any other capacity;

(ii) to any obligation of the **insured** to indemnify or contribute with another because of damages arising out of the **bodily injury;** or

(iii) to **bodily injury** sustained by the spouse, child, parent, brother or sister of an employee of the **insured** as a consequence of **bodily injury** to such employee arising out of and in the course of his employment by the **insured;**

This exclusion applies to all claims and suits by any person or organization for damages because of such **bodily injury** including damages for care and loss of services.

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PENNSYLVANIA NATIONAL... Mutual Casualty INSURANCE COMPANY

IMPORTANT NOTICE -- PLEASE READ CAREFULLY

Please read the provisions of the Pollution Exclusion endorsement attached to this policy. It replaces the Pollution Exclusion contained in the policy wording.

This policy, with this Pollution Exclusion endorsement attached, does not provide coverage for liability resulting from pollution which occurs either gradually or in a sudden and accidental manner. Accordingly, this endorsement represents a reduction in the coverage afforded under your previous policy, by eliminating coverage for liability resulting from sudden and accidental pollution.

If you have any questions regarding this change, please contact your agent.

Form 70-1656 (Rev. 7/85)

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GL 03 00
(Ed. 7 81)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.
(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective | Policy No. | Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE
SMP LIABILITY INSURANCE

DEDUCTIBLE LIABILITY INSURANCE

It is agreed that:

1. The company's obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on behalf of the **insured** applies only to the amount of damages in excess of any deductible amounts stated in the schedule below as applicable to such coverages, and the limit of liability shown in this policy as being applicable to "each **occurrence**" for such coverages shall be reduced by the amount of such deductible. The limit of liability shown in this policy as "aggregate", if any, for such coverages shall not be reduced by the application of such deductible amount.
2. The deductible amounts stated in the schedule apply as follows:
   (a) PER CLAIM BASIS—if the deductible is on a "per claim" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of **bodily injury** sustained by one person, or to all **property damage** sustained by one person or organization, as the result of any one **occurrence**.
   (b) PER OCCURRENCE BASIS—if the deductible is on a "per **occurrence**" basis, the deductible amount applies under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of all **bodily injury** or **property damage** as the result of any one **occurrence**, regardless of the number of persons or organizations who sustain damages because of that **occurrence**.
3. The terms of the policy, including those with respect to (a) the company's rights and duties with respect to the defense of suits and (b) the **insured**'s duties in the event of an **occurrence** apply irrespective of the application of the deductible amount.
4. The company may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the named **insured** shall promptly reimburse the company for such part of the deductible amount as has been paid by the company.

SCHEDULE

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	$	per claim
	$	per occurrence
Property Damage Liability	$ 100	per claim
	$	per occurrence

APPLICATION OF ENDORSEMENT (Enter here any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to all loss however caused):—

GL 03 00 07 81

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CV401126

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SMP COMPREHENSIVE CRIME COVERAGE ENDORSEMENT
SECTION III — CRIME COVERAGE

MP 04 50
(Ed. 12 79)

This endorsement shall be attached to Policy No.
of the Insurance Company
(herein called Company)

The Insuring Agreements, General Agreements, Conditions and Limitations and other terms of this endorsement shall apply only as specified herein and none of the provisions, stipulations and other terms of the policy to which this endorsement is attached shall apply to insurance hereunder unless so specified.

DECLARATIONS

Item 1. Effective Period: from 12:01 a.m. 3-31-86 (Month, Day, Year) 3-31-87 to 12:01 a.m. on the effective date of the cancellation or termination of the policy to which this endorsement is attached, standard time at the location of designated premises shown in the policy to which this endorsement is attached as to each of said dates, unless this endorsement is canceled or terminated as hereinafter provided or in any other manner.

Item 2. Table of Limits of Liability

Insuring Agreement IA	Employee Dishonesty (Commercial Blanket) Coverage	$ 50,000
Insuring Agreement IB	Employee Dishonesty (Blanket Position) Coverage	$
Insuring Agreement II	Loss Inside the Premises Coverage	$ 5,000
Insuring Agreement III	Loss Outside the Premises Coverage	$ 5,000
Insuring Agreement IV	Money Orders and Counterfeit Paper Currency Coverage	$
Insuring Agreement V	Depositors Forgery Coverage	$
If added by endorsement: Insuring Agreement		$

Item 3. The liability of the Company is subject to the terms of the following endorsements attached hereto:

Item 4. The Insured by the acceptance of this endorsement gives notice to the Company terminating or cancelling prior bond(s) or policy(ies) No.(s) such termination or cancellation to be effective as of the time this endorsement becomes effective.

The Company, in consideration of the payment of the premium, and subject to the Declarations made a part hereof, the General Agreements, Conditions and Limitations and other terms of this endorsement, agrees with the Insured, in accordance with such of the Insuring Agreements hereof as are specifically designated by the insertion of an amount of insurance in the Table of Limits of Liability of this endorsement, to pay the Insured for:

INSURING AGREEMENTS

EMPLOYEE DISHONESTY COMMERCIAL BLANKET COVERAGE

IA. Loss of Money, Securities and other property which the Insured shall sustain, to an amount not exceeding in the aggregate the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement IA, resulting directly from one or more fraudulent or dishonest acts committed by an Employee, acting alone or in collusion with others.

Dishonest or fraudulent acts as used in this Insuring Agreement shall mean only dishonest or fraudulent acts committed by such Employee with the manifest intent:

(a) to cause the Insured to sustain such loss; and

(b) to obtain financial benefit for the Employee, or for any other person or organization intended by the Employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment.

EMPLOYEE DISHONESTY BLANKET POSITION COVERAGE

IB. Loss of Money, Securities and other property which the Insured shall sustain resulting directly from one or more fraudulent or dishonest acts committed by an Employee, acting alone or in collusion with others. The amount of insurance on each of the Employees being the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement IB.

Dishonest or fraudulent acts as used in this Insuring Agreement shall mean only dishonest or fraudulent acts committed by such Employee with the manifest intent:

(a) to cause the Insured to sustain such loss; and

(b) to obtain financial benefit for the Employee, or for any other person or organization intended by the Employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment.

LOSS INSIDE THE PREMISES COVERAGE

II. Loss of Money and Securities by the actual destruction, disappearance or wrongful abstraction thereof within the Premises or within any Banking Premises or similar recognized places of safe deposit.

Loss of (a) other property by Safe Burglary or Robbery within the Premises or attempt thereat, and (b) a locked cash drawer, cash box or cash register by felonious entry into such container within the Premises or attempt thereat or by felonious abstraction of such container from within the Premises or attempt thereat.

