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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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 II OF II**

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INDEX

Order Granting Covil Corporation's Motion for Partial Summary Judgment of August 13, 2020.....	2
Order Denying Penn National's Motion for Reconsideration of September 21, 2020	13
Summons and Complaint filed February 28, 2020	18
Defendant's Notice of Motion and Motion to Transfer Venue and Answer to Complaint filed March 30, 2020	23
Covil Corporation's Motion for Partial Summary Judgment filed April 22, 2020.....	34
Defendant Penn National's Memorandum of Law in Opposition To Covil's Motion for Partial Summary Judgment filed May 8, 2020.....	162
Reply Memorandum of Covil Corporation in Support of Its Motion for Partial Summary Judgment filed June 18, 2020	520
Defendant Penn National's Motion for Reconsideration filed August 24, 2020	553
Receiver's Response to Penn National's Motion for Reconsideration filed August 27, 2020.....	558
Notice of Appeal filed September 14, 2020.....	563
Certificate of Counsel	565

EXHIBIT 13-2

SPECIAL MULTI-PERIL
POLICY
NON-ASSESSABLE

**Pennsylvania
National**
Insurance Companies

Pennsylvania National Mutual Casualty Insurance Company
One Fox 2001 • Harrisburg, PA 17101

POLICY NO.

SKRO 025

THE LAST DAY OF EXPIRATION YEAR
5 1 5 5 0 2 8 5 3 - 8

INCIDENTAL OFFICE

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

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

IN LIEU OF

515 50 28 53-7

ISSUING PLAN 99
ISSUING DATE 4/8/87
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

Sam J Crain & Co., Inc.

AGENCY NUMBER

22 6729

ISSUING DATE

4/8/87

PLUGGER ID

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

Designated Premises (ENTER "SAME" IF SAME LOCATION AS ITEM 1 ABOVE)

131 Pensley Cir. Greenville, Greenville, SC
Same

Tax Dist.

Occupancy of Premises

Warehouse
Warehouse

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	LIMITS OF LIABILITY					
		COV. NO.	LOC. NO.	Bldg. No.	Loc. No.		
PROPERTY COVERAGE	Building(s)	80	1	1	1		
	Personal Property of the Insured	80	\$ 893,000	\$	5000		
	Personal Property of Others	80	\$ 1,200,000	\$	2000		
	Addl. Cov. (Specify)						
Deductible: \$ See 70-627 each occurrence.							
If no deductible stated above, the deductible shall be \$100 each occurrence, \$1,000 aggregate each occurrence.							
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	\$		each person	\$		aggregate
	Addl. Cov. (Specify)	\$	1,000	each person	\$	10,000	each accident
SECT. II	CRIME COVERAGE	☒	As stated in the endorsement, made part of this Policy, if indicated by ☒ .				
SECT. IV	BOILER AND MACHINERY COVERAGE	☐					
6. Forms and Endorsements made part of this policy at time of issue (insert No. and Ex. 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 RO.520 9/63 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							
c. Section III - Forms and Endorsements only: CGL-1 MP-1 PI-1 GL0300 7/81 70-260 73-3010							
d. Section IV - Forms and Endorsements only: MP0450 12/79 MP5231 7/77 MP0307 7/77 IL0249 9/86 GL2104 7/66 MP2405 7/77							
7. Mortgagee: (Name and Address) Bldg. 1) Community Bank, P O Box 6807 Loc. 1) Greenville, SC 29602							
8. The Total Advance Premium is \$ 38193 and is payable \$ 38193 at inception, and \$ 2304 W. Parker Rd. Greenville, SC 29611 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

CODED BY BR READ YOUR POLICY CAREFULLY

HOME OFFICE COPY

Authorized Agent

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

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 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 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

which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

(b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

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

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

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

(c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of

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

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

(over)



Pennsylvania National Mutual Casualty Insurance Company
P.O. Box 2361 - Harrisburg, PA 17105

COMPREHENSIVE GENERAL LIABILITY
INSURANCE COVERAGE PART

SCHEDULE

Policy No.

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			
See 70-260					4967.	19,145.
Escalators (Number at Premises)	Subline 314	Number Insured	Per Landing			
cov. subj. to audit						
Independent Contractors		Cost	Per \$100 of Cost			
construction operations contractor		500,000	.025	.020	125.	91.
not railroads-excluding operations		500,000	.013	.011	65.	50.
on board ships loc.1) T39-999 16291		2,000,000	.003	.004	55.	80.
		(a) Receipts	(a) Per \$1,000 of Receipts			
Excluded						
Total Advance B.I. and P.D. Premiums					5212.	19,366.
Total Advance Premium					\$ 24,578.	
Location of all premises owned by, rented to or controlled (ENTER "RANGE" 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:

"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 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 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.

This insurance applies only to **bodily injury** or **property damage** which occurs within the **policy territory**.

PENNSYLVANIA NATIONAL 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 linear 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 bldg. walls- NOC						
Loc. 1 T39-999 (313) 15161		c) 1,400,000	.276	.680	3516.	9520.
Loc. 2 T32-999 (313) 15161		c) 250,000	.357	3.324	812.	8310.
Loc. 3 T10-999 (313) 15161		c) 12,000	.775	3.156	85.	379.
Loc. 4 T16-999 (313) 15161		c) if any	.339	1.429	-	-
Loc. 5 T41-999 (313) 15161		c) 10,000	.494	2.902	45.	290.
Loc. 6 T45-999 (313) 15161		c) if any	.407	2.499	-	-
Loc. 7 T23-999 (313) 15161		c) if any	.512	.959	-	-
Contractors construction or erection exec. supervisors exercising supervision through superintendents and foremen- not direct supervision.						
Loc. 1 T39-999 (313) 15192		C) 26,000	.990	.573	257.	136.
Loc. 3 T32-999 (313) 15192		c) if any	1.295	2.921	-	-
Loc. 9) T01-999 (313) 15192		c) if any	7.106	2.221	-	-
Air conditioning, heating or refrigeration systems or combined heating and air cond. system including duct work and piping-in- stallation, servicing or repair-including shop and repair including shop and retail stores or display rooms						
Loc 1) T39-999 17140		c) 50,000	.553	1.020	252.	510.
Paper hanging						
Loc. 1 T39-999 (313) 17235		c) if any	.253	1.110	-	-
Loc. 3) T32-999 (313) 17235		c) if any	.362	3.324	-	-
Loc. 4) T10-999 (313) 17235		c) if any	.711	3.156	-	-
Loc. 9) T01-999 (313) 17235		c) if any	1.747	2.841	-	-

PERSONAL INJURY LIABILITY INSURANCE COVERAGE PART
PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
HARRISBURG, PENNSYLVANIA

HOME OFFICE COPY
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	
A. False Arrest, Detention or Imprisonment, or Malicious Prosecution	ADVANCE PREMIUM
B. Libel, Slander, Defamation or Violation of Right of Privacy	\$ 745.
C. Wrongful Entry or Eviction or Other Invasion of Right of Private Occupancy	\$
Insured's Participation 0 %	Minimum Premium \$ N/A Total Advance Premium \$ 745./



Pennsylvania National Mutual Casualty Insurance Company
P.O. Box 2361 - Harrisburg, PA 17105

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PREMISES MEDICAL PAYMENTS
INSURANCE COVERAGE PART

SCHEDULE					General—Automobile Liability Policy No.	
COVERAGE						
(a) Premises and operations	15161,	15192,	17140	17235	ADVANCE PREMIUM	
(b) Escalators					\$ 157.	
(c) Sports activities					\$	
					\$	
					Total Advance Premium	
					\$ 157.	

COVERAGE E—PREMISES MEDICAL PAYMENTS

This coverage will pay to or for each person who sustains bodily injury caused by or for all reasonable medical expense incurred within one year from the date of accident on account of such bodily injury, provided such bodily injury arises out of and in the course of his employment for the named insured, or (b) operations with respect to 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 thereon;
- (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 thereon;

- (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.



SOUTH CAROLINA AMENDATORY ENDORSEMENT
(Inland and Seacoast Territories)

MP 03 15
(Ed. 04 89)

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. <u>1</u>	Bldg. No. <u>1</u>	\$ <u>893,000</u>	Loc. No. _____	Bldg. No. _____	\$ _____
Loc. No. <u>1</u>	Bldg. No. <u>2</u>	\$ <u>5,000</u>	Loc. No. _____	Bldg. No. _____	\$ _____
Loc. No. _____	Bldg. No. _____	\$ _____	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.

MP 03 15 (Ed. 04 89)

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.

ELECTRONICALLY FILED - 2020 May 08 6:29 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
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 Corp., Inc. Covil Residential Insulation, Inc. CovilConst. Co., Inc.
(Dormant Corp.) Industrial and Assoc. Inc. (Dormant Corp.) John Hamrick Link-
Pres. James P. Covil-Vice Pres. Yvonne W. Walls-Corporate Sec. and Tres.
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.

COINSURANCE CONTRACT



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)
1,0	1	Both
1,	2	
2,	1	
2,	2	

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 limit of liability under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the 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.

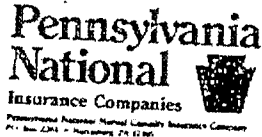
In the event that the aggregate claim for any loss is both less than \$10,000 and less than 5% of the limit of liability for all contributing insurance applicable to the property involved at the time such loss occurs, no special inventory or appraisal of the undamaged property shall be required, provided 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.

MP 04 20 (Ed. 01 83)

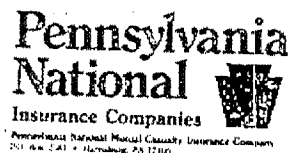


DEDUCTIBLE ENDORSEMENT

Basis of Insurance \$ Full Coverage Rate
Deductible Amount \$ See 70-16 Credit for Deductible See 70-16
Amount See 70-k16 % See 70-16 See 70-16 See 70-16
Limit of Liability \$ Rate for Deductible In-
surance 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:
☒ Occurrence
☐ Location
☐ Item
(Indicate one) except
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.....
Form 70-627 (Ed. 6/80) Agent



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 _____ (Name of Insurance Company) Dated _____, 19 _____.
_____ Agent

(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 <u>893,000</u>	Credit for
Deductible Amount <u>1,000</u>	Deductible Amount <u>16%</u>
Limit of Liability <u>893,000</u>	
Company Participation <u>100%</u>	
Location # 1	Item # 1 Conts.
Basis of Insurance <u>1,200,000</u>	Credit for
Deductible Amount <u>1,000</u>	Deductible Amount <u>16%</u>
Limit of Liability <u>1,200,000</u>	
Company Participation <u>100%</u>	
Location # 1	Item # 2 Bldg.
Basis of Insurance <u>5,000</u>	Credit for
Deductible Amount <u>1,000</u>	Deductible Amount <u>15%</u>
Limit of Liability <u>5,000</u>	
Company Participation <u>100%</u>	

(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 #

Basis of Insurance 92,000
Deductible Amount 1,000
Limit of Liability 92,000
Company Participation 100%

Credit for
Deductible Amount

Location # 2

Item #

Basis of Insurance 131,000
Deductible Amount 1,000
Limit of Liability 131,000
Company Participation 100%

Credit for
Deductible Amount



LOSS PAYABLE

No. 520
Ala., Fla., S. C.
(Edition 9-45)

It is stipulated that any loss due the Insured under this policy shall be held payable to Telephone Control
Corp. 302 Research Dr. Norcross, GA 30092
as their interest may appear, subject, nevertheless, to all conditions of the policy.

