

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Apr 14 2021**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Jean Hoefler Toal, Chief Justice (Ret.)

**SC Court of Appeals**

Case Nos. 2019-CP-40-06956 and 2019-CP-40-02285

Appellate Case No. 2020-001437

Peter D. Protopapas, as Receiver for Covil Corporation, Plaintiff,

v.

Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; Zurich American Insurance Company, Defendants

AND

Sandra S. Hutto, individually and as Personal Representative of the Estate of Donald L. Hutto, Brian Hutto, and Candace H. Youngblood, Plaintiffs,

v.

Covil Corporation; Sentry Insurance A Mutual Company; Southern Insulation, Inc.; Starr Davis Company, Inc.; Starr Davis Company of South Carolina, Inc.; United States Fidelity & Guarantee Company; Zurich American Insurance Company; 3M Company; AECOM; Armstrong International, Inc.; Aurora Pump Company; BW/IP, Inc.; Carboline Company; CBS Corporation; CGR Products, Inc.; Daniel International Corporation; Fisher Controls International, L.L.C.; Fluor Constructors International, Inc.; Fluor Enterprises, Inc.; Foster Wheeler Energy Corporation; The Goodyear Tire And Rubber Company; Grinnell, LLC; Hajoca Corporation; IMG Industries, Inc.; John Crane, Inc.; Metropolitan Life Insurance Company; Spirax Sarco, Inc.; Trane U.S., Inc.; Uniroyal Holding, Inc; Velan Valve Corporation; Viking Pump, Inc.; Weir Valves & Controls U.S.A., Inc., Defendants,

of which

United States Fidelity and Guaranty Company is the Appellant,

and

Covil Corporation, by and through its Receiver, Peter D. Protopapas and Peter D. Protopapas, in his capacity as Receiver of Covil Corporation are the Respondents.

---

**MOTION TO DISMISS**

---

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Respondents Covil Corporation (“Covil”), by and through its Receiver, Peter D. Protopapas; and Peter D. Protopapas, in his capacity as Receiver for Covil Corporation (collectively, “the Receiver”), by and through the undersigned counsel, respectfully request the Court dismiss the Notice of Appeal filed by United States Fidelity and Guaranty Company (“USF&G”) on October 26, 2020, in *Hutto v. Covil Corporation, et al.*, 2019-CP-40-06956 (“the *Hutto* action”), as there is no longer a justiciable controversy in the *Hutto* action.

Plaintiffs Sandra S. Hutto, individually and as Personal Representative of the Estate of Donald L. Hutto; Brian Hutto; and Candace H. Youngblood initiated the *Hutto* action against Covil, USF&G, and numerous other defendants on December 12, 2019. Covil filed an Answer and cross-claims against USF&G on February 21, 2020. USF&G filed an Answer to Plaintiffs’ Complaint and Covil’s cross-claims on July 13, 2020. In the Answer, USF&G raised the following as a defense:

Covil is a dissolved corporation and claims against it, including against any entity alleged to be Covil’s “alter ego” are barred under S.C. Code Ann. § 33-14-106 and § 33-14-107. Plaintiffs’ claims against USF&G are necessarily barred because Plaintiffs’ claims against USF&G are derivative of underlying asbestos claims against Covil.

Exhibit A at 16.

On July 21, 2020, the Receiver filed a Motion to Clarify the Status of the Receivership in the *Hutto* action and in *Protopapas v. Wall, Templeton & Haldrup, P.A., et al.*, 2019-CP-40-02285 (“the *Protopapas* action”). In the motion, the Receiver requested that the circuit court clarify the

impact, if any, of Covil's prior receivership and dissolution on the cases pending before the circuit court, specifically whether these events had any effect on the ability of asbestos plaintiffs to maintain personal injury claims against Covil in light of affirmative defenses raised by USF&G and Zurich American Insurance Company. On September 25, 2020, the circuit court granted the Receiver's Motion to Clarify and found "Covil's prior receivership presents no impediment to the assertion of asbestos personal injury claims against Covil." (Order at 10). This order is the subject of the instant consolidated appeal from both the *Hutto* and *Protopapas* actions.

On January 20, 2021, the Receiver withdrew the crossclaims against USF&G in the *Hutto* action. Exhibit B. Further, on February 17 and March 9, 2021, the *Hutto* Plaintiffs dismissed all claims against Covil and USF&G. Exhibits C and D. Therefore, the *Hutto* action has been completely resolved between the Plaintiffs, Covil, and USF&G.

A threshold inquiry for any court is a finding of justiciability, specifically, whether the litigation presents a case or controversy. *See Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002). Because there is no longer an existing controversy between Covil, USF&G, and the Plaintiffs in the *Hutto* action, the Court should dismiss USF&G's *Hutto* Notice of Appeal as moot. "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [an] existing controversy." *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 603, 567 S.E.2d 514, 517 (Ct. App. 2002) (quoting *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996)). "This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief." *Id.* (quoting *Byrd*, 321 S.C. at 431, 468 S.E.2d at 864). The settlement or dismissal of a case is an event that makes it impossible for this Court to grant

effectual relief. *See S.C. State Highway Dep't v. McKeown Food Store No. 9*, 254 S.C. 180, 183, 174 S.E.2d 342, 343 (1970) (“The settlement ended the litigation and rendered moot the issue which appellant now seeks to have the court decide.”); *Cheap-O's Truck Stop, Inc.*, 350 S.C. at 603, 567 S.E.2d at 517 (“Because we find the present case was settled and the settlement is enforceable, the issue is moot.”).

Although there are three exceptions to the mootness doctrine which would allow the Court, in its discretion, to take jurisdiction despite mootness, none are met in the case. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“The utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked.”). First, this issue is not “capable of repetition but evading review.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. Although this issue could arise in other cases, that fact alone does not warrant consideration of this issue by the Court. *See McKeown Food Store No. 9*, 254 S.C. at 183, 174 S.E.2d at 344 (“[T]he mere fact that the same question may arise in other cases does not preserve the issue for determination in this appeal.”). If the issue arises in any other case, USF&G will have the ability to obtain appellate review of the issue at that time. Further, USF&G’s appeal of the same issue in the *Protopapas* action would still be pending for this Court’s consideration despite a dismissal of the now-moot *Hutto* appeal.

Second, this issue is not a “question[] of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. It is well-established that the public interest exception is a limited one. *Sloan v. Greenville Cty.*, 361 S.C. 568, 571, 606 S.E.2d 464, 466 (2004). As noted above, these issues are currently pending before the Court in the appeal from the *Protopapas* action, so there is no urgent need for

the Court to issue an advisory opinion in an action where there is no longer a pending controversy. Third, the decision on appeal in *Hutto* is not one that “may affect future events[] or have collateral consequences for the parties.” *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. As the *Hutto* action has been resolved, there are no collateral consequences to the parties if the *Hutto* appeal were to be dismissed.

Accordingly, the dismissal of the *Hutto* action as to all claims pending between the *Hutto* Plaintiffs, USF&G, and Covil has made USF&G’s Notice of Appeal filed in the *Hutto* action moot, as there is no longer an existing controversy between USF&G and Covil in that case. *See Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) (“The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.”). Therefore, the Receiver respectfully requests that the Court dismiss USF&G’s appeal in the *Hutto* action.