Damage to the Premises by such Safe Burglary, Robbery or felonious abstraction, or by following burglarious entry into the Premises or attempt threat, provided with respect to damage to the Premises the Insured is the owner thereof or is liable for such damage.

LOSS OUTSIDE THE PREMISES COVERAGE

III. Loss of Money and Securities by the actual destruction, disappearance or wrongful abstraction thereof outside the Premises while being conveyed by a Messenger or any armored motor vehicle company or while within the living quarters in the home of any Messenger.

Loss of other property by Robbery or attempt thereat outside the Premises while being conveyed by a Messenger or any armored motor vehicle company, or by theft while within the living quarters in the home of any Messenger.

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DEDUCTIBLE ON IA, II OR III
(For use with SMP Comprehensive Crime Coverage Endorsement Form Only)

MP 03 07 (Ed. 07 77)

It is agreed that, with respect to SMP Comprehensive Crime Coverage Endorsement Form, to which this endorsement is attached:

1. The Company shall not be liable under Insuring Agreement IA on account of loss through acts or defaults committed at any time, whether before or after this endorsement is effective, by any Employee or in which such Employee is concerned or implicated, unless the amount of such loss, after deducting the net amount of all reimbursement and recovery, including any cash deposit taken by the Insured, obtained or made by the Insured, other than from any bond or policy of insurance issued by a surety of insurance company and covering such loss, or by the Company on account thereof prior to payment by the Company of such loss, shall be in excess of

Dollars ($ 250.00)

and then for such excess only, but in no event for more than the amount of insurance carried under Insuring Agreement IA on such loss.

2. The Company shall not be liable under Insuring Agreement II on account of any loss, except to the extent such loss is in excess of

Dollars ($ 250.00), with the insurance then applying to such excess only, subject

otherwise to the applicable limit of the Company's liability.

3. The Company shall not be liable under Insuring Agreement III on account of any loss, except to the extent such loss is in excess of

Dollars ($ 250.00), with the insurance then applying to such excess only, subject

otherwise to the applicable limit of the Company's liability.

4. In no event shall the Company be liable under any Insuring Agreement, as modified by this endorsement, for more than the amount specified in the Table of Limits of Liability as applicable to such Insuring Agreement subject, however, to Section 11.

5. Section 10 is deleted and the following inserted:

> "Section 10. If the Insured shall sustain any loss covered by this endorsement to which a deductible amount applies and such loss exceeds the applicable amount of insurance hereunder plus such Deductible Amount, the Insured shall be entitled to all recoveries made after payment by the Company of loss covered by this endorsement (except from suretyship, insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whomsoever made, less the actual cost of effecting such recoveries, until reimbursed for such excess loss; and any remainder, or, if there be no such excess loss, any such recoveries shall be applied first in reimbursement of the Company and thereafter in reimbursement of the Insured for that part of such loss within such Deductible Amount."

6. The Insured shall, within the time and in the manner prescribed in the said SMP Comprehensive Crime Coverage Endorsement, give the Company notice of any loss of the kind covered by Insuring Agreement IA whether or not the Company is liable therefor or for any part thereof, and upon the request of the Company shall file with it a brief statement giving the particulars concerning such loss.

This Endorsement must be attached to Change Endorsement when issued after the Policy is written.

MP 03 07 (Ed. 07 77)

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

INSURING AGREEMENTS

Coverage A - Robbery Inside the Premises. To pay for loss of money, securities and other property by robbery or attempt thereat within the premises. To pay for damage not otherwise covered under this policy to the premises by such robbery or attempt thereat, provided the insured is the owner thereof or is liable for such damage.

Coverage B - Robbery Outside the Premises. To pay for loss of money, securities and other property by robbery or attempt thereat outside the premises while being conveyed by a messenger.

Coverage C - Safe Burglary. To pay for loss of money, securities and other property from within the vault or safe by safe burglary or attempt thereat. To pay for damage not otherwise covered under this policy to property, other than money and securities, and to the premises by such safe burglary or attempt thereat, provided with respect to damage to the premises the insured is the owner thereof or is liable for such damage.

EXCLUSIONS

This insurance does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured or a partner therein, whether acting alone or in collusion with others;

(b) to loss of manuscripts, books of account or records;

(c) to loss, other than to a safe or vault, by fire, whether or not such fire is caused by, contributed to, by, or arises out of the occurrence of a hazard insured against.

CONDITIONS

1. **Policy Period, Territory**

This endorsement applies only to loss which occurs during the policy period within any of the states of the United States of America, the District of Columbia, Virgin Islands, Puerto Rico, Canal Zone or Canada.

2. **Definitions**

"Money" means currency, coins, bank notes and bullion; and travelers checks, register checks and money orders held for sale to the public.

"Securities" means all negotiable and non-negotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include money.

"Premises" means the interior of that portion of any building at a location designated in the declarations which is occupied by the insured in conducting the business as stated therein.

"Messenger" means the insured, a partner therein or an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property outside the premises.

"Custodian" means the insured, a partner therein or an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property within the premises, excluding any person while acting as a watchman, porter or janitor.

"Guard" means any male person not less than seventeen nor more than sixty-five years of age who accompanies a messenger by direction of the insured, but who is not a driver of a public conveyance.

"Robbery" means the taking of insured property (1) by violence inflicted upon a messenger or a custodian; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by an officer, partner or employee of the insured; (4) from the person or direct care and custody of a messenger or custodian who has been killed or rendered unconscious, or (5) under Coverage A, (a) from within the premises by means of compelling a messenger or custodian by violence or threat of violence while outside the premises to admit a person into the premises or to furnish him with means of ingress into the premises, or (b) from a showcase or show window within the premises, after regularly open for business, by a person who has broken the glass thereof from outside the premises.

"Safe Burglary" means (1) the felonious abstraction of insured property from within a vault or safe described in the declarations and located within the premises by a person making felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom or walls of such vault or such safe and any vault through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the premises

(This includes damage

3. **Ownership of Property; Interests Covered**

The property which may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, is the property as respects which the insured is legally liable, provided, this insurance applies only to the interest of the insured in such property in covering the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

4. **Joint Insured**

If more than one insured is named in the declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovered made by any insured shall constitute knowledge possessed or discovered made by every insured.

5. **Books and Records**

The insured shall keep records of all the insured property in such manner that the Company can accurately determine therefrom the amount of loss.

