THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

Case No. 2020-CP-40-01226

Appellate Case No. 2022-000366

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

v.

Pennsylvania National Mutual Casualty Insurance Company, Petitioner.

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY'S REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

To ensure fairness and equity, litigation between parties in this State is governed by rules and law gleaned from judicial determinations. These rules and law safeguard against trial by ambush and allow parties to fully and fairly litigate their cases. Unfortunately, Petitioner Pennsylvania National Mutual Casualty Insurance Company ("Penn National") was never allowed this opportunity in the present case. Respondent Covil Corporation ("Covil"), in its Return, characterizes this case as very routine, where rules and the law were followed and Penn National had the opportunity to participate in this litigation. The facts belie Covil's depiction.

The undisputed facts are:

- April 15, 2019: Covil is served with Rollins Lawsuit (App. p. 292)
- January 27, 2020: Covil provides notice to Penn National of Rollins Lawsuit (*Id.*)
- February 10, 2020: Covil first notifies Penn National of mediation in Rollins Lawsuit on February 25, 2020 (App. pp. 415-16)
- February 14, 2020: Penn National informs Covil that it has insufficient information to evaluate coverage and provides non-waiver agreement (App. pp. 418-21)
- February 25, 2020: Rollins Lawsuit is settled at mediation
- February 28, 2020: Covil files present action (App. pp. 18-22)
- April 22, 2020: Covil files motion for partial summary judgment (App. pp. 34-161)

Despite the fact that Covil delayed over nine (9) months in providing notice of the Rollins Lawsuit to Penn National, Covil then embarked on a whirlwind of activity that robbed Penn National of the opportunity to fully and fairly litigate the issues in this case. First, Covil settled the claims against it in the Rollins Lawsuit less than one month after it first provided notice of the Rollins Lawsuit to Penn National, and then filed this coverage against Penn National just three days later. Covil then moved for summary judgment less than two months after filing this action, and just twenty-three (23) days after Penn National filed its Answer. Penn National had a mere three months' notice of the Rollins Lawsuit before Covil moved for

summary judgment in this coverage case, which motion to the circuit court was granted without affording the opportunity for a hearing, and held that Penn National had coverage for the Rollins Lawsuit and that Penn National's defenses of late notice and applicable exclusions were not "valid." Clearly, Penn National was not allowed the opportunity guaranteed to it by the rules and law of this State to fully and fairly litigate the issues in this case.

In its decision, the Court of Appeals addressed novel issues of law and found contrary to this Court's jurisprudence in order to affirm the circuit court's actions. The holdings made by the Court of Appeals should be reviewed by this Court. Covil presented no valid arguments to the contrary in its Return.

ARGUMENT

1. The Court of Appeals' Decision Holding That Penn National's Mandatory Attendance At Mediation Waived Its Late Notice Defense Should Be Reviewed By This Court.

In defense of Covil's claim for coverage, Penn National asserted that Covil failed to provide timely notice of the Rollins Lawsuit as required by the conditions contained in the Penn National Policies. Because of Covil's breach of the Policies' conditions, no coverage should have been afforded to Covil for the Rollins Lawsuit. The circuit court found that this defense "was not a valid defense to breach of its insurance contract with Covil." (App. p. 10) The Court of Appeals affirmed, raising the issue of waiver for the first time and specifically holding, "We find Penn's actions at mediation inferred a waiver of its right to timely notice." (App. p. 690) Penn National requests this Court's review of the Court of Appeals' decision because its holding that an insurer's attendance at a court-ordered mediation waived the insurer's late notice defense is a novel issue of law.

In its Return, Covil did not tackle whether the Court of Appeals' decision either

addressed a novel issue of law or was inconsistent with this Court's previous rulings regarding the applicability of waiver. Instead, Covil tried to shift this Court's attention away from what the Court of Appeals actually held (i.e. Penn National waived its late notice defense by attending court-ordered mediation) to whether Penn National received timely notice and whether Penn National was prejudiced by any late notice. (Return, pp. 9-13)

Despite Covil's constant (but not supported by citation to the record in this case) refrain that "Penn National was not provided late notice" (Return, pp. 10, 11, 13), it is uncontroverted that Penn National did not receive notice of the Rollins Lawsuit until nine (9) months after Covil was served with the Lawsuit. (App. pp. 292) By the time that Penn National received notice, pleadings had been filed and all discovery had already been completed in the Rollins Lawsuit. (App. pp. 353-391, 396-406) Furthermore and significantly, Penn National only received notice on February 10, 2020 of the court-ordered mediation in the Rollins Lawsuit scheduled for February 25, 2020, fifteen days later. Clearly, Covil's notice to Penn National did not meet the requirements of immediate notice contained in the Conditions of the Penn National Policies. (App. pp. 456, 502)