Respectfully submitted,

*s/Shanon N. Peake*

G. Murrell Smith, Jr. (S.C. Bar # 66263)

Jonathan M. Robinson (S.C. Bar # 68285)

**Shanon N. Peake (S.C. Bar #102723)**

Austin T. Reed (SC Bar #102808)

Smith Robinson Holler DuBose and Morgan, LLC

2530 Devine Street, Third Floor

Columbia, South Carolina 29205

(803) 254-5445

ATTORNEYS FOR RESPONDENTS

April 14, 2021.

# EXHIBIT A

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FIFTH JUDICIAL CIRCUIT  
COUNTY OF RICHLAND ) CIVIL ACTION NO. 2019-CP-40-06956  
 )

SANDRA S. HUTTO, individually and as Personal )  
Representative of the Estate of DONALD L. )  
HUTTO, and DONALD BRIAN HUTTO and )  
CANDACE H. YOUNGBLOOD, Individually )  
 )  
Plaintiffs, )

v. )

COVIL CORPORATION; )  
SENTRY INSURANCE AGENCY, INC.; )  
SOUTHERN INSULATION, INC.; )  
STARR DAVIS COMPANY, INC.; )  
STARR DAVIS COMPANY OF S.C., INC.; )  
UNITED STATES FIDELITY AND GUARANTY )  
COMPANY; )  
ZURICH AMERICAN INSURANCE COMPANY; )  
3M COMPANY; )  
AECOM; )  
ARMSTRONG PUMP COMPANY; )  
BW/IP INC; )  
CARBOLINE COMPANY; )  
CBS CORPORATION; )  
CGR PRODUCTS, INC; )  
DANIEL INTERNATIONAL CORPORATION; )  
FISHER CONTROLS INTERNATIONAL LLC; )  
FLUOR CONSTRUCTORS INTERNATIONAL; )  
FLUOR CONSTRUCTORS INTERNATIONAL )  
INC.; )  
FLUOR DANIEL SERVICES CORPORATION; )  
FLUOR ENTERPRISES, INC; )  
FOSTER WHEELER ENERGY CORPORATION; )  
THE GOODYEAR TIRE & RUBBER COMPANY; )

Defendants.

**UNITED STATES FIDELITY AND GUARANTY COMPANY'S ANSWER TO  
PLAINTIFFS' ORIGINAL COMPLAINT AND COVIL'S CROSS-CLAIMS**

Comes now Defendant, United States Fidelity and Guaranty Company (hereinafter "USF&G"), by and through its undersigned counsel, to answer the Complaint filed by Plaintiffs in the above-captioned case.

**GENERAL ALLEGATIONS**

Each and every allegation in the complaint not hereinafter specifically admitted, qualified or explained is denied.

1. Paragraph 1 constitutes a characterization of the Plaintiffs' claims to which no response is required.

2. Paragraph 2 states legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraph 2 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 insofar as they relate to other parties.

3-4. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 3 and 4.

5-6. Paragraphs 5 and 6 state legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraphs 5 and 6 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5 and 6 insofar as they relate to other parties.

7. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7. To the extent a response is required, USF&G denies those allegations.

8. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8. To the extent a response is required, USF&G denies those allegations.

9. Paragraph 9 states legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraph 9 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 insofar as they relate to other parties.

10. USF&G admits that it is authorized to conduct business in South Carolina and has, at times, conducted business therein. USF&G denies that it has “regularly” conducted business in South Carolina, and states that it has no employees in South Carolina, does not rent or own office space in South Carolina, and is not writing any new business in South Carolina. USF&G denies the remaining allegations contained in Paragraph 10 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 insofar as they relate to other parties.

11. Paragraph 11 does not contain any allegations to which a response is required. To the extent a response is required, USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11.

12-14. Paragraphs 12 through 14 state legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations

contained in Paragraphs 12 through 14 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 12 through 14 insofar as they relate to other parties.

15. Paragraph 15 states legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraph 15 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 insofar as they relate to other parties.

### **THE PARTIES**

16. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16.

17-21. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 17 through 21, which relate to parties other than USF&G.

22. USF&G admits that it is incorporated in Connecticut and principally operates therein. The allegations remaining in Paragraph 22 constitute legal conclusions to which no response is required. To the extent a response is required, USF&G denies those allegations, and denies that it is or was the alter-ego of Covil Corporation.

23-50. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 23 through 50, which relate to parties other than USF&G.

### **BACKGROUND FACTS**

51-57. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 51 through 57.

58. Paragraph 58 states legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraph 58 to the extent such allegations are directed against USF&G and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58 insofar as they relate to other parties.

59. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59.

60. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60.

61. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61. To the extent that Paragraph 61 contains legal conclusions, no response is required.

62. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62. To the extent that Paragraph 62 contains legal conclusions, no response is required.

63. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63. To the extent that Paragraph 63 contains legal conclusions, no response is required.

**FACTUAL BACKGROUND AS TO COVIL**

64. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64.

65-66. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 65 and 66. USF&G admits upon information and belief that Covil sold and in some cases installed insulation products at various

times between 1964 and 1991 and that Covil was judicially dissolved as a result of an order of the Greenville County Court of Common Pleas, dated November 30, 1992.

67. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67, except admits that it is aware of certain lawsuits that have been filed against Covil alleging bodily injury resulting from asbestos exposure.

68. To the extent the allegations of Paragraph 68 are directed at USF&G, USF&G denies all of the allegations, except admits that USF&G fulfilled its defense obligation under the policy of insurance agreed to by Covil and USF&G by providing a defense to Covil in connection with certain lawsuits pursuant to the terms and conditions of the USF&G Policy. USF&G, otherwise, denies the allegations in Paragraph 68, including the allegation that it conducted all of Covil's affairs, including after Covil was dissolved, or that lawyers retained by USF&G to defend Covil exerted control and domination of Covil. To the extent the allegations of Paragraph 68 are directed at entities other than USF&G, USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68.

69. USF&G admits that Fidelity and Guaranty Insurance Underwriters, Inc. issued policy number SMP 490049 to Covil Corporation for the period March 31, 1976 to March 31, 1978 (the "USF&G Policy"). USF&G denies that it issued any other insurance policy to Covil, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 69 insofar as they relate to other parties.

70. To the extent the allegations of Paragraph 70 are directed at USF&G, USF&G denies those allegations, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70 insofar as they relate to other parties.

71. To the extent the allegations of Paragraph 71 are directed at USF&G, USF&G denies those allegations, except admits that it fulfilled defense obligation under the USF&G Policy by providing a defense to Covil in connection with certain lawsuits pursuant to the terms and conditions of the USF&G Policy. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71 insofar as they relate to other parties.

72. To the extent the allegations of Paragraph 72 are directed at USF&G, USF&G denies those allegations, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 72 insofar as they relate to other parties.

73. To the extent the allegations of Paragraph 73 are directed at USF&G, USF&G denies those allegations, and USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 73 insofar as they relate to other parties.

74. To the extent the allegations of Paragraph 74 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74 insofar as they relate to other parties.

75. To the extent the allegations of Paragraph 75 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 75 insofar as they relate to other parties.

76. To the extent the allegations of Paragraph 76 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76 insofar as they relate to other parties.