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CHANGE ENDORSEMENT

MP 12 01 (Ed. 02 79)

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW:

ENDORSEMENT EFFECTIVE DATE	POLICY NUMBER	TERM	FROM	TO
1/1/87	515 50 28 53 7	1 YRS	3/31/86	3/31/87

COMPANY PNI

INSURED'S NAME AND MAILING ADDRESS

Covil Corporation, Inc.
PO Box 1804
Greenville, SC 29602

AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADDRESS

San J Crain & Co., Inc

PRODUCER CODE 22 6729

POLICY CHANGES

Section I-Deleting all coverages for Loc. 2-1 and Loc. 2-2
Section II Deleting All Fla Exposures

Sect I		Breakdown	Sect II	
Loc. 2-1	Loc. 2-2		15161	15192
F 103-	147-		BI 376-	nc
E 21-	31-		PD nc	nc
V 2-	2-	BFPD	Med	PI-1
A 11-	14-	nc	1-	56-

SPECIFY FORM NOS. AND EDITION DATES AFFECTED BY POLICY CHANGES:

SECTION I—PROPERTY COVERAGE

Coverage Description	Loc. No.	Bldg. No.	LIMITS OF LIABILITY Previous	LIMITS OF LIABILITY New	RATES Previous	RATES New	PREMIUMS Previous	PREMIUMS New	Add'l / Return
A	2	1	$ 92,000	$ nil			$ 561.	$ nil	$ 137-
A	2	2	$ 133,000	$			$ 795.	$ nil	$ 194-
			$	$			$	$	$
			$	$			$	$	$

SECTION II—LIABILITY COVERAGE

COVERAGE	LIMITS OF LIABILITY Previous	LIMITS OF LIABILITY New	PREMIUMS Previous	PREMIUMS New	Add'l / Return
SMP Liability Insurance Form: Bodily Injury and Property Damage Liability (Combined Single Limit)	$ 1,000,000 ea. Occurrence / $ 1,000,000 Aggregate	$ same ea. Occurrence / $ same Aggregate	$ 19,512	17,970	376.-
☐ Premises Medical Payments ☐ SMP Liability Insurance Form ☐ Medical Payments Coverage Part	$ ea. Person / ea. Accident	$ ea. Person / ea. Accident	$ 66.	$ 61.	$ 1-
☐ Forms other than SMP Liability Insurance Form Specify Coverage Part	BODILY INJURY LIABILITY				
	$ ea. Occurrence / Aggregate	$ ea. Occurrence / Aggregate			
PI-1			$ 910	$ 679	$ 56-
BF PD	PROPERTY DAMAGE LIABILITY				
	$ ea. Occurrence / Aggregate	$ ea. Occurrence / Aggregate	$ 1143	$ 1143	$ nc
☐ Revised Dual Limits:					

INSTALLMENT PAYMENT PREMIUMS

		Previous Installments	Additional Premium	Return Premium	Revised Installments
Dates of subsequent installments, if payable in annual installments:	2.	$	$	$	$
	3.	$	$	$	$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT	1/1/87	$	$	$	$
Total for remainder of policy term:			$	$ 764.	
			$	$ 764.	

MP 12 01 (Ed. 02 79)

Agency, By

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CHANGE ENDORSEMENT

MP 12 01 (Ed. 02 79)

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW:

ENDORSEMENT EFFECTIVE DATE	POLICY NUMBER	TERM YRS	FROM	TO
3-31-86	515 50 28 53 7	1	3-31-86	3-31-87

COMPANY: Pa Nat Mut Cas Ins Co.

INSURED'S NAME AND MAILING ADDRESS

Covil Corporation, Inc.
P O Box 1804
Greenville, SC 29602

AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADDRESS

Sam J Crain & Co., Inc.

PRODUCER CODE: 22-6729

POLICY CHANGES

Amending policy to delete products form GL0031(4/84), and Add G12104(7/66) Products hazard exclusion as it was left off at renewal.
No change in rates or premiums.

Insured's Signature

SPECIFY FORM NOS. AND EDITION DATES AFFECTED BY POLICY CHANGES:

Pro Rata 100%

SECTION I—PROPERTY COVERAGE

Coverage Description	Loc. No.	Bldg. No.	LIMITS OF LIABILITY Previous	LIMITS OF LIABILITY New	RATES Previous	RATES New	PREMIUMS Previous	PREMIUMS New	☐ Add'l ☐ Return
			$	$			$	$	$
			$	$			$	$	$
			$	$			$	$	$
			$	$			$	$	$

SECTION II—LIABILITY COVERAGE

COVERAGE	LIMITS OF LIABILITY Previous	LIMITS OF LIABILITY New	PREMIUMS Previous	PREMIUMS New	☐ Add'l ☐ Return
SMP Liability Insurance Form: Bodily Injury and Property Damage Liability (Combined Single Limit)	$ ea. Occurrence / $ Aggregate	$ ea. Occurrence / $ Aggregate	$	$	$
Premises Medical Payments ☐ SMP Liability Insurance Form ☐ Medical Payments Coverage Part	$ ea. Person / $ ea. Accident	$ ea. Person / $ ea. Accident	$	$	$
☐ Forms other than SMP Liability Insurance Form Specify Coverage Part	BODILY INJURY LIABILITY: $ ea. Occurrence / $ Aggregate	$ ea. Occurrence / $ Aggregate	$	$	$
	PROPERTY DAMAGE LIABILITY: $ ea. Occurrence / $ Aggregate	$ ea. Occurrence / $ Aggregate	$	$	$
☐ Revised Dual Limits:					

INSTALLMENT PAYMENT PREMIUMS

Doc. #1 #015 #6567 5-23-86 mt

		Previous Installments	Additional Premium	Return Premium	Revised Installments
Dates of subsequent installments, if payable in annual installments:	2.	$	$	$	$
	3.	$	$	$	$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT: 3-31-86			$	$	
Total for remainder of policy term:			$ NC	$ NC	

MP 12 01 (Ed. 02 79) _____ Agency, By _____

GL 21 04
(Ed. 07 66)

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective | Policy No. | Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following
COMPREHENSIVE GENERAL LIABILITY INSURANCE
SMP LIABILITY INSURANCE

EXCLUSION

(Completed Operations Hazard and Products Hazard)

It is agreed that such insurance as is afforded by the Bodily Injury Liability Coverage and the Property Damage Liability Coverage does not apply to bodily injury or property damage included within the Completed Operations Hazard or the Products Hazard.