Notes 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 53-8 of the
PA NAT MUT CAS INS CO NAME OF INSURANCE COMPANY
issued at its Sam J Crain STATE GA Agency.
Dated _____
No. 520 (9-45) (Ala., Fla., S. C.) Agent
No. 520 (9-45) (Ala., Fla., S. C.)



(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

..... Policy Number	 Effective	 Expiring	 Issued to
..... Endorsement No.	 Effective	 Agent	
..... Authorized Representative			

TANNING BOOTHS OR SUNTANNING PROCEDURES EXCLUSION ENDORSEMENT

It is agreed that this policy does not apply to **Bodily Injury, Property Damage or Personal Injury** arising out of the use of sunlamps, suntanning equipment, tanning booths or other similar equipment.

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:
BUSINESS OWNERS POLICY
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.
- Subparagraphs (a) and (d) (i) of paragraph (1) of this exclusion do not apply to **bodily injury** or **property damage** caused by heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.
- IL 09 28 05 86
- Copyright, Insurance Services Office, Inc., 1986



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.

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
ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

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**.

ELECTRONICALLY FILED - 2020 May 08 6:29 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4001226

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.



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:

- 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:
 - 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.
 - 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.
- 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.
- 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	\$	per claim
	\$ 100.	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):—



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.)

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.), 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.), 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)



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 May 08 6:29 PM - RICHARD AND - COMMON PLEAS - CASE#2020CP4001226



FORGERY DEDUCTIBLE ON V
(For use with SMP Comprehensive Crime Coverage Endorsement Form Only)

MP 24 05
(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 V on account of any loss through forgery or alteration committed by any person or in which such person is concerned or implicated, whether such forgery or alteration involves one or more instruments, unless such loss shall exceed **Dollars (\$ 250.** and then for each event only but in no event for more than the amount of insurance carried under Insuring Agreement V on such loss.
 2. The Insured shall, within the time and in the manner prescribed in the Policy, give the Company notice of any loss of the kind covered by Insuring Agreement V 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 24 05 (Ed. 07 77)



CHANGE ENDORSEMENT

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW:

ENDORSEMENT EFFECTIVE DATE 6/23/87	POLICY NUMBER 513 50 28 53 0	TERM 1 YRS	FROM 3/31/87	3
---------------------------------------	---------------------------------	---------------	-----------------	---

COMPANY FMI

INSURED'S NAME AND MAILING ADDRESS

Covill Corporation, Inc(See 70-53)
PO Box 1854
Greenville, SC 29602

AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADL

Sam J Crain & Co

PRODUCER CODE 22 6729

POLICY CHANGES

Industrial & Assoc. Inc(Dormant Corp.) is deleted from
Form 70-53

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

SECTION I—PROPERTY COVERAGE

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

SECTION II—LIABILITY COVERAGE

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

INSTALLMENT PAYMENT PREMIUMS

Dec. #3		Previous Installments	Additional Premium	Return Premium	Revised Installments
Dates of subsequent installments,	2.	\$	\$	\$	\$
if payable in annual installments:	3.	\$	\$	\$	\$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT:			\$	\$	
Total for remainder of policy term:			\$	\$	

MP 12 01 (Ed. 02 79)

Agency, By



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
4/24/87	515 03 91 36 8	1 YRS	3/15/87	3/15/88
COMPANY PNY				

INSURED'S NAME AND MAILING ADDRESS	AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADDRESS
Carolina Investment Group (See 70-53) 4701 Hedgemore Dr. Suite 104 Charlotte, NC 28209	Ben F Turner, Inc PRODUCER CODE 21 6128

POLICY CHANGES

Adding Form MP0127(4/86) to policy with no change in premium.

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

SECTION I—PROPERTY COVERAGE

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

SECTION II—LIABILITY COVERAGE

COVERAGE	LIMITS OF LIABILITY		PREMIUMS		☐ Add'l ☐ Return
	Previous	New	Previous	New	
SMP Liability Insurance Form: Bodily Injury and Property Damage Liability (Combined Single Limit)	\$ ea. Occurrence \$ Aggregate	\$ ea. Occurrence \$ Aggregate	\$	\$	\$
☐ Premises Medical Payments Form	\$	\$			
☐ SMP Liability Insurance Form	\$ ea. Person	\$ ea. Person	\$	\$	\$
☐ Medical Payments Coverage Part	\$ ea. Accident	\$ 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. #2		Previous Installments	Additional Premium	Return Premium	Revised Installments
Dates of subsequent installments,	2.	\$	\$	\$	\$
if payable in annual installments:	3.	\$	\$	\$	\$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT:		\$	nc	\$	
Total for remainder of policy term:		7/29/87	\$	\$	

MP 12 01 (Ed. 02 79)

Agency, By

COINSURANCE CONTRACT

SET TAB STOPS AT ARROWS



BUSINESSOWNERS POLICY CHANGE ENDORSEMENT

BU 12 01
(Ed. 01 83)

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW

EFFECTIVE DATE 4/15/87	COMPANY PNI	POLICY NUMBER 525 02 11 71 7
Policy Period FROM 12 21 86	TO 12 21 87	☐ Standard Form ☒ Special Form

Name Insured and Mailing Address

REPRESENTATIVE: Agent or Broker and Office Address

**Seacon Square Condominium Assoc.
1036 East Ocean View Ave
Norfolk, VA 23503**

**Commercial Ins
27 4132**

Authorized Representative

7/29/87er

POLICY CHANGES

**Doc. #4, typed 6/18/87, effective 4/15/87 is corrected to show
adding Loc 2 (in lieu of Loc 1) at 1052-1058 E. Oceanview Ave.,
Norfolk, VA**

POLICY AMOUNT AND PREMIUM ADJUSTMENT					
Coverage Description	Limits of Liability		Premiums		☐ Add'l. Premium ☐ Return Premium
	Previous Limit	New Limit	Previous Premium	New Premium	
	\$	\$	\$	\$	\$

OPTIONAL COVERAGES

The following optional coverages are added under this policy when designated by an "X" in the box(es) shown below.		☐ Add'l. Premium ☐ Return Premium
☐ Employee Dishonesty	Limits of Liability \$5,000 each occurrence	\$
☐ Exterior Signs	\$	
☐ Exterior Grade Floor Glass	Included under Coverage A or Coverage B	
☐ Burglary and Robbery	Refer to Page 6 & 7 of the Standard Form	
☐ Boiler, Pressure Vessels and Air Conditioning Equipment	Included under Coverage A or Coverage B	
☐ Other (Describe)		

Doc. #5

Total Additional or Return Premium **na**

BU 12 01 (Ed. 01 83)



CHANGE ENDORSEMENT

MP 12 01
(Ed. 02 79)

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW:

ENDORSEMENT EFFECTIVE DATE 9/9/87	POLICY NUMBER 515 50 28 53 8	TERM 1 YRS	FROM 3/31/87	TO 3/31/88
COMPANY PA NAT MUT CAS INS CO		AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADDRESS Sam J Crain & Co., Inc.		
INSURED'S NAME AND MAILING ADDRESS Covill Corporation, Inc. (See 70-53) PO Box 1804 Greenville, SC 29602		PRODUCER CODE 22 6720		
11/11/87 LB # 0285		POLICY CHANGES		
Waiver of Subrogation endorsement is added to the policy - See Form 03-16 attached.				
SPECIFY FORM NOS. AND EDITION DATES AFFECTED BY POLICY CHANGES:				

SECTION I—PROPERTY COVERAGE

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

SECTION II—LIABILITY COVERAGE

COVERAGE	LIMITS OF LIABILITY		PREMIUMS		☐ Add'l ☐ Return
	Previous	New	Previous	New	
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	\$ ea. Person	\$ ea. Person	\$	\$	\$
☐ Medical Payments Coverage Part	\$ ea. Accident	\$ 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 #4	Previous Installments	Additional Premium	Return Premium	Revised Installments
Dates of subsequent installments: 2.	\$	\$	\$	\$
if payable in annual installments: 3.	\$	\$	\$	\$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT:	\$	\$	\$	\$
Total for remainder of policy term:				

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



Waiver of Subrogation Endorsement

It is agreed that with respect to such insurance as is afforded by the policy for Bodily Injury Liability and Property Damage Liability, condition 7, Subrogation, is amended to read as follows:

7. Subrogation, In the event of any payment under this policy, the Company shall be subrogated to all the insured's rights of recovery thereof against any person or organization except- Tyger Construction Co. in connection with the insured's contract

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.

It is further agreed that the additional premium for this endorsement is a minimum charge and shall be retained in full by the Company in the event of cancellation or termination of this endorsement or the policy.

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY
Harrisburg, Pennsylvania

515 50 28 53 8	3/31/87	3/31/88	Covil Corporation, Inc.
Policy Number	Effective	Expiring	(Issued to)
XXX	9/9/87		Sam J. Crain & Co., Inc. 22 6729
(Endorsement No.)	(Effective)		(Agent)

.....
Authorized Representative

Form 23-16b

PRINTED BY THE STANDARD TRUST COMPANY U.S.A. ZIP 17101



CHANGE ENDORSEMENT

MP 12 01
(Ed. 02 79)

THIS ENDORSEMENT FORMS A PART OF THE POLICY NUMBERED BELOW:

ENDORSEMENT EFFECTIVE DATE 3/31/87	POLICY NUMBER 515 50 28 53 8	TERM 1 YRS	FROM 3/31/87	TO 3/31/88
COMPANY PNI				
INSURED'S NAME AND MAILING ADDRESS Covill Corp. PO Box 1804 Greenville, SC 29602		AUTHORIZED REPRESENTATIVE'S NAME AND MAILING ADDRESS Sam J Crain & Co.		
PRODUCER CODE 22 6729				
POLICY CHANGES Adding Location #2 at 130 Pensley Circle, Greenville, Greenville, SC for 31,000 All Risk, 1000 Ded, 80% Co-Insurance. Contents Coverage. Breakdown F -218 E 14 V 2 A 137				
SPECIFY FORM NOS. AND EDITION DATES AFFECTED BY POLICY CHANGES:				

SECTION I—PROPERTY COVERAGE

Coverage Description	Loc. No.	Bldg. No.	LIMITS OF LIABILITY		RATES		PREMIUMS 100%		☒ Add'l ☐ Return
			Previous	New	Previous	New	Previous	New	
B	2	1	\$ nil	\$21,000			\$ nil	\$ 371.	\$ 371.
			\$	\$			\$	\$	\$
			\$	\$			\$	\$	\$
			\$	\$			\$	\$	\$

SECTION II—LIABILITY COVERAGE

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

☐ Revised Dual Limits:

INSTALLMENT PAYMENT PREMIUMS

Doc. #1	Previous Installments	Additional Premium	Return Premium	Revised Installments
Dates of subsequent installments, 2.	\$	\$	\$	\$
if payable in annual installments: 3.	\$	\$	\$	\$
PREMIUM DUE AT EFFECTIVE DATE OF ENDORSEMENT: 3/31/87	\$ 371.	\$	\$	\$
Total for remainder of policy term: 5/13/87 or	\$ 371.	\$	\$	\$

MP 12 01 (Ed. 02 79)

Agency, By

CODED BY BR

CRB

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 cancellation 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.

