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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

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2020-001437
Circuit Court Case No. 2019-CP-40-02285

Peter D. Protopapas, in his capacity as Receiver for Covil Corporation, ... Plaintiff,

v.

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

Of Which:

United States Fidelity and Guaranty Company is the..... Appellant,

And

Peter D. Protopapas, in his capacity as Receiver of Covil Corporation, is the..... Respondent.

RECORD ON APPEAL
(VOLUME I)

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September 13, 2021

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND 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.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C.A. No. 2019-CP-40-02285
STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Sandra S. Hutto, individually and as Personal Representative of the Estate of Donald L. Hutto, et al., Plaintiffs, v. Covil Corporation et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C.A. No. 2019-CP-40-06956

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ORDER GRANTING RECEIVER'S MOTION TO CLARIFY STATUS OF RECEIVERSHIP

This matter comes before the Court on the Receiver's July 21, 2020 Motion to Clarify Status of Receivership. Zurich American Insurance Company ("Zurich") filed its response on August 6, 2010, United States Fidelity and Guaranty Company ("USF&G") filed its response on August 21, 2020, and the Receiver filed his Reply on September 8, 2020. Through the Motion, the

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Receiver asks this Court to clarify the impact, if any, of Zurich's and USF&G's (collectively, "the Insurers") affirmative defenses related to Covil's prior receivership.[1] After careful consideration of the parties' filings and applicable law, the Court hereby grants the Motion and finds Covil's prior receivership presents no impediment to the assertion of asbestos personal injury claims against Covil.

BACKGROUND

In 1991, the Greenville County Master in Equity, Judge Simmons, appointed L. Winston Lee as Receiver ("the Prior Receiver") for Covil Corporation in *First Savings Bank, FSB v. Covil Corporation et al.*, C.A. No. 91-CP-23-04445. In a May 12, 1992 Order, Judge Simmons judicially dissolved Covil and ordered the Prior Receiver to, among other things, provide known Covil claimants with notice of the dissolution pursuant to section 33-14-106 of the South Carolina Code and publish notice of the dissolution pursuant to section 33-14-107 of the South Carolina Code.

In a Petition filed November 11, 1992, the Prior Receiver, seeking to bring his receivership to a close, detailed the acts undertaken in his capacity as Covil's receiver, including that he "marshalled and liquidated the assets and collected the accounts of the Defendants," retained legal representation, "sold all the furniture, fixtures, inventory[,] and equipment of Covil," and addressed the presence and remediation of asbestos in inventory and materials sold to another company.

The following day, Judge Simmons entered an order that contained the following finding: "From the foregoing Petition of the Receiver, it appears and I find that he has fully complied with the previous Orders of this Court in liquidating the assets of the his [sic] Defendants, that his

[1] Specifically, Zurich's Tenth Defense in *Protopapas v. Wall, Templeton & Haldrup, P.A.*, C.A. No. 2019-CP-40-02285, and USF&G's Sixth Defense in *Hutto v. Covil Corporation et al.*, C.A. No. 2019-CP-40-06956.

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accounting is in order[,] and that the relief sought by him should be approved." Judge Simmons provided for the Prior Receiver's discharge as Covil's then-receiver, thus ending the receivership, in a subsequent order entered on December 7, 1992. On May 4, 2020, Judge Simmons transferred *First Savings Bank* to this Court and this Court is the proper Court for both the 1991 Receivership and the present Receivership.

Documentary evidence as well as the testimony of corporate representatives of Zurich and USF&G conclusively evidence that both insurance companies were well aware of the Prior Receivership in 1991. Further, Zurich understood by at least 1994 that Covil still needed to file a Notice of Dissolution in the newspaper to effect dissolution of Covil.

First, USF&G's corporate representative, Craig Johnson, testified that a former claims representative of USF&G, Cynthia Knight, communicated with the Prior Receiver, L. Winston Lee, directly by telephone and through written correspondence. *See* Deposition of USF&G, Day 1, at 80-81. The notes memorializing the telephone call and Ms. Knight's letters to Mr. Lee both include reference to case number 91-CP-23-4445 and Judgment Roll number 91-5988. *Id.*at 84-85.

Second, Zurich's corporate representative, John Weiss, testified that Zurich received a letter from its counsel, Danny White, on November 14, 1991, in which counsel stated that he included a Notice to Creditors for Covil Corporation dated November 7, 1991. *See* Deposition of Zurich, Day 1, at 192-193. While he agreed that the letter in question was located in the Covil claims file, Zurich did not locate the enclosure. *See id.* at 194-198. Indeed, Mr. Weiss testified that he was not aware that Zurich performed any specific search for the enclosure which sets forth judgment roll and civil action numbers. *See id.* at 198.

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LAW

Section 33-14-106 provides, in relevant part, "(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section. . . . (d) For purposes of this section, 'claim' does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution."[2]

Section 33-14-107, as it existed at the time of Covil's dissolution, provided:

> (a) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
>
> (b) The notice must:
> (1) be published once in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this State, its registered office) is or was last located;
> (2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
> (3) state that a claim against the corporation is barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.
>
> (c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:
> (1) claimant who did not receive written notice under Section 33-14-106;
> (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on.
>
> (d) A claim may be enforced under this section:
> (1) against the dissolved corporation to the extent of its undistributed assets; or
> (2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him

[2] This statute was last amended before Covil was dissolved; accordingly, its language is unchanged throughout the time period relevant to this motion.

> in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

In 2004, section 33-14-107 was amended to add subsection (c)(3), which created a bar to claims for "a claimant whose claim is contingent or based on an event occurring after the effective date of the dissolution."

DISCUSSION

1. No Evidence Exists that Notice of Covil's Dissolution Was Ever Published.

The Insurers contend that in his November 11, 1992 Order, Judge Simmons found the Prior Receiver published notice of Covil's dissolution. However, upon close examination of the Order, read in context, the Court disagrees.

Critically, the order made no explicit findings related to publication, and the Court declines to presume that the Receiver did publish the notice, as USF&G urges. Instead, the order merely found that the prior receiver "fully complied with the previous Orders of this Court *in liquidating the assets of the . . . Defendants*, that his accounting is in order[,] and that the relief sought by him should be approved." This finding says nothing about publication of Covil's dissolution; instead, it only speaks to the Prior Receiver's compliance with Judge Simmons' instructions to "proceed with the collection of accounts and marshalling of assets, and the orderly liquidation of the business of Covil Corporation." *First Savings Bank, FSB v. Covil Corporation et al.*, May 11, 1992 Order.

Additionally, Judge Simmons' finding, by its own terms, was based entirely on the representations the Prior Receiver made in his Petition to the court: "*From the foregoing Petition of the Receiver, it appears* and I find that he has fully complied . . . ." November 12 Order (emphasis added). And while the Petition goes into great detail about the Prior Receiver's actions, it lacks any assertion that he published notice of Covil's dissolution. Accordingly, even if the Judge Simmons' language in the November 12 Order could be construed as a finding of compliance with

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all of the court's prior orders, including the publication requirement, such a finding would have no factual basis as it relates to publication.

In addition to the lack of support for extrapolating Judge Simmons' finding to encompass publication, evidence also exists that contradicts such a reading. For example, the Prior Receiver's Petition contains a final accounting of reimbursable expenses, and nowhere in this accounting is there any mention of a publication expense to any newspaper. Further, when defense counsel provided the opportunity to pursue publishing a notice of dissolution in 1994, no one at Zurich followed up to insist that such action be taken. Additionally, a Zurich Claim File Activity Memorandum from March 2001 acknowledged there was "no evidence" that notice of Covil's dissolution had been published. Because Judge Simmons' November 12, 1992 finding is ambiguous as to publication, and evidence exists that would contradict interpreting the finding to encompass publication, the Court declines the Insurers' invitation to do so and finds that notice of Covil's dissolution was never published.

2. Section 33-14-107 Does Not Foreclose the Asbestos Claims Pending Against Covil.

Assuming *arguendo* that notice of Covil's dissolution was published, pending and future asbestos claims by personal injury claimants would nonetheless remain viable, as neither iteration of section 33-14-107 forecloses any claims against Covil as a matter of law. Despite USF&G's objection to the contrary, the Court further finds that the Receiver has standing to present this argument.

a. The Amended Statute Does Not Apply to Covil.

Section 33-14-107(c) operates as a statute of repose, and as such, it "creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Langley v. Pierce*, 313 S.C. 401, 403–04, 438 S.E.2d 242, 243 (1993) (quoting *First United*

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Methodist Church v. U.S. Gypsum Co., 882 F.2d 862, 865–866 (4th Cir.1989)); *see also* Adam Bain, *Determining the Preemptive Effect of Federal Law on State Statutes of Repose*, 43 U. Balt. L. Rev. 119, 131 (2014) (noting "courts have recognized that while statutes of limitations are procedural, statutes of repose are substantive").

Accordingly, subsection (c)(3), which was added to the statute in 2004, applies prospectively only to corporate dissolutions occurring after its enactment. *See Edwards v. State Law Enf't Div.*, 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011) ("When a statute creates a new obligation or imposes a new duty, courts generally consider the statute prospective only."); *Indep. Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 33, 61 S.E.2d 399, 404 (1950) ("Statutes tending to destroy private rights should be construed not only strictly, but as not retrospective in operation."); *see, e.g.*, *Corbett v. City of Columbia*, 294 S.C. 327, 331–32, 364 S.E.2d 459, 461 (1988) ("[W]e held that the repeal of § 42–9–100 involved substantive rights and that the amendment would not be applied retroactively."); *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (Ct. App. 2011) (reasoning that because an act "create[d] substantive rights and impose[d] new obligations," it would "apply prospectively absent clear indication to the contrary by the Legislature").

The Insurers argue that, even if subsection (c)(3) applies prospectively, it nonetheless acts to bar claims brought more than ten years after its enactment, in 2014. However, this interpretation is incompatible with the plain statutory language, which mandates that a claim against a dissolved corporation must be filed "within ten years after the publication date of the newspaper notice." § 33-14-107(c). Under the Insurers' interpretation of the statute, claims against Covil that fall under subsection (c) must have been filed between 2004 and 2014; however, subsection (c) would also require that the claims be filed by 2002, ten years after the purported notice of Covil's

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dissolution. The Insurers' desire for a favorable reading of section 33-14-107 must yield to the impossibility their interpretation presents.[3] Subsection (c)(3) simply cannot be applied to dissolutions that took place prior to its enactment.

b. The Unamended Statute Does Not Bar Unaccrued Claims.

The Insurers further claim that, even if the 2004 amendments to section 33-14-107 do not apply to Covil, the prior version of the statute, read alongside section 33-14-106, nonetheless bars the current asbestos claims brought against Covil. Again, however, the Insurers' position is belied by plain statutory language. The Insurers are correct that section 33-14-106 addresses "known" claims against a dissolved corporation, and subsection (d) excludes from the definition of "claim" "a contingent liability or a claim based on an event occurring after the effective date of dissolution." § 33-14-106. However, the fact that section 33-14-107 does not contain a similar exclusion does not suggest that the pre-2004 version of the statute encompasses such claims. "Unknown" as it is used in section 33-14-107 refers to claims unknown *to the dissolved corporation*, not to claims unknown *to the claimant*. This interpretation is consistent with the language of subsection (a), which provides that "[a] dissolved corporation may publish notice of its dissolution and request that *persons with claims* against the corporation present them in accordance with the notice." § 33-14-107(a) (emphasis added).

This interpretation is also consistent with the Reporter's Note accompanying section 33-14-107, which recognizes that the statute "does not contain subsection (c)(3) of Model Act Section

[3] Even taken out of the context of Covil's dissolution, for corporations that dissolved (and published notice of dissolution) in the ten years prior to the 2004 amendment, the Insurers' interpretation of the statute would also reduce the period during which claimants could bring claims against the dissolved corporation. For example, claims against a corporation that dissolved in 2000 would have to be brought between 2004 and 2010 to comply both with the Insurers' interpretation and the plain statutory language. This Court does not believe the legislature intended such disparate results when it amended section 33-14-107.

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14.07 providing that contingent claims and those based on an event occurring after dissolution are subject to the five-year statute of repose, too. The statute of repose in the new provision only applies to claims existing at dissolution." South Carolina Reporter's Comments, § 33-14-107. This Comment reveals the intent of the South Carolina legislature to exclude nonexistent claims from the reach of both section 33-14-106 and -107 at the time of Covil's dissolution.

The Insurers' argument that the Reporter's Comments contradict "the plain meaning of the statutory text" is incorrect, as is their argument that the 2004 amendment adding subsection (c)(3) merely clarified existing law. In fact, the amendment stands strongly in opposition to the Insurer's position—if section 33-14-107 already encompassed nonexistent claims prior to 2004, the addition of subsection (c)(3) would have been entirely unnecessary and that language would be surplusage. *See Cannon v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 371 S.C. 581, 584, 641 S.E.2d 429, 430 (2007) ("It is presumed the Legislature, in adopting an amendment to a statute, intended to make some change in the existing law."); *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . ." (quoting 82 C.J.S. *Statutes* § 346)).[4]

In sum, no version of section 33-14-107 precludes an asbestos personal injury plaintiff from bringing claims against Covil. Furthermore, as the Receivership Court for the current and former Receiver, nothing from the prior Receivership precludes the current Receivership or personal injury asbestos claimants from filing lawsuits against Covil.

[4] The Insurers also argue section 33-14-107(d) does not authorize the filing of asbestos claims against Covil because Covil's insurance policies are not "undistributed assets." § 33-14-107(d). This Court disagrees. *See, e.g.*, *Moultis v. Degen*, 279 S.C. 1, 7, 301 S.E.2d 554, 558 (1983); *Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc.*, 379 S.C. 31, 41, 664 S.E.2d 83, 88 (Ct. App. 2008); *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 293, 569 S.E.2d 371, 374 (Ct. App. 2002).

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CONCLUSION

For the reasons stated above, the Court hereby **GRANTS** the Receiver's Motion and finds Covil's prior receivership presents no impediment to the assertion of asbestos personal injury claims against Covil.

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

_____
Jean H. Toal, Chief Justice of the South Carolina Supreme Court, Retired; Acting Circuit Court Judge.

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Richland Common Pleas

Case Caption: Peter D Protopapas , plaintiff, et al vs Wall Templeton & Haldrup Pa , defendant, et al

Case Number: 2019CP4002285

Type: Order/Other

So Ordered

Jean H. Toal

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

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

This Court hereby appoints Attorney Peter Protopapas as Receiver at such rate of compensation as may be approved by the Court. Mr. Protopapas is hereby appointed Receiver in this case pursuant to § 15-65-10 with the power and authority to fully administer all assets of Covil Corporation ("Covil"). This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers.

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

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

IT IS SO ORDERED.

SIGNED this_____ day of _____,2018.

_____
JEAN TOAL, CHIEF JUSTICE (Ret.)

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Richland Common Pleas

Case Caption: Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al

Case Number: 2018CP4004940

Type: Order/Appointment of Receiver

IT IS SO ORDERED.

s/ Jean H. Toal #2758

STATE OF SOUTH CAROLINA COUNTY OF YORK ROXANNE FALLS, Individually and as Personal Representative of the Estate of CHARLOTTE GAYE SMITH, Plaintiffs, vs. CBS Corporation, et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT C/A NO.: 2015-CP-46-02155 **ORDER FOR RULE TO SHOW CAUSE HEARING**
STATE OF SOUTH CAROLINA COUNTY OF YORK TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, Plaintiffs, vs. Air & Liquid Systems Corporation, et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT C/A NO.: 2015-CP-46-03456 **ORDER FOR RULE TO SHOW CAUSE HEARING**

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND CHARLES T. HOPPER and REBECCA HOPPER, Plaintiffs, vs. Air & Liquid Systems Corporation, et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A NO.: 2019-CP-40-00076 **ORDER FOR RULE TO SHOW CAUSE HEARING**

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES MICHAEL HILL, Plaintiff, vs. Advance Auto Parts, Inc., et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-40-04680 **ORDER FOR RULE TO SHOW CAUSE HEARING**

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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).

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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.

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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.

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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. Celeanese 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

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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

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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

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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

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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

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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

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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

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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.

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'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 documents[7] 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."

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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

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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

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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 polices were presented to it. The insurers take the position that the Fourth Circuit has "spoken" definitively on this issue. However,

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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.

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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

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"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:

Policy Period	Insurer	Policy Number
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

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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.

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York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation , defendant, et al

Case Number: 2015CP4602155

Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

ELECTRONICALLY FILED - 2019 Mar 04 12:19 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
DENVER D. TAYLOR and JANICE R. TAYLOR, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION, et al.,** Defendants.	Civil Action No: 2018-CP-40-04940 **ORDER GRANTING THE RECEIVER FOR COVIL CORPORATION'S MOTION TO CLARIFY THE RECEIVER ORDER**

This matter comes before the Court by way of the Receiver for Covil Corporation's Motion to Clarify the Order Appointing a Receiver for Covil Corporation ("Covil"). The hearing on the Receiver's Motion took place on February 21, 2019.The Receiver's Motion is hereby GRANTED.

Peter D. Protopapas ("the Receiver") was appointed Receiver for Covil by this Court on November 2, 2018. This Order clarifies the appointment of the Receiver for Covil. Although the Receiver was appointed in the matter of *Denver D. Taylor v. Janice Taylor v. Air & Liquid Systems Corporation, et al.,* C/A No. 2018-CP-40-04940, the Receiver's appointment is not limited to the *Taylor* case. Rather, as stated in the initial Order Appointing a Receiver for Covil, Mr. Protopapas was appointed pursuant to S.C. Code § 15-65-10 with the power and authority to fully administer all assets of Covil, inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil as well as any claims related to the actions or failure to act of Covil's insurance carriers. This Court has jurisdiction over all asbestos related cases in South Carolina. Therefore, the Receiver is appointed in all asbestos related cases and for all asbestos related matters.

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In addition to the rights and powers of the Receiver set forth in the Order Appointing the Receiver, the Receiver is hereby vested with all rights of Covil as the client in any attorney-client relationship between Covil and any attorney or counselor hired or retained by Covil or hired and retained to represent Covil by Covil's insurers. The Receiver's rights include, but are not limited to, access to all documents, business records, reports and correspondence contained in any prior, present or future attorney file related to representation of Covil.

Specifically, the Receiver is entitled to review and obtain the entire file contents related to representation of Covil in the possession of Wall Templeton Attorneys and Gallivan, White & Boyd, PA., including but not limited to all Covil business records, reports, correspondence, litigation materials, transcripts, fee agreements, insurance policies, information related to prior and pending claims, and written and electronic correspondence to Covil's insurers. The Receiver has the right to take possession of all Covil documents and correspondence and to protect or assert attorney-client privilege and work product doctrine on behalf of Covil. The Court is aware that retained counsel's duty of good faith, fair dealing, and confidentiality is a duty not to Covil's insurers, but to Covil itself, and that confidentiality may be waived by Mr. Protopapas as the Receiver. By sharing information with the Receiver, the attorneys representing Covil are not waiving the attorney-client privilege or violating any obligations to any of Covil's insurers.

IT IS SO ORDERED

SIGNED this ____ day of _____, 2019

_____
Chief Justice Jean Toal (Ret), Supreme Court
Acting Circuit Court Judge

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Richland Common Pleas

Case Caption: Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al

Case Number: 2018CP4004940

Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) FOR THE SIXTH JUDICIAL CIRCUIT
) C/A NO.: 2015-CP-46-02155
ROXANNE FALLS, Individually and as)
Personal Representative of the Estate of)
CHARLOTTE GAYE SMITH,)
) ORDER GRANTING JOINT MOTIONS
Plaintiffs,) TO ESTABLISH COVIL QUALIFIED
) SETTLEMENT FUND AND TO APPROVE
vs.) SETTLEMENTS BETWEEN THE
) RECEIVER FOR COVIL AND (1)
CBS Corporation, et al.,) HARTFORD, (2) TIG, AND (3) SENTRY
) AND TO KEEP CONTINUING
Defendants.) JURISDICTION OVER THIS
) QUALIFIED SETTLEMENT FUND
In Re:)
)
Receivership of Covil Corporation by and)
through its Receiver Peter D. Protopapas)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) FOR THE SIXTH JUDICIAL CIRCUIT
) 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,)
) ORDER GRANTING JOINT MOTIONS
Plaintiffs,) TO ESTABLISH COVIL QUALIFIED
) SETTLEMENT FUND AND TO APPROVE
vs.) SETTLEMENTS BETWEEN THE
) RECEIVER FOR COVIL AND (1)
Air & Liquid Systems Corporation, et al.,) HARTFORD, (2) TIG, AND (3) SENTRY
) AND TO KEEP CONTINUING
Defendants.) JURISDICTION OVER THIS
) QUALIFIED SETTLEMENT FUND
In Re:)
)
Receivership of Covil Corporation by and)
through its Receiver Peter D. Protopapas)

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SC Court of Appeals

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND CHARLES T. HOPPER and REBECCA HOPPER, Plaintiffs, vs. Air & Liquid Systems Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A NO.: 2019-CP-40-00076 ORDER GRANTING JOINT MOTIONS TO ESTABLISH COVIL QUALIFIED SETTLEMENT FUND AND TO APPROVE SETTLEMENTS BETWEEN THE RECEIVER FOR COVIL AND (1) HARTFORD, (2) TIG, AND (3) SENTRY AND TO KEEP CONTINUING JURISDICTION OVER THIS QUALIFIED SETTLEMENT FUND

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND JAMES MICHAEL HILL, Plaintiff, vs. Advance Auto Parts, Inc., et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-40-04680 ORDER GRANTING JOINT MOTIONS TO ESTABLISH COVIL QUALIFIED SETTLEMENT FUND AND TO APPROVE SETTLEMENTS BETWEEN THE RECEIVER FOR COVIL AND (1) HARTFORD, (2) TIG, AND (3) SENTRY AND TO KEEP CONTINUING JURISDICTION OVER THIS QUALIFIED SETTLEMENT FUND

ELECTRONICALLY FILED - 2020 Apr 10 4:40 PM - YORK - COMMON PLEAS - CASE#2015CP4602155

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND DENVER D. TAYLOR and JANICE TAYLOR, Plaintiffs, vs. Air & Liquid Systems Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-40-04940 ORDER GRANTING JOINT MOTIONS TO ESTABLISH COVIL QUALIFIED SETTLEMENT FUND AND TO APPROVE SETTLEMENTS BETWEEN THE RECEIVER FOR COVIL AND (1) HARTFORD, (2) TIG, AND (3) SENTRY AND TO KEEP CONTINUING JURISDICTION OVER THIS QUALIFIED SETTLEMENT FUND

This matter came before the Court on the joint motions of Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver"), Hartford Accident and Indemnity Company and First State Insurance Company (collectively "Hartford"), and TIG Insurance Company, as successor to Ranger Insurance Company ("TIG"); and Sentry Insurance, a Mutual Company ("Sentry") to establish a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of 1986, as amended ("I.R.C.") to Approve the Settlements between the Receiver and each of Hartford, TIG, and Sentry, and to keep continuing jurisdiction over the Qualified Settlement Fund. Having considered the joint motions, together with the exhibits submitted with these motions, the Court hereby decides the matter on the filings and rules as follows:

FINDING RELATED TO CORONAVIRUS EMERGENCY PROCEDURES

On April 3, 2020, the South Carolina Supreme Court issued an Order providing guidance to the courts of South Carolina to help ensure the continued operation of the courts during the

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Coronavirus emergency. In the Order, the Supreme Court noted the impossibility of continuing the practice of conducting hearings on virtually all motions during this unprecedented time. The Supreme Court indicated South Carolina trial judges, after allowing all parties the opportunity to file responses to a motion, "may elect to not hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers." *See* April 3, 2020 Order of the South Carolina Supreme Court. This Court advised all parties and non-parties by email of the opportunity to file briefs on or before March 30, 2020. The Court finds these motions have been fully and exhaustively briefed, and, after reviewing all submissions, the Court further finds that hearings on these motions are not necessary and may readily be decided without further input from the lawyers. Ruling on these motions is also in the best interest of the Receivership as delay in these perilous times threatens the assets of the Receivership and the proposed liquidation of those assets into a qualified settlement fund.

FINDINGS REGARDING PARALLEL PROCEEDINGS

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

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

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the Receivership Court. Judge Hendricks found: "It is abundantly clear that Justice Toal, for whom the undersigned has the highest respect, has done and is doing her best to keep the underlying state tort suits moving forward appropriately without interfering with the coverage issues pending here."

In this order, this Court intends to faithfully adhere to Judge Hendricks' rulings and stay out of ruling on coverage matters that are before Judge Hendricks' Court.[1]

With regard to these proposed settlements, these three settling insurers were parties to the case pending before Judge Hendricks, but each settling insurer has now been dismissed without prejudice from that proceeding. In each case, the settling parties indicated to Judge Hendricks that the requested dismissals were to be without prejudice because each settlement still required the approval of this Court. In addition, the Receiver filed with Judge Hendricks the proposed approval Orders submitted to this Court. The settling parties also advised Judge Hendricks that, upon the Receivership Court's approval, the parties would return to Judge Hendricks' Court in order to convert the dismissals without prejudice into final dismissals *with* prejudice. The non-settling insurers did not object to any of these motions even though the motions were predicated on this Court's considering the proposed Orders approving settlement to which they now object.

As to each settling insurer, Judge Hendricks signed the dismissals without prejudice on this basis, and as a result the settling insurers have all been dismissed from the above-referenced case

[1] Although the Objecting Insurers have taken the position that the Receiver and the Settling Insurers are seeking insurance rulings from this Court in requesting the approvals for these settlements, the Court notes that USF&G is the one that has sought substantive insurance rulings from this Court during this settlement approval process. The Court takes Judge Hendricks' order very seriously. It is disingenuous for non-party USF&G to assert such strident objections to this Court's adjudication of these joint settlement motions while, at the same time, USF&G has sought the exact types of rulings from this Court that are prohibited by Judge Hendricks' order. This Court rejects USF&G's blatant attempts to circumvent the spirit and substance of Judge Hendricks' directives.

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in Judge Hendricks' court. Therefore, it is not possible for this Court to rule on the coverage matters pending before Judge Hendricks as this Court evaluates whether to approve the proposed settlements from the settling insurers, each of which has now been dismissed from Judge Hendricks' case.

ASBESTOS DOCKET MANAGEMENT

The establishment of the Covil QSF, and the approval of the settlements made the basis of these motions and the Court's continuing jurisdiction over the Covil QSF, as provided for by I.R.C. Section 468B, all directly relate to this Court's responsibility to manage South Carolina's statewide asbestos litigation docket. Asbestos litigation is often repetitive, serial litigation, and many similar issues present themselves repeatedly for routine adjudication by this Court. To the extent any claims are made that are addressed in this order, this Court can use its experience in managing the South Carolina asbestos litigation to establish efficient procedures to address, at the outset, a variety of these recurring, housekeeping issues. The Court intends to do so as a way to streamline future asbestos proceedings and to minimize the burden on this Court and the litigants of these prospective filings if ever made. Throughout this order, in establishing the mechanism for treatment of future claims related to asbestos issues, the Court will exercise its inherent authority to manage its docket so as to maximize the efficiency of the procedures being established by way of this order.

PROCEDURAL HISTORY

Covil Corporation was a business organized under the laws of the State of South Carolina and was previously incorporated in the State of South Carolina. Covil Corporation is alleged to have made, manufactured, sold, distributed, installed, removed and disturbed thermal insulation

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materials that, at certain times, contained asbestos. As a result, Covil Corporation has been named as a defendant in numerous asbestos-related bodily injury actions (hereinafter "Asbestos Bodily Injury Suits"). Sentry's predecessor Hardware Mutual Casualty Company issued certain policies of liability insurance to Covil Corporation or its predecessors that were in effect from April 21, 1964 through March 31, 1970. Hartford issued certain policies of liability insurance to Covil Corporation or its predecessors that were in effect from 1977 to 1986. TIG's predecessor Ranger Insurance Company issued or allegedly issued certain policies of excess liability insurance to Covil Corporation or its predecessors that were in effect from 1976-1979.

As part of the Settlement Agreements at issue with these joint motions, Covil Corporation, through its Receiver, and each of Sentry, Hartford, and TIG, have entered into stipulations identifying the year, limits, and basic terms of these insurance policies, and of certain claims made policies issued by Evanston Insurance Company, now managed by an affiliate of TIG.

Beginning in or about 1976, Covil began being named as a defendant in Asbestos Bodily Injury Suits. Shortly thereafter, Sentry began participating in the defense of Covil. At that time, Covil was still a functioning business entity with its own corporate counsel.

In 1991, Covil ceased business operations. In 1993, the Secretary of State revoked Covil's corporate charter. However, Covil continued to be named as a defendant in Asbestos Bodily Injury Suits. Sentry, along with Zurich American Insurance Company and United States Fidelity & Guaranty Company, continued defending Covil after Covil ceased operations. Covil Corporation was aware that it had pending asbestos bodily injury suits when it ceased operations.

ANALYSIS AND TREATMENT OF CONFIDENTIAL SETTLEMENT AGREEMENTS

The Receiver for Covil Corporation and Covil QSF LLC have entered into proposed Settlement Agreements with each of the settling insurers, Hartford, TIG, and Sentry. Sentry,

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Hartford and TIG, jointly with Covil Corporation, have moved this Court to authorize the establishment of Covil QSF LLC as the Covil Qualified Settlement Fund ("QSF") for the defense and payment of Covil's Asbestos Bodily Injury Suits. The proposed Settlement Agreements provide that funds paid by Hartford, TIG, and Sentry as part of the Settlement Agreement will all be deposited into the Covil QSF. The Court has thoroughly reviewed each of the proposed Settlement Agreements. Covil and the settling insurers have asked that the settlement agreements remain sealed.

In weighing the factors outlined in Rule 41.1(c) of the South Carolina Rules of Civil Procedure, the Court finds there is no compelling reason to seal the aggregate amount of the settlements which is $44,500,000. However, the Court, while mindful of our state's public policy favoring the transparency of court proceedings, has reviewed the comprehensive settlement agreements in detail *in camera* and all submissions related to this Motion and finds Receiver has met his burden to show sealing the settlement agreements is proper and necessary under Rule 41.1(c) of the South Carolina Rules of Civil Procedure. Specifically, the Court finds that, although the litigation of asbestos suits is of great public importance, the specific terms of the liquidation of Receiver assets arising from a settlement between the Receiver and the settling insurance companies does not have great public significance.

The Court agrees with Receiver that the settlement agreements do not attempt to hide important or damaging information from the public and are only related to liquidating Receiver assets from three insurers who, in each instance, have voluntarily agreed to the liquidation for amounts in excess of their stated applicable policy limits. The Court holds that sealing the settlement agreements is necessary and beneficial to the public to ensure the longevity of the Qualified Settlement Fund and allow for the fair and just compensation of injured parties who may

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have legitimate future claims against Covil due to asbestos-related injuries. This Court will retain continuing jurisdiction over the Qualified Settlement Fund and will be able to adjudicate any matter brought before the Court concerning these settlements and their transfer of funds to Covil QSF.

Although these settlement agreements fully resolve the disputes the Receiver has with TIG, Sentry, and Hartford, the Receiver is still deeply involved in disputes over other Receiver assets and is working towards a resolution with other Covil insurers in other forums.

The premature disclosure of the specific details of these settlement agreements could be misappropriated and could chill the Receiver's ability to equitably liquidate other Receivership assets. Furthermore, the underlying asbestos litigation is still ongoing, and sealing these settlement agreements will allow these asbestos cases to continue forward in the same manner in which other cases move forward. The Court further finds sealing the settlement agreements is the best way to balance the potential harm to the settling parties with the public interest, and there are no other alternatives in this case to protect the private interests of the settling parties.

LIQUIDATION OF RECEIVERSHIP ASSSETS AND APPROVAL OF SETTLEMENTS

"A sale of receivership property by the receiver, under an order of court, is a judicial sale." *Hannon v. Mechanics Bldg. & Loan Ass'n of Spartanburg*, 177 S.C. 153, 180 S.E. 873, 876 (1935). "The courts of this state have uniformly exercised the power to order that a receiver, duly appointed, shall sell the real estate and other property of the person or corporation whose assets are in the hands of receivers, in order to distribute the proceeds among creditors, stockholders, and other parties interested, and to liquidate and wind up the affairs of such insolvent person or corporation." *Id.* at 876. Moreover, "it is often of great importance that such assets should be disposed of by a receiver, duly appointed, because of his special knowledge of such assets and

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because the receiver takes manual possession and custody of the property for the purpose of disposing of it and distributing the proceeds." *Id.* Thus, when the Court deems it appropriate, it "may make an order to the receivers to sell at private sale, or the court may accept an offer made directly to the court, or it may ratify a sale already made." *Id.*

The Court has previously held that the insurance policies are in the possession of the Court under the receivership. Like any contractual right, the insurance contracts constitute property of Covil Corporation that may be liquidated by way of a sale. As part of the Settlement Agreements, Hartford, TIG, and Sentry have offered to buy back any policies that it or its predecessors may have sold to Covil Corporation or Covil Corporation's predecessors. Doing so will allow the insurance assets to be liquidated for use in the administration of the Receivership, and by the QSF for the defense of asbestos bodily injury suits and payment of asbestos bodily injury claims.

The Receiver and the Settling Insurers are seeking approval for the Receiver to sell the Receivership's property. Specifically, the Receiver is selling the insurance policies issued by the Settling Insurers to Covil back to the respective Settling Insurers to establish and fund a qualified settlement fund. This Court has jurisdiction over the assets of Covil through its un-appealed and unchallenged Order appointing Receiver dated November 2, 2018. Furthermore, South Carolina law vests this Court with discretion to dispose of the Receivership's assets and direct disposition of those assets.[2] The Court is further keeping continuing jurisdiction over the QSF and all of its assets.

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[2] It is clear that this Court's jurisdiction extends over Covil's assets which include its insurance policies. *See Buist v. Merchant's & Planter's Bank* 65 S.C. 487, 489, 43 S.E. 958, 959 (S.C. 1903) (Receiver can liquidate property under Court supervision); *Clyburn v. Reynolds*, 31 S.C. 91, 105, 9 S.E. 973, 975 (1889) (Court can empower receivers to sell the assets of the receivership); *Montgomery & Crawford v Arcadia Mills*, 173 S.C. 464, 490, 176 S.E. 589, 599 (1934) (Receivership Court has the power to liquidate the rights of creditors pursuant to their priorities) *In re State ex rel Hutchinson*, 182 S.C. 369, 375, 189 S.E. 475, 477-78 (1937) (holding the power

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OBJECTIONS BY NON-PARTY INSURERS

USF&G and Zurich (collectively referred to as "Objecting Insurers") filed objections to the establishment of the qualified settlement fund and to this Court's approval of the proposed settlements.[3] The Objecting Insurers vigorously assert they are not parties to the case but still seek to object to establishment of the Covil QSF and the sale of Receivership assets. Although the existence of these settlements have been known to the Objecting Insurers for months, the Objecting Insurers have not intervened in any of these matters. If the Objecting Insurers wished to object to the establishment of the Covil QSF or to the approval of these settlements then they were required to seek leave to intervene in these cases. They chose not to do so.

In South Carolina, an insurer does not have standing to challenge a Court order issued in a case where the insurer is not a party. *See Narruhn v. Alea London, Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013)(holding that a non-party insurer did not have standing to challenge an Order). As a result, the Objecting Insurers repeated assertion that they are non-parties to the case (and their decision not to intervene) is fatal to their objections because they do not have standing to challenge the Motions under their own theory.

To the extent the Objecting Insurers believe that they have standing to challenge the establishment of the Covil QSF or the liquidation of the Receiver's assets because of this Court's prior Orders Sanctioning Objecting Insurers for their misconduct, they are mistaken. The Court's

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to appoint a receiver is vested in every circuit court of the State, and nowhere in the body of the law is there any limitation upon this authority); *Truesdell v. Johnson*, 144 S.C. 188, 142 S.E. 343, 345 (1928) (holding the effect of the appointment of the receiver is to take property and place it in the hands of a third party pending litigation); S.C. Code Ann. § 15-65-10.

[3] Covil's other known and solvent insurer, Pennsylvania National Mutual Casualty Insurance Company, chose not to object to the establishment of the qualified settlement fund or to any of these settlements. Furthermore, none of the asbestos Plaintiffs have objected to these settlements or the propriety of a Qualified Settlement Fund for future asbestos Plaintiffs.

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prior Orders addressed an Objecting Insurer's violation of South Carolina's mediation rules and the Objecting Insurers' refusal to provide information required by this Court to manage its asbestos docket. Those orders do not form a basis for the Objecting Insurers to challenge the establishment of the Covil QSF or the routine disposal of Receivership assets.

If this Court were to reach the Objecting Insurers' objections, the Court has evaluated them and finds that they are without merit. The Objecting Insurers assert two arguments: (1) if the Court approves the settlement agreements, the Objecting Insurers contend that they would be deprived of purported contractual and equitable rights and (2) issuing an order to prevent suits against the Settling Insurers violates due process.

First, the Objecting Insurers argue that they will be deprived of rights of subrogation and contribution. Such an objection is without merit because the Receiver and the Settling Insurers proposed that the QSF stand in the shoes of the Settling Insurers in all respects, as provided for by federal law as set forth in 26 U.S.C. § 468B. Additionally, the Court finds that the Objecting Insurers are in no way harmed by these settlements because Settling Insurers have agreed to pay more in its settlement than the policy limits applicable to the Settling Insurers' responsive policies. And, this Court has kept continuing jurisdiction over the QSF and stands ready to address any claim properly brought to or against the QSF.

Furthermore, the Objecting Insurers failed to establish any contractual relationship with the Settling Insurers. USF&G contracted with Covil for defense and indemnification against Covil's potential liability to pay damages for, among other things, bodily injury during the policy period. USF&G did not contract with any of the Settling Insurers. To the extent that the Objecting

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Insurers contend that subrogation or contribution are contractual rights, they are incorrect because subrogation and contribution are equitable rights.[4]

Subrogation is an equitable claim against a tortious third party. *Calvert Fire Ins. Co. v. James*, 236 S.C. 431, 435, 114 S.E.2d 832, 834 (1960). Specifically, "Where the tortious conduct of a third person is the cause of a loss covered by an insurance policy, the insurer, upon payment of the loss, becomes subrogated *pro tanto* by operation of law to whatever rights the insured may have against the wrongdoer." *Globe & Rutgers Fire Ins. Co. v. Foil*, 189 S.C. 91, 200 S.E. 97, 100; *Lucas v. Garrett*, 209 S.C. 521, 41 S.E.2d 212; *Pringle v. Atlantic Coast Line R. Co.*, 212 S.C. 303, 47 S.E.2d 722. Those types of rights are not implicated here.

As it pertains to the equitable remedy of contribution, the Objecting Insurers have failed to provide the Court with any documentation or information about the existence, let alone the potential value, of any such claims sufficient even to argue that these settlements (in excess of policy limits) impact the Objecting Insurers' theoretical, future claims. The Court believes that these sophisticated settlement agreements provide the Objecting Insurers with a mechanism to make claims and demands for contribution directly against the Covil Qualified Settlement Fund, which will be responsible for such claims, under this Court's careful and continuing supervision.

Second, the Objecting Insurers insinuate that this Court is issuing a "channeling injunction" that will deprive the Objecting Insurers of a property right in violation of their due process

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[4] *Calvert Fire Ins. Co. v. James*, 236 S.C. 431, 435, 114 S.E.2d 832, 834 (1960) ("Legal subrogation is not dependent upon contract. The doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and relationship of the parties."); *Cooper v. Ga. Cas. & Sur. Co.*, 244 S.C. 286, 292, 136 S.E.2d 774, 777 (1964) ("The rule of contribution is an *equitable rule* and is based on the fact that those who insure or become sureties for the same duty ought [] share the results of the default.").

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rights. To the contrary, the settling parties request that as part of the sale of a receivership asset, anyone that seeks to sue or make a Covil-related claim against a Settling Insurer should simply sue the Qualified Settlement Fund instead because the Qualified Settlement Fund is assuming all of the responsibilities of the Settling Insurers. The Court notes that this is no different than Zurich as the successor to Maryland Casualty Company's responsibilities to Covil or TIG as the successor in interest to Fairmont Specialty Insurance Company's responsibilities to Covil. Here, the Fund is within the exclusive jurisdiction of the Receivership and the Receivership Court, and as mentioned above, the Court intends to exercise its inherent authority to manage its asbestos docket to fashion a streamlined process for the Court and future litigants.

To the extent that the Objecting Insurers bring a contribution claim against the QSF before this Court, this Court can adjudicate all such claims: "The courts of this state have uniformly exercised the power to order that a receiver, duly appointed, shall sell the real estate and other property of the person or corporation whose assets are in the hands of receivers, in order to distribute the proceeds among creditors, stockholders, and other parties interested, and to liquidate and wind up the affairs of such insolvent person or corporation." *Hannon v. Mechanics Bldg. & Loan Ass'n of Spartanburg*, 177 S.C. 153, 180 S.E. 873, 876 (1935) (emphasis added).

For the foregoing reasons, this Court finds that, if it were to reach the Objections raised by non-parties Zurich and USF&G, those objections are without merit and are overruled. As such, the Court enters the following Findings of Fact and Conclusions of Law as to the Joint Motions to Approve Settlement Agreements and to Approve the QSF Formation.

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FINDINGS OF FACT

A. Hartford-Covil Settlement Agreement

1.1 The Receiver and Hartford have entered into a final comprehensive settlement agreement titled, "Confidential Settlement Agreement and Release" ("Hartford-Covil Settlement Agreement"). The Hartford-Covil Settlement Agreement resolves all disputes between Hartford and Covil under the policies Hartford issued to Covil.

1.2 The Hartford-Covil Settlement Agreement provides that Hartford shall transfer funds and claims to a Qualified Settlement Fund ("Covil QSF"), as defined by Section 468B of the I.R.C. and the regulations promulgated thereunder.

1.3 The purposes of the Covil QSF are to provide funds to pay for costs incurred by the parties in connection with claims, suits and demands alleging personal injury and bodily injury from alleged exposure to asbestos ("Covil Asbestos Suits"); to pay the legal fees of the parties related to such Covil Asbestos Suits; to pay for administrative and management costs; and to do all things necessary or appropriate in connection with the Covil QSF.

1.4 The Hartford-Covil Settlement Agreement provides for consideration that is fair and reasonable, in consideration for a release of rights against Hartford, commonly referred to as a policy "buy back," and the settlement has been concluded by means of good faith negotiations between the parties in connection with a mediation conducted pursuant to the Absolute Mediation Privilege.

1.5 The Hartford policies, allegedly issued or issued to Covil, or providing coverage to Covil, known and unknown, are being exhausted by and through this settlement.

1.6 Hartford, in addition to the transfer of cash to the Covil QSF, has also assigned to the Covil QSF, all claims for contribution, indemnification, subrogation and otherwise ("Contribution Claims"), which are equitable claims that Hartford has and to which it has

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succeeded or will succeed by reason of its transfer of the settlement amount to the Covil QSF. In consideration therefor, Covil, Covil QSF, and Hartford agree and the only other parties to this case, the underlying asbestos plaintiffs, do not oppose that claims asserted against Hartford will be directed to the Covil QSF and shall not be brought against Hartford. As these are the only parties to this action, this requested relief is approved. This Court is not making any ultimate determination on such claims if ever made.

B. TIG-Covil Settlement Agreement

1.7 The Receiver and TIG Insurance Company have entered into a final comprehensive settlement agreement titled "Confidential Settlement Agreement and Release" ("TIG-Covil Settlement Agreement"). The TIG-Covil Settlement Agreement resolves all disputes between TIG Insurance Company and Covil under the policies TIG issued to Covil. The settlement agreement also resolves any claim that policies issued by Evanston Insurance Company ("Evanston") to Covil are responsive to Covil's asbestos suits by way of an acknowledgment that the Evanston policies are not responsive to Covil asbestos suits by virtue of the policies being "claims made" policies where the window of time for asserting claims has long since expired. The Covil-TIG Settlement Agreement was reached in good faith and provides for a fair exchange of consideration, and complies with law as set forth herein.

1.8 The TIG-Covil Settlement Agreement provides that TIG Insurance Company shall transfer funds and claims to a Qualified Settlement Fund ("Covil QSF"), as defined by Section 468B of the I.R.C. and the regulations promulgated thereunder.

1.9 The purposes of the Covil QSF are to provide funds to pay for costs incurred by the parties in connection with claims, suits and demands alleging personal injury and bodily injury from alleged exposure to asbestos ("Covil Asbestos Suits"); to pay the legal fees of the parties

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related to such Covil Asbestos Suits; to pay for administrative and management costs; and to do all things necessary or appropriate in connection with the Covil QSF.

1.10 The TIG-Covil Settlement Agreement provides for consideration that is fair and reasonable, in consideration for a release of rights against TIG Insurance Company, commonly referred to as a policy "buy back," and the settlement has been concluded by means of good faith negotiations between the parties in connection with a mediation conducted pursuant to the Absolute Mediation Privilege.

1.11 The TIG policies, allegedly issued or issued to Covil, or providing coverage to Covil, known and unknown, are being exhausted by and through this settlement.

1.12 TIG Insurance Company, in addition to the transfer of cash to the Covil QSF, has also assigned to the Covil QSF all claims for contribution, indemnification, subrogation and otherwise ("Contribution Claims"), which are equitable claims that TIG has and to which it has succeeded or will succeed by reason of its transfer of the settlement amount to the Covil QSF. In consideration therefor, Covil, Covil QSF, and TIG agree and the only other parties to this case, the underlying asbestos plaintiffs, do not oppose that all similar Contribution Claims asserted against TIG Insurance Company by other insurers of Covil will be directed to the Covil QSF and shall not be brought against TIG Insurance Company or Evanston. As these are the only parties to this action, this requested relief is approved. This Court is not making any ultimate determination on such claims if ever made.

C. Sentry-Covil Settlement Agreement

1.13 The Receiver and Sentry have entered into a final comprehensive settlement agreement titled, "Confidential Settlement Agreement and Release" ("Sentry-Covil Settlement

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Agreement"). The Sentry-Covil Settlement Agreement resolves all disputes between Sentry and Covil under the policies Sentry issued to Covil.

1.14 The Court is convinced the terms of the Sentry-Covil Settlement Agreement are the result of substantial arm's-length, good faith negotiations between the settling parties in connection with a mediation conducted pursuant to the Absolute Mediation Privilege.. The legal disputes between Sentry and Covil Corporation have been contested, and this settlement will avoid what would otherwise be years of contentious and expensive litigation.

1.15 Permitting the sale of the insurance policies is an appropriate and efficient method of liquidating the insurance policy assets. The buyback will allow the Court, through the Receiver, to more easily manage Covil Corporation's assets and garner those assets for the defense and resolution of future Covil Asbestos bodily injury suits.

1.16 Likewise, to the extent Covil Corporation has any chose-in actions against Sentry, whether in tort, contract, law or equity, the release of any and all such claims as part of the Settlement Agreement is an efficient means of liquidating those assets so that they may be properly managed under the receivership. Upon completion and funding of the settlement to the Covil QSF LLC, Sentry's policies issued to Covil or under which Covil is entitled to benefits from Sentry, known and unknown, including but not limited to the policies described in the Policy Stipulation, are deemed forever extinguished and all insurance coverage potentially available under the policies are fully exhausted such that no further insurance coverage will be available under the policies, and Sentry shall have no obligation to make any other payment of any type whatsoever under those policies, including no obligation to make any payments for Covil Asbestos Bodily Injury Suits in the form of defense, indemnity, or otherwise.

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1.17 The Court approves the buyback of the policies and authorizes the Receiver to execute whatever documents are necessary to complete the sale of the policies back to Sentry, thereby forever extinguishing any contractual obligations Sentry may have owed to Covil Corporation under the insurance policies.

1.18 Covil, Covil QSF, and Sentry agree and the only other parties to this case, the underlying asbestos plaintiffs, do not oppose that claims of against Sentry for contribution, indemnification, subrogation, spoliation, alter-ego, veil piercing, corporate successorship, bodily injury or other claims shall be directed to the Covil QSF. This Court ratifies the Agreement. Further, this Court is not making any ultimate determination on such claims if ever made.

1.20 Upon completion and funding of the settlement to the Covil QSF LLC, Sentry is forever relieved of any and all obligations it may owe in connection with Covil.

1.21 Covil, Covil QSF, and Sentry agree and the only other parties to this case, the underlying asbestos plaintiffs, do not oppose that claims any and all claims against Sentry relating to obligations arising out of Covil's Asbestos Bodily Injury Suits or other bodily injury or property damage liabilities, including any claims asserting that Covil was an alter ego of Sentry, if pursued, are directed to be filed against the Covil QSF for the reasons discussed above. This Court ratifies the Agreement. Further, this Court is not making any ultimate determination on such claims if ever made.

1.22 In 1991, as Covil was closing its business operations, a representative for Covil notified insurer-retained defense counsel for Covil that Covil would be selling its assets and discarding its corporate records (hereinafter "Covil's Historic Records"). Insurer-retained defense counsel retrieved Covil's Historic Records from Covil before they were destroyed and retained

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those documents. No evidence has been presented that, at any time, did Sentry come into possession of Covil's Historic Records.

1.23 Covil's Historic Records included a data tape that appears to have last been backed up in 1991. There is no evidence that Sentry did, at any time, obtain the data tape. There is no evidence that Sentry was ever notified of the data tape's existence when counsel obtained Covil's Historic Records in 1991 or thereafter until years later, after Peter Protopapas was appointed as the Covil Receiver. At no time did Sentry instruct defense counsel to hide the data tape or conceal its existence.

1.24 On April 24, 2019, the Receiver filed a Summons and Complaint in the Richland County Court of Common Pleas asserting legal malpractice claims against the law firm of Wall, Templeton & Haldrup, P.A., and asserting causes of action against Sentry for aiding and abetting breach of fiduciary duty, breach of contract, bad faith failure to defend, bad faith processing of claims, negligence, declaratory judgment, and alter-ego/instrumentality. In connection with this settlement agreement, the Receiver will dismiss its claims against Sentry in that case, with prejudice, and Sentry will assign, to the fullest extent permissible, its claims against Wall Templeton & Haldrup, P.A. to the Receiver.

1.25 Proceedings have taken place before this Court involving Covil, by its Receiver, and Sentry, a non-party. In connection with those proceedings, Sentry has produced a very large volume of documents consisting of hundreds of thousands of pages of historical records and other documents. Sentry has withheld certain documents due to privilege, and Sentry did not complete its production prior to reaching an agreement-in-principle with Covil. However, Covil Corporation, through its Receiver, is satisfied that it has now reviewed adequate information to enter into the Settlement Agreement. Moreover, by reviewing the documents produced by Sentry

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and other carriers, Covil has been able to determine and stipulate to certain facts as set forth in the Court's Findings.

1.26 There is no evidence that Sentry hid, concealed, or destroyed any Covil-related evidence, nor that it was involved in any such conduct.

1.27 Sentry never directed counsel for Covil Corporation to not file an answer or otherwise protect Covil Corporation in any asbestos bodily injury suit, including but not limited to the suits of *James Michael Hill v. Advance Auto Parts, Inc., et al.*, Civil Action No. 2018-CP-40-04680 and *Denver D. Taylor and Janice Taylor v. Air & Liquid Systems Corporation, et al.*, Civil Action No. 2018-CP-40-04940.

1.28 Sentry did not receive notice from Jim Covil or any other current or former Covil agent, director, employee, officer, or representative of any actual or attempted service in *Hill* or *Taylor* prior to the defaults in those cases.

1.29 At no time did Sentry exercise any control over Covil Corporation beyond its contractual right to control the defense of those Covil asbestos bodily injury suits implicating or alleging exposures that may have fallen under a Sentry insurance policy. Therefore, Covil never became Sentry's alter ego.