GL 21 04 07 66

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ORIGINAL 030455
(Red)

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SPECIAL MULTI-PERIL POLICY CONDITIONS AND DEFINITIONS
GENERAL CONDITIONS

Form MP 00 90 07 77

The following Conditions apply to Section I and II except as otherwise indicated. Additional Conditions or modifications of the following Conditions may appear in the specific coverage sections.

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

If this policy is issued for a period in excess of one year with a specified expiration date and a premium is payable at each anniversary, such premium shall be determined annually on the basis of the rates in effect at the anniversary date.

If this policy is issued for a period without a specified expiration date, it may be continued by payment of the required premium for the succeeding annual period. Such premium must be paid to the Company prior to each anniversary date; if not so paid, this policy shall expire on the first anniversary date that the said premium has not been received by the Company.

2. **Time of Inception.** To the extent that coverage in this policy replaces coverage in other policies terminating noon standard time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated.

3. **Cancellation.** This policy may be cancelled by the named insured by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the named insured at the mailing address shown in the Declarations, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the Company shall be equivalent to mailing.

If the named insured cancels, the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

Notice of cancellation addressed to the named insured and mailed to the mailing address shown in the Declarations shall be sufficient notice to effect cancellation of this policy.

4. **Concealment or Fraud.** This policy is void if any insured has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.

5. **Assignment.** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. However, if the named insured shall die, this insurance shall apply:

(a) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such; or

(b) to the person having temporary custody of the property of the named insured but only until the appointment and qualification of the legal representative.

6. **Subrogation.**

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

(b) The Company shall not be bound to pay any loss if the insured has impaired any right of recovery for loss; however, it is agreed that the insured may:

(1) as respects property while on the premises of the insured, release others in writing from liability for loss prior to loss, and such release shall not affect the right of the insured to recover hereunder, and

(2) as respects property in transit, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

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

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

8. **Liberalization Clause.** In the event any filing is submitted to the insurance supervisory authorities on behalf of the Company, and:

(a) the filing is approved or accepted by the insurance authorities to be effective while this policy is in force or within 45 days prior to its inception; and

(b) the filing includes insurance forms or other provisions that would extend or broaden this insurance by endorsement or substitution of form, without additional premium;

the benefit of such extended or broadened insurance shall inure to the benefit of the insured as though the endorsement or substitution of form had been made.

9. **Insurance Under More Than One Coverage, Part or Endorsement.** In the event that more than one coverage, part or endorsement of this policy insures the same loss, damage or claim, the Company shall not be liable for more than the actual loss or damage sustained by the insured.

10. **Waiver or Change of Provisions.** The terms of this insurance shall not be waived, changed or modified except by endorsement issued to form a part of this policy.

200325

Penn National Policies 000031

ORIGINAL
(Red)

030456

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CONDITIONS APPLICABLE TO SECTION I

1. **Policy Period, Territory.** Section I of this policy applies only to loss to property during the policy period while such property is within or between the fifty states of the United States of America, the District of Columbia and Puerto Rico.

2. **Deductible.** Unless otherwise provided in the Declarations.

(a) The sum of $100 shall be deducted from the amount of loss to property in any one occurrence. This deductible shall apply

(1) separately to each building, including personal property therein;

(2) separately to personal property in each building if no coverage is provided on the containing building; and

(3) separately to personal property in the open (including within vehicles).

(b) The aggregate amount of this deductible in any one occurrence shall not exceed $1,000.

3. **Coinsurance Clause.** The Company shall not be liable for a greater proportion of any loss to property covered than the limit of liability under this policy for such property bears to the amount produced by multiplying the actual cash value of such property at the time of the loss by the coinsurance percentage stated in the Declarations.

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

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

4. **Removal.** This policy covers loss by removal of the property covered hereunder from premises endangered by the perils insured against, and the amount of insurance applies pro rata for five days at each proper place to which such property shall necessarily be removed for preservation.

5. **Debris Removal.** This policy covers expense incurred in the removal of debris of the property covered which may be occasioned by loss by any of the perils insured against in this policy. The total amount recoverable under this policy for both loss to property and debris removal expense shall not exceed the limit of liability applying to the property. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

6. **War Risk And Governmental Action Exclusion.** This policy under Section I shall not apply to loss caused, directly or indirectly, by or due to any act or condition incident to the following:

(a) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack (i) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (ii) by military, naval or air forces; or (iii) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;

(b) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

7. **Nuclear Clause And Nuclear Exclusion.**

(a) Nuclear Clause (Not Applicable in New York). The word "fire" in this policy is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy. However, subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

(b) Nuclear Clause (Applicable only in New York). This policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under this policy.

(c) Nuclear Exclusion (Not Applicable in New York). Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against by this policy; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke". This clause applies to all perils insured against hereunder except the peril of fire, which is otherwise provided for in the nuclear clause above.

8. **Other Insurance.**

(a) If at the time of loss there is other insurance written in the name of the insured upon the same plan, terms, conditions and provisions as contained in this policy, herein referred to as Contributing Insurance, the Company shall be liable for no greater proportion of any loss than the limit of liability under this policy bears to the whole amount of insurance covering such loss.

(b) If at the time of loss there is other insurance other than that as described in (a) above, the Company shall not be liable for any loss hereunder until:

(1) the Liability of such other insurance has been exhausted, and

(2) then for only such amount as may exceed the amount due from such other insurance, whether collectible or not.

9. **Duties Of The Named Insured After A Loss.** In case of loss the named insured shall:

(a) give immediate written notice of such loss to the Company;

(b) protect the building and personal property from further damage, make reasonable temporary repairs required to protect the property, and keep an accurate record of repair expenditures;

(c) prepare an inventory of damaged personal property showing in detail, quantity, description, actual cash value and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;

(d) exhibit the remains of the damaged property as often as may be reasonably required by the Company and submit to examination under oath;

(e) submit to the Company within 60 days after requested a signed, sworn statement of loss that sets forth to the best of the named insured's knowledge and belief:

(1) the time and cause of loss;

(2) interest of the insured and all others in the property involved and all encumbrances on the property;

(3) other policies of insurance that may cover the loss;

(4) changes in title or occupancy of the property during the term of the policy;

(5) specifications of any damaged building and detailed estimates for repair of the damage;

(6) an inventory of damaged personal property described in (c) above;

(f) give notice of such loss to the proper police authority if loss is due to a violation of law.

10. **Appraisal.** If the named insured and the Company fail to agree on the amount of the loss, either can demand that the amount of loss be set by appraisal. If either party makes a written demand for appraisal, each shall select a competent independent appraiser. Each shall notify the other of the selected appraiser's identity within twenty (20) days of the receipt of the written demand.