77. To the extent the allegations of Paragraph 77 are directed at USF&G, USF&G denies those allegations, USF&G fulfilled its defense obligation under the policy of insurance agreed to by Covil and USF&G by providing a defense to Covil in connection with certain lawsuits pursuant to the terms and conditions of the USF&G Policy. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 77 insofar as they relate to other parties.

78. Paragraph 78 states legal conclusions as to which no response is required.

79-84. To the extent the allegations of Paragraphs 79 through 84 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 79 through 84 insofar as they relate to other parties. Further, Paragraphs 79 through 84 state legal conclusions as to which no response is required.

85. To the extent the allegations of Paragraph 85 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 85 insofar as they relate to other parties.

86. To the extent the allegations of Paragraph 86 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 86 insofar as they relate to other parties. Additionally, Paragraph 86 is an incomplete and/or unintelligible sentence, and USF&G denies its allegations on the basis that it is vague and/or ambiguous.

87. Paragraph 87 does not contain any allegations against USF&G as to which a response is required. To the extent a response is required, USF&G denies those allegations.

88. USF&G denies the allegations in Paragraph 88 to the extent they are directed at USF&G, except admits that USF&G fulfilled its defense obligation under the policy of insurance agreed to by Covil and USF&G by providing a defense to Covil in connection with certain lawsuits pursuant to the terms and conditions of the USF&G Policy, and communicated with other insurers who were also involved in Covil's defense.

89. To the extent the allegations of Paragraph 89 are directed at USF&G, they constitute legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraph 89.

90-91. Paragraphs 90 and 91 contain legal conclusions to which no response is required. To the extent a response is required, USF&G denies those allegations.

92. To the extent the allegations of Paragraph 92 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 92 insofar as they relate to other parties.

93. To the extent the allegations of Paragraph 93 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 93 insofar as they relate to other parties.

94. The allegations of Paragraph 94 constitute legal conclusions to which no response is required. To the extent a response is required, USF&G denies those allegations.

95-96. To the extent the allegations of Paragraphs 95 and 96 are directed at USF&G, USF&G denies those allegations. USF&G denies knowledge or information sufficient

to form a belief as to the truth of the allegations of Paragraphs 95 and 96 insofar as they relate to other parties.

97. The allegations of Paragraph 97 constitute legal conclusions to which no response is required. To the extent a response is required, USF&G denies those allegations.

98. To the extent the allegations of Paragraph 98 are directed at USF&G, they constitute legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraph 98. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 98 insofar as they relate to other parties.

99. To the extent the allegations of Paragraph 99 are directed at USF&G, USF&G denies the allegations of Paragraph 99. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99 insofar as they relate to other parties.

100. To the extent the allegations of Paragraph 100 are directed at USF&G, USF&G denies the allegations of Paragraph 100. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 100 insofar as they relate to other parties.

101. Paragraph 101 consists of a description of the relief sought by Plaintiffs, to which no response is required. To the extent that a response is required, USF&G denies that the Plaintiffs are entitled to any relief against USF&G.

**FIRST CAUSE OF ACTION**  
**(Product Liability: Negligence)**

102. USF&G incorporates by reference its responses to Paragraphs 1 through 101.

103-115. To the extent the allegations of Paragraphs 103 through 115 are directed at USF&G, USF&G denies the allegations of Paragraphs 103 through 115. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 103 through 115 insofar as they relate to other parties.

116-117. To the extent the allegations of Paragraphs 116 and 117 are directed at USF&G, they constitute legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraphs 116 and 117.

**SECOND CAUSE OF ACTION**

**(Product Liability: Strict Liability – S.C. Code Ann. Sec. 15-73-10, et seq.)**

118. USF&G incorporates by reference its responses to Paragraphs 1 through 117.

119. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 119.

120-122. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 120 through 122 insofar as they relate to other parties. To the extent the allegations of Paragraphs 120 through 122 are directed at USF&G, USF&G denies the allegations of Paragraphs 120 through 122.

123. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 123.

124-134. To the extent the allegations of Paragraphs 124 through 134 are directed at USF&G, USF&G denies the allegations of Paragraphs 124 through 134. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 124 through 134 insofar as they relate to other parties.

**THIRD CAUSE OF ACTION**

**(Vicarious Liability of Defendants Based upon Respondeat Superior)**

135. USF&G incorporates by reference its responses to Paragraphs 1 through 134.

136-151. To the extent the allegations of Paragraphs 136 through 151 are directed at USF&G, USF&G denies the allegations of Paragraphs 136 through 151. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 136 through 151 insofar as they relate to other parties.

**FOURTH CAUSE OF ACTION**

**(Product Liability: Breach of Implied Warranties- S.C. Code Ann. 36-2-314)**

152. USF&G incorporates by reference its responses to Paragraphs 1 through 151.

153-155. To the extent the allegations of Paragraphs 153 through 155 are directed at USF&G, USF&G denies the allegations of Paragraphs 153 through 155. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 153 through 155 insofar as they relate to other parties.

**FIFTH CAUSE OF ACTION**

**(Fraudulent Misrepresentation)**

156. USF&G incorporates by reference its responses to Paragraphs 1 through 155.

157-159. To the extent the allegations of Paragraphs 157 through 159 are directed at USF&G, USF&G denies the allegations of Paragraphs 157 through 159. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 157 through 159 insofar as they relate to other parties.

**SIXTH CAUSE OF ACTION**

**(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)**

160. USF&G incorporates by reference its responses to Paragraphs 1 through 159.

161-174. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 161-174, which relate to parties other than USF&G.

**SEVENTH CAUSE OF ACTION**

**(Wrongful Death Action, S.C. Code Ann. § 15-51-10 et seq.)**

175. USF&G incorporates by reference its responses to Paragraphs 1 through 174.

176. The allegations contained in Paragraph 176 of Plaintiff’s Complaint are statements and/or conclusions as to which no response is required.

177. To the extent the allegations of Paragraph 177 are directed at USF&G, USF&G denies the allegations of Paragraph 177. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 177 insofar as they relate to other parties.

**EIGHTH CAUSE OF ACTION**

**(Loss of Consortium)**

178. USF&G incorporates by reference its responses to Paragraphs 1 through 177.

179-181. To the extent the allegations of Paragraphs 179 through 181 are directed at USF&G, USF&G denies the allegations of Paragraphs 179 through 181. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 179 through 181 insofar as they relate to other parties.

**NINTH CAUSE OF ACTION**  
**(Survival Action, S.C. Code Ann. § 15-5-90)**

182. USF&G incorporates by reference its responses to Paragraphs 1 through 181.

183. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 183.

184. The allegations contained in Paragraph 184 of Plaintiff's Complaint are statements and/or conclusions as to which no response is required.

185. To the extent the allegations of Paragraph 185 are directed at USF&G, USF&G denies the allegations of Paragraph 185. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 185 insofar as they relate to other parties.

**TENTH CAUSE OF ACTION**  
**(Alter Ego As to Sentry Insurance A Mutual Company, United States Fidelity And Guaranty Company, and Zurich American Insurance Company)**

186. To the extent the allegations of Paragraph 186 are directed at USF&G, USF&G denies the allegations, except admits that USF&G fulfilled its defense obligation under the policy of insurance agreed to by Covil and USF&G by providing a defense to Covil in connection with certain lawsuits pursuant to the terms and conditions of the USF&G Policy. To the extent the allegation of Paragraph 186 are directed at entities other than USF&G, USF&G lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 186, and therefore denies the same.