1.30 The Receiver is authorized to execute these Settlement Agreements and the Court hereby ratifies the execution of the Settlement Agreements.

1.31 The Settlement Amounts paid by the Settling Insurers shall be deposited into the Covil QSF and managed and used as specified in the Settlement Agreements and related documents.

D. Approval of Qualified Settlement Fund

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2.1 Treasury Regulation § 1.468B-1 authorizes the establishment of a Qualified Settlement Fund if the requirements of paragraph (c) of the section are met.

2.2 The requirements of Treasury Regulation § 1.468B-1(c)(2) have been satisfied, as the Hartford-Covil Settlement Agreement, the TIG-Covil Settlement Agreement and the Sentry-Covil Settlement Agreement all provide for the transfer of funds, claims and other things of value to the Covil QSF and each will resolve the Receiver's claims for coverage against Sentry, Hartford and TIG.

2.3 The limited liability company referenced above as "Covil QSF LLC" will be constituted and will operate as the Covil QSF. This Court will keep continuing jurisdiction over Covil QSF LLC.

2.4 The assets of the Covil QSF are segregated from the assets of Covil, Sentry, TIG, and Hartford, satisfying the requirements of Treasury Regulation § 1.468B-1(c)(3).

2.5 The Hartford-Covil Settlement Agreement, the TIG-Covil Settlement Agreement, the Sentry-Covil Settlement Agreement, the establishment of the Covil QSF and the transfer of the funds to the Covil QSF pursuant to the terms of the Sentry-Covil Settlement Agreement, Hartford-Covil Settlement Agreement, and the TIG-Covil Settlement Agreement comply with law as set forth herein.

CONTRACTS WITH ATTORNEYS

In its capacity as the Receivership Court, this Court has directed the Receiver to marshall the assets of Covil to make such assets available to meet the costs and expenses of Covil's Asbestos Suits, including Covil's insurance policies and proceeds. Further, in the order appointing the Receiver, this Court authorized the Receiver to "hire any person or company necessary to

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accomplish any right or power under this Order." The Court finds that the Receiver has been diligent in carrying out these duties.

Immediately following his appointment as the Receiver for Covil, Mr. Protopapas retained a team of well-regarded law firms to litigate a number of complex claims, in multiple jurisdictions, against Covil's historic insurance carriers. Given Covil's complete lack of financial resources, each of these law firms agreed to assume the significant risk of undertaking this representation on the basis of contingent fee contracts.

The Receiver entered into contingent fee contracts with the following highly qualified law firms: Morgan Lewis Bockius, LLP ("Morgan Lewis"); Smith Robinson Holler DuBose and Morgan, LLC ("Smith Robinson"), and Rikard & Protopapas, LLC.

Morgan Lewis is a global law firm and is highly skilled and experienced in asbestos litigation and in complex insurance coverage litigation. Smith Robinson is, likewise, a highly regarded firm in the State of South Carolina and throughout the Southeast with experience in insurance coverage litigation. The Receiver also engaged lawyers with his own firm, Rikard & Protopapas, LLC, who are experienced in engaging in complex litigation and insurance coverage litigation.

Each of the law firms has fully performed their services under the contingency fee contracts, and as such, the Receiver seeks the Court's approval of the attorneys' contingency fee of thirty-three and one-third percent (33 1/3%) of the gross settlement amount between Covil and the settling insurers and approval of reimbursement costs incurred by the law firms to date.

Since his appointment, the Receiver has been actively involved in complex and aggressive litigation that has demanded the expenditure of extraordinary time and resources. The Receiver, through his professionals, has been engaged in litigation with the insurers that have hundreds of

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filings. From the Court's perspective, these law firms have achieved remarkable results, in a compressed timeframe, and under difficult circumstances. The Court has been impressed by the quality of the work generated by these firms and the professionalism exhibited by each of the lawyers at these firms. Finally, the Court notes the remarkable results reflected in finalizing $44,500,000.00 in settlements to date in connection with this receivership, noting that Covil had no liquid assets when the receivership began. As such, the Court approves the attorneys' fee contracts and attorneys' fees in the amount of thirty-three and one-third percent (33 1/3%) of the gross settlement amount between Covil and the settling insurers, in addition to approval of reimbursement for costs incurred to date. In light of the attorneys' fee awarded, in part, to the Receiver's law firm, that attorneys' fee will be in lieu of any Receiver fee for the Receiver's extensive work to date.

IT IS THEREFORE ORDERED THAT

(1) The Covil-Hartford Settlement Agreement is a reasonable settlement of disputes between Covil and Hartford;

(2) Covil is selling, and Hartford is purchasing, all interests in the Covil policies, and this "buy back" of policy rights is being consummated in good faith;

(3) The Covil Policies issued by, or allegedly issued by, Hartford to Covil, are exhausted and Hartford has no further obligation to make payments thereunder, including with regard to Covil Asbestos-Related Suits; and

(4) Consistent with Hartford's assignment of Contribution Claims to the Covil QSF; Covil, Covil QSF and Hartford agree and the only other parties to this case, the underlying asbestos plaintiffs, do not oppose, that all Claims for contribution, indemnification, subrogation, or otherwise against Hartford by other insurers of Covil are barred, and directs that all such Claims

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shall be brought or made solely to the QSF. The Covil QSF shall be entitled to substitute itself for Hartford in any such Claim upon motion brought to this or other court having jurisdiction over such Claims. This Court approves and ratifies the Agreement. Further, this Court is not making any ultimate determination on such claims if ever made.

(5) The Covil-TIG Settlement Agreement is a reasonable settlement of disputes between Covil and TIG Insurance Company;

(6) Covil is selling, and TIG is purchasing, all interests in the Covil policies, and this "buy back" of policy rights is being consummated in good faith;

(7) The Covil Policies issued by, or allegedly issued by, TIG Insurance Company to Covil, are exhausted and TIG has no further obligation to make payments thereunder, including with regard to Covil Asbestos-Related Suits; and

(8) Consistent with TIG Insurance Company's assignment of Contribution Claims to the Covil QSF; Covil, Covil QSF and TIG Insurance Company agree and the only other parties to this case, the underlying asbestos plaintiffs, do not oppose, that all Claims for contribution, indemnification, subrogation, or otherwise against TIG and/or Evanston by other insurers of Covil and/or by any other claimant are barred, and directs that all such Claims shall be brought or made solely to the QSF. The Covil QSF shall be entitled to substitute itself for TIG and/or Evanston in any such Claim upon motion brought to this or other court having jurisdiction over such Claims. This Court approves and ratifies the Agreement. Further, this Court is not making any ultimate determination on such claims if ever made.

(9) The Court is convinced the terms of the Covil-Sentry Settlement Agreement are the result of substantial arm's-length, good faith negotiations between the settling parties conducted under the Absolute Mediation Privilege. The legal disputes between Sentry and Covil

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Corporation have been contested, and this settlement will avoid what would otherwise be years of contentious and expensive litigation.

(10) Permitting the sale of the insurance policies is an appropriate and efficient method of liquidating the insurance policy assets. The buyback will allow the Court, through the Receiver, to more easily manage Covil Corporation's assets and garner those assets for the defense and resolution of future Covil asbestos suits.

(11) Likewise, to the extent Covil Corporation has any chose-in actions against Sentry, whether in tort, contract, law or equity, the release of any and all such claims as part of the Settlement Agreement is an efficient means of liquidating those assets so that they may be properly managed under the receivership.

(12) Covil and Sentry agree that upon completion and funding of the settlement to the Covil QSF LLC, Sentry's policies issued to Covil or under which Covil is entitled to benefits from Sentry, known and unknown, including but not limited to the policies described in the Policy Stipulation, are deemed forever extinguished and all insurance coverage potentially available under the policies are fully exhausted such that no further insurance coverage will be available under the policies, and Sentry shall have no obligation to make any other payment of any type whatsoever under those policies, including no obligation to make any payments for Covil asbestos bodily injury suits in the form of defense, indemnity, or otherwise.

(13) The Court approves the buyback of the policies and authorizes the Receiver to execute whatever documents are necessary to complete the sale of the policies back to Sentry, thereby forever extinguishing any contractual obligations Sentry may have owed to Covil Corporation under the insurance policies.

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(14) Covil, Covil QSF, and Sentry agree that claims of any asbestos bodily injury claimants, other insurers, or any other party against Sentry for contribution, indemnification, subrogation, spoliation, alter-ego, veil piercing, corporate successorship, bodily injury or other claims shall be barred and directed to the Covil QSF. The other parties to these cases, the underlying asbestos plaintiffs do not object to this relief, and as such the Court approves and ratifies this agreement in connection with future asbestos filings, as noted above. Further, this Court is not making any determination on such claims if ever made.

(15) Covil, Covil QSF, and Sentry agree that any and all claims by underlying asbestos claimants, now and in the future, direct or derivative, against Sentry, including but not limited to "alter ego" or other veil piercing or corporate successorship claims are barred and must be directed to the Covil QSF. The other parties to these cases, the underlying asbestos plaintiffs do not object to this relief, and as such the Court approves and ratifies this agreement in connection with streamlining future asbestos filings, as noted above. Further, this Court is not making any determination on such claims if ever made.

(16) Covil and Sentry agree that upon completion and funding of the settlement to the Covil QSF LLC, that Sentry is forever relieved of any and all obligations it may owe in connection with Covil. The other parties to these cases, the underlying asbestos plaintiffs do not object to this relief, and as such the Court approves and ratifies this agreement in connection with future asbestos filings, as noted above.

(17) Covil and Sentry agree that any and all claims against Sentry relating to obligations arising out of Covil's Asbestos Bodily Injury Suits or other bodily injury or property damage liabilities are forever ended, including any claims asserting that Covil was an alter ego of Sentry. The other parties to these cases, the underlying asbestos plaintiffs do not object to this

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relief, and as such the Court approves and ratifies this agreement in connection with streamlining future asbestos filings, as noted above.

(18) Based on a stipulation between the parties, the Court finds that there is no evidence that Sentry hid, concealed, or destroyed any Covil-related evidence, nor that it was involved in any such conduct.

(19) Based on a stipulation between the parties, the Court finds that Sentry never directed counsel for Covil Corporation to not file an answer or otherwise protect Covil Corporation in any asbestos bodily injury suit, including but not limited to the suits of *James Michael Hill v. Advance Auto Parts, Inc., et al.*, Civil Action No. 2018-CP-40-04680 and *Denver D. Taylor and Janice Taylor v. Air & Liquid Systems Corporation, et al.*, Civil Action No. 2018-CP-40-04940.

(20) Based on a stipulation between the parties, the Court finds that at no time did Sentry exercise any control over Covil Corporation beyond its contractual right to control the defense of those Covil asbestos bodily injury suits implicating or alleging exposures that may have fallen under a Sentry insurance policy. Therefore, Covil never became Sentry's alter ego.

(21) The Receiver is authorized to execute the Settlement Agreement, and if the Settlement Agreement has already been executed, the Court hereby ratifies the execution of the Settlement Agreement.

(22) As to Sentry only, this Court hereby vacates its prior rulings and findings in the Rule to Show Cause Proceedings, including but not limited to the rulings and findings in the attached Orders of September 19, 2019, and January 8, 2020. All findings and rulings in the Rule to Show Cause proceedings against any other insurer remain in effect, but the findings and rulings shall have no binding effect on or applicability to Sentry.

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(23) The Covil QSF, which is the Delaware limited liability company known as "Covil QSF, LLC," with Peter D. Protopapas, the duly ordered Receiver of Covil Corporation as its sole Member and Manager, is hereby established as a Qualified Settlement Fund in compliance with § 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulations §§ 1.468B, *et seq.*, in order to receive settlement proceeds and claims from the Sentry–Covil Settlement Agreement, Hartford-Covil Settlement Agreement and the TIG-Covil Settlement Agreement, as well as any future transfers of funds, claims or things of value relating to Covil or its assets, including its insurance policies;

(24) The Receiver's Contracts with his lawyers are approved as set forth above, and

(25) The Court retains continuing jurisdiction in accordance with Income Tax Regulation § 1.468B-1(c)(1) of all matters related to this Order.

IT IS SO ORDERED.

_____

HON. JEAN H. TOAL, CHIEF JUSTICE (Ret.)

SIGNED this _____ day of _____, 2020

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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

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Tracy Jolly Pavlish, individually and as Personal Representative of the Estate of Beverly Dale Jolly, and Brenda Rice Jolly, Plaintiffs, v. Covil Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	C.A. No. 2019-CP-42-03968 **ORDER GRANTING RECEIVER'S MOTION TO CLARIFY ORDER APPOINTING A RECEIVER FOR COVIL CORPORATION**

INTRODUCTION

By order dated November 2, 2018 ("the Appointment Order"), this Court appointed the Receiver pursuant to section 15-65-10 of the South Carolina Code and granted him the authority "to fully administer all assets of Covil Corporation . . . . as well as any claims related to the actions or failure to act of Covil's insurance carriers." In the fulfillment of his duties, the Receiver has participated in various lawsuits to adjudicate the scope of Covil's insurance coverage and the duties owed to Covil by various insurers. Covil's insurers have removed several actions to South Carolina federal court and asserted counterclaims there against Covil, seeking declaratory judgments absolving them of any duties to indemnify or defend Covil in asbestos litigation. Covil's insurers have also suggested that more lawsuits against the Receiver are forthcoming.

This matter comes before the Court on the Receiver's June 15, 2020 Notice of Motion and Motion to Clarify Order Appointing a Receiver for Covil Corporation. To preserve Receivership

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assets, the Receiver asks the Court to clarify the Appointment Order by requiring that parties seeking to sue the Receiver or Covil outside of this Court obtain leave of this Court prior to doing so. After careful consideration of the parties' filings and applicable law, the Court hereby grants the Motion.

DISCUSSION

1. The *Barton* doctrine

In *Barton v. Barbour*, the Supreme Court observed, "It is a general rule that before suit is brought against a receiver[,] leave of the court by which he was appointed must be obtained." 104 U.S. 126, 127 (1881); *see also Texas & P. Ry. Co. v. Cox*, 145 U.S. 593, 601 (1892) ("[I]t has been often decided that the jurisdiction of the court appointing a receiver is necessarily exclusive, and that actions at law cannot be prosecuted against him except by leave of that court."). "This rule applies equally whether a state court appointed receiver is sued in state court . . . [or] federal court." *Patco Energy Express, LLC v. Lambros*, 353 F. App'x 379, 381 (11th Cir. 2009). The *Barton* Court explained the rationale for this requirement: "A suit . . . brought without leave . . . is virtually a suit the purpose of which is, and effect of which may be, to take the property of the trust . . . without regard to the rights of other creditors or the orders of the court which is administering the trust property." *Barton*, 104 U.S. at 129; *see also In re VistaCare Grp., LLC*, 678 F.3d 218, 224 (3d Cir. 2012) ("The *Barton* Court explained that a court approval requirement was necessary to ensure a consistent and equitable administration of the receivership property.").

"The *Barton* doctrine [also] serves the principle that a bankruptcy trustee[1] 'is an officer of the court that appoints him,' and therefore that court 'has a strong interest in protecting him

[1] The *Barton* doctrine is now most often seen in the bankruptcy context; however, it remains applicable to the Covil receivership. *See The Barton Doctrine: An Examination of Its Past, Present & Future Application in Bankruptcy Matters*, 25 No. 6 J. Bankr. L. & Prac. NL Art. 2 ("Although

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from unjustified personal liability for acts taken within the scope of his official duties.'" *McDaniel v. Blust*, 668 F.3d 153, 157 (4th Cir. 2012) (quoting *In re Lehal Realty Assocs.*, 101 F.3d 272, 276 (2d Cir. 1996)). "Without the requirement [of obtaining leave], trusteeship w[ould] become a more irksome duty, and so it w[ould] be harder for courts to find competent people to appoint as trustees. Trustees w[ould] have to pay higher malpractice premiums, and this w[ould] make the administration of the bankruptcy laws more expensive." *Id.* (alterations by court) (quoting *Matter of Linton*, 136 F.3d 544, 545 (7th Cir. 1998)).

2. Inherent Authority of a Receivership Court

Independent of the *Barton* doctrine, this Court also has the inherent authority to protect its role as Covil's Receivership Court by preventing vexatious litigation against the Receiver and the companies in his receivership. *See Link v. Powell*, 57 F.2d 591, 594 (W.D.S.C. 1932) ("No law is more firmly settled than that the court having jurisdiction, both of the receivers and of the subject-matter, has exclusive power to administer the entire estate and property."); *State-Record Co. v. State*, 332 S.C. 346, 349, 504 S.E.2d 592, 593 (1998) ("The United States Supreme Court has . . . recognized the inherent authority of a court to protect its proceedings."); *Sec. & Exch. Comm'n v. United Fin. Grp., Inc.*, 576 F.2d 217, 221 n.8 (9th Cir. 1978) ("The receivership court has broad equitable powers to prevent interference with the administration of the estate by blanket stay orders as well as injunctions against particular actions."); *cf. Collins v. Collins*, 219 S.C. 1, 11, 63 S.E.2d 811, 815 (1951) ("There is no question as to the power of a court of equity, where it has jurisdiction

originally applied to receivers, the Barton doctrine has been expanded to protect bankruptcy trustees and the trustee's professionals, and in certain instances, creditors and insiders."); *id.* ("The Barton doctrine is as relevant today as when it was created in 1881."); James W. Day & Marc E. Hirschfield, *The Barton Doctrine: Still Kicking After 130 Years*, Am. Bankr. Inst. J., August 2012, at 22, 84 ("The *Barton* doctrine has proven itself useful by allowing bankruptcy and receivership courts to efficiently administer assets of the estate to maximize value for creditors by centralizing control over those assets.").

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of the cause and of the parties, to enjoin a person from commencing or prosecuting an action in another state."); *id.* ("A Court of Equity has a wide discretion in a matter of this kind.").

This Court has not only the authority, but also the duty, to do so. "When [a] receivership court takes jurisdiction of [an] estate, it has power to issue orders barring actions which would interfere with its administration of that estate." *United Fin. Grp.*, 576 F.2d at 220; *see also Strickland v. Williams*, 109 S.E.2d 761, 763 (Ga. 1959) ("It is the duty of the court to protect from interference the property in its possession through its receivers, and the writ of injunction is a proper remedy to effect this purpose."). Moreover, the relief sought here by the Receiver is not novel or extraordinary—it has been a long-standing practice of South Carolina courts to prohibit such external litigation. *See Nixon Grocery Co. v. Spann*, 108 S.C. 329, 94 S.E. 531, 532 (1917) ("The order [appointing a receiver] contained *the usual injunction in such cases*, among other things, enjoining all creditors from proceeding to enforce their demands, except in this action." (emphasis added)); *see, e.g.*, *Nat'l Cash Register Co. v. Burns*, 217 S.C. 310, 313, 60 S.E.2d 615, 616 (1950) (noting the trial court's order of receivership "enjoined other actions against the [company in receivership] and required all creditors to establish their claims in the receivership"); *Willcox v. Riverview Mem'l Park*, 214 S.C. 527, 529, 53 S.E.2d 648, 648 (1949) ("The said order appointing the receiver enjoined all creditors . . . from prosecuting their claims by suit or otherwise except in this proceeding."); *McCormack v. Sherwood Lumber & Mfg. Co.*, 128 S.C. 407, 122 S.E. 493 (1924); *Ex parte Planters' Bank*, 122 S.C. 241, 115 S.E. 299 (1922); *Virginia-Carolina Chem.*

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Co. v. Hunter, 94 S.C. 65, 77 S.E. 751 (1913); *Wylie v. Commercial & Farmers' Bank*, 63 S.C. 406, 41 S.E. 504 (1902); *First Nat. Bank v. Iredell Land Co.*, 60 S.C. 306, 38 S.E. 613 (1901).

3. Litigation by The Insurers

Covil's insurers wrongly suggest that the *Barton* doctrine's purpose is limited to protecting receivers and trustees from liability and preventing creditors from gaining priority over other creditors. *See In re CitX Corp.*, 302 B.R. 144, 152 (Bankr. E.D. Pa. 2003) ("The justification for the constraint upon suing a receiver in a non-appointing forum, as enunciated in *Barton,* emphasized due regard for the receivership court's control over property."); *id.* ("Especially when state court appointed receivers are involved, the holding of *Barton* (and later in *Porter*) was based primarily upon the understanding that receivership property was in the control of the state court, and such control must be accorded deference by federal courts . . . ."); *id.* at 152 n.8 ("*More recently*, some courts have added a common law interest in protecting a trustee or receiver 'from unjustified personal liability for acts taken within the scope of his official duties.'" (emphasis added) (quoting *In re Lehal Realty Assocs.*, 101 F.3d 272, 276 (2d Cir. 1996))).

Here, the insurers' federal claims seek a declaration completely absolving them of any duties to indemnify or defend Covil in asbestos litigation. *See, e.g.*, *Covil v. Zurich Am. Ins. Co.*, No. 18-CV-03291 (D.S.C. May 21, 2020), ECF No. 160-2 at 18–20 ("*Covil v. Zurich*"). USF&G's suggestion that the *Barton* doctrine does not apply to these claims, or counterclaims generally, is simply incorrect. *See Ritchie Capital Mgmt., L.L.C. v. Jeffries*, 653 F.3d 755, 762 (8th Cir. 2011) (reasoning a receivership court's "power to stave off suits by third parties turns on these suits' ability to deplete the res of the receivership estate"); *In re Franco*, 586 B.R. 489, 495–96 (Bankr. D.N.M. 2018) ("In this count, the counterplaintiffs seek money damages from the Trustee personally for disparagement/slander of title. . . . Counterplaintiffs did not seek the Court's

approval before bringing the claim. . . . Count Two violates the *Barton* doctrine, so the Court lacks subject matter jurisdiction over the claim."); *see also Sheafe v. Larimer*, 79 F. 921, 924 (C.C.N.D. Iowa 1897) (ruling that, pursuant to *Barton*, a cause of action "[could not] be availed of as a counterclaim against [a] receiver").

So, too, is the argument that *Barton* is inapplicable to claims against a company in receivership as opposed to a receiver. Limiting *Barton*'s application to claims against a receiver would undermine the primary purpose of the doctrine—protecting the receivership court's control over the assets of an entity in receivership. Accordingly, this argument must be rejected. *See Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) ("[T]he receivership court may issue a blanket injunction, staying litigation against the named receiver *and the entities under his control* unless leave of that court is first obtained." (emphasis added) (citing *Barton*, 104 U.S. at 128)); *In re CitX Corp.*, 302 B.R. at 152 ("*Barton* also held that a lawsuit in a non-appointing forum which was designed to fix the existence and amount of a claim *against the entity in receivership* was tantamount to execution upon the property held in receivership and so invalid." (emphasis added)); *id.* at 149–50 ("Any claim against the receiver *or the corporation* the court may permit to be put in suit in another tribunal against the receiver, or may reserve to itself the determination of . . . ." (emphasis added) (quoting *Porter*, 149 U.S. at 479–80)).

In essence, the insurers' claims would allow the insurers to avoid their duties under the policies they issued to Covil, which would render them worthless, thus depleting the insurance policies that are Covil's only receivership assets. Moreover, requiring the Receiver to respond to an ever-increasing barrage of litigation significantly increases the Receiver's attorney's fees and costs, further depleting Covil's assets. That is precisely the harm to a receivership court's jurisdiction the *Barton* doctrine was created to prevent. And that is why "no one can obtain any

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part of the assets, or enforce a right to specific property in the possession of a receiver, except upon application to the court which appointed him." *Geig v. March Co.*, 59 F.3d 170, at *4 (6th Cir. 1995) (unpublished table decision) (quoting *Riehle v. Margolies*, 279 U.S. 218, 224 (1929)).

4. Injunctive Relief

"[A] receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained." *Liberte Capital Grp.*, 462 F.3d at 551. This Court finds it entirely appropriate to prohibit actions against the Receiver or Covil when necessary to protect receivership assets. *See*, *e.g.*, *Nat'l Cash Register Co.*, 217 S.C. at 313, 60 S.E.2d at 616 (noting the trial court's order of receivership "enjoined other actions against the [company in receivership] and required all creditors to establish their claims in the receivership"). The insurers' contention that this Court lacks the authority to do so is incorrect.

In fact, Covil's prior receivership court issued such an injunction, which provided:

> All creditors and other persons are hereby restrained and enjoined pursuant to this Court's power to grant injunctive relief as set forth in § 33-13-310 of the Code of Laws of the State of South Carolina, 1976 as amended, from instituting or prosecuting any action or proceeding against Covil Corporation . . . other than as set forth in this Order or from levying upon, attaching, distraining, or selling, or attempting to levy upon, attach, distrain or sell any of the property of Covil Corporation . . . .

The First Savings Bank v. Covil Corp. et al., C.A. No. 91-CP-23-4445, at 5–6 (S.C. Com. Pl. May 11, 1992).

5. The Insurers' Remaining Arguments

Despite USF&G's contentions, the Receiver's Motion does not violate an injunction entered by the federal court, which prohibits the Receiver from "pursuing judicial determinations in underlying state tort suits regarding insurance coverage issues arising from policies issued or allegedly issued to Covil by the Insurers." *Covil v. Zurich*, ECF No. 105 at 25 (D.S.C. Feb. 27,

2020). The Court's adjudication of this motion simply does not require it to make any "determinations . . . regarding insurance coverage issues." Similarly, the fact that the Receiver has also opposed, on *Barton* doctrine grounds, motions by the Insurers in federal court to amend their answers and bring their counterclaims does not preclude this Court from ruling on the Receiver's motion or entering an order consistent with *Barton*.

USF&G also argues "Covil's amenability to suit is governed by" section 33-14-105(c)(5) of the South Carolina Code; however, that statute merely provides that a corporation's dissolution "does not . . . prevent commencement of a proceeding by or against the corporation in its corporate name"—it says nothing about where such proceedings may be brought and in no way restricts the ability of this Court to protect its jurisdiction over Covil's receivership by clarifying the ability of a party to bring suit against Covil or the Receiver.

Finally, the insurers challenge the Court's authority to issue an order pursuant to *Barton* related to Covil's receivership. However, Chief Justice Beatty ordered "that the Honorable Jean Hoefer Toal, retired Chief Justice of the Supreme Court, is hereby appointed to serve as the Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation filed within the state court system." S.C. Sup. Ct. Order dated May 28, 2019. Justice Beatty further gave this Court the authority "to perform such other duties as appropriate in her role as Chief Judge for Administrative Purposes[.]" *Id.* Covil's receivership arose out of, and was necessitated by, asbestos litigation filed in the South Carolina court system. The Court has the authority to manage and oversee the Receivership.

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CONCLUSION

For the reasons stated above, the Court hereby GRANTS the Receiver's Motion, Denies USF&G's and Zurich's requests contained in their proposed orders and orders that any party intending to bring an action or claim in any other court against either the Receiver or Covil must obtain leave of this Court prior to doing so.

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

_____

Jean H. Toal, Chief Justice of the South Carolina Supreme Court, Retired; Acting Circuit Court Judge

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Spartanburg Common Pleas

Case Caption:	Tracy Jolly Pavlish , plaintiff, et al VS Covil Corporation , defendant, et al
Case Number:	2019CP4203968
Type:	Order/Other

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Peter D. Protopapas as Receiver for Covil Corporation, Plaintiff, v. Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; and Zurich American Insurance Company, Defendants.	Civil Action No: **SUMMONS**

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

Respectfully submitted,

s/ Mark W. Hardee_____
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s/ Jescelyn T. Spitz
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April 24, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Peter D. Protopapas as Receiver for Covil Corporation, Plaintiff, v. Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; and Zurich American Insurance Company, Defendants.	Civil Action No: **COMPLAINT** (Jury Trial Demanded)

COMES NOW Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, for his complaint, who alleges upon knowledge as to his own acts and upon information and belief as to all other matters as follows:

PARTIES

1. Plaintiff is a lawyer who was appointed as Receiver of Covil Corporation, a dissolved South Carolina corporation, by Order attached as **Exhibit 1**, on November 2, 2018 and who maintains his principal place of business in Richland County, South Carolina.
2. Wall Templeton & Haldrup, P.A. ("Lawyers") is a professional association organized and existing in the state of South Carolina with its principal place of business in Charleston, South Carolina.
3. Sentry Casualty Company ("Sentry") is an insurance company, operating as a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business in the State of Wisconsin.

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4. United States Fidelity and Guaranty Company ("USF&G") is an insurance company, operating as a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in the State of Connecticut. USF&G is a wholly-owned subsidiary of The Travelers Group of Insurance Companies.

5. Zurich American Insurance Company ("Zurich") is an insurance company, operating as a corporation organized under the laws of the State of New York with its principal place of business located in the State of Illinois. Zurich is the successor by merger to Maryland Casualty Company and Northern Insurance Company of New York. Zurich American is a wholly-owned subsidiary of the Zurich Group of Insurance Companies.

6. Sentry, Zurich, and USF&G are collectively referred to as the "Primary Insurers."

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over plaintiff's claims for relief as the actions and omissions occurred in this County.

8. Venue of this case is proper in Richland County.

FACTUAL BACKGROUND

9. Covil was an installer of thermal insulation, including thermal insulation which at certain times contained asbestos.

10. Covil conducted these operations from at least 1964 until approximately 1991, after which Covil ceased to conduct business operations and, ultimately, dissolved.

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11. It has been alleged that Covil's operations from 1964 through at least 1986 included the installation, repair, replacement, removal or disturbance of thermal insulation and other building materials and that those operations exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations").

12. The alleged bodily injury resulting from the Asbestos Allegations has resulted in claims and lawsuits against Covil ("Covil Asbestos Suits").

13. From at least in or about 1991, until the appointment of the Receiver, on November 2, 2018, the defense of the Covil Asbestos Suits was controlled by the Primary Insurers, specifically defendants Zurich American Insurance Company ("Zurich"), Sentry Casualty Company ("Sentry") and United States Fidelity and Guaranty Company ("USF&G"). Moreover, on and after 1991, the Primary Insurers conducted all of Covil's affairs, including after Covil was dissolved, extending until appointment of the Receiver.

14. The Primary Insurers issued insurance policies to Covil from in or about 1964 until approximately 1978.

15. From at least in or about 1991, continuing until appointment of the Receiver, Zurich, Sentry, and USF&G managed Covil, making all determinations as to use and the disposition of Covil's assets which consisted primarily of corporate documents and insurance policies.

16. The Primary Insurers made all determinations as to the disposition of Covil Asbestos Suits as well as the treatment and characterization of claims under the Covil insurance policies.

17. Since as early as approximately 1991, the Primary Insurers acted in concert for the common purpose of ensuring that there was no independent person or entity acting by or on behalf of Covil. The Primary Insurers determined that the only Covil that could exist would be a Covil that was for all purposes the Primary Insurers' agency, subsidiary, alter ego, and/or controlled entity.

18. The Primary Insurers effectuated their common purpose of exclusive, unilateral control of Covil by running Covil's affairs in all material aspects.

19. At no time did the Primary Insurers make efforts to appoint an independent person or entity to determine what was in Covil's best interest. Rather, the Primary Insurers unilaterally determined what was best for Covil, or disregarded what was best for Covil, acting in their own interest, regardless of whether there was an actual or potential conflict between their interest and Covil's interest.

20. Each of the Primary Insurers' actions on behalf of Covil was for the purpose of protecting the Primary Insurers rather than Covil.

21. In addition to controlling the assets and affairs of Covil, the Primary Insurers unilaterally hired agents for Covil, including but not limited to attorneys, experts and a professional 30(b)(6) witness to act as and on behalf of, and to constitute Covil, *de facto* or *de jure*.

22. The Primary Insurers are required to act in good faith and to engage in fair dealing in all of their actions in regards to Covil.

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23. The Insurers had and have a duty to provide a full defense in the Covil Asbestos Suits.

24. The Primary Insurers engaged Lawyers to provide a defense to certain of the Covil Asbestos Suits, including but not limited to the *Hill* suit.

25. In South Carolina, when an insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured, *i.e.,* the insured client of the attorney. Pursuant to that relationship, the attorney owes the insured client—not the insurer—a fiduciary duty. The loyalties of the attorney may not be divided.

26. Lawyers were hired to protect Covil's interest but became part of the Primary Insurers' scheme to run Covil as an effective subsidiary, agency or alter ego of the Primary Insurers. Lawyers followed the Primary Insurers' instructions and treated the Primary Insurers as Covil for representation and fiduciary duty purposes.

27. The attorney's conduct of litigation involving an insured client is also governed by established law. *See, e.g.*, Rule 1.8(f), RPC, Rule 407, SCACR ("A lawyer shall not accept compensation for representing a client from one other than the client unless: ... (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; ...."); Rule 5.4(c), RPC, Rule 407, SCACR ("[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services").

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28. Lawyers breached their duties to Covil by taking sole direction from the Primary Insurers.

29. Lawyers were hired in or about May 2018 to represent and defend Covil in all cases pending against Covil in South Carolina. See **Exhibit 2**, Mark Wall's 3.28.19 Affidavit.

30. At no time did Lawyers make any effort independently to determine Covil's needs and interests. Rather, Lawyers acted at all times pertinent as if the Primary Insurers were Lawyers' clients.

31. Lawyers failed to ensure proper procedures were in place for Covil to express its interests including but not limited to the procedures provided by S.C. Code Ann. § 15-65-10 and Rule 66, SCRCP; therefore, Lawyers were unable to ascertain what Covil wanted or to protect Covil's interests.

32. The Primary Insurers improperly required or requested Lawyers to treat the Primary Insurers as Covil.

33. Lawyers failed to communicate with the insured, Covil, as no proper procedures were in place as provided by S.C. Code Ann. § 16-65-10 and Rule 66, SCRCP to effectuate said communication.

34. Lawyers improperly accepted this arrangement of treating Primary Insurers as Covil, and Lawyers failed to advise Primary Insurers that the arrangement was contrary to South Carolina law, although Lawyers knew or should have known of these facts and circumstances.

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35. Lawyers' actions, in breach of Lawyers' duties and at the direction of Primary Insurers, were to effectuate the Primary Insurers' desire that no Covil separate and apart from the Primary Insurers would exist.

36. The Primary Insurers' complete control over Covil, and management of Covil's affairs, including but not limited to the Covil asbestos suits, extended to the *Hill* suit.

37. Prior to the appointment of the Receiver, Primary Insurers and Lawyers unilaterally determined that Covil would not answer the *Hill* suit, thereby leaving Covil exposed to potential default.

38. The *Hill* case is pending in Richland County South Carolina: *Hill v. Covil Corporation*, CA NO. 2018 –CP-40-04680 and was served on James Covil on September 7, 2018.

39. Primary Insurers and Lawyers knew that the *Hill* complaint had been filed.

40. Primary Insurers and Lawyers knew that service of process had been historically performed on James Covil.

41. Primary Insurers and Lawyers wrongfully believed that James Covil was not appropriate for service of process even though he had accepted service many times in the past; despite their wrongful belief, Primary Insurers and Lawyers knew they could answer and raise improper service as a defense.

42. Primary Insurers and Lawyers consciously chose not to answer the *Hill* complaint despite the historical service of process on Jim Covil as outlined by The Honorable Jean H. Toal. See **Exhibit 3**, *Hill* and *Taylor* Order Denying Covil's Motion to Lift Entry of Default.

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43. Primary Insurers and Lawyers improperly determined not to answer the *Hill* complaint or challenge service of process through an appropriate motion.

44. Primary Insurers and Lawyers improperly determined that they would stop following their past pattern and practice of answering complaints and challenging service of process.

45. Primary Insurers and Lawyers did not speak to James Covil or to any Covil representative.

46. The communications between and among the defendants illustrates how defendants singlehandedly ran Covil. The pertinent communications include:

Date	From	To/CC	Subject	Key points of email
10/9/18 3:46 pm	Mark Wall	Irene Muse; Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New cases	Covil has been named in at least two new cases, but we have no Notice of Service. I'm assuming we need to be served before appearing. Agree.
10/18/18 1:49 pm	Mark Wall	Irene Muse Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New trial etc. / new cases	Unserved case Hill set for March; depo scheduled; recommend not appear.
10/19/18 9:07am	Barb Davis	Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss Carol Weill	New cases	Do we really think we would not be served at some point? If we had already been served, would still recommend not attending the plaintiff deposition?

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		William Silvernman Pauline Burdin Sarah Schrodetzki Tommy Boger		
10/22/18 3:47pm	Mark Wall	Irene Muse Barb Davis Steven Fries Carol Weill	FW James Michael Hill v. Advance Auto Parts Amended NOD of James Michael Hill	FYI see attached communications.
10/22/18 3:57pm	Carol Weill	Barb Davis Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	New cases	Request for response to inquiries.
10/23/18 2:07pm	Mark Wall	Carol Weill; Barb Davis; Irene Muse Gerry Begley John Weiss William Silverman Pauline Burdin Steven Fries travelers Sara Schrodetzki Tommy Boger	Covil unserved cases	Maybe Jim stopped accepting service. If we get served later, and Hill is still alive, we re-depose him. If we were served, we should attend; however, we checked the docket and there was no proof of serviced filed.

10/23/18 4:15pm	Carol Weill	Mark Wall Barb Davis Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	Covil Unserved cases	Zurich would recommend that Mark not appear for depositions in cases where service has not yet been effectuated.
10/31/18 3:57pm	Mark Wall	Irene Muse Steven Fries Carol Weill Barb Davis Gerry Begley John Weiss Pauline Burdin	FW Hill and email from Theile asking about answers	It didn't take them very long to figure out. What response at this point?
11/1/18 1:53pm	Mark Wall	Irene Muse Steven Fries Carol Weill Erin Corbally, Barb Davis Gerry Begley John Weiss	FW Hill and Taylor	FYI see below. Below is Mark's email stating that he had not been asked to represent Covil in Hill and Taylor and Theile's email from 11/1/18 at 10:34 am asking about past due answers.
11/1/18 2:00pm	Steven Fries	Mark Wall, Irene Muse Carol Weill Erin Corbally Davis Barb Gerry Begley John Weiss	Re. Hill and Taylor	I thought you said yesterday that if approached by Plaintiff on these cases that we're going to tell them no record of service.
11/1/18 2:04pm	Mark Wall	Steven Fries Irene Muse Carol Weill Erin Corbally Barb Davis Gerry Begley John Weiss	Re. Hill and Taylor	In face of what has been filed today, I thought I would start slowly and leave service to last. I want to see what they say about service.

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47. Defendants acted in concert when deciding not to answer the *Hill* case and without any input from an independent Covil. These actions were in breach of their duties to Covil.

FOR A FIRST CAUSE OF ACTION
Professional Negligence as to Lawyers

48. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

49. Pursuant to S.C. Code Ann. § 15-36-100, plaintiff has retained the services of Michael Virzi as an expert witness in this matter. Mr. Virzi's affidavit is attached as **Exhibit 4** and incorporated by reference.

50. As Covil's attorneys, Lawyers owed a legal duty to Covil to conform to the generally recognized and accepted practices of the legal profession in respect to the services that Lawyers performed for Covil.

51. Lawyers provided legal services contrary to the most minimal legal standards.

52. Lawyers breached their duties to Covil and failed to conform to the generally recognized and accepted practices of the legal profession in respect to the services performed by Lawyers. In particular, Lawyers were negligent, grossly negligent, reckless, willful and wanton in their:

a. Failure to properly represent Covil;

b. Failure to communicate with their client;

c. Failure to identify Covil as their client and not Primary Insurers;

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d. Failure to provide competent representation;

e. Failure to act diligently in the interest of Covil;

f. Failure to communicate with Covil sufficiently to allow Covil to make any informed decisions;

g. Failure to act with commitment and dedication to the interest of Covil;

h. Failure to protect Covil;

i. Failure to use all available proper procedures to protect Covil, including appointment of a receiver for Covil as provided by S.C. Code Ann. § 16-65-10 and Rule 66, SCRCP;

j. Lawyers failed to communicate with the insured, Covil, as no proper procedures were in place as provided by S.C. Code Ann. § 16-65-10 and Rule 66, SCRCP to effectuate said communication;

k. Failure to properly identify and disclose the conflict of interest in representing the Primary Insurers and Covil; and

l. Failure to plead appropriate defenses, which seriously affected the value of the *Hill* case. See **Exhibit 5**, Mark Wall's 11.2.2018 Affidavit.

53. Lawyers' actions and inactions were negligent, grossly negligent, reckless, willful and wanton.

54. As a direct and proximate result of Lawyers' negligence, plaintiff has suffered actual and consequential damages in an amount to be proven at trial.

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FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty as to Lawyers

55. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

56. Lawyers served as attorneys for Covil.

57. As the attorneys for Covil, Lawyers had fiduciary duties and owed a duty of due care, good faith and loyalty to Covil. Lawyers breached these duties owed to Covil.

58. As a result of Lawyers' negligent, grossly negligent, and wanton acts, plaintiff has suffered actual and consequential damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
Aiding and Abetting the Breach of a Fiduciary Duty as To Primary Insurers

59. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

60. Lawyers owed fiduciary duties to Covil.

61. Primary Insurers knew that Lawyers had a fiduciary duty to Covil and knowingly participated in the breach of fiduciary duty.

62. Primary Insurers knew Lawyers received notice of the *Hill* complaint and not only were aware but also participated in Lawyers' decision not to answer the *Hill* complaint.

63. Further, Primary Insurers knew and improperly instructed Lawyers to breach their fiduciary duties to their insured, Covil, Lawyers' client, by treating the Primary Insurers as the client.

64. As a direct and proximate cause, plaintiff suffered damages caused by these breaches of fiduciary duties and the aiding and abetting as described herein.

FOR A FOURTH CAUSE OF ACTION
Breach of Contract – Bad Faith Failure to Defend against Primary Insurers related to *Hill*

65. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

66. The Primary Insurers have contractual obligations to plaintiff.

67. A copy of all policy materials known and available relating to the Zurich policies is attached hereto as **Exhibit 6**.

68. A copy of all policy materials known and available relating to the Sentry policies is attached hereto as **Exhibit 7**.

69. A copy of all policy materials known and available relating to the USF&G policies is attached hereto as **Exhibit 8**.

70. The Primary Insurers had, and have, a contractual duty to provide a defense to the Covil Asbestos Suits, including but not limited to the *Hill* suit, which the Primary Insurers breached.

71. The Primary Insurers breached their duty to defend Covil by determining what was best for Covil without consulting with an independent Covil or even consulting with Jim Covil who was their prior contact for Covil.

72. Primary Insurers knowingly failed to exercise an honest and informed judgment in providing a defense to Covil.

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73. Primary Insurers are liable for all damages, without limitation, assessed against Covil, by way of settlement or judgment, as a result of the Primary Insurers' actions in failing adequately to defend Covil against the *Hill* suit.

FOR A FIFTH CAUSE OF ACTION
Breach of Contract – Bad Faith Processing of Claims against Primary Insurers related to *Hill*

74. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

75. Primary Insurers each have valid contractual obligations to Plaintiff.

76. Primary Insurers each have a contractual duty to administer and settle claims made against Covil in the Covil Asbestos Suits.

77. Primary Insurers have breached their respective contracts in bad faith by refusing to pay until Covil was held in default and thereafter delaying payment of benefits justly due under the contract in *Hill*.

78. Furthermore, Primary Insurers have engaged in a bad faith processing of *Hill*.

79. Primary Insurers' actions in refusing to abide by their obligations under their respective contracts were unreasonable and in breach of the Primary Insurers' contracts as well as the implied covenant of food faith and fair dealing under the policies, including but not limited to the imposition of extra contractual duties and obligations upon Covil in furtherance of the Primary Insurers' interest and to the detriment of Covil.

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80. As a direct and proximate result of Primary Insurers' acts and omissions, Plaintiff has been damaged and is entitled to recover actual, compensatory and punitive damages.

FOR A SIXTH CAUSE OF ACTION
Tort Action – Bad Faith Processing of Claims against Primary Insurers related to *Hill*

81. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

82. Primary Insurers, willfully and with reckless disregard of the Plaintiff's rights, acted in bad faith and/or unreasonably in processing claim(s) under their mutually binding insurance contract.

83. Primary Insurers' willful, and with reckless disregard of the Plaintiff's rights, actions in refusing to abide by their obligations under their respective contracts were unreasonable and in breach of the Primary Insurers' contracts as well as the implied covenant of food faith and fair dealing under the policies, including but not limited to the imposition of extra contractual duties and obligation upon Covil in furtherance of the Insurers' interest and to the detriment of Covil.

84. As a direct and proximate result of Primary Insurers' acts and omissions, Plaintiff has been damaged and is entitled to recover actual, compensatory and punitive damages.

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FOR A SEVENTH CAUSE OF ACTION
Primary Insurers Are Fully Responsible for Conduct Prior To November 2, 2018, As Covil's Alter Ego, Agency or Instrumentality

85. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

86. Primary Insurers' pattern and practice has made the Primary Insurers fully responsible for all of Covil's liabilities prior to appointment of the Receiver.

87. Under a number of legal theories, Primary Insurers are Covil and acted as such in the *Hill* case.

88. Primary Insurers have entered into a joint venture with each other to take over Covil and become Covil. For example:

a. A special combination of the Primary Insurers and Covil for the specific venture of limiting or eliminating Covil as a direct voice in the management of Covil's assets so that the Primary Insurers would protect and save their money;

b. The retention of a separate corporate personality for Covil would promote fraud, wrong, injustice and contravene public policy; and.

c. Each Primary Insurer had an equal right to control the conduct of their joint venture and of Covil.

89. Covil has become the alter ego of the Primary Insurers:

a. The Primary Insurers have shown a total domination and control over Covil;

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b. The domination was so complete that Covil never manifested separate corporate interests of its own and functioned solely to achieve the purposes of the Insurers;

c. The insurers misused their domination of Covil and were not entitled to dominate Covil; and.

d. Inequitable consequences have resulted with the unilateral application of insurance proceeds, default judgments, and verdicts.

90. The Primary Insurers were the principals and Covil the agent or agency:

a. Primary Insurers manifested complete control over Covil and purported to act on Covil's behalf;

b. The course of dealing between the principal and the agent clearly show no independent Covil; and

c. Primary Insurers became active participants in Covil rather than simply insurers.

91. Primary Insurers' acts and omissions constitute negligence and/or gross negligence because they constitute an extreme departure from what a reasonably careful person would do in the same situation.

92. As a direct and proximate result of the Insurers' acts and omissions, plaintiff is entitled to recover actual, compensatory, attorneys' fees and costs of this action as well as punitive damages for the Primary Insurers' negligent, grossly negligent, willful and intentional conduct towards Covil.

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FOR AN EIGHTH CAUSE OF ACTION
Negligence as To Lawyers and Primary Insurers

93. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

94. Lawyers and the Primary Insurers negligently failed to conduct an adequate defense on behalf of Covil in respect of the *Hill* suit.

95. Lawyers and Primary Insurers should have taken steps necessary to avoid a default in the *Hill* suit, some or all of which are outlined in this complaint.

96. Primary Insurers knowingly permitted Lawyers to act negligently in defense of Covil and are responsible for failing or refusing to intercede to prevent Lawyers' default on behalf of Covil in the *Hill* suit.

97. As a direct and foreseeable consequence of the foregoing negligence, Covil has been damaged in an amount to be determined at trial.

98. Lawyers and the Primary Insurers are responsible for all damages incurred by Covil as a result of the foregoing negligence.

FOR A NINTH CAUSE OF ACTION
Declaratory Judgment as to the Primary Insurers
And the Primary Insurers' Policies Related to *Hill*

99. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

100. As to all of the Covil Insurance Policies issued by the Primary Insurers applicable to *Hill*, Covil seeks the following declarations:

a. The Covil Insurance Policies cover all damages of *Hill* because *Hill* alleges bodily injury, personal injury, injurious exposure,

progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;

b. Covil may select the policy or policy years to which to assign or allocate *Hill*-related loss;

c. In the case of a claimed ambiguity in any Covil Insurance Policy applicable to *Hill*, such ambiguity shall be construed in favor of the broadest coverage afforded under the Covil Insurance Policies;

d. Defense costs for *Hill* are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of Covil Insurance Policies;

e. Each of the Primary Insurers Covil Insurance Policies is required to pay or reimburse all sums that Covil is legally obligated to pay in *Hill* as damages in settlement of the *Hill* suit;

f. Each of the Primary Insurers Covil Insurance Policies must cover *Hill*, in full, including but not limited to its "per occurrence" limits;

g. Hill's exposure to asbestos for which Covil is liable, during Covil's operations, including Covil's construction, installation, maintenance or removal activities, are, including but not limited to, subject only to the "per occurrence" limits of the Covil Insurance Policies, and not subject to "aggregate" limits, if any, of the Covil Insurance Policies;

h. For *Hill,* any aggregate limit on coverage in any of the Covil Insurance Policies is a limitation on coverage, and therefore each defendant

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Primary Insurer has the burden to prove any assertion that *Hill* is subject to the aggregate limits in the Covil Insurance Policies, if any;

i. Each Primary Insurer has the burden to prove, based on the evidence, that Hill is either a "products" claim or a "completed operations" claim, as those terms are defined in the Covil Insurance Policies, in order to subject the claim to the aggregate limits in the Covil Insurance Policies, if any;

j. Each of the Primary Insurers is fully responsible for all damages resulting from the *Hill* default and pursuant to the collateral source rule, Lawyers should not benefit from any payment from the insurers;

k. The damages for the *Hill* default are extracontractual in nature and derive from the Primary Insurers' failure or refusal to provide a defense, including but not limited to a competent defense, to *Hill*;

l. The damages for the *Hill* default cannot be allocated to any Covil Insurance Policy limit;

m. Each of the Primary Insurers has waived, or is estopped from asserting, any right of subrogation and any purported claim of equitable contribution against any other person, including but not limited to any other Covil insurer, except as explicitly pleaded herein; and

101. An actual and justiciable controversy exists between Covil and each of the defendant Primary Insurers concerning their obligations under the Covil Insurance Policies.

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102. Judicial declarations are necessary and appropriate at this time, and under the circumstances alleged above, so that Covil may ascertain its rights under the Covil Insurance Policies in *Hill*.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays for an award from this Court as to each cause of action in an amount to be determined at trial as well as an additional punitive award in an amount sufficient to impress upon the Defendants the seriousness of their conduct and to deter such similar conduct in the future together with attorneys' fees, costs, prejudgment interest, and such further relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

Signatures on following page

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Respectfully submitted,

s/ Mark W. Hardee
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Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation as to all causes of action related to Professional Negligence

s/ Jescelyn T. Spitz
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Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation as to all causes of action

Signatures continued on following page

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April 24, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Peter D. Protopapas as Receiver for Covil Corporation, Plaintiff, v. Wall, Templeton & Haldrup, P.A.; United States Fidelity and Guaranty Company; and Zurich American Insurance Company, Defendants.	Civil Action No: 2019-CP-40-02285 **SUMMONS**

YOU ARE HEREBY SUMMONED and required to answer the First Amended Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said First Amended Complaint upon the subscribers at 1329 Blanding Street, Columbia, South Carolina 29201, within fifteen (15) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

Signature on following page

Respectfully submitted,

s/ Jescelyn T. Spitz_____
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Attorneys for Covil Corporation, acting through Peter D. Protopapas, Receiver of Covil Corporation as to all causes of action

July 20, 2020
Columbia, South Carolina

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ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Peter D. Protopapas as Receiver for Covil Corporation, Plaintiff, v. Wall, Templeton & Haldrup, P.A.; United States Fidelity and Guaranty Company; and Zurich American Insurance Company, Defendants.	Civil Action No: 2019-CP-40-02285 **FIRST AMENDED COMPLAINT** (Jury Trial Demanded)

COMES NOW Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, for his complaint, who alleges upon knowledge as to his own acts and upon information and belief as to all other matters as follows:

PARTIES

1. Plaintiff is a lawyer who was appointed as Receiver of Covil Corporation, a dissolved South Carolina corporation, by Order attached as **Exhibit 1**, on November 2, 2018, and who maintains his principal place of business in Richland County, South Carolina.