ORIGINAL 030457
(Red)

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The two appraisers shall select a competent, impartial umpire. If the appraisers are unable to agree upon an umpire within fifteen (15) days the named insured or the Company may petition a judge of a Court of Record in the state where the insured premises is located to select an umpire.

The appraisers shall then set the amount of the loss. If the appraisers submit a written report or an agreement to the Company, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of loss.

Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and compensation of the umpire shall be paid equally by the named insured and the Company.

11. Company Options. If the Company gives notice within thirty (30) days after it has received a signed, sworn statement of loss, it shall have the option to take all or any part of the property damaged at an agreed value, or to repair, rebuild or replace it with equivalent property.

12. Abandonment Of Property. The Company need not accept any property abandoned by an insured.

13. Payment Of Loss. The Company will pay all adjusted claims within thirty (30) days after presentation and acceptance of the proof of loss.

14. Privilege To Adjust With Owner.

(a) Except as provided in (b) below, or unless another payee is specifically named in the policy, loss, if any, shall be adjusted with and payable to the named insured.

(b) In the event claim is made for damage to property of others held by the insured, the right to adjust such loss or damage with the owner or owners of the property is reserved to the Company and the receipt of payment by such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the insured for which such payment has been made.

If legal proceedings be taken to enforce a claim against the insured as respects any such loss or damage, the Company reserves the right at its option without expense to the insured to conduct and control the defense on behalf of and in the name of the insured. No action of the Company in such regard shall increase the liability of the Company under this policy, nor increase the limits of liability specified in the policy.

15. Suit. No suit shall be brought on this policy unless the insured has complied with all the policy provisions and has commenced the suit within one year after the loss occurs.

16. Permits And Use. Except as otherwise provided, permission is granted:

(a) to make alterations and repairs;

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

17. Vacancy, Unoccupancy and Increase of Hazard.

(a) This Company shall not be liable for loss occurring while a described building, whether intended for occupancy by owner or tenant is vacant beyond a period of sixty consecutive days. "Vacant" or "Vacancy" means containing no contents pertaining to operations or activities customary to occupancy of the building, but a building in process of construction shall not be deemed vacant.

(b) Permission is granted for unoccupancy.

(c) Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the insured.

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

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

19. Mortgage Clause—Applicable Only To Buildings. This clause is effective if a mortgagee is named in the Declarations. The word "mortgagee" includes "trustee". Loss to buildings shall be payable to the named mortgagee as interest may appear, under all present or future mortgages on the buildings described in the Declarations in order of precedence of mortgages on them.

As it applies to the interest of any mortgagee designated in the Declarations, this insurance shall not be affected by any of the following:

(a) any act or neglect of the mortgagor or owner of the described buildings;

(b) any foreclosure or other proceedings or notice of sale relating to the property;

(c) any change in the title or ownership of the property;

(d) occupancy of the premises for purposes more hazardous than are permitted by this policy;

provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall, on demand, pay the premium.

The mortgagee shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of the mortgagee. Unless permitted by this policy, such change of ownership or occupancy or increase of hazard shall be noted on the policy and the mortgagee shall on demand pay the premium for the increased hazard for the term it existed under this policy. If such premium is not paid, this policy shall be null and void.

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

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

20. Recoveries. In the event the Company has made a payment for loss under the policy and a subsequent recovery is made of the lost or damaged property, the insured shall be entitled to all recoveries in excess of the amount paid by the Company, less only the actual cost of effecting such recoveries.

21. Loss Clause. Any loss hereunder shall not reduce the amount of this insurance.

22. No Benefit To Bailee. This insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee.

23. No Control. This insurance shall not be prejudiced

(a) by any act or neglect of the owner of any building if the insured is not the owner thereof, or by any act or neglect of any occupant (other than the insured) of any building when such act or neglect of the owner or occupant is not within the control of the insured, or

(b) by failure of the insured to comply with any warranty or condition contained in any endorsement attached to this policy with regard to any portion of the premises over which the insured has no control.

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CONDITIONS APPLICABLE TO SECTION II

1. **Supplementary Payments.** The Company will pay in addition to the applicable limit of liability

(a) all expenses incurred by the Company, all costs taxed against the insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed $250 per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for first aid to others at the time of an accident for bodily injury to which this policy applies;

(d) reasonable expenses incurred by the insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed $25 per day.

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

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

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

4. **Insured's Duties in the Event of Occurrence, Claim or Suit.**

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

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

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

5. **Medical Reports; Proof and Payment of Claim.** As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

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

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

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

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

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

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

8. **Annual Aggregate.** If this policy is issued for a period in excess of one year, any limit of the Company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period.

9. **Nuclear Exclusion.**

I. This policy does not apply:

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

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

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

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

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

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

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

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

II. As used in this exclusion

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

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

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

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

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

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DEFINITIONS APPLICABLE TO SECTION II

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

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

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

"collapse hazard" includes "structural property damage" as defined herein and property damage to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunneling, pile driving, cofferdam work or caisson work, or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include property damage (1) arising out of operations performed for the named insured by independent contractors, or (2) included within the completed operations hazard or the underground property damage hazard, or (3) for which liability is assumed by the insured under an incidental contract;

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

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

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

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

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

The completed operations hazard does not include bodily injury or property damage arising out of

(a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,

(b) the existence of tools, uninstalled equipment or abandoned or unused materials, or

(c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

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

"explosion hazard" includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the named insured by independent contractors, or (3) included within the completed operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the insured under an incidental contract;

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

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

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

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

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

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

"policy territory" means:

(1) the United States of America, its territories or possessions, or Canada, or

(2) international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or

(3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

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

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

"underground property damage hazard" includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. "Underground property damage" means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the named insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the insured under an incidental contract.

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COINSURANCE CONTRACT

SPECIAL MULTI-PERIL POLICY
SECTION I—SPECIAL BUILDING FORM

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I. PROPERTY COVERED

BUILDING(S): Buildings(s) or structure(s) shall include attached additions and extensions; fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building(s); materials and supplies intended for use in construction, alteration or repair of the building(s) or structure(s); yard fixtures; personal property of the insured used for the maintenance or service of the building(s), including fire extinguishing apparatus, outdoor furniture, floor coverings and appliances for refrigerating, ventilating, cooking, dishwashing and laundering (but not including other personal property in apartments or rooms furnished by the named insured as landlord); all while at the designated premises.