In its Return, Covil also argued that Penn National was required to show that it suffered prejudice by any late notice, citing to case law from Wyoming and Louisiana. (Return, pp. 10-11) Covil's argument, however, ignores South Carolina law and precedent from this Court. This Court has on numerous occasions addressed notice conditions in insurance policies, found that such provisions are valid and enforceable, and held that the insured's failure to comply with these notice provisions bars coverage. See, e.g., *Hatchett v. Nationwide Mut. Ins. Co.*, 244 S.C. 425, 435, 137 S.E.2d 608, 613 (1964) (holding that failure of an insured to provide timely notice of a lawsuit barred recovery under the policy for that lawsuit); *Lee v. Metropolitan Life Ins. Co.*,

180 S.C. 475, 486-87, 186 S.E. 376, 381 (1936) ("No rule of law is more firmly established in this jurisdiction than that one suing on a policy of insurance, where the notice required by the policy is not timely given, cannot recover.").

Only in circumstances where the rights of innocent third-parties are affected by the insured's breach of the notice condition does the insurer have to show that it was prejudiced by the late notice. See, *Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 266, 831 S.E.2d 406, 408 (2019) (recognizing the purpose of notice clauses in insurance policies and indicating that prejudice must be shown only if the rights of innocent third-parties were involved); *Vermont Mut. Ins. Co. v. Singleton*, 318 S.C. 5, 12, 446 S.E.2d 417, 421 (1994) ("Where the rights of innocent parties are jeopardized by a failure of the insured to comply with the notice requirements of an insurance policy, the insurer must show substantial prejudice to the insurer's rights."). Because Covil pled that it paid the amount of the settlement for which it seeks reimbursement from Penn National (App. p. 21, ¶¶ 12-13),[1] Penn National was not required under South Carolina law to prove prejudice. See also, *Prior v. S.C. Med. Malpractice Liab. **Ins.** Joint Underwriting Ass'n*, 305 S.C. 247, 407 S.E.2d 655 (Ct. App. 1991) (holding that untimely notice precluded coverage under insurance policy even without evidence of prejudice where judgment had already been paid by the insured and no rights of innocent third-parties were implicated).[2]

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[1] See also, Return, p. 13 ("The Receiver only seeks from Penn National the settlement amount he incurred in *Rollins*.")

[2] In its Return, Covil also repeatedly stated that Penn National "prepared for" the mediation and "attended the mediation with the very same materials provided to the other insurers." (Return, pp. 11, 12) There is actually no evidence in the Record to support these statements and indeed Covil does not cite to any. In fact, the only evidence in the Record is that Penn National did not have sufficient information prior to the mediation to determine what coverage, if any, it had in the Rollins Lawsuit. In its letter dated February 14, 2020 (prior to the February 25, 2020 mediation), Penn National stated, "However, since Penn National is unable to evaluate coverage in lieu of the limited information presently in our possession, attached you will find a Non-Waiver Agreement." (App. p.418) Again, no discovery was obtained in this action to controvert this statement by Penn National.

However, most notably, the issues addressed by Covil in its Return were not addressed by the Court of Appeals. Rather, the Court of Appeals based its decision on the theory that Penn National waived its late notice defense simply by attending the mediation – an issue that was not raised by Covil at the trial court level and was not a basis relied upon by the circuit court. Penn National seeks review by this Court of the Court of Appeals' decision because the Court of Appeals held that Penn National waived its late notice defense when it attended the mediation in the Rollins Lawsuit – even though Penn National's participation in the mediation was required by the South Carolina Court-Annexed Alternative Dispute Resolution Rules and Penn National expressly informed Covil that it was not waiving its late notice defense by its actions at mediation by sending a non-waiver agreement to Covil prior to its attendance at the mediation. (App. pp. 418-21).[3] Covil has not presented any arguments as to why the Court of Appeals' holding was correct or consistent with the jurisprudence of this State. Significantly, Covil has not shown how Penn National's actions in the Rollins Lawsuit constituted an intentional or voluntary relinquishment of its late notice defense. In truth, the Court of Appeals was treading new ground when it held that an insurer can waive its late notice defense by simply attending mediation. Penn National respectfully requests that this Court grant its petition for writ of certiorari to review this novel question of law.