2. Wall Templeton & Haldrup, P.A. ("Lawyers") is a professional association organized and existing in the state of South Carolina with its principal place of business in Charleston, South Carolina.

3. United States Fidelity and Guaranty Company ("USF&G") is an insurance company, operating as a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in the State

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of Connecticut. USF&G is a wholly-owned subsidiary of The Travelers Group of Insurance Companies.

4. Zurich American Insurance Company ("Zurich") is an insurance company, operating as a corporation organized under the laws of the State of New York with its principal place of business located in the State of Illinois. Zurich is the successor by merger to Maryland Casualty Company and Northern Insurance Company of New York. Zurich American is a wholly-owned subsidiary of the Zurich Group of Insurance Companies.

5. Zurich and USF&G are collectively referred to as the "Primary Insurers."

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over plaintiff's claims for relief as the actions and omissions occurred in this County.

7. Venue of this case is proper in Richland County.

FACTUAL BACKGROUND

8. Covil was an installer of thermal insulation, including thermal insulation which, at certain times, contained asbestos.

9. Covil conducted these operations from at least 1954 until approximately 1991, after which Covil ceased to conduct business operations and, ultimately, dissolved.

10. It has been alleged that Covil's operations from 1954 through at least 1986 included the installation, repair, replacement, removal, or disturbance of thermal insulation and other building materials, and those operations

exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations").

11. The alleged bodily injury resulting from the Asbestos Allegations has resulted in claims and lawsuits against Covil (the "Covil Asbestos Suits").

12. From at least in or about 1991, until the appointment of the Receiver, on November 2, 2018, the defense of the Covil Asbestos Suits was controlled by the Primary Insurers—specifically, defendants Zurich American Insurance Company ("Zurich") and United States Fidelity and Guaranty Company ("USF&G"). Moreover, in and after 1991, the Primary Insurers conducted all of Covil's affairs, including the period after Covil was dissolved and extending until appointment of the Receiver.

13. The Primary Insurers issued insurance policies to Covil from in or about 1954 until approximately 1978.

14. From at least in or about 1991, continuing until appointment of the Receiver, Zurich and USF&G managed Covil, making all determinations as to the use and disposition of Covil's assets, which consisted primarily of corporate documents and insurance policies.

15. The Primary Insurers made all determinations as to the disposition of Covil Asbestos Suits as well as the treatment and characterization of claims under the Covil insurance policies.

16. Since as early as approximately 1991, the Primary Insurers acted in concert for the common purpose of ensuring that there was no independent person or entity acting by or on behalf of Covil. The Primary Insurers

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determined that the only Covil that could exist would be a Covil that was, for all purposes, the Primary Insurers' agent, intermediary, subsidiary, alter ego, and/or controlled entity.

17. The Primary Insurers effectuated their common purpose of exclusive, unilateral control of Covil by running Covil's affairs in all material aspects.

18. At no time did the Primary Insurers make efforts to appoint an independent person or entity to determine and act in Covil's best interest. Rather, the Primary Insurers unilaterally determined what was best for Covil, or disregarded what was best for Covil, acting in their own interest, regardless of whether there was an actual or potential conflict between their interest and Covil's interest.

19. Each of the Primary Insurers' actions on behalf of Covil was for the purpose of protecting the Primary Insurers rather than Covil.

20. In addition to controlling the assets and affairs of Covil, the Primary Insurers unilaterally hired agents for Covil, including but not limited to attorneys, experts, and a professional 30(b)(6) witness to act as and on behalf of, and to constitute Covil, *de facto* or *de jure*.

21. The Primary Insurers are and were required to act in good faith and engage in fair dealing in all of their actions in regards to Covil.

22. The Insurers had and have a duty to provide a full defense in the Covil Asbestos Suits.

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23. The Primary Insurers engaged Lawyers to provide a defense to certain of the Covil Asbestos Suits, including but not limited to the *Hill* and *Taylor* suits.

24. In South Carolina, when an insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured, *i.e.,* the insured client of the attorney. Pursuant to that relationship, the attorney owes the insured client—not the insurer—a fiduciary duty. The loyalties of the attorney may not be divided.

25. Lawyers were hired to protect Covil's interest but became part of the Primary Insurers' scheme to run Covil as an effective subsidiary, intermediary, agent, controlled entity, or alter ego of the Primary Insurers. Lawyers followed the Primary Insurers' instructions and treated the Primary Insurers as Covil for representation and fiduciary duty purposes.

26. An attorney's conduct of litigation involving an insured client is also governed by established law. *See, e.g.*, Rule 1.8(f), RPC, Rule 407, SCACR ("A lawyer shall not accept compensation for representing a client from one other than the client unless: . . . (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; . . . ."); Rule 5.4(c), RPC, Rule 407, SCACR ("[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services").

27. Lawyers breached their duties to Covil by taking sole direction from the Primary Insurers.

28. Lawyers were hired in or about May 2018 to represent and defend Covil in all cases pending against Covil in South Carolina. See **Exhibit 2**, Mark Wall's 3.28.19 Affidavit.

29. At no time did Lawyers make any effort independently to determine Covil's needs and interests. Rather, Lawyers acted at all times pertinent as if the Primary Insurers were Lawyers' clients.

30. Lawyers failed to ensure proper procedures were in place for Covil to express its interests, including but not limited to the procedures provided by S.C. Code Ann. § 15-65-10 and Rule 66, SCRCP; therefore, Lawyers were unable to ascertain what Covil wanted or to protect Covil's interests.

31. The Primary Insurers improperly required or requested Lawyers to treat the Primary Insurers as Covil.

32. Lawyers failed to communicate with the insured, Covil, as no proper procedures were in place as provided by S.C. Code Ann. § 16-65-10 and Rule 66, SCRCP, to effectuate said communication.

33. Lawyers improperly accepted this arrangement of treating Primary Insurers as Covil, and Lawyers failed to advise Primary Insurers that the arrangement was contrary to South Carolina law, although Lawyers knew or should have known of these facts and circumstances.

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34. Lawyers' actions, in breach of Lawyers' duties and at the direction of Primary Insurers, were to effectuate the Primary Insurers' desire that no Covil separate and apart from the Primary Insurers would exist.

35. The Primary Insurers' complete control over Covil, and management of Covil's affairs, including but not limited to the Covil asbestos suits, extended to the *Hill* and *Taylor* suits.

36. Prior to the appointment of the Receiver, Primary Insurers and Lawyers unilaterally determined that Covil would not answer the *Hill* and *Taylor* suits, thereby leaving Covil exposed to potential default.

37. The *Hill* case is pending in Richland County, South Carolina (*Hill v. Covil Corporation*, C.A. No. 2018–CP-40-04680) and was served on James Covil on September 7, 2018. The *Taylor* case is also pending in Richland County, South Carolina (Taylor v Covil Corporation, C.A. No. 2018-CP-40-04940) and was also served on James Covil.

38. Primary Insurers and Lawyers knew that the *Hill* and *Taylor* complaints had been filed.

39. Primary Insurers and Lawyers knew that service of process had been historically performed on James Covil.

40. Primary Insurers and Lawyers wrongfully believed that James Covil was not appropriate for service of process even though he had accepted service many times in the past. Despite their wrongful belief, Primary Insurers and Lawyers knew they could answer and raise improper service as a defense.

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41. Primary Insurers and Lawyers consciously chose not to answer the *Hill* or *Taylor* complaints despite the historical service of process on Jim Covil as outlined by The Honorable Jean H. Toal. See **Exhibit 3**, *Hill* and *Taylor* Order Denying Covil's Motion to Lift Entry of Default.

42. Primary Insurers and Lawyers improperly determined not to answer the *Hill* or *Taylor* complaints or challenge service of process through an appropriate motion.

43. Primary Insurers and Lawyers improperly determined that they would stop following their past pattern and practice of answering complaints and challenging service of process.

44. Primary Insurers and Lawyers did not speak to James Covil or to any Covil representative.

45. Defendants acted in concert when deciding not to answer the *Hill* and *Taylor* cases without any input from an independent Covil. These actions were in breach of their duties to Covil.

FOR A FIRST CAUSE OF ACTION
Professional Negligence as to Lawyers

46. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

47. Pursuant to S.C. Code Ann. § 15-36-100, plaintiff has retained the services of Michael Virzi as an expert witness in this matter. Mr. Virzi's affidavit is attached as **Exhibit 4** and incorporated by reference.

48. As Covil's attorneys, Lawyers owed a legal duty to Covil to conform to the

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generally recognized and accepted practices of the legal profession in respect to the services that Lawyers performed for Covil.

49. Lawyers provided legal services contrary to the most minimal legal standards.

50. Lawyers breached their duties to Covil and failed to conform to the generally recognized and accepted practices of the legal profession in respect to the services performed by Lawyers. In particular, Lawyers were negligent, grossly negligent, reckless, willful and wanton in their:

a. Failure to properly represent Covil;

b. Failure to communicate with their client;

c. Failure to identify Covil as their client and not Primary Insurers;

d. Failure to provide competent representation;

e. Failure to act diligently in the interest of Covil;

f. Failure to communicate with Covil sufficiently to allow Covil to make any informed decisions;

g. Failure to act with commitment and dedication to the interest of Covil;

h. Failure to protect Covil;

i. Failure to use all available proper procedures to protect Covil, including appointment of a receiver for Covil as provided by S.C. Code Ann. § 16-65-10 and Rule 66, SCRCP;

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j. Failure to communicate with the insured, Covil, as no proper procedures were in place as provided by S.C. Code Ann. § 16-65-10 and Rule 66, SCRCP, to effectuate said communication;

k. Failure to properly identify and disclose the conflict of interest in representing the Primary Insurers and Covil; and

l. Failure to plead appropriate defenses, which seriously affected the value of the *Hill* and *Taylor* cases. See **Exhibit 5**, Mark Wall's 11.2.2018 Affidavit.

51. Lawyers' actions and inactions were negligent, grossly negligent, reckless, willful and wanton.

52. As a direct and proximate result of Lawyers' negligence, plaintiff has suffered actual and consequential damages in an amount to be proven at trial.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty as to Lawyers

53. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

54. Lawyers served as attorneys for Covil.

55. As the attorneys for Covil, Lawyers had fiduciary duties and owed a duty of due care, good faith, and loyalty to Covil. Lawyers breached these duties owed to Covil.

56. As a result of Lawyers' negligent, grossly negligent, and wanton acts, and the breach of fiduciary duties that resulted, plaintiff has suffered actual and consequential damages in an amount to be determined by a jury.

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FOR A THIRD CAUSE OF ACTION
Aiding and Abetting the Breach of a Fiduciary Duty as To Primary Insurers

57. Plaintiff re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

58. Lawyers owed fiduciary duties to Covil and breached those duties.

59. Primary Insurers knew that Lawyers owed fiduciary duties to Covil and knowingly encouraged, directed, procured, and participated in the breaches of those duties.

60. Primary Insurers knew Lawyers received notice of the *Hill* and *Taylor* complaints and not only were aware but also participated in Lawyers' decision not to answer the *Hill* and *Taylor* complaints.

61. Further, Primary Insurers knowingly and improperly instructed Lawyers to breach their fiduciary duties to the insured, Covil, Lawyers' client, by treating the Primary Insurers as the client.

62. As a direct and proximate cause of Primary Insurers' knowing participation in Lawyers' breach of their fiduciary duties to Covil, plaintiff suffered damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
Breach of Contract – Bad Faith Failure to Defend against Primary Insurers related to *Hill* and *Taylor*

63. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

64. The Primary Insurers have contractual obligations to plaintiff.

65. A copy of all policy materials known and available relating to the Zurich policies is attached hereto as **Exhibit 6**.

66. A copy of all policy materials known and available relating to the USF&G policies is attached hereto as **Exhibit 7**.

67. The Primary Insurers had, and have, a contractual duty to provide a defense to the Covil Asbestos Suits, including but not limited to the *Hill* and *Taylor* suits.

68. The Primary Insurers breached their duty to defend Covil by determining what was best for Covil without consulting with an independent Covil or even consulting with Jim Covil, who was their prior contact for Covil.

69. Primary Insurers knowingly failed to exercise an honest and informed judgment in providing a defense to Covil.

70. Primary Insurers are liable for all damages, without limitation, assessed against Covil, by way of settlement or judgment, as a result of the Primary Insurers' actions in failing to adequately defend Covil against the *Hill* and *Taylor* suits.

FOR A FIFTH CAUSE OF ACTION
Breach of Contract – Bad Faith Processing of Claims against Primary Insurers related to *Hill* and *Taylor*

71. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

72. Primary Insurers each have valid contractual obligations to Plaintiff.

73. Primary Insurers each have a contractual duty to administer and settle claims made against Covil in the Covil Asbestos Suits.

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74. Primary Insurers have breached their respective contracts in bad faith by refusing to pay until Covil was held in default and thereafter delaying payment of benefits justly due under the contract in *Hill* and *Taylor*.

75. Furthermore, Primary Insurers have engaged in a bad faith processing of *Hill* and *Taylor*.

76. Primary Insurers' actions in refusing to abide by their obligations under their respective contracts were unreasonable and in breach of the Primary Insurers' contracts as well as the implied covenant of food faith and fair dealing under the policies, including but not limited to the imposition of extra contractual duties and obligations upon Covil in furtherance of the Primary Insurers' interest and to the detriment of Covil.

77. As a direct and proximate result of Primary Insurers' acts and omissions, Plaintiff has been damaged and is entitled to recover actual, compensatory, and punitive damages.

FOR A SIXTH CAUSE OF ACTION
Tort Action – Bad Faith Processing of Claims against Primary Insurers related to *Hill* and *Taylor*

78. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

79. Primary Insurers, willfully and with reckless disregard of the Plaintiff's rights, acted in bad faith and/or unreasonably in processing claim(s) under their mutually binding insurance contract.

80. Primary Insurers' willful, and with reckless disregard of the Plaintiff's rights, actions in refusing to abide by their obligations under their respective

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contracts were unreasonable and in breach of the Primary Insurers' contracts as well as the implied covenant of good faith and fair dealing under the policies, including but not limited to the imposition of extra contractual duties and obligation upon Covil in furtherance of the Insurers' interest and to the detriment of Covil.

81. As a direct and proximate result of Primary Insurers' acts and omissions, Plaintiff has been damaged and is entitled to recover actual, compensatory, and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
Primary Insurers Are Fully Responsible for Conduct Prior To November 2, 2018, As Covil's Alter Ego, Agency, or Instrumentality

82. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

83. Primary Insurers' pattern and practice has made the Primary Insurers fully responsible for all of Covil's liabilities prior to appointment of the Receiver.

a. Under a number of legal theories, Primary Insurers are Covil and acted as such in the *Hill* and *Taylor* cases.Primary Insurers have entered into a joint venture with each other to take over Covil and become Covil. A special combination of the Primary Insurers for the specific venture of limiting or eliminating Covil as a direct voice in the management of Covil's assets so that the Primary Insurers would protect and save their money;

b. The retention of a separate corporate personality for Covil would promote fraud, wrong, injustice and contravene public policy; and

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c. Each Primary Insurer had an equal right to control the conduct of their joint venture and of Covil.

84. Covil has become the alter ego of the Primary Insurers:

a. The Primary Insurers have shown a total domination and control over Covil;

b. The domination was so complete that Covil never manifested separate corporate interests of its own and functioned solely to achieve the purposes of the Insurers;

c. The insurers misused their domination of Covil and were not entitled to dominate Covil; and.

d. The insurers became equitable owners of Covil;

e. Inequitable consequences have resulted with the unilateral application of insurance proceeds, default judgments, and verdicts.

85. The Primary Insurers were the principals and Covil the agent:

a. Primary Insurers manifested complete control over Covil and purported to act on Covil's behalf;

b. The course of dealing between the principal and the agent clearly shows no independent Covil; and

c. Primary Insurers became active participants and equitable owners of Covil rather than simply insurers.

86. Primary Insurers' acts and omissions constitute negligence and/or gross negligence because they are an extreme departure from what a reasonably careful person would do in the same situation.

87. As a direct and proximate result of the Insurers' acts and omissions, plaintiff is entitled to recover actual, compensatory, attorneys' fees and costs of this action as well as punitive damages for the Primary Insurers' negligent, grossly negligent, willful and intentional conduct towards Covil.

FOR AN EIGHTH CAUSE OF ACTION
Single Business Enterprise / Amalgamation as to the Primary Insurers

88. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

89. The Primary Insurers, through their combined exercise of complete control over Covil between the time of Covil's dissolution and the Receiver's appointment, disregarded and eliminated the legal corporate distinction between themselves and Covil.

90. The Primary Insurers and Covil functioned during this period as an amalgamation of corporate interests.

91. By acting on behalf of Covil and directing Lawyers' conduct with respect to Covil, the Primary Insurers ensured they and Covil collectively worked toward a common purpose: advancing the Primary Insurers' interests over those of Covil.

92. By treating Covil as a mere extension of their corporate identities, the Primary Insurers abused their position with respect to Covil and acted fraudulently and in bad faith.

93. It would be unjust and inequitable to continue the legal fiction that Covil and the Primary Insurers maintained separate corporate identities during the time the Primary Insurers exercised control over Covil.

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FOR A NINTH CAUSE OF ACTION
Negligence as To Lawyers and Primary Insurers

94. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

95. Lawyers and the Primary Insurers negligently failed to conduct an adequate defense on behalf of Covil in respect of the *Hill* and *Taylor* suits.

96. Lawyers and Primary Insurers should have taken steps necessary to avoid a default in the *Hill* and *Taylor* suits, some or all of which are outlined in this complaint.

97. Primary Insurers knowingly permitted Lawyers to act negligently in defense of Covil and are responsible for failing or refusing to intercede to prevent Lawyers' default on behalf of Covil in the *Hill* and *Taylor* suits.

98. As a direct and foreseeable consequence of the foregoing negligence, Covil has been damaged in an amount to be determined at trial.

99. Lawyers and the Primary Insurers are responsible for all damages incurred by Covil as a result of the foregoing negligence.

FOR A TENTH CAUSE OF ACTION
Declaratory Judgment as to the Primary Insurers
And the Primary Insurers' Policies Related to *Hill* and *Taylor*

100. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

101. As to all of the Covil Insurance Policies issued by the Primary Insurers applicable to *Hill* and *Taylor*, Covil seeks the following declarations:

a. The Covil Insurance Policies cover all damages of *Hill* and *Taylor* because *Hill* and *Taylor* allege bodily injury, personal injury, injurious

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exposure, progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;

b. Covil may select the policy or policy years to which to assign or allocate *Hill/Taylor*-related loss;

c. In the case of a claimed ambiguity in any Covil Insurance Policy applicable to *Hill* and *Taylor*, such ambiguity shall be construed in favor of the broadest coverage afforded under the Covil Insurance Policies;

d. Defense costs for *Hill* and *Taylor* are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of Covil Insurance Policies;

e. Each of the Primary Insurers' Covil Insurance Policies is required to pay or reimburse all sums that Covil is legally obligated to pay in *Hill* and *Taylor* as damages in settlement of the *Hill* and *Taylor* suits;

f. Each of the Primary Insurers' Covil Insurance Policies must cover *Hill* and *Taylor*, in full, including but not limited to its "per occurrence" limits;

g. Hill's exposure to asbestos for which Covil is liable, during Covil's operations, including Covil's construction, installation, maintenance or removal activities, are, including but not limited to, subject only to the "per occurrence" limits of the Covil Insurance Policies, and not subject to "aggregate" limits, if any, of the Covil Insurance Policies;

h. For *Hill* and *Taylor,* any aggregate limit on coverage in any of the Covil Insurance Policies is a limitation on coverage, and therefore

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each defendant Primary Insurer has the burden to prove any assertion that *Hill* and *Taylor* are subject to the aggregate limits in the Covil Insurance Policies, if any;

i. Each Primary Insurer has the burden to prove, based on the evidence, that *Hill* and *Taylor* are either a "products" claim or a "completed operations" claim, as those terms are defined in the Covil Insurance Policies, in order to subject the claim to the aggregate limits in the Covil Insurance Policies, if any;

j. Each of the Primary Insurers is fully responsible for all damages resulting from the *Hill* and *Taylor* default and pursuant to the collateral source rule, Lawyers should not benefit from any payment from the insurers;

k. The damages for the *Hill* and *Taylor* defaults are extra-contractual in nature and derive from the Primary Insurers' failure or refusal to provide a defense, including but not limited to a competent defense, to *Hill* and *Taylor*;

l. The damages for the *Hill* and *Taylor* defaults cannot be allocated to any Covil Insurance Policy limit;

m. Each of the Primary Insurers has waived, or is estopped from asserting, any right of subrogation and any purported claim of equitable contribution against any other person, including but not limited to any other Covil insurer, except as explicitly pleaded herein; and

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102. An actual and justiciable controversy exists between Covil and each of the defendant Primary Insurers concerning their obligations under the Covil Insurance Policies.

103. Judicial declarations are necessary and appropriate at this time, and under the circumstances alleged above, so that Covil may ascertain its rights under the Covil Insurance Policies in *Hill* and *Taylor*.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays for an award from this Court as to each cause of action in an amount to be determined at trial as well as an additional punitive award in an amount sufficient to impress upon the Defendants the seriousness of their conduct and to deter such similar conduct in the future, together with attorney's fees, costs, prejudgment interest, and such further relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

Signatures on following page

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Respectfully submitted,

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Signatures continued on following page

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July 20, 2020
Columbia, South Carolina

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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,	)	
-versus-	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C.A. NO.: 2018-CP-40-04680
JAMES MICHAEL HILL, JR., as Executor of the Estate of James Michael Hill	)	
Plaintiff,	)	
-versus-	)	
ADVANCE AUTO PARTS, INC.,	)	
Defendants.	)	

AFFIDAVIT OF MARK H. WALL

PERSONALLY APPEARED BEFORE ME, Mark H. Wall, who first being duly sworn deposes and states as follows:

1. I am competent to testify to the matters stated herein, which are based on my personal knowledge, and if called to testify, I would testify to the facts stated herein.

2. I am a member of the South Carolina Bar and an attorney in the law firm of Wall Templeton & Haldrup, P.A. ("Wall Templeton").

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3. In May 2018, I and Wall Templeton began representing Covil Corporation ("Covil") as substitute counsel in all cases pending against Covil in South Carolina.

4. Upon being retained, I learned that one of the reasons Wall Templeton was retained was that this Court had stricken the answers of Covil in three cases because Covil produced James Covil as its corporate representative.

5. At no time have I or Wall Templeton ever listed or used Mr. Covil as a corporate representative of Covil. In addition, neither I nor any other person at Wall Templeton have ever spoken or met with Mr. Covil.

6. Wall Templeton retained the services of Robert Glenn to act as Covil's corporate representative. Mr. Glenn was deposed as Covil's corporate representative in *Jerry Crawford and Evelyn Kay Crawford v. Celanese Corporation, et al,* Civil Action No.: 2017-CP-42-04429 on July 9, 2018; *Dwaine T. Waters and Janice K. Waters v. AGCO Corporation, et al,* Civil Action No.: 2017-CP-40-05462 on July 26, 2018; *Norman Jefferson Nolen, individually and as Personal Representative of the Estate of Linda Nolen v. Daniel International, et al,* Civil Action No.: 2016-CP-40-04184; *Rhonda Elaine Greene, Individually and as Personal Representative of the Estate of Ella Fay Greene v. Armstrong International, Inc.,* Civil Action No.: 2018-CP-40-00173 on December 14, 2018; He also testified as Covil's corporate representative at trial before this Court in *Jerry Howard Crawford v. Celanese Corporation*, Civil Action No.: 2017-CP-42-04429.

7. Wall Templeton has entered its appearance in only one case against Covil that was commenced after May 2018, prior to *Hill* and *Taylor*. That case was*Mary Ann Robertson, individually and as Executrix of the Estate of Paul E. Cruise v. Air & Liquid Systems Corporation, et al,* Civil Action No.: 3:18-cv-01842-TLW.

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8. The *Cruise* case was not "served" on Wall Templeton. Instead, notice of commencement of that case came through Covil's former counsel, Daniel B. White, of the law firm of Gallivan White & Boyd ("Gallivan White").

9. Specifically, Mr. White forwarded the *Cruise* case to me by email on June 25, 2018. Mr. White's emails indicated that he had received copies of the Summons and Complaint in the *Cruise* and *Bingham* cases and was forwarding the same to Wall Templeton and the insurance carriers participating in Covil's defense (the "Carriers").

10. Unlike the *Cruise* and *Bingham* (an Illinois case against Covil) cases, the Summons and Complaint in the *Hill* and *Taylor* cases were never delivered to me or Wall Templeton by Mr. White or Mr. Covil.

11. On October 9, 2018, I advised the Carriers that Covil had been named in two new cases but that I had not received notice of service of process on Covil in either case.

12. On October 18, 2018, I advised the Carriers that the deposition of the plaintiff in the *Hill* case had been scheduled for October 24, 2018. I recommended to the Carriers that Covil not appear at or participate in that deposition. The basis for that recommendation was that Covil had not been served at that time.

13. On October 22, 2018, I advised the Carriers that the deposition in the *Hill* case described above had been rescheduled for October 29, 2018.

14. On October 23, 2018, I advised the Carriers that the cases of *Hill* and *Taylor* were proceeding. I also advised the Carriers that if Covil had been served with process it should attend the deposition in the *Hill* case, but that Covil had not been served as of October 23.

15. On October 31, 2018, I received an email from plaintiff's counsel in the *Hill* and *Taylor* cases stating that Covil's answers in those cases were past due and inquiring when

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plaintiff's counsel could expect Covil to file answers in those cases. I forwarded that email to the Carriers on October 31. During a phone call with representatives from the Carriers that same day, I advised that if plaintiff's counsel approached me again regarding Covil's answers in the *Hill* and *Taylor* cases, I would tell plaintiff's counsel that Wall Templeton has no record of Covil being served in those cases.

16. On November 1, 2018 at 10:34 a.m., I received another email from plaintiff's counsel inquiring when Covil would file answers in in the *Hill* and *Taylor* cases. At 1:16 p.m., before communicating with the Carriers, I replied to plaintiff's counsel email and advised that: "We have not been asked to represent Covil in Hill and Taylor." Shortly after sending that email, plaintiff's counsel filed motions for the entry of default judgment in the *Hill* and *Taylor* cases.

17. It was only after receiving the motions for the entry of default judgment in the *Hill* and *Taylor* cases on November 1 that I learned for the first time that Mr. Covil had been allegedly served with the Summons and Complaint in those cases.

18. Given the facts described above, the Court's conclusion in that "the decision to allow Covil to be placed into default appears to the Court to have been a conscious decision by Covil's insurers" is not supported by the events leading to the defaults. Order dated March 20, 2019 at p. 5. In fact, the Carriers never made a decision to place Covil into default. Instead, the defaults resulted from 1) plaintiffs' decision to serve James Covil, who was not the registered agent of Covil Corporation; 2) Mr. Covil's decision not to forward the Hill and Taylor summonses and complaints to anyone on Covil's behalf; 3) plaintiffs' decision not to file an affidavit of service in the *Hill* or *Taylor* cases; and 4) my good-faith belief that Covil had not been served in *Hill* and *Taylor* at the time the motions for entry of default judgments were filed in those cases.

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19. Service of new cases, to which this law firm has appeared on behalf of Covil Corporation, have been made by service of process on the Court appointed Receiver, Peter D. Protopapas who forwarded the same to me and the carriers.

FURTHER DEPONENT SAITH NOT.

Mark H. Wall

SWORN to before me this
28th day of March, 2019.

(SEAL)
Notary Public for South Carolina
My Commission expires: 12-3-2024

SARAH JANE SCHRODETZKI
Notary Public, South Carolina
My Commission Expires
December 03, 2024

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
DENVER D. TAYLOR and **JANICE TAYLOR,**	)	**C/A No. 2018-CP-40-04940**
	)	In Re:
Plaintiffs,	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
COVIL CORPORATION, et al.	)	
	)	
Defendants.	)	
	)	
	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JAMES MICHAEL HILL,	)	
	)	**C/A No. 2018-CP-40-04680**
Plaintiff,	)	
v.	)	In Re:
	)	Asbestos Personal Injury Litigation
COVIL CORPORATION	)	Coordinated Docket
	)	
Defendants.	)	

ORDER DENYING COVIL'S MOTION TO LIFT ENTRY OF DEFAULT

Defendant Covil Corporation made a motion to set aside the entry of default entered by this Court on November 2, 2018 pursuant to South Carolina Rule of Civil Procedure 55(c). A hearing on the Defendant's motion was held on March 13, 2019. For the reasons set forth below, the motion is DENIED.

RELEVANT SERVICE HISTORY

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Covil Corporation has been a defendant in asbestos litigation in South Carolina and other neighboring states for decades. The history of how Covil has been served throughout its history is relevant to the issue of default in this case. As the Defendant notes, the registered agent listed at the Secretary of State's webpage is Palmer Covil. Palmer Covil died in 1984. Covil did not go out of business until 1993. Covil never updated the Secretary of State with a new registered agent. Jim Covil, was an employee of Covil Corporation for many years. Jim Covil is the son of Palmer Covil. Until very recently, Jim Covil was designated by Covil as its 30(b)(6) corporate representative for Covil Corporation, testifying on the corporation's behalf. For Decades following Palmer's death and Covil's dissolution, Plaintiffs in asbestos litigation have been serving Covil by serving his son Jim.

At the hearing to lift the entry of default, Plaintiff provided documentation about the history of service of Covil for cases that the Plaintiffs' counsel has been involved in. Plaintiffs provided documentation of 10 cases as follows:

1. Finch
    a. Served Jim Covil at 5 Woodfern Circle, Greenville, SC on 10-4-16
    b. Answered by Attorneys for Covil.
2. Greene
    a. Served Jim Covil at 815 E. Butler Road, Apt 113, Greenville, SC on September 18, 2018
    b. Answered by Attorneys for Covil
3. Howe
    a. Served Greenville Process Service, Dec 7, 2015
    b. Answered by Attorneys for Covil.
4. Nolen
    a. Served Jim Covil at 815 East Butler Road, Apt 113 Greenville, SC on January 9, 2017
    b. Answered by Attorneys for Covil
5. Sizemore
    a. Served Jim Covil at 815 East Butler Road, Apt 113, Greenville, SC on December 15, 2016
    b. Answered Attorneys for Covil.
6. David Taylor

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   a. Served Jim Covil at 815 East Butler Road, Apt 113 in Greenville, SC on December 30, 2016
   b. Answered by Attorneys for Covil.
7. Waugh
   a. Served Jim Covil at 815 East Butler Street, Greenville, SC on December 5, 2016
   b. Answered by Attorneys for Covil.
8. Hill
   a. Served Jim Covil at 815 East Butler Street, Greenville, SC on September 7, 2018
   b. No answer. Emailed Attorneys for Covil on October 31, 2018 and November 1, 2018 asking when we could expect answer. Attorney for Covil responded that he had not been asked to represent the client in Hill and Taylor.
9. Denver Taylor
   a. Served Jim Covil at 25 Park Woodruff Drive, Greenville, SC 29607 (Covil's place of employment).
   b. No answer. Emailed Attorneys for Covil on October 31, 2018 and November 1, 2018 asking when we could expect answer. Attorney for Covil responded that he had not been asked to represent the client in Hill and Taylor.
10. Hopper
   a. Served Jim Covil at 815 East Butler Street, Greenville, SC on January 8, 2019
   b. Answered by Attorneys for Covil on February 26, 2019

Over the last two years, this Court has heard multiple motions regarding Covil. This Court has also tried a Covil case to verdict. Covil has never raised insufficient service of process to this Court or asked this Court to determine whether service on Jim Covil is sufficient under our rules.

I. Service on Covil was Proper

South Carolina Rule of Civil Procedure 4(d)(3) provides for service on a corporation, "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service of process." Our Courts have held that

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SCRCP, Rule 4 serves at least two purposes: "it confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Richardson v. P.V., Inc*, 383 S.C. 610 (2009).

Covil argues that it should not be held in default because Jim Covil was not the registered agent for Covil at the time of service. The South Carolina Supreme Court in *Richardson v. P.V., Inc*, 383 S.C. 610 (2009) held:

> Whether an employee may accept service on behalf of a corporation depends on the authority the corporation conferred upon the employee. In order to determine whether an employee is an authorized agent, the court must look to the circumstances surrounding the relationship and find authority which is either express or implied from the type of relationship between the defendant and the alleged agent. While actual authority is expressly conferred upon the agent by the principal, apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority.

In this case, even if Jim Covil did not have actual authority, I find that that he had apparent authority to accept service of process. Jim Covil has been accepting service for Covil Corporation for years. Under the facts, as outlined above, I find that Covil knowingly permitted Covil to exercise authority to accept service of process. This fact is confirmed by the fact that Jim Covil has been conveying the complaints to lawyers for Covil and insurance carriers for Covil have been retaining counsel for Covil and authorizing funds for its defense.

II. No Good Cause to Lift Default

Covil next argues that the Court should set aside the entry of default for good cause shown. In deciding whether to set aside an entry of default, the court should consider the following factors: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; (3) the reason for the failure to act promptly; and (4) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehmon Bros., Inc.*, 381 S.E.2d 499, 501 (Ct. App. 2007).

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Defendant wholly failed to show good cause as to why the entry of default should be lifted. Once counsel for Plaintiffs realized that Covil had not filed an Answer in the Taylor and Hill cases, she emailed Counsel for Covil regarding the missing answers. On October 31, 2018, Ms. McVey sent the following email to Counsel for Covil: "Mark, in both Hill and Taylor, Covil's answer is past due. Would you let me know when we can expect an answer?" When no response was received, Ms. McVey followed up on November 1, 2018: "Mark and Tommy: Please let me know about your answers that are past due." Counsel for Covil then responded: "We have not been asked to represent Covil in Hill and Taylor." Although neither of these emails was required, it served to place Covil's lawyers clearly on notice that they had not answered.

Indeed, at the hearing on this matter, Covil did not argue that it failed to get notice that the Taylor and Hill Complaint had been filed and served on Jim Covil.

During the hearing on this matter, counsel for Covil acknowledged that they were not engaged by Covil's insurance carrier's answer despite communications from Covil's counsel to the carriers about the pending action. Thus, the decision to allow Covil to be placed into default appears to the Court to have been a conscious decision by Covil's insurers. Such negligence by Covil's carriers is also not a basis for lifting a default judgment. "Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve Appellants from the entry of default." *Richardson v. P.V., Inc,* 383 S.C. 610 (2009) citing *Roberts v. Peterson,* 292 S.C. 149 355 S.E.2d 280 (Ct. App. 1987) (observing that the "courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant."); see also *Williams v. Vanvolkenburg,* 312 S.C. 373, 440 S.E. 2d 408 (Ct. App. 1994) (imputing an attorney's negligence to a defaulting litigant).

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Despite being given repeated notice of their impending default Covil did nothing to attempt to cure its default until November 12, 2018, more than 10 days after they were placed in default. In the intervening period, the deposition of Plaintiff Hill was taken on the following days: 10/29/18, 11/1/18, 11/2/18, 11/5/18. Similarly, the deposition of Plaintiff Taylor was taken on 11/15/18, 11/16/18, 11/19/18, 11/20/18. Despite being given notice of these depositions, Covil made no appearance of these dying men. Plaintiff Hill has since died and is not in a position to be cross examined by Covil. Thus, lifting the default would prejudice the Plaintiffs in their ability to put on a case against Covil. Similarly, requiring Mr. Taylor, 6 months later to now undergo a cross examination by Covil after he has undergone major surgery to remove a lung, is a prejudice that Plaintiff Taylor should not be forced to undergo because of Covil's insurer's negligence.

Covil also argues that it has a meritorious defense, but offers no compelling evidence in its motion to lift the default that this is so.

CONCLUSION

Covil ceased to exist in 1993. Since that time[1], the Covil entity has apparently been nothing more than a façade behind which the insurers stand and direct the actions of its lawyers. The evidence at the hearing of this matter indicates that the insurers, sophisticated actors indeed, made the considered decision not to answer for Covil. That those carriers have now further considered their actions and concluded that their decision was ill founded is not a sufficient basis for lifting the default Covil willfully entered into. Therefore, for the reasons stated, Covil's Motion to Lift Default should be and therefore is DENIED.

AND IT SO ORDERED.

[1] At least until such time as Plaintiffs moved for the appointment of a receiver to protect Covil.

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Richland Common Pleas

Case Caption: Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al

Case Number: 2018CP4004940

Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 2019-CP-40-____
Peter D. Protopapas as Receiver for Covil Corporation,	)	
Plaintiff,	)	**AFFIDAVIT OF MICHAEL J. VIRZI**
vs.	)	
Zurich American Insurance Company; Sentry Casualty Company; United States Fidelity and Guarantee Company; Wall Templeton & Haldrup, PA,	)	
Defendants.	)	

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am offering this affidavit in support of the above-named Plaintiff's claim against the above-named Defendants stated in the Complaint filed in the above-captioned action.

2. My qualifications to give expert testimony include the following:

   A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice, ethics, and lawyer discipline;

   B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Ethics Advisory and Professional Responsibility Committees, and I served a three-year term as Chair of the former and currently serve as Chair of the latter;

   C. I have authored five published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice, I teach Professional Responsibility at the University of South Carolina School of Law, I am a frequent CLE speaker and law school guest lecturer and have given more than 100 presentations on the topics of lawyer malpractice, ethics, and lawyer discipline, and I am one of six instructors

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for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program;

D. I am the Ethics Chair for the South Carolina Association for Justice and a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, and the ABA Center for Professional Responsibility; and

E. I have provided expert testimony on matters involving the standard of care for lawyers on approximately 100 occasions either in court, in deposition, or by affidavit, I have been qualified in federal and state courts in South Carolina as an expert in matters of lawyer ethics and malpractice, and I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

3. My opinion is based on review of the following documents:

A. Complaint in the above-captioned case;

B. Order Granting Default Judgment in James Michael Hill vs. Advance Auto Parts, Inc., et al., Case No. 2018-CP-40-04680 (hereinafter "Hill Case"), entered on November 2, 2018;

C. Order Denying Covil's Motion to Lift Entry of Default in the Hill Case and Denver D. Taylor and Janice Taylor vs. Air & Liquid Systems Corporation, et al., Case No. 2018-CP-40-04940 (hereinafter "Taylor Case"), entered on March 20, 2019;

D. Order Appointing a Receiver for Covil Corporation in the Taylor Case, entered on November 2, 2018;

E. Order Granting the Receiver for Covil Corporation's Motion to Clarify the Receiver Order in the Taylor Case, entered on March 4, 2019;

F. Affidavit of Mark H. Wall in the Taylor and Hill Cases, dated March 28, 2109; and

G. A series of emails among Defendants in October and November 2018 regarding the Hill and Taylor Cases.

4. Based on my experience, education, training, and knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my professional opinion that

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Defendants' conduct as alleged in the Complaint fell below the standard of care for lawyers in South Carolina, which is the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession, and that Defendants breached duties owed to Plaintiff.

5. In particular, it appears that Defendant Wall Templeton & Haldrup, PA (hereinafter "WTH") undertook in May 2018 to represent Covil Corporation (hereinafter "Covil") in the defense of all pending cases against Covil in South Carolina. Prior to the appointment of Plaintiff as Receiver for Covil, it is alleged and appears that WTH communicated exclusively with the other Defendants in this case (hereinafter "Insurers") on behalf of Covil without attempting to appoint a receiver to act for Covil independently of Insurers. When an insurer hires legal counsel to represent its insured in litigation, the insured (in this case, Covil) is counsel's client and an attorney-client relationship is thereby created between counsel and the insured. Thus, in my professional opinion, WTH had an attorney-client relationship with Covil and owed duties of competence, diligence, and loyalty to Covil beginning in May 2018. The standard of care in executing those duties to a defunct corporation includes protecting the client's interests through some mechanism of identifying an appropriate representative, such as seeking to re-form the entity or have a representative appointed such as a receiver. It is alleged and appears that WTH instead deferred to the instructions and interests of Insurers without regard to the potentially divergent interests of Covil. In my professional opinion, WTH's conduct thus fell below the standard of care for lawyers and breached duties owed to Covil.

6. It further appears that WTH's representation of Covil included advice regarding the Hill Case. Mr. Wall's Affidavit, identified at paragraph 3.F hereinabove, describes six occasions

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in October and November of 2018 when WTH provided legal advice regarding the Hill case. Therefore, in my professional opinion, the scope of WTH's attorney-client relationship with Covil included the Hill Case.

7. Specifically, it appears WTH provided legal advice to Covil through Insurers not to file an Answer in the Hill Case because Mr. Wall was unaware of the Summons and Complaint having been served. In my professional opinion, this advice fell below the standard of care for lawyers. Mr. Wall's Affidavit states at paragraph 14 that he "advised the Carriers … that Covil had not been served as of October 23" in the Hill Case. However, it appears that Covil had been served by delivery of the Hill Summons and Complaint to James Covil. Rather than investigating whether service had been made (beyond checking the docket for an affidavit of service, which is not necessary to effectuate service), it appears WTH waited to hear from Hill's counsel and surmised without inquiry that "maybe Jim Covil stopped accepting service." Rather than advise Covil of the risks and alternatives to ignoring the Hill Case, WTH simply advised Covil not to respond in any way or attend the plaintiff's scheduled deposition, which created a significant risk of default and of greater financial exposure but without advising the client of that risk. Thus WTH's conduct fell below the standard of care for lawyers and breached duties of competence, diligence, and loyalty to Covil.

8. Based on the foregoing, it is my professional opinion that Defendant WTH's conduct fell below the degree of care, skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina and that Defendant WTH breached duties owed to Plaintiff.

9. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the evidence listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.

Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 24th day of April, 2019

Notary Public

My Commission Expires : 3/31/2027

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ELECTRONICALLY FILED - 2018 Nov 28 4:35 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004680

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A N.: 2018-CP-40-04680
JAMES MICHAEL HILL,	)	In te: Asbestos Personal Injury Litigation
	)	Coordinated Docket
Plaintiff,	)	
	)	**AFFIDAVIT**
v.	)	**OF**
	)	**MARK H. WALL**
ADVANCE AUTO PARTS, INC., et al.,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Mark H. Wall, who first being duly sworn deposes and states as follows:

1. I am an attorney in the State of South Carolina and represent Covil Corporation in several matters before this Court and give this Affidavit in that capacity.

2. That as an attorney for Covil Corporation, I am familiar with the facts of the Covil Corporation defense and generally with the facts that Plaintiffs' counsel tend to allege against Covil Corporation.

3. That as an attorney for Covil Corporation I tried a case in Spartanburg County, known as *Crawford versus Covil,* Case Number: 2017-CP-42-04429. That trial resulted in a verdict being rendered by the jury for the Defendant.

4. In addition thereto, depending on the exact facts of the case, several Plaintiffs and/or were formerly employees by Covil Corporation and as a result thereof, Covil Corporation is entitled to the exclusive remedy provision in the South Carolina Workers' Compensation Code and as such cannot be sued by third parties.

5. Depending on the exact facts of the case, Covil Corporation has an expert, Brian Hardin, Ph.D., who will testify that he is familiar with Covil Corporation and with the state of the knowledge of the hazards of asbestos and has opined in reports that, depending on the exact date of exposure, Covil Corporation did not have and should not have known of all hazards of asbestos including, but not limited to, the risks of developing the disease mesothelioma.

6. Based upon the above and my experience of handling and trying asbestos cases since 1976, I believe that Covil Corporation has a legitimate defense to the causes of action brought against it by the Plaintiffs.

FURTHER DEPONENT SAITH NOT!

Mark H. Wall

SWORN to before me this
8th day of November, 2018.

Sarah Jane Schrodetzki (SEAL)
Notary Public for South Carolina
My Commission expires: 12-3-2024

SARAH JANE SCHRODETZKI
Notary Public, South Carolina
My Commission Expires
December 03, 2024

ELECTRONICALLY FILED - 2018-11-08 21:35 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002888

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SPECIAL MULTI-PERIL POLICY

THE
USF&G
COMPANIES

United States Fidelity and Guaranty Company

Fidelity and Guaranty Insurance Underwriters, Inc.

The issuing company is designated on the declarations

COV-USF&G-00001

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IMPORTANT NOTICE

PLEASE READ YOUR POLICY CAREFULLY.

All insurance policies contain exclusions and/or limitations which may apply in certain situations. These should be read with care for a full understanding of the scope of your coverage.
This policy may also contain changes in coverage from that provided in a prior policy.
In order to thoroughly understand your current coverage reference must be made to this entire policy.

CONSULT YOUR AGENT FOR ANY ASSISTANCE YOU MAY REQUIRE.

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No. 525-1
Ala.-Fla.
Ga.-S. C.
(Edition 8-64)

LOST POLICY CANCELLATION RELEASE

Dated March 31, 19 78

IN CONSIDERATION OF $ 52531, receipt of which is hereby acknowledged, being the unearned portion of premium upon cancellation of Policy No. SMP 490049
of the FIDELITY & GUARANTY INSURANCE UNDERWRITERS, INC.
(NAME OF INSURANCE COMPANY)
issued at its Greenville, South Carolina Agency,
(CITY OR TOWN) (STATE)
and said policy having been lost or mislaid, it is hereby agreed by the Undersigned that said policy is hereby cancelled and terminated as of 12 o'clock noon (Standard Time) on the date hereof at the place where the property described in the said policy is located, and it is hereby agreed that no claim whatever will be made for any loss under said policy, and if found, said policy will be returned to this Company forthwith and without further compensation.

Signed COVIL CORPORATION, ETAL (INSURED) Signed (MORTGAGEE)

Signed (INSURED) Signed (MORTGAGEE)

RECEIVED MAY 1 1978 COLUMBIA, S. C.

SAM J. CRAIN & CO., INC. Agent.

NOTES TO AGENTS:

1. Send direct to Company.
2. The policy should not be admitted as lost without a thorough search.
3. This Release should be signed by ALL the parties named in the policy and, when a Mortgage Clause is attached, should be signed by ALL named Mortgagees.

RECEIVED APR 2 6 1978

No. 525-1 (8-64) (Ala.-Fla.-Ga.-S. C.)

No. 525-1 (8-64) (Ala.-Fla.-Ga.-S. C.)

COV-USF&G-00003

RP_001200

THE U. S. F. & G. COMPANIES

TO (HO Dept., BO or Gen Agent)	FROM (HO Dept., BO or C Agent)	
Columbia, S. C.	(Miss) Audrey G. Boykin, CPIW	
(Name) Ms. Linda Poole	(Name) Sam J. Crain & Co., Inc.	DATE 4/28/78

SUBJECT: Covil Corporation, etal
Pol. No.: SMP 490049

Dear Linda:

Attached hereto is Lost Policy Cancellation Release on the above captioned policy for flat cancellation as of the 3/31/78 anniversary date.

Please acknowledge receipt of same by return mail!

RECEIVED
MAY 1 1978
COLUMBIA, S. C.

Enc.

(Miss) Audrey G. Boykin, CPIW
Audrey

REPLY

DIARY DATE 5/12/78

NOTE: Forward only the white copy to Recipient IF no reply is required OR your message provides no space for reply.

COV-USF&G-00004

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...STATE... FIDELITY AND GUARANTY ...LIFE INSURANCE COMPANY

...Maryland 2101

FIDELITY AND GUARANTY COMPANY

[X] FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

USE BLOCKS AT RIGHT FOR REVISIONS OF REINSURANCE AFTER INCEPTION DATE	NET	NET
	DATE UND.	DATE UND.

CR 3A1 | CARDED BY ES | INSP. NO.

OTHER LINES SAME RISK OR ADJOINING (SEE MAP CARD) ☐ YES ☐ NO

No. SMP 490049 F&GIU

NEW / RENEWAL OF NUMBER

USE PROPER

Report 2-13A Naked

DESTROY

No. SMP 490049

1. Named Insured and P. O. Address

COVIL CORPORATION, ETAL (SEE GEN. 166)
P. O. Box 1804
Greenville, S. C. 29602

2. Policy Period 3-31-76 (Inception) 3-31-79 (Expiration)
12:01 A.M. Standard Time at location of described property
MAR 31 1976

3. The Named Insured is: ☐ Individual [X] Corporation ☐ Partnership

4. Location of Premises (Enter "Same" if same location as above)

1. See MLB-22
2.
3.

I certify this is a true copy.
Linda C. Poole

RECEIVED
MAR 26 1976
S. C.

Date JUL 10 1978
CANCELLATION
APPROVED

3/31/78

5. Insurance is provided with respect to those premises described above 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	COVERAGE			Coinsurance Percentage Applicable	LIMIT OF LIABILITY Loc. No.	Bldg. No.	Loc. No.	Bldg. No.	Loc. No.	Bldg. No.
I PROPERTY COVERAGE	DIVISION 1.		Cov. A — Building(s)		$ See MLB-22		$		$	
			Cov. B — Personal Property		$		$		$	
			Addl. Cov. (Specify)		$		$		$	
			Loss Deductible Clause No. 1 is ____ applicable.		Loss Deductible Clause No. 2 is ____ applicable.					
		2.	Addl. Cov. (Specify)		$		$		$	

SECTION	COVERAGE	LIMIT OF LIABILITY		
II LIABILITY COVERAGE	Cov. C — Bodily Injury and Property Damage Liability	$ See MLB-21 each occurrence.	$	aggregate
	Cov. D — Premises Medical Payments	$ 1,000 each person	$ 10,000	each accident
	Addl. Cov. (Specify)	$	$	$
III	CRIME COVERAGE ☐	Limits as stated in the endorsement, made part of this Policy, if indicated by ☒.		
IV	BOILER AND MACHINERY COVERAGE ☐			

6. Forms and Endorsements made part of this Policy at time of issue: (Insert No. and Edition Date) See Schedule of Applicable Forms per Gen. 170 Attached.

No. SMP 490049

7. Mortgagee: (NAME AND ADDRESS)

8. The Total Provisional Premium is $ 117,747, and is payable $ 39,289 at inception, and $ 39,229 at each anniversary.

Countersignature Date 3-31-76 Agency at Greenville, S. C.

SAM J. CRAIN CO., INC. Agent.

☐ SUBJECT TO AUDIT

UNDERWRITING COPY

COV-USF&G-00005

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TYPE AB

Named Insured Endorsement:

COVIL CORPORATION, & PALMER COVIL & G. & C. REALTY CO., INC., COVIL CONSTRUCTION CO., INC. & INDUSTRIAL ASSOCIATES, INC., A WHOLLY OWNED SUBSIDIARY OF COVIL CORPORATION.

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Splidt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

William J. Gra
President

Countersigned by.....
Authorized Representative

General 166 (8/73)

COV-USF&G-00006

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General

SMP GENERAL PROPERTY FORM
SECTION I — PROPERTY COVERAGE

I. PROPERTY COVERED

COVERAGE A — BUILDING(S): When the insurance under this policy covers buildings, such insurance shall also cover all additions and extensions attached thereto; all fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building; materials and supplies intended for use in construction, alteration or repair of the buildings; yard fixtures; personal property of the insured as landlord used for the maintenance or service of the described buildings, and including fire extinguishing apparatus, floor coverings, refrigerating, ventilating, cooking, dishwashing and laundering equipment, shades and outdoor furniture (but not including other personal property in apartments or rooms furnished by the insured as landlord); all while at the described locations.