II. ADDITIONAL COVERAGE

COLLAPSE—This policy insures against risk of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

a. fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism or malicious mischief; breakage of glass; falling objects; weight of snow, ice or sleet; water damage; all only as insured against in this policy;

b. hidden decay;

c. hidden insect or vermin damage;

d. weight of people or personal property;

e. weight of rain which collects on a roof;

f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Company shall not be liable for loss to the following types of property under items b., c., d., e. and f. unless the loss is a direct result of the collapse of a building:

1. Outdoor radio or television antennas, including their lead-in wiring, masts or towers; awnings; gutters and downspouts; yard fixtures;

2. If specifically covered in this policy, outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

This Additional Coverage does not increase the amount(s) of insurance provided in this policy.

III. PROPERTY NOT COVERED

This policy does not cover:

A. Outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls not constituting a part of a building; walks, roadways and other paved surfaces.

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

C. Outdoor signs, whether or not attached to a building or structure.

D. Lawns; outdoor trees, shrubs and plants, except as provided in the Extensions of Coverage.

E. Property which is more specifically covered in whole or in part by this or any other contract of insurance, except for the amount of loss which is in excess of the amount due from such more specific insurance.

IV. PROPERTY SUBJECT TO LIMITATIONS

The following property is subject to these additional limitations:

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

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

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

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

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

F. Metal smokestacks and, when outside of buildings, (1) awnings of fabric or slat construction, canopies of fabric or slat construction, including their supports, and (2) radio or television antennas including their lead-in wiring, masts or towers are not covered against loss caused by ice, snow or sleet, nor by windstorm or hail.

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

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

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

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V. EXTENSIONS OF COVERAGE

Except with respect to Extension D. Replacement Cost:

(A) Each of the limits of liability specified for the following Extensions of Coverage applies as an additional amount of insurance.

(B) The Coinsurance Clause shall not apply to loss under the Extensions of Coverage.

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

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

A. Newly Acquired Property: The insured may apply up to 25% of the limit of liability specified for Building(s), but not exceeding $100,000, to cover direct loss in any one occurrence by a peril not otherwise excluded to the following described property:

1. New buildings and new structures being constructed on the designated premises and intended for similar occupancy when not otherwise covered by insurance. This coverage shall cease 30 days from the date construction begins or on the date the values of new construction are reported to the Company, or on the expiration date of the policy, whichever occurs first.

2. Buildings acquired by the insured at any location, elsewhere than at the designated premises, within the territorial limits of this policy and used for similar occupancies or warehouse purposes. This coverage shall cease 30 days from the date of such acquisition or on the date values of the buildings are reported to the Company, or on the expiration date of the policy, whichever occurs first.

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

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

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

D. Replacement Cost: In the event of loss to a building structure covered under this policy, when the full cost of repair or replacement is less than $1,000, the coverage of this policy is extended to cover the full cost of repair or replacement (without deduction for depreciation). Coverage shall be applicable only to a building structure covered hereunder, but excluding outdoor furniture, outdoor equipment, floor coverings, awnings, and appliances for refrigerating, ventilating, cooking, dishwashing and laundering, all whether permanently attached to the building structure or not

The Company shall not be liable under this Extension of Coverage unless the whole amount of insurance applicable to the building structure for which claim is made is equal to or in excess of the amount produced by multiplying the co-insurance percentage applicable (specified in the Declarations) by the actual cash value of such property at the time of the loss.

VI. PERILS INSURED AGAINST

This policy insures against risks of direct physical loss unless the loss is excluded in VII. Exclusions below, subject to the provisions and stipulations herein and in the policy of which this form is made a part.

VII. EXCLUSIONS

1. This policy does not insure against loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

A. Loss occasioned directly or indirectly by enforcement of any ordinance or law regulating the use, construction, repair, or demolition of buildings or structures including debris removal expense.

B. Loss caused directly or indirectly by the interruption of power or other utility service furnished to the designated premises if the interruption takes place away from the designated premises. If a peril insured against ensues on the designated premises, this Company will pay only for loss caused by the ensuing peril.

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

1. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;

2. flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;

3. water which backs up through sewers or drains; or

4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless fire or explosion as insured against ensues, and then this Company shall be liable for only loss caused by the ensuing fire or explosion; but these exclusions shall not apply to loss arising from theft.

5. volcanic eruption unless direct loss by fire or breakage of glass or safety glazing material ensues. In this event, this Company shall be liable for only the direct loss to the property insured caused by the ensuing fire and if an insured peril, the ensuing breakage of glass or safety glazing material.

Volcanic eruption means the eruption, explosion or effusion of a volcano.

D. War Risk and Governmental Action Exclusion as contained in the SMP Policy Conditions and Definitions Form.

E. Nuclear Clause and Nuclear Exclusion as contained in the SMP Policy Conditions and Definitions Form.

2. This policy does not insure under this form against loss caused by

A. wear and tear, deterioration, rust or corrosion, mould, wet or dry rot, inherent or latent defect; smog; smoke, vapor or gas from agricultural or industrial operations; mechanical breakdown, including rupture or bursting caused by centrifugal force; settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings, animals, birds, vermin, termites or other insects; unless loss by a peril not otherwise excluded ensues and then the Company shall be liable for only such ensuing loss.

If loss by water not otherwise excluded ensues, this policy shall also cover the cost of tearing out and replacing of any part of the building covered required to effect repairs to the plumbing, heating or air conditioning system or domestic appliance from which the water escapes, but excluding loss to the system or appliance from which the water escapes;

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B. explosion of steam boilers, steam pipes, steam turbines or steam engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber, of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom) if owned by, leased by or operated under the control of the insured, or for any ensuing loss except by fire or explosion not otherwise excluded, and then the Company shall be liable for only such ensuing loss;

C. vandalism, malicious mischief, theft or attempted theft, if the building had been vacant or unoccupied beyond a period of 30 consecutive days immediately preceding the loss, unless loss by a peril not excluded in this policy ensues, and then the Company shall be liable for only such ensuing loss; nor shall this exclusion be applicable to such unoccupancy as is usual or incidental to the described occupancy;

D. leakage or overflow from plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) caused by or resulting from freezing while the building is vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy;

E. theft (including but not limited to burglary and robbery) of any property which at the time of loss is not installed or attached to and made a part of a building or structure (except direct loss by pillage and looting occurring during and at the immediate place of a riot or civil commotion), unless loss by a peril not excluded in this policy ensues from theft or attempted theft, and then the Company shall be liable for only such ensuing loss;

F. unexplained or mysterious disappearance of any property, or shortage disclosed on taking inventory, or caused by any willful or dishonest act or omission of the insured or any associate, employee or agent of any insured;

G. continuous or repeated seepage or leakage of water or steam from within a plumbing, heating or air conditioning system or from within a domestic appliance which occurs over a period of weeks, months or years;

H. collapse, except as provided above in the Collapse Additional Coverage. If a peril not otherwise excluded ensues on the described premises, this Company will pay only for loss caused by the ensuing peril.