2. The Court of Appeals' Decision Holding That Penn National's Inability To Conduct Discovery Did Not Preclude The Entry Of Summary Judgment Against It Should Be Reviewed By This Court.

In opposing summary judgment in this case, Penn National argued that it did not have

[3] In response to Penn National's argument that waiver was neither pled by Covil in its Complaint in this case, Covil argued in its Return that it did indeed plead the elements of waiver even though it did not use the term, "waiver." (Return, p. 13) That is not true. The only allegations in Covil's Complaint in this action concern Penn National's alleged breach of its insurance policies when it failed to contribute to the settlement in the Rollins Lawsuit. (App. pp. 20-22, ¶¶ 12-13, 16-18) The Complaint does not mention any defenses that Penn National raised, including late-notice, and does not allege facts that indicate that Penn National waived this defense. Indeed, there are no allegations regarding the mediation in the Rollins Lawsuit at all. (App. pp. 19-22)

any opportunity, let alone a full and fair opportunity as required by this Court's prior decisions, to complete discovery in this case. The circuit court dismissed Penn National's argument that summary judgment was premature because "Penn National did not submit a Rule 56(f) affidavit setting forth the discovery it needed to conduct in order to present 'facts essential to justify its opposition.'" (App. p. 16) The Court of Appeals again affirmed:

> Instead, [Penn National] argues the additional discovery was needed to support the issues raised in this appeal: late notice and the applicability of exclusions in the policies. However, as found by the circuit court, Penn failed to submit a Rule 56(f) affidavit setting forth the discovery it needed to conduct.

(App. p. 688) Penn National contends that the Court of Appeals wrongfully relied on the failure of Penn National to submit a Rule 56(f) affidavit when it refused to vacate summary judgment entered in Covil's favor on the grounds that judgment was premature because this holding was contrary to prior decisions of this Court.

Covil, in its Return, did not dispute that this Court has never strictly required the filing of a Rule 56(f) Affidavit when a party has opposed summary judgment as being premature. (Return, p. 17) ("Although a Rule 56(f) affidavit may not be a hardened requirement ...") Instead, Covil argued that evidence in a coverage action is derived from the evidence adduced in the underlying lawsuit. (*Id.* at p. 15) Although true at a basic level, Covil's argument ignores that Penn National was precluded from obtaining information regarding the underlying Rollins Lawsuit by Covil's failure to provide timely notice of that Lawsuit to Penn National. Therefore, Penn National did not receive information in the normal course of the litigation of the Rollins Lawsuit as the other insurers to whom Covil provided timely notice may have. It is unfair for Covil to now argue that Penn National "had access to" the evidence in the Rollins Lawsuit (*Id.* at p. 15), or that "Penn National received copies of the discovery materials in Rollins" (*Id.* at p. 16), when there is no

evidence in the Record to suggest that Penn National did. Indeed, Covil does not cite to any such evidence.

In truth, Covil moved for summary judgment regarding Penn National's coverage for the Rollins Lawsuit on April 22, 2020, a mere three months after Covil first provided notice to Penn National of the Rollins Lawsuit on January 27, 2020, and less than two (2) months after Covil filed this coverage action and just twenty-three (23) days after Penn National had filed its Answer. (App. pp. 34-161, 292) The circuit court then ruled on Covil's motion for summary judgment without affording an opportunity for a hearing. There is no evidence in the Record that Penn National was able to obtain copies of the discovery in the Rollins Lawsuit in those three months prior to Covil's moving for summary judgment. In fact, the only evidence contained in the entirety of the Record regarding Penn National's ability to obtain information from the Rollins Lawsuit is in a letter from Penn National to Covil. In that letter dated February 14, 2020, Penn National stated:

> Penn National Mutual Casualty Company ("Penn National") received notice from your office of the above referenced pending litigation on January 27, 2020. ... However, since Penn National is unable to evaluate coverage in lieu of the limited information presently in our possession, attached you will find a Non-Waiver Agreement.

(App. p. 418) As there was no discovery undertaken in this case (and indeed there was no time to engage in any discovery prior to Covil's moving for summary judgment a mere twenty-three days after Penn National filed its Answer), there is no evidence that Covil produced any information, documents or testimony from the Rollins Lawsuit to Penn National. Therefore, there is simply no support – in the Record or otherwise – for Covil's contention that Penn National actually had the information from the Rollins Lawsuit, Covil's proclamations to the contrary notwithstanding.