★ **COVERAGE B — PERSONAL PROPERTY:** When the insurance under this policy covers personal property, such insurance shall cover only business personal property owned by the insured and usual to the occupancy of the insured, including bullion, manuscripts, furniture, fixtures, equipment and supplies, not otherwise covered under this policy, and shall also cover the insured's interest in personal property owned by others to the extent of the value of labor and materials expended thereon by the insured, all while in or on the described buildings, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

This coverage shall also include Tenant's Improvements and Betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the buildings 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 removal by the insured.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage B — Personal Property at such location, 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 only while on the described premises or within 100 feet thereof.

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.

The Coinsurance Clause of this form or the Value Reporting and Full Reporting Clauses of the Reporting Provisions of any other form made a part of this policy shall not apply to this coverage, and when applying said clauses to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is contributing insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL — COVERAGE A — BUILDING(S) OR COVERAGE B — PERSONAL PROPERTY: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril insured against. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

SAMPLE

II. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Animals and pets; aircraft; watercraft, including motors, equipment and accessories (except rowboats and canoes, while out of water and on the described premises); and automobiles, trailers, semi-trailers or any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured.
This exclusion does not apply to the following types of property when held for sale or sold but not delivered and specifically covered by endorsement:
   1. Animals and pets.
   2. Motorcycles and motor-scooters.
   3. Trailers designed for use with private passenger vehicles for general utility purposes or carrying boats.
   4. Watercraft, including motors, equipment and accessories, while not afloat.

B. Outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls not constituting a part of building; walks, roadways and other paved surfaces; unless such items are specifically covered by endorsement.

C. The cost of excavations, grading or filling; foundations of buildings, machinery, boilers or engines which foundations are below the undersurface of the lowest basement floor, or where there is no basement, below the surface of the ground; pilings, piers, pipes, flues and drains which are underground; pilings which are below the low water mark.

D. Outdoor signs, whether or not attached to a building unless specifically covered by endorsement.

E. 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 or unless specifically covered by endorsement.

F. Growing crops and lawns. ★

G. Trees, shrubs and plants, except when held for sale or sold but not delivered, or to the extent provided in the Extensions of Coverage.

H. Property which is more specifically covered in whole or in part under this or any other contract of insurance.

III. PERILS INSURED AGAINST

This policy insures under Section I against all direct loss to the property covered under this form caused by the following perils, except as otherwise specifically provided:

A. Fire.

B. Lightning.

C. Windstorm and Hail:
   1. The Company shall not be liable as respects these perils for loss caused directly or indirectly by frost or cold weather or ice (other than hail), snow or sleet, whether driven by wind or not.
   2. The Company shall not be liable as respects these perils for loss to the interior of the buildings or the property covered therein caused
      a. by rain, snow, sand or dust, whether driven by wind or not, unless the buildings covered or containing the property covered shall first sustain an actual damage to roof or walls by the direct action of wind or hail and then shall be liable for loss to the interior of the buildings or the property covered therein as may be caused by rain, snow, sand or dust entering the buildings through openings in the roof or walls by direct action of wind or hail; or
      b. by water from sprinkler equipment or other piping, unless

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such equipment or piping be damaged as a direct result of wind or hail.

3. Unless specifically covered by endorsement, the Company shall not be liable as respects these perils for damage to the following property:
   a. grain, hay, straw or other crops outside of buildings;
   b. windmills, windpumps or their towers;
   c. crop silos or their contents;
   d. metal smokestacks or, when outside of buildings, awnings or canopies (fabric or slat) including their supports; ★
   e. outdoor radio or television antennas including their lead-in wiring, masts or towers;
   f. trees, shrubs and plants.

D. **Explosion:** Loss by explosion shall include 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. The Company shall not be liable for loss by explosion of steam boilers, steam pipes, steam turbines or steam engines, if owned by, leased by or operated under the control of the Insured. The following are not explosions within the intent or meaning of these provisions:
   1. Shock waves caused by aircraft, generally known as "sonic boom"
   2. Electric arcing.
   3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown.
   4. Water hammer.
   5. Rupture or bursting of water pipes.
   6. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
   7. Rupture, bursting or operation of pressure relief devices.

E. **Sudden and Accidental Damage from Smoke,** other than smoke from agricultural smudging or industrial operations.

F. **Vehicles or Aircraft:** Loss by aircraft or by vehicles shall mean only ★ direct loss resulting from actual physical contact of an aircraft, including self-propelled missiles or spacecraft, or a vehicle with the property covered hereunder or with the buildings containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom.
   The Company shall not be liable as respects this peril for loss
   1. by any vehicle owned or operated by the Insured or by any occupant of the described premises; or
   2. to any aircraft or vehicle, including contents thereof, other than stocks of aircraft or vehicles in process of manufacture or for sale.

G. **Riot, Riot Attending a Strike and Civil Commotion:** Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the described buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion.
   The Company shall not be liable as respects this peril for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

IV. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the limit of liability specified for the coverages being extended.

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 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:**
   1. The Insured may apply up to 10%, but not exceeding $25,000, of the limit of liability specified for Coverage A — Building(s) to cover direct loss in any one occurrence by a peril insured against to the following described property:
      a. New additions, new buildings and new structures when constructed on the described premises and intended for similar occupancy. 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.
      b. Buildings acquired by the insured at any location, elsewhere than at the described premises, within the territorial limits of this policy and used by him 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.
   2. The Insured may apply up to 10%, but not exceeding $10,000, of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against to such property at any location (except fairs and exhibitions) acquired by the Insured, elsewhere than at the described 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 construction begins or the property is acquired.

B. **Off-Premises:** The Insured may apply up to 2%, but not exceeding $5,000, of the sum of the limits of liability specified for Coverage A — Building(s) and Coverage B — Personal Property at a described location to cover direct loss in any one occurrence by a peril insured against to such property (other than merchandise or stock) while removed from such location 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. **Personal Effects:** The Insured may apply up to $500 of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against to personal effects while located on the described 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.

D. **Valuable Papers and Records:** The Insured may apply up to $500 of the limit of liability specified for Coverage B — Personal Property to cover direct loss in any one occurrence by a peril insured against under Coverage B — Personal Property of this form to valuable papers and records consisting of 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 described locations. 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 described locations.

E. **Trees, Shrubs and Plants:** The Insured may apply up to $1,000 of the sum of the limits of liability specified for Coverage A — Building(s)

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and Coverage B — Personal Property to cover trees, shrubs and plants at the described location 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.

F. **Extra Expense:** The insured may apply up to $1,000 of the sum of the limits of liability specified for Coverage A — Building(s) and Coverage B — Personal Property to cover the necessary extra expense incurred by the insured in order to continue as nearly as practicable the normal operation of the insured's business immediately following damage by a peril insured against to the buildings or personal property situated at the described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation 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 thereof 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 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 insured against, 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 cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

G. **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 carpeting, cloth awnings, air-conditioners, domestic appliances and out-door equipment, all whether permanently attached to the building structure or not.

The Company shall not be liable under this Extension of Coverage:

1. unless and until the damaged property is actually repaired or replaced on the same premises with due diligence and dispatch, and, in no event, unless repair or replacement is completed within a reasonable time after such loss.
2. 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 this policy) by the actual cash value of such property at the time of the loss.

V. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:
   1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures, unless such liability is otherwise specifically assumed by endorsement;
   2. electrical currents artificially generated unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by a peril insured against. The Company shall not be liable for any loss specifically excluded under the riot provisions of this form.

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;
   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 loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

VI. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder 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 actual cash value of such property at the time of the 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 and appraisement of the undamaged property shall be required, provided 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.

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 when applying the Coinsurance Clause.

VII. DEDUCTIBLE CLAUSES

A. The following Deductible Clauses are applicable only if so stated in the Declarations:
   1. **Loss Deductible Clause No. 1:** With respect to loss by windstorm or hail to buildings, structures or personal property in the open, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.
   2. **Loss Deductible Clause No. 2:** With respect to loss by any of the perils insured against other than:
      a. fire or lightning,
      b. windstorm or hail to buildings, structures or personal property in the open,

      the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.

B. No more than one deductible shall apply to loss by windstorm or hail arising out of any one occurrence.

VIII. VALUATION

Subject to the provisions and stipulations of this policy, the following bases for valuation of property are established:

★ **A. Tenant's Improvements and Betterments:**

1. If repaired or replaced at the expense of the 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 insured, there shall be no liability hereunder.

B. 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.

C. 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.

D. All other property at actual cash value.

IX. CONDITIONS

A. Permits and Use: Except as otherwise provided herein, permission is hereby granted:

1. to make alterations and repairs;
2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
3. 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 hereunder 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.

B. Loss Clause: Any loss hereunder shall not reduce the amount of this policy.

C. Mortgage Clause: Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee) in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation 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 (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void. The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

Whenever the Company shall pay the mortgagee (or trustee) 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 party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) 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; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

SAMPLE

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RP_001209

Section I
Property Coverage

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SUPPLEMENTAL DECLARATIONS ENDORSEMENT

Form MLB-22 (Ed. 10-66)

Location of premises, as stated in the Declarations, is extended to include the following and insurance is provided with respect to those premises described below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all the terms of this policy including forms and endorsements made a part hereof:

Div. No.	Loc. No.	Bldg. No.	LOCATION OF PREMISES (Address, City, State)	OCCUPANCY	SECTION I			
					COVERAGE	Forms and Endorsements Applicable	Coinsurance Percentage Applicable	Limits of Liability ($)
	1	1	131 Pinsley Circle Greenville, S. C.	Main Office & Warehouse	A	MLB-101 M	80%	375,000
					B	MLB-100		
						MLB-121	80%	650,000
						MLB-109	80%	75,000
	2	1	523 Rear Sulphur Springs Rd. Greenville, S. C.	Sheet Metal Shop & Office	A	MLB-101	80%	100,000
					B	MLB-100		
						MLB-121	80%	100,000
						MLB-109	80%	3,000
	2	2	523 B Rear Sulphur Springs Rd. Greenville, S. C.	Builders Risk	A	MLB-102	80%	40,000
	3	1	1911 Sullivan St. Greensboro, N. C.	Office & Warehouse	B	MLB-100		
						MLB-121	80%	50,000
						MLB-109	80%	4,000
	3	2	1911 Rear Sullivan St Greensboro, N. C.	Warehouse	B	MLB-100		
						MLB-121	80%	125,000
					Sprinkler Leakage	MLB-122	90%	52,000
	4	1	Main Street Black Creek, N. C.	Office & Warehouse	A	MLB-101	80%	20,000
					B	MLB-100		
						MLB-121	80%	125,000
						MLB-109	80%	4,000
	5	1	721 Roosevelt Avenue Albany, Georgia	Office & Warehouse	B	MLB-100		
						MLB-121	80%	100,000
						MLB-109	80%	4,000

Form MLB-22 (Ed. 10-66)

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SUPPLEMENTAL DECLARATIONS ENDORSEMENT

Form MLB-22 (Ed. 10-66)

Location of premises, as stated in the Declarations, is extended to include the following and insurance is provided with respect to those premises described below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all the terms of this policy including forms and endorsements made a part hereof:

Div. No.	Loc. No.	Bldg. No.	LOCATION OF PREMISES (Address, City, State)	OCCUPANCY	SECTION I			
					COVERAGE	Forms and Endorsements Applicable	Coinsurance Percentage Applicable	Limits of Liability ($)
	6	1	9th St. at Market St. Augusta, Georgia	Bonded Warehouse	B	MLB-100 MLB-121	80%	100,000
	7	1	423 Margaret St. Jacksonville, Fla.	Office & Warehouse	B	MLB-100 MLB-121	80%	40,000
						MLB-109	80%	3,000
	8	1	3211 8th Ave. North Birmingham, Alabama	Office & Warehouse	B	MLB-100 MLB-121	80%	75,000
						MLB-109	80%	10,000
	9	1	1510 East Adams St. Jacksonville, Fla.	Office & Warehouse	80%	MLB-100 MLB-121	80%	175,000
						MLB-109	80%	10,000

Form MLB-22 (Ed. 10-66)

COV-USF&G-00014

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SCHEDULE OF FORMS AND APPLICABLE ENDORSEMENTS:

- ✓ MLB-21(1-73)
- ✓ MLB-22(10-66)
- ✓ MLB-66(11-69)
- ✓ MLB-100(2-71)
- ✓ MLB-101(5-69)
- ✓ MLB-102(2-71)
- ✓ MLB-109(2-71)
- ✓ MLB-121(3-71)
- ✓ MLB-122(5-69)
- ✓ MLB-156(1-71)
- ✓ MLB-16(11-69)
- ✓ MLB-200(1-73)
- ✓ MLB-202(1-73)
- ✓ MLB-300(1-71)
- ✓ MLB-400(1-71)
- ✓ MLB-401(1-71)
- ✓ MLB-402(1-71)
- ✓ CAS.205(4-74)
- ✓ MARINE-319(11-71)
- ✓ GEN.166(8-73)
- ✓ GEN.170(3-70)
- ✓ FIRE-263(12-71)
- ✓ CAS.71(3-72)

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Splidt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

Williford Gragg
President

Countersigned by.....
Authorized Representative

General 170 (3-70)

COV-USF&G-00015

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SOUTH CAROLINA AMENDATORY ENDORSEMENT

Form MLB-66 (Ed. 11-69)

I. Subject to all the provisions and stipulations otherwise applicable to Section I, this policy is amended as follows:

A. With respect to Coverage A—Building(s), as provided under Forms MLB-100, MLB-101, MLB-104, or MLB-105, insurance under this policy is effected subject to the following agreements and provisions and supersedes and replaces any Valuation Clause in the policy of which this form is made a part:

Valuation Clause: Insofar as insurance against the perils of fire and lightning are concerned, the insured and the insurer hereby agree that the value of buildings described herein is—and hereby fix the amount of insurance to be carried thereon (including this policy)—respectively, as follows:

AGREED VALUE OF BUILDINGS

Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No. SEE MLB-22		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	

B. With respect to Coverage A—Building(s), as provided under Forms MLB-102 or MLB-103 insurance under this policy is effected subject to the following agreements and provisions and supersedes and replaces any Valuation Clause in the policy of which this form is made a part:
Valuation Clause: Insofar as insurance against the perils of fire and lightning are concerned, the insured and the insurer hereby agree that the value of buildings described herein, when completed, is—and hereby fix the amount of insurance to be carried thereon (including this policy)—respectively, as follows:

AGREED VALUE OF BUILDINGS

Loc. No. 2 Bldg. No. 2 $ 40,000		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	
Loc. No.____ Bldg. No.____ $____		Loc. No.____ Bldg. No.____ $____	

C. The Special Loss Deductible Clause in Form MLB-101, as made a part of this policy, is superseded and replaced by the following Special Loss Deductible Clause:

Special Loss Deductible Clause: With respect to loss by any of the perils of explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, and vandalism and malicious mischief, as insured against under this form, the Company shall be liable only when such loss exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible provision shall not apply.

With respect to loss by any of the perils insured against under this form other than fire, lightning, explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, windstorm or hail, and vandalism and malicious mischief, the Company shall be liable only when such loss in each occurrence exceeds $100. When loss is between $100 and $500, the Company shall be liable for 125% of loss in excess of $100; and when loss is $500 or more, this deductible provision shall not apply.

D. The Deductible Clause provisions of Form MLB-102, as made a part of this policy, are amended to include the following additional Loss Deductible Clause:

Loss Deductible Clause No. 2: With respect to loss by any of the perils insured against other than:

a. fire or lightning,
b. windstorm or hail to buildings, structures or personal property in the open,

the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible provision shall not apply.

E. The Special Loss Deductible Clause in Form MLB-103, as made a part of this policy, is superseded and replaced by the following Special Loss Deductible Clause:

Special Loss Deductible Clause: With respect to loss by any of the perils of explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, and vandalism and malicious mischief, as insured against under this form, the Company shall be liable only when such loss exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this deductible provision shall not apply.

The sum of $500 shall be deducted from the amount of loss in any one occurrence resulting from any peril other than fire, lightning, explosion, smoke, vehicles, aircraft, riot, riot attending a strike, and civil commotion, windstorm or hail, and vandalism and malicious mischief. This deductible shall apply separately to each building or structure (including its personal property) and separately to personal property in the open.

F. The following Clause is added to the Deductible Clause provisions in Forms MLB-107, MLB-108 or MLB-109, and Endorsements MLB-172 or MLB-173, as made a part of this policy:

With respect to loss caused by the perils of aircraft, explosion, riot, civil commotion, smoke, vehicles, or wind storm or hail to property contained in any building, as insured against under this form, the Company shall be liabl only when such loss exceeds $50.

G. The provision relating to Loss Deductible Clause No. 2 in Vandalism and Malicious Mischief Endorsement, Fo MLB-121, as made a part of this policy, is superseded and replaced by the following provision:

Loss Deductible Clause No. 2 applies to the coverage afforded by this endorsement.

H. The Loss Clause in Forms MLB-100, MLB-101, MLB-102, MLB-103, MLB-104, MLB-105, MLB-107, MLB-108 and MLB-109, as made a part of this policy, is deleted and the following condition is added:

Unearned Premium Clause: If a loss is paid under this policy, the named insured, shall be indemnified for loss of the pro rata unearned premium on the amount of such loss payment; however, this Company may elect by written notice within 60 days after time of loss to reinstate this policy in the amount of such loss and, in consideration of such reinstatement, make no payment to the named insured as otherwise provided by this clause.

II. Subject to all the provisions and stipulations otherwise applicable to Section II, the Alcoholic Beverage Exclusion is amended to read as follows:

It is agreed that that part of the alcoholic beverage exclusion which relates to the selling, serving or giving of any alcoholic beverage (a) to a person under the influence of alcohol or (b) which causes or contributes to the intoxication of any person, is deleted.

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SMP SPECIAL BUILDING FORM

Form MLB-101
(Ed. 5-69)

SECTION I — PROPERTY COVERAGE

With respect to SECTION I — PROPERTY COVERAGE, this form cancels and replaces any coverage on buildings provided under any other form made a part of the policy, but only with respect to those buildings to which this form is shown to be applicable.

I. INSURING AGREEMENT

This policy insures against all risks of direct physical loss to Coverage A–Building(s), subject to the provisions and stipulations herein and in the policy of which this form is made a part.

II. PROPERTY COVERED

COVERAGE A — BUILDING(S): When the insurance under this policy covers buildings, such insurance shall also cover all additions and extensions attached thereto; all fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building; materials and supplies intended for use in construction, alteration or repair of the buildings; yard fixtures; personal property of the insured as landlord used for the maintenance or service of the described buildings, and including fire extinguishing apparatus, floor coverings, refrigerating, ventilating, cooking, dishwashing, and laundering equipment, shades and outdoor furniture (but not including other personal property in apartments or rooms furnished by the insured as landlord); all while at the described locations.

DEBRIS REMOVAL: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril not otherwise excluded. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

III. PROPERTY SUBJECT TO LIMITATIONS

The following property is subject to these additional limitations:

A. Plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) are not covered against loss caused by or resulting from freezing while the described buildings are vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy.

B. Steam boilers, steam pipes, steam turbines or steam engines are not covered against loss caused by any condition or occurrence within such boilers, pipes, turbines or engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber, of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom).

C. Hot water boilers or other equipment for heating water are not covered against loss caused by any condition or occurrence within such boilers or equipment, other than an explosion.

D. Glass is not covered against loss for more than $50 per plate, pane, multiple plate, insulating unit, radiant heating panel, jalousie, louver or shutter, nor for more than $250 in any one occurrence, unless caused by fire, lightning, windstorm, hail, aircraft, vehicles, discharge from fire protection or building service equipment, explosion, riot or civil commotion, and then the Company shall be liable only to the extent that such perils are insured against in this policy.

E. Fences, pavements, outdoor swimming pools and related equipment, retaining walls, bulkheads, piers, wharves or docks, when covered under this policy, are not covered against loss caused by freezing or thawing, impact of watercraft, or by the pressure or weight of ice or water whether driven by wind or not.

F. Metal smokestacks and, when outside of buildings, cloth awnings, 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 unless liability therefor is specifically assumed by endorsement.

G. The interior of buildings is not covered against loss caused by rain, snow, sand or dust, whether driven by wind or not, unless (1) the buildings shall first sustain an actual damage to roof or walls by the direct action of wind or hail, and then the Company shall be liable for loss to the interior of the buildings as may be caused by rain, snow, sand or dust entering the buildings through openings in the roof or walls made by direct action of wind or hail; or (2) such loss results from fire, lightning, aircraft, vehicles, explosion, riot or civil commotion, vandalism or malicious mischief, to the extent that such perils are insured against in this policy.

H. Buildings or structures in process of construction, including materials and supplies therefor, when covered under this policy, are not covered against loss unless caused by fire, lightning, windstorm, hail, aircraft, vehicles, smoke, explosion, riot or civil commotion, vandalism or malicious mischief, and then the Company shall be liable only to the extent that such perils are insured against in this policy.

I. Property undergoing alterations, repairs, installations or servicing, including materials and supplies therefor, is not covered against loss if directly attributable to the operations or work being performed thereon, unless loss by a peril not excluded in this policy ensues, and then the Company shall be liable for only such ensuing loss.

IV. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls not constituting a part of a building; walks, roadways and other paved surfaces; unless such items are specifically covered by endorsement.

B. The cost of excavations, grading or filling; foundations of buildings, machinery, boilers or engines which foundations are below the undersurface of the lowest basement floor, or where there is no basement, below the surface of the ground; pilings, piers, pipes, flues and drains which are underground; pilings which are below the low water mark.

C. Outdoor signs, whether or not attached to a building, unless specifically covered by endorsement.

D. Growing crops and lawns.

E. Trees, shrubs and plants, except as provided in the Extensions of Coverage.

F. Property which is more specifically insured in whole or in part under this or any other contract of insurance.

SAMPLE

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V. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the limit of liability specified for the coverages being extended.

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 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 10%, but not exceeding $25,000, of the limit of liability specified for Coverage A—Building(s) to cover direct loss in any one occurrence by a peril not otherwise excluded to the following described property:

1. New additions, new buildings and new structures when constructed on the described premises and intended for similar occupancy. 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 described premises, within the territorial limits of this policy and used by him 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 location is acquired.

B. Off-Premises: The insured may apply up to 2%, but not exceeding $5,000, of the limits of liability specified for Coverage A—Building(s) at a described location to cover direct loss in any one occurrence by a peril not otherwise excluded to such building property while removed from such location 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. Trees, Shrubs and Plants: The insured may apply up to $1,000 of the limit of liability specified for Coverage A—Building(s) to cover trees, shrubs and plants at the described location 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. Extra Expense: The insured may apply up to $1,000 of the limit of liability specified for Coverage A—Building(s) 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 described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation 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 or research or other expense necessary to replace or restore damaged 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 cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

E. Replacement Cost Coverage: 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, 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 carpeting, cloth awnings, air conditioners, domestic appliances and outdoor equipment, all whether permanently attached to the building structure or not.

The Company shall not be liable under this Extension of Coverage:

1. unless and until the damaged property is actually repaired or replaced on the same premises with due diligence and dispatch, and, in no event, unless repair or replacement is completed within a reasonable time after such loss.
2. 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 coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

VI. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:

1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement;
2. electrical currents artificially generated unless loss by fire or explosion not otherwise excluded as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by perils not otherwise excluded. Also, the Company shall not be liable under this clause for any loss resulting from riot, riot attending a strike, civil commotion, or vandalism and malicious mischief.

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;
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 loss by fire or explosion not otherwise excluded ensues, and then the Company shall be liable for only such ensuing loss.

EXEMPLAR

D. Loss caused by:

1. 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.
2. 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.
3. vandalism, malicious mischief, theft or attempted theft, if the described 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.
4. 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.
5. theft (including but not limited to burglary and robbery) of any property which at the time of loss is not an integral 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.
6. unexplained or mysterious disappearance of any property, or shortage as disclosed on taking inventory, or caused by any wilful or dishonest act or omission of the insured or any associate, employee or agent of any insured.

VII. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder 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 actual cash value of such property at the time of the 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 and appraisement of the undamaged property shall be required, provided 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.

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 when applying the Coinsurance Clause.

VIII. DEDUCTIBLE CLAUSES

A. **Loss Deductible Clause No. 1** — Applicable only if so stated in the Declarations: With respect to loss by windstorm or hail, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 111% of loss in excess of $50; and when loss is $500 or more, this loss deductible clause shall not apply.

B. **Special Loss Deductible Clause** — With respect to loss by any of the perils insured against under this form other than fire, lightning, aircraft, vehicles, smoke, explosion, riot or civil commotion, windstorm or hail, the Company shall be liable only when such loss in each occurrence exceeds $100. When loss is between $100 and $500, the Company shall be liable for 125% of loss in excess of $100; and when loss is $500 or more, this loss deductible clause shall not apply.

IX. CONDITIONS

A. **Permits and Use:** Except as otherwise provided herein, permission is hereby granted:
   1. to make alterations and repairs;
   2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
   3. 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 not otherwise excluded 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.

B. **Loss Clause:** Any loss hereunder shall not reduce the amount of this policy.

C. **Mortgage Clause:** Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee (or trustee) in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation 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 (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void. The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

Whenever the Company shall pay the mortgagee (or trustee) 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 party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) 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; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

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SPECIMEN

SMP BUILDERS' RISK COMPLETED VALUE FORM
SECTION I — PROPERTY COVERAGE

With respect to SECTION I — PROPERTY COVERAGE, this form cancels and replaces any coverage provided under any other forms or endorsements made a part of the policy, but only with respect to the property to which this form is shown to be applicable.

I. PROPERTY COVERED ★

COVERAGE A — BUILDING(S): This policy covers the building or structure at the described location while in the course of construction, including all additions directly attached thereto and all fixtures, machinery and equipment constituting a permanent part of said building.

This policy also covers temporary structures, materials and supplies of all kinds owned by the named insured and incident to the construction of said building or structure; all while in or on the described buildings, structures or temporary structures, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage A — Building(s) at such location, 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 materials and supplies similar to that covered by this policy, belonging to others while in the care, custody or control of the named insured and only while on the described premises or within 100 feet thereof.

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.

The Provisional Limit of Liability Condition of this form shall not apply to this coverage, and when applying said clause to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril insured against. The total amount recoverable for both loss to property and debris removal expense shall not exceed the actual limit of liability applying at the time of loss to the item of insurance involved in the application of this clause.

II. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, property which is more specifically covered in whole or in part under this or any other contract of insurance is also excluded from coverage under this form.

III. PERILS INSURED AGAINST

This policy insures under Section I against direct loss to the property covered under this form caused by the following perils, except as otherwise specifically provided:

A. Fire.

B. Lightning.

C. Windstorm and Hail:

1. The Company shall not be liable as respects these perils for loss caused directly by or indirectly by frost or cold weather or ice (other than hail), snow or sleet whether driven by wind or not.
2. The Company shall not be liable as respects these perils for loss to the interior of the buildings or the property covered therein caused
   a. by rain, snow, sand or dust whether driven by wind or not, unless the buildings covered or containing the property covered shall first sustain an actual damage to the roof or walls by the direct action of wind or hail and then shall be liable for loss to the interior of the buildings or the property covered therein 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
   b. by water from sprinkler equipment or other piping, unless such equipment or piping be damaged as a direct result of wind or hail.
3. Unless specifically covered by endorsement, the Company shall not be liable as respects these perils for damage to the following property:
   a. grain, hay, straw or other crops outside of buildings or structures;
   b. windmills, windpumps or their towers;
   c. crop silos or their contents;
   ★ d. metal smokestacks or, when outside of buildings, awnings or canopies (fabric or slat) including their supports;
   e. radio or television antennas including their lead-in wiring, masts or towers;
   f. trees, shrubs or plants.

D. Explosion: Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the fire box (or the combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. The Company shall not be liable for loss by explosion of steam boilers, steam pipes, steam turbines or steam engines if owned by, leased by or operated under the control of the insured. The following are not explosions within the intent or meaning of these provisions:

1. Shock waves caused by aircraft, generally known as 'sonic boom'.
2. Electrical arcing.
3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal or mechanical breakdown.
4. Water hammer.
5. Rupture or bursting of water pipes.
6. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
7. Rupture, bursting or operation of pressure relief devices.

E. Sudden and Accidental Damage from Smoke, other than smoke from agricultural smudging or industrial operations.

F. Aircraft or Vehicles: Loss by aircraft or by vehicles shall mean only direct loss resulting from actual physical contact of an aircraft, including self-propelled missiles or spacecraft, or a vehicle ★ with the property covered hereunder or with the buildings containing the property covered hereunder, except that loss by aircraft includes direct loss by objects falling therefrom. The Company shall not be liable as respects this peril for loss:

1. by any vehicle owned or operated by the insured or by any occupant of the described premises;
2. to any aircraft or vehicle including contents thereof, other than stocks of aircraft or vehicles in process of manufacture or for sale.

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G. Riot, Riot Attending a Strike and Civil Commotion: Loss by riot, riot attending a strike or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the described buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike or civil commotion.

The Company shall not be liable as respects this peril for loss resulting from damage to or destruction of the described property owing to change in temperature or humidity or interruption of operations, whether or not such loss is covered by this policy as to other perils.

IV. EXCLUSIONS

This policy does not insure under this form against:

A. Loss occasioned directly or indirectly by:

1. enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement;
2. electrical currents artificially generated unless loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

B. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by a peril insured against. The Company shall not be liable for any loss specifically excluded under the riot provisions of this form.

C. Loss caused by, resulting from, contributed to or aggravated by any of the following:

1. earth movement, including but not limited to earthquake, volcanic eruption, 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;
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 loss by fire or explosion as insured against hereunder ensues, and then the Company shall be liable for only such ensuing loss.

V. DEDUCTIBLE CLAUSE

Loss Deductible Clause No. 1 — Applicable only if so stated in the Declarations: With respect to loss by windstorm or hail, to buildings, structures or personal property in the open, the Company shall be liable only when such loss in each occurrence exceeds $50. When loss is between $50 and $500, the Company shall be liable for 11⅐% of loss in excess of $50; and when loss is $500 or more, this deductible shall not apply.

VI. OCCUPANCY CLAUSE

It is made a condition of this policy that the buildings, additions or structures in the course of construction shall not be occupied without obtaining the consent of the Company endorsed hereon with proper rate adjustment, except that machinery may be set up and operated solely for the purpose of testing the same without prejudice to this policy.

VII. CONDITIONS

A. Provisional Limit of Liability: The limit of liability applicable to property under this form is provisional. It is a condition of this insurance, wherein the rate and premium are based on an average amount of liability during the period of construction, that at any date while this policy is in force, the actual limit of liability under this form is that proportion of the provisional limit of liability that the actual value of the described property on that date bears to the value at the date of completion, but shall not in any case exceed the provisional limit of liability, and:

In consideration of the reduced rate at which this policy is written, it is a condition of this insurance that in the event of loss, the Company shall be liable for no greater proportion thereof than the provisional limit of liability under this form bears to the value of the described property at date of completion.

If this form applies to two or more items, the foregoing shall apply separately to each such item.

B. Permits and Use: Except as otherwise provided herein, permission is hereby granted 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 hereunder 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.

C. Loss Clause: Any loss hereunder shall not reduce the amount of this policy.

D. Mortgage Clause: Applicable to buildings only (this entire clause is void unless name of mortgagee (or trustee) is inserted in the Declarations): Loss, if any, under this policy, shall be payable to the mortgagee (or trustee), named on the first page of this policy, as interest may appear under all present or future mortgages upon the property herein described in which the aforesaid may have an interest as mortgagee, (or trustee), in order of precedence of said mortgages, and this insurance as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation 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 (or trustee) shall, on demand, pay the same. Provided also, that the mortgagee (or trustee) shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof, otherwise this policy shall be null and void.

The Company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Company shall have the right, on like notice, to cancel this agreement.

Whenever the Company shall pay the mortgagee (or trustee) 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 party to whom such payment shall be made under all securities held as collateral to the mortgage debt or may at its option pay to the mortgagee (or trustee) 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; but no subrogation shall impair the rights of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

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COINSURANCE CONTRACT

SMP SPECIAL OFFICE PERSONAL PROPERTY FORM

Form MLB-109 (Ed. 2-71)

SECTION I — PROPERTY COVERAGE

With respect to SECTION I — PROPERTY COVERAGE, this form cancels and replaces any coverage on personal property provided under any other form made a part of this policy, but only with respect to personal property to which this form is shown to be applicable.

I. INSURING AGREEMENT

This policy insures against all risks of direct physical loss to Coverage B — Personal Property, subject to the provisions and stipulations herein and in the policy of which this form is made a part.

II. PROPERTY COVERED ★

COVERAGE B — PERSONAL PROPERTY: This policy covers business personal property owned by the insured and usual to the office occupancy of the insured, including manuscripts, furniture, fixtures, equipment and supplies not otherwise covered under this policy, and shall also cover the insured's interest in personal property owned by others to the extent of the value of labor and materials expended thereon by the insured; all while in or on the described building, or in the open (including within vehicles) on the described premises or within 100 feet thereof.

This coverage shall also include Tenant's Improvements and Betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the buildings 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 removal by the insured.

PERSONAL PROPERTY OF OTHERS: The insured may apply at each location up to 2%, but not exceeding $2,000, of the limit of liability specified for Coverage B — Personal Property at such location, 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 not otherwise excluded 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 only while on the described premises or within 100 feet thereof.

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.

The Coinsurance Clause of this form or any other form made a part of this policy shall not apply to this coverage, and when applying said clause to insurance covering property owned by the insured, the value of personal property of others shall not be considered in the determination of actual cash value.

When there is Contributing Insurance, the Company shall not be liable for more than its pro rata share of the limit applying to personal property of others.

DEBRIS REMOVAL: This policy covers expense incurred in the removal of debris of the property covered hereunder which may be occasioned by loss by a peril not otherwise excluded. The total amount recoverable under this policy shall not exceed the limit of liability stipulated for each item. Cost of removal of debris shall not be considered in the determination of actual cash value when applying the Coinsurance Clause.

III. PROPERTY SUBJECT TO LIMITATIONS

The following property is subject to these additional limitations:

A. 1. 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.

2. 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).

3. 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.

B. The term "specified perils" sall 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.

IV. PROPERTY NOT COVERED

In addition to the kinds of property which are otherwise excluded or limited under this policy, the following are also excluded from coverage under this form:

A. Live animals, birds and fish; aircraft; watercraft, including motors, equipment and accessories (except rowboats and canoes, while out of water and on the described premises); and automobiles, trailers, semi-trailers or any self-propelled vehicles or machines, except motorized equipment not licensed for use on public thoroughfares and operated principally on the premises of the insured.

B. Property for sale; samples or merchandise in the care, custody or control of salesmen away from the premises.

C. Currency, money and stamps, except to the extent provided in the Extensions of Coverage; notes, securities, deeds, accounts, bills, evidences of debt, letters of credit and tickets.

D. Outdoor signs, whether or not attached to a building, unless specifically covered by endorsement.

E. 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 or unless specifically covered by endorsement.

F. Growing crops and lawns. ★

G. Fur, fur garments, jewelry and watches, watch movements, jewels, pearls, precious and semi-precious stones, gold, silver, platinum and other precious alloys or metals.

H. Trees, shrubs and plants, except to the extent provided in the Extensions of Coverage.

I. Property shipped by mail from the time it passes into the custody of the Post Office Department.

J. Property which is more specifically covered in whole or in part under this or any other contract of insurance.

V. EXTENSIONS OF COVERAGE

The liability of the Company for loss in any one occurrence, including loss under these Extensions of Coverage, shall not exceed the amount of insurance applicable to Personal Property. 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 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.

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A. **Newly Acquired Property:** The insured may apply up to 10%, but not exceeding $10,000, of the limit of liability specified for Coverage B — Personal Property 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 mercantile or warehouse purposes, elsewhere than at the described locations 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 of the amount of insurance applicable to Coverage B — Personal Property to cover direct loss in any one occurrence by the perils not otherwise excluded to personal effects while located on the described 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 of the amount of insurance applicable to Coverage B — Personal Property to cover direct loss in any one occurrence by a peril not otherwise excluded to valuable papers and records consisting of 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 described locations. 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 described locations.

D. **Extra Expense:** The insured may apply up to $1,000 of the amount of insurance applicable to Coverage B — Personal Property 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 described locations.

"Extra expense" means the excess of the total cost incurred during the period of restoration chargeable to the operation 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 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 cost exceed the amount by which the total extra expense otherwise payable under this Extension of Coverage is reduced.
3. any other consequential or remote loss.

E. **Theft Damage to Buildings:** This policy includes loss (except by fire or explosion) to that part of the buildings occupied by the insured and containing property covered, and to equipment therein pertaining to the service of the building, (but not building property or equipment removed from premises), directly resulting from theft, burglary or robbery (including attempt thereat), provided the insured is the owner of such building or equipment or is liable for such damage, but in no event shall this coverage apply to glass (other than glass building blocks) or to any lettering or ornamentation thereon.

F. **Off Premises:** The insured may apply up to 10%, but not exceeding $10,000 of the amount of insurance applicable to Personal Property, to cover direct loss in any one occurrence by a peril not otherwise excluded to such property while away from the premises (not exceeding 30 consecutive days), but within the 50 states of the United States of America, the District of Columbia and in transit within and between such places, and in transit between such places and the Dominion of Canada.

G. **Currency, Money and Stamps:** The insured may apply up to $250 of the amount of insurance applicable to Personal Property to cover direct loss in any one occurrence by a peril not otherwise excluded to currency, money and stamps, while on the premises or while being conveyed outside the premises by the insured or by an employee of the insured.

H. **Trees, Shrubs and Plants:** The insured may apply up to $1,000 of the amount of insurance applicable to Personal Property to cover trees, shrubs and plants at the described location 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.

VI. EXCLUSIONS

A. **This policy does not insure under this form against loss caused by:**

1. Enforcement of any local or state ordinance or law regulating the construction, repair, or demolition of buildings or structures unless such liability is otherwise specifically assumed by endorsement hereon.
2. Unexplained or mysterious disappearance of property (except property in the custody of carriers for hire); or shortage of property disclosed on taking inventory.
3. Actual work upon or installation of property covered, latent defect, failure, breakdown or derangement of machines or machinery, faulty materials or workmanship; unless loss by fire or explosion not otherwise excluded ensues and then the Company shall be liable for only such ensuing loss.
4. Electrical currents artificially generated unless loss by fire or explosion not otherwise excluded ensues, and then the Company shall be liable for only such ensuing loss.
5. 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.
6. Delay, loss of market, interruption of business, nor consequential loss of any nature.
7. Inherent vice, wear and tear, marring or scratching, gradual deterioration, insects, vermin, dampness or dryness of atmosphere, changes in temperature, rust or corrosion.
8. Theft (including attempt thereat) from any vehicle, occurring while such vehicle is unattended, unless the property is contained in a fully enclosed and securely locked body or compartment of such

SAMPLE

vehicle and theft results from forcible entry, evidenced by visible marks upon such body or compartment. This exclusion shall not apply to property in the custody of carriers for hire.

9. Voluntary parting with title or possession of any property by the insured or others to whom the property may be entrusted (except by carriers for hire) if induced to do so by any fraudulent scheme, trick, device or false pretense.
10. 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, other than any carrier for hire.
11. Rain, snow or sleet to property in the open (other than property in the custody of carriers for hire).
12. Any legal proceeding.

B. This policy does not insure under this form against loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by perils not otherwise excluded. Also, the Company shall not be liable under this clause for any loss resulting from riot, riot attending a strike, civil commotion, or vandalism and malicious mischief.

C. This policy does not insure under this form against 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;
4. water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, or basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;

unless loss by fire or explosion not otherwise excluded ensues, and the Company shall then be liable for only such ensuing loss; but these exclusions shall not apply to property in due course of transit or to loss arising from theft.

VII. COINSURANCE CLAUSE

The Company shall not be liable for a greater proportion of any loss to the property covered hereunder than the amount of insurance under this policy for such property bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this policy) by the actual cash value of such property at the time of the loss.

In the event the aggregate claim for any loss is both less than $10,000 and less than 5% of the total amount of contributing insurance applicable to the property involved at the time such loss occurs, no special inventory or appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the preceding paragraph of this clause.

If insurance under this policy is divided into separate amounts of insurance, the foregoing shall apply separately to the property covered under each such amount of insurance.

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 when applying the Coinsurance Clause.

VIII. DEDUCTIBLE CLAUSE

Each loss shall be adjusted separately and from the amount of each such adjusted loss the sum of $100 shall be deducted or, if there is contributing insurance, this Company's pro rata share thereof.

This deductible shall not apply to (a) loss by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, windstorm or hail to property contained in any building; or (b) loss of or to property in transit while in the custody of carriers for hire.

IX. VALUATION

Subject to the provisions and stipulations of this policy, the following bases for valuation of property are established:

★ **A.** Tenant's Improvements and Betterments:

1. If repaired or replaced at the expense of the 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 insured, there shall be no liability hereunder.

B. 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.

C. 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.

D. All other property at actual cash value.

X. CONDITIONS

A. Less Clause: Any loss hereunder shall not reduce the amount of this policy.

B. Permits and Use: Except as otherwise provided herein permission is hereby granted:

1. to make alterations and repairs;
2. for such unoccupancy as is usual or incidental to the described occupancy but vacancy is limited to the 60 day period permitted by the policy conditions;
3. 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 not otherwise excluded 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.

C. Protection of Property: In case of loss, it shall be lawful and necessary for the insured, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance, nor shall the acts of the insured or the Company, in recovering, saving and preserving the property insured in case of loss be considered a waiver or an acceptance of abandonment. The expenses so incurred shall be borne by the insured and the Company proportionately to the extent of their respective interests.

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MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
1	131 Pinsley Circle Greenville, S. C.	7,500	Included
2	523 Rear Sulphur Springs Rd. Greenville, S. C.	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50. %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

COV-USF&G-00026

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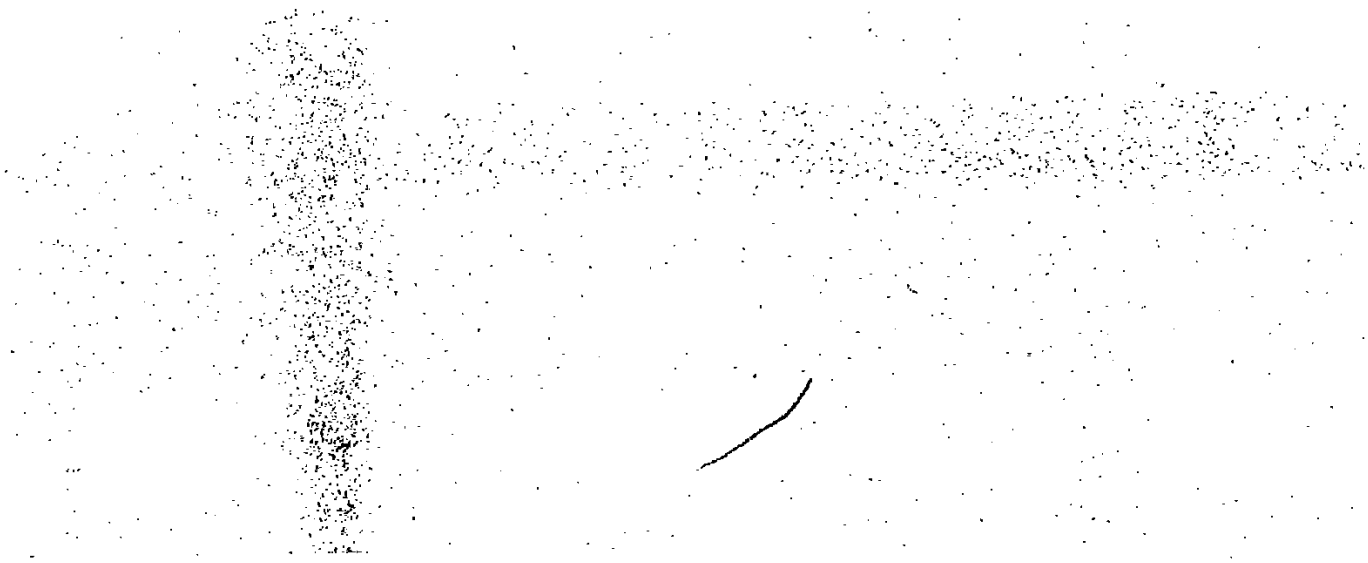

CONDITIONS

1. **Definitions.**

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. **Ownership of Property; Interests Covered.** The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. **Joint Insured.** If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. **Books and Records.** The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. **Coinsurance.** The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. **Limits of Liability; Settlement Options.** Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
3	1911 Sullivan Street Greenville, S. C.	7,500	Included
3 Bldg. #2	1911 Rear Sullivan Street Greenville, S. C.	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

COV-USF&G-00028

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

CONDITIONS

1. **Definitions.**

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. **Ownership of Property; Interests Covered.** The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. **Joint Insured.** If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. **Books and Records.** The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. **Coinsurance.** The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. **Limits of Liability; Settlement Options.** Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
4	Main Street Black Creek, N. C.	7,500	Included
5	721 Roosevelt Avenue Albany, Georgia	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

COV-USF&G-00030

RP_001227

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

CONDITIONS

1. Definitions.

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. Ownership of Property; Interests Covered. The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. Joint Insured. If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. Books and Records. The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. Coinsurance. The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. Limits of Liability; Settlement Options. Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
6	9th St. at Market St. Augusta, Georgia	7,500	Included
7	423 Margaret Street Jacksonville, Florida	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I. Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

COV-USF&G-00032

ELECTRONICALLY FILED - 2020-Jul-20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

CONDITIONS

1. Definitions.

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. Ownership of Property; Interests Covered. The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. Joint Insured. If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. Books and Records. The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. Coinsurance. The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. Limits of Liability; Settlement Options. Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

MERCANTILE OPEN STOCK BURGLARY ENDORSEMENT

Form MLB-156 (Ed. 1-71)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy, except the Coinsurance Clause, the Loss Deductible Clauses, the Valuation Clause and the Replacement Cost Coverage Endorsement if made a part of this policy, this policy is extended to provide the following coverage only at those locations indicated by a specific limit of liability and premium.

SCHEDULE

Loc. No.	Location (Street, Address, City & State)	Limit of Liability	Premium
8	3211 8th Avenue, North Birmingham, Alabama	7,500	Included
9	1510 East Adams St. Jacksonville, Florida	7,500	Included

Total Premium $ Included

The coinsurance percentage applicable to loss of merchandise is 50 %, subject to a coinsurance limit of $ 7,500

Insuring Agreements

I, Loss of Merchandise; Premises Damage. To pay for loss by burglary or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures and equipment within the premises or within a showcase or show window used by the insured and located outside the premises but inside the building line of the building containing the premises or attached to said building.

To pay for damage to the premises and the exterior thereof, and to the insured property within the premises or within such showcase or show window, by such burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises and the exterior thereof the insured is the owner of the premises or is liable for such damage.

Exclusions

This coverage does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others;

(b) to loss of furs or articles containing fur which represents their principal value, by removal of such property from within a showcase or show window by a person who has broken the glass thereof from outside the premises or by an accomplice of any such person;

(c) to loss occurring while there is any change in the condition of the risk or during a fire in the premises;

(d) to damage by vandalism or malicious mischief;

(e) to loss, other than to a safe or vault, by fire whether or not such fire is caused by, contributed to by or arises out of the occurrence of a hazard insured against;

(f) to loss of manuscripts, books of account or records.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

COV-USF&G-00034

ELECTRONICALLY FILED - 2020 Jul 20 2:11 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

CONDITIONS

1. Definitions.

"Premises" means the interior of that portion of the building at the location designated in the Schedule which is shown in the Schedule as occupied by the insured in conducting the business as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls or stairways.

"Burglary" means the felonious abstraction of insured property (1) from within the premises by a person making felonious entry therein by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the exterior of the premises at the place of such entry, or (2) from within a showcase or show window outside the premises by a person making felonious entry into such showcase or show window by actual force and violence, of which force and violence there are visible marks thereon, or (3) from within the premises by a person making felonious exit therefrom by actual force and violence as evidenced by visible marks made by tools, explosives, electricity or chemicals upon, or physical damage to, the interior of the premises at the place of such exit.

"Robbery of a watchman" means the taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

"Loss" includes damage.

"Jewelry" means jewelry, watches, necklaces, bracelets, gems, precious or semi-precious stones, and articles containing one or more gems and articles of gold or platinum.

2. Ownership of Property; Interests Covered. The insured property may be owned by the insured, or held by the insured in any capacity whether or not the insured is liable for the loss thereof, or may be property as respects which the insured is legally liable; provided, this insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. Joint Insured. If more than one insured is named in the Declarations, the insured first named shall act for every insured for all purposes of this endorsement. Knowledge possessed or discovery made by any insured shall constitute knowledge possessed or discovery made by every insured.

4. Books and Records. The insured shall keep records of all the insured property in such manner that the company can accurately determine therefrom the amount of loss.

5. Coinsurance. The Company shall not be liable for a greater proportion of a loss of merchandise, exclusive of jewelry and of property held by the insured as a pledge or as collateral, than the limit of liability stated in the Schedule bears to (a) the coinsurance percentage, as stated in the Schedule, of the actual cash value of all such merchandise contained within the premises at time of loss, or (b) the coinsurance limit stated in the Schedule, whichever is less.

6. Limits of Liability; Settlement Options. Subject to any application of the coinsurance requirement, the limit of the Company's liability for loss shall not exceed the actual cash value of the property at time of loss, nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of liability stated in the Schedule; provided, however, the limit of the Company's liability for loss of the contents of any showcase or show window not opening directly into the interior of the premises is $100; provided, further, (a) the actual cash value of any one article of jewelry shall be deemed not to exceed $50, and (b) subject to such limit, the actual cash value of property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Company. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Company, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

The occurrence of any loss shall reduce the applicable limit of liability by the extent of the Company's liability for such loss until the premises are restored to at least the same condition of safety as immediately prior to the loss; but such reduction shall not occur with respect to loss occurring subsequent to the receipt by the Company of notice of loss for which the Company is liable under this endorsement if the insured shall maintain within the premises at least one watchman while the premises are not open for business.

Application of the liability to property of more than one person shall not operate to increase the limit of the Company's liability.

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SPRINKLER LEAKAGE ENDORSEMENT

Form MLB-122 (Ed. 5-69)

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy of which this endorsement is made a part, except as otherwise provided for herein, this policy is extended to insure against all direct loss by sprinkler leakage, as defined and limited herein, to property covered by this endorsement. This coverage applies only to the following locations and property for which a limit of liability is shown:

SCHEDULE

Location or Premises Loc. No.	Location or Premises Bldg. No.	Property Covered (Indicate Cov. A—Bldgs. or Cov. B—Personal Property)	Limits of Liability	Coinsurance Percentage Applicable
3	2	Coverage B	52,000	90%

I. PROPERTY COVERED

When insurance under this endorsement covers on buildings, such insurance shall cover, in accordance with the description elsewhere in this policy of Coverage A — Building(s), including Debris Removal, Extensions of Coverage and Valuation, the cost of repairs and replacement of the automatic sprinkler system when the damage sustained is caused directly by (a) breakage of any of its parts resulting in sprinkler leakage or (b) freezing.

When insurance under this endorsement covers on business personal property, such insurance shall cover in accordance with the description elsewhere in this policy of Coverage B — Personal Property, including Debris Removal, Extensions of Coverage and Valuation.

II. EXCLUSIONS AND LIMITATIONS

A. Property not covered or excluded elsewhere in this policy is also excluded from coverage hereunder.

B. **Additional Perils Not Included:** The Company shall not be liable for loss by sprinkler leakage or by collapse or fall of a tank caused directly or indirectly by: fire; lightning; windstorm; earthquake; blasting; explosion; rupture or bursting of steam boilers or fly wheels; riot; civil commotion; and water, except from within an automatic sprinkler system.