3. This policy does not insure under this form against loss occasioned directly or indirectly by any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated unless fire as insured against ensues, and then this Company shall be liable only for loss caused by the ensuing fire.

4. This policy does not insure against loss caused by any of the following. However, any ensuing loss not excluded or excepted in this policy is covered.

A. Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;

B. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;

C. Faulty, inadequate or defective:

1. planning, zoning, development, surveying, siting;

2. design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

3. materials used in repair, construction, renovation or remodeling; or

4. maintenance;

of part or all of any property on or off the described premises.

VIII. VALUATION

The following bases are established for valuation of property:

All property at actual cash value at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, nor in any event for more than the interest of the named insured.

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COINSURANCE CONTRACT

SPECIAL MULTI-PERIL POLICY
SECTION I—SPECIAL PERSONAL PROPERTY FORM

MP 00 14
(Ed. 10 83)

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I. PROPERTY COVERED

PERSONAL PROPERTY OF THE INSURED: Business personal property owned by the insured and usual to the occupancy of the insured, including the insured's interest in personal property owned by others to the extent of the value of labor, materials and charges furnished, performed or incurred by the insured; all while (1) in or on the building(s), or (2) in the open (including within vehicles) on or within 100 feet of the designated premises.

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

PERSONAL PROPERTY OF OTHERS: This insurance shall cover for the account of the owner(s) (other than the named insured) personal property belonging to others in the care, custody or control of the insured, while (1) in or on the building(s), or (2) in the open (including within vehicles) on or within 100 feet of the designated premises.

Loss shall be adjusted with the named insured for the account of the owners of the property, except that the right to adjust any loss with the owners is reserved to the Company and the receipts of the owners in satisfaction thereof shall be in full satisfaction of any claim by the named insured for which payments have been made.

II. ADDITIONAL COVERAGE

COLLAPSE—This policy insures against risk of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

a. fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism or malicious mischief, breakage of glass; falling objects, weight of snow, ice or sleet, water damage; all only as insured against in this policy;

b. hidden decay;

c. hidden insect or vermin damage;

d. weight of people or personal property;

e. weight of rain which collects on a roof;

f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation

This Company shall not be liable for loss to the following types of property, if otherwise covered in this policy, under items b., c., d., e. and f. unless the loss is a direct result of the collapse of a building:

outdoor radio or television antennas, including their lead-in wiring, masts or towers, awnings; gutters and downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

This Additional Coverage does not increase the amount(s) of insurance provided in this policy.

III. PROPERTY NOT COVERED

This policy does not cover:

A. Property sold by the insured under conditional sale, trust agreement, installment payment or other deferred payment plan, after delivery to customers.

B. Aircraft, watercraft, including motors, equipment and accessories (except rowboats and canoes, while out of water and on the designated premises); and automobiles, trailers, semi-trailers or any self-propelled vehicles or machines, except such property not licensed for use on public thoroughfares and operated principally on the premises of the insured

This provision does not apply to the following types of property when held for sale or sold but not delivered:

1. Watercraft (including motors, equipment and accessories) while not afloat,

2. Motorcycles, motorscooters and snowmobiles; or

3. Trailers designed for use with private passenger vehicles for general utility purposes or carrying boats

This provision does not apply to the following types of property when manufactured, processed or warehoused by the insured:

1. Aircraft;

2. Watercraft, including motors, equipment and accessories, while not afloat, or

3. Automobiles, trailers, semi-trailers or any self-propelled vehicles or machines.

C. Personal property while waterborne.

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

E. Accounts, bills, currency, deeds, evidences of debt, money and securities.

F. Outdoor signs, whether or not attached to a building or structure.

G. Growing crops and lawns.

H. Property which is more specifically covered in whole or in part by this or any other contract of insurance, except for the amount of loss which is in excess of the amount due from such more specific insurance.

IV. PROPERTY SUBJECT TO LIMITATIONS

The following property is subject to these additional limitations:

1. Except for loss caused by the "specified perils":

(a) Fur and fur garments are covered for not exceeding loss in the aggregate of $2,500 in any one occurrence for all contributing insurance.

(b) Jewelry and watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals are covered for not exceeding loss in the aggregate of $2,500 in any one occurrence for all contributing insurance. This limitation shall not apply to jewelry and watches valued at $50 or less per item.

(c) Patterns, dies, molds, models and forms are covered for not exceeding loss in the aggregate of $2,500 in any one occurrence for all contributing insurance.

(d) Stamps, tickets and letters of credit are covered for not exceeding loss in aggregate of $250 in any one occurrence for all contributing insurance.

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2. Valuable papers and records meaning computer programs and books of account, manuscripts, abstracts, drawings, card index systems and other records including film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing, are covered only against loss caused by the "specified perils".

3. Animals and pets are not covered, except when held for sale or sold but not delivered, and then only against death or destruction directly resulting from or made necessary by the "specified perils".

4. Outdoor trees, shrubs and plants are not covered, except: (a) when held for sale or sold but not delivered, and then only against direct loss by the "specified perils", or (b) as provided in the Extensions of Coverage.

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

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

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

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

V. EXTENSIONS OF COVERAGE

Each of the limits of liability specified or the following Extensions of Coverage applies as an additional amount of insurance. The Coinsurance Clause shall not apply to loss under the Extensions of Coverage.

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

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

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

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

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

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

E. Extra Expense: The insured may apply up to $1,000 to cover the necessary extra expense incurred by the insured in order to continue as nearly as practicable the normal operations of the insured's business immediately following damage by a peril not otherwise excluded under this form to the buildings or personal property situated at the designated premises.

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

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

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

1. loss of income,

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

3. any other consequential or remote loss.

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

G. Transportation: The insured may apply up to **$1,000** to cover insured personal property (other than property in the care, custody or control of salesmen) during transportation by motor vehicles owned, leased or operated by the insured for loss in any one occurrence caused by:

1. fire, lightning, windstorm and hail, explosion, smoke, riot, riot attending a strike and civil commotion, vandalism and malicious mischief; or

2. collision, overturning or upset of the vehicle; meaning thereby the violent and accidental contact of the vehicle conveying the property described herein with any other vehicle or object excluding any loss or damage done by coming in contact with any portion of the road bed or by means other than as expressly indicated; or

3. theft of an entire shipping bale, case or package from a vehicle while such property is contained in a fully enclosed and securely locked body or compartment and theft results from forcible entry, evidenced by visible marks upon such body or compartment.