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 or 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 appraisal 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 custom's 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.

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.

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.**

1. This policy does not apply.

(a) **Under any Liability Coverage, to bodily injury or property damage**

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

(2) resulting from the hazardous properties of nuclear material and with respect to which (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**

(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.

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 hook 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.

SMP AMENDATORY ENDORSEMENT

In consideration of the premium charged, this endorsement is made a part of this policy.

The SMP Policy is amended as follows:

1. SUBROGATION

General Condition 6. "Subrogation" of the SMP Policy Conditions and Definitions Form is replaced by the following:

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 except as provided below.

(b) When SMP Condominium Additional Policy Provision Endorsement MP 00 80 is attached to this policy, the waiver of subrogation condition, paragraph 1. of Form MP 00 80 is deleted and replaced by the following:

The Company waives its rights to subrogation against any unit-owner of the condominium described in the declarations.

(c) As respects coverage provided under Section I-Property Coverage of this policy, this insurance shall not be invalidated should the insured waive in writing any or all right of recovery against any party for loss. Provided, however, that in the event the insured waives only a part of his rights against any particular third party, this Company shall be subrogated with respect to all rights of recovery which the insured may retain against any such third party for loss from the perils insured against to the extent that payment therefor is made by this Company; all subject to the following additional provisions:

- (1) This condition does not apply to crime, inland marine or glass coverage written under Section I. Property Coverage of this policy;
- (2) If made before loss has occurred, such agreement may run in favor of any third party;
- (3) If made after loss has occurred, such agreement may run only in favor of a third party falling within one of the following categories at the time of loss:
 - (i) a third party insured under this policy;
 - or

- (ii) a corporation, firm, or entity (a) owned or controlled by the named insured or in which the named insured owns capital stock or other proprietary interest, or (b) owning or controlling the named insured or owning or controlling capital stock or other proprietary interest in the named insured; or

- (iii) a tenant of the named insured.

(d) Except as provided in paragraphs (b) and (c) above 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, 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.

2. PERMITS AND USE

In the Conditions Applicable to Section I of the SMP Policy Conditions and Definitions Form:

A. Condition 16: Permits and Use is amended by adding the following:

(c) Without prejudice to this insurance, there to be an error in stating the name, number, street or location of any building(s) covered hereunder, or of building(s) and personal property if covered under a single item of insurance, where there is no willful concealment or misrepresentation.

B. Condition 17: Vacancy, Unoccupancy, and Increase of Hazard is replaced by the following:

Permission is granted for:

(a) The described building(s) to be vacant without limit of time, subject to a 15% reduction in the amount of loss payment otherwise due under this policy while the involved building(s) is vacant beyond a period of 60 consecutive days. This penalty will not be applicable during the period of any extension whereby the 60 day period is extended by endorsement.

("Vacant" or "Vacancy" means containing no contents pertaining to operations or activities customary to occupancy of the building. A building in the course of construction shall not be considered vacant.)

(b) Unoccupancy.

Provisions (a) and (b) above do not apply to the perils of vandalism or malicious mischief or sprinkler leakage.

(c) Increased hazards and for change in use or occupancy.

3. PERSONAL PROPERTY OF THE INSURED

The following words are deleted from Personal Property of the Insured in Section I. Property Covered:

A. "and usual to the occupancy of the insured"

in the General Personal Property Form and Special Personal Property Form

B. "and usual to the occupancy of the named insured"

in the Condominium Unit-owners General Personal Property Form and Condominium Unit-owners Special Personal Property Form

4. EXTENSIONS OF COVERAGE

In the General Building Form
Special Building Form
Condominium General Building Form
Condominium Special Building Form

the following words are deleted from A. Newly Acquired Property under Extensions of Coverage:

"but not exceeding \$100,000"

5. PROPERTY NOT COVERED

The following is added to the provisions of the General Building Form, the Special Building Form, the Builders' Risk Completed Value Form, the Special Builders' Risk Completed Value Form, the Condominium General Building Form and the Condominium Special Building Form respecting Property Not Covered:

This policy does not cover land (including land on which covered property is located) or water.

6. DEBRIS REMOVAL

In the Conditions Applicable to Section I of the SMP Policy Conditions and Definitions Form, the following is added to Condition 5., Debris Removal:

The total liability under this policy for debris removal expense only shall not exceed a) \$5,000, plus b) 25% of: i) the amount recoverable under this policy for loss to property plus ii) the deductible in this policy applicable to such loss. Nor will this insurance cover debris removal expenses reported to the Company more than 180 days after the earlier of the date of direct loss or the expiration of this policy.

This Debris Removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore or replace polluted land or water.

7. POLLUTANTS CLEAN UP AND REMOVAL

The following is added to the General Building Form

Special Building Form
Condominium General Building Form
Condominium Special Building Form

This insurance covers expense to extract pollutants from land or water at the described premises if the release, discharge or dispersal of the pollutants is occasioned by loss caused by any of the perils insured against in this policy during the policy period. Such expenses must be reported to the Company within 180 days after the earlier of the date of direct loss or the expiration of this policy.

The liability of the Company for loss under this coverage shall not exceed \$10,000 in the aggregate for the sum of all such expense incurred arising out of insured perils occurring during each separate twelve month period of this policy. This limit applies as an additional amount of insurance.

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.

8. POLLUTION EXCLUSION

The following is added to the Special Building Form

Special Personal Property Form
Condominium Special Building Form
Condominium Special Personal Property Form
Condominium Unit-Owners Special Personal Property Form
Special Builders' Risk Completed Value Form

This policy does not insure under this form against loss caused by the release, discharge or dispersal of pollutants unless the release, discharge or dispersal is itself caused by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, windstorm or hail to property contained in any building, vandalism, malicious mischief or leakage or accidental discharge from automatic fire protective systems. But if loss by any of the above twelve perils ensues, then this Company shall be liable for only loss caused by the ensuing peril.

**9. APPLICABLE ONLY TO COVERAGE FOR
BUSINESS INTERRUPTION, TUITION FEES,
EXTRA EXPENSE, RENT OR RENTAL VALUE
OR OTHER CONSEQUENTIAL LOSS**

The following is added to the
Combined Business Interruption and Extra Ex-
pense Endorsement

- Extra Expense Endorsement
- Loss of Rents Endorsement
- Tuition Fees Endorsement
- Loss of Business Income Endorsement
- Gross Earnings Endorsement
- Loss of Earnings Endorsement

The length of time to which this insurance applies
shall not include any increased period of time re-
quired due to the enforcement of any law regulat-
ing the prevention, control, repair, clean-up or
restoration of environmental damage.

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COINSURANCE CONTRACT

SPECIAL MULTI-PERIL POLICY SECTION I—SPECIAL BUILDING FORM

MP 00 13
(Ed. 10 83)

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:

- 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;
- hidden decay;
- hidden insect or vermin damage;
- weight of people or personal property;
- weight of rain which collects on a roof;
- 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:

- Outdoor radio or television antennas, including their lead-in wiring, masts or towers; awnings; gutters and downspouts; yard fixtures;
- 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:

- 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.
- The cost of excavations, grading or filling; foundations of buildings, machinery, boilers or engines whose foundations are below the under-surface 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.

- Outdoor signs, whether or not attached to a building or structure.
- Lawns; outdoor trees, shrubs and plants, except as provided in the Extensions of Coverage.
- 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:

- 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.
- 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).
- 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.
- 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.
- 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.

- 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.
- 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.
- 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 is excluded by this policy ensues, and then the Company shall be liable only for loss caused by such ensuing peril.

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;

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.

**SPECIAL MULTI-PERIL POLICY
SECTION I—SPECIAL PERSONAL PROPERTY FORM**

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.

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

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 thereof), 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 Com-

pany 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 short- age 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;

- 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.

EXHIBIT 14

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)
)
Nell Ashworth, Individually and as)
Personal Representative of the Estate)
of Robert J. Ashworth,)
)
Plaintiff,)
vs.)
)
Fisher Controls International, LLC,)
etc. et al.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
C/A NO.: 19-CP-25-00325

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)
)
DAVID D. ROLLINS,)
)
Plaintiff,)
vs.)
)
AIR & LIQUID SYSTEMS)
CORPORATION, et al.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-25-00118

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
BARBARA SAN NICOLAS,)
)
Plaintiffs,)
)
vs.)
)
BORG-WARNER MORSE TEC)
LLC, et al.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A NO.: 2017-CP-40-05764

SCHEDULING ORDER

Deadlines for the March 23, 2020 Asbestos Term of Court:

1. Motions for Summary Judgment deadlines are as follows:
 - a. Motions filed and served by February 7, 2020;
 - b. Responses filed and served by February 28, 2020;
 - c. Replies filed and served by March 6, 2020;
 - d. Hearing tentatively scheduled for March 13, 2020.
2. Motions *in Limine* deadlines are as follows
 - a. Filed and served by February 21, 2020;
 - b. Responses filed and served by March 3, 2020;
 - c. No replies will be considered;
 - d. Hearing tentatively scheduled for March 13, 2020.
3. Mediation will be held February 25, 2020 in Charleston, SC at the offices of Haynsworth Sinkler Boyd with Mediator Tim Wills.
4. Jury selection and trial will begin March 23, 2020.

[SIGNATURE PAGE TO FOLLOW]

IT IS SO ORDERED.

By: _____
Jean Hoefer Toal
Chief Justice, Retired
Acting Circuit Court Judge
jtoal@sccourts.org

Columbia, South Carolina
January 29, 2020



Hampton Common Pleas

Case Caption: David D Rollins VS Air & Liquid Systems Corporation , defendant,
et al
Case Number: 2019CP2500118
Type: Order/Scheduling Order

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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.)

**REPLY MEMORANDUM OF COVIL
CORPORATION IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

The Receiver of Covil Corporation hereby submits this reply memorandum in support of his motion for partial summary judgment. In its opposition to the Receiver's motion, Pennsylvania National Mutual Casualty Company ("Penn National") asserts four reasons why this Court should decline to rule in the Receiver's favor, even though the Receiver is entitled to prevail as a matter of law under this Court's jurisprudence and prior rulings. This reply brief succinctly sets forth the reasons why the Receiver's motion should be granted.