C. **Conditions Suspending or Restricting Insurance:** Unless otherwise provided in writing, the Company shall not be liable for sprinkler leakage loss:

1. occurring during and resulting from the making of repairs, alterations or extensions involving a wall or supports of a floor or roof, the installation of or change in an automatic sprinkler system at the location described in this endorsement after a period of fifteen consecutive days from the beginning of such operations;
2. while a building at the location(s) described in this endorsement is vacant or unoccupied.

III. DEFINITIONS

A. "Sprinkler leakage" means (1) leakage or discharge of water or other substance from within any automatic sprinkler system or (2) direct loss caused by collapse or fall of a tank forming a part of such system.

B. "Automatic Sprinkler System" means any automatic fire protective system including sprinklers, discharge nozzles and ducts, pipes, valves, fittings, tanks (including component parts and supports thereof), pumps and private fire protection mains, all connected with and constituting a part of an automatic fire protective system; and non-automatic fire protective systems, hydrants, standpipes or outlets supplied from an automatic fire protective system.

IV. COINSURANCE

The Company shall not be liable for a greater proportion of any loss to the property covered by this endorsement than the limit of liability hereby insured bears to the amount produced by multiplying the coinsurance percentage applicable (specified in this endorsement) by the actual cash value of such property 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 and appraisement of the undamaged property shall be required, provided that nothing herein shall be construed to waive the application of the first paragraph of this clause.

If insurance under this endorsement is divided into separate limits of liability, the foregoing shall apply separately to the property covered under each such limit of liability.

The Extensions of Coverage, and the cost of removal of debris, shall not be considered in the determination of actual cash value when applying this Coinsurance Clause.

V. CONDITIONS

A. Loss Deductible Clause No. 2 shall not apply to any sprinkler leakage loss covered by this endorsement.

B. **Time Element Coverage:** When the insurance under this policy, and by this endorsement, provides time element coverage such as earnings, tuition fees, extra expense, or rents, the term "direct" as applied to loss, means loss, as limited and conditioned in such forms attached to this policy, resulting from direct physical damage to the described property caused by sprinkler leakage. The conditions in such forms attached to this policy supersede the condition of this endorsement except for those shown in II — Exclusions and Limitations, and III — Definitions.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

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VANDALISM OR MALICIOUS MISCHIEF ENDORSEMENT

Form MLB-121 (Ed. 3-71)

PROPERTY COVERED ☐ Coverage A — Building(s) ☒ Coverage B — Personal Property

Subject to all the provisions and stipulations otherwise applicable to Section I of this policy of which this endorsement is made a part, except as otherwise provided for herein, the following perils are added to and made part of the "Perils Insured Against" section of the forms of which this endorsement is made a part with respect to the coverage specified by an "X" in the appropriate box above.

A. Vandalism or Malicious Mischief: Loss by vandalism or malicious mischief shall mean only the wilful and malicious damage to or destruction of the property covered. The Company shall not be liable, as respects these perils, for any loss:

1. to glass (other than glass building blocks) constituting a part of a building;
2. by pilferage, theft, burglary or larceny, except for wilful damage to the buildings covered hereunder caused by burglars;
3. by explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, steam engines, or rotating parts of machines or machinery owned, operated or controlled by the insured;
4. caused by or resulting from power, heating or cooling failure unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located;
5. if the described buildings had been vacant or unoccupied beyond a period of 30 consecutive days immediately preceding the loss, whether or not such period commenced prior to the inception date of this endorsement.

NOTE: A building in process of construction shall not be deemed vacant or unoccupied.

Loss Deductible Clause No. 2 does not apply to the coverage afforded by this endorsement.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

Form MLB-121 (Ed. 3-71)

COV-USF&G-00037

COV-USF&G-00038

RP_001235

Section II
Liability Coverage

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AMENDMENT OF LIMITS OF LIABILITY

Form MLB-21
(Ed. 1-73)

COVERAGE C—BODILY INJURY AND PROPERTY DAMAGE LIABILITY

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

SMP LIABILITY INSURANCE
COMPREHENSIVE GENERAL LIABILITY INSURANCE

It is agreed that the policy is amended as follows:

1. The limits of liability stated in the Declarations as applicable to Coverage C—Bodily Injury and Property Damage Liability are amended to read as follows:

Bodily Injury Liability	$300,000 each occurrence $300,000 aggregate
Property Damage Liability	$100,000 each occurrence $100,000 aggregate

2. The Limits of Liability provision is replaced by the following:

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

   Coverage C—Bodily Injury Liability—The total liability of the Company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated as applicable to "each occurrence".

   Subject to the above provisions respecting "each occurrence" the total liability of the Company for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limits of bodily injury liability stated as "aggregate".

   Coverage C—Property Damage Liability—The total liability of the Company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated as applicable to "each occurrence".

   Subject to the above provision respecting "each occurrence", the total liability of the Company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated as "aggregate".

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

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

   (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

   Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the named insured.

   Bodily Injury and Property Damage Liability—For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

3. With respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility 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.

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SMP LIABILITY INSURANCE FORM
SECTION II LIABILITY COVERAGE

Form MLB-200
(Ed. 1-73)

I. COVERAGE C—BODILY INJURY AND 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 bodily injury or property damage to which this insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use of the insured premises and all operations necessary or incidental to the business of the named insured conducted at or from the insured premises 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 insured premises, 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;

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

(f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(g) to bodily injury or property damage arising out of operations on or from premises (other than insured premises) owned by, rented to or controlled by the named insured, or to liability assumed by the insured under any contract or agreement relating to such premises;

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

(a) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (b) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;

(k) to property damage to

(1) property owned or occupied by or rented to the insured,

(2) property used by the insured, or

(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the named insured;

(l) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to the named insured's products arising out of such products or any part of such products;

(o) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work forms a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to bodily injury and property damage arising out of demolition operations performed by or on behalf of the insured.

II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

(a) if the named insured is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the

spouse of the named insured with respect to the conduct of such a business;

(b) if the named insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the named insured is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, member of the board of trustees, directors or governors or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,

(i) an employee of the named insured while operating any such equipment in the course of his employment, and

(ii) any other person while operating with the permission of the named insured any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided that no person or organization shall be an insured under this paragraph (e) with respect to:

(1) bodily injury to any fellow employee of such person injured in the course of his employment, or

(2) property damage to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.

III. 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.

IV. LIMITS OF LIABILITY—COVERAGE C

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

(a) The total liability of the Company for Coverage C for all damages, including damages for care and loss of services, as a result of any one occurrence shall not exceed the limit of liability for Coverage C as stated in the Declarations provided that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province such limit of liability shall be applied to provide the separate limits required by such law for bodily injury liability and property damage liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the Company's liability.

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

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

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

(3) all bodily injury and property damage included within the completed operations hazard and all bodily injury and property damage included within the products hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1) and (2) and separately with respect to each project away from the insured premises. Such aggregate limit shall apply separately to the bodily injury and property damage described in subparagraph (3).

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

V. COVERAGE D—PREMISES MEDICAL PAYMENTS:

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

Exclusions:

This insurance does not apply:

(a) to bodily injury

(1) arising out of operations on or from premises (other than insured premises) owned by, rented to, or controlled by the named insured;

(2) 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;

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

(4) 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

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(5) 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) arising out of demolition operations performed by or on behalf of insureds;

(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 the foregoing if the bodily injury arises out of and in the course of his employment therewith;

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

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

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

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;

(d) 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.

VI. LIMITS OF LIABILITY—COVERAGE D:

The limit of liability for Coverage D 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.

SAMPLE

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COMPREHENSIVE GENERAL LIABILITY INSURANCE ENDORSEMENT

Form MLB-202
(Ed. 1-73)

In consideration of the payment of the premium, in reliance upon the statements in the Declarations of the policy of which this endorsement is made a part, and subject to all the terms of this endorsement, the Company agrees with the named insured as follows:

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

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;

but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;

(f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(g) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes,

if such liability is imposed

(a) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (b) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to property damage to

(1) property owned or occupied by or rented to the insured,

(2) property used by the insured, or

(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;

but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of elevators at premises owned by, rented to or controlled by the named insured;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;

(k) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(l) to property damage to the named insured's products arising out of such products or any part of such products;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(o) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work forms a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(p) to bodily injury or property damage for which insurance is afforded under

(1) the SMP Liability Insurance Coverage, or

(2) any Comprehensive Personal Liability Endorsement forming a part of this policy

or for which insurance would have been afforded but for the exhaustion of the limits of liability thereunder.

SAMPLE

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

II. LIMIT OF LIABILITY—COVERAGE C

The limit of the Company's liability with respect to each occurrence under this endorsement is the amount stated in the Declarations as applicable to Coverage C of Section II of this policy and such limits apply to the insurance afforded by this endorsement in accordance with the terms of Provision IV, Limits of Liability, of Section II.

III. OTHER PROVISIONS APPLICABLE TO THIS ENDORSEMENT

A. The following provisions applicable to Sections I and II of the policy are applicable to this endorsement; War Risk and Governmental Action Exclusion; Inspection and Audit; Cancellation; Subrogation; and subparagraph (2) of Policy Period, Territory.

B. The following terms and provisions applicable only to Section II are applicable to this endorsement: Persons Insured; Supplementary Payments; Modification of Terms; Financial Responsibility Laws; Premium; Insured's Duties in the Event of Occurrence, Claim or Suit; Other Insurance; Action Against the Company; Nuclear Exclusion; and Definitions—Section II.

ISO SAMPLE

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UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.
BALTIMORE, MARYLAND 21203

SPECIAL MULTI-PERIL POLICY—SECTION II LIABILITY SCHEDULE

This schedule forms a part of SMP Liability Insurance Form, MLB—200.

Agency Code	Policy Number	Effective Date	Named Insured
15-3764	SMP 490049	3-31-76	COVIL CORPORATION, ETAL

Provisional Premiums: ☐ Three Year Prepaid ☒ Annual Installment

Description of Hazards—See Note Below† The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Annual Premium Bases	Rates†† B. I. or Single Lmt.	Rates†† P. D.	Rates†† Medical Payments	Provisional Premiums B. I. or Single Lmt.	Provisional Premiums P. D.	Provisional Premiums Medical Payments
Premises—Operations		(a) Area (Sq. Ft.) (b) Receipts (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per $100 of Receipts (c) Per $100 of Remuneration					
131 Pinsley Circle Greenville, S. C. 533 Rear Pinsley Circle Greenville, S. C. Insulation Work-installation or application of acoustical or thermal insulating material in buildings or within building walls.---	15161	c)1,533,461	.104	.175	.007	1595	2684	11
Contractors-construction or erection-executive supervisors exercising supervision through superintendents and foreman-no direct supervision	15192	c)42,067	.218	.083	.014	92	35	1
Escalators		Number	Per Landing					
Independent Contractors		Cost	Per $100 of Cost					
Completed Operations		Receipts	Per $1,000 of Receipts					
Insulation-Buildings	15161	8,911,525	.073	.255		651	2272	
Products Stores or Dealers-Retail Building Materials-excluding ladders, scaffolding, and installation work	52111	5,185,544	.113	.116		586	602	
				Increased Limits Basic Charge			5	
				Total Annual Premiums		6161	11037	58
				Total Three Year Premiums		18483	33111	174

†Premium for insured hazards not specifically rated herein will be determined by audit and accordingly charged.

††Annual Rates Indicated By "*". If premiums are three year prepaid.

Fire 263 (12-71)

COV-USF&G-00045

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GENERAL SCHEDULE — SECTION II

Form MLB-16 (Ed. 11-69)

☒ MLB-200, SMP Liability Insurance Form

☐ MLB-202, Comprehensive General Liability Insurance Endorsement

Description of Hazards and Locations

The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Premium Bases †	Rates *B.I.	Rates P.D.	Advance Premiums *B.I.	Advance Premiums P.D.
(a) Premises—Operations		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration		*If Single Limit, Use B.I. Column. Include Premium for Premises Medical Payment Insurance in B.I. Column.	
(b) Escalators		(d) Number Insured	(d) Per Landing			
(c) Independent Contractors—Let or Sublet Work		(e) Cost	(e) Per $100 of Cost			
(d) Completed Operations		(f) Receipts	(f) Per $1,000 of Receipts			
(e) Products		(g) Sales	(g) Per $1,000 of Sales			
(A) Painting, Decorating or Paper Hanging-including shop operations- 17235		c)50,000	c).076	.267	38	134
Medical Payments:			.005		3	
1911 Sullivan St. Greensboro, N. C.						
1911 Rear Sullivan St. Greensboro, N. C.						
Main Street Black Creek, N. C.						
(A) Same as above	15161	c)1,429,653	c).006	.230	944	3288
Medical Payments:			.004		SMP	
(A) Same as above	15192	c)25,862	c).123	.092	32	24
Medical Payments:			.008		Inc.	
721 Roosevelt Ave. Albany, Georgia						
9th St. at Market St. Aurusta, Georgia						
(A) Same as above	15161	c)174,922	c).113	.202	198	353
Medical Payments:			.007		SMP	
(A) Same as above	15192	c)25,436	c).237	.138	60	35
Medical Payments:			.015		Inc.	
423 Margaret St. Jacksonville, Florida						
1510 East Adams Street Jacksonville, Florida						
Same as above	15161	c)71,137	c).245	.267	174	190
Medical Payments:			.015		SMP	
(a) Same as aobve	15192	c)If Any	c).946	.267		
Medical Payments:			.060			

† Describe premium basis, if other than stated.

Form MLB-16 (Ed. 11-69)

COV-USF&G-00046

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GENERAL SCHEDULE — SECTION II

Form MLB-16 (Ed. 11-69)

Page 2

☒ MLB-200, SMP Liability Insurance Form ☒ MLB-202, Comprehensive General Liability Insurance Endorsement

Description of Hazards and Locations

The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Premium Bases †	Rates *B.I.	Rates P.D.	Advance Premiums *B.I.	Advance Premiums P.D.
(a) Premises—Operations		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration	(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration		*If Single Limit, Use B.I. Column. Include Premium for Premises Medical Payment Insurance in B.I. Column.	
(b) Escalators		(d) Number Insured	(d) Per Landing			
(c) Independent Contractors—Let or Sublet Work		(e) Cost	(e) Per $100 of Cost			
(d) Completed Operations		(f) Receipts	(f) Per $1,000 of Receipts			
(e) Products		(g) Sales	(g) Per $1,000 of Sales			
3211 8th Ave., North. Birmingham, Alabama						
(A) Same as above	15161	c)28,494	c).189	.230	54	66
Medical Payments:			.012		5MP	
(A) Same as above	15192	c)If Any	c).454	.156		
Medical Payments:			.029			
Virginia						
(A) Same as above	15161	c)158,920	c).056	.156	89	248
Medical Payments:			.004		5MP	
(A) Same as above	15192	c)If Any	c).228	.175		
Medical Payments:			.014			
Tennessee						
(A) Same as above	15161	c)If Any	c).175	.249		
Medical Payments:			.011			
(A) Same as above	15192	c)If ANy	c).245	.184		
Medical Payments:			.015			
Mississippi						
(A) Same as above	15161	c)3,079	c).180	.191	6	6
Medical Payments:			.023		5MP	
(A) Same as above	15192	c)If Any	c).360	.156		
Medical Payments:			.023			
Kentucky						
(A) Same as above	15161	c)16,957	.085	.202	14	34
Medical Payments:			.005		5MP	
Purchase Agreements		FLAT CHARGE			119	
CGL Supplement per CAS.205					1506	1061
		Premium Included on Fire-263				

† Describe premium basis, if other than stated.

Form MLB-16 (Ed. 11-69)

COV-USF&G-00047

RP_001244

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UNITED STATI FIDELITY AND GUARANT COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.
BALTIMORE, MARYLAND 21203

SPECIAL MULTI-PERIL POLICY—SECTION II COMPREHENSIVE GENERAL LIABILITY SCHEDULE

This schedule forms a part of Comprehensive General Liability Insurance Endorsement, MLB—202.

Agency Code	Policy Number	Effective Date	Named Insured	Provisional Premiums: ☐ Three Year Prepaid ☐ Annual Installment
	SMP 490049	3-31-76	COVIL CORPORATION, ETAL	

Description of Hazards—See Note Below† The rating classifications herein, except as specifically provided elsewhere, do not modify any of the provisions of the policy.	Code No.	Annual Premium Bases	Annual Rates B. I. or Single Lmt.	Annual Rates P. D.	Annual Rates Medical Payments	Provisional Premiums B. I. or Single Lmt.	Provisional Premiums P. D.	Provisional Premiums Medical Payments
Premises—Operations		(a) Area (Sq. Ft.) (b) Receipts (c) Remuneration (d) Each	(a) Per 100 Sq. Ft. of Area (b) Per $100 of Receipts (c) Per $100 of Remuneration					
Private Residences: Additional Residence - 65143		d)1.0	2.510	.459	Flat Charge	3	Inc.	8
Escalators		Number	Per Landing					
Independent Contractors		Cost	Per $100 of Cost					
Completed Operations Included		Receipts	Per $1,000 of Receipts					
Products Included		Sales	Per $1,000 of Sales					
			Increased Limits Basic Charge					
			Total Annual Premiums			Included on Fire 263		
			Total Three Year Premiums					

†Premium for insured hazards not specifically rated herein will be determined by audit and accordingly charged.

Casualty 71 (3-75) ⊙

COV-USF&G-00048

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This endorsement ...fies such insurance as is afforded by the provisions of the p... relating to
Comprehensive General Liability Insurance

COMPREHENSIVE GENERAL LIABILITY SUPPLEMENT

(Contractors)

(Part 1)

I. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY

A. The Company will pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as **damages** because of injury sustained by any person or organization and arising out of one or more of the following offenses committed in the conduct of the **Named Insured's** business as stated in the declarations:

Group A—false arrest, detention or imprisonment, or malicious prosecution;

Group B—the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **Named Insured;**

Group C—wrongful entry or eviction, or other invasion of the right of private occupancy;

herein called **"personal injury"**; or

Group D—libel, slander, defamation, invasion of the right of privacy, piracy, unfair competition or idea misappropriation under an implied contract, or infringement of copyright, title or slogan, arising out of the **Named Insured's** advertising activities;

herein called **"advertising injury"**;

if such offense is committed during the policy period, within the **policy territory**, and the Company shall have the right and duty to defend any suit against the **Insured** seeking **damages** on account of such injury 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:

1. to liability assumed by the **Insured** under any contract or agreement;
2. to **personal injury** arising out of any publication or utterance described in Group B, if the first injurious publication or utterance of the same or similar material by or on behalf of the **Named Insured** was made prior to the effective date of this endorsement;
3. to **personal injury** arising out of a publication or utterance described in Group B concerning any organization or business enterprise, or its products or services, made by or at the direction of any **Insured** with knowledge of the falsity thereof;
4. to **advertising injury** arising out of (a) failure of performance of contract, other than the unauthorized appropriation of ideas based upon the alleged breach of an implied contract; (b) infringement of trademark, service mark or trade name; (c) unfair competition based upon infringement of trademark, service mark or trade name; or (d) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
5. to **personal injury** or **advertising injury** arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any **Insured;**
6. to **personal injury** or **advertising injury** arising out of the conduct of any partnership or joint venture of which the **Insured** is a partner or member and which is not designated in the declarations as a **Named Insured.**

B. **Limit of Liability**—Regardless of the number of (1) **Insureds** under this policy, (2) persons or organizations who sustain **personal injury** or **advertising injury**, or (3) claims made or suits brought on account of **personal injury** or **advertising injury**, the total limit of the Company's liability under this insurance for all **damages** shall not exceed the limit of liability stated in the declarations as "aggregate" for the Bodily Injury Liability Coverage.

C. **Deductible Provision**—The Company's obligation to pay **damages** on behalf of the **Insured** because of **advertising injury** applies only to the amount of **damages** in excess of the deductible amount of $5,000. Such deductible amount applies separately to each claim for **advertising injury.** For the purpose of determining the application of such deductible amount, "each claim" shall include all claims made or suits brought on account of **advertising injury** sustained by one or more persons or organizations and arising out of the same injurious material or act, regardless of the frequency of repetition thereof or the number or kind of media used. The terms of the policy, including those with respect to the Company's rights and duties with respect to the defense of suits and 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.

D. When used in reference to this insurance **"damages"** means only those damages which are payable because of **personal injury** or **advertising injury** arising out of an offense to which this insurance applies.

E. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Paragraphs (a), (b) and (c) of Persons Insured; Definitions; Supplementary Payments; Conditions and the Nuclear Energy Liability Exclusion.

II. BROAD FORM PROPERTY DAMAGE (Excluding Completed Operations)

The Property Damage Liability Coverage (including **property damage** coverage under Part III. Contractual Liability) applies to **property damage** to property in the care, custody or control of the **Insured** and to **property damage** to work performed by or on behalf of the **Named Insured,** subject to the following additional provisions:

1. The exclusions relating to **property damage** to (1) property owned, occupied or used by or rented to the **Insured** or in the care, custody or control of the **Insured** or as to which the **Insured** is for any purpose exercising physical control and (2) work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (w) and (x):

   (w) to **property damage**

   (1) to property owned or occupied by or rented to the **Insured** or, except with respect to the use of **elevators,** to property held by the **Insured** for sale or entrusted to the **Insured** for storage or safekeeping;

   (2) except with respect to liability under a written sidetrack agreement or the use of **elevators,** to

   (a) property while on premises owned by or rented to the **Insured** for the purpose of having operations performed on such property by or on behalf of the **Insured,**

   (b) tools or equipment while being used by the **Insured** in performing his operations,

   (c) property in the custody of the **Insured** which is to be installed, erected or used in construction by the **Insured,**

   (d) that particular part of any property, not on premises owned by or rented to the **Insured,**

   (i) upon which operations are being performed by or on behalf of the **Insured** at the time of the **property damage** arising out of such operations, or

   (ii) out of which any **property damage** arises, or

   (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **Insured;**

   (x) with respect to the **completed operations hazard,** to **property damage** to work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof or out of materials, parts or equipment furnished in connection therewith.

2. This insurance shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the **Insured,** such as, but not limited to, Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage; the "Other Insurance" Condition is amended accordingly.

(Continued on reverse side)

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III. CONTRACTUAL LIABILITY

A. The Company will pay on behalf of the **Insured** all sums which the **Insured**, by reason of **contractual liability**, shall become legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies, caused by an **occurrence**, and the Company shall have the right and duty to defend any **suit** against the **Insured** seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the **suit** are groundless, false or fraudulent, and may make such investigation and settlement of any claim or **suit** as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend

(1) any arbitration proceeding wherein the Company is not entitled to exercise the **Insured's** rights in the choice of arbitrators and in the conduct of such proceedings, or

(2) 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 **incidental contract**;

(b) to **bodily injury** or **property damage** for which the **Insured** has assumed liability under any contract or agreement, if such injury or damage occurred prior to the entering into of the contract or agreement;

(c) (1) if the **Insured** is an architect, engineer or surveyor, to **bodily injury** or **property damage** arising out of professional services performed by such **Insured**, including
(i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
(ii) supervisory, inspection or engineering services;
(2) if the indemnitee of the **Insured** is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of
(i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
(ii) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the **bodily injury** or **property damage**;

(d) to **bodily injury** or **property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;

(e) to **bodily injury** or **property damage** for which the Indemnitee may be held liable
(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
(2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed
(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;
but part (ii) of this exclusion does not apply with respect to liability of the indemnitee as an owner or lessor described in (2) above;

(f) to any obligation for which the **Insured** or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(g) to any obligation for which the **Insured** may be held liable in an action on a contract by a third party beneficiary for **bodily injury** or **property damage** arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;

(h) to **property damage** to
(1) property owned or occupied by or rented to the **Insured**,
(2) property used by the **Insured**, or
(3) property in the care, custody or control of the **Insured** or as to which the **Insured** is for any purpose exercising physical control;

(i) to **property damage** to premises alienated by the **Named Insured** arising out of such premises or any part thereof;

(j) to loss of use of tangible property which has not been physically injured or destroyed resulting from
(1) a delay in or lack of performance by or on behalf of the **Named Insured** of any contract or agreement, or
(2) the failure of the **Named Insured's products** or work performed by or on behalf of the **Named Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Named Insured**;
but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Named Insured's products** or work performed by or on behalf of the **Named Insured** after such products or work have been put to use by any person or organization other than an **Insured**;

(k) to **property damage** to the **Named Insured's products** arising out of such products or any part of such products;

(l) to **property damage** to work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(m) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **Named Insured's products** or work completed by or for the **Named Insured** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(n) to **bodily injury** or **property damage** arising out of 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;

(o) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

(p) to **bodily injury** or **property damage** arising out of the loading or unloading of watercraft;

(q) to **bodily injury** or **property damage** arising out of operations affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing, within fifty feet of any such railroad property;

(r) to **property damage** included within (1) the **explosion hazard**, (2) the **collapse hazard**, or (3) the **underground property damage hazard**; except to the extent that insurance is afforded for such **property damage** by the Comprehensive General Liability Insurance Coverage forming a part of the policy.

B. **Limits of Liability**

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

The limits of liability shall be the same as the limits stated in the declarations for Comprehensive General Liability Insurance and shall apply separately to Contractual Liability Coverage. With respect to Contractual Liability Coverage, the total liability of the Company for all damages because of **property damage** to which this coverage applies shall not exceed the limit of **property damage** liability stated in such declarations as "aggregate" and such aggregate limit of liability applies separately with respect to each project away from premises owned by or rented to the **Named Insured**.

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

C. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Paragraphs (a), (b) and (c) of Persons Insured; Definitions; Supplementary Payments; Conditions and the Nuclear Energy Liability Exclusion.

3. to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the **Named Insured** or (b) the **Named Insured**, or, if the **Named Insured** is a partnership or joint venture, any partner or member thereof;

4. to **bodily injury** or **property damage** included within Incidental Malpractice Liability.

X. PREMISES MEDICAL PAYMENTS

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

Exclusions

This insurance does not apply:

(a) to **bodily injury**

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

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

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

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

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

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

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

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

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

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

(b) to **bodily injury**

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

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

(3) resulting from the selling, serving or giving of any alcoholic beverage

(i) in violation of any statute, ordinance or regulation,

(ii) to a minor,

(iii) to a person under the influence of alcohol, or

(iv) which causes or contributes to the intoxication of any person,

if the **Named Insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the **Named Insured** is such an owner or lessor;

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

(c) to **bodily injury**

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

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

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

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

(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;

(d) 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.

B. **Limits of Liability**

The limit of liability for Premises Medical Payments is $250 each person; $10,000 each accident unless amended in the schedule of this endorsement. The limit of liability for Premises Medical Payments 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 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 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.

C. **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.

D. **Other Provisions Applicable To This Insurance**—The following provisions applicable to Comprehensive General Liability Insurance are applicable to this insurance: Definitions, Conditions and the Nuclear Energy Liability Exclusion.

E. **Additional Definitions**

When used in reference to this insurance:

"**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.

F. **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 except hereunder, of the Company.

(Continued on Part 2)

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3. to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (a) another employee of the **Named Insured** or (b) the **Named Insured**, or, if the **Named Insured** is a partnership or joint venture, any partner or member thereof;
4. to **bodily injury** or **property damage** included within Incidental Malpractice Liability.

X. PREMISES MEDICAL PAYMENTS

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

Exclusions

This insurance does not apply:

(a) to **bodily injury**

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

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

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

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

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

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

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

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

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

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

(b) to **bodily injury**

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

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

(3) resulting from the selling, serving or giving of any alcoholic beverage

(i) in violation of any statute, ordinance or regulation,

(ii) to a minor,

(iii) to a person under the influence of alcohol, or

(iv) which causes or contributes to the intoxication of any person,

if the **Named Insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion (b) (3) applies when the **Named Insured** is such an owner or lessor;

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

(c) to **bodily injury**

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

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

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

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

(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;

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"**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.

F. **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 hereund[illegible] all not constitute an admission of liability of any person [illegible]cept hereunder, of the Company.

(Continued on Part 2)

Coverage	Line	Premium On Effective Date of This Endorsement		Premium Adjustment To Each Subsequent Anniversary		Revised Premium Due On Each Subsequent Anniversary
		Additional	Return	Additional	Return	
Bodily Injury		$	$	$	$	$
Property Damage		$	$	$	$	$
Total Premium	General Liability	$	$	$	$	$

(Continued from Part 1)

COMPREHENSIVE GENERAL LIABILITY SUPPLEMENT

(Contractors)

(Part 2)

SCHEDULE

☒ An "x" in this block indicates that **BROAD FORM PROPERTY DAMAGE** includes Completed Operations and exclusion (x) is amended to read:

(x) with respect to the **completed operations hazard** to **property damage** to work performed by the **Named Insured** arising out of the work, or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

☐ An "x" in this block indicates that the limit for property damage liability is, as respects **FIRE LEGAL LIABILITY—REAL PROPERTY**, further amended to read:

$,000 each **occurrence**

PREMISES MEDICAL PAYMENTS limits of liability are amended to read:

☐ $1,000 each person; $25,000 each accident
☐ $2,000 each person; $25,000 each accident
☐ $3,000 each person; $50,000 each accident

Coverages (PF60)	Code No.	Premium Bases	Rates / % Bodily Injury	Rates / % Property Damage	Premiums Bodily Injury	Premiums Property Damage
Contractual Liability	90100	Contract Cost 8,911,525	(Per $100 of Cost) $ .012	$ .006	$1069	$535
All Other	90200	B.I.-P.D. (M&C,OLT,OCP) Premium	10 %	5 %	$ 437	$382
Completed Operations (Broad Form P.D.)		Completed Operations P.D. Premium		5 %		$144
Fire Legal Liability—Increased Limit		Limit of Liability (If amended above)	(Per $100 of Limit) $			$
TOTAL ADVANCE PREMIUMS					$1506	$1061

Minimum Premiums: B.I.$ 21.00 P.D. $ 23.00

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.O.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Spliedt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

William J. Gragg
President

Countersigned by.....
Authorized Representative

Trans. Code	Pkg.	Line	Pol. Eff. Date Mo.	Pol. Eff. Date Day	Pol. Eff. Date Yr.	Exp. Date Mo.	Exp. Date Yr.	State	Terr.	PF	Class		Limits BI PD Age Sp	Exposure	Coll. P.F. Med.	L. Prem.	R. Prem.	Comm.
									—	60	9010	0	——	———	—	.00	.00	
											9020	0				.00	.00	

Casualty 205 (Part 2) (4-74)

COV-USF&G-00053

RP_001250

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COV-USF&G-00054

Section III
Crime Coverage

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SMP COMPREHENSIVE CRIME COVERAGE ENDORSEMENT
SECTION III — CRIME COVERAGE

Form MLB-300 (Ed. 1-71)

This endorsement shall be attached to Policy No. SMP 490049 of the

FIDELITY & GUARANTY INSURANCE UNDERWRITERS, INC. Insurance Company.

(herein called Company)

The Insuring Agreements, General Agreements, Conditions and Limitations and other terms of this endorsement shall apply only as specified herein and none of the provisions, stipulations and other terms of the policy to which this endorsement is attached shall apply to insurance hereunder.

DECLARATIONS

Item 1. Effective Period: from noon on 3-31-76 to noon on the 3-31-79 (Month, Day, Year)

effective date of the cancelation or termination of the policy to which this endorsement is attached, standard time at the P.O. Address shown in the policy to which this endorsement is attached as to each of said dates, unless this endorsement is canceled or terminated as hereinafter provided or in any other manner.

Item 2.

	Table of Limits of Liability	
Insuring Agreement IA	Employee Dishonesty (Commercial Blanket) Coverage	$ 25,000
Insuring Agreement IB	Employee Dishonesty (Blanket Position) Coverage	$
Insuring Agreement II	Loss Inside the Premises Coverage	$ 2,000
Insuring Agreement III	Loss Outside the Premises Coverage	$ 2,000
Insuring Agreement IV	Money Orders and Counterfeit Paper Currency Coverage	$ 25,000
Insuring Agreement V	Depositors Forgery Coverage	$
If added by endorsement: Insuring Agreement		$

Item 3. The liability of the Company is subject to the terms of the following endorsements attached hereto:

Item 4. The Insured by the acceptance of this endorsement gives notice to the Company terminating or canceling prior bond(s) or policy(ies) No.(s) such termination or cancelation to be effective as of the time this endorsement becomes effective.

The Company, in consideration of the payment of the premium, and subject to the Declarations made a part hereof, the General Agreements, Conditions and Limitations and other terms of this endorsement, agrees with the Insured, in accordance with such of the Insuring Agreements hereof as are specifically designated by the insertion of an amount of insurance in the Table of Limits of Liability of this endorsement, to pay the Insured for:

INSURING AGREEMENTS

EMPLOYEE DISHONESTY COMMERCIAL BLANKET COVERAGE

IA. Loss of Money, Securities and other property which the Insured shall sustain, to an amount not exceeding in the aggregate the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement IA through any fraudulent or dishonest act or acts committed by any of the Employees, acting alone or in collusion with others.

EMPLOYEE DISHONESTY BLANKET POSITION COVERAGE

IB. Loss of Money, Securities and other property which the Insured shall sustain through any fraudulent or dishonest act or acts committed by any of the Employees, acting alone or in collusion with others, the amount of insurance on each of such Employees being the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement IB.

LOSS INSIDE THE PREMISES COVERAGE

II. Loss of Money and Securities by the actual destruction, disappearance or wrongful abstraction thereof within the Premises or within any Banking Premises or similar recognized places of safe deposit.

Loss of (a) other property by Safe Burglary or Robbery within the Premises or attempt thereat, and (b) a locked cash drawer, cash box or cash register by felonious entry into such container within the Premises or attempt thereat or by felonious abstraction of such container from within the Premises or attempt thereat.

Damage to the Premises by such Safe Burglary, Robbery or felonious abstraction, or by or following burglarious entry into the Premises or attempt thereat, provided with respect to damage to the Premises the Insured is the owner thereof or is liable for such damage.

LOSS OUTSIDE THE PREMISES COVERAGE

III. Loss of Money and Securities by the actual destruction, disappearance or wrongful abstraction thereof outside the Premises while being conveyed by a Messenger or any armored motor vehicle company, or while within the living quarters in the home of any Messenger.

Loss of other property by Robbery or attempt thereat outside the Premises while being conveyed by a Messenger or any armored motor vehicle company, or by theft while within the living quarters in the home of any Messenger.

MONEY ORDERS AND COUNTERFEIT PAPER CURRENCY COVERAGE

IV. Loss due to the acceptance in good faith, in exchange for merchandise, Money or services, of any post office or express money order, issued or purporting to have been issued by any post office or express company, if such money order is not paid upon presentation, or due to the acceptance in good faith in the regular course of business of counterfeit United States or Canadian paper currency.

DEPOSITORS FORGERY COVERAGE

V. Loss which the Insured or any bank which is included in the Insured's proof of loss and in which the Insured carries a checking or savings account, as their respective interests may appear, shall sustain through forgery or alteration of, on or in any check, draft, promissory note, bill of exchange, or similar written promise, order or direction to pay a sum certain in money, made or drawn by or drawn upon the Insured, or made or drawn by one acting as agent of the Insured, or purporting to have been made or drawn as hereinbefore set forth, including

(a) any check or draft made or drawn in the name of the Insured, payable to a fictitious payee and endorsed in the name of such fictitious payee;

(b) any check or draft procured in a face to face transaction with the Insured, or with one acting as agent of the Insured, by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one so impersonated; and

(c) any payroll check, payroll draft or payroll order made or drawn by the Insured, payable to bearer as well as to a named payee and endorsed by anyone other than the named payee without authority from such payee;

whether or not any endorsement mentioned in (a), (b) or (c) be a forgery within the law of the place controlling the construction thereof.

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

(f) under Insuring Agreement II, to loss of Money contained in coin operated amusement devices or vending machines, unless the amount of Money deposited within the device or machine is recorded by a continuous recording instrument therein;

(g) under Insuring Agreement III, to loss of insured property while in the custody of any armored motor vehicle company, unless such loss is in excess of the amount recovered or received by the Insured under (1) the Insured's contract with said armored motor vehicle company, (2) insurance carried by said armored motor vehicle company for the benefit of users of its service, and (3) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service, and then this endorsement shall cover only such excess;

(h) under Insuring Agreement II, to loss, other than to money, securities, a safe or vault, by fire whether or not such fire is caused by, contributed to by, or arises out of the occurrence of a hazard insured against.

(i) under Insuring Agreements II and III, to loss due to nuclear action, nuclear radiation or radio active contamination, or to any act or condition incident to any of the foregoing.

DEFINITIONS

Section 3. The following terms, as used in this endorsement shall have the respective meanings stated in this Section:

"Money" means currency, coins, bank notes and bullion; and travelers checks, register checks and money orders held for sale to the public.

"Securities" means all negotiable and non-negotiable instruments or contracts representing either Money or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include Money.

"Employee" means any natural person (except a director or trustee of the Insured, if a corporation, who is not also an officer or employee thereof in some other capacity) while in the regular service of the Insured in the ordinary course of the Insured's business during the Effective Period of this endorsement and whom the Insured compensates by salary, wages or commissions and has the right to govern and direct in the performance of such service, but does not mean any broker, factor, commission merchant, consignee, contractor or other agent or representative of the same general character. As applied to loss under Insuring Agreement IA or IB the above words "while in the regular service of the Insured" shall include the first 30 days thereafter; subject, however, to Sections 15 and 16.

"Premises" means the interior of that portion of any building which is occupied by the Insured in conducting its business.

"Banking Premises" means the interior of that portion of any building which is occupied by a banking institution in conducting its business.

"Messenger" means the Insured or a partner of the Insured or any Employee who is duly authorized by the Insured to have the care and custody of the insured property outside the Premises.

"Custodian" means the Insured or a partner of the Insured or any Employee who is duly authorized by the Insured to have the care and custody of the insured property within the Premises, excluding any person while acting as a watchman, porter or janitor.

"Robbery" means the taking of insured property (1) by violence inflicted upon a Messenger or a Custodian; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by a partner or Employee of the Insured; (4) from the person or direct care and custody of a Messenger or Custodian who has been killed or rendered unconscious; or (5) under Insuring Agreement II, (a) from within the Premises by means of compelling a Messenger or Custodian by violence or threat of violence while outside the Premises to admit a person into the Premises or to furnish him with means of ingress into the Premises, or (b) from a showcase or show window within the Premises while regularly open for business, by a person who has broken the glass thereof from outside the Premises.

"Safe Burglary" means (1) the felonious abstraction of insured property from within a vault or safe, the door of which is equipped with a combination lock, located within the Premises by a person making a felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom or walls of such vault or such safe and any vault containing the safe through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the Premises.

"Loss", except under Insuring Agreements IA, IB and V, includes damage.

LOSS CAUSED BY UNIDENTIFIABLE EMPLOYEE

Section 4. If a loss is alleged to have been caused by the fraud or dishonesty of any one or more of the Employees covered under Insuring Agreement IA or IB, as the case may be, and the Insured shall be unable to designate the specific Employee or Employees causing such loss, the Insured shall nevertheless have the benefit of such applicable Insuring Agreement subject to the provisions of Section 2 (b) of this endorsement provided that the evidence submitted reasonably proves that the loss was in fact due to the fraud or dishonesty of one or more of the said Employees, and provided, further, that the aggregate liability of the Company for any such loss shall not exceed the Limit of Liability applicable to such Insuring Agreement.

OWNERSHIP OF PROPERTY; INTERESTS COVERED

Section 5. The insured property may be owned by the Insured, or held by the Insured in any capacity whether or not the Insured is liable for the loss thereof, or may be property as respects which the Insured is legally liable; provided, Insuring Agreements II, III and IV apply only to the interest of the Insured in such property, including the Insured's liability to others, and do not apply to the interest of any other person or organization in any of said property unless included in the Insured's proof of loss, in which event the third paragraph of Section 8 is applicable to them.

BOOKS AND RECORDS

Section 6. The Insured shall keep records of all the insured property in such manner that the Company can accurately determine therefrom the amount of loss.

PRIOR FRAUD, DISHONESTY OR CANCELATION

Section 7. The coverage of Insuring Agreement IA or IB shall not apply to any Employee from and after the time that the Insured or any partner or officer thereof not in collusion with such Employee shall have knowledge or information that such Employee has committed any fraudulent or dishonest act in the service of the Insured or otherwise, whether such act be committed before or after the date of employment by the Insured.

If, prior to the issuance of this endorsement, any fidelity insurance in favor of the Insured or any predecessor in interest of the Insured and covering one or more of the Insured's Employees shall have been canceled as to any of such Employees by reason of the giving of written notice of cancelation by the insurer issuing such fidelity insurance whether the Company or not, and if such Employees shall not have been reinstated under the coverage of said fidelity insurance or superseding fidelity insurance, the Company shall not be liable on account of such Employees unless the Company shall agree in writing to include such Employees within the coverage of Insuring Agreement IA or IB, as the case may be.

LOSS; NOTICE; PROOF; ACTION AGAINST COMPANY

Section 8. Upon knowledge or discovery of loss or of an occurrence which may give rise to a claim for loss, the Insured shall: (a) give notice thereof as soon as practicable to the Company or any of its authorized agents and, except under Insuring Agreements IA or IB, and V, also to the police if the loss is due to a violation of law; (b) file detailed proof of loss, duly sworn to, with the Company within four months after the discovery of loss.

Proof of loss under Insuring Agreement V shall include the instrument which is the basis of claim for such loss, or if it shall be impossible to file such instrument, the affidavit of the Insured or the Insured's bank of deposit setting forth the amount and cause of loss shall be accepted in lieu thereof.

Upon the Company's request, the Insured shall submit to examination by the Company, subscribe the same, under oath if required, and produce for the Company's examination all pertinent records, all at such reasonable times and places as the Company shall designate, and shall cooperate with the Company in all matters pertaining to loss or claims with respect thereto.

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this endorsement nor until ninety days after the required proofs of loss have been filed with the Company, nor at all unless commenced within two years from the date when the Insured discovers the loss. If any limitation of time for notice of loss or any legal proceeding herein contained is shorter than that permitted to be fixed by agreement under any statute controlling the construction of this endorsement the shortest permissible statutory limitation of time shall govern and shall supersede the time limitation herein stated.

VALUATION — PAYMENT — REPLACEMENT

Section 9. In no event shall the Company be liable as respects Securities for more than the actual cash value thereof at the close of business on the business day next preceding the day on which

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Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

The Insured shall be entitled to priority of payment over loss sustained by any bank aforesaid. Loss under this Insuring Agreement, whether sustained by the Insured or such bank, shall be paid directly to the Insured in its own name, except in cases where such bank shall have already fully reimbursed the Insured for such loss. The liability of the Company to such bank for such loss shall be a part of and not in addition to the amount of insurance applicable to the Insured's office to which such loss would have been allocated had such loss been sustained by the Insured.

If the Insured or such bank shall refuse to pay any of the foregoing instruments made or drawn as hereinbefore set forth, alleging that such instruments are forged or altered, and such refusal shall result in suit being brought against the Insured or such bank to enforce such payment and the Company shall give its written consent to the defense of such suit, then any reasonable attorneys' fees, court costs, or similar legal expenses incurred and paid by the Insured or such bank in such defense shall be construed to be a loss under this Insuring Agreement and the liability of the Company for such loss shall be in addition to any other liability under this Insuring Agreement.

GENERAL AGREEMENTS

CONSOLIDATION-MERGER

A. If, through consolidation or merger with, or purchase of assets of, some other concern, any persons shall become Employees, the insurance afforded by this endorsement shall also apply as respects such Employees, provided the Insured shall give the Company written notice thereof within thirty days thereafter and shall pay the Company an additional premium computed prorata from the date of such consolidation, merger or purchase to the end of the current premium period.

JOINT INSURED

B. If more than one Insured is covered under this endorsement, the Insured first named shall act for itself and for every other Insured for all purposes of this endorsement. Knowledge possessed or discovery made by any Insured or by any partner or officer thereof shall, for the purposes of Sections 7, 8 and 15, constitute knowledge possessed or discovery made by every Insured. Cancelation of the insurance hereunder as respects any Employee as provided in Section 15 shall apply to every Insured. If, prior to the cancelation or termination of this endorsement, this endorsement or any Insuring Agreement hereof is canceled or terminated as to any Insured, there shall be no liability for any loss sustained by such Insured unless discovered within one year from the date of such cancelation or termination, or as respects Insuring Agreement IB, within two years therefrom. Payment by the Company to the Insured first named of any loss under this endorsement shall fully release the Company on account of such loss. If the Insured first named ceases for any reason to be covered under this endorsement, then the Insured next named shall thereafter be considered as the Insured first named for all purposes of this endorsement.

LOSS UNDER PRIOR BOND OR POLICY

C. If the coverage of an Insuring Agreement of this endorsement other than Insuring Agreement V, is substituted for any prior bond or policy of insurance carried by the Insured or by any predecessor in interest of the Insured, which prior bond or policy is terminated, canceled or allowed to expire as of the time of such substitution, the Company agrees that such Insuring Agreement applies to loss which is discovered as provided in Section 1 of the Conditions and Limitations and which would have been recoverable by the Insured or such predecessor under such prior bond or policy except for the fact that the time within which to discover loss thereunder had expired; provided:

(1) the insurance under this General Agreement C shall be a part of and not in addition to the amount of insurance afforded by the applicable Insuring Agreement of this endorsement;

(2) such loss would have been covered under such Insuring Agreement had such Insuring Agreement with its agreements, conditions and limitations as of the time of such substitution been in force when the acts or events causing such loss were committed or occurred; and

(3) recovery under such Insuring Agreement on Account of such loss shall in no event exceed the amount which would have been recoverable under such Insuring Agreement in the amount for which it is written as of the time of such substitution, had such Insuring Agreement been in force when such acts or events were committed or occurred, or the amount which would have been recoverable under such prior bond or policy had such prior bond or policy continued in force until the discovery of such loss, if the latter amount be smaller.

Insuring Agreement V shall also cover loss sustained by the Insured at any time before the termination or cancelation of Insuring Agreement V, which would have been recoverable under the coverage of some similar form of forgery insurance (exclusive of fidelity insurance) carried by the Insured or any predecessor in interest of the Insured, had such prior forgery insurance given all of the coverage afforded under Insuring Agreement V; provided, with respect to loss covered by this paragraph:

(a) the coverage of Insuring Agreement V is substituted on or after the date hereof for such prior forgery coverage and the Insured or such predecessor, as the case may be, carried such prior forgery coverage on the office at which such loss was sustained continuously from the time such loss was sustained to the date the coverage of Insuring Agreement V was substituted therefor;

(b) at the time of discovery of such loss, the period for discovery of loss under all such prior forgery insurance has expired; and

(c) if the amount of insurance carried under Insuring Agreement V applicable to the office at which such loss is sustained is larger than the amount applicable to such office under such prior forgery insurance, and in force at the time such loss is sustained, then liability hereunder for such loss shall not exceed the smaller amount.

THE FOREGOING INSURING AGREEMENTS AND GENERAL AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

EFFECTIVE PERIOD, TERRITORY, DISCOVERY

Section 1. Loss is covered under Insuring Agreement IB of this endorsement only if discovered not later than two years from the end of the Effective Period of this endorsement. Except under Insuring Agreement IB, loss is covered under this endorsement only if discovered not later than one year from the end of such Effective Period.

Subject to General Agreement C:

(a) this endorsement, except under Insuring Agreement IA, IB and V, applies only to loss which occurs during the Effective Period of this endorsement within any of the States of the United States of America, the District of Columbia, Virgin Islands, Puerto Rico, Canal Zone or Canada;

(b) Insuring Agreements IA and IB apply only to loss sustained by the Insured through fraudulent or dishonest acts committed during the Effective Period of this endorsement by any of the Employees engaged in the regular service of the Insured within the territory designated above or while such Employees are elsewhere for a limited period;

(c) Insuring Agreement V applies only to loss sustained during the Effective Period of this endorsement.

EXCLUSIONS

Section 2. This endorsement does not apply:

(a) to loss due to any fraudulent, dishonest or criminal act by any Insured or a partner therein, whether acting alone or in collusion with others;

(b) under Insuring Agreement IA or IB, to loss, or to that part of any loss, as the case may be, the proof of which, either as to its factual existence or as to its amount, is dependent upon an inventory computation or a profit and loss computation; provided, however, that this paragraph shall not apply to loss of Money, Securities or other property which the Insured can prove, through evidence wholly apart from such computations, is sustained by the Insured through any fraudulent or dishonest act or acts committed by any one or more of the Employees;

(c) under Insuring Agreements II and III, to loss due to any fraudulent, dishonest or criminal act by an Employee, director, trustee or authorized representative of any Insured, while working or otherwise and whether acting alone or in collusion with others; provided, this Exclusion does not apply to Safe Burglary or Robbery or attempt thereat;

(d) under Insuring Agreements II and III, to loss 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;

(e) under Insuring Agreements II and III, to loss (1) due to the giving or surrendering of Money or Securities in any exchange or purchase; (2) due to accounting or arithmetical errors or omissions; or (3) of manuscripts, books of account or records;

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the loss was discovered, nor as respects other property, for more than the actual cash value thereof at the time of loss; provided, however, the actual cash value of such other property held by the Insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the Insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The Company may, with the consent of the Insured, settle any claim for loss of property with the owner thereof. Any property for which the Company has made indemnification shall become the property of the Company.

In case of damage to the Premises or loss of property other than Securities, the Company shall not be liable for more than the actual cash value of such property, or for more than the actual cost of repairing such Premises or property or of replacing same with property or material of like quality and value. The Company may, at its election, pay such actual cash value, or make such repairs or replacements. If the Company and the Insured cannot agree upon such cash value or such cost of repairs or replacements, such cash value or such cost shall be determined by arbitration.

RECOVERIES

Section 10. If the Insured shall sustain any loss covered by this endorsement which exceeds the applicable amount of insurance hereunder, the Insured shall be entitled to all recoveries (except from suretyship, insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whomsoever made, on account of such loss under this endorsement until fully reimbursed, less the actual cost of effecting the same; and any remainder shall be applied to the reimbursement of the Company.

LIMITS OF LIABILITY

Section 11. Payment of loss under Insuring Agreement IA, IB or V shall not reduce the Company's liability for other losses under the applicable Insuring Agreement whenever sustained. The Company's total liability (a) under Insuring Agreement IA for all loss caused by any Employee or in which such Employees is concerned or implicated, (b) under Insuring Agreement IB as to each Employee or (c) under Insuring Agreement V for all loss by 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, is limited to the applicable amount of insurance specified in the Table of Limits of Liability or endorsement amendatory thereto. The liability of the Company for loss sustained by any or all of the Insured shall not exceed the amount for which the Company would be liable had all such loss been sustained by any one of the Insured.

Except under Insuring Agreements IA, IB and V the applicable limit of liability stated in the Table of Limits of Liability of this endorsement is the total limit of the Company's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the Premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

Regardless of the number of years this endorsement shall continue in force and the number of premiums which shall be payable or paid, the limit of the Company's liability as specified in the Table of Limits of Liability of this endorsement shall not be cumulative from year to year or period to period.

LIMIT OF LIABILITY UNDER THIS ENDORSEMENT AND PRIOR INSURANCE

Section 12. This Section shall apply only to Insuring Agreements IA, IB and V.

With respect to loss caused by any person (whether one of the Employees or not) or in which such person is concerned or implicated or which is chargeable to any Employee as provided in Section 4 and which occurs partly during the Effective Period of this endorsement and partly during the period of other bonds or policies issued by the Company to the Insured or to any predecessor in interest of the Insured and terminated or canceled or allowed to expire and in which the period for discovery has not expired at the time any such loss thereunder is discovered, the total liability of the Company under this endorsement and under such other bonds or policies shall not exceed, in the aggregate, the amount carried under the applicable Insuring Agreement of this endorsement on such loss or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss, if the latter amount be the larger.