H. Non-Owned Personal Property: The insured may apply at each location up to 2% of the limit of liability specified for Personal Property of the Insured at such location, but not exceeding $2,000, as an additional amount of insurance, to cover for the account of the owners thereof (other than the named insured) direct loss by a peril insured against to personal property, similar to that covered by this policy, belonging to others while in the care, custody or control of the named insured and all while (1) in or on the building(s), or (2) in the open (including within vehicles) on or within 100 feet of the designated premises.

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

I. Off-Premises: The insured may apply up to 2% of the limit of liability specified for Personal Property of the Insured, but not exceeding $5,000 nor less than $1,000, at a described location to cover direct loss in any one occurrence by a peril not otherwise excluded to the property covered under Personal Property of the Insured (other than merchandise or stock) while removed from designated premises. This Extension of Coverage shall not apply: (a) to loss by theft, (b) to property in transit nor (c) to property on any premises owned, leased, operated or controlled by the insured.

VI. PERILS INSURED AGAINST

This policy insures against risks of direct physical loss unless the loss is excluded in VII. Exclusions below, subject to the provisions and stipulations herein and in the policy of which this form is made a part.

VII. EXCLUSIONS

1. This policy does not insure against loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

A. Loss occasioned directly or indirectly by enforcement of any ordinance or law regulating the use, construction, repair or demolition of property, including debris removal expense.

B. Loss caused directly or indirectly by the interruption of power or other utility service furnished to the designated premises if the interruption takes place away from the designated premises. If a peril insured against ensues on the designated premises, this Company will pay only for loss caused by the ensuing peril.

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

1. earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;

2. flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;

3. water which backs up through sewers or drains; or

4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless fire or explosion as insured against ensues, and then this Company shall be liable for only loss caused by the ensuing fire or explosion; but these exclusions shall not apply to loss arising from theft.

5. volcanic eruption unless direct loss by fire or breakage of glass or safety glazing material ensues. In this event, this Company shall be liable for only the direct loss to the property insured caused by the ensuing fire and if an insured peril, the ensuing breakage of glass or safety glazing material.

Volcanic eruption means the eruption, explosion or effusion of a volcano.

D. War Risk and Governmental Action Exclusion as contained in the SMP Policy Conditions and Definitions Form.

E. Nuclear Clause and Nuclear Exclusion as contained in the SMP Policy Conditions and Definitions Form.

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

A. unexplained or mysterious disappearance of property, or shortage of property disclosed on taking inventory;

B. actual work upon, installation or testing of property covered, failure, breakdown or derangement of machines or machinery; unless loss by fire or explosion not otherwise excluded ensues and then the Company shall be liable for only such ensuing loss;

C. any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated unless fire as insured against ensues, and then this Company shall be liable for only loss caused by the ensuing fire;

D. leakage or overflow from plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) caused by or resulting from freezing while the described building is vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy;

E. delay, loss of market, interruption of business, nor consequential loss of any nature;

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F. (a) wear and tear, marring or scratching;

(b) deterioration, inherent vice, latent defect;

(c) rust, mold, wet or dry rot, contamination;

(d) dampness or dryness of atmosphere, changes in or extremes of temperature;

(e) smog, smoke from agricultural smudging or industrial operations; or

(f) birds, vermin, rodents, insects or animals;

unless loss by fire, smoke (other than smoke from agricultural smudging or industrial operations), explosion, collapse of a building, glass breakage or water not otherwise excluded ensues, then this policy shall cover only such ensuing loss.

If loss by water not otherwise excluded ensues, this policy shall also cover the cost of tearing out and replacing of any part of the building covered required to effect repairs to the plumbing, heating or air conditioning system or domestic appliance but excluding loss to the system or appliance from which the water escapes;

G. explosion of steam boilers, steam pipes, steam turbines or steam engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber, of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom) if owned by, leased by or operated under the control of the insured, or for any ensuing loss except by fire or explosion not otherwise excluded, and then the Company shall be liable for only such ensuing loss;

H. voluntary parting with title or possession of any property by the insured or others to whom the property may be entrusted if induced to do so by any fraudulent scheme, trick, device or false pretense;

I. any fraudulent, dishonest or criminal act done by or at the instigation of any insured, partner or joint adventurer in or of any insured, an officer, director or trustee of any insured; pilferage, appropriation or concealment of any property covered due to any fraudulent, dishonest or criminal act of any employee while working or otherwise, or agent of any insured, or any person to whom the property covered may be entrusted;

J. continuous or repeated seepage or leakage of water or steam from within a plumbing, heating or air conditioning system or from within a domestic appliance which occurs over a period of weeks, months or years;

K. rain, snow or sleet to property in the open; or

L. collapse, except as provided above in the Collapse Additional Coverage. If a peril not otherwise excluded ensues on the described premises, this Company will pay only for loss caused by the ensuing peril.

3. This policy does not insure against loss caused by any of the following. However, any ensuing loss not excluded or excepted in this policy is covered.

A. Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;

B. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;

C. Faulty, inadequate or defective:

1. planning, zoning, development, surveying, siting;

2. design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

3. materials used in repair, construction, renovation or remodeling; or

4. maintenance;

of part or all of any property on or off the described premises.

VIII. VALUATION

The following bases are established for valuation of property:

A. The value of all stock actually sold but not delivered shall be the price at which it was sold, less all discounts and unincurred expenses.

B. Tenants' Improvements and Betterments:

1. If repaired or replaced at the expense of the named insured within a reasonable time after loss, the actual cash value of the damaged or destroyed improvements and betterments.

2. If not repaired or replaced within a reasonable time after loss, that proportion of the original cost at time of installation of the damaged or destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at the time of loss bears to the periods from the dates such improvements or betterments were made to the expiration date of the lease.

3. If repaired or replaced at the expense of others for the use of the named insured, there shall be no liability hereunder.

C. Valuable Papers and Records:

1. Books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing) for not exceeding the cost of blank books, cards or other blank material plus the cost of labor incurred by the named insured for transcribing or copying such records.

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

3. Computer programs for not exceeding the cost of labor incurred by the named insured for transcribing or copying such programs.

D. All other property at actual cash value at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, nor in any event for more than the interest of the named insured.

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