187. USF&G denies the allegations of Paragraph 187.

## **RESPONSE TO PRAYER FOR RELIEF**

As to the allegations in Plaintiffs' Prayer for Relief, USF&G denies that it is liable to Plaintiffs under any theory or cause of action for the damages and/or other relief requested therein.

### **AFFIRMATIVE DEFENSES**

USF&G hereby asserts the following affirmative defenses in total and/or partial bar of the claims for relief and/or alleged damages sought in the Complaint.

#### **FOR A FIRST DEFENSE**

The Complaint fails to allege facts sufficient to state a cause of action against USF&G and, accordingly, should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

#### **FOR A SECOND DEFENSE**

This Court lacks both general and specific personal jurisdiction over USF&G. There are not sufficient minimum contacts with the State of South Carolina to bring USF&G within the Court's jurisdiction pursuant to *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 423 S.E.2d (1992); *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 66 S. Ct. 154 (1945) and their progeny, S.C. Code Ann. § 36-2-803, the Constitutions of the State of South Carolina and the United States of America and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

#### **FOR A THIRD DEFENSE**

USF&G's obligations to Plaintiffs, if any, are limited by the terms of the USF&G Policy with Covil, including, without limitation, conditions, exclusions, declarations, endorsements, limits of liability, per occurrence and aggregate limits, definitions, deductibles, self-insured retentions, policy periods, requirements of exhaustion of other insurance, and notice

requirements. USF&G expressly reserves, and does not waive, its rights under all of the terms of the USF&G Policy.

**FOR A FOURTH DEFENSE**

Plaintiffs' claims against USF&G may be barred by the applicable statute of limitations and/or repose.

**FOR A FIFTH DEFENSE**

If USF&G is determined to be Covil's "alter ego", which USF&G specifically denies, then USF&G stands in Covil's shoes and is entitled to assert all claims and defenses that Covil would be entitled to assert.

**FOR A SIXTH DEFENSE**

Covil is a dissolved corporation and claims against it, including against any entity alleged to be Covil's "alter ego" are barred under S.C. Code Ann. § 33-14-106 and 33-14-107. Plaintiffs' claims against USF&G are necessarily barred also because Plaintiffs' claims against USF&G are derivative of underlying asbestos claims against Covil.

**FOR A SEVENTH DEFENSE**

Plaintiffs were not in privity with USF&G or any of its predecessors, affiliates or subsidiaries and Plaintiffs may not rely upon any warranties which may have been implied or imposed by law upon USF&G, which affirmatively states that it breached no warranty.

**FOR AN EIGHTH DEFENSE**

USF&G alleges upon information and belief that Plaintiffs' claim for punitive damages violates: the Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause as USF&G could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause because USF&G could be compelled to give testimony against itself in

a penalty situation such as punitive damages; the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; USF&G's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills USF&G's exercise of that right; the Eighth Amendment's guarantee that excessive fines shall not be imposed; the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, Plaintiffs' claim for punitive damages should be dismissed.

**FOR A NINTH DEFENSE**

USF&G requests, pursuant to S.C. Code Ann. §15-32-520, that any proceeding to determine punitive damages be bifurcated from any trial to determine liability and compensatory damages.

**FOR A TENTH DEFENSE**

Any award of punitive damages should not exceed the limits provided for in S.C. Code Ann. §15-32-530.

**FOR AN ELEVENTH DEFENSE**

USF&G would show that, among other things, Plaintiffs' claim for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

**FOR A TWELFTH DEFENSE**

To the extent that the Complaint asserts a demand for punitive damages, USF&G specifically incorporates by reference any and all standards and limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v.*

*Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

**FOR A THIRTEENTH DEFENSE**

USF&G alleges that Plaintiffs' damages are the direct and proximate result of the negligent and/or reckless conduct of Decedent Donald L. Hutto, which combined and concurred with any negligence or recklessness on the part of USF&G—which is specifically denied and is raised solely for the purpose of this defense and no other—and that Plaintiffs' alleged damages would not have occurred if Decedent Donald L. Hutto had not engaged in such negligence or recklessness. The Complaint is barred to the extent that Decedent Donald L. Hutto's contributory negligence and recklessness is more than 50% of the total alleged negligence in this case. To the extent that Decedent Donald L. Hutto's contributory negligence and recklessness is 50% or less of the total alleged negligence in this case, which is denied and raised solely for the purpose of this defense, Plaintiffs' recovery should be reduced by the percentage of Decedent Donald L. Hutto's contributory negligence and recklessness.

**FOR A FOURTEENTH DEFENSE**

Upon information and belief, the Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 et seq., of the South Carolina Code of Laws, also known as the Asbestos and Silica Claims Procedure Act of 2006.

**FOR A FIFTEENTH DEFENSE**

Upon information and belief, Plaintiffs' claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, collateral estoppel, and/or conditions precedent or subsequent.

**FOR A SIXTEENTH DEFENSE**

Plaintiffs' claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

**FOR A SEVENTEENTH DEFENSE**

Plaintiffs' alleged injuries are barred by S.C. Code Ann. § 15-73-10 et seq.; therefore, Plaintiffs are prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

**FOR A EIGHTEENTH DEFENSE**

USF&G would show that any product allegedly distributed by Covil, or for which USF&G and/or Covil is alleged to have been liable, was altered or changed in some manner after it left the custody and possession of Covil.

**FOR A NINETEENTH DEFENSE**

There has been no concert of action between USF&G and any of the other named defendants. The defendants are not joint tortfeasors, and USF&G therefore may not be held jointly and severally liable with the other named defendants. Accordingly, USF&G asserts that it is entitled to the benefit of the provisions set forth in S.C. Code Ann. § 15-38-15 in this action.

**FOR A TWENTIETH DEFENSE**

To the extent that Plaintiffs have received payment in satisfaction of any of the alleged injuries and/or claims against USF&G, the Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

**FOR A TWENTY-FIRST DEFENSE**

There are no allegations against USF&G stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like to satisfy the requirements of Rule 9(b) of the South Carolina Rules of Civil Procedure

**FOR A TWENTY-SECOND DEFENSE**

Plaintiffs' claims are barred to the extent that any products for which USF&G is or may be responsible were sold by Covil to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or defendant as a "bulk supplier."

**FOR A TWENTY-THIRD DEFENSE**

Any oral warranties upon which Plaintiffs allege to have relied are inadmissible and unavailable because of the provisions of the applicable statute of frauds.

**FOR A TWENTY-FOURTH DEFENSE**

USF&G alleges that, upon information and belief, Decedent Donald L. Hutto had actual knowledge of and voluntarily assumed the risk incident to his use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials that were known to him to be dangerous.

**FOR A TWENTY-FIFTH DEFENSE**

USF&G alleges that, upon information and belief, Decedent Donald L. Hutto failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the times and places alleged in the Complaint.

**FOR A TWENTY-SIXTH DEFENSE**

USF&G alleges that if Decedent Donald L. Hutto used the product or products for which USF&G is alleged to be responsible, upon information and belief, the same was used for a

purpose not intended by USF&G and/or Covil, and contrary to any instructions or normal method of using the same.