OTHER INSURANCE

Section 13. If there is available to the Insured any other insurance or indemnity covering any loss covered by Insuring Agreement IA, IB or V the Company shall be liable hereunder only for that part of such loss which is in excess of the amount recoverable or recovered from such other insurance or indemnity, except that if such other insurance or indemnity is a bond or policy of fidelity insurance, any loss covered under both such fidelity insurance and Insuring Agreement V shall first be paid under Insuring Agreement V. Any loss covered under both Insuring Agreements IA or IB and also under Insuring Agreement V shall first be paid under Insuring Agreement V and the excess, if any, shall be paid under Insuring Agreement IA or IB, as the case may be. The Company waives any right of contribution which it may have against any forgery insurance carried by any depository bank which is indemnified under Insuring Agreement V.

Under any other Insuring Agreement, if there is any other valid and collectible insurance which would apply in the absence of such Insuring Agreement, the insurance under this endorsement shall apply only as excess insurance over such other insurance; provided, the insurance shall not apply (a) to property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by the Insured.

SUBROGATION

Section 14. In the event of any payment under this endorsement the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatsoever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

CANCELATION AS TO ANY EMPLOYEE

Section 15. Insuring Agreements IA or IB shall be deemed canceled as to any Employee: (a) immediately upon discovery by the Insured, or by any partner or officer thereof not in collusion with such Employee, of any fraudulent or dishonest act on the part of such Employee; or (b) at noon, standard time as aforesaid, upon the effective date specified in a written notice mailed to the Insured. Such date shall be not less than ten days after the date of mailing. The mailing by the Company of notice as aforesaid to the Insured at the P. O. address shown in the policy to which this endorsement is attached shall be sufficient proof of notice. Delivery of such written notice by the Company shall be equivalent to mailing.

CANCELATION OF ENDORSEMENT OR INSURING AGREEMENT

Section 16. This endorsement or any Insuring Agreement thereof may be canceled by the Insured by mailing to the Company written notice stating when thereafter the cancelation shall be effective. This endorsement or any such Insuring Agreement may be canceled by the Company by mailing to the Insured at the P.O. address shown in the policy to which this endorsement is attached written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date of cancelation stated in the notice shall become the end of the Effective Period of this endorsement for any affected Insuring Agreement. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

NO BENEFIT TO BAILEE

Section 17. This Section shall apply only to Insuring Agreements II and III.

The insurance afforded by this endorsement shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

ASSIGNMENT

Section 18. Assignment of interest under this endorsement shall not be valid except with the written consent of the Company; if, however, the Insured shall die, this endorsement shall cover the Insured's legal representative as Insured; provided that notice of cancelation addressed to the Insured named in the Declarations and mailed to the P.O. address shown in the policy to which this endorsement is attached shall be sufficient notice to effect cancelation of this endorsement.

CHANGES

Section 19. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this endorsement or estop the Company from asserting any right under the terms of this endorsement, nor shall the terms of this endorsement be waived or changed, except by endorsement issued to form a part of this endorsement signed by an officer of the Company.

By acceptance of this endorsement the Insured agrees that it embodies all agreements existing between the Insured and the Company or any of its agents relating to this insurance.

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Section IV
Boiler & Machinery Coverage

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SMP BOILER AND MACHINERY COVERAGE ENDORSEMENT
SECTION IV — BOILER AND MACHINERY COVERAGE

Form MLB-400 (Ed. 10-66)

This endorsement is effective as to the policy designated below.

Policy Symbol and No.	Name of Company	Endorsement effective from noon of (Month, Day, Year)

Insured

The Insuring Agreement, Conditions, Definitions and Special Provisions and other terms of this endorsement shall apply only as specified herein and none of the provisions, stipulations and other terms of the policy to which this endorsement is attached shall apply to insurance hereunder.

DECLARATIONS

Item 1.
Item 2.
Item 3. } as stated in the policy to which this endorsement is attached, unless amended herein:

	Limit per Accident:	Location 1	Location 2	Location 3
Item 4.		$	$	$
Item 5.	Premium $			
Item 6.	Repair or Replacement _____ Coverage not afforded unless the word "Included" is inserted in this Item.			
Item 7.	Endorsements Nos. made part of this endorsement at inception date			

INSURING AGREEMENT

In consideration of the Premium, subject to the Declarations, to the Conditions, to the Definitions, to the Special Provisions, to other terms of this endorsement and to the endorsements issued to form a part thereof, the Company agrees with the Insured respecting loss from an Accident, as defined herein, occurring while this endorsement is in effect, to an Object, as defined herein, while the Object is in use or connected ready for use at any Location specified in the Declarations, as follows:

Coverage I—LOSS ON PROPERTY OF INSURED

To pay for loss on the property of the Insured directly damaged by such Accident (or, if the Company so elects, to repair or replace such damaged property), excluding (a) loss from fire concomitant with or following an Accident or from the use of water or other means to extinguish fire, (b) loss from an Accident caused directly or indirectly by fire or from the use of water or other means to extinguish fire, (c) loss from a combustion explosion outside the Object concomitant with or following an Accident, (d) loss from flood unless an Accident ensues and the Company shall then be liable only for loss from such ensuing Accident, (e) loss from delay or interruption of business or manufacturing or process, (f) loss from lack of power, light, heat, steam or refrigeration and (g) loss from any other indirect result of an Accident;

Coverage II—EXPEDITING EXPENSES

To pay, subject to exclusions (a) through (g) stated in Coverage I, and to the extent of any indemnity remaining after payment of all loss as may be required under Coverage I, for the reasonable extra cost of temporary repair and of expediting the repair of such damaged property of the Insured, including overtime and the extra cost of express or other rapid means of transportation, provided the Company's liability under Coverage II shall not exceed $1,000;

Coverage III—PROPERTY DAMAGE LIABILITY

To pay, to the extent of any indemnity remaining after payment of all loss as may be required under Coverages I and II, such amounts as the Insured shall become obligated to pay by reason of the liability of the Insured for loss on property of others directly damaged by such Accident, including liability for loss of use of such damaged property of others;

Coverage IV—DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

To defend the Insured against claim or suit alleging liability under Coverage III, unless or until the Company shall elect to effect settlement thereof, and to pay all costs taxed against the Insured in any legal proceeding defended by the Company in accordance with such Coverage, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premiums on appeal bonds required in such legal proceedings, all premiums on bonds to release attachments for an amount not in excess of the applicable limits of liability for Coverage III, and all expenses incurred by the Company for such defense; the amounts incurred under Coverage IV are payable by the Company irrespective of the Limit per Accident, except settlements of claims and suits.

CONDITIONS

1. LIMIT PER ACCIDENT

The Company's total liability for loss from any One Accident shall not exceed the amount specified as Limit per Accident. The term "One Accident" shall be taken as including all resultant or concomitant Accidents whether to one Object or to more than one Object or to part of an Object. The inclusion herein of more than one Insured shall not operate to increase the limits of the Company's liability.

2. OTHER INSURANCE

The words "joint loss," as used herein, mean loss to which both this insurance and other insurance carried by the Insured apply. In the event of such "joint loss,"

(a) the Company shall be liable under this endorsement only for the proportion of the said joint loss that the amount that would have been payable under this endorsement on account of said joint loss, had no other insurance existed, bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said joint loss, had there been no insurance under this endorsement, but

(b) in case the policy or policies affording such other insurance do not contain a clause similar to clause (a), the Company shall be liable under this endorsement only for the proportion of said joint loss that the amount insured under this endorsement, applicable to said joint loss, bears to the whole amount of insurance, applicable to said joint loss.

3. NUCLEAR ENERGY EXCLUSION

This endorsement does not apply to loss, whether it be direct or indirect, proximate or remote,

(1) from an Accident caused directly or indirectly by nuclear reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled; or

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the Policy is written.

(2) from nuclear reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, caused directly or indirectly by, contributed to or aggravated by an Accident;

nor shall the Company be liable for any loss covered in whole or in part by any contract of Insurance carried by the Insured, which also covers any hazard or peril of nuclear reaction or nuclear radiation.

4. WAR DAMAGE EXCLUSION

This endorsement does not apply to loss from an Accident caused directly or indirectly by

(1) hostile or warlike action, including action in hindering, combating or defending against an actual, impending or expected attack, by

(i) any government or sovereign power (de jure or de facto) or any authority maintaining or using military, naval or air forces,

(ii) military, naval or air forces, or

(iii) an agent of any such government, power, authority or forces;

(2) insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating or defending against such an occurrence, or by confiscation by order of any government or public authority.

5. PROPERTY VALUATION—COVERAGE I

The limit of the Company's liability for loss on the property of the Insured shall not exceed the actual cash value thereof at the time of the Accident. If, as respects the damaged property of the Insured, the repair or replacement of any part or parts of an Object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the Object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

6. REPAIR OR REPLACEMENT — COVERAGE I

If the word "Included" is inserted in Item 6 of the Declarations, but not otherwise, the Property Valuation — Coverage I Condition of this endorsement is deleted and loss on property of the Insured as specified in Coverage I shall mean the amount actually expended by the Insured to repair or replace such property of the Insured, all subject to the following provisions:

(a) The damaged property shall be repaired or replaced within twelve months from the date of the Accident unless such period is extended with written consent of the Company.

(b) If an Object Limit clause and a Coinsurance clause are applicable to the payment of loss under Coverage I of the Insuring Agreement of this endorsement, the words "replacement cost" are substituted for words "actual cash value" wherever they appear in said clauses.

(c) The Company's liability for any repair or replacement shall be limited to the smaller of the following:

(1) The cost at the time of the Accident to repair the said property, or

(2) The cost at the time of the Accident to replace the said property on the same site with property of like kind, capacity, size and quality;

provided that in the event the replacement is by property of a better kind or quality or of larger capacity or size, the liability of the Company shall not exceed the amount that would be paid if the replacement has been made by property of like kind, capacity, size and quality.

(d) The Company shall not be liable for:

(1) any increase in the cost of repair or replacement necessitated by any ordinance or law regulating or restricting repair, construction or installation,

(2) loss or damage to property useless to the Insured or obsolete to the Insured, nor

(3) the cost of repairing or replacing any part or parts of an Object which is in excess of the cost of repairing or replacing the entire Object.

(e) If any damaged property is not repaired or replaced, the Company's liability as respects such property shall be limited to the amount that would have been paid had this Condition not been in effect.

7. INSPECTION AND SUSPENSION

The Company shall be permitted at all reasonable times while this endorsement is in effect to inspect any Object and the premises where said Object is located.

Upon the discovery of a dangerous condition with respect to any Object, any representative of the Company may immediately suspend the insurance with respect to an Accident to said Object by written notice mailed or delivered to the Insured at the P.O. Address of the Insured as specified in the Declarations or at the location of the Object. Insurance so suspended may be reinstated by the Company but only by an endorsement issued to form a part of this endorsement and signed by a duly authorized representative of the Company. The Insured shall be allowed the unearned portion of the premium paid for such suspended insurance, pro rata, for the period of suspension.

8. CANCELLATION

Cancellation or termination of the policy to which this endorsement is attached shall effect cancellation or termination of this endorsement.

This endorsement may be cancelled by the Insured by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This endorsement may be cancelled by the Company by mailing to the Insured at the P.O. Address of the Insured, as specified 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 and the effective date and hour of cancellation stated in the notice shall become the end of the Policy Term for this endorsement. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

If the Insured cancels, the earned premium shall be computed in accordance with the Term Table in the Company's Manual of Rules and Rates applicable. If the Company cancels, the earned premium shall be computed pro rata. Premium Adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due the Insured.

If the premium indicated in the Declarations is made payable in Annual installments, failure of the Insured to pay any such installment when due, shall be deemed a request by the Insured for cancellation of this endorsement and Notice by the Company to the Insured in accordance with the provisions of this Condition shall operate as a cancellation thereof at the request of the Insured and the earned premium shall be determined as specified in this Condition for cancellation by the Insured.

If the earned premium, computed in accordance with the provisions of this Condition, exceeds the premium paid by the Insured, the Insured shall pay the Company the difference.

9. NOTICE OF ACCIDENT AND ADJUSTMENT

When an Accident occurs, written notice shall be given by or on behalf of the Insured to the Company or any of its authorized agents as soon as practicable. The Insured shall give like notice of any claim made on account of such Accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Insured before repairs are undertaken or physical evidence of the Accident is removed, except for protection or salvage. Proof of loss shall be made by the Insured in such form as the Company may require. If suit is brought against the Insured for loss to which this insurance is applicable, the Insured shall immediately forward to the Company any summons or other process served upon the Insured. The Insured upon request of the Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company.

In the event of disagreement between the Company and the Insured as to the amount of loss on the property of the Insured for which the Company is liable under this endorsement, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then on the request of the Insured or the Company, such umpire shall be

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selected by a judge of a court of record in the State in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss and upon failure to agree shall submit their difference to the umpire. An award in writing of any two of said three persons shall determine the amount of said loss. The Insured and the Company shall pay the appraisers respectively chosen by each and shall share and pay equally for the umpire and for other expenses of appraisal. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

The Insured shall not voluntarily assume any liability or incur any expense, other than at the Insured's own cost, except as otherwise expressly permitted in this endorsement, or interfere in any negotiation for settlement or any legal proceeding, without the consent of the Company previously given in writing.

10. SUBROGATION

In the event of any payment under this endorsement, the Company shall be subrogated to the Insured's rights of recovery therefor 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 the Accident to prejudice such rights.

11. ACTION AGAINST COMPANY—COVERAGES I AND II

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this endorsement, nor unless commenced within fourteen months from the date of Accident. If this limitation of time is shorter than that prescribed by any statute controlling the construction of this endorsement, the shortest permissible statutory limitation in time shall govern and shall supersede the time limitation herein stated.

12. ACTION AGAINST COMPANY—COVERAGE III

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this endorsement, nor until the amount of the Insured's obligation to pay has been finally determined either by judgment against the Insured after trial or by written agreement of the Insured, the claimant and the Company. The Insured upon request of the Company shall aid in effecting settlements, in securing evidence and the attendance of witnesses and in prosecuting appeals.

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 endorsement to the extent of the insurance afforded by this endorsement. Nothing contained in this endorsement shall give any person or organization any right to join the Company as a codefendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

13. PREMIUM ADJUSTMENT

With respect to the Objects described in the Definitions, the premiums for all kinds of insurance afforded by this endorsement or amendment thereof shall be adjusted as follows:

(a) any premium applicable to such Objects shall be adjusted, as of the effective date such insurance applies, on the basis of the information obtained at the time of the Company's survey of such Objects that are in use or connected ready for use as of such effective date;

(b) an additional premium shall be charged for additional Objects, included in this endorsement in accordance with the terms and provisions of this Condition which are located in new structures or structural additions constructed after the effective date of this endorsement, such additional premium to be computed pro rata from the time said additional Objects are connected ready for use; and

(c) a return premium shall be allowed for insured Objects located in structures or structural additions demolished after the effective date of this endorsement, such return premium to be computed pro rata from the time said Objects are disconnected.

14. ASSIGNMENT

Assignment of interest under this endorsement shall not bind the Company until its consent is endorsed herein; if, however, the Insured shall die or be adjudged bankrupt or insolvent during the Term of the Policy to which this endorsement is attached, this endorsement, unless cancelled, shall, if written notice be given to the Company within sixty days after the date of such death or adjudication, cover the Insured's legal representative as the Insured.

15. CHANGES

By accepting this endorsement, the Insured agrees that this endorsement embodies all agreements existing between the Insured and the Company or any of its agents relating to this insurance. Notice to any agent or knowledge possessed by an agent or any other person shall not effect a waiver or a change in any part of this endorsement or estop the Company from asserting any rights under this endorsement; nor shall the terms of this endorsement be waived or changed, except by endorsement issued to form a part of this endorsement signed by a duly authorized representative of the Company. The additional or return premium for any such endorsement shall be computed in accordance with the Company's Manual of Rules and Rates applicable to such change.

DEFINITIONS

A. DEFINITION OF OBJECT

Object shall mean

Group 1, any steam boiler, electric steam generator, hot water boiler, fired water heater or fired pressure vessel, including as part thereof (1) any steel economizer used solely with such vessel, (2) any indirect water heater used for hot water supply service which is directly in the water circulating system of such vessel and which does not form a part of a water storage tank, and (3) any piping on the premises of the Insured, or between parts of said premises, with valves, fittings, traps and separators thereon, which contains steam or condensate thereof, generated in whole or in part in such vessel, and any feed water piping between such vessel and its feed pump or injector; but Object shall not include

a. any part of such vessel or piping which does not contain water or steam;
b. any reciprocating or rotating machine;
c. any electrical apparatus;
d. any piping not on the premises of the Insured, used to supply any premises not owned by, leased by or operated under the control of the Insured; nor
e. any other piping, any radiator, convector, coil, vessel or apparatus except as included in (1), (2) and (3) above.

Group 2, any metal unfired pressure vessel as follows: hot water storage tank with or without internal heating coils, coil water heater, electric water heater, tank for the storage of compressed air and hydro-pneumatic tank; but Object shall not include

a. any part of such vessel which is not under pressure of contents therein or which is not under vacuum therein;
b. any reciprocating or rotating apparatus within or forming a part of such vessel;
c. any electrical apparatus within or forming a part of such vessel;
d. any piping leading to or from such vessel;
e. any cylinder containing a movable plunger or piston;
f. any expansion tank used with a hot water heating system;
g. any radiator, inductor or convector; nor
h. any vessel or coil connected to or used with a refrigerating system or an air conditioning system.

Group 3, metal piping with valves, fittings, traps or separators thereon containing steam or condensate thereof, on or between parts of the premises of the Insured, supplied by boilers or vessels not owned, operated or controlled by the Insured, and compressed air piping on the premises; but Object shall not include

a. any radiator;
b. any convector; nor
c. any coil or other vessel or apparatus connected to such piping.

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B. DEFINITION OF ACCIDENT

I. Accident shall mean a sudden and accidental breakdown of the Object, or a part thereof, which manifests itself at the time of its occurrence by physical damage to the Object that necessitates repair or replacement of the Object or part thereof, but Accident shall not mean

a. depletion, deterioration, corrosion or erosion of material;
b. wear and tear;
c. leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
d. the breakdown of any vacuum tube, gas tube or brush;
e. the breakdown of any structure or foundation supporting the Object or any part thereof;
f. the functioning of any safety device or protective device; nor
g. the explosion of gas or unconsumed fuel within the furnace of any fired Object or within the gas passages therefrom to the atmosphere.

II. Subject to the War Damage Exclusion in Condition 4 of this endorsement, an Accident arising out of strike, riot, civil commotion or acts of sabotage, vandalism or malicious mischief shall be considered "accidental" within the terms of this definition.

SPECIAL PROVISIONS

A. As respects any Object described in Group 1 of the Definition of Object, the furnace of any such Object and the gas passages therefrom to the atmosphere shall be considered as "outside the Object."

B. As respects any Object described in Group 1 of the Definition of Object, the Company shall not be liable for loss from an Accident while said Object is undergoing a hydrostatic pressure test.

C. As respects any Object described in Groups 2 and 3 of the Definition of Object, the Company shall not be liable for loss while said Object is undergoing a hydrostatic, pneumatic or gas pressure test.

Form MLB-400 (Ed. 10-66)

SAMPLE

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SECTION IV — BOILER AND MACHINERY COVERAGE

Form MLB-401 (Ed. 1-71)

DECLARATIONS

Item 1. Policy Number SMP 490049

Item 2. Name and Address of Insured COVIL CORPORATION, ETAL
P. O. Box 1804, Greenville, S. C.

Item 3. Policy Period: From noon of 3-31-76 to noon of 3-31-79 Standard Time, as to each of said dates, at the place where the accident occurs.

Item 4.

Total Premium	If Installments, Premium Payable:		
	In Advance	1st Anniversary	2nd Anniversary
$ 2,916	$ 1,012	$ 952	$ 952

Item 5. Repair or Replacement ..... (Coverage not afforded unless the word "Included" is inserted in this Item.)

Item 6. Endorsements Nos. made part of this endorsement at inception date MLB-400, MLB-40, mLB-402

Item 7.

Limit per Accident:	Location 1	Location 2	Location 3
	$ 500,000	$	$

Item 8. Schedule A—Applicable when coverage is provided by object groups. Insurance is afforded only with respect to Groups for which the word "Included" is inserted in the space provided below.

Groups	Descriptions	Included or Amount
1, 2, 3	Boilers, Unfired Vessels, and Piping	Included
2a	Additional Unfired Vessels	Included
4	Refrigerating	
	Additional Vessels & Piping	
	Ammonia Contamination Limit	$
	Water Damage Limit	$

Groups	Descriptions	Included or Amount
5, 6, 7, 8	Machinery	
	Object Limit (Group 8)	%
	Coinsurance (Group 8)	%
9, 10	Steam Machinery	
11, 12	Nonrotating Electrical	
	Object Limit (Group 12)	%
	Coinsurance (Group 12)	%
13, 14	Machinery Units	Included
	Water Damage Limit (Group 13)	$ 1,000

Item 9. Schedule B—Applicable only when coverage under MLB-400 is provided in conjunction with MLB-422.

Definitions and Special Provisions Section	Designated No. of Objects	Description of Objects and Other Provisions	Coverage

Form MLB-401 (Ed. 1-71)

COV-USF&G-00064

RP_001261

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DO NOT TYPE ABOVE THIS LINE

Applicable to Form MLB-401

In Item 5 Repair or Replacement is included except as respects the following 2 (two) air conditioning units.
1) Air conditioning Unit No. 58-3612, 180,000 btu/hr
2) Air Conditioning Unit No. 249667, 180,000 btu/hr.

The described units are located at:
131 Pinsley Circle,
Greenville, S. C.

This endorsement, from its effective date, forms a part of the policy described below issued by the Company named therein.

End. No.	End. Effective Date	Co.	B.D.	Agency Code	Policy Number	Named Insured

(The spaces above are to be completed only if this endorsement is issued subsequent to the issuance of the policy.)

William F. Spliedt
Secretary

UNITED STATES FIDELITY AND GUARANTY COMPANY
FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.

Willford Gragg
President

Countersigned by.....
Authorized Representative

General 166 (8/73)

COV-USF&G-00065

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ADDITIONAL OBJECT GROUPS
(Definitions and Special Provisions)

Form MLB-402 ★
(Ed. 1-71)

Insurance is afforded only with respect to Groups for which the word "Included" is inserted in Item 8 of the Declarations of Form MLB-401.

A. GROUP 4—REFRIGERATING

Object shall mean any system of refrigerating or air conditioning vessels and piping of 5HP capacity or more consisting of

1. all interconnected vessels, coils and piping which contain refrigerant;
2. all vessels which contain coils within which refrigerant is circulated;
3. any vessel, heated directly or indirectly, which functions as a generator, regenerator or concentrator and which forms a part of an absorption type system;
4. all valves and fittings on such vessels, coils and piping;

and if the word "Included" is inserted in Item 8 of the Declarations of MLB-401 opposite Additional Vessels & Piping, but not otherwise, Object shall also include

5. all vessels, radiators, inductors, convectors and coils together with valves and fittings thereon, which are connected to or used with the system and within which steam, water, brine or other solution is circulated for cooling, humidifying or space heating; and all piping containing water, brine or other solution interconnecting such vessels, radiators, inductors, convectors and coils, together with valves and fittings on such piping;

but excluding

(a) any steam boiler, steam piping or hot water boiler;
(b) any reciprocating or rotating machine or apparatus;
(c) any electrical apparatus;
(d) any apparatus mounted on or forming a part of a truck or other vehicle, or any hose, flexible device or non-metallic pipe connected to such apparatus; and
(e) any vessel, cooling tower, reservoir or other source of supply of cooling water for any condenser or compressor together with any water piping leading to or from such source of supply.

Ammonia Contamination Limit—The Company's liability for loss, including salvage expense, with respect to damage by ammonia contacting or permeating property under refrigeration, or in process requiring refrigeration, resulting from any One Accident to one or more Objects described in this Group shall not exceed $1,000 or shall not exceed the amount, if any, specified as the "Ammonia Contamination Limit" in Item 8 of the Declarations of MLB-401, whichever amount is greater, any such amount being a part of and not in addition to the Limit per Accident.

Water Damage Limit—The Company's liability for loss, including salvage expense, on property damaged by water resulting from any One Accident to one or more Objects described in this Group, shall not exceed $1,000 or shall not exceed the amount, if any, specified as the "Water Damage Limit" in Item 8 of the Declarations of MLB-401, whichever amount is greater, any such amount being a part of and not in addition to the Limit per Accident.

Special Provision—The Company shall not be liable for loss from an Accident to any Object described in this Group while said Object is undergoing a hydrostatic, pneumatic or gas pressure test.

B. GROUP 5—MACHINERY

Object shall mean any pump, compressor, fan or blower of the centrifugal or rotary type which is driven by an electric motor of 5HP capacity or more; but Object shall not include

(a) any air tank, mechanism or other appliance connected to the pump, compressor, fan or blower;
(b) any electrical apparatus;
(c) any piping or duct leading to or from the pump, compressor, fan or blower; nor
(d) any well casing.

C. GROUP 6—MACHINERY

Object shall mean any reciprocating pump or compressor which is driven by an electric motor of 5HP capacity or more; but Object shall not include

(a) any air tank, mechanism or other appliance connected to the pump or compressor;
(b) any electrical apparatus;
(c) any piping or duct leading to or from the pump or compressor; nor
(d) any well casing.

D. GROUP 7—MACHINERY

Object shall mean any electric motor of 5HP capacity or more used to drive a pump, compressor, fan or blower including

1. any exciter which is mechanically connected to such motor and is used solely for the excitation of such motor;
2. any shaft of such motor and any gear, wheel or magnetic brake mechanism on such shaft or on the frame of such motor, if such shaft does not also form an integral part of any other machine;
3. any shaft coupled to such motor, including the couplings and bearings thereon, if there is no mechanism other than a coupling on such shaft;
4. any gear set, with its bearings and shafts, built into the frame of any such motor or built into a casing integral with such motor; and
5. any nonrotating equipment used solely to start, stop or control any such motor and all electrical conductors connecting such equipment with the said motor, provided that such control equipment is physically separate from, and does not form a part of a switchboard, cubicle or bus structure used for the control of any electrical machine other than the said motor;

but Object shall not include

(a) any electrical conductors not specified in item (5);
(b) any piping leading to or from such motor; nor
(c) any electronic computer or electronic data processing equipment.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause(a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from use of water or other means to extinguish fire."

E. GROUP 8—MACHINERY

Object shall mean any enclosed gear set used as an intermediate drive for an Object described in Groups 5 or 6; but object shall not include

(a) any mechanism or appliance connected to such machine; nor
(b) any electrical apparatus.

Object Limit. The liability of the Company for loss on any Object, if such loss is caused by an Accident to said

SAMPLE

This Endorsement must be attached to Change Endorsement MLB-20 when issued after the policy is written.

Object, shall not exceed the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Object Limit" in Item 8 of the Declarations of MLB-401, and such amount is a part of and not in addition to the Limit per Accident.

Coinsurance. The Company shall not be liable for a greater proportion of loss on any Object, if such loss is caused by an Accident to the Object, than the Object Limit determined above bears to the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Coinsurance" percentage in Item 8 of the Declarations of MLB-401.

F. GROUP 9—STEAM MACHINERY

Object shall mean any steam engine, steam type compressor or steam type pump; but Object shall not include

(a) any air tank, mechanism or other appliance connected to such machine;
(b) any electrical apparatus, other than a governor motor;
(c) any condenser or its adapter;
(d) any piping or duct leading to or from such machine; nor
(e) any well casing.

G. GROUP 10—STEAM MACHINERY

Object shall mean any steam turbine unit, including as part thereof

1. any complete driving turbine;
2. any electrical generator, pump, compressor, fan, blower, wheel or gear on the shaft of the driving turbine or turbines or on a shaft which is connected to any of said turbines by any coupling, clutch or gear set;
3. any mechanical or hydraulic governing mechanism together with any electric motor used solely therewith;
4. any auxiliary apparatus mounted on the frame or bed of the unit;
5. any oil pump, or any pump for circulating a coolant for any electric generator, if used solely for the unit together with any machine driving any such pump;
6. any auxiliary electric motor used to rotate the unit solely for maintenance purposes;
7. any shaft which forms a part of the unit or which connects parts of the unit, together with any coupling, clutch, bearing, gear or gear set on said shaft; and
8. the interconnecting wiring and piping between parts of the unit;

but Object shall not include

(a) any electronic computer or electronic data processing equipment used to govern or control the unit;
(b) any machine or apparatus except as included in Sections 1-8 above;
(c) any wiring or piping leading to or from the unit; nor
(d) any condenser, its connecting pipe or adapter.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

H. GROUP 11—NON ROTATING ELECTRICAL

Object shall mean any transformer of 5 KVA or 5 KW capacity or more; but Object shall not include (a) any electrical conductors nor any piping leading to or from such transformer; nor (b) any electronic computer or electronic data processing equipment.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

I. GROUP 12—NON ROTATING ELECTRICAL

Object shall mean any switchboard, cubicle, bus structure, oil circuit breaker or air circuit breaker; but Object shall not include

(a) any rotating electrical machine other than one used solely to operate any part of such apparatus;
(b) any power transformer or any induction feeder regulator;
(c) any electronic computer or electronic data processing equipment;
(d) any conduit; nor
(e) any electrical conductors or piping leading to or from such apparatus.

Object Limit. The liability of the Company for loss on any Object, if such loss is caused by an Accident to said Object, shall not exceed the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Object Limit" in Item 8 of the Declarations of MLB-401, and such amount is a part of and not in addition to the Limit per Accident.

Coinsurance. The Company shall not be liable for a greater proportion of loss on any Object, if such loss is caused by an Accident to the Object, than the Object Limit determined above bears to the percentage of the Actual Cash Value of the Object at the time of the Accident, which percentage is specified as the "Coinsurance" percentage in Item 8 of the Declarations of MLB-401.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

J. GROUP 13—MACHINERY UNITS

Object shall mean any air conditioning unit which has a capacity of 60,000 Btu/hr, or more, but not in excess of 600,000 Btu/hr, consisting of

1. all interconnected vessels, coils and piping which contain refrigerant, or within which refrigerant is circulated, together with valves and fittings on such vessels, coils and piping;
2. any vessel, heated directly or indirectly, which functions as a generator, regenerator or concentrator and which forms a part of an absorption type unit;
3. all compressors, pumps, fans and blowers used solely with such unit, together with their driving electric motors;
4. all control equipment used solely with the unit; and
5. all vessels, radiators, inductors, convectors and coils, together with valves and fittings thereon, which are connected to or used with the unit and within which steam, water, brine or other solution is circulated for cooling, humidifying or space heating; and all piping containing water, brine or other solution interconnecting such vessels, radiators, inductors, convectors and

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coils, together with valves and fittings on such piping; but Object shall not include

(a) any steam boiler, steam piping or hot water boiler;

(b) any vessel, cooling tower, reservoir or other source of supply of cooling water for any condenser or compressor, together with any water piping leading to or from such source of supply;

(c) any wiring or piping leading to or from the unit;

(d) any belt; nor

(e) any truck or other vehicle, cabinet or compartment on or within which the unit, or any part thereof, is installed.

Water Damage Limit—The Company's liability for loss, including salvage expense, on property damaged by water resulting from any One Accident to one or more Objects described in this Group, shall not exceed $1,000 or shall not exceed the amount, if any, specified as the "Water Damage Limit" in Item 8 of the Declarations of MLB-401, whichever amount is greater, any such amount being a part and not in addition to the Limit per Accident.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

K. GROUP 14—MACHINERY UNITS

Object shall mean any small refrigerating unit or small air compressing unit each of which has a single compressor driven by a single electric motor with a capacity of 5HP or more but not in excess of 15HP, excluding any such unit forming part of an air conditioning unit; and Object shall mean the complete unit, but shall not include

(a) any wiring or piping leading to or from the unit;

(b) any belt; nor

(c) any truck or other vehicle, cabinet or compartment on or within which the unit, or any part thereof, is installed.

SPECIAL PROVISIONS

1. The Company shall not be liable for loss from an Accident while said Object is undergoing an insulation breakdown test, or is being dried out.
2. Clause (a) of Coverage I of the Insuring Agreement in the SMP Boiler and Machinery Coverage Endorsement, Form MLB-400 of which this endorsement forms a part is changed to read "(a) loss from fire outside the Object concomitant with or following an Accident or from the use of water or other means to extinguish fire."

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MOBILE PROPERTY FLOATER FORM
(FORM A)

Attached to and forming part of Policy Number SMP 490049

Issued by FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.
covering on the following described property:

DESCRIPTION OF PROPERTY	AMOUNT OF INSURANCE
This policy covers on property as per schedule on file at the office of the Company at Columbia, South Carolina dated 3-31-76.	267,345

DEDUCTIBLE

Each claim for loss or damage shall be adjusted separately, and from the amount of each adjusted claim, or the applicable limit of liability, whichever is less, the sum of $....25.00.....shall be deducted.

THIS POLICY INSURES AGAINST:

All risks of direct physical loss or damage to the above described property from any external cause, except as hereinafter provided.

THIS POLICY DOES NOT INSURE AGAINST:

(a) Loss or damage caused by wear and tear, gradual deterioration, dampness of atmosphere, extremes of temperature, insect, vermin, defect, inherent vice, or damage sustained due to any process or while being actually worked upon and resulting therefrom;

(b) Loss or damage caused by short circuit or other electrical injury or disturbance, exclusive of lightning to electrical appliances, devices or other electrically operated property or wiring unless fire ensues and then for the loss or damage by fire only;

(c) Loss or damage due to mechanical damage or breakdown, breakage of glass or other brittle articles or parts (lenses of scientific instruments excepted), marring, scratching, chipping or denting unless caused by fire, lightning, theft or attempted theft, cyclone, tornado, windstorm, earthquake, flood, explosion, malicious damage or collision, derailment or overturn of transporting vehicle;

(d) Loss or damage caused by or resulting from misappropriation, secretion, conversion, infidelity or any dishonest act on the part of the insured or other party of interest, his or their employees or agents or others to whom the property may be entrusted (carriers for hire excepted);

THE PROVISIONS PRINTED ON THE BACK OF THIS FORM ARE HEREBY REFERRED TO AND MADE A PART HEREOF.

Date 3-31-76 SAM J. CRAIN CO., INC. Agent.

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THIS POLICY DOES NOT INSURE AGAINST:

(e) Loss or damage caused by or resulting from theft from an unattended vehicle unless said vehicle is equipped with a fully enclosed body, and the loss is a direct result of violent forcible entry (of which there shall be visible evidence) into such fully enclosed body, the doors and windows of which have been securely locked;

(f) Delay, loss of market, indirect or consequential loss of any kind, unexplained loss, mysterious disappearance or shortage disclosed upon taking inventory;

(g) Loss or damage caused by or resulting from perils as specified in the War Risk Exclusion clause contained in the policy to which this form is attached;

(h) Loss caused by perils as specified in the Nuclear Exclusion Clause contained in the policy to which this form is attached.

SPECIAL CONDITIONS:

1. **TERRITORIAL LIMITS:** This policy covers the property insured only while it is within the forty-eight (48) contiguous states of the United States of America, the District of Columbia and the Dominion of Canada, *( )

2. **COINSURANCE:** The Company shall be liable, in the event of loss, for no greater proportion thereof than the amount insured hereunder bears to 100% of the actual value of the property insured hereunder at the time when such loss or damage shall happen. If this policy covers two or more items, this condition to apply to each item separately.

*Note: On policies issued to Insureds in Alaska, Hawaii or Puerto Rico, insert the words "and within Alaska" or "and within Hawaii" or "and within Puerto Rico" as the case may be.

Subject to all conditions of the policy to which this form is attached, except that any and all clauses and conditions in the printed portion of the policy in conflict with the terms of this special form are waived and declared null and void.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL DISTRICT
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 2019-CP-40-02285

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.

ANSWER OF ZURICH AMERICAN INSURANCE COMPANY

NOW COMES Zurich American Insurance Company ("Zurich"), as successor by merger to Maryland Casualty Company and Northern Insurance Company of New York, answering the Complaint of Peter D. Protopapas as Receiver for Covil Corporation (the "Receiver" or "Plaintiff"), would respectfully show the Court the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted herein is denied.

2. Responding to Paragraph 1, Zurich admits, upon information and belief, the Receiver maintains his principal place of business in Richland County, South Carolina. Zurich affirmatively avers, however, that Covil Corporation ("Covil") had its principal place of business in Greenville County, South Carolina. Further responding, Zurich craves reference to the Order attached to the Receiver's Complaint as Exhibit 1 for its specific terms and import. Zurich denies all remaining allegations of Paragraph 1 inconsistent with said exhibit.

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3. Paragraph 2 is not directed at Zurich, therefore, no response is required. To the extent a response is required, upon information and belief, Zurich admits Wall, Templeton & Haldrup, P.A. ("WTH") is a South Carolina professional association with its principal place of business in Charleston, South Carolina. Any remaining allegations of Paragraph 2 are denied.

4. Paragraph 3 is not directed at Zurich, therefore, no response is required. To the extent a response is required, Zurich is informed and believes that Sentry is an insurance company. Zurich lacks sufficient knowledge or information to form a belief as to the remaining allegations of Paragraph 3.

5. Paragraph 4 is not directed at Zurich, therefore, no response is required. To the extent a response is required, Zurich is informed and believes that USF&G is an insurance company. Zurich lacks sufficient knowledge or information to form a belief as to the remaining allegations of Paragraph 4.

6. Responding to Paragraph 5, Zurich admits that it is an insurance company organized under the laws of the State of New York with its principal place of business in the State of Illinois. Zurich admits it is successor by merger to Maryland Casualty Company and Northern Insurance Company of New York. Zurich denies it is a wholly-owned subsidiary of "Zurich Group of Insurance Companies."

7. Paragraphs 7 and 8 state legal conclusions to which no response is required. To the extent a response is required, the same is denied.

8. Responding to Paragraph 9, Zurich admits upon information and belief that Covil was an installer of thermal insulation. Zurich lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 9 and therefore denies the same.

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9. Upon information and belief, Zurich admits the allegations of Paragraph 10.

10. Responding to Paragraph 11, Zurich admits that it has been alleged by certain asbestos plaintiffs that Covil's operations included the installation, repair, replacement, removal, or disturbance of thermal insulation and other building materials and that those operations exposed persons to asbestos who thereby suffered bodily injury. However, Zurich lacks sufficient knowledge or information to form a belief as to the underlying allegations that Covil's operations caused harm, and therefore denies the same.

11. Responding to Paragraph 12, Zurich admits that Covil has been the subject of claims and lawsuits arising from its activities. Zurich denies any remaining allegations of Paragraph 12.

12. Responding to Paragraph 13, Zurich admits that it participated in the defense of Covil pursuant to certain policies of insurance. Zurich denies the remaining allegations of Paragraph 13.

13. Responding to Paragraph 14, Zurich admits only that it issued certain insurance to Covil. Zurich specifically denies issuing policies of insurance to Covil continuously from 1964 until 1978.

14. Zurich denies the allegations of Paragraphs 15, 16, 17 and 18.

15. Zurich denies the allegations of Paragraph 19. Further responding, Zurich avers that L. Winston Lee was appointed the Receiver for Covil Corporation pursuant to Orders of the Greenville County Court of Common Pleas and the Greenville County Master-In-Equity.

16. Zurich denies the allegations of Paragraph 20.

17. Zurich admits to retaining, in conjunction with United States Fidelity & Guaranty Company ("USF&G") and Sentry Insurance a Mutual Company ("Sentry"), certain individuals

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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 its policy of insurance. Zurich denies all remaining allegations of Paragraph 21.

18. Paragraph 22 states a legal conclusion to which no response is required. To the extent a response is required, the same is denied. Zurich would show that it has acted in good faith and engaged in fair dealing with respect to its actions towards Covil.

19. To the extent Paragraph 23 is directed at Zurich, Zurich states that the policies of insurance issued to Covil govern its obligations to Covil. Zurich denies all allegations of Paragraph 23 inconsistent with such policies of insurance. Zurich would further show that it is not obligated to provide a defense except as set forth in its policies of insurance.

20. To the extent Paragraph 24 is directed at Zurich, Zurich admits that it, in conjunction with Sentry and USF&G, engaged certain attorneys to provide a defense in certain lawsuits in which Covil was or is a named defendant. Zurich admits to retaining, in conjunction with USF&G and Sentry and pursuant to its policies of insurance issued to Covil, WTH in conjunction with the lawsuit captioned *Hill v. Advance Auto Parts, Inc., et al.*, C.A. No. 2018-CP-40-04680 (Richland County).

21. Paragraph 25 states a conclusion of law to which a response is not required. To the extent a response is required, Zurich denies the same, except admits that when an insurer hires an attorney to represent an insured, an attorney-client relationship arises between the attorney and the insured.

22. Responding to Paragraph 26, Zurich admits that it, in conjunction with USF&G and Sentry, retained certain lawyers to protect Covil's interest pursuant to and in strict

compliance with its policies of insurance. Zurich denies all remaining allegations of Paragraph 26.

23. Paragraph 27 states a conclusion of law to which no response is required. To the extent a response is required, Zurich denies the same, except refers to the Rules referenced therein, which speak for themselves.

24. Zurich denies the allegations of Paragraph 28.

25. Responding to Paragraph 29, Zurich admits that it, in conjunction with USF&G and Sentry, retained WTH in or about April 2018 to represent and defend Covil in all cases pending against Covil in South Carolina. Any remaining allegations of Paragraph 29 are denied.

26. Responding to Paragraph 30, Zurich lacks sufficient knowledge or information to form a belief as to the allegations of the first sentence and therefore denies the same. Further responding, Zurich, in conjunction with USF&G and Sentry, hired WTH and expected WTH to comply with all ethical duties toward Covil, its client and Zurich's insured. Zurich denies the second sentence of Paragraph 30.

27. Responding to Paragraph 31, Zurich, upon information and belief, admits that WTH did not utilize S.C. Code Ann. § 15-65-10 or Rule 66, SCRCP; however, Zurich denies that such was necessary. *See* South Carolina Bar Ethics Advisory Opinion 19-04. Upon information and belief, Zurich denies the remaining allegations of Paragraph 31.

28. Zurich denies the allegations of Paragraph 32.

29. Zurich denies the allegations of Paragraph 33. *See* South Carolina Bar Ethics Advisory Opinion 19-04.

30. Responding to Paragraph 34, Zurich denies that WTH acted improperly, but admits that WTH never advised Zurich that its representation of Covil was contrary to South

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Carolina law. Zurich further responds that the representation of Covil by WTH was not contrary to South Carolina law. Any remaining allegations of Paragraph 34 are denied.

31. Zurich denies the allegations of Paragraphs 35, 36 and 37.

32. Responding to Paragraph 38, Zurich admits the *Hill* case was pending in Richland County, South Carolina. Zurich denies the legal conclusion that the *Hill* case was served on James Covil, but acknowledges that the Court in *Hill* found sufficient service.

33. Paragraph 39 fails to state when Zurich allegedly knew the *Hill* complaint had been filed. Accordingly, Zurich admits that it knows the *Hill* complaint was filed, but denies Paragraph 39 to the extent it implies Zurich knew of filing of the *Hill* complaint on a specific, unreferenced, date.

34. Paragraph 40 fails to state when Zurich allegedly knew that "service of process had been historically performed through James Covil." Accordingly, Zurich admits that certain lawsuits against Covil were purportedly served on James Covil, but denies Paragraph 40 to the extent it implies Zurich knew that "service of process had been historically performed through James Covil" on a specific, unreferenced, date.

35. Paragraph 41 states conclusions of law to which no response is required. To the extent a response is required Zurich denies the allegations in Paragraph 41.[1] Further responding, Zurich states that if service is improper, as Zurich was informed by WTH, an answer is not required.

36. Responding to Paragraph 42, Zurich admits that the Court entered an Order attached as Exhibit 3 to the Complaint. Zurich denies the remaining allegations of Paragraph 42.

[1] Zurich acknowledges that the Court in *Hill* found that Mr. Covil was appropriate for service of process. The *Hill* matter was settled and thus no appellate review was conducted on this finding.

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37. Paragraph 43 states a legal conclusion to which no response is required. To the extent a response is required, the same is denied.

38. Zurich denies the allegations of Paragraph 44.

39. Responding to Paragraph 45, Zurich lacks sufficient knowledge or information to form a belief as to the truth of whether WTH spoke to James Covil or any Covil representative and therefore denies the same. Zurich otherwise denies the remaining allegations of Paragraph 45.

40. Responding to Paragraph 46, Zurich craves reference to the emails referenced therein for their specific terms and import. Zurich denies all allegations, and any inference thereof, of Paragraph 46 inconsistent with emails referenced therein. Zurich denies the remaining allegations of Paragraph 46.

41. Zurich denies the allegations of Paragraph 47.

42. Responding to Paragraph 48, Zurich realleges the above paragraphs as if set forth verbatim herein.[2]

43. Responding to Paragraph 49, Zurich admits that Mr. Virzi's affidavit is attached to the Complaint as Exhibit 4. Zurich lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 49 and therefore denies the same.

44. Paragraph 50 states a legal conclusion to which no response is required. To the extent a response is required, the same is denied.

45. Paragraphs 51, 52, 53, and 54 are not directed at Zurich. Therefore, no response is required. Further responding to Paragraph 54, Zurich, in conjunction with other insurers,

[2] In responding to the allegations against WTH, Zurich's admissions and denials shall not be seen as a waiver of any rights against WTH including, but not limited to those afforded Zurich pursuant to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, ___ S.C. ___, 826 S.E.2d 270 (2019). Zurich specifically reserves all rights and causes of action against WTH.

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settled the *Hill* case pursuant to the applicable policies of insurance and with the approval of the Plaintiff, thereby precluding any damages from accruing to Covil.

46. Responding to Paragraph 55, Zurich realleges the above paragraphs as if set forth verbatim herein.

47. Zurich admits the allegations of Paragraph 56.

48. Paragraph 57 is not directed to Zurich, and so no response is required. To the extent any response is required, Paragraph 57 states legal conclusions to which no response is required. Zurich denies such allegations to the extent inconsistent with applicable law.

49. Responding to Paragraph 58, Zurich, in conjunction with other insurers, settled the *Hill* case pursuant to the applicable policies of insurance, and with the approval of the Receiver, thereby precluding any damages from accruing to Covil. Zurich therefore denies the allegations of Paragraph 58.

50. Responding to Paragraph 59, Zurich realleges the above paragraphs as if set forth verbatim herein.

51. Paragraph 60 states a legal conclusion to which no response is required. Zurich denies such allegations to the extent inconsistent with applicable law.

52. Zurich denies the allegations of Paragraphs 61.

53. Responding to Paragraph 62, Zurich denies that WTH's "notice" of the *Hill* complaint is in any way pertinent. Therefore, Zurich denies the allegations of Paragraph 62. Responding further to Paragraph 62, Zurich admits that it communicated with WTH regarding the *Hill* lawsuit. Zurich otherwise denies any remaining allegations of Paragraph 62.

54. Zurich denies the allegations of Paragraphs 63 and 64.

55. Responding to Paragraph 65, Zurich realleges the above paragraphs as if set forth verbatim herein.

56. Responding to Paragraph 66, Zurich craves reference to the policies of insurance issued to Covil and denies all allegations of Paragraph 66 inconsistent therewith.

57. Responding to Paragraph 67, Zurich admits that certain policy materials are attached to the Complaint as Exhibit 6.

58. Zurich lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraphs 68 and 69 and therefore denies the same.

59. Responding to Paragraph 70, Zurich craves reference to the policies of insurance issued to Covil and denies all allegations of Paragraph 70 inconsistent therewith.

60. Zurich denies the allegations of Paragraphs 71, 72 and 73.

61. Responding to Paragraph 74, Zurich realleges the above paragraphs as if set forth verbatim herein.

62. Responding to Paragraph 75, Zurich admits it issued certain policies of insurance to Covil. Zurich denies all remaining allegations of Paragraph 75.

63. Paragraph 76 states a legal conclusion to which no response is required. To the extent a response is required, the same is denied.

64. Zurich denies the allegations of Paragraphs 77, 78, 79 and 80.

65. Responding to Paragraph 81, Zurich realleges the above paragraphs as if set forth verbatim herein.

66. Zurich denies the allegations of Paragraphs 82, 83 and 84.

67. Responding to Paragraph 85, Zurich realleges the above paragraphs as if set forth verbatim herein.

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68. Zurich denies the allegations of Paragraphs 86 and 87.

69. Zurich denies the allegations of Paragraph 88, including all subparagraphs.

70. Zurich denies the allegations of Paragraph 89, including all subparagraphs.

71. Zurich denies the allegations of Paragraph 90, including all subparagraphs.

72. Zurich denies the allegations of Paragraphs 91 and 92.

73. Responding to Paragraph 93, Zurich realleges the above paragraphs as if set forth verbatim herein.

74. Zurich denies the allegations of Paragraphs 94.

75. Responding to Paragraph 95, Zurich admits WTH should have taken steps to avoid any default. To the extent directed at Zurich, Zurich denies the allegations of Paragraph 95 that imply Zurich acted improperly.

76. Zurich denies the allegations of Paragraphs 96, 97 and 98.

77. Responding to Paragraph 99, Zurich realleges the above paragraphs as if set forth verbatim herein.

78. Zurich denies the allegations of Paragraphs 100, including all subparagraphs, including all legal conclusions therein which do not require a response.

79. Paragraph 101 states a legal conclusion to which no response is required. To the extent a controversy exists, such is the subject of a first-filed action in the Middle District of North Carolina and therefore this court must dismiss the Complaint pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure as set forth more fully hereinafter.

80. Responding to Paragraph 102, Zurich respectfully denies that declarations from this Court are necessary or appropriate. Zurich denies the remaining allegations of Paragraph 102.

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81. To the extent a response is required to the paragraph beginning WHEREFORE (Prayer for relief), Zurich denies that Plaintiff is entitled to any recovery of Zurich.

FOR A SECOND DEFENSE

82. Plaintiff's Complaint fails to state claims upon which relief can be granted. Therefore the Complaint must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

83. There are multiple other actions pending between Zurich and Plaintiff, including, but not limited to *Covil Corporation By Its Duly Appointed Receiver, Peter D. Protopapas v. Zurich American Insurance Company, et al.*, No.: 7:18-cv-03291-BHH (D.S.C.) (a still-pending federal case in which an injunction was issued prohibiting the Receiver from seeking coverage determinations in state court); *Zurich American Insurance Company v. Covil Corporation, et. al.*, No. 1:18-cv-932 (M.D.N.C.). Accordingly, this action should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

84. Zurich has not exerted total dominance and control over Covil, nor has Zurich misused any control of Covil which has resulted in injustices or inequitable consequences to Plaintiff. Accordingly, Plaintiff's claims against Zurich are without merit and should be dismissed.

FOR A FIFTH DEFENSE

85. Plaintiff's claims against Zurich are barred by the equitable doctrines of laches, estoppel, and waiver.

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FOR A SIXTH DEFENSE

86. The actions alleged in the Complaint and the injuries caused thereby, if any (it being denied that Plaintiff suffered any injuries), were caused by the acts or omissions of third parties which acted as a direct and proximate cause of Plaintiff's injuries, if any, in such a way as to constitute a supervening or intervening cause ending all liability on the part of Zurich.