**I. THIS COURT HAS JURISDICTION OVER THIS CASE UNDER SOUTH
CAROLINA LAW AND STATE AND FEDERAL JURISPRUDENCE**

This case involves a failure by Penn National to pay \$50,000 in settlement of a single asbestos-related bodily injury case, referred to herein as *Rollins*. The facts of the *Rollins* coverage dispute in this case are not disputed: the *Rollins* plaintiff was exposed to asbestos as a result of Covil's operations at the Bowater paper mill in Catawba, South Carolina, during the policy period of one Penn National primary policy, *i.e.*, March 11, 1986 to January 25, 1987. This Penn National

primary policy (policy number 515 5028 537, issued for the period March 31, 1986 to March 31, 1987) provides \$1,000,000 in limits for each and every occurrence. The *Rollins* \$50,000 settlement is well within the \$1,000,000 limit of the Penn National policy. A representative of Penn National attended the mediation at which the *Rollins* case was settled and “expressed a willingness to contribute toward settlement on behalf of Covil” but then declined to contribute not only the \$50,000 amount required to settle *Rollins* but any amount whatsoever even though the \$50,000 was, and is, well within the Penn National policy limit for the *Rollins* occurrence.

This case involves one case, *i.e.*, *Rollins*, and the Receiver’s request that this Court rule that Penn National is required to pay the \$50,000 demanded of Penn National for this settlement.

This Court has jurisdiction over this case. Not only did this Court supervise the *Rollins* case, but this Court has jurisdiction over a breach of contract case involving an 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 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.

Rather, Penn National makes the specious argument that a federal court should decide this dispute, despite the uncontroverted facts that (i) no federal court has jurisdiction over a \$50,000 contract dispute, (ii) Penn National is no longer a party to the North Carolina action to which it wants this Court to defer, (iii) South Carolina substantive law, decided by South Carolina state courts, applies, and (iv) this Court is highly familiar with *Rollins*, with the Receiver, with Covil, and with the specific matters of law raised by this case.

The simple answer to Penn National's argument that this Court should not decide this case is that this case presents an actual justiciable controversy over one insurance contract and a \$50,000 claim under that contract in a Court that has exclusive jurisdiction over this case under both South Carolina and federal law. There is no just cause to delay the Receiver's right to adjudicate this dispute with Penn National in this Court. Nor is there any reason to deny or delay granting the Receiver's motion for partial summary judgment.

II. THERE IS NO "LATE NOTICE" DEFENSE IN THIS CASE

Penn National rests the principal part of its defense on a claim of "late notice." Leaving aside the fact that Penn National failed to submit any competent evidence on this issue, and that a demonstration of prejudice is required for assertion of this defense, Penn National's "late notice" defense is disposed of by Penn National's stark but telling admission:

"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 ("Opposition"), p. 17. In other words, Penn National was present at the mediation that resulted in the *Rollins* settlement, had the opportunity to meet the \$50,000 demand, and even to offer a different number. It, however, did nothing. Although it clearly had the ability to meet the \$50,000 settlement demand, which was well within its policy limit of \$1,000,000, Penn National refused "to contribute the amount requested by Covil at the mediation." *Id.* And, in fact, Penn National never offered anything. Penn National has since that time refused to reimburse the \$50,000 *Rollins* settlement.

This Court can summarily dispose of Penn National's "late notice" excuse with this straightforward admission by Penn National. Penn National was present at the mediation which resulted in the settlement of *Rollins*, had the opportunity to settle the case within its policy limit, for the sum of \$50,000, knew that there was bodily injury during its policy period and "expressed a willingness to contribute toward settlement on behalf of Covil," but then declined to do so, failing to meet its contractual obligations, breaching its contract, and resulting in this suit.

There simply is no "late notice" defense in this case.

III. THE ROLLINS SETTLEMENT IS COVERED UNDER PENN NATIONAL'S POLICY

This case involves bodily injury taking place during a discrete period, *i.e.*, March 11, 1986 to January 25, 1987, when Covil was performing operations at the Bowater paper mill in Catawba, South Carolina. This exposure was the result of operations conducted by Covil smack in the middle of Penn National's policy number 515 5028 537, in effect during the policy period of March 31, 1986 to March 31, 1987. Penn National admits – as it must – that the exposure and resulting bodily injury took place during its policy period. It further admits that its policy fully covers, with a \$1,000,000 policy limit for each "occurrence", bodily injury resulting from the conduct of Covil's operations.

The Receiver respectfully submits that this case is governed completely by the following determinations as a matter of law by this Court:

- 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;

- As to this individual asbestos lawsuit, 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;
- 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;
- 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
- Penn National bears the burden of proving the applicability of its exclusion for product liability and completed operations claims.

These matters of law have been determined by this Court in the specific context of Covil and this Court's supervision of the Receiver and the Receivership. The January 8, 2020 attached Order for Rule to Show Cause (the "Covil Order") governs disposition of this case.

This case involves Penn National's assertion that an exclusion (for the "completed operations hazard" and the "products hazard") bars coverage for *Rollins*. Penn National bears the burden of demonstrating that this exclusion applies. As held by this Court:

"The South Carolina Supreme Court has recognized that insurers bear the burden of proving the applicability of a coverage provision that limits their liability to their insured: "Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560 614 S.E.2d 611, 614 (2004) (citing *Boggs v. Aetna Cas. and Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565 (1979)); see also *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144–48, 781 S.E.2d 137, 141–44 (2015) (upholding circuit court decision to construe an ambiguous terms in favor of coverage, and noting that "ambiguous terms are to be construed strictly against the insurer"). Courts have held that this basic principle also applies to "limitations" on coverage. *Ins. Co. of N. Am. v. Kayser-Roth Corp.*, 770 A.2d 403

(R.I. 2001) (“[o]nce the insured makes a prima facie showing of coverage, ‘the insurer then bears the burden of proving the applicability of policy exclusions and limitations in order to avoid an adverse judgment.’” (quoting *Gen. Accident Ins. Co. v. Am. Nat’l Fireproofing, Inc.*, 770 A.2d 403, 416 (R.I. 1998))); *Koppers Co. v. Aetna Cas. & Sur. Co.*, 98 F.3d 1440, 1446 (3d Cir. 1996) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage, since disclaiming coverage on the basis of an exclusion is an affirmative defense”).”

Covil Order, p. 17. While the Covil Order deals largely with the applicability of aggregate limits, this Court’s discussion of the burden of proving the applicability of an exclusion is equally apt.

Penn National has done nothing even remotely to attempt to meet its burden.

In fact, Penn National admits that the operations at Bowater were conducted during its policy period and that this is the period of bodily injury. Penn National attempts to meet this burden in two ways. First, Penn National points to language in a 1986 Covil 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.” Opposition, p. 20. The implication by Penn National – never clearly stated and certainly never proven by any competent evidence – is that Covil supplied asbestos-containing “materials” in 1986 and 1987. However, Covil was not using or supplying or “furnishing” asbestos-containing materials in 1986 or 1987 and Penn National has presented no proof of any kind to this effect or that this is a “product liability” exposure as its Opposition implies.

Second, Penn National argues that it does not need to cover the *Rollins* action because Mr. Rollins’ exposure was take-home, and that means that 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. This is simply not an accurate reading of the exclusion.

Although the “products hazard” and the “completed operations hazard” exclusions may apply in different factual scenarios depending upon the individual case, it is established that the risk insured by both exclusions 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).

The evidence in this case is that Mr. Rollins was exposed to asbestos during the same period of time in which Covil performed Contract No. 4192-F-6410 at Bowater, between March 1986 and January 1987. Covil did not relinquish possession of the operations of Contract No. 4192-F-6410 until January 1987. Courts considering this same fact pattern have held that the products hazard exclusion applies only if bodily injury or property damage first occurs after the insured completes 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) (emphases added).¹ Other courts have noted that the “products hazard” exclusion applies only when the injury is caused by a defective product 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 (D.S.C. 1955).

¹ The *Friestad* court relied substantially on Dean Henderson’s article. 260 Pa. Super. at 182-185.

Penn National's position on the exclusion especially lacks merit because by 1986, new pipe insulation being installed at jobsites did not contain asbestos. Penn National has no evidence to suggest otherwise, and cannot rely on this implication to overcome summary judgment when no such claim was made in the underlying *Rollins* action.

The short answer is that Penn National has failed to meet its burden. The more substantial answer is that this case is governed by the important principles of law enunciated in the Covil Order, which should be announced as governing law in this case.

IV. PENN NATIONAL IS RESPONSIBLE FOR THE ENTIRE \$50,000 SETTLEMENT SOUGHT BY THE RECEIVER

Penn National's final argument is that the \$50,000 sought from Penn National under its 1986-1987 policy should be spread on a "pro-rata/time-on-risk" basis to as-yet unidentified insurers, citing *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40 (2011). Opposition, p. 21, n. 20. On this argument as well, Penn National has failed to heed, let alone grapple with, this Court's consideration of this very issue, in the specific context of Covil's ASBESTOS cases. While *Crossman* has bearing on allocation for product liability/completed operations cases, this is not such a case, as Penn National readily admits. For operations cases, such as this, the pro-rata rule of *Crossman* does not apply, but, rather, "in the case of operations claims where the policies in effect during the conduct of the operations will apply on an 'all sums' basis." Covil Order, p. 19. As previously held by this Court, in a ruling which MIGHT be repeated in this case:

"The Court is mindful of the South Carolina Supreme Court's decision in *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), and notes that it speaks generally to allocation of loss in a continuous injury situation such as asbestos-related disease but does not address the particular circumstances presented by this Receivership, i.e., the applicability of operations coverage and the impracticability of allocation of loss to Covil itself. Therefore, the Court

will apply the rule of Crossman Communities of N.C., Inc. except in the case of operations claims where the policies in effect during the conduct of the operations will apply on an “all sums” basis.”

Covil Order, pp. 18-19. Thus, there can be no allocation to other insurers. Penn National failed in its proof or to meet its burden. Most importantly, on this issue, it failed to appreciate the teaching and the articulated reasoning of this Court.

CONCLUSION

For the reasons set forth herein, in Covil’s motion, in the attached Covil Order, and otherwise, the Receiver of Covil respectfully requests that his motion for partial summary judgment be granted, that this case not be stayed, but, rather, proceed to full adjudication, and that a judgment be entered in Covil’s favor, as requested by Covil’s motion for partial summary judgment.

Respectfully submitted,

s/ G. Murrell Smith, Jr.

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June 18, 2020.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
C/A NO.: 2015-CP-46-02155

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

Plaintiffs,

vs.

CBS Corporation, et al.,

Defendants.

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
C/A NO.: 2015-CP-46-03456

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

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2019-CP-40-00076

CHARLES T. HOPPER and REBECCA
HOPPER,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., et al.,

Defendants.