**FOR A TWENTY-SEVENTH DEFENSE**

USF&G alleges that if Decedent Donald L. Hutto sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others, and not USF&G.

**FOR A TWENTY-EIGHTH DEFENSE**

USF&G would show that even if Plaintiffs have suffered injuries as described in the Complaint, which USF&G denies, then said injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of Plaintiffs' injuries in such a way as to constitute a supervening or intervening cause, ending all liability on the part of USF&G.

**FOR A TWENTY-NINTH DEFENSE**

If Plaintiffs sustained the injuries and/or damages alleged, which is specifically denied, then, upon information and belief, such injuries and/or damages were proximately caused by the acts and/or omissions of Decedent Donald L. Hutto's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

**FOR A THIRTIETH DEFENSE**

USF&G alleges that if Decedent Donald L. Hutto sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as defendants in this

action, including but not limited to product manufacturers that have taken advantage of the protections of the bankruptcy provisions of the United States Code.

**FOR A THIRTY-FIRST DEFENSE**

If Decedent Donald L. Hutto was exposed to any products for which USF&G is alleged to have been responsible, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications, and laws; consequently, recovery by Plaintiffs herein is barred.

**FOR A THIRTY-SECOND DEFENSE**

If it should be proven that Decedent Donald L. Hutto, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products for which USF&G is alleged to have been responsible, such materials, upon information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

**FOR A THIRTY-THIRD DEFENSE**

If any products for which USF&G is alleged to have been responsible and which give rise to Plaintiffs' claims herein were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of USF&G, and by reason thereof USF&G is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

**FOR A THIRTY- FOURTH DEFENSE**

In the event that it is determined that any product for which USF&G is alleged to have been responsible was dangerous, which danger is specifically denied, USF&G was unaware

of such danger as it would apply in any conceivable use of such products by Decedent Donald L. Hutto; further, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold, used, and/or warnings provided. Moreover, such products were manufactured, distributed, sold, and used in conformity with the state of the art and/or prevailing industry standards at the time.

**FOR A THIRTY-FIFTH DEFENSE**

Upon information and belief, Plaintiffs have received payments from and granted releases to other parties, including but not limited to other parties to this action and other non-parties against whom Plaintiffs have claimed liability in tort for the same injury for which Plaintiffs claim that USF&G is liable. USF&G is entitled to setoff of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

**FOR A THIRTY-SIXTH DEFENSE**

Upon information and belief, Plaintiffs have failed, neglected, and/or refused to mitigate their damages, if any, and therefore, Plaintiffs are barred from recovery of those damages that could have been avoided by the exercise of due diligence.

**FOR A THIRTY-SEVENTH DEFENSE**

The products for which USF&G is alleged to have been responsible and/or which were sold and/or distributed by USF&G and/or Covil were at all times reasonably fit and suitable for the purposes for which they were sold, and USF&G denies that such products were in any way defective for the use for which they were sold.

**FOR A THIRTY-EIGHTH DEFENSE**

Upon information and belief, Decedent Donald L. Hutto was employed by a knowledgeable and sophisticated user/employer, and any duty that USF&G may have had to

warn him of any potential dangers incident to the use of Covil's products, which duty is denied, was discharged by the employer's intervening duty to warn Decedent Donald L. Hutto.

**FOR A THIRTY-NINTH DEFENSE**

USF&G reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available

**FOR A FORTIETH DEFENSE**

USF&G reserves the right to assert additional affirmative defenses based on information it may receive during the course of this litigation.

**FOR A FORTY-FIRST DEFENSE**

USF&G incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded, or asserted by all other answering defendants.

**FOR A FORTY-SECOND DEFENSE**

Upon information and belief, this action has been brought in an improper venue in that no Defendant resides in Richland County and the most substantial part of the alleged act or omission giving rise to the action occurred in a county(ies) other than Richland County.

**FOR A FORTY-THIRD DEFENSE**

The Complaint fails to join as parties persons in whose absence complete relief cannot be afforded among those already parties, and/or persons who have an interest relating to the subject matter of this action and are so situated that the disposition of the action in their absence may as a practical matter impair or impede their ability to protect that interest or leave the persons already parties subject to a substantial risk of incurring double, multiple, or inconsistent obligations. The joinder of said persons is compulsory under South Carolina Rule of Civil Procedure 19 and, therefore, this action should be dismissed unless said persons are joined.

**FOR A FORTY-FOURTH DEFENSE**

USF&G pleads the provisions of the South Carolina Door Closing Statute, S.C. Code Ann. § 15-5-150. Plaintiffs alleges that they are residents of North Carolina, and upon information and belief, Plaintiffs' claims are or may be barred by the Door Closing Statute.

**FOR A FORTY-FIFTH DEFENSE**

USF&G has not exerted total dominance and control over Covil, nor has USF&G misused any control of Covil which has resulted in injustices or inequitable consequences to Plaintiffs. Accordingly, all of Plaintiffs' claims against USF&G are without merit and should be dismissed.

**JURY TRIAL DEMAND**

USF&G requests a trial by jury on all issues so triable.

**WHEREFORE**, USF&G prays the Court for the following relief:

1. That the Second Amended Complaint be dismissed with prejudice as to USF&G;
2. That any and all cross-claims against USF&G be dismissed with prejudice;
3. That Plaintiffs and other defendants and/or third-party defendants have and recover nothing from USF&G;
4. That the costs of this action be taxed against Plaintiffs and/or other defendants and/or third-party defendants;
5. That any judgment against USF&G be reduced by any amount that any employer of Plaintiff, their successors, or assigns would be entitled to receive therefrom by way of subrogation;
6. That there be a trial by jury on all issues of fact; and
7. For such other and further relief as the Court deems just and proper.

**FURTHER ANSWERING USF&G ALLEGES:****UNITED STATES FIDELITY AND GUARANTY COMPANY'S ANSWER TO COVIL CORPORATION BY AND THROUGH ITS RECEIVER'S CROSS-CLAIM**

United States Guaranty and Fidelity Company (“USF&G”) answering the Cross-claim of Covil Corporation By and Through its Receiver (“Covil”) would respectfully show unto the Court the following:

**PARTIES**

Each and every allegation in the complaint not hereinafter specifically admitted, qualified or explained is denied.<sup>1</sup>

1. USF&G admits, upon information and belief, that Peter Protopapas (the “Receiver”) maintains his principal place of business in Richland County, South Carolina. USF&G affirmatively avers, however, that Covil Corporation (“Covil”) had its principal place of business in Greenville County, South Carolina. Further responding, USF&G states that the Order attached to the Complaint as Exhibit 1 speaks for itself. USF&G denies all remaining allegations of Paragraph 1 inconsistent with said exhibit.

2. In response to Paragraph 2, USF&G admits that it is an insurance company organized and existing under the laws of the State of Connecticut with its principal place of business therein. USF&G denies that it is a “wholly-owned subsidiary of Travelers Group of Insurance Companies,” as, upon information and belief, no such legal entity exists.

---

<sup>1</sup> By answering Covil’s cross-claims, USF&G does not waive, and expressly reserves, its right to enforce the order enjoining Covil from seeking insurance coverage determinations in state court. *See Covil Corp. v. Zurich Am. Ins. Co.*, No. 7:18-3291-BHH, 2020 U.S. Dist. LEXIS 33140, at \*42-43 (D.S.C. Feb. 27, 2020) (“Nonetheless, the Court finds it proper, as both expressly authorized by an Act of Congress and necessary in aid of its jurisdiction, to enjoin the Receiver from further pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued to Covil by the Insurers,” including USF&G.).

3. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of to the extent they are directed at entities other than USF&G.

4. Paragraph 4 is a definitional paragraph to which no response is required. To the extent a response is required, the same is denied.

### **JURISDICTION AND VENUE**

5. Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies that this Court has jurisdiction over USF&G or Covil's Cross-claims.

### **FACTUAL BACKGROUND**

6. As to Paragraph 6, USF&G admits upon information and belief that Covil installed thermal insulation, among other business operations. USF&G lacks sufficient knowledge or information necessary to form an opinion or belief as to the truth of the remaining allegations set forth in Paragraph 6 and therefore denies the same.

7. Upon information and belief, USF&G admits that Covil conducted business operations until 1991 and that Covil's charter was purportedly administratively revoked, and further states that Covil was judicially dissolved in 1992.

8. Upon information and belief, USF&G admits that it has been *alleged* by individuals asserting claims and lawsuits against Covil that Covil's operations at certain times included the installation, repair, replacement, removal or disturbance of thermal insulation and other building materials, and that it has been alleged that those operations exposed persons to asbestos. USF&G denies any remaining allegations or inferences to be drawn from Paragraph 8.

9. USF&G admits that Covil has been the subject of claims and lawsuits arising from its activities. USF&G denies the remaining allegations of Paragraph 9.

10. USF&G admits only that it fulfilled all its defense obligation to Covil under the USF&G Policy by providing a defense to Covil for certain lawsuits pursuant to the terms and conditions of its insurance contract with Covil. USF&G denies the remaining allegations of Paragraph 10.

11. USF&G admits only that Fidelity and Guaranty Insurance Underwriters, Inc. issued policy number SMP 490049 to Covil Corporation for the period March 31, 1976 to March 31, 1978 (referred to herein as the "USF&G Policy"). USF&G denies issuing policies providing liability insurance to Covil continuously from in or about 1954 until approximately 1978.

12-17. USF&G denies the allegations of Paragraphs 12 through 17.

18. USF&G admits certain individuals were retained to act in defense of Covil as attorneys, as a Rule 30(b)(6) witness of Covil, and as an expert witness in claims made against Covil, all pursuant to and in strict conformance with the USF&G Policy. USF&G denies the remaining allegations of Paragraph 18.

19. Paragraph 19 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraph 19, except admits that the USF&G Policy imposed on USF&G and Covil mutual contractual obligations of good faith and fair dealing.

20. To the extent Paragraph 20 is directed at USF&G, USF&G states that the USF&G Policy governs its obligations to Covil. USF&G denies all allegations of Paragraph 20 inconsistent with the USF&G Policy and further states that it is not obligated to provide a defense to Covil except as set forth in that policy.

21. To the extent Paragraph 21 is directed at USF&G, USF&G admits that it, pursuant to and in strict conformance with the USF&G Policy, engaged certain attorneys, in conjunction with Sentry and Zurich, to provide a defense in certain lawsuits in which Covil was or is a named defendant.

22. Paragraph 22 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraph 22, except it admits that when an insurer hires an attorney to represent an insured, an attorney-client relationship arises between the attorney and the insured and that a common interest exists as between the insured and the insurer in connection with the insured's defense.

23. USF&G admits that it, in conjunction with Sentry and Zurich, retained lawyers to protect Covil's interest pursuant to and in strict conformance with the USF&G Policy. USF&G denies the remaining allegations of Paragraph 23.

24-26. USF&G denies the allegations of Paragraphs 24 through 26.

27. To the extent the allegations of Paragraph 27 are directed at USF&G, USF&G refers to the contents of the alleged communications for their specific terms and import. USF&G denies all allegations, and any inference thereof, of Paragraph 27 inconsistent with the communications referenced therein. USF&G denies the remaining allegations of Paragraph 27.

**FIRST CROSS-CLAIM**  
**(Alter Ego, Agency or Instrumentality Claim against USF&G and Zurich)**

28. USF&G incorporates by reference its responses to Paragraphs 1 through 27.

29-35. The allegations of Paragraphs 29 through 35 constitute legal conclusions or characterizations of the Covil's claims to which no response is required. To the

extent a response is required, USF&G denies the allegations of Paragraphs 29 through 35 to the extent directed at USF&G.

**SECOND CROSS-CLAIM**  
**(Declaratory Judgment Against USF&G)**

36. USF&G incorporates by reference its responses to Paragraphs 1 through 35.

37. USF&G admits that certain policyholders have at times, including in the late 1970s, submitted notice of lawsuits concerning asbestos exposure. USF&G denies the remaining allegations of Paragraph 37.

38. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 to the extent they are directed at entities other than USF&G, and therefore denies the same.

39. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 to the extent they are directed at entities other than USF&G. To the extent that the allegations of Paragraph 39 are directed at USF&G, USF&G admits only that it was aware of the existence of asbestos litigation in approximately 1981 and 1982, and denies the remaining allegations of Paragraph 39.

40. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 40.

41. USF&G refers to the alleged publication cited in Paragraph 41 for a true and accurate accounting of its contents.

42-50. USF&G denies the allegations of Paragraphs 42 through 50.

51-52. The allegations contained in Paragraphs 51 and 52 characterize Covil's claims and therefore no response is required. To the extent a response is required, USF&G denies the allegations of Paragraphs 51 and 52.

**THIRD CROSS-CLAIM**  
**(Declaratory Judgment Against USF&G and Zurich)**

53. USF&G incorporates by reference its responses to Paragraphs 1 through 52.

54-62. Paragraphs 54 through 62 state legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraphs 54 through 62.

**FOURTH CROSS-CLAIM**  
**(Bad Faith Failure to Defend Against USF&G and Zurich)**

63. USF&G incorporates by reference its responses to Paragraphs 1 through 62.

64. Paragraph 64 states legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraph 64, except admits that contracts contained implied mutual covenants of good faith and fair dealing.

65. USF&G states that the USF&G Policy issued to Covil governs its obligations to Covil. USF&G denies all allegations of Paragraph 65 inconsistent with the USF&G Policy except admits that USF&G has had a duty to defend Covil in connection with certain claims against Covil. USF&G would further show that it is not obligated to provide a defense except as set forth in its policies of insurance.

66-68. Paragraphs 66 through 68 state legal conclusions as to which no response is required. To the extent a response is required, USF&G denies the allegations in

Paragraphs 66 through 68. In addition, the end of Paragraph 68 appears to be missing and USF&G denies it on the basis that it is vague and/or incomplete.

### **PRAYER FOR RELIEF**

As to the allegations in Covil's Prayer for Relief, USF&G denies that it is liable to Covil under any theory or cause of action for the damages and/or other relief requested therein.

### **AFFIRMATIVE DEFENSES TO COVIL'S CROSS-CLAIMS**

USF&G hereby asserts the following defenses and affirmative defenses in total and/or partial bar of the claims for relief and/or alleged damages sought in the Cross-claim of Covil Corporation by and through its Receiver. By including the following defenses or affirmative defenses USF&G does not assume the burden of proof where such burden lies with Covil or parties other than USF&G.