Further, Covil supported its motion for summary judgment in this case with documents that were never produced to Penn National in discovery in this case (as no discovery in this case occurred), were unauthenticated and were not submitted pursuant to any affidavit. For example, in support of its motion for partial summary judgment in this case, Covil submitted two excerpts from deposition transcripts; however, these depositions were not taken in the Rollins Lawsuit, but were taken in two different cases, specifically "Ashworth v. Air & Liquid Systems Corp., et al." and "Taylor v. Air & Liquid Systems Corp., et al." (App. pp. 113, 117). Further, Covil did not support its motion for summary judgment with a complete copy of the Subcontract Agreement between BE&K Construction Company and Covil, submitting only pages 1 and 5-8 of that Subcontract. (App. pp. 121-25) In addition, Covil submitted hand-written notes that purported to show wages paid during the "Bowater Project" without any further identification of whether this was the same plant at which Rollins' stepfather allegedly worked.

The truth is that Rollins sought compensation in the Rollins Lawsuit for his exposure to asbestos that spanned three decades, from 1973 through 2001. (App. pp. 87-89, ¶¶ 73-78) Penn National should have been allowed the opportunity to determine whether and what asbestos exposure occurred during the two-year period during which the Penn National Policies were in force, i.e., from March 31, 1986 through March 31, 1988. Penn National was not allowed this opportunity because (1) it was not provided with timely notice of the Rollins Lawsuit and (2) it was then not permitted to engage in discovery in this case to obtain that information.

In order to preserve a party's right to a trial of disputed factual issues, this Court has consistently held that summary judgment should not be granted against any party who has not been provided with a full and fair opportunity to complete discovery. See, *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *John Doe v. Batson*, 345 S.C. 316, 321-22, 548

S.E.2d 854, 857 (2001); *Baughman v. American Tel. & Telegraph Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). In this case, it cannot be reasonably disputed that Penn National did not have the opportunity to engage in any discovery. It is unfair to allow summary judgment to be entered against Penn National under these circumstances. Accordingly, Penn National respectfully requests that this Court grant its petition to review the Court of Appeals' decision regarding whether Penn National's failure to file a Rule 56(f) Affidavit was fatal to its arguments that summary judgment was entered prematurely.

3. The Court of Appeals' Decision Holding That Neither The Products Hazard Exclusion Nor The Completed Operations Exclusion Applied To Preclude Coverage For The Rollins Lawsuit Should Be Reviewed By This Court.

In the Rollins Lawsuit, Mr. Rollins alleged that he was diagnosed with mesothelioma in 2019, as a result of his exposure to asbestos that spanned three decades, from 1973 – 2001. (App. pp. 87-89, ¶¶ 72-78) Mr. Rollins brought his lawsuit against fifty-three (53) defendants, alleging that each defendant was liable for injuries from his exposure to asbestos either from the defendants' products or from the defendants' premises. (App. pp. 67-86, ¶¶ 17-69) Penn National issued its policies of insurance to only one of these defendants, Covil, and only for a two year period, from March 31, 1986 through March 31, 1988.

In the Rollins Lawsuit, Covil was identified as a "Product Defendant." The claims asserted and damages sought from Covil in the Rollins Lawsuit arise from Covil's alleged products liability. (App. pp. 90-103, 107-08, ¶¶ 85-134, 150-57: Product Liability: Negligence; Product Liability: Strict Liability – S.C. Code Ann. sec. 15-73-10, *et seq.*; Vicarious Liability of Defendants Based upon Respondeat Superior; Product Liability: Breach of Implied Warranties – S.C. Code Ann. 36-2-314; Fraudulent Misrepresentation).

The Penn National Policies contained two exclusions: the products hazard exclusion and

the completed operations exclusion. (App. pp. 452, 458, 491, 504) Based on the allegations of the Amended Complaint filed in the Rollins Lawsuit and the liability alleged against Covil therein, the products hazard exclusion and potentially the completed operations hazard exclusion applied to exclude coverage for Covil for the Rollins Lawsuit. The Court of Appeals disagreed. Relying on case law from other jurisdictions, the Court of Appeals held that neither exclusion applied to preclude coverage under the Penn National Policies for the Rollins Lawsuit. (App. p. 690-94)

In its Return, Covil repeatedly argued that the Court of Appeals' decision is "in line with longstanding authority" and consistent with "decades-old caselaw [sic]." (Return, p. 22) However, Covil did not cite to any of this longstanding authority or case law in its Return. The only case cited by Covil was a case from a lower court in Pennsylvania and the authority was actually contained in a footnote. (*Id.*, citing to *Friestad v. Travelers Indemnity Co.*, 393 A.2d 1212, 1215 n. 5 (Pa. Super. Ct. 1978)). Both the circuit court's decision and the Court of Appeals' decision cited to three cases in support of their interpretation of the products hazard exclusion, none of which are precedential authority from this Court. (App. pp. 9, 962, citing to *Friestad,*393 A.2d at 1215 n.5; *B&R Farm Servs., Inc. v. Farm Bureau Mut. Ins. Co.*, 483 N.E.2d 1076 (Ind. 1985); *Heyward v. American Cas. Co.*, 129 F. Supp. 4 (E.D.S.C. 1955)).