**ORDER FOR RULE TO SHOW CAUSE
HEARING**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04940
	)	
DENVER D. TAYLOR and JANICE	)	
TAYLOR,	)	
	)	
Plaintiffs,	)	ORDER FOR RULE TO SHOW CAUSE
	)	HEARING
vs.	)	
	)	
Air & Liquid Systems Corporation, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

This matter comes before this Court by way of a Motion for a Rule to Show Cause initiated by Peter D. Protopapas, as the duly appointed Receiver of Covil Corporation (“Receiver”). The Receiver’s Motion for a Rule to Show Cause against United States Fidelity and Guaranty Company (“USF&G”), Zurich American Insurance Company (“Zurich”), and Sentry Insurance, a Mutual Company (“Sentry”) (collectively “Insurers”) seeks an order holding these Insurers in contempt for violating this Court’s (1) November 2, 2018 Order Appointing a Receiver for Covil Corporation;¹ (2) February 28, 2019 Order requiring Covil’s Insurers to attend mediation;² (3) September 19, 2019 Order requiring Covil’s Insurers to respond and produce required documents before September 30, 2019;³ and (4) October 28, 2019 Order for Rule to Show Cause.⁴

¹ See November 2, 2018, Order Appointing Receiver in *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-40-04940).

² See February 28, 2019, Order Granting Plaintiff’s Motion to Compel Attendance at Mediation in *Nolen v. Daniel, et al.* (C/A No. 2016-CP-40-04184); *Greene v. Armstrong, et al.* (C/A No. 2016-CP-40-00173); *Thompson v. Armstrong, et al.* (2016-CP-40-2498); and *Taylor v. Air & Liquid, et al.* (C/A No. 2018-CP-04940).

³ See September 19, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

⁴ See October 28, 2019, Order for Rule to Show Cause in *Hopper v. Air & Liquid, et al.* (C/A/No. 2019-CP-40-00076).

The South Carolina Supreme Court appointed the undersigned to serve as the Chief Judge of Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system. The asbestos litigation in South Carolina constitutes a significant number of complex multi-party cases. A typical case will include an injured plaintiff alleging that an asbestos-related cancer was caused by dozens of different defendants.

This Court has worked diligently to manage this docket and to organize this complicated statewide litigation into an orderly process whereby cases are assigned for trial in a predictable fashion. This process is designed to allow the litigants to participate in discovery in an orderly fashion to facilitate the evaluation of litigation positions well before trial, and to try the cases as necessary.

The Supreme Court's charge to this Court includes facilitating meaningful mediations of asbestos cases consistent with the South Carolina Rules of Alternative Dispute Resolution. The Rules mandate attendance at mediation of "a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim" on behalf of any insured party against whom a claim is made. SCRADR 6(b)(4).

Although this Court manages a large asbestos docket involving scores of different defendants, the matters associated with defendant Covil Corporation have required a very significant amount of this Court's time and attention for the reasons explained in more detail below.

From the time of its original formation in or about 1954, Covil Corporation was engaged in the installation and removal of insulation in various industrial facilities across South Carolina. Covil's operations involved the installation, removal and disturbance of insulation materials, typically supplied, required or acquired by other parties. At pertinent times insulation materials contained asbestos and Covil's operations are alleged to have resulted in bodily injury to South Carolina citizens. In 1991, Covil's business failed and it ceased operations. Thereafter, in 1993 the State of South Carolina rescinded Covil's corporate charter for failing to file the appropriate documentation with the Secretary of State.

Despite Covil's failure as a going concern and its subsequent forfeiture of its corporate charter, it continued to be sued in numerous asbestos cases. Through the management of the South Carolina asbestos docket, this Court observed several irregularities in the way that Covil conducted itself in its litigation. In the fall of 2018, Covil inexplicably defaulted on two mesothelioma asbestos cases pending before this Court, and shortly thereafter on November 2, 2018, the undersigned appointed Peter D. Protopapas to serve as a Receiver for Covil Corporation to manage its affairs according to South Carolina law.

During the ensuing months, this Court conducted numerous hearings regarding issues related to Covil. Over time, it became clear to this Court that certain of Covil's primary insurers (USF&G, Zurich, and Sentry) were operating an otherwise defunct Covil for purposes of managing Covil's asbestos litigation and had been doing so for over two decades without any apparent involvement from the insured – Covil Corporation. For over two decades, these primary Insurers pretended to be Covil. The primary insurers never sought the appointment of a receiver to represent Covil's interests in the defense of its asbestos cases. In fact, despite numerous opportunities to do so, at no time did any of Covil's Insurers even disclose to this Court their scheme to operate Covil as an undisclosed alter ego of these insurance companies.

As Covil's Receiver began to undertake his responsibilities, it became evident to this Court that Covil's Insurers would not willingly cooperate with the Receiver.⁵ In fact, several of these Insurers went to great lengths to thwart the Receiver's efforts to understand the basic nature and amount of the asbestos insurance coverage available to Covil. As a result of the insurers' refusal to cooperate, the Receiver began to seek this Court's intervention to determine the nature and amount of insurance available to Covil for its asbestos litigation. This information is critical to the Receiver's ability to manage Covil's asbestos

⁵ The Court's discussion of Covil's Insurers does not apply to TIG Insurance Company, as successor in interest to Fairmont Specialty Company, formerly known as Ranger Insurance Company ("TIG"). Unlike Covil's other insurers, TIG has cooperated with this Court and the Receiver. After producing the requisite materials, TIG acknowledged its responsibilities and reached an amicable settlement with Covil's Receiver. The Court commends TIG and its counsel for their cooperation and professionalism throughout this process. The Court also dissolved its Order to Show Cause as it related to Hartford and notes that Hartford also has reached an agreement to resolve its differences with Covil's Receiver.

litigation and, specifically, to participate meaningfully in mediation sessions scheduled for Covil's asbestos cases as required by the South Carolina Rules of Alternative Dispute Resolution.

Proceedings before this Court on the issue of Covil's participation in mediation exercises have demonstrated a lack of clarity regarding what constitutes "full authority" for claims filed against Covil Corporation. This lack of clarity continually delays settlement, stalls negotiations, and slows the ability of this Court to manage the South Carolina asbestos docket. An inquiry into the insurance coverage of Covil Corporation is warranted to fully determine the amount of authority available for settlement of asbestos personal injury actions filed against Covil Corporation.

Over time, this Court entered a series of escalating orders designed to require the Insurers to produce relevant insurance information to Covil's Receiver and to participate in asbestos mediations as scheduled on the South Carolina docket. Although several asbestos cases have been resolved under this system, except as noted above in note 5, the Insurers have yet to comply with this Court's Orders regarding the full production of the relevant insurance information to Covil's Receiver. These Insurers' defiance of this Court's lawful orders has impeded Covil's Receiver in his work under this Court's mandate, has interrupted this Court's ability to manage the numerous asbestos cases pending on its docket, and has required this Court unnecessarily to expend valuable time and resources in numerous hearings designed to encourage these Insurers to conduct themselves in accordance with the basic tenets of well-established South Carolina law. The Court has experienced problems with these Insurers when they were animating an otherwise defunct Covil and controlling its behavior in asbestos litigation before the appointment of the Receiver. *See* Order Granting Plaintiff's Motion for New Trial in *Crawford v. Ceeleanese Corp.*, C/A No. 2017-CP-42-04429 (where this Court found that Covil's insurers had been improperly operating, controlling, and abusing Covil for many years).

Unfortunately, this Court's persistence and patience have been unsuccessful in causing these Insurers fully to disclose and produce the insurance information or the details concerning their respective insuring relationship with Covil to the Receiver for their insured, Covil. After numerous attempts to achieve

compliance, this Court scheduled a show cause hearing on November 12, 2019, where the Insurers were directed to appear to discuss by policy and annual period (or portion thereof) the original and remaining limits of Covil's insurance policies under all applicable coverage parts, including separately as to the product liability/completed operations coverage part and the operations/premises coverage part and to provide an accounting of the amounts paid in settlement for each claim paid or settled, who authorized payment, under what coverage parts of the policies settlements or judgments were paid, documentation or other evidence supporting the analysis and characterization of claims as products/completed operations or operations/premises claims, method of allocation of settlements or judgments paid among Insurers, policies and policy years and if no payment was made because of a denial of coverage, the stated basis at the time of settlement for such denial. With the exceptions noted above in note 5, the Insurers failed and refused to comply with this order.

In sum, after months of work by this Court and its Receiver, it appears to this Court that these Insurers have refused to provide complete policy limits and settlement authority information to their insured's Receiver, even after this Court ordered the Insurers to provide the information by September 30, 2019, under penalty of perjury, and again in a show cause hearing scheduled on November 12, 2019. Despite their assertions in their memoranda submitted to this Court following the November 12, 2019 hearing, the Court has given the Insurers ample opportunity to respond to Receiver's arguments and explain to the Court why they should not be held in contempt for failing to abide by this Court's September 19, 2019 Order. Despite these Insurers not complying with the clear terms of the September 19, 2019 Order to respond to the areas of inquiry under the penalty of perjury by September 30, 2019, the Court allowed these Insurers to submit additional affidavits and evidence after the November 12, 2019 hearing. However, as the Court noted at the hearing, these Insurers were already in contempt of this Court's order by not providing proper responses under perjury by the September 30, 2019 deadline, and the supplemental submissions, although potentially helpful to the Court in making this ruling, do not necessarily cure the Insurers' contempt. The Court has diligently reviewed and considered the extensive filings submitted by both the

Receiver and these Insurers after the November 12, 2019 hearing. The Court finds the submissions by these Insurers are not relevant to, and do not cure, their contemptuous conduct. Rather, these filings have consumed additional countless hours of this Court's time while these Insurers continue to play games rather than comply with this Court's orders.

The Court is particularly concerned with the fact that these Insurers continue to claim ignorance surrounding their responsibility to their insured and their obligations under this Court's orders. The Court has held multiple hearings wherein the Court has allowed the Receiver and the Insurers to present arguments pertaining to these issues, and the Receiver has been trying to obtain the requested information since his appointment, well over a year ago. These Insurers cannot continue to plead ignorance in order to avoid the consequences of their own conduct and prolong the much-needed resolution of pending asbestos cases. The Insurers have continuously attempted to impede the Receiver's ability to determine the amounts of coverage available to Covil and have violated the South Carolina Alternative Dispute Resolution Rules by refusing to provide the Receiver with the necessary coverage information to fully participate in the mediation of these claims. In fact, because of these Insurers' obstinate refusal to comply with this Court's order and their past conduct, the Receiver has been forced to go to great lengths in order to present evidence to this Court and piece together the secondary evidence of insurance. While the Insurers have produced thousands of pages of documents, the production does not satisfy this Court's order as these Insurers have still not produced full coverage information or policies to the Receiver or fully disclosed the nature and extent of their insuring relationship.

During these hearings, the Court has been presented with evidence in the form of documents and sworn testimony indicating that Covil purchased products liability and completed operations liability insurance from USF&G (now a part of Travelers) from 1954 to 1964. Specifically, Palmer Covil (the founder of Covil Corporation) testified in a deposition in 1977 that Covil purchased USF&G general liability insurance coverage from 1954 to 1964. Moreover, Palmer Covil identified the Goldsmith Agency as the broker responsible for selling USF&G coverage to Covil. Former Lieutenant Governor Nick

Theodore provided an affidavit, as a former employee and partner of this agency, that he recalled selling USF&G insurance to Covil during this time period (until his agency lost the business to an agent selling insurance issued by Sentry). The Court finds this evidence and testimony to be persuasive, credible, and consistent with other known facts in this case.