### **FOR A FIRST DEFENSE**

Covil's Cross-claims fail to allege facts sufficient to state a cause of action against USF&G and, accordingly, should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. In particular, there are no facts alleged sufficient to constitute a cause of action for alter ego, and as a matter of law, USF&G is entitled to dismissal from this action.

### **FOR A SECOND DEFENSE**

This Court lacks both general and specific personal jurisdiction over USF&G. There are not sufficient minimum contacts with the State of South Carolina to bring USF&G within the Court's jurisdiction pursuant to *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 423 S.E.2d (1992); *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 66 S. Ct. 154 (1945) and their progeny, S.C. Code Ann. § 36-2-803, the Constitutions of the State of South Carolina and the United States of America and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

### **FOR A THIRD DEFENSE**

Covil has been enjoined “from pursuing judicial determinations in underlying state tort suits regarding insurance coverage issued or allegedly issued to Covil by the Insurers.” See Opinion and Order, *Covil Corporation By and Through Its Duly Appointed Receiver, Peter D. Protopapas v. Zurich American Insurance Company et al.*, 7:18-3291-BHH (D.S.C. February 27, 2020), p. 25 (the “Opinion and Order”). This Court should dismiss the Cross-claims as a matter of comity for the Federal courts.

#### **FOR A FOURTH DEFENSE**

Another action is pending between the same parties for the same claim; therefore, the Cross-claims should be dismissed pursuant to Rule 12(b)(8), SCRCP. USF&G and Covil are parties to numerous pending actions, including but not limited to *Zurich American Insurance Company v. Covil Corporation, et al.*, No. 1:18-CV-932-CCE-LPA (M.D.N.C.) (the “MDNC Action”); *Covil Corporation By and Through Its Duly Appointed Receiver, Peter D. Protopapas v. Zurich American Insurance Company et al.*, No. 7:18-3291-BHH (D.S.C.); and others. In certain other actions, the parties are litigating the same insurance-coverage issues that Covil now asserts in the Cross-claims. Indeed, Covil has been enjoined from raising these coverage-related issues in the state court. See Opinion and Order.

#### **FOR A FIFTH DEFENSE**

Covil’s Cross-claims were compulsory counterclaims in the MDNC Action, but Covil failed to present them by the deadline for amending pleadings. Accordingly, Covil is barred from asserting them in this action.

#### **FOR A SIXTH DEFENSE**

Covil’s Cross-claims are barred by Rule 13(g), SCRCP, which provides, “[a] pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a

counterclaim therein or relating to any property that is the subject matter of the original action.” Covil’s Cross-claims exceed the permissible scope of Rule 13(g), including because there is no property involved in Covil’s claims against USF&G, and USF&G was not alleged to be involved in the transaction or occurrence that is the subject matter of the original action filed by Plaintiffs.

**FOR A SEVENTH DEFENSE**

Upon information and belief, Covil’s claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, collateral estoppel, and/or conditions precedent or subsequent.

**FOR AN EIGHTH DEFENSE**

USF&G has not exerted total dominance and control over Covil, nor has USF&G misused any control of Covil which has resulted in injustices or inequitable consequences to Covil. Accordingly, all of Covil’s claims against USF&G are without merit and should be dismissed.

**FOR A NINTH DEFENSE**

To the extent that Covil has received payment in satisfaction of any of the alleged injuries and/or claims against USF&G, Covil’s claims are barred by the defense of payment and accord and satisfaction. Alternatively, USF&G is entitled to a set-off for any and all such payments.

**FOR A TENTH DEFENSE**

The Receiver has been enjoined from seeking coverage determinations in state court. *See Covil Corp. v. Zurich Am. Ins. Co.*, No. 7:18-3291-BHH, 2020 U.S. Dist. LEXIS 33140, at \*42-43 (D.S.C. Feb. 27, 2020) (“Nonetheless, the Court finds it proper, as both expressly authorized by an Act of Congress and necessary in aid of its jurisdiction, to enjoin the Receiver from further pursuing judicial determinations in underlying state tort suits regarding

insurance coverage issues arising from policies issued or allegedly issued to Covil by the Insurers,” including USF&G.). This injunction remains in place. Accordingly, the Receiver lacks standing to assert his causes of action in this Court.

**FOR AN ELEVENTH DEFENSE**

Covil is a dissolved corporation and claims against it, including against any entity alleged to be Covil’s “alter ego” are barred under S.C. Code Ann. § 33-14-106 and 33-14-107. Covil’s claims against USF&G are necessarily barred also because Covil’s alleged claims against USF&G are derivative of underlying asbestos claims against Covil.

**FOR A TWELFTH DEFENSE**

USF&G asserts that it is entitled to the benefit of the provisions set forth in S.C. Code Ann. § 15-38-15 in this action.

**FOR A THIRTEENTH DEFENSE**

Upon information and belief, Covil has failed to join as parties persons in whose absence complete relief cannot be afforded among those already parties, and/or persons who have an interest relating to the subject matter of this action and are so situated that the disposition of the action in their absence may as a practical matter impair or impede their ability to protect that interest or leave the persons already parties subject to a substantial risk of incurring double, multiple, or inconsistent obligations. The joinder of said persons is compulsory under South Carolina Rule of Civil Procedure 19 and, therefore, Covil’s Cross-claims should be dismissed unless said persons are joined.

**FOR A FOURTEENTH DEFENSE**

USF&G pleads the doctrine of setoff as a complete or partial bar to the allegations set forth in the Cross-claim.

**FOR AN FIFTEENTH DEFENSE**

USF&G alleges upon information and belief that Covil's claim for punitive damages violates: the Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause as USF&G could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause because USF&G could be compelled to give testimony against itself in a penalty situation such as punitive damages; the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; USF&G's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills USF&G's exercise of that right; the Eighth Amendment's guarantee that excessive fines shall not be imposed; the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, Covil's claim for punitive damages should be dismissed.

**FOR A SIXTEENTH DEFENSE**

USF&G requests, pursuant to S.C. Code Ann. §15-32-520, that any proceeding to determine punitive damages be bifurcated from any trial to determine liability and compensatory damages.

**FOR A SEVENTEENTH DEFENSE**

USF&G pleads the applicable provisions of the South Carolina Noneconomic Damages Awards Act of 2005, § 15-32-200, et. seq., and § 15-38-15. Any award of punitive damages should not exceed the limits provided for in S.C. Code Ann. §15-32-530.

**FOR AN EIGHTEENTH DEFENSE**

USF&G would show that, among other things, Covil's claim for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

**FOR A NINETEENTH DEFENSE**

To the extent that the Cross-claims assert a demand for punitive damages, USF&G specifically incorporates by reference any and all standards and limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

**FOR A TWENTIETH DEFENSE**

Covil's alter-ego and bad faith claims are barred by the *Noerr Pennington* Doctrine.

**FOR A TWENTY-FIRST DEFENSE**

Covil has failed to fulfill conditions precedent to bringing its Cross-claims pursuant to the USF&G Policy. USF&G further avers that the USF&G Policy contains the following provision: "No action shall lie against the Company [referring to the insurer] 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." Insofar as no liability has been established against Covil in this action, Covil has failed to satisfy conditions precedent to pursue its Cross-claims. USF&G further avers that Covil's non-compliance with its policies of insurance further prevents it from

maintaining the Cross-claims in this action. Accordingly, Covil's Cross-claims must be dismissed.