FOR A SEVENTH DEFENSE

87. 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 (Zurich)."). This action has not been remanded by Judge Hendricks, thus the injunction remains in place. Accordingly, the Receiver lacks standing to assert his causes of action in this Court.

FOR AN EIGHTH DEFENSE

88. The *Hill* case has been settled pursuant to certain payments by Zurich and other insurers on behalf of Covil. Accordingly, Plaintiff has not been damaged and therefore lacks standing to assert any causes of action against Zurich.

FOR A NINTH DEFENSE

89. To the extent Plaintiff has received payment in satisfaction of any of the alleged injuries and/or claims against Zurich or any other insurer, Plaintiff is barred by the defense of

payment and accord and satisfaction. Alternatively, Zurich is entitled to a set-off for any and all such payments.

FOR A TENTH DEFENSE

90. Pursuant to Order dated May 11, 1992 (the "May 11, 1992 Order"), the Honorable Charles B. Simmons, Jr. appointed L. Winston Lee the "permanent Receiver for Covil Corporation" and granted Mr. Lee "all of the usual and normal statutory powers and authority of a Receiver, including, but not limited to, those set forth in §§ 33-14-105 and 33-14-320" of the South Carolina Code of Laws of South Carolina. Order, *The First Savings Bank, FSB v. Covil Corp, et al.* (Greenville Ct. Com. Pleas May 11, 1992), at 2. Judge Simmons further decreed Covil Corporation to be judicially dissolved. *Id.*

91. In accordance with his decree of judicial dissolution and the South Carolina Business Corporation Act of 1988, the May 11, 1992 Order required Mr. Lee to provide notice to known creditors pursuant to S.C. Code Ann § 33-14-106 and to publish notice to unknown creditors pursuant to S. C. Code Ann. § 33-14-107. *Id* at 5. The Order further restrained and enjoined all creditors and other persons, pursuant to the Court's power under S.C. Code Ann. § 33-13-310 "from instituting or prosecuting any action or proceeding against Covil . . . other than as set forth in this Order or from levying upon, attaching, distraining, or selling, or attempting to levy upon, attach, distrain, or sell any property of Covil . . . ." *Id.* at 6.

92. On November 12, 1992, Judge Simmons found that Mr. Lee had "fully complied with the previous Orders of this Court in liquidating the assets of the his [sic] Defendants, that his accounting is in order and that the relief sought by him should be approved." Order, *The First Savings Bank, FSB v. Covil Corp, et al.* (Greenville Ct. Com. Pleas Nov. 12, 1992), at 2.

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This Order included a finding that Mr. Lee published notice to unknown creditors as required by S.C. Code Ann. §§ 33-14-106 and 33-14-107 to bar future claimants against Covil.

93. When offered in evidence, the Orders of Judge Simmons may not be impugned upon matters within his jurisdiction, such as the Covil Receivership, by counter evidence. *Long v. McMillian*, 226 S.C. 598, 610, 86 S.E.2d 477, 482 (1955).

94. Accordingly, pursuant to S.C. Code Ann. §§ 33-14-106 and 33-14-107, underlying asbestos claims against Covil Corporation are barred. Plaintiffs' claims against Zurich are necessarily barred as well because Plaintiff's alleged claims against Zurich are derivative of underlying asbestos claims against Covil.

FOR AN ELEVENTH DEFENSE

95. Zurich is entitled to and pleads the benefits of the provisions of S.C. Code Ann. § 15-38-15 et seq.

FOR A TWELFTH DEFENSE

96. Zurich, in all respects, operated in good faith reliance upon the provisions of the contract of insurance issued to Covil.

FOR A THIRTEENTH DEFENSE

97. Upon information and belief, Plaintiff has failed to join a necessary party. Accordingly, Plaintiff's complaint should be dismissed pursuant to Rule 12(b)(7), or Plaintiff should be required to join such party(ies).

FOR A FOURTEENTH DEFENSE

98. Zurich pleads the doctrine of setoff as a complete or total bar to the allegations set forth in the Complaint.

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FOR A FIFTHTEENTH DEFENSE

99. Plaintiff's claims for punitive damages violates Zurich's rights under the applicable Constitutions (including, but not limited to, the Fifth and Fourteenth Amendments of the Constitution of the United States of America).

FOR A SIXTEENTH DEFENSE

100. Zurich pleads the applicable provisions of the South Carolina Noneconomic Damages Awards Act of 2005 (§ 15-32-200, et. seq.) and § 15-38-15. Zurich affirmatively includes within this defense the recovery limits of S.C. Code Ann § 15-32-530 and any other limitation on punitive damages allowed by Federal or State law.

FOR AN SEVENTEENTH DEFENSE

101. Plaintiff has suffered no damages as the *Hill* case was settled. Covil was not responsible for any amount of the settlement, nor any of the costs incurred in defending the *Hill* case. Therefore, it has suffered no damages.

FOR A EIGHTEENTH DEFENSE

102. Receiver's alter-ego claims are barred by the Noerr Pennington Doctrine.

WHEREFORE, having fully answered the Complaint herein, Zurich prays unto the Court for the following relief:

A. That the Complaint be dismissed with prejudice as to Zurich;

B. That the Plaintiff have and recover nothing from Zurich;

C. That the costs of this action be taxed against some person or entity other than Zurich;

D. FOR TRIAL BY JURY on all issues so triable; and

E. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

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ATTORNEYS FOR DEFENDANT ZURICH AMERICAN INSURANCE COMPANY

June 15, 2020
Charleston, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A No. 2019-CP-40-02285
	)	
Peter D. Protopapas as Receiver for Covil Corporation,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; and Zurich American Insurance Company,	)	
Defendants.	)	

UNITED STATES FIDELITY AND GUARANTY COMPANY'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

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

PARTIES

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

1. USF&G admits, upon information and belief, that Peter Protopapas ("Plaintiff") 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 including any implication that the Receiver was properly appointed in accordance with South Carolina law.

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2. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 2 insofar as they are directed at entities other than USF&G.

3. 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 no such legal entity exists.

4. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4, which relate to parties other than USF&G.

5. Paragraph 5 is a definitional paragraph to which no response is required. To the extent a response is required, the same is denied.

JURISDICTION AND VENUE

6. Paragraph 6 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.

7. Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies that venue is proper in the State of South Carolina Court of Common Pleas for Richland County.

FACTUAL BACKGROUND

8. USF&G admits upon information and belief that Covil sold and 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 8 and therefore denies the same.

9. In response to Paragraph 9, upon information and belief, USF&G admits that Covil conducted business operations from at least 1954 until approximately 1991 and that

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Covil's charter was purportedly administratively revoked, and further states that Covil was judicially dissolved in 1992.

10. 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 sale, installation, repair, replacement, removal or disturbance of thermal insulation and other building materials, and that it has been alleged that those operations and sales exposed persons to asbestos. USF&G denies any remaining allegations or inferences to be drawn from Paragraph 10.

11. USF&G admits upon information and belief that Covil has been the subject of various claims and lawsuits arising from alleged asbestos-related injuries.

12. USF&G admits only that it fulfilled its defense obligations to Covil under the USF&G Policy (as defined herein) by providing a defense to Covil for certain lawsuits pursuant to the terms and conditions of the USF&G Policy. USF&G denies the remaining allegations of Paragraph 12.

13. 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") and that other insurers issued policies providing liability insurance to Covil during the period from 1964 until after 1978, and lacks sufficient knowledge or information necessary to form an opinion or belief as to the allegations of Paragraph 13 with respect to the period from 1954 to 1963.

14-19. USF&G denies the allegations of Paragraphs 14 through 19.

20. 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

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Covil, all pursuant to and in conformance with the USF&G Policy. USF&G denies the remaining allegations of Paragraph 20.

21. Paragraph 21 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraph 21, except admits that the USF&G Policy imposed on USF&G and Covil mutual contractual obligations of good faith and fair dealing.

22. To the extent Paragraph 22 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 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.

23. To the extent Paragraph 23 is directed at USF&G, USF&G admits that it, pursuant to and in conformance with the USF&G Policy, engaged certain attorneys, in conjunction with Sentry and Zurich[1], to represent and defend Covil in certain lawsuits in which Covil was or is a named defendant, including but not limited to the *Hill* and *Taylor* suits.[2]

24. Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations of Paragraph 24, 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.

25. USF&G admits that it, in conjunction with Sentry and Zurich, retained lawyers to represent and defend Covil pursuant to and in conformance with the USF&G Policy.

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[1] "Sentry" refers to Sentry Casualty Company and "Zurich" refers to Zurich American Insurance Company

[2] "Hill" refers to *James Michael Hill v. Advance Auto Parts, Inc., et al.*, C/A No. 2018-CP-40-04680 (S.C. Ct. of Common Pleas) and "Taylor" refers to *Denver D. Taylor and Janice Taylor v. Air & Liquid Systems, et al.*, No. 2018-CP-40-04940 (S.C. Ct. of Common Pleas).

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USF&G denies the remaining allegations of Paragraph 25.

26. Paragraph 26 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies the same, except refers to the Rules referenced therein and to the rules of professional responsibility applicable to each particular jurisdiction, which speak for themselves.

27. To the extent the allegations of Paragraph 27 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 27 insofar as they relate to other parties.

28. Responding to Paragraph 28, USF&G admits that, pursuant to the USF&G Policy, USF&G, together with Zurich and Sentry, retained Wall Templeton & Hardrup, P.A. ("WTH") in or about April 2018 to represent and defend Covil in litigation pending against Covil. USF&G denies any remaining allegations of Paragraph 28.

29. USF&G denies knowledge or information sufficient to form a belief as to the allegations of the first sentence and therefore denies the same. USF&G, in coordination with other insurers, retained WTH to represent and defend Covil and expected WTH to comply with all applicable ethical duties. USF&G denies the second sentence of Paragraph 29.

30. USF&G responds that upon information and belief, WTH did not utilize S.C. Code Ann. § 15-65-10 or Rule 66, SCRCP; however, USF&G denies that such was necessary. *See* South Carolina Bar Ethics Advisory Opinion 19-04. Furthermore, USF&G denies that the referenced code section and South Carolina Rules of Civil Procedure applied to the *Hill* and *Taylor* actions. Upon information and belief, USF&G denies the remaining allegations of Paragraph 30.

31-32. USF&G denies the allegations of Paragraphs 31 and 32.

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33. Responding to Paragraph 33, USF&G admits that WTH never advised USF&G of an "arrangement" as alleged in Paragraph 33 or that an "arrangement" as alleged in Paragraph 33 was contrary to South Carolina law. USF&G further responds that the representation of Covil by WTH was not contrary to South Carolina law. Any remaining allegations of Paragraph 33 are denied, including the existence of the alleged "arrangement".

34-35. USF&G denies the allegations of Paragraphs 34 and 35.

36. To the extent the allegations of Paragraphs 36 are directed at USF&G, USF&G admits only that at the time *Hill* and *Taylor* were filed, USF&G retained Wall, Templeton, & Haldrup, P.A., to defend Covil. USF&G, acting upon the advice of counsel, accepted counsel's recommendation not to have Covil appear until Covil was properly served. USF&G otherwise denies the allegations in Paragraph 36.

37. USF&G admits only that the *Hill* and *Taylor* actions are pending in Richland County, South Carolina. USF&G denies that James Covil was properly served with the complaints in the *Hill* and *Taylor* actions.

38. USF&G admits only that it became aware that the *Hill* and *Taylor* actions had been filed, and states further that, acting upon the advice of counsel, USF&G accepted counsel's recommendation not to have Covil appear until Covil was properly served. USF&G otherwise denies the allegations in Paragraph 38.

39. USF&G denies the allegations in Paragraph 39 and states on information and belief that, while James Covil had previously received copies of certain court filings against Covil, James Covil was not Covil's registered agent for service of process.

40. USF&G denies the allegations in Paragraph 40. Additionally, Paragraph 40 states legal conclusions to which no response is required.

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41-44. USF&G denies the allegations in Paragraphs 41 through 44.

45. Paragraph 45 states legal conclusions to which no response is required. To the extent a response is required, USF&G denies the allegations contained in Paragraph 45.

FIRST CAUSE OF ACTION
(Professional Negligence as to Lawyers)

46. USF&G incorporates by reference its responses to Paragraphs 1 through 45.

47. Paragraph 47 conclusions to which no response is required.

48. Paragraph 48 states legal conclusions as to which no response is required.

49-52. USF&G denies the allegations contained in Paragraphs 49 through 52 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 49 through 52 insofar as they relate to other parties.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to Lawyers)

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

54. USF&G admits upon information and belief that Covil was represented at times by attorneys.

55-56. Paragraphs 55 and 56 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 55 and 56 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 55 and 56 insofar as they relate to other parties.

THIRD CAUSE OF ACTION

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(Aiding and Abetting the Breach of a Fiduciary Duty as to Primary Insurers)

57. USF&G incorporates by reference its responses to Paragraphs 1 through 56.

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 of Paragraph 58.

59-62. USF&G denies the allegations of Paragraphs 59 through 62.

FOURTH CAUSE OF ACTION
(Breach of Contract – Bad Faith Failure to Defend against Primary Insurers related to *Hill* and *Taylor*)

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

64. To the extent Paragraph 64 is directed at USF&G, USF&G states that the USF&G Policy governs its obligations to Covil and Covil's obligations to USF&G.

65. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 65, which relates to parties other than USF&G.

66. USF&G states that the document attached as Exhibit 7 to the Complaint speaks for itself.

67. To the extent Paragraph 67 is directed at USF&G, USF&G states that the USF&G Policy governs its obligations to Covil and Covil's obligations to USF&G. USF&G denies that it breached any contractual duty to Covil.

68-70. USF&G denies the allegations of Paragraph 68 through 70.

FIFTH CAUSE OF ACTION
(Breach of Contract – Bad Faith Processing of Claims against Primary Insurers related to *Hill* and *Taylor*)

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71. USF&G incorporates by reference its responses to Paragraphs 1 through 70.

72-73. To the extent Paragraphs 72 and 73 are directed at USF&G, USF&G states that the USF&G Policy governs its obligations to Covil and Covil's obligations to USF&G.

74-77. Paragraphs 74 through 77 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 74 through 77.

SIXTH CAUSE OF ACTION
(Tort Action – Bad Faith Processing of Claims against Primary Insurers related to *Hill* and *Taylor*)

78. USF&G incorporates by reference its responses to Paragraphs 1 through 77.

79-81. Paragraphs 79 through 81 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 79 through 81.

SEVENTH CAUSE OF ACTION
(Primary Insurers Are Fully Responsible for Conduct Prior to November 2, 2018, As Covil's Alter Ego, Agency, or Instrumentality)

82. USF&G incorporates by reference its responses to Paragraphs 1 through 81.

83-87. The allegations of Paragraphs 83 through 87 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 83 through 87 to the extent directed at USF&G.

EIGHTH CAUSE OF ACTION
(Single Business Enterprise / Amalgamation as to the Primary Insurers)

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88. USF&G incorporates by reference its responses to Paragraphs 1 through 87.

89-93. The allegations of Paragraphs 89 through 93 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 89 through 93.

NINTH CAUSE OF ACTION
(Negligence as to Lawyers and Primary Insurers)

94. USF&G incorporates by reference its responses to Paragraphs 1 through 93.

95-99. Paragraphs 95 through 99 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 95 through 99.

TENTH CAUSE OF ACTION
(Declaratory Judgment as to the Primary Insurers and the Primary Insurers' Polices Related to *Hill* and *Taylor*)

100. USF&G incorporates by reference its responses to Paragraphs 1 through 99.

101. The first sentence of Paragraph 101 does not contain any allegations to which a response is required. The remaining allegations in Paragraph 101 and its subparts constitute a characterization of Covil's claims to which no response is required. To the extent a response is required, USF&G denies those allegations.

102. USF&G denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 102 to the extent they are directed at entities other than USF&G, and therefore denies the same. To the extent the allegations of Paragraph 102 are directed against USF&G, USF&G denies those allegations, except admits that to the extent a

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justiciable controversy exists, such is the subject of the first-filed action in the United States District Court for the District of South Carolina (*Covil Corporation v. Zurich American Insurance Company, et al.*, No. 7:18-cv-3291-BHH), and therefore this Court should simiss the Complaint pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure as set forth more fully hereinafter. USF&G states further that the question of how any *Hill/Taylor* related losses should be allocated to particular policies or policy years has already been adjudicated by the United States District Court for the Middle District of North Carolina (*see* ECF 335, *Zurich American Insurance Company v. Covil Corporation, et al.*, No. 1:18-CV-932-CCE-LPA (M.D.N.C.)). .

103. Responding to Paragraph 103, USF&G respectfully denies that declarations from this Court are necessary or appropriate. USF&G denies the remaining allegations of Paragraph 103.

RESPONSE TO PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

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 Plaintiff's Complaint. By including the following defenses or affirmative defenses, USF&G does not assume the burden of proof where such burden lies with Plaintiff or parties other than USF&G.

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. 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 Complaint as a matter of comity for the Federal courts and because Plaintiff lacks standing to assert his causes of action in this Court.

FOR A FOURTH 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 or counties other than Richland County. Further, Plaintiff fails to plead that Richland County is a proper venue.

FOR A FIFTH DEFENSE

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

FOR A SIXTH DEFENSE

To the extent that Covil has received payment in satisfaction of any of the alleged injuries and/or claims against USF&G, Plaintiff'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 SEVENTH DEFENSE

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

FOR AN EIGHTH DEFENSE

To the extent the Complaint alleges negligence against USF&G, it is subject to dismissal because Covil did not suffer any damages as a result of the entries of default in either the *Hill* or *Taylor* actions.

FOR A NINTH DEFENSE

Another action is pending between the same parties for the same claim; therefore, the Complaint 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 *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 Complaint. Indeed, Covil has been enjoined from raising these coverage-related issues in the state court. *See* Opinion and Order.

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FOR A TENTH DEFENSE

USF&G's obligations to Plaintiff, 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 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. Plaintiff's claims against USF&G are necessarily barred also because Plaintiff's alleged claims against USF&G are derivative of underlying asbestos claims against Covil.

FOR A TWELFTH DEFENSE

USF&G alleges upon information and belief that Plaintiff'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

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damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, Plaintiff's claim for punitive damages should be dismissed.

FOR A THIRTEENTH 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 FOURTEENTH DEFENSE

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

FOR A FIFTEENTH DEFENSE

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

FOR A SIXTEENTH 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 SEVENTEENTH DEFENSE

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

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FOR AN EIGHTEENTH DEFENSE

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

FOR A NINETEENTH 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 TWENTIETH DEFENSE

Upon information and belief, Plaintiff has failed, neglected, and/or refused to mitigate Covil's damages, if any.

FOR A TWENTY-FIRST 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 TWENTY-SECOND 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 Plaintiff. Accordingly, all of Plaintiff's claims against USF&G are without merit and should be dismissed.

FOR A TWENTY-THIRD 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 TWENTY-FOURTH DEFENSE

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

FOR A TWENTY-FIFTH 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 TWENTY-SIXTH DEFENSE

To the extent the Complaint alleges negligence against USF&G based upon USF&G's alleged duties under the USF&G Policy, Plaintiff's claims under that contractual agreement are limited to contract claims and Plaintiff cannot assert a negligence claim against USF&G.

FOR A TWENTY-SEVENTH DEFENSE

Plaintiff's claims are barred to the extent Covil breached the obligations to cooperate in the defense of claims against it.

FOR A TWENTY-EIGHTH DEFENSE

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

FOR A TWENTY-NINTH DEFENSE

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To the extent Plaintiff was not appointed in accordance with law or was appointed in contravention of USF&G's due process rights, or the appointment of Plaintiff 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, Plaintiff lacks standing to assert the claims on Covil's behalf.

FOR A THIRTIETH DEFENSE

The Court lacks subject matter jurisdiction over Covil's claims.

FOR A THIRTY-FIRST DEFENSE

To the extent Plaintiff seeks declarations that Covil may select the policy or policy years to which to assign or allocate any asbestos- related losses, or that the USF&G Policy is required to pay or reimburse all sums that Covil is legally obligated to pay in connection with any suit, that issue has already been adjudicated by the District Court for the Middle District of North Carolina (*see* ECF 335, *Zurich American Insurance Company v. Covil Corporation, et al.*, No. 1:18-CV-932-CCE-LPA (M.D.N.C.)), and that court found that USF&G is liable only for its "pro rata share of the judgment, based on the number of years [USF&G] provided coverage relative to the overall duration of the injury", and thus no justiciable controversy exists with respect to any such declarations sought by Plaintiff.

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:

That the Complaint be dismissed with prejudice as to USF&G;

That Plaintiff and other defendants and/or third-party defendants have and recover nothing from USF&G;

That the costs of this action be taxed against Plaintiff and/or other defendants and/or third-party defendants;

That there be a trial by jury on all issues of fact; and

For such other and further relief as the Court deems just and proper.

Respectfully submitted:

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* Pro Hac Vice application forthcoming

Attorneys for United States Fidelity and Guaranty Company

August 4, 2020

ELECTRONICALLY FILED - 2020 Aug 04 7:53 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

ELECTRONICALLY FILED - 2021 Apr 01 2:53 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Peter D. Protopapas as Receiver for Covil Corporation, Plaintiff, v. Wall, Templeton & Haldrup, P.A., et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No: 2019-CP-40-02285 **CONSENT ORDER OF DISMISSAL AS TO WALL TEMPLETON & HALDRUP, P.A.**

Whereas Plaintiff, Peter D. Protopapas as Receiver for Covil Corporation (the "Receiver") has asserted causes of action against Defendant Wall, Templeton & Haldrup, P.A. ("WTH"); and Whereas, the Receiver and WTH have reached a settlement of the claims and causes of action of the Receiver against WTH that includes the Receiver's dismissal of his causes of action against WTH without prejudice upon approval of the settlement by the Court;

NOW, on the joint motion of WTH and the Receiver IT IS HEREBY ORDERED that pursuant to Rule 41(a)(2), the Court hereby dismisses all causes of action of the Receiver against WTH without prejudice. In accordance with the terms of the settlement, this dismissal shall convert to a dismissal with prejudice upon payment of the settlement amount to Covil QSF, LLC, n/k/a Covil South Carolina Asbestos Personal Injury Settlement Fund, LLC as provided in the approved settlement.

IT IS FURTHER ORDERED, with the consent of and stipulation between the Receiver and WTH, that the defenses of statute of limitations and any other time-based defenses of WTH to the causes of action and claims of the Receiver asserted in the current pleadings shall be deemed tolled as of the date of filing of the Complaint herein until sixty (60) days after the final ruling of the appellate courts (i.e., full exhaustion of appeal) on the order approving settlement if there is an appeal of that order.

All claims against parties other than Defendant WTH remain pending and are unaffected by this dismissal.

AND IT IS SO ORDERED!

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

Columbia, South Carolina

WE CONSENT

/s/ Benjamin C. Bruner
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WE CONSENT

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Richland Common Pleas

Case Caption: Peter D Protopapas , plaintiff, et al vs Wall Templeton & Haldrup Pa , defendant, et al

Case Number: 2019CP4002285

Type: Order/Dismissal

So Ordered

Jean H. Toal

ELECTRONICALLY FILED - 2021 May 26 9:12 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Peter D. Protopapas as Receiver for Covil Corporation, Plaintiff, v. Wall, Templeton & Haldrup, P.A., et al., Defendants.	Civil Action No: 2019-CP-40-02285 **NOTICE OF DISMISSAL OF ZURICH AMERICAN INSURANCE COMPANY AND ENSTAR (US), INC.**

Pursuant to the *Order Granting Joint Motion To Approve Confidential Settlement Between And Among The Receiver For Covil, The Covil South Carolina Asbestos Personal Injury Settlement Fund, Zurich American Insurance Company, Enstar,(U.S.), Inc. And Cavello Bay Reinsurance Limited* entered May 19, 2021 authorizing dismissal of all Plaintiffs' claims against Zurich and Enstar and pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure, the Plaintiff, Peter D. Protopapas as Receiver for Covil Corporation, by and through his undersigned counsel, hereby stipulate to the dismissal without prejudice of Defendants Zurich American Insurance Company (hereinafter "Zurich") and Enstar (US), Inc. (hereinafter "Enstar"). Plaintiff shall file a subsequent notice converting this dismissal to one with prejudice if and when the settlement approval Order between the Receiver for Covil and Zuirch and Enstar becomes final.

Each party shall bear its own costs.

(Signature page follows)

ELECTRONICALLY FILED - 2021 May 26 9:12 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4002285

SMITH ROBINSON HOLLER DuBOSE AND MORGAN, LLC

s/Jonathan M. Robinson
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803-254-5445

Attorneys for Peter D. Protopapas
as Receiver for Covil Corporation

ELECTRONICALLY FILED - 2019 Dec 12 5:00 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006956

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT

SANDRA S. HUTTO, individually and as Personal Representative of the Estate of DONALD L. HUTTO, and DONALD BRIAN HUTTO and CANDACE H. YOUNGBLOOD, Individually,	)	C/A No. _____
Plaintiffs,	)	In Re: Coordinated Docket
v.	)	
COVIL CORPORATION;	)	**SUMMONS**
SENTRY INSURANCE A MUTUAL COMPANY;	)	
SOUTHERN INSULATION, INC.;	)	
STARR DAVIS COMPANY, INC.;	)	
STARR DAVIS COMPANY OF S.C., INC.;	)	
UNITED STATES FIDELITY AND GUARANTY COMPANY;	)	
ZURICH AMERICAN INSURANCE COMPANY;	)	
3M COMPANY;	)	
AECOM;	)	
ARMSTRONG INTERNATIONAL, INC.;	)	
AURORA PUMP COMPANY;	)	
BW/IP INC.;	)	
CARBOLINE COMPANY;	)	
CBS CORPORATION;	)	
CGR PRODUCTS, INC.;	)	
DANIEL INTERNATIONAL CORPORATION;	)	

ELECTRONICALLY FILED - 2019 Dec 12 5:00 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006956

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;

GRINNELL, LLC;

HAJOCA CORPORATION;

IMO INDUSTRIES, INC.;

JOHN CRANE INC.;

METROPOLITAN LIFE INSURANCE COMPANY;

SPIRAX SARCO, INC.

TRANE U.S. INC.;

UNIROYAL HOLDING INC.;

VELAN VALVE CORP.;

VIKING PUMP, INC.;

WEIR VALVES & CONTROLS USA, INC.

Defendants.

ELECTRONICALLY FILED - 2019 Dec 12 5:00 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006956

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

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

Respectfully submitted,

s/Theile B. McVey
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ATTORNEYS FOR PLAINTIFF

December 12, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Dec 12 5:00 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006956

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**FOR THE FIFTH JUDICIAL CIRCUIT**

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 A MUTUAL COMPANY** **SOUTHERN INSULATION, INC.** **STARR DAVIS COMPANY, INC.** **STARR DAVIS COMPANY OF S.C., INC.** **UNITED STATES FIDELITY AND GUARANTY COMPANY** **ZURICH AMERICAN INSURANCE COMPANY**, a/k/a ZURICH NORTH AMERICA, INC. **3M COMPANY**, f/k/a MINNESOTA MINING & MANUFACTURING COMPANY **AECOM**, individually and as successor-in-interest to URS CORPORATION, successor-in-interest to HARBERT-YEARGIN INC., successor-in-interest to YEARGIN CONSTRUCTION COMPANY INC.	)	**C/A NO.** _____ In Re: Coordinated Docket Mesothelioma Wrongful Death and Survival Action **COMPLAINT** (Jury Trial Demanded)

ELECTRONICALLY FILED - 2019 Dec 12 5:00 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006956

ARMSTRONG INTERNATIONAL, INC.)
)
AURORA PUMP COMPANY)
)
BW/IP INC.,)
and its wholly-owned subsidiaries)
)
CARBOLINE COMPANY)
)
CBS CORPORATION,)
a Delaware corporation f/k/a VIACOM,)
INC., successor-by-merger to CBS)
CORPORATION, a Pennsylvania)
corporation, f/k/a WESTINGHOUSE)
ELECTRIC CORPORATION)
)
CGR PRODUCTS, INC.,)
f/k/a CAROLINA GASKET AND RUBBER)
COMPANY, INC.)
)
DANIEL INTERNATIONAL)
CORPORATION)
)
FISHER CONTROLS)
INTERNATIONAL LLC)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL,)
f/k/a/ FLUOR CORPORATION)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL, INC.)
)
FLUOR DANIEL SERVICES)
CORPORATION)
)
FLUOR ENTERPRISES, INC.)
)
FOSTER WHEELER ENERGY)
CORPORATION)
)
THE GOODYEAR TIRE & RUBBER)
COMPANY)
)
GRINNELL LLC,)
d/b/a GRINNELL CORPORATION)

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HAJOCA CORPORATION	)
IMO INDUSTRIES, INC.	)
JOHN CRANE INC.	)
METROPOLITAN LIFE INSURANCE COMPANY, a wholly-owned subsidiary of METLIFE INC	)
SPIRAX SARCO, INC.	)
TRANE U.S. INC., f/k/a AMERICAN RADIATOR & STANDARD SANITARY CORPORATION, successor in merger between American Radiator Company and Standard Sanitary Manufacturing Company	)
UNIROYAL HOLDING INC., f/k/a UNITED STATES RUBBER COMPANY, INC.	)
VELAN VALVE CORP.	)
VIKING PUMP, INC.	)
WEIR VALVES & CONTROLS USA, INC., individually and as successor-in-interest to ATWOOD & MORRILL CO., INC.	)
Defendants.	)

PLAINTIFFS' ORIGINAL COMPLAINT

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

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the named Defendants for compensatory and punitive damages, by and through her attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. This action is brought pursuant to the Wrongful Death Act, S.C. Gen. Stat. 15-51-10 *et seq*., for the wrongful death of the Decedent, DONALD L. HUTTO, on behalf of all persons entitled to recover damages.

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

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

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

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

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

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

3. The Defendants that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products and raw material.

4. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an

established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

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

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

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

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

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

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portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
3M COMPANY	f/k/a MINNESOTA MINING & MANUFACTURING COMPANY
AECOM	successor-in-interest to URS CORPORATION, successor-in-interest to HARBERT-YEARGIN INC., successor-in-interest to YEARGIN CONSTRUCTION COMPANY INC.
BW/IP INC.	and its wholly-owned subsidiaries
CBS CORPORATION	a Delaware corporation f/k/a VIACOM, INC., successor-by-merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION
CGR PRODUCTS, INC.	f/k/a CAROLINA GASKET AND RUBBER COMPANY, INC.
FLUOR CONSTRUCTORS INTERNATIONAL	f/k/a/ FLUOR CORPORATION
GRINNELL LLC	d/b/a GRINNELL CORPORATION
METROPOLITAN LIFE INSURANCE COMPANY	a wholly-owned subsidiary of METLIFE INC.
TRANE U.S. INC.	f/k/a AMERICAN RADIATOR & STANDARD SANITARY CORPORATION, successor in merger between American Radiator Company and Standard Sanitary Manufacturing Company
UNIROYAL HOLDING INC.	f/k/a UNITED STATES RUBBER COMPANY, INC.
WEIR VALVES & CONTROLS USA, INC.	successor-in-interest to ATWOOD & MORRILL CO., INC.

DEFENDANT	ALTERNATE ENTITY
ZURICH AMERICAN INSURANCE COMPANY	A/K/A ZURICH NORTH AMERICA, INC.

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

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

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

13. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Donald L. Hutto incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to

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Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiffs' medical treatment is ascertained.

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

15. Plaintiff hereby disclaims each and every claim or cause of action which does or may arise from any United States Army service or on any federal enclave. This disclaimer is not related solely to actions taken by or at the direction of a federal officer, but is, rather broader. Plaintiff is not making any claims and is not alleging any causes of action against any entity for any asbestos exposure of any kind which occurred as a result of Plaintiff's United States Army service. Moreover, Plaintiff is further disclaiming each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiff's presence on or at any federal enclave. Plaintiff further disclaims each and every claim or cause of action arising under the United States Constitution and under any Federal Law or Regulation. Finally, Plaintiff disclaims each and every claim or cause of action which may be asserted under federal admiralty or maritime law. Courts across the Country have found that such disclaimers are proper and within the province of the Plaintiff to disclaim. Any removal by any defendant on the basis of the disclaimed claims will result in a motion for sanctions and seeking attorneys' fees.

THE PARTIES

16. The Plaintiff SANDRA S. HUTTO is currently a resident of the State of North Carolina, Plaintiff DONALD BRIAN HUTTO is currently a resident of the State of North

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Carolina, and Plaintiff CANDACE H. YOUNGBLOOD is currently a resident of the State of North Carolina. Decedent DONALD L. HUTTO was exposed to asbestos during the course of his career, including but not limited to, various job sites located in South Carolina.

17. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands of people, including the Decedent Donald L. Hutto, to lethal doses of asbestos. Plaintiffs' claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

18. Defendant, **SENTRY INSURANCE A MUTUAL COMPANY**, ("Sentry" or "Covil's Alter Ego") is a Wisconsin corporation with its principal place of business in Wisconsin. SENTRY INSURANCE A MUTUAL COMPANY is an insurance company subject to the jurisdiction of this Honorable Court by virtue of its direct acts within the state of South Carolina which give rise to the claims herein against it. At all times pertinent herein Sentry was the alter-ego of Defendant Covil Corporation and as such, is directly liable for the tortious conduct of Covil Corporation.

19. Defendant, **SOUTHERN INSULATION INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, SOUTHERN

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INSULATION INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. SOUTHERN INSULATION INC. is sued as a Product Defendant. SOUTHERN INSULATION INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Southern Insulation Inc., exposed tens of thousands of people, including the Decedent Donald L. Hutto, to lethal doses of asbestos. Plaintiffs' claims against SOUTHERN INSULATION INC. arise out of this Defendant's business activities in the State of South Carolina.

20. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including the Decedent Donald L. Hutto, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

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21. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including the Decedent Donald L. Hutto, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **UNITED STATES FIDELITY AND GUARANTY COMPANY**, ("USF&G" or "Covil's Alter Ego") is a Connecticut corporation with its principal place of business in Connecticut. UNITED STATES FIDELITY AND GUARANTY COMPANY is an insurance company subject to the jurisdiction of this Honorable Court by virtue of its direct acts within the state of South Carolina which give rise to the claims herein against it. At all times pertinent herein USF&G was the alter-ego of Defendant Covil Corporation and as such, is directly liable for the tortious conduct of Covil Corporation.

23. Defendant, **ZURICH NORTH AMERICA, INC. A/K/A**, **ZURICH AMERICAN INSURANCE COMPANY** ("Zurich" or "Covil's Alter Ego") is a New York corporation with its principal place of business in Illinois. ZURICH NORTH AMERICA, INC., is an insurance company

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subject to the jurisdiction of this Honorable Court, which, on information and belief, at all times pertinent herein was the liability insurer of Defendant Covil Corporation and by virtue of its direct acts within the state of South Carolina which give rise to the claims herein against it. At all times pertinent herein Sentry was the alter-ego of Defendant Covil Corporation and as such, is directly liable for the tortious conduct of Covil Corporation.

24. Defendant, **3M COMPANY**, f/k/a MINNESOTA MINING & MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing 3M masks. 3M COMPANY is sued as a Product Defendant. Plaintiffs' claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

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

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

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

28. Defendant, **BW/IP INC.**, and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson

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pumps. BW/IP INC. is sued as a Product Defendant. Plaintiffs' claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

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

30. Defendant, **CBS CORPORATION**, a Delaware corporation f/k/a VIACOM, INC., successor-by-merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, CBS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Westinghouse blowers and turbines. CBS CORPORATION is sued as a Product Defendant. Plaintiffs' claims against CBS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **CGR PRODUCTS, INC.**, f/k/a CAROLINA GASKET AND RUBBER COMPANY, INC., was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, CGR PRODUCTS, INC. mined,

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manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing gaskets and packing. CGR PRODUCTS, INC. is sued as a Product Defendant. Plaintiffs' claims against CGR PRODUCTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

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

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

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

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

36. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but

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not limited to, the installation and removal of asbestos-containing thermal insulation. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

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

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

39. Defendant, **THE GOODYEAR TIRE & RUBBER COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE

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GOODYEAR TIRE & RUBBER COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durabla gaskets. THE GOODYEAR TIRE & RUBBER COMPANY is sued as a Product Defendant. Plaintiffs' claims against THE GOODYEAR TIRE & RUBBER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

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

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

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

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

44. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a company incorporated under the laws of the State of New York with its principal place of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

45. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiffs' claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **TRANE U.S. INC.**, f/k/a AMERICAN RADIATOR & STANDARD SANITARY CORPORATION, successor in merger between American Radiator Company and Standard Sanitary Manufacturing Company, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, TRANE U.S. INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing American Standard boilers, heaters, and furnaces. TRANE U.S. INC. is sued as a Product Defendant. Plaintiffs' claims against TRANE U.S. INC. arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **UNIROYAL HOLDING INC.**, f/k/a UNITED STATES RUBBER COMPANY, INC., was and is a New Jersey corporation with its principal place of business in Connecticut. At all times material hereto, UNIROYAL HOLDING INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Asbeston cloth. UNIROYAL HOLDING INC. is sued as a Product Defendant. Plaintiffs' claims against UNIROYAL HOLDING INC. arise out of this Defendant's business activities in the State of South Carolina.

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

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

50. Defendant, **WEIR VALVES & CONTROLS USA, INC.**, individually and as successor-in-interest to ATWOOD & MORRILL CO., INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, WEIR VALVES & CONTROLS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves. WEIR VALVES & CONTROLS USA, INC. is sued as a Product Defendant. Plaintiffs' claims against WEIR VALVES &

CONTROLS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

BACKGROUND FACTS

51. Plaintiffs Sandra S. Hutto, Donald Brian Hutto, and Candace H. Youngblood bring this action for monetary damages as a result of Decedent Donald L. Hutto contracting an asbestos-related disease.

52. Decedent Donald L. Hutto was diagnosed with mesothelioma on or about March 14, 2013, and died from this disease on December 15, 2017.

53. Decedent's mesothelioma was caused by his exposure to asbestos during the course of his employment.

54. During his work history, Decedent was exposed to Defendants' asbestos-containing products through his work in construction, maintenance, and manual labor jobs from approximately 1963 to 2005 for various employers at various industrial locations set forth in Exhibit A, which is attached hereto and incorporated by reference herein. All of these activities exposed Decedent to asbestos.

55. During his work history, Decedent was further exposed through his work around other trades, including boilermakers, welders, mechanics, carpenters, iron workers, insulators, and electricians. Decedent worked closely to a variety of trades that were working on asbestos-containing insulation, generators, boilers, and often worked near tradesmen working on asbestos-containing pipe insulation, valves, steam traps, pumps, furnaces, and other equipment. All of these activities exposed Decedent to asbestos.

56. During his work history, Decedent worked on new construction, renovations, and additions. Decedent was further exposed through his work around other trades, including

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carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Decedent worked closely to a variety of trades that were working on turbine generators, boilers, and often worked near tradesmen working on valves, steam traps, pumps and other equipment. All of these activities exposed Decedent to asbestos.

57. During the course of Decedent's employment at the location(s) mentioned in Exhibit A, during both occupational and non-occupational work projects and in other ways, Decedent Donald L. Hutto was exposed to and inhaled, ingested, or otherwise absorbed asbestos fibers emanating from certain products he was working around.

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

59. Decedent Donald L. Hutto was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

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

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

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

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

FACTUAL BACKGROUND AS TO COVIL

64. Covil was an installer of thermal insulation, including thermal insulation which at certain times contained asbestos.

65. Covil conducted these operations from at least 1964 until approximately 1991, after which Covil ceased to conduct business operations and, in 1993 ultimately, dissolved.

66. Covil's operations from 1964 through at least 1986 included the installation, repair, replacement, removal or disturbance of thermal insulation and other building materials and that those operations exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations").

67. The alleged bodily injury resulting from the Asbestos Allegations has resulted in claims and lawsuits against Covil ("Covil Asbestos Suits").

68. From at least in or about 1991, until the appointment of the Receiver, on November 2, 2018, the defense of the Covil Asbestos Suits was controlled by the Primary Insurers, specifically defendants Zurich American Insurance Company ("Zurich"), Sentry Insurance A

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Mutual Company ("Sentry") and United States Fidelity and Guaranty Company ("USF&G") and their lawyers. Moreover, on and after 1991, the Primary Insurers conducted all of Covil's affairs, including after Covil was dissolved, extending until appointment of the Receiver.[1] During the course of their work, the lawyers have also exerted control and domination of Covil sufficiently to qualify them as Alter-Egos.

69. The Primary Insurers issued insurance policies to Covil from in or about 1964 until approximately 1978.

70. From at least in or about 1991, continuing until appointment of the Receiver, Zurich, Sentry, and USF&G, in conjunction with their lawyers and the lawyers, managed Covil, making all determinations as to use and the disposition of Covil's assets which consisted primarily of corporate documents and insurance policies.

71. The Primary Insurers, and as of 2018, the Alter-Egos made all determinations as to the disposition of Covil Asbestos Suits as well as the treatment and characterization of claims under the Covil insurance policies.

72. Since as early as approximately 1991, the Primary Insurers in conjunction with their lawyers acted in concert for the common purpose of ensuring that there was no independent person or entity acting by or on behalf of Covil. The Alter-Egos and prior to 2018, the Primary Insurers and their lawyers, determined that the only Covil that could exist would be a Covil that was for all purposes the Primary Insurers' alter ego, and/or controlled entity.

73. The Primary Insurers and their lawyers effectuated their common purpose of exclusive, unilateral control of Covil by running Covil's affairs in all material aspects.

[1] For reasons set forth herein, the appointment of the receiver does not alleviate the obligations of the Alter-Egos as it relates to Covil's current and future debts.

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74. At no time did the Primary Insurers and their lawyers make efforts to appoint an independent person or entity to determine what was in Covil's best interest. Rather, the Primary Insurers and their lawyers unilaterally determined what was best for Covil, or disregarded what was best for Covil, acting in their own interest, regardless of whether there was an actual or potential conflict between their interest and Covil's interest.

75. Each of the Primary Insurers' actions on behalf of Covil was for the purpose of protecting the Primary Insurers rather than Covil.

76. Each of the lawyers actions on behalf of Covil was for the purpose of earning a fee from the Primary Insurers rather than protecting Covil.

77. In addition to controlling the assets and affairs of Covil, the Primary Insurers unilaterally hired agents for Covil, including experts and a professional 30(b)(6) witness to act as and on behalf of, and to constitute Covil, de facto or de jure.

78. The Primary Insurers are required to act in good faith and to engage in fair dealing in all of their actions in regards to Covil.

79. The lawyers are required to exercise loyalty to Covil, and not the insurance companies that pay their bills. Statements made in open court by Mark Wall, name partner in the one of the lawyers' firm, demonstrates that the lawyers did not understand, much less adhere to this requirement. During a hearing on the issue on February 21, 2019, Mark Wall stated:

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THE COURT: Those kind of things you have got to provide, Mr. Wall.

MR. WALL: Under what theory, Your Honor?

THE COURT: I have appointed these people as receivers for Covil.

MR. WALL: Yes, Your Honor.

THE COURT: Covil is your client. They stand in the shoes of Covil.

MR. WALL: Are they my client, Your Honor?

THE COURT: Sir?

MR. WALL: Are they my client?

THE COURT: Covil is your client.

MR. WALL: No, Your Honor, are they my client? That is the issue.

THE COURT: Yes, they are your client because they are the receiver for Covil.

MR. WALL: So I now have attorney-client privilege with them?

THE COURT: That's right.

MR. WALL: And that is protected by the Court?

THE COURT: Yes, sir.

MR. WALL: As long as --

THE COURT: And I get why you want that protection. I'm not saying this in a hostile way

80. In South Carolina, when an insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured, i.e., the insured client of the attorney. Pursuant to that relationship, the attorney owes the insured client—not the insurer—a fiduciary duty. The loyalties of the attorney may not be divided.

81. Lawyers were hired to protect Covil's interest but became part of the Primary Insurers' scheme to run Covil as an effective subsidiary, agency or alter ego of the Primary

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Insurers. Lawyers followed the Primary Insurers' instructions and together with the Primary Insurers acted as Covil.

82. The attorney's conduct of litigation involving an insured client is also governed by established law. See, e.g., Rule 1.8(f), RPC, Rule 407, SCACR ("A lawyer shall not accept compensation for representing a client from one other than the client unless: ... (2) there is no interference with the lawyer's independence of professional judgment or with the client- lawyer relationship; ...."); Rule 5.4(c), RPC, Rule 407, SCACR ("[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services").

83. Lawyers by acting for Covil when Covil was in no position to act for itself stood in the shoes of Covil and became, in conjunction with the Primary Insurers, Covil's Alter Ego.

84. Lawyers failed to ensure proper procedures were in place for Covil to express its interests including but not limited to the procedures provided by S.C. Code Ann. § 15-65-10 and Rule 66, SCRCP; therefore, lawyers simply made decisions, in conjunction with the Primary insurers about how to handle the litigation.

85. The result of the Alter-Ego's actions were to effectuate the Primary Insurers' desire that no Covil separate and apart from the Alter-Egos would exist.

86. The Alter-Egos' complete control over Covil, and management of Covil's affairs, including but not limited to the Covil asbestos suits.

87. Asbestos litigation is littered with the bodies of those who made and sold asbestos containing insulation. Some of the largest companies in the world, many of them insured by the Primary Insurers, have gone bankrupt because of the harm asbestos insulation causes. That any

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reasonable person believed that Covil would not be found liable in amounts far exceeding the claimed liability limits of the Primary Insureds is difficult to fathom.

88. By way of example only, some communications between the Alter-Egos demonstrate how the Alter-Egos ran Covil. The pertinent communications include:

Date	From	To/CC	Subject	Key points of email
10/9/18 3:46 pm	Mark Wall	Irene Muse; Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New cases	Covil has been named in at least two new cases, but we have no Notice of Service. I'm assuming we need to be served before appearing. Agree.
10/18/18 1:49 pm	Mark Wall	Irene Muse Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New trial etc. / new cases	Unserved case Hill set for March; depo scheduled; recommend not appear.
10/19/18 9:07am	Barb Davis	Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss Carol Weill	New cases	Do we really think we would not be served at some point? If we had already been served, would still recommend not attending the plaintiff deposition?
10/22/18 3:47pm	Mark Wall	Irene Muse Barb Davis Steven Fries Carol Weill	FW James Michael Hill v. Advance Auto Parts Amended NOD of James Michael Hill	FYI see attached communications.

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Date	From	To/CC	Subject	Key points of email
10/22/18 3:57pm	Carol Weill	Barb Davis Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	New cases	Request for response to inquiries.
10/23/18 2:07pm	Mark Wall	Carol Weill; Barb Davis; Irene Muse Gerry Begley John Weiss William Silverman Pauline Burdin Steven Fries travelers Sara Schrodetzki Tommy Boger	Covil unserved cases	Maybe Jim stopped accepting service. If we get served later, and Hill is still alive, we re-depose him. If we were served, we should attend; however, we checked the docket and there was no proof of serviced filed.
10/23/18 4:15pm	Carol Weill	Mark Wall Barb Davis Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	Covil Unserved cases	Zurich would recommend that Mark not appear for depositions in cases where service has not yet been effectuated.
10/31/18 3:57pm	Mark Wall	Irene Muse Steven Fries Carol Weill Barb Davis Gerry Begley John Weiss Pauline Burdin	FW Hill and email from Theile asking about answers	It didn't take them very long to figure out. What response at this point?

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Date	From	To/CC	Subject	Key points of email
11/1/18 1:53pm	Mark Wall	Irene Muse Steven Fries Carol Weill Erin Corbally, Barb Davis Gerry Begley John Weiss	FW Hill and Taylor	FYI see below. Below is Mark's email stating that he had not been asked to represent Covil in Hill and Taylor and Theile's email from 11/1/18 at 10:34 am asking about past due answers.
11/1/18 2:00pm	Steven Fries	Mark Wall, Irene Muse Carol Weill Erin Corbally Davis Barb Gerry Begley John Weiss	Re. Hill and Taylor	I thought you said yesterday that if approached by Plaintiff on these cases that we're going to tell them no record of service.
11/1/18 2:04pm	Mark Wall	Steven Fries Irene Muse Carol Weill Erin Corbally Barb Davis Gerry Begley John Weiss	Re. Hill and Taylor	In face of what has been filed today, I thought I would start slowly and leave service to last. I want to see what they say about service.

89. Defendants acted in concert when deciding what actions to take or not take and without any input from an independent Covil. These actions were in breach of their duties to Covil.

90. Primary Insurers' pattern and practice has made the Primary Insurers fully responsible for all of Covil's liabilities prior to appointment of the Receiver.

91. Under a number of legal theories, Primary Insurers are Covil and acted as for nearly 30 years.

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92. Primary Insurers have entered into a joint venture with each other to take over Covil and become Covil. For example:

a. A special combination of the Primary Insurers and Covil for the specific venture of limiting or eliminating Covil as a direct voice in the management of Covil's assets so that the Primary Insurers would protect and save their money;

b. The retention of a separate corporate personality for Covil would promote fraud, wrong, injustice and contravene public policy; and

c. Each Primary Insurer had an equal right to control the conduct of their joint venture and of Covil.

93. Covil has become the alter ego of the Primary Insurers:

a. The Primary Insurers have shown a total domination and control over Covil;

b. The domination was so complete that Covil never manifested separate corporate interests of its own and functioned solely to achieve the purposes of the Insurers;

c. The insurers misused their domination of Covil and were not entitled to dominate Covil;

d. Inequitable consequences have resulted with the unilateral application of insurance proceeds, default judgments, and verdicts;.

e. The Primary Insurers were the principals and Covil the agent or agency;

f. Primary Insurers manifested complete control over Covil and purported to act on Covil's behalf;

g. The course of dealing between the principal and the agent clearly show no

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independent Covil; and

h. Primary Insurers became active participants in Covil rather than simply insurers.

94. Primary Insurers' acts and omissions satisfy the elements of Alter-Ego under South Carolina law and the requested finding by the Court is that the Primary Insurers are the Alter-Ego of Covil and thus, responsible for the debts, present and future, or Covil.

95. Lawyers in conjunction with the Primary Insurers acted to control and dominate Covil in such a way to ensure that Covil had no actual representation;

96. Lawyers in conjunction with the Primary Insurers acted intentionally to avoid the statutory procedures that would give Covil a voice in its representation, operation and defense.

97. The Lawyers' acts and omissions satisfy the elements of Alter-Ego under South Carolina law and the requested finding by the Court is that the Lawyers are the Alter-Ego of Covil and thus, responsible for satisfying the Debts of Covil, past and present.

98. Because the Primary insurers, for nearly 30 years, have controlled Covil, they have made Covil's defense of asbestos litigation nearly, if not completely, impossible.

99. The Primary insurers took no steps to accumulate or preserve Covil's documents. The Primary Insurers took no steps to procure or preserve the testimony of material fact witnesses who, through the passage of time, are now no longer available to Covil.

100. The result of these failures is that Covil is now irretrievably defenseless in asbestos cases. These failures will continue to haunt Covil at all times going forward. Because of this, the Primary insurers can now no longer claim that any control or domination of Covil and the damages resulting therefrom ended in November of 2018 with the appointment of the receiver.

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101. Plaintiffs therefore seek a declaratory judgment that the Primary Insurers are the Alter-Ego of Covil after November 2, 2018 as well as before.

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

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

102. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

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

104. At all times herein mentioned, Defendants and/or their alter egos and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and

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advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Decedent and others similarly situated, (hereinafter collectively called "exposed persons"), while being used for their intended purpose and in a manner that was reasonably foreseeable.