On the other hand, USF&G reports only that it has been unable to locate these insurance policies. However, the Court has also been presented with evidence that USF&G undertook a systematic corporate program to destroy or discard its historical insurance policies which included policies and other related documentation from the period of time for which policies were issued to Covil as demonstrated by the evidence before this Court. In its arguments before the Court on November 12, 2019, and its memorandum submitted after the hearing, USF&G argues the Court should disregard its historical conduct because past conduct cannot be the basis of a finding of contempt. However, USF&G failed to inform the Court of the systematic destruction of policies until the Receiver brought the matter to the attention of the Court at the most recent hearing. The Court is concerned by the Insurers' failure to fully represent facts to the Court regarding the insurance coverage issued to Covil, especially considering that the Insurers acted as the alter ego of Covil for numerous years. The Court has given the Insurers ample opportunity to inform the Court of the necessary facts surrounding these coverage issues, and the Insurers have continuously refused to provide full information, misrepresented information, and attempted to prevent this Court from ruling on these issues.

The Court is deeply troubled by USF&G's historical behavior, including the widespread destruction of its insureds' insurance policies in an effort to evade liability under these policies. The Court is even more troubled by the fact that USF&G never mentioned, in numerous hearings on this very topic, that its policy destruction "purge" was the reason that USF&G is now unable to produce Covil's policies to the receiver. In this regard, USF&G has flagrantly defied this Court's orders and attempted to make a mockery of this Court's important work. Rarely, if ever, has this Court encountered such a degree of corporate

dishonesty as has been on display from USF&G during these proceedings. USF&G owes this Court a duty of candor, and should have been forthright.

The spoliation of evidence is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a current or reasonably anticipated legal proceeding. If proven, spoliation may be used to establish that the evidence was unfavorable to the party responsible. *Black's Law Dictionary* (8th Ed. 2004). The theory behind imposing sanctions for spoliation of evidence is that when a party destroys evidence, it is reasonable to infer that the party had “consciousness of guilt” or other motivations to avoid the evidence being heard or introduced to the jury.

A party bringing a motion for sanctions based on spoliation bears the burden of establishing three (3) independent elements before the Court may determine which sanction, if any, is appropriate. These elements are:

- (1) that the party having control over the evidence had a duty to preserve it at the time it was destroyed;
- (2) that the evidence was destroyed with a culpable state of mind; and
- (3) that the destroyed evidence was relevant to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Hawkins v. College of Charleston, 2013 WL 6050324, *2 (4th Cir. 2013) (quoting *Cytec Carbon Fibers, LLC v. Hopkins*, No. 2:11-cv-0217, 2012 WL 6044778 (D.S.C. Oct. 22, 2012)).

As to the first element, USF&G had a duty to preserve this evidence. “A party has a duty to preserve evidence during litigation and at any time ‘before the litigation when a party reasonably should know that evidence may be relevant to anticipated litigation.’” *Id.* at *3 (quoting *Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001)). There is a common law duty to preserve evidence, and a party can only be sanctioned for destroying evidence it had a duty to preserve. That duty arises when a party has notice that the party possesses evidence that is relevant to litigation or when a party should have known the evidence may be relevant to future litigation. Pre-litigation discussions or requests to inspect can also trigger a duty to preserve relevant evidence and it can be said that the obligation to preserve evidence

runs first to counsel, who then has an ethical obligation to notify and advise their client on its obligations to safeguard and preserve the evidence relevant to the litigation on a continuing basis.

Covil is unable to identify a specific date on which USF&G's duty to preserve records arose. However, by 1976, USF&G had received correspondence from Covil requesting USF&G to respond to an asbestos case, and by June 1983, USF&G had received correspondence from Covil serving as Covil's final written demand that USF&G afford a defense to Covil in an asbestos case. As a result of this exchange of correspondence, USF&G knew by at least June 1983 that its insurance policies issued to Covil would be highly relevant documents for years to come. Despite this fact, USF&G reports that it has been unable to locate the early policies issued to Covil – policies that it denies having issued – or an actual copy of a later policy that it admits to having issued to Covil.

The evidence demonstrates that USF&G cannot locate the early policies USF&G issued to Covil, or the later policy it admits having issued to Covil, because USF&G destroyed the policies. In 1984, the year after Covil's counsel demanded a defense from USF&G, which was facing a growing number of long-tail claims like the asbestos claims here, USF&G deliberately began purging old policies and policy information, including information on policy limits. To support its contentions regarding the destruction of policies, the Receiver submitted documents from the *Western MacArthur* litigation; most importantly the Pillsbury Report, which USF&G Filed in *Western MacArthur* litigation (*Western MacArthur Company v. General Accident Insurance Company of America*, Case No. 721595-7, In the Superior Court for Alameda County, California).⁶

⁶ The Pillsbury Report is an 85-page document, filed in *United States Fidelity & Guaranty Company, et al. v. American Re-Insurance Company, et al.* Index No. 604517/2002, in the Supreme Court of the State of New York, County of New York. An expert witness, Philip L. Pillsbury, Jr., of the New York law firm, Pillsbury and Levinson, was retained by the reinsurers of USF&G to evaluate, in the context of California bad faith and insurance practice, the potential exposure for damages, which USF&G faced in a jury trial in 2002. This material was presented by Covil, at the November 12, 2019 hearing to describe the significant corporate misconduct leading to USF&G's contention that it was unable to locate copies of Covil's early insurance policies, which the Receiver found highly probative of the key issues in the proceeding. There was no objection regarding the Court's consideration of the documents, and Defendant

As stated in the Pillsbury report, an April 30, 1984 memorandum from Charles Watson, then a Vice President of USF&G, the new document destruction policy mandated the “purging of *each* file, not just files that can be discarded in entirety,” required that doubts should be resolved “in favor of discarding unless there are legal restraints,” and admonished that “we must be absolutely sure that we have thoroughly cleaned existing files.” Similarly, a March 16, 1984 Department Circular detailing the Records Management Program noted: “All existing departmental files are to be in full compliance including having been completely purged of all obsolete and duplicate material.”

As detailed in the expert report of Philip Pillsbury, which USF&G filed on February 21, 2017 as an exhibit to its opposition to a motion in the *Western MacArthur* reinsurance matter then pending in New York, USF&G’s employees were given just two months to comply with the document destruction. Relying on USF&G’s historical records, Mr. Pillsbury also described the deposition testimony of Randolph Rohrbaugh, the USF&G Vice President of Quality Assurance, who testified that, at a meeting concerning the USF&G document destruction program among USF&G management and attorneys in 1984, “there was a discussion as to whether USF&G should retain its records information about insureds’ policies given that insureds would bear the burden of proof as to those policies.” See Pillsbury Report at 18.

In short, the evidence shows that USF&G plainly undertook its purge of policy-related materials in anticipation of litigation. Having destroyed its policy records, USF&G then could require its policyholders to provide copies of their policies to USF&G in order for USF&G to provide coverage. Beginning in the late 1980s, however, USF&G realized that policyholders could prove coverage for long-tail liability claims with secondary evidence, even if USF&G had destroyed the actual historical policy records in its possession. In his report in the reinsurance matter, Mr. Pillsbury describes the USF&G decision to reverse course on the document destruction policy. See Pillsbury Report at 18–19. Summarizing the deposition of Kenneth Ford, the USF&G in-house counsel in the Claims Legal Division, Mr. Pillsbury notes that Ford

USF&G and others requested the court allow them to submit further documentation. The court has considered the report and the additional insurers’ submissions in drafting this order.

“testified at deposition that USF&G decided to ‘stop the destruction’ after policyholders began to prove coverage for the long-tail claims with ‘partial information concerning a policy,’ and the burden was shifted to the insurer to prove there wasn’t a policy or at least to prove the policy terms, and USF&G was not able to rebut some of that information.” *Id.* at 19. The reversal of course apparently occurred after USF&G destroyed evidence of the coverage it had provided to Covil between 1954 and 1964 and the actual policy it admits to having issued to Covil in the 1976 to 1978 periods.

Recently produced documents from USF&G itself further support that had USF&G not destroyed its historical policies, it would have been able to locate coverage it issued to Covil in the 1950s and 1960s and the actual policy it admits to having issued to Covil in 1976 to 1978. USF&G Claims Register documents⁷ produced to the Receiver by USF&G on November 22, 2019, and December 5, 2019, over two months after this Court’s deadline for production, show USF&G paid claims on Covil policies made by third-party business entities such as Daniel Construction, Tennessee Eastman, Raburn Mills, First Baptist Church and Hicks & Ingle Company during the period from 1955 to 1962, further supporting the fact that USF&G issued general liability insurance coverage to Covil during this timeframe and, due to its conduct, has been unable to produce full and complete coverage information. Furthermore, although it claims to have what it calls a “certified” copy of the 1976 to 1978 primary policy it admits having issued to Covil, USF&G has not been transparent with either Covil or the court. This so-called “policy” is a collection of forms, not an actual insurance policy, and there is no competent proof of an aggregate limit for products or completed operations claims. USF&G’s use of the word “certified” is also misleading since the documents have no independent verification of their source or accuracy.

⁷ The Court understands that USF&G utilized Claims Registers to maintain an index of all paid claims, and specifically that an entry was not placed on a claims register until a clerk had reviewed the relevant insurance policy to ensure that there was coverage for the loss. An April 1947 booklet entitled “Claim Department Clerical Instructions” detailed USF&G’s instructions to clerical staff regarding entry of claims in the claims register: “After the clerk has checked the policy or bond information to determine if there is coverage for the loss, she enters it on the claim register as provided on that form. She assigns the number next in order to the last one used. A separate sheet is used on each class of claims for each month. A carbon copy of the claim register is sent to the Home Office on the first of each month on AL [Automobile Bodily Injury], L [Other Bodily Injury], C [Compensation], and MP [Miscellaneous Property Damage] claims.”

By failing to maintain documents relevant to pending and future asbestos personal injury and insurance litigation, USF&G had a culpable state of mind because it either intentionally or negligently destroyed the evidence. The destruction of the documentary evidence that Covil seeks significantly hampers Covil's Receiver's ability to reconstruct its insurance program and other information relevant to pending and future asbestos personal injury and insurance litigation.

The "culpable" state of mind requirement does not require willful destruction. Rather, the moving party need only show that the evidence was destroyed "knowingly, even without intent [to breach the duty to preserve it], or negligently." *Byrnie v. Town of Cromwell*, 243 F.3d 93, 107–12 (2d Cir. 2001). "[T]he Fourth Circuit requires only a showing of fault, with the degree of fault impacting the severity of the sanctions." *Sampson v. City of Cambridge, Maryland*, 251 F.R.D. 172, 179 (D. Md. 2008) (citing *Silvestri*, 271 F.3d at 590).