**FOR A TWENTY-SECOND DEFENSE**

By failing to cooperate in the defense of claims against it, Covil has failed to mitigate its alleged damages.

**FOR A TWENTY-THIRD DEFENSE**

To the extent Covil or the Receiver engaged in any improper, wrongful or inequitable conduct, Covil's Cross-claims are barred under the doctrine of unclean hands.

**FOR A TWENTY-FOURTH DEFENSE**

To the extent the Receiver was not appointed in accordance with law or was appointed in contravention of USF&G's due process rights, or the appointment of Peter Protopapas as Receiver of Covil Corporation was improper in light of L. Winston Lee having been appointed as Covil's permanent receiver and/or in light of Covil's assets having been previously abandoned, the Receiver lacks standing to assert the Cross-claims on Covil's behalf.

**FOR A TWENTY-FIFTH DEFENSE**

USF&G hereby incorporates by reference the affirmative defenses asserted in its Answer to Plaintiffs' Complaint, insofar as success on those would extinguish any Cross-claim in this action.

**JURY TRIAL DEMAND**

USF&G requests a trial by jury on all issues so triable.

**WHEREFORE**, USF&G prays the Court for the following relief:

1. That the Complaint be dismissed with prejudice as to USF&G;
2. That Covil have and recover nothing from USF&G;

3. That the costs of this action be taxed against some other person or entity other than USF&G;
4. That there be a trial by jury on all issues of fact; and
5. For such other and further relief as the Court deems just and proper.

Respectfully submitted:

/s/William P. Davis

William P. Davis, S.C. Bar No.: 1585  
BAKER, RAVENEL & BENDER, LLP  
3710 Landmark Drive, Suite 400  
Post Office Box 8057  
Columbia, South Carolina 29202  
(803) 799-9091; [wdavis@brblegal.com](mailto:wdavis@brblegal.com)

Todd Carroll, S.C. Bar No.: 74000  
WOMBLE Bond Dickinson LLP  
1221 Main Street, Suite 1600  
Columbia, SC 29201  
803-454-7730; [Todd.Carroll@wbd-us.com](mailto:Todd.Carroll@wbd-us.com)

*Attorneys for United States Fidelity and Guaranty  
Company*

July 13, 2020

# EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Sandra S. Hutto, individually and as Personal Representative of the Estate of Donald L. Hutto, et al.,

Plaintiffs,

vs.

Covil Corporation, et al.,

Defendants.

CIVIL ACTION NO: 2019-CP-40-06956

**THE RECEIVER FOR COVIL CORPORATION'S NOTICE OF WITHDRAWAL WITHOUT PREJUDICE OF CROSS-CLAIMS AGAINST DEFENDANTS UNITED STATES FIDELITY AND GUARANTY COMPANY AND ZURICH AMERICAN INSURANCE COMPANY**

Defendant Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, with the consent of USF&G, Zurich, and Plaintiffs, hereby files this Notice of Withdrawal Without Prejudice of Cross-Claims brought against Defendants United States Fidelity and Guaranty Company ("USF&G") and Zurich American Insurance Company ("Zurich").

SMITH ROBINSON HOLLER DuBOSE  
AND MORGAN, LLC

*s/Jonathan M. Robinson*

**Jonathan M. Robinson (SC Bar # 68285)**

G. Murrell Smith, Jr.

Shanon N. Peake

2530 Devine Street, 3<sup>rd</sup> Floor

Columbia, SC 29205

(803) 254-5445

Attorneys for the Receiver for Covil Corporation

*(Signature pages continue on following page)*

WE CONSENT:

*s/John S. Wilkerson, III*

John S. Wilkerson, III  
Turner Padget Graham & Laney, PA  
PO Box 22129  
Charleston, South Carolina 29413-2129  
Phone: 843-576-2801  
[jwilkerson@turnerpadget.com](mailto:jwilkerson@turnerpadget.com)

Counsel for Defendant Zurich

WE CONSENT:

*s/Todd Carroll*

Todd Carroll  
Womble Bond Dickinson (US) LLP  
1221 Main Street, Suite 1600  
Columbia, South Carolina 29201  
Phone: 803-454-7730  
[Todd.carroll@wbd-us.com](mailto:Todd.carroll@wbd-us.com)

Counsel for Defendant USF&G

WE CONSENT:

*s/Theile B. McVey*

Theile B. McVey  
Kassel McVey Attorneys at Law  
1330 Laurel Street  
Post Office Box 1476  
Columbia, South Carolina 29202  
Phone: 803-256-4242  
[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)

Counsel for Plaintiffs

# EXHIBIT C



**DEAN OMAR BRANHAM SHIRLEY, LLP    ELLIS & WINTERS LLP**

s/ Jonathan M. Holder  
Jonathan M. Holder (S.C. Bar No. 77935)  
302 N. Market Street, Suite 300  
Dallas, TX 75202  
jholder@dobslegal.com  
*Attorney for Plaintiff*

s/ Ashley K. Brathwaite  
Ashley K. Brathwaite (S.C. Bar No. 76952)  
P.O. Box 33550  
Raleigh, NC 27636  
ashley.brathwaite@elliswinters.com  
*Attorney for Covil Corporation*

# EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
		<b>C/A NO. 2019-CP-40-6956</b>
<b>SANDRA S. HUTTO</b> , Individually and as Personal Representative of the Estate of <b>DONALD L. HUTTO</b> , and <b>DONALD</b> <b>BRIAN HUTTO</b> and <b>CANDACE H.</b> <b>YOUNGBLOOD</b> , Individually,	)	<i>In Re:</i> Asbestos Personal Injury Litigation Coordinated Docket
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
<b>COVIL CORPORATION., et al.</b>	)	
	)	
Defendants.	)	

---

Pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, the Plaintiffs, Sandra S. Hutto, Individually and as Personal Representative of the Estate of Donald L. Hutto and Donald Brian Hutto and Candace H. Youngblood, Individually, by and through their undersigned counsel, and with the consent of Defendant United States Fidelity and Guaranty Company, hereby stipulate and agree to dismiss all claims against Defendant. in the above-captioned action without prejudice. Each party agrees to bear their own fees and costs.

s/Theile B. McVey  
 Theile B. McVey (SC Bar No. 16682)  
 KASSEL MCVEY, ATTORNEYS AT LAW  
 1330 Laurel Street  
 Columbia, SC 29202  
 803-256-4242/FAX 803-256-1952  
[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)

s/William P. Davis  
 William P. Davis, SC Bar No. 1585  
 BAKER RAVENEL & BENDER LLP  
 3710 Landmark Drive, Suite 400  
 Columbia, SC 29202  
 803-799-9091  
[wdavis@brblegal.com](mailto:wdavis@brblegal.com)

/s/ Jonathan M. Holder  
 Jonathan Holder (SC Bar 77935)  
[jholder@dobslegal.com](mailto:jholder@dobslegal.com)  
 DEAN OMAR BRANHAM SHIRLEY, LLP  
 302 N. Market Street, Suite 300  
 Dallas, Texas 75202  
 214-722-5990  
*Attorneys for Plaintiff*

*Attorneys for Defendant  
 United States Fidelity & Guaranty Co.*