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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case Nos. 2020-CP-40-01226

Appellate Case No. 2020-001239

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

Respondent,

v.

Pennsylvania National Mutual Casualty Insurance Company,

Appellant.

MOTION TO EXPEDITE

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Peter D. Protopapas, in his capacity as the Receiver for Covil Corporation (“Covil” or “the Receiver”), by and through the undersigned counsel, respectfully requests this Court expedite consideration of this appeal.

Appellant Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) filed a Notice of Appeal on September 14, 2020, appealing an order of the circuit court granting partial summary judgment in favor of Covil. In the underlying case, the circuit court found that (1) insurance issued by Penn National to Covil provided coverage in an underlying asbestos action and (2) Penn National breached its contract when it refused to defend and contribute to the settlement of that action.

The Receiver filed his final brief on February 24, 2021, and Penn National filed its final brief and reply brief on March 1, 2021. Therefore, this appeal is currently ready for the Court's consideration.

The Receiver respectfully requests this Court expedite consideration of this appeal to clarify these issues for the many other asbestos cases currently pending (and coming up for trials) against Covil.

On November 2, 2018, Chief Justice Jean Hoefer Toal (Ret.), serving as the state's asbestos judge, appointed the Receiver to manage and administer the affairs of Covil. (R. p. 56). In fulfilling his duties, the Receiver has succeeded in marshalling many of Covil's insurance assets into a Qualified Settlement Fund through settlements with some of Covil's insurers. The QSF will help fund settlements for the injured asbestos plaintiffs with legitimate claims against Covil.

The Receiver continues to work with Covil's non-settling insurers to evaluate pending asbestos claims against Covil and participate in settlement negotiations with underlying asbestos plaintiffs' counsel where appropriate. There are a number of asbestos cases that may involve coverage by Penn National that are currently pending against Covil, including the following:

1. *James M. Bailey v. Aerco International Inc., et al.*, C/A No. 2020-CP-10-03949 (S.C. Ct. Comm. Pleas, Charleston)
2. *Norma D. Bowlin v. Covil Corporation, et al.*, C/A No. 2020-CP-40-02692 (S.C. Ct. Comm. Pleas, Richland)
3. *Richard F. Carpenter v. Armstrong International, Inc., et al.*, C/A No. 2020-CP-40-04475 (S.C. Ct. Comm. Pleas, Richland)
4. *Robin M. Eford v. Arconic, Inc. et al.*, C/A No. 2019-CP-40-05869 (S.C. Ct. Comm. Pleas, Richland)
5. *Joe Eldra Goodwin v. 4520 Corp., Inc., et al.*, C/A No. 2020-CP-40-04613 (S.C. Ct. Comm. Pleas, Richland)
6. *Stephen C. Horton v. AO Smith Corp., et al.*, C/A No. 2020-CP-40-05526 (S.C. Ct. Comm. Pleas, Richland)
7. *Kayla Keith v. Air & Liquid Systems Corp., et al.*, C/A No. 2019-CP-40-05339 (S.C. Ct. Comm. Pleas, Richland)

8. *Richard L. Knight, II v. Eastman Chemical Company, et al.*, C/A No. 2019-CP-38-01045 (S.C. Ct. Comm. Pleas, Orangeburg)
9. *Dianne McCullough v. 4520 Corp., Inc., et al.*, C/A No. 2020-CP-40-01952 (S.C. Ct. Comm. Pleas, Richland)
10. *Edward R. Morgan v. Armstrong International, Inc., et al.*, C/A No. 2020-CP-40-05731 (S.C. Ct. Comm. Pleas, Richland)
11. *Nicholas Leon Murphy v. Abb Inc., et al.*, C/A No. 2020-CP-40-01364 (S.C. Ct. Comm. Pleas, Richland)
12. *Robert B. Pickelsimer v. 4520 Corp., Inc., et al.*, C/A No. 2020-CP-40-02868 (S.C. Ct. Comm. Pleas, Richland)
13. *James Joseph Reilly v. Covil Corporation, et al.*, C/A No. 2020-CP-40-00952 (S.C. Ct. Comm. Pleas, Richland)
14. *Eunice H. Sims v. 3M Company, et al.*, C/A No. 2020-CP-40-05935 (S.C. Ct. Comm. Pleas, Richland)
15. *James W. Smith v. Armstrong International, Inc., et al.*, C/A No. 2019-CP-40-04326 (S.C. Ct. Comm. Pleas, Richland)
16. *Jack E. Taylor v. 3M Company, et al.*, C/A No. 2020-CP-40-06134 (S.C. Ct. Comm. Pleas, Richland)
17. *Kathy Lynn Weist v. Air & Liquid Systems Corp., et al.*, C/A No. 2020-CP-40-01597 (S.C. Ct. Comm. Pleas, Richland)
18. *Linda J. White v. Armstrong International, Inc., et al.*, C/A No. 2019-CP-40-02858 (S.C. Ct. Comm. Pleas, Richland)
19. *Tommy D. Wannamaker v. 3M Company, et al.*, C/A No. 2021-CP-38-00240 (S.C. Ct. Comm. Pleas, Orangeburg)

However, Penn National has refused to meaningfully participate in settlement discussions in the pending asbestos cases. Despite the Receivership Court's rulings on applicable insurance issues, Penn National continues to cling to its own contrary view of South Carolina insurance jurisprudence, due in part to this Court's pending consideration of this appeal. This directly impedes the ability of the Receiver to discharge his duties. Accordingly, the Receiver respectfully requests that the Court expedite consideration of this appeal so that the parties may effectively and efficiently discharge their duties and meaningfully participate in the proper administration of the underlying asbestos cases.

(Signature page follows)

Respectfully submitted,

s/Shanon N. Peake

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April 21, 2021.

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PROOF OF SERVICE

I certify that a true copy of the Motion to Expedite in this case has been served on the following, this 21st day of April, 2021, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

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(Signature page follows)

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Protopapas*

April 21, 2021

From: [Shanon Peake](#)
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Subject: Appellate Case No. 2020-01239 - Covil Corporation v. Penn National
Date: Wednesday, April 21, 2021 4:15:00 PM
Attachments: [Motion to Expedite, 4.pdf](#)
[Proof of Service - Motion to Expedite, 2.pdf](#)

Good Afternoon,

Please find attached a Motion to Expedite that we are filing with the Court of Appeals in the above-referenced appeal today, served on you pursuant to subsection (g)(3) of the Supreme Court's Order on the Operation of the Appellate Courts During the Coronavirus Emergency.

Thank you,
Shanon Peake

SMITH ROBINSON

Forward thinking. Results driven.

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