Here, the evidence before the Court shows that USF&G's conduct of destroying or losing relevant documents satisfies the required minimum level of culpability needed for spoliation sanctions to be imposed. Because culpability encompasses everything from ordinary negligence to willful conduct, the culpable standard merely requires USF&G to have some degree of fault, which is the case in this matter. Whether the Court finds that USF&G was negligent, grossly negligent, or willful in destroying the evidence, the Court concludes that USF&G had a culpable state of mind when it spoliated the evidence at issue.

The last of the three independent elements, relevance to the party's claims, is also clearly present on these facts. Under Rule 401 of the South Carolina Rules of Evidence, "relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." "Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears." *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Thus, any evidence which assists a jury at arriving at the truth of an issue is relevant. The determination of the relevancy of evidence is largely

within the trial judge's discretion. *Strickland v. Coastal Design Assocs., Inc.*, 294 S.C. 421, 425, 365 S.E.2d 226, 228 (Ct. App. 1987).

Here, Covil has met its burden of showing the spoliated evidence is highly relevant to its case. The fact that USF&G destroyed or lost such evidence is extremely damaging to Covil's ability to reconstruct its insurance policies. As such, USF&G should not profit or benefit from its failure to preserve this evidence. Of course, Covil has no way of knowing precisely what has been destroyed. However, there is reason to believe that the destroyed evidence would have aided Covil's position, which has suffered irreparable prejudice due to USF&G's spoliation. USF&G is hereby ORDERED to produce ALL documents related to these issues, including all transcripts, from the *Western Asbestos* litigation, including the subsequent re-insurance litigation, to Covil's Receiver by January 13, 2020.

By destroying relevant evidence, USF&G has succeeded in hiding significant evidence of its insurance coverage and attempted to deprive Covil of the opportunity to present critical evidence of insurance coverage. Thus, the Court finds that USF&G spoliated relevant evidence and will issue an appropriate sanction to deter such conduct in the future and attempt to re-level the now uneven evidentiary playing field.

When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. *Gathers ex rel. Hutchinson v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 83, 427 S.E.2d 687, 689 (Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990)). Over the years, courts have found numerous sanctions to be appropriate for the spoliation of evidence. Courts have allowed adverse inferences to be drawn from the loss or destruction of relevant evidence, dismissed cases or stricken pleadings, issued fines plus attorney's fees and applied almost every other sanction available for the failure to provide discovery.

Among the tools that judges may use to combat spoliation is the adverse inference jury instruction/presumption. Giving the finder of fact the ability to decide what weight to place on the spoliation is the preferred practice in South Carolina. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d

679 (Ct. App. 1997). The presumption does not arise from the failure to present the evidence, but rather from the role that the spoliating party had in preventing it from being reviewed by the jury or court. When a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. *Gathers v. S.C.E.&G. Co.*, 427 S.E.2d 687, 689 (S.C. Ct. App. 1993) (citing *Kershaw Cty. Bd. of Educ.*, 302 S.C. 390, 396 S.E.2d 369). Based on the evidence established by Covil's Receiver regarding the existence of Covil insurance coverage issued by USF&G, and based on the evidence demonstrating USF&G's spoliation of evidence regarding the existence of the coverage, this Court holds that USF&G's issued general liability insurance coverage to Covil Corporation on an annual basis, including products and completed operations coverage, between 1954 and 1964, without an aggregate limit of liability for damages paid for bodily injury or property damage. The court also makes a similar finding as to the 1976 to 1978 policy, SMP 490049.

Further, necessitated by the Supreme Court's charge to this Court to manage the South Carolina statewide asbestos litigation cases and as a direct result of these Insurers' recalcitrance in refusing to cooperate with this process, this Court and its Receiver are now left to discharge their respective duties by reconstructing the nature and scope of Covil's historical insurance program (without the cooperation of the Insurers) so as to facilitate the management of the South Carolina asbestos docket. In this effort, the Court will apply the following principles of South Carolina insurance law.

1. "Trigger of Coverage." The term "trigger of coverage" describes the necessary events for a liability policy to respond to a suit seeking damage because of bodily injury. The Court rules that the policies at issue respond to suits when bodily injury takes place during the policy period, regardless of when the event causing the injury took place and regardless of when the injury becomes known or knowable. All of an insured's policies in effect from a person's first exposure to asbestos through manifestation of an asbestos disease and, ultimately, to death cover the asbestos cases unless coverage is otherwise excluded. This approach is called a "continuous trigger of coverage" or an "injury in fact trigger of coverage" inasmuch as medical science established long ago that asbestos injuries begin upon first inhalation of

asbestos fibers and continue progressively thereafter. As respects asbestos injury and death suits, the “continuous trigger of coverage” and the “injury in fact trigger of coverage” yield the same result such that the court need not choose between these conceptually similar approaches. *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 45 Cal. App. 4th 1, 45 (1996) (“We find no error in the trial court’s use of an injury-in-fact analysis to apply a continuous trigger.”).

2. The Distinction Between “Operations” and “Completed Operations.” The Court finds that the policies at issue contain separate and distinct coverage parts for “operations” and “completed operations.” As a general matter, the policies contain no aggregate limit of liability for the operations coverage part, although the Court has also held that the USF&G policies issued to Covil between 1954 and 1964 also contain no aggregate limit of liability for the products and completed operations coverage part as well. The operations coverage part for each one of the policies at issue in this case responds repeatedly to each and every “occurrence” without a total “cap” on the insurers’ liability to pay, subject only to a “per occurrence” limit of liability. The same is true of products and completed operations claims covered under the 1954 to 1964 USF&G policies. Most of the asbestos contracting claims against Covil invoke the operations coverage part because they did not result from its “completed operations.”

The insurers have conflated the separate “operations” coverage part with the “completed operations” coverage part and have applied their policies in a manner that has not been adopted by the state courts in South Carolina. The Court is aware that the insurers contend that aggregate limits of liability apply to any third party’s claim against Covil involving exposure to asbestos that took place before the *inception date* of their policies. The policies are not written in that manner, however. There is nothing in the definition of “completed operations” that focuses on the inception date of a policy.

This Court is aware that, in seeking to limit their obligations to Covil, the insurers would prefer to rely exclusively on federal decisions attempting to “guess” the view the Maryland Court of Appeals would take if the issue of interpreting the “completed operations” provisions of the policies were presented to it. The insurers take the position that the Fourth Circuit has “spoken” definitively on this issue. However,

this Court finds that federal decisions attempting to predict the interpretation of policy language under Maryland law are not pertinent to the determination of South Carolina law. This Court specifically finds that *In re Wallace & Gale Co.*, 385 F.3d 820 (4th Cir. 2004) is not the law of South Carolina.

This Court finds that the “completed operations hazard” described in the insurers’ policies, and the corresponding aggregate limits of liability in the policies that contain such aggregate limits of liability, apply *only* when a plaintiff is exposed to asbestos *after* Covil completed its installation or removal operations or work at a particular jobsite.

The Court holds that any aggregate limit of liability in the insurers’ policies applies only to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos attributed to Covil *after* Covil completed its work at a particular jobsite. No aggregate limits of liability apply to suits seeking the recovery of damages for bodily injury where the plaintiff was exposed to asbestos while Covil was performing work at a particular jobsite.⁸ See, e.g., *Travelers Cas. & Sur. Co. v. Gerling Global Reinsurance Corp. of Am.*, 419 F.3d 181, 184 (2d Cir. 2005) (“*Gerling*”) (“Operations” coverage “protected [the insured] from claims for asbestos-related injuries resulting from asbestos exposure on [the insured’s] premises or during its business operations, for example, injuries occurring during the installation or removal of asbestos products”); *Travelers Cas. & Sur. Co. v. Employers Ins. of Wausau*, 130 Cal. App. 4th 99, 114 n.6 (2005) (“Examples of injuries covered under the premises-operations coverage include injuries suffered by a shipyard worker while installing insulation at the insured’s facility and injuries caused by a subcontractor’s negligent construction of a wall that fell on a worker while the job was in progress.”).

⁸ Covil contends that policies in addition to those issued by USF&G between 1954 and 1964 do not contain any aggregate limits of liability at all. The court has not reached any conclusion as to this contention, except to conclude, in accordance with well-settled South Carolina law, that the burden is on the insurer to prove any limitation on coverage, including a limitation such as an aggregate limit of liability.

3. **Burden Of Proof.** The Insurers bear the burden of proving any exclusion or limitation of coverage, including the application of aggregate limits to particular suits and the “exhaustion” of the aggregate limits of liability in their policies.

The South Carolina Supreme Court has recognized that insurers bear the burden of proving the applicability of a coverage provision that limits their liability to their insured: “Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion’s applicability.” *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560 614 S.E.2d 611, 614 (2004) (citing *Boggs v. Aetna Cas. and Sur. Co.*, 272 S.C. 460, 252 S.E.2d 565 (1979)); see also *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 144–48, 781 S.E.2d 137, 141–44 (2015) (upholding circuit court decision to construe an ambiguous terms in favor of coverage, and noting that “ambiguous terms are to be construed strictly against the insurer”). Courts have held that this basic principle also applies to “limitations” on coverage. *Ins. Co. of N. Am. v. Kayser-Roth Corp.*, 770 A.2d 403 (R.I. 2001) (“[o]nce the insured makes a prima facie showing of coverage, ‘the insurer then bears the burden of proving the applicability of policy exclusions and limitations in order to avoid an adverse judgment.’” (quoting *Gen. Accident Ins. Co. v. Am. Nat’l Fireproofing, Inc.*, 770 A.2d 403, 416 (R.I. 1998))); *Koppers Co. v. Aetna Cas. & Sur. Co.*, 98 F.3d 1440, 1446 (3d Cir. 1996) (“[T]he insurer bears the burden of proving the applicability of any exclusions or limitations on coverage, since disclaiming coverage on the basis of an exclusion is an affirmative defense”).

Consequently, as to any individual asbestos lawsuit, it is the Insurers’ burden to prove that the suit seeks the recovery of damages that are subject to the aggregate limits of liability, if any, applicable to the “completed operations” provisions in their policies, where such aggregate limits have been proven by each particular Insurer as to each specific policy or policy period. By definition, aggregate limits restrict coverage. Accordingly, the insurers bear the burden of demonstrating that aggregate limits in their policies, if any, apply to any particular asbestos suits.

4. **Occurrences.** The policies at issue provide coverage for legal liabilities resulting from an

“occurrence.” An “occurrence” is typically defined as an accident, including exposure to substantially similar conditions, that results in bodily injury during the policy period. Covil faces allegations in numerous lawsuits that multiple asbestos injury and wrongful death “occurrences” have resulted from its asbestos “operations.” Covil is therefore entitled to multiple “per occurrence” limits of liability to resolve each of the asbestos suits.

The asbestos insulation operations suits against Covil are not repetitive products liability suits alleging exposure to asbestos from the same defective product. Instead, these suits allege that Covil’s operations exposed workers and other bystanders to asbestos. Courts have held that the type of asbestos operations claims against Covil resulted from multiple “occurrences” under the standard definition of “occurrence” used during the time of the insurers’ policies. *See, e.g., Gerling*, 419 F.3d at 184 (“[I]f claims arising from multiple occurrences triggered [operations] coverage, then Travelers was exposed to unlimited liability; each occurrence was subject to a \$1 million limit on liability, but there was no cap on total liability. Regardless of how much Travelers had paid for previous non-products occurrences under a single policy, each additional non-products occurrence under that policy subjected Travelers to liability anew.”).