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

106. Defendants and/or their alter egos and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products

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

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

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

109. Decedent suffered from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Decedent was not aware at the time was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

110. Defendants' and/or their alter egos conduct and defective products as described in this cause of action were a direct cause of Decedent's injuries, and all damages thereby sustained

by Decedent. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

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

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

113. Defendants and/or their alter egos and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their

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

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

115. Decedent and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily

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recognizable by Decedent or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Decedent and others similarly situated were exposed.

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

117. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants and/or their alter egos, seeks punitive damages according to proof against all defendants.

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

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and allege as follows:

118. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

119. Decedent suffered from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Decedent was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

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120. Defendants' and/or their alter egos conduct and defective products as described above were a direct cause of Decedent's injuries, and the injuries and damages thereby sustained by Decedent.

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

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

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

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

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

126. The defect existed in the said products at the time they left the possession of defendants, and/or their alter egos and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said

products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to “exposed persons,” including Decedent herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

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

128. Defendants’ defective products as described above were a direct cause of Decedent’s injuries, and the damages thereby sustained.

129. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, and/or their alter egos, and/or their “alternate entities,” and each of them, did so with conscious disregard for the safety of Decedent and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their alter egos and/or their "alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for

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foreseeable use with asbestos products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

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

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

induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

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

133. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants and/or their alter egos, seek punitive damages according to proof against all defendants.

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

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

As a Third Distinct Cause of Action Against Defendants, Plaintiffs Bring this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and allege as follows:

135. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

136. Prior to and during all relevant times Defendants and/or their alter egos employed workers (hereinafter "employees") in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent worked and/or spent time as alleged above.

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

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

139. Employees handling and disturbing asbestos-containing products in Decedent's, Decedent's family members and others' vicinity received monetary compensation from

Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

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

141. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Decedent, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Decedent.

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

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

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

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145. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Decedent.

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

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

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

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

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

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

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

As a Fourth Distinct Cause Of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

152. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

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

154. The implied warranty made by the Defendants and/or their alter egos that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Decedent carried out his duties and was inhaled by Decedent.

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

FOR A FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Fifth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

156. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

157. That during, before and after Decedent Donald L. Hutto's exposure to asbestos products manufactured by Defendants and/or their alter egos, the Defendants and/or their alter

egos falsely represented facts, including the dangers of asbestos exposure to Decedent in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Decedent. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

158. The foregoing representations were material conditions precedent to Decedent Donald L. Hutto's continued exposure to asbestos-containing products. Defendants and/or their alter egos each intended that Decedent act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Decedent was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

159. As a direct and proximate result of Decedent Donald L. Hutto's reliance upon Defendants' false representations, Decedent suffered injury and damages as described herein.

FOR A SIXTH CAUSE OF ACTION
(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendant Metropolitan Life Insurance Company, and Allege as Follows:

160. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

161. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the

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request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

162. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

163. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

164. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Decedent breathed asbestos dust which resulted in Decedent's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Decedent herein.

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165. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Decedent was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Decedent's illness.

166. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

167. Decedent unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

168. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Decedent from asbestos exposure was increased, and (ii) Decedent suffered the injuries described herein.

169. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Decedent.

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170. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Decedent was caused to remain ignorant of all the dangers of asbestos resulting in Decedent's wife, his co-workers, his family, and the general public to be unaware of the true and full dangers of asbestos, depriving Decedent of the opportunity to decide for himself whether he wanted to take the risk of being exposed to asbestos, denied Decedent the opportunity to take precautions against the dangers of asbestos and proximately caused Decedent's damages herein.

171. During the relevant time period the Decedent was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

172. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action to inflict injury on the Decedent, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Decedent or his wife in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

(a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.

(b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about

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the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

(c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

(d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

(e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Decedent.

(f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

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(g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

(h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

(i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Decedent who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Decedent of the dangers to which he was exposed when they knew of the dangers.

(j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Decedent to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

173. Decedent reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark

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regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

174. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Decedent has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Decedent has been damaged.

FOR AN SEVENTH CAUSE OF ACTION
(Wrongful Death Action, S.C. Code Ann. § 15-51-10 et seq.)

For a Seventh Distinct Cause of Action for Wrongful Death, Plaintiffs Complain of Defendants, and allege as follows:

175. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

176. Plaintiffs bring this cause of action for Donald L. Hutto's wrongful death pursuant to S.C. Code Ann. § 15-51-10, for the benefit of Sandra S. Hutto, as the widow of Decedent, and on behalf of the heirs of Donald L. Hutto, as defined by S.C. Code § 15-51-20.

177. As a direct and proximate result of the negligence, recklessness, carelessness, and intentional actions of Defendants and/or their alter egos as described above, Donald L. Hutto died on December 15, 2017, and his wife and children have and will endure pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of love, loss of society with the Decedent, loss of guidance from the Decedent, loss of his companionship and deprivation of the

use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of himself and his beneficiaries, and they have been otherwise seriously damaged. Moreover, reasonable funeral expenses were incurred, and Plaintiffs pray for judgment against Defendants in such amount of actual and punitive damages against all defendants and/or their alter egos, as the trier of fact may determine.

FOR AN EIGHTH CAUSE OF ACTION
(Loss of Consortium)

For an Eighth Distinct Cause of Action for Loss of Consortium, Plaintiff Sandra S. Hutto Complains of Defendants, and alleges as follows:

178. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

179. Decedent Donald L. Hutto and Sandra S. Hutto were married on March 30, 1968, and at all times relevant to this action were husband and wife.

180. Prior to his injuries as alleged, Decedent Donald L. Hutto was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Decedent has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Sandra S. Hutto was deprived of the consortium of her spouse, including the performance of duties, all to Plaintiff's damages, in an amount presently unknown to Plaintiff but which will be proven at time of trial.

181. As a direct and proximate result of the acts of Defendants and/or their alter egos and/or their "alternate entities" and the severe injuries and death caused to Decedent Donald L. Hutto as set forth herein, Decedent's spouse and Plaintiff Sandra S. Hutto suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society,

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comfort, companionship, love and affection of her spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiff prays for judgment against defendants, their "alternate entities," and each of them, as hereinafter set forth.

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

For a Ninth Distinct Cause of Action, known statutorily as a Survival Action, Plaintiffs Complain of Defendants, and allege as follows:

182. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

183. Plaintiff, Sandra S. Hutto, is the spouse of decedent Donald L. Hutto, and Plaintiffs Donald Brian Hutto and Candace H. Youngblood are the children of decedent Donald L. Hutto. Plaintiff Sandra S. Hutto, individually and as Personal Representative of the Estate of Donald L. Hutto, deceased, brings this survival action as allowed under S.C. Code Ann. § 15-5-90.

184. Plaintiffs bring this cause of action for Decedent's medical, surgical and hospital bills, as well as for Decedent's conscious pain and suffering prior to his untimely death, as well as for the mental distress of Decedent due to knowledge of his impending death from his incurable disease.

185. As a direct and proximate result of the negligence, recklessness, carelessness, and in some cases intentional actions of Defendants and/or their alter egos as described, Decedent endured conscious pain, suffering, mental anguish and distress until his untimely death, and Plaintiffs pray for judgment against Defendants and/or their alter egos in such amount of actual and punitive damages against all defendants, as the trier of fact may determine is just.

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

For a Tenth Distinct Cause of Action, Alter Egos Claims, Plaintiffs Complains of Defendants, and allege as follows:

186. Covil Corporation ("Covil"), a South Carolina company founded on selling asbestos insulation throughout South Carolina and the southeast, began its corporate life in 1954. In 1993, Covil Corporation, after the death of its founder Palmer Covil from mesothelioma[2], understanding it had sold asbestos all over South Carolina and the immense implications for the health of workers of South Carolina, quietly dissolved its corporate existence leaving behind only insurance coverage. Between 1993 and 2018, Covil's insurance carriers and their lawyers, including Wall Templeton and Haldrop, P.A. ("WTH") and Gallivan White and Boyd, PA ("GWB" and together with WTH, the "lawyers"), without an insured or client, appeared for Covil, answered Covil's lawsuits, decided how to defend the suits, what representations to make to court and counsel, answered discovery for Covil (making factual representations), determined how and when to make settlement offers, if any were made at all, and how, if at all, to respond to demands. In essence, Covil's insurers and their lawyers were Covil, turned on the lights in the morning and turned them off when they left and made every decision for Covil in between.

187. Covil's lawyers and carriers have assumed the mantle of Covil. For nearly thirty years, they have acted for and as the company with no regard to the desires or wishes of their insured. The result is that they are the alter-egos of Covil and are responsible for all of the debts it has and continues to incur.

[2] [M]esothelioma, [is] an "invariably fatal cancer…for which asbestos exposure is the only known cause…" In re Patenaude, 210 F.3d 135, 138 (3d Cir.), cert. denied, 531 U.S. 1011 (2000).

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PRAYER FOR RELIEF

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

1. For Decedents' actual damages according to proof, including Decedent's pain & suffering, Decedent's mental distress as well as Decedent's medical, surgical and hospital bills;

2. For Decedent's loss of income or earnings according to proof;

3. For loss of care, comfort and society of the Decedent;

4. For pecuniary loss of the beneficiaries/heirs including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heirs, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of his companionship and deprivation of the use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of himself and his beneficiaries;

5. For punitive damages according to proof;

6. For Plaintiffs' cost of suit herein;

7. For damages for fraudulent misrepresentation according to proof;

8. For damages for breach of implied warranty according to proof;

9. All economic and non-economic damages allowed pursuant to the Survival and Wrongful Death Act; and

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

11. That Sentry Insurance A Mutual Company, United States Fidelity And Guaranty Company, and Zurich American Insurance Company are found to be the alter egos of Covil and, co-extensively liable with Covil as found by the jury in this case.

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A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

s/Theile B. McVey
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ATTORNEYS FOR PLAINTIFFS

December 12, 2019

Columbia, South Carolina.

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A 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 CANDANCE H. YOUNGBLOOD, Individually, Plaintiffs, v. COVIL CORPORATION et al., Defendants.	**COVIL CORPORATION'S ANSWER TO COMPLAINT**

Defendant Covil Corporation (Covil) presents the following answer and defenses to Plaintiffs' Complaint. Any allegations in the Complaint not specifically admitted herein are denied. In addition, Covil more specifically states as follows:

RESPONSE TO "GENERAL ALLEGATIONS"

1. In response to the allegations in paragraph 1 of the Complaint, Covil denies that it is liable to Plaintiffs under any theory or cause of action for the damages and/or other relief requested therein.

2. The allegations in paragraph 2 of the Complaint, including all subparts, are legal conclusions to which no response is required. To the extent that a response is required, Covil denies the allegations in paragraph 2 as they relate to Covil. To the extent that the allegations in paragraph 2 relate to defendants other than Covil, Covil is without sufficient knowledge or information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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3. In response to the allegations in paragraph 3 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself in the State of South Carolina. Covil denies the remaining allegations in paragraph 3 of the Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 3 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

4. Covil denies the allegations in paragraph 4 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 4 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

5. The allegations in paragraph 5 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Covil denies the allegations in paragraph 5 as they relate to Covil. To the extent that the allegations in paragraph 5 relate to defendants other than Covil, Covil is without sufficient knowledge or information to form a belief as to the truthfulness of those allegations and therefore denies the same.

6. Covil denies the allegations in paragraph 6 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 6 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

7. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 7 of the Complaint and therefore denies the same.

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8. Covil denies the allegations in paragraph 8 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 8 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

9. Covil denies the allegations in paragraph 9 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 9 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

10. In response to the allegations in paragraph 10 of the Complaint, Covil admits that it was a corporation formed under the laws of the State of South Carolina, and that it forfeited its corporate authority to transact business and was administratively dissolved in 1993. Except as expressly admitted, the allegations in paragraph 10 are denied.

11. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 11 of the Complaint and therefore denies the same.

12. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 12 of the Complaint concerning Donald L. Hutto's injuries or damages, and therefore denies the same. Covil denies the remaining allegations in paragraph 12 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 12 are directed at or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

13. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 13 of the Complaint concerning Donald L. Hutto's

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medical costs, and therefore denies the same. Covil denies the remaining allegations in paragraph 13 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 13 are directed at or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

14. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 14 of the Complaint concerning Donald L. Hutto's loss of profits and commissions, diminished earning potential, and other pecuniary losses, and therefore denies the same. Covil denies the remaining allegations in paragraph 14 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 14 are directed at or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

15. The allegations in paragraph 15 of the Complaint contain legal conclusions to which no response is required. The allegations of paragraph 15 of the Complaint are directed to other defendants, and no response is required.

RESPONSE TO "THE PARTIES"

16. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 16 of the Complaint and therefore denies the same.

17. In response to the allegations in paragraph 17 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself in the State of South Carolina. Covil denies the

remaining allegations in paragraph 17 of the Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 17 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

18. The allegations in paragraph 18 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

19. The allegations in paragraph 19 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required. To the extent that the allegations in paragraph 19 could be construed to relate to Covil, Covil denies those allegations.

20. The allegations in paragraph 20 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required. To the extent that the allegations in paragraph 20 could be construed to relate to Covil, Covil denies those allegations.

21. The allegations in paragraph 21 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

22. The allegations in paragraph 22 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

23. The allegations in paragraph 23 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

24. The allegations in paragraph 24 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

25. The allegations in paragraph 25 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

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26. The allegations in paragraph 26 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

27. The allegations in paragraph 27 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

28. The allegations in paragraph 28 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

29. The allegations in paragraph 29 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

30. The allegations in paragraph 30 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

31. The allegations in paragraph 31 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

32. The allegations in paragraph 32 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

33. The allegations in paragraph 33 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

34. The allegations in paragraph 34 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

35. The allegations in paragraph 35 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

36. The allegations in paragraph 36 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

37. The allegations in paragraph 37 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

38. The allegations in paragraph 38 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

39. The allegations in paragraph 39 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

40. The allegations in paragraph 40 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

41. The allegations in paragraph 41 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

42. The allegations in paragraph 42 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

43. The allegations in paragraph 43 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

44. The allegations in paragraph 44 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

45. The allegations in paragraph 45 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

46. The allegations in paragraph 46 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

47. The allegations in paragraph 47 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

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48. The allegations in paragraph 48 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

49. The allegations in paragraph 49 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

50. The allegations in Paragraph 50 of the Complaint are directed at parties other than Covil, and therefore no response from Covil is required.

RESPONSE TO "BACKGROUND FACTS"

51. In response to the allegations in paragraph 51 of the Complaint, Covil denies that it is liable to Plaintiffs under any theory or case of action for the damages and/or other relief requested therein.

52. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 52 of the Complaint and therefore denies the same.

53. Covil denies the allegations in paragraph 53 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 53 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

54. Covil denies the allegations in paragraph 54 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 54 of the Complaint and therefore denies the same.

55. Covil denies the allegations in paragraph 55 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a

belief as to the truthfulness of the remaining allegations in paragraph 55 of the Complaint and therefore denies the same.

56. Covil denies the allegations in paragraph 56 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 56 of the Complaint and therefore denies the same.

57. Covil denies the allegations in paragraph 57 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 57 of the Complaint and therefore denies the same.

58. Covil denies the allegations in paragraph 58 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 58 of the Complaint and therefore denies the same.

59. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 59 of the Complaint and therefore denies the same.

60. Covil denies the allegations in paragraph 60 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 60 of the Complaint and therefore denies the same.

61. Covil denies the allegations in paragraph 61 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a

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belief as to the truthfulness of the remaining allegations in paragraph 61 of the Complaint and therefore denies the same.

62. Covil denies the allegations in paragraph 62 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 62 of the Complaint and therefore denies the same.

63. Covil denies the allegations in paragraph 63 of the Complaint to the extent that the allegations relate to Covil. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 63 of the Complaint and therefore denies the same.

RESPONSE TO "FACTUAL BACKGROUND AS TO COVIL"

In response to paragraphs 64 through 101 of Plaintiffs' Complaint, including all subparts, , Covil admits that it ceased conducting business operations in 1991. To the extent that the allegations of paragraphs 64 through 101 allege facts during the time period after which Covil ceased operations, Covil lacks sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 64 through 101 and therefore denies the same. To the extent that the allegations of paragraphs 64 through 101 allege that other named defendants acted as the alter ego of Covil after it ceased doing business, those allegations are the subject of separate, pending litigation involving the receiver appointed for Covil after it ceased doing business. Covil further responds to the enumerated allegations of paragraphs 64 through 101, including all subparts, as follows:

64. In response to the allegations in paragraph 64 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to

time during its existence, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Except as expressly admitted herein, the allegations in paragraph 64 are denied.

65. In response to the allegations in paragraph 65 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time during its existence, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil further admits that it forfeited its corporate authority to transact business and was administratively dissolved in 1993. Except as expressly admitted, the allegations in paragraph 65 are denied.

66. In response to the allegations in paragraph 66 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time during its existence, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil further admits that, at certain times during its existence, its operations may have included the installation, repair, replacement, removal, or disturbance of insulation materials. Except as expressly admitted, the allegations in paragraph 66 are denied.

67. In response to the allegations in paragraph 67 of the Complaint, Covil admits that it has been named as a defendant in asbestos-related lawsuits. Except as expressly admitted, the allegations in paragraph 67 are denied.

68. Covil admits that it carried insurance during its operation and that various insurance carriers provided a defense for Covil while it was still in operation. The remaining allegations of paragraph 68 of the Complaint are directed to other defendants, and no response is required.

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69. Covil admits that it carried insurance during the time periods alleged in paragraph 40 of the Complaint. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the remaining allegations in paragraph 69 and therefore denies the same.

70. The allegations of paragraph 70 of the Complaint are directed to other defendants, and no response is required.

71. The allegations of paragraph 71 of the Complaint are directed to other defendants, and no response is required.

72. The allegations of paragraph 72 of the Complaint are directed to other defendants, and no response is required.

73. The allegations of paragraph 73 of the Complaint are directed to other defendants, and no response is required.

74. The allegations of paragraph 74 of the Complaint are directed to other defendants, and no response is required.

75. The allegations of paragraph 75 of the Complaint are directed to other defendants, and no response is required.

76. The allegations of paragraph 76 of the Complaint are directed to other defendants, and no response is required.

77. The allegations of paragraph 77 of the Complaint are directed to other defendants, and no response is required.

78. The allegations in paragraph 78 of the Complaint contain legal conclusions to which no response is required. The allegations of paragraph 78 of the Complaint are directed to other defendants, and no response is required.

79. The allegations in paragraph 79 of the Complaint contain legal conclusions to which no response is required. The allegations of paragraph 79 of the Complaint are directed to other defendants, and no response is required.

80. The allegations in paragraph 80 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 80 of the Complaint are directed to other defendants, and no response is required.

81. The allegations of paragraph 81 of the Complaint are directed to other defendants, and no response is required.

82. The allegations in paragraph 82 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 82 of the Complaint are directed to other defendants, and no response is required.

83. The allegations in paragraph 83 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 83 of the Complaint are directed to other defendants, and no response is required.

84. The allegations of paragraph 84 of the Complaint are directed to other defendants, and no response is required.

85. The allegations of paragraph 85 of the Complaint are directed to other defendants, and no response is required.

86. The allegations of paragraph 86 of the Complaint are directed to other defendants, and no response is required.

87. The allegations of paragraph 87 of the Complaint are directed to other defendants, and no response is required.

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88. The allegations of paragraph 88 of the Complaint are directed to other defendants, and no response is required.

89. The allegations of paragraph 89 of the Complaint are directed to other defendants, and no response is required.

90. The allegations in paragraph 90 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 90 of the Complaint are directed to other defendants, and no response is required.

91. The allegations in paragraph 91 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 91 of the Complaint are directed to other defendants, and no response is required.

92. The allegations in paragraph 92 of the Complaint, including all subparts, are legal conclusions to which no response is required. The allegations of paragraph 92 of the Complaint are directed to other defendants, and no response is required.

93. The allegations in paragraph 93 of the Complaint, including all subparts, are legal conclusions to which no response is required. The allegations of paragraph 93 of the Complaint are directed to other defendants, and no response is required.

94. The allegations in paragraph 94 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 94 of the Complaint are directed to other defendants, and no response is required.

95. The allegations of paragraph 95 of the Complaint are directed to other defendants, and no response is required.

96. The allegations of paragraph 96 of the Complaint are directed to other defendants, and no response is required.

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97. The allegations in paragraph 97 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 97 of the Complaint are directed to other defendants, and no response is required.

98. The allegations in paragraph 98 of the Complaint are legal conclusions to which no response is required. The allegations of paragraph 98 of the Complaint are directed to other defendants, and no response is required.

99. The allegations of paragraph 99 of the Complaint are directed to other defendants, and no response is required.

100. The allegations in paragraph 100 of the Complaint contain legal conclusions to which no response is required. The allegations of paragraph 100 of the Complaint are directed to other defendants, and no response is required.

101. The allegations of paragraph 101 of the Complaint are directed to other defendants, and no response is required.

RESPONSE TO FIRST CAUSE OF ACTION
(Product Liability: Negligence)

102. In response to the allegations in paragraph 102 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 101 as if fully repeated herein.

103. In response to the allegations in paragraph 103 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil denies the remaining allegations in paragraph 103 of the Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 103 are directed against or pertain to

parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

104. Covil denies the allegations in paragraph 104 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 104 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

105. Covil denies the allegations in paragraph 105 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 105 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

106. Covil denies the allegations in paragraph 106 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 106 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

107. Covil denies the allegations in paragraph 107 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 107 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

108. Covil denies the allegations in paragraph 108 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 108 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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109. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 109 of the Complaint and therefore denies the same.

110. Covil denies the allegations in paragraph 110 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 110 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

111. Covil denies the allegations in paragraph 111 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 111 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

112. Covil denies the allegations in paragraph 112 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 112 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

113. Covil denies the allegations in paragraph 113 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 113 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

114. Covil denies the allegations in paragraph 114 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 114 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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115. Covil denies the allegations in paragraph 115 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 115 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

116. Covil denies the allegations in paragraph 116 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 116 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

117. Covil denies the allegations in paragraph 117 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 117 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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

118. In response to the allegations in paragraph 118 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 117 as if fully repeated herein.

119. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 119 of the Complaint and therefore denies the same.

120. Covil denies the allegations in paragraph 120 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 120 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

121. Covil denies the allegations in paragraph 121 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 121 are directed

against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

122. Covil denies the allegations in paragraph 121 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 121 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

123. Covil denies the allegations in paragraph 123 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 123 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

124. Covil denies the allegations in paragraph 124 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 124 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

125. Covil denies the allegations in paragraph 125 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 125 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

126. Covil denies the allegations in paragraph 126 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 126 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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127. Covil denies the allegations in paragraph 127 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 127 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

128. Covil denies the allegations in paragraph 128 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 128 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

129. Covil denies the allegations in paragraph 129 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 129 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

130. Covil denies the allegations in paragraph 130 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 130 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

131. Covil denies the allegations in paragraph 131 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 131 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

132. Covil denies the allegations in paragraph 132 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 132 are directed

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against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

133. Covil denies the allegations in paragraph 133 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 133 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

134. In response to the allegations in paragraph 134 of the Complaint, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil denies the remaining allegations in paragraph 134 of the Complaint to the extent that the allegations could be construed to relate to Covil. To the extent that the allegations in paragraph 134 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

RESPONSE TO THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

135. In response to the allegations in paragraph 135 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 134 as if fully repeated herein.

136. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 136 of the Complaint and therefore denies the same.

137. Covil denies the allegations in paragraph 137 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 137 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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138. Covil denies the allegations in paragraph 138 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 138 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

139. Covil denies the allegations in paragraph 139 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 139 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

140. Covil denies the allegations in paragraph 140 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 140 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

141. Covil denies the allegations in paragraph 141 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 141 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

142. Covil denies the allegations in paragraph 142 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 142 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

143. Covil denies the allegations in paragraph 143 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 143 are directed

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against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

144. Covil denies the allegations in paragraph 144 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 144 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

145. Covil denies the allegations in paragraph 145 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 145 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

146. Covil denies the allegations in paragraph 146 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 146 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

147. Covil denies the allegations in paragraph 147 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 147 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

148. Covil denies the allegations in paragraph 148 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 148 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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149. Covil denies the allegations in paragraph 149 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 149 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

150. Covil denies the allegations in paragraph 150 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 150 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

151. Covil denies the allegations in paragraph 151 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 151 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

RESPONSE TO FOURTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties – S.C. Code Ann. 36-2-314)

152. In response to the allegations in paragraph 152 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 151 as if fully repeated herein.

153. Covil denies the allegations in paragraph 153 of the Complaint to the extent that the allegations relate to Covil and, further, specifically denies that any implied warranty was made or breached, or that any alleged breach resulted in any damage to Plaintiffs.

154. Covil denies the allegations in paragraph 154 of the Complaint to the extent that the allegations relate to Covil and, further, specifically denies that any implied warranty was made or breached, or that any alleged breach resulted in any damage to Plaintiffs.

155. Covil denies the allegations in paragraph 155 of the Complaint to the extent that the allegations relate to Covil and, further, specifically denies that any implied warranty was made or breached, or that any alleged breach resulted in any damage to Plaintiffs.

RESPONSE TO FIFTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

156. In response to the allegations in paragraph 156 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 155 as if fully repeated herein.

157. Covil denies the allegations in paragraph 157 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 157 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

158. Covil denies the allegations in paragraph 158 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 158 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

159. Covil denies the allegations in paragraph 159 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 159 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

RESPONSE TO SIXTH CASE OF ACTION
(Conspiracy, Concert of Action – Defendant Metropolitan Life)

160. In response to the allegations in paragraph 160 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 159 as if fully repeated herein.

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161. The allegations of paragraph 161 of the Complaint are directed to other defendants, and no response is required.

162. The allegations of paragraph 162 of the Complaint are directed to other defendants, and no response is required.

163. The allegations of paragraph 163 of the Complaint are directed to other defendants, and no response is required.

164. The allegations of paragraph 164 of the Complaint are directed to other defendants, and no response is required.

165. The allegations of paragraph 165 of the Complaint are directed to other defendants, and no response is required.

166. The allegations of paragraph 166 of the Complaint are directed to other defendants, and no response is required.

167. The allegations of paragraph 167 of the Complaint are directed to other defendants, and no response is required.

168. The allegations of paragraph 168 of the Complaint are directed to other defendants, and no response is required.

169. The allegations of paragraph 169 of the Complaint are directed to other defendants, and no response is required.

170. The allegations of paragraph 170 of the Complaint are directed to other defendants, and no response is required.

171. The allegations of paragraph 171 of the Complaint are directed to other defendants, and no response is required.

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172. The allegations of paragraph 172, including subparts, of the Complaint are directed to other defendants, and no response is required.

173. The allegations of paragraph 173 of the Complaint are directed to other defendants, and no response is required.

174. The allegations of paragraph 174 of the Complaint are directed to other defendants, and no response is required.

RESPONSE TO SEVENTH CAUSE OF ACTION
(Wrongful Death Action, S.C. Code Ann. § 15-51-10 et seq.)

175. In response to the allegations in paragraph 175 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 174 as if fully repeated herein.

176. The allegations in paragraph 176 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Covil denies that it is liable to Plaintiffs under any theory or cause of action for the damages and/or other relief requested therein.

177. Covil denies the allegations in paragraph 177 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 177 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

RESPONSE TO EIGHTH CAUSE OF ACTION
(Loss of Consortium)

178. In response to the allegations in paragraph 178 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 178 as if fully repeated herein.

179. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 179 of the Complaint and therefore denies the same.

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180. Covil denies the allegations in paragraph 180 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 180 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

181. Covil denies the allegations in paragraph 181 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 181 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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

182. In response to the allegations in paragraph 182 of the Complaint, Covil hereby incorporates its preceding responses to paragraphs 1 through 181 as if fully repeated herein.

183. The allegations in paragraph 183 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Covil denies that it is liable to Plaintiffs under any theory or cause of action for the damages and/or other relief requested therein.

184. The allegations in paragraph 184 of the Complaint state conclusions to which no response is required. To the extent that a response is required, Covil denies that it is liable to Plaintiffs under any theory or cause of action for the damages and/or other relief requested therein.

185. Covil denies the allegations in paragraph 185 of the Complaint to the extent that the allegations relate to Covil. To the extent that the allegations in paragraph 185 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and therefore denies the same.

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RESPONSE TO 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. Covil incorporates by reference its responses to paragraphs 64 through 101 of Plaintiffs' Complaint. In further response, Covil admits that it was an insulation contractor and wholesaler of insulation materials that purchased, from time to time during its existence, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil further admits that it ceased operations in 1991 and forfeited its corporate authority to transact business and was administratively dissolved in 1993. To the extent that the allegations in paragraph 186 of the Complaint are directed at parties other than Covil, no response from Covil is required.

187. Covil incorporates by reference its responses to paragraphs 64 through 101 of Plaintiff's Complaint. To the extent the allegations in paragraph 187 of the Complaint are directed at parties other than Covil, no response from Covil is required.

RESPONSE TO "PRAYER FOR RELIEF"

As to the allegations contained in the Prayer for Relief, Covil 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

Covil 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 Covil and, accordingly, should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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FOR A SECOND DEFENSE

Covil is a dissolved corporation and therefore lacks the capacity to sue or be sued.

FOR A THIRD DEFENSE

Upon information and belief, there is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FOR A FOURTH DEFENSE

Upon information and belief, the claims set forth in the Complaint are barred by the applicable statutes of limitations and/or repose in this State or other states as may be applicable.

FOR A FIFTH DEFENSE

Covil alleges that Plaintiffs' damages are the direct and proximate result of the negligent, reckless, willful, and wanton conduct of Decedent Donald L. Hutto, which combined and concurred with any negligence or recklessness on the part of Covil—which is specifically denied and is admitted 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 been guilty of such negligence, recklessness, willfulness, or wantonness. The Complaint is barred to the extent that Decedent Donald L. Hutto's contributory negligence and recklessness is more than 50% of the total negligence in this case. To the extent that Decedent Donald L. Hutto's contributory negligence and recklessness is 50% or less of the total negligence in this case, which is denied and admitted solely for the purpose of this defense, Plaintiffs' recovery should be reduced by the percentage of Decedent Donald L. Hutto's contributory negligence and recklessness.

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FOR A SIXTH DEFENSE

The claims set forth in the Complaint are barred to the extent that there is another action pending between the same parties for the same claims.

FOR A SEVENTH 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 AN EIGHTH 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 NINTH 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 TENTH DEFENSE

By virtue of the doctrine of judicial estoppel, Plaintiffs are precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and, upon information and belief, are therefore precluded from alleging the material facts necessary to state a cause of action against Covil.

FOR AN ELEVENTH DEFENSE

Covil 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.

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FOR A TWELFTH DEFENSE

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

FOR A THIRTEENTH DEFENSE

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

FOR A FOURTEENTH DEFENSE

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

FOR A FIFTEENTH DEFENSE

To the extent that Plaintiffs have received payment in satisfaction of any of the alleged injuries and/or claims against Covil, 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 SIXTEENTH DEFENSE

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

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FOR A SEVENTEENTH DEFENSE

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

FOR AN EIGHTEENTH 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 NINETEENTH DEFENSE

Covil 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 TWENTIETH DEFENSE

Covil 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-FIRST DEFENSE

Covil alleges that if Decedent Donald L. Hutto used the product or products for which Covil is alleged to be responsible, upon information and belief, the same was used for a purpose not intended by Covil and contrary to any instructions or normal method of using the same.

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FOR A TWENTY-SECOND DEFENSE

Covil 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 Covil.

FOR A TWENTY-THIRD DEFENSE

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

FOR A TWENTY-FOURTH 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 TWENTY-FIFTH DEFENSE

Covil 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.

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FOR A TWENTY-SIXTH DEFENSE

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

FOR A TWENTY-SEVENTH 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 Covil is alleged to have been responsible, such materials, upon information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

FOR A TWENTY-EIGHTH DEFENSE

If any products for which Covil 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 Covil, and by reason thereof Covil 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 TWENTY-NINTH DEFENSE

In the event that it is determined that any product for which Covil is alleged to have been responsible was dangerous, which danger is specifically denied, Covil was unaware of such danger as it would apply in any conceivable use of such products by Decedent Donald L. Hutto;

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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 THIRTIETH 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 Covil is liable. Covil is entitled to setoff of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

FOR A THIRTY-FIRST 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-SECOND DEFENSE

The Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

FOR A THIRTY-THIRD DEFENSE

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

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FOR A THIRTY-FOURTH DEFENSE

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

FOR A THIRTY-FIFTH DEFENSE

To the extent that the Complaint seeks punitive damages, Covil affirmatively pleads the following:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise, and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

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(e) Plaintiffs' claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A THIRTY-SIXTH DEFENSE

Upon information and belief, Decedent Donald L. Hutto was employed by a knowledgeable and sophisticated user/employer, and any duty that Covil may have had to warn him of any potential dangers incident to 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-SEVENTH DEFENSE

Covil reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

FOR A THIRTY-EIGHTH DEFENSE

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

RESERVATION OF CROSSCLAIMS

All crossclaims for contribution and for indemnity by Covil against all co-defendants and third-party defendants are hereby reserved and implied.

JURY TRIAL DEMAND

Covil requests a trial by jury on all issues so triable.

WHEREFORE, Covil prays the Court for the following relief:

1. That the Complaint be dismissed with prejudice as to Covil;

2. That any and all crossclaims against Covil be dismissed with prejudice;

3. That Plaintiffs and other defendants and/or third-party defendants have and recover nothing from Covil;

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 Covil 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.

Respectfully submitted, this 31st day of January, 2020.

/s/ Ashley K. Brathwaite
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S.C. State Bar No. 76952
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Counsel for Defendant Covil Corporation

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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, and DONALD BRIAN HUTTO AND CANDACE H. YOUNGBLOOD, Individually, Plaintiffs, Vs. COVIL CORPORATION; SENTRY INSURANCE A MUTUAL COMPANY; SOUTHERN INSULATION, INC.; STARR DAVIS COMPANY, INC.; STARR DAVIS COMPANY OF S.C., INC.; UNITED STATES FIDELITY AND GUARANTY COMPANY; ZURICH AMERICAN INSURANCE COMPANY, a/k/a ZURICH NORTH AMERICA, INC.; 3M COMPANY; AECOM; ARMSTRONG INTERNATIONAL, INC.; AURORA PUMP COMPANY; BW/IP INC.; CARBOLINE COMPANY; CBS CORPORATION;	Case Number: 2019-CP-40-06956

CGR PRODUCTS, INC.;

DANIEL INTERNATIONAL CORPORATION;

FISHER CONTROLS INTERNATIONAL, LLC;

FLUOR CONSTRUCTORS INTERNATIONAL, INC.;

FLUOR DANIEL SERVICES CORPORATION;

FLUOR ENTERPRISES, INC.;

FOSTER WHEELER ENERGY CORPORATION;

THE GOODYEAR TIRE & RUBER COMPANY;

GRINNELL, LLC;

HAJOCA CORPORATION;

IMO INDUSTRIS, INC.;

JOHN CRANE INC;

METROPOLITAN LIFE INSURANCE COMPANY;

SPIRAX SARCO, INC;

TRANE U.S. INC.;

UNIROYAL HOLDING INC.;

VELAN VALVE CORP.;

VIKING PUMP, INC.;

WEIR VALVES & CONTROLS USA, INC.

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Defendants.

CROSS CLAIM OF DEFENDANT COVIL CORPORATION BY AND THROUGH ITS RECEIVER AGAINST UNITED STATES FIDELITY AND GUARANTY COMPANY AND ZURICH AMERICAN INSURANCE COMPANY

COME NOW Defendant Covil Corporation by and through its Receiver, Peter D. Protopapas, (hereinafter referred to as "Covil") asserting cross claims as follows: Covil denies each and every allegation of the complaint which is not hereinafter specifically admitted.

PARTIES

1. The Receiver is a lawyer who was appointed as Receiver of Covil Corporation, by Order attached as **Exhibit 1**, on November 2, 2018 and who maintains his principal place of business in Richland County, South Carolina.
2. United States Fidelity and Guaranty Company ("USF&G") is an insurance company, operating as a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in the State of Connecticut. USF&G is a wholly-owned subsidiary of The Travelers Group of Insurance Companies.
3. Zurich American Insurance Company ("Zurich") is an insurance company, operating as a corporation organized under the laws of the State of New York with its principal place of business located in the State of Illinois. Zurich is the successor by merger to Maryland Casualty Company and Northern Insurance Company of New York. Zurich American is a wholly-owned subsidiary of the Zurich Group of Insurance Companies.
4. Zurich and USF&G are collectively referred to as the "Primary Insurers."

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JURISDICTION AND VENUE

5. This Court has jurisdiction over this suit inasmuch as this Court appointed the Receiver of Covil, a former South Carolina corporation and Defendants have operated in this State.

FACTUAL BACKGROUND

6. Covil was an installer of thermal insulation, including thermal insulation which at certain times contained asbestos.
7. Covil conducted these operations from at least 1954 until approximately 1991, after which Covil ceased to conduct business operations and, ultimately, Covil's charter was administratively revoked.
8. It has been alleged that Covil's operations from 1954 through at least 1986 included the installation, repair, replacement, removal or disturbance of thermal insulation and other building materials and that those operations exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations").
9. The alleged bodily injury resulting from the Asbestos Allegations has resulted in claims and lawsuits against Covil ("Covil Asbestos Suits").
10. From at least in or about 1991, until the appointment of the Receiver, on November 2, 2018, the defense of the Covil Asbestos Suits was controlled by the Primary Insurers, specifically defendants Zurich and USF&G. Moreover, on and after 1991, the Primary Insurers conducted all of Covil's affairs, including after Covil's corporate status was administratively revoked in 1993, extending until appointment of the Receiver.

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11. The Primary Insurers issued insurance policies to Covil from in or about 1954 until approximately 1978.

12. From at least in or about 1991, continuing until appointment of the Receiver, Zurich and USF&G managed Covil, making all determinations as to use and the disposition of Covil's assets, which consisted primarily of corporate documents and insurance policies.

13. The Primary Insurers made all determinations as to the disposition of Covil Asbestos Suits as well as the treatment and characterization of claims under the Covil insurance policies.

14. Since as early as approximately 1991, the Primary Insurers acted in concert for the common purpose of ensuring that there was no independent person or entity acting by or on behalf of Covil. The Primary Insurers determined that the only Covil that could exist would be a Covil that was for all purposes the Primary Insurers' agency, subsidiary, alter ego, and/or controlled entity.

15. The Primary Insurers effectuated their common purpose of exclusive, unilateral control of Covil by running Covil's affairs in all material aspects.

16. At no time did the Primary Insurers make efforts to appoint an independent person or entity to determine what was in Covil's best interest. Rather, the Primary Insurers unilaterally determined what was best for Covil, or disregarded what was best for Covil, acting in their own interest, regardless of whether there was an actual or potential conflict between their interest and Covil's interest.

17. Each of the Primary Insurers' actions on behalf of Covil was for the purpose of protecting the Primary Insurers rather than Covil.

18. In addition to controlling the assets and affairs of Covil, the Primary Insurers unilaterally hired agents for Covil, including but not limited to attorneys, experts and a professional 30(b)(6) witness to act as and on behalf of, and to constitute Covil, *de facto* or *de jure*.

19. The Primary Insurers are required to act in good faith and to engage in fair dealing in all of their actions in regards to Covil.

20. The Primary Insurers had and have a duty to provide a full defense in the Covil Asbestos Suits.

21. The Primary Insurers engaged Lawyers to provide a defense to certain of the Covil Asbestos Suits.

22. In South Carolina, when an insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured, *i.e.,* the insured client of the attorney. Pursuant to that relationship, the attorney owes the insured client—not the insurer—a fiduciary duty. The loyalties of the attorney may not be divided.

23. Lawyers were hired to protect Covil's interest but improperly became part of the Primary Insurers' scheme to run Covil as an effective subsidiary, agency or alter ego of the Primary Insurers. Lawyers improperly followed the Primary Insurers' instructions and treated the Primary Insurers as Covil for representation and fiduciary duty purposes.

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24. Prior to the Receiver's appointment, Covil was nothing more than a façade behind which the Primary Insurers stood and directed actions of its lawyers.

25. The Primary Insurers improperly required or requested Lawyers to treat the Primary Insurers as Covil.

26. The Primary Insurers' complete control over Covil, and management of Covil's affairs, including but not limited to the Covil asbestos suits.

27. The communications between and among the defendants illustrates how defendants singlehandedly ran Covil. The pertinent communications include:

Date	From	To/CC	Subject	Key points of email
10/9/18 3:46 pm	Mark Wall	Irene Muse; Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New cases	Covil has been named in at least two new cases, but we have no Notice of Service. I'm assuming we need to be served before appearing. Agree.
10/18/18 1:49 pm	Mark Wall	Irene Muse Barb Davis; Steven Fries; Gerry Begley; John Weiss; Carol Weill; William Silverman; Pauline Burdin	New trial etc. / new cases	Unserved case Hill set for March; depo scheduled; recommend not appear.
10/19/18 9:07am	Barb Davis	Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss Carol Weill William Silvernman Pauline Burdin Sarah Schrodetzki	New cases	Do we really think we would not be served at some point? If we had already been served, would still recommend not attending the plaintiff deposition?

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		Tommy Boger		
10/22/18 3:47pm	Mark Wall	Irene Muse Barb Davis Steven Fries Carol Weill	FW James Michael Hill v. Advance Auto Parts Amended NOD of James Michael Hill	FYI see attached communications.
10/22/18 3:57pm	Carol Weill	Barb Davis Mark Wall Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	New cases	Request for response to inquiries.
10/23/18 2:07pm	Mark Wall	Carol Weill; Barb Davis; Irene Muse Gerry Begley John Weiss William Silverman Pauline Burdin Steven Fries travelers Sara Schrodetzki Tommy Boger	Covil unserved cases	Maybe Jim stopped accepting service. If we get served later, and Hill is still alive, we re-depose him. If we were served, we should attend; however, we checked the docket and there was no proof of serviced filed.

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10/23/18 4:15pm	Carol Weill	Mark Wall Barb Davis Irene Muse Steven Fries Gerry Begley John Weiss William Silverman Pauline Burdin Sara Schrodetzki Tommy Boger	Covil Unserved cases	Zurich would recommend that Mark not appear for depositions in cases where service has not yet been effectuated.
10/31/18 3:57pm	Mark Wall	Irene Muse Steven Fries Carol Weill Barb Davis Gerry Begley John Weiss Pauline Burdin	FW Hill and email from Theile asking about answers	It didn't take them very long to figure out. What response at this point?
11/1/18 1:53pm	Mark Wall	Irene Muse Steven Fries Carol Weill Erin Corbally, Barb Davis Gerry Begley John Weiss	FW Hill and Taylor	FYI see below. Below is Mark's email stating that he had not been asked to represent Covil in Hill and Taylor and Theile's email from 11/1/18 at 10:34 A.M. asking about past due answers.
11/1/18 2:00pm	Steven Fries	Mark Wall, Irene Muse Carol Weill Erin Corbally Davis Barb Gerry Begley John Weiss	Re. Hill and Taylor	I thought you said yesterday that if approached by Plaintiff on these cases that we're going to tell them no record of service.
11/1/18 2:04pm	Mark Wall	Steven Fries Irene Muse Carol Weill Erin Corbally Barb Davis Gerry Begley John Weiss	Re. Hill and Taylor	In face of what has been filed today, I thought I would start slowly and leave service to last. I want to see what they say about service.

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FOR A FIRST CROSS-CLAIM
(Primary Insurers, USF&G and Zurich, Are Fully Responsible as Covil's Alter Ego, Agency or Instrumentality)

28. The Cross-Claimant re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

29. Primary Insurers' pattern and practice has made the Primary Insurers fully responsible for all of Covil's liabilities prior to appointment of the Receiver.

30. Under a number of legal theories, Primary Insurers are Covil and acted as such.

31. Primary Insurers have entered into a joint venture with each other to take over Covil and become Covil. For example:

    a. A special combination of the Primary Insurers and Covil for the specific venture of limiting or eliminating Covil as a direct voice in the management of Covil's assets so that the Primary Insurers would protect and save their money;

    b. The retention of a separate corporate personality for Covil would promote fraud, wrong, injustice, and contravene public policy; and

    c. Each Primary Insurer had an equal right to control the conduct of their joint venture and of Covil.

32. Covil has become the alter ego of the Primary Insurers:

    a. The Primary Insurers have shown a total domination and control over Covil;

    b. The domination was so complete that Covil never manifested separate corporate interests of its own and functioned solely to achieve the purposes of the Insurers;

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c. The insurers misused their domination of Covil and were not entitled to dominate Covil; and

d. Inequitable consequences have resulted with the unilateral application of insurance proceeds, default judgments, and verdicts.

33. The Primary Insurers were the principals and Covil, the agent or agency:

a. Primary Insurers manifested complete control over Covil and purported to act on Covil's behalf;

b. The course of dealing between the principal and the agent clearly show no independent Covil; and

c. Primary Insurers became active participants in Covil rather than simply insurers.

34. Primary Insurers' acts and omissions constitute negligence and/or gross negligence because they constitute an extreme departure from what a reasonably careful person would do in the same situation.

35. As a direct and proximate result of the Insurers' acts and omissions, the Cross-Claimant is entitled to recover actual, compensatory, attorneys' fees, and costs of this action as well as punitive damages for the Primary Insurers' negligent, grossly negligent, willful, and intentional conduct towards Covil.

FOR A SECOND CROSS-CLAIM
(Declaratory Judgment against USF&G)

36. The Cross-Claimant re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

37. Upon information and belief, by the late 1970s, USF&G had become aware of a wave asbestos litigation facing its insureds.

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38. Upon information and belief, by the late 1970's, companies engaged in asbestos mining and the manufacture, installation, distribution or sale of asbestos products faced an overwhelming number of claims from individuals seeking damages for asbestos-related injuries and death. The multitude of these claims and the amount of money at stake were a very real threat to these asbestos involved companies forcing some large companies into bankruptcy, such as UNR Industries and Manville Corporation.
39. Insurers, including USF&G, were aware and concerned about the growing asbestos liabilities as early as 1981 and 1982. Insurers funded research into the growing asbestos liabilities.
40. USF&G in particular was one of the companies that provided money for research on the costs of asbestos litigation to RAND Corporation.
41. Upon information and belief, in 1983, RAND corporation published: "Costs of Asbestos Litigation" which concluded in part that the potential liability for the defendant firms may run into the billions of dollars; that about $1 billion in compensation and litigation expenses had already been spent on asbestos product liability litigation from the early 1970s; that the basic uncertainty over insurance coverage had severely complicated relations between defendants and insurers and had itself spawned a large number of lawsuits.
42. Upon information and belief, USF&G itself acknowledged that: the insurance industry had by 1982 paid out over $1 billion for damages and expense on about 30,000 asbestos claims, most of which involved injury to shipyard and factory workers exposed to asbestos in the workplace. Future estimates run

from $4 to $87 billion and 180,000 additional claims by the turn of the century. The Courts have recognized the right of injured workers to bring suit against non-employer defendants, e.g. mining companies, manufactures, etc.

43. Upon information and belief, by 1984, USF&G's top executives complained that lawsuits were causing USF&G to suffer the worst underwriting losses in its history.

44. Upon information and belief, also in 1984, USF&G commenced a process calculated to try to make it impossible for policyholders to prove coverage through USF&G's own documents by ordering the mass purge and destruction of documents that might reveal policies and coverage for insureds.

45. Upon information and belief, the new document destruction policy mandated the purging of each file with doubts resolved in favor of discarding documents.

46. Upon information and belief, beginning in the late 1980's, USF&G recognized that policy holders were using secondary evidence of insurance to prove coverage even if the original policy could no longer be located.

47. Upon information and belief, in 1988, USF&G began to salvage as much as it could of records still existing after the purge had been ordered in the mid-1980s and it did this so as to be able to combat secondary evidence by policyholders as to the terms and conditions of the policies.

48. USF&G was particularly concerned that policyholders of policies issued decades earlier might contend that there were no aggregate limits.

49. Upon information and belief, USF&G's in house counsel for Claim Legal Division, testified at deposition that USF&G decided to stop the destruction

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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.

50. Upon information and belief, former USF&G claims adjusters have testified that a certificate of insurance is intended to be confirmation of insurance.

51. The Receiver seeks a declaration, consistent with this Court's prior Order dated January 8, 2020 (**Exhibit 2**), that USF&G 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.

52. The Receiver seeks the same declaration as to the 1976 to 1978 policy, SMP 490049.

FOR A THIRD CROSS-CLAIM
(Declaratory Judgment against USF&G and Zurich)

53. The Cross-Claimant re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

54. The Receiver seeks a declaration that the Zurich and USF&G policies 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.

55. All of Covil'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.

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56. The Receiver seeks a declaration that the operations coverage part for each one of the Zurich and USF&G policies respond 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.
57. The Receiver seeks a declaration 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.
58. The Receiver seeks a declaration that 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.
59. The Receiver seeks a declaration that 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.
60. The Receiver seeks a declaration that Covil is entitled to multiple "per occurrence" limits of liability to resolve each of the asbestos suits.

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61. The Receiver seeks a declaration that in the case of operations claims, the policies in effect during the conduct of the operations will apply on an "all sums" basis, and allocation of loss will not be made to policy years when Covil does not have any available or responsive coverage.

62. The Receiver seeks a declaration, consistent with this Court's prior Order dated January 8, 2020 (**Exhibit 2**), 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:

Policy Period	Insurer	Policy Number
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

FOR A FOURTH CROSS-CLAIM
(Bad Faith Failure to Defend against USF&G and Zurich)

63. The Cross-Claimant re-alleges and incorporates by this reference the preceding paragraphs of this complaint as if fully set forth herein.

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

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65. Zurich and USF&G have a contractual duty to defend Covil pursuant to the terms of their policies.

66. Zurich and USF&G have breached the implied covenant of good faith and fair dealing and their duty to defend Covil.

67. Zurich and USF&G have acted in bad faith in their refusal to defend their insured, Covil, as it relates to the instant matter, and more specifically related to the defense of Plaintiffs' Causes of Action One through Eight.

68. As a direct and proximate result of Zurich's and USF&G's actions, Covil has suffered direct and consequential damages. Furthermore, Covil is entitled to an award of punitive damages for the

PRAYER FOR RELIEF

WHEREFORE, Cross-Claimant respectfully prays for an award from this Court as to each cross-claim in an amount to be determined at trial as well as an additional punitive award in an amount sufficient to impress upon the Cross-Claim Defendants the seriousness of their conduct and to deter such similar conduct in the future together with attorneys' fees, costs, prejudgment interest, and such further relief as the Court deems just and appropriate.

JURY DEMAND

Covil hereby demands a trial by jury on all issues so triable.

Signature on following page

Respectfully submitted,

s/Jonathan M. Robinson
G. Murrell Smith, Jr.
Jonathan M. Robinson
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This 21st Day of February, 2020

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ELECTRONICALLY FILED - 2020 Jul 13 8:25 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4006956

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.	

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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.

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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

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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.

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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

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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.

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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.

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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

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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.

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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.

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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.

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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.

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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.

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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

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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

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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.*

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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.

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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.

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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

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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

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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

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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.

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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.[1]

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.

[1] 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.).

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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.

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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.

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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.

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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

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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, C*ovil 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

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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

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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

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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

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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;

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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:

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July 13, 2020

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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

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(Signature pages continue on following page)

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A 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; et al., Defendants.	**STIPULATION OF DISMISSAL OF COVIL CORPORATION WITHOUT PREJUDICE**

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, 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, and Defendant Covil Corporation, by and through their respective undersigned counsel of record, hereby stipulate to the dismissal **without prejudice** of all claims asserted by Plaintiffs against Defendant Covil Corporation in the above-captioned lawsuit. Each party shall bear its own attorney's fees and costs.

Dated: February 17, 2021.

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