5. Allocation of Losses to Covil’s Policies. Exposure to asbestos results in progressive injury spanning many years, thereby triggering coverage under multiple policies. Exposure to asbestos during the conduct of operations that results in bodily injury during the policy period or periods during which the operations were conducted also presents an allocation issue. And, here, Covil is in a Receivership, with no assets other than its insurance policies and proceeds, which also affects any allocation of loss since Covil itself cannot absorb any allocation of loss. Finally, the Court notes that the language of the policies typically requires the insurers to pay “all sums” – meaning everything – for which the insured is legally obligated to pay if a claimant sustains bodily injury during the period of the policy.

The Court is mindful of the South Carolina Supreme Court’s decision in *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), and notes that it speaks generally to allocation of loss in a continuous injury situation such as asbestos-related disease but does not

address the particular circumstances presented by this Receivership, *i.e.*, the applicability of operations coverage and the impracticability of allocation of loss to Covil itself. Therefore, the Court will apply the rule of *Crossman Communities of N.C., Inc.* except in the case of operations claims where the policies in effect during the conduct of the operations will apply on an “all sums” basis. The Court also interprets *Crossman* such that allocation of loss will not be made to policy years when Covil does not have any available or responsive coverage.

Finally, each individual insurer will nevertheless be protected fully against the possibility that it paid too much on a single asbestos claim by its right to seek contribution from any other insurer, but not from Covil, whose policy also was triggered by the asbestos suit. This approach “ensures that [Covil] is indemnified by one [or more] insurer for the full extent of the loss up to the policy’s limits, but apportions liability among all insurers whose policies were triggered by the claimant’s asbestos-related bodily injury.” *Armstrong*, 45 Cal. App. 4th at 55.

This Court further finds that no aggregate limit of liability for product liability or completed operations claims has been or can be proven, and therefore no aggregate limit for product liability or completed operations claims exists, for the following Covil insurance policies:

<u>Policy Period</u>	<u>Insurer</u>	<u>Policy Number</u>
April 21, 1964 – April 21, 1965	Hardware Mutual Casualty Co.	39 04132 02 01
April 21, 1965 – April 1, 1966	Hardware Mutual Casualty Co.	39 04132 02 01
April 21 1966 – March 31, 1967	Hardware Mutual Casualty Co.	39 04132 02
March 31, 1967 – March 31, 1968	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1968 – March 31, 1969	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1969 - March 31, 1970	Hardware Mutual Casualty Co./Sentry	39 04132 07
March 31, 1974 – March 31, 1975	Maryland Casualty Company	41-206393
March 31, 1975 – March 31, 1976	Maryland Casualty Company	41-206393

March 31, 1976 – March 31, 1977	USF&G	SMP 490049
March 31, 1977 – March 31, 1978	USF&G	SMP 490049

This Court further orders that this Order be forwarded to the South Carolina Attorney General and to the South Carolina Department of Insurance for their consideration and further action, as they may deem appropriate.

AND IT SO ORDERED this 8 day of January, 2020.

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

Columbia, South Carolina.



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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,

vs.

PENNSYLVANIA NATIONAL
MUTUAL CASUALTY
INSURANCE COMPANY,

Defendant,

**DEFENDANT PENN NATIONAL'S
MOTION FOR RECONSIDERATION**

COMES NOW Defendant Pennsylvania National Mutual Casualty Insurance Company (“Penn National”), by and through counsel, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and moves the Court to reconsider its Order entered on August 13, 2020, granting the Motion for Partial Summary Judgment filed by Plaintiff Covil Corporation (“Covil”) in this action.

The undisputed facts in the present matter are as follows:

1. Penn National issued a liability insurance policy, policy no. 515 50 28 53 (the “Penn National policy”), to Covil with annual policy periods from March 31, 1986 to March 31, 1988.

2. The *Rollins Asbestos Action*¹ was filed against Covil on April 5, 2019, alleging that Mr. Rollins suffered from mesothelioma as a result of exposure to asbestos.

On April 10, 2019, an Amended Complaint was filed in the Rollins Asbestos Action, which was

¹ The asbestos lawsuit at issue in this action is captioned *David D. Rollins v. Covil Corp.* et al, C.A. No. 2019-CP25-0118 (the “*Rollins Asbestos Action*”), filed in Hampton County, South Carolina.

served on Covil on April 25, 2019. Covil filed its 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; however, Covil did not provide notice to Penn National of the *Rollins* Asbestos Action at that time.

3. Only after the pleadings had been closed and discovery (both fact and also expert) had long since been completed did Covil send its first notice of the *Rollins* Asbestos Action to Penn National on January 27, 2020.

4. Then, on February 10, 2020, the Receiver for Covil wrote to counsel for Penn National to advise that a mediation had been scheduled for February 25, 2020, in the *Rollins* Asbestos Action, providing notice 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.

5. As a condition for coverage, the Penn National policy requires 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.”

6. Covil failed to comply with this condition for coverage under the policies. 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. 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 Covil provided even less notice to Penn National).

7. 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 policy 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).

8. Furthermore, even if "substantial prejudice" was required in order to relieve Penn National of its coverage obligations in relation to the *Rollins* Asbestos Action under the Penn National policy, Penn National was "substantially prejudiced" by Covil's untimely notice. 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, the trial date just eight (8) weeks away. Then, the parties in the *Rollins* Asbestos Action 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.

9. Alternatively, 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.

10. The “Completed Operations Hazard and Products Hazard” exclusion in the Penn National policy bars coverage under the policy for “bodily injury” included in the “completed operations hazard” and the “products hazard”.

11. 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, 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.”

12. Covil does not contend and it is not alleged in the *Rollins* Asbestos Action 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.

13. The “bodily injury” as alleged in the *Rollins* Asbestos Action 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, the “bodily injury” as alleged in the *Rollins* Asbestos Action 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.

14. Furthermore, in the alternative, Covil's Motion for Partial Summary Judgment is premature insofar as discovery in this case has yet to be completed. 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.

WHEREFORE, Penn National respectfully requests that the Court reconsider and reverse its grant of Covil's Motion for Partial Summary Judgment, and its corresponding holding that the Penn National policy provides coverage to Covil for the claims asserted against it in the *Rollins Asbestos Action*.

Respectfully submitted this the 24th day of August, 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 Number: 2020-CP-40-01226

**RECEIVER'S RESPONSE TO PENN
NATIONAL'S MOTION FOR
RECONSIDERATION**

Peter D. Protopapas, in his capacity as Receiver for Covil Corporation ("the Receiver"), and acting by and through the undersigned counsel, files this Response to 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.

Penn National's Motion merely repeats the same arguments that this Court already considered and rejected in granting Covil's motion. Penn National does not identify a single error of law or fact in the Court's Order. Rather, its only basis for asking the Court to reverse itself is because it does not like the Court's decision. Penn National's motion should be denied.

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, 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. 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 an exclusion in its policy, the "completed operations hazard" and the "products hazard," bars coverage for *Rollins*. See Penn National's Opposition. Covil filed its Reply in support of summary judgment on June 18, 2020.

After carefully considering the pleadings, the parties' briefing, and the entire record before it, the Court granted Covil's Motion in its August 13, 2020 Order ("Order").¹ Penn National filed its Motion for Reconsideration on August 24, 2020.

II. Argument and Authorities

A. Legal Standard

Penn National moves for reconsideration under Rule 59(e), SCRCPP. 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 original).

¹ Pursuant to the Supreme Court's COVID-19 guidelines, the Court decided the motion on the briefing as there was no need for "further input from the lawyers." See *Re: Operation of the Trial During the Coronavirus Emergency*, S.C. Sup. Ct. Order dated April 3, 2020.

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

This Court already considered and rejected each of the arguments Penn National raises in its Motion. Penn National has failed to identify any legal or factual issue that the Court overlooked or erred in deciding. Its motion should be denied.

1. The Court properly rejected 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. Motion at 2-3. Specifically, it contends it had no duty to defend or indemnify Covil for the *Rollins* action. *Id.*

Penn National briefed these issues in its Opposition, including its alleged “substantial prejudice,” so it may not ask the Court to reconsider this argument. Opposition at 5-8, 12-17. Thus, as the Court found previously,

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. After further analysis, the Court correctly held, “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.

2. The Court ruled that Penn National did not met its burden to show that the “product liability hazard” exclusion or the “completed operations hazard” exclusion applies.

Penn National argues, “Alternatively, 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.” Motion at 3. The Court carefully considered both Covil’s and Penn National’s arguments on this issue. It set out the governing law and carefully analyzed the

undisputed facts in a lengthy analysis that Covil will not quote verbatim here. Order at 4-8. Ultimately, the Court held that Penn National has not met its burden of establishing that this action falls within either the “product liability hazard” or the “completed operations hazard.” *Id.* at 8. There is nothing new in Penn National’s Motion that affects the Court’s analysis or ruling, and the Motion should be denied.

3. Summary judgment is not premature.

Finally, Penn National complains that summary judgment is premature because it did not have the opportunity to engage in discovery. Motion at 5. But Penn National made this exact conclusory argument in its Opposition. Opposition at 5 n.8. And 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. 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), SCRCF; *see also Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433, 439-40 (2003) (holding trial court properly granted a summary judgment motion filed four months after action was commenced and rejecting argument that it was premature because the opposing party failed to explain what discovery was needed and what issues of fact it was likely to uncover). 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. The Court properly rejected this argument—which was relegated to a one-sentence footnote that cannot be supplemented here, and there is no reason to reconsider the Court’s decision. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 482 (Ct. App. 1990) (holding parties cannot use Rule 59(e) to raise new argument or supplement the record).

C. The Court may not consider any new arguments because, to the extent they exist, they could have been raised in Penn National's Opposition.

Penn National's Motion is a re-hash of its Opposition to Covil's Motion for Partial Summary Judgment. Even if the Court finds otherwise, however, its Motion makes no argument that could not have been raised in its original Opposition. Accordingly, any new argument raised in the Motion would be improperly before the court.

III. Conclusion

Nothing has changed since Penn National filed its Opposition to Covil's motion for summary judgment, which was correctly decided by the Court. The Court, therefore, should deny Penn National's motion on the briefing.

Respectfully submitted,

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This 27th Day of August, 2020

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. 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 Appellant.
Casualty Insurance Company,

NOTICE OF APPEAL

Pennsylvania National Mutual Casualty Insurance Company appeals the following Order of the Honorable Jean H. Toal filed on August 13, 2020. Appellant received written notice of entry of the Order in this action on or after August 13, 2020.

September 14, 2020

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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,

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Pennsylvania National Mutual
Casualty Insurance Company,

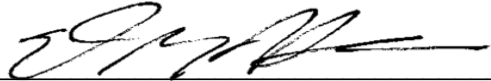
Appellant.

Appellate Case No. 2020-001239

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 8, 2021.



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