More importantly, none of these cases actually support the Court of Appeals' holding that the products hazard exclusion does not apply to preclude coverage for the Rollins Lawsuit. See, *Friestad*, 393 A.2d at 1217 ("Hence, it is more preferable by far to define the products hazard in terms of products liability law, and apply the exclusion only when a product, other than a service, is the cause in fact of damages or injuries to a third person."); *B&R Farm Servs.*, 483 N.E.2d at 1077 ("The claims in this case have nothing to do with any defect in the product. They

arose because of negligent release of the product from the premises. Product liability clauses are designed to cover situations such as the asphyxiation of a car's passengers by a defective exhaust system; premises liability coverage is designed to cover the pedestrian who is injured if a car rolls out of the factory door due to some negligent act of an employee."); *Heyward*, 129 F.Supp. at 9 (finding that the products hazard exclusion was not implicated because there were no claims asserted against the insured for product liability: "'Products Liability,' to the average person, refers to liability arising out of the use of, or existence of any condition in good or products manufactured, sold, handles or distributed by the insured. The suit in the State Court involved no such liability, but is based on the alleged negligent construction by the plaintiff.").

In an attempt to bolster the Court of Appeals' decision in this case, Covil presented its interpretation of the products hazard exclusion in its Return. (Return, pp. 21-22) However, in its construction of the exclusion, Covil failed to adhere to the plain and ordinary meaning of the language actually contained in the products hazard exclusion. Pursuant to the products hazard exclusion, the Penn National Policies exclude coverage for "bodily injury ... arising out of the named insured's products ... but only if the bodily injury ... occurs away from the premises owned by ... the named insured and after physical possession of such products has been relinquished to others." (App. pp. 452, 458, 491, 504) Covil did not dispute that the Rollins Lawsuit alleged bodily injury that arose out of Covil's products and that the alleged bodily injury occurred away from Covil's premises. Instead, Covil interpreted "after physical possession of such products has been relinquished to others" to mean that the exclusion only applied after Covil finished its operations at the Bowater facility at which Mr. Rollins' stepfather worked. (*Id.* at 22)

However, the products hazard definition in the Penn National Policies does not contain

any language indicating that the products hazard exclusion only applies "when all operations to be performed by or on behalf of the named insured under the contract have been completed." This quoted language is only contained in the definition of the "completed operations hazard" and is **not** contained in the definition of "products hazard." (App. pp. 458, 504) Covil improperly conflated the two definitions in its argument, contrary to the canons of insurance policy construction promulgated by this Court. See, e.g., *B.L.G. Enter. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999) (policies are to be construed according to its plain, ordinary and popular meaning); *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976) ("[A]ll portions of a contract are inserted for a purpose and the contract must be read as a whole, giving appropriate weight to all provisions."). See also, *Engineered Prod., Inc. v. Aetna Cas. & Sur. Co.*, 295 S.C. 375, 378, 368 S.E.2d 674, 675 (Ct. App. 1988) ("Exclusions in an insurance policy are to be read independently of each other; they are not to be read cumulatively.").

In its Return, Covil further confused the two exclusions in providing an example to illustrate how the products hazard exclusion should be applied. Covil's example was a construction project that had not yet been completed. (Return, p. 22) This example, again, emphasized that the exclusion should apply only after the construction operations had been completed – a prerequisite **not** contained in the Penn National Policies' definition of "products hazard." A more apt example is where an insured is putting up a display of its products in a store – for example a tire display in an automotive store. Just because a customer obtains one of the displayed tires before the insured has finished putting up the entire display does not mean that the products hazard exclusion would not apply to bar coverage for injuries suffered by that customer when the tire immediately blows out.

The products hazard exclusion only requires that the physical possession of the product at issue in the Rollins Lawsuit had been relinquished by Covil to others. The Rollins Lawsuit clearly alleged that the only potential exposure to asbestos that occurred during the Penn National Policy period (i.e., March 31, 1986 – March 31, 1988) was to take-home asbestos from Mr. Rollins' stepfather:

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

(App. p. 88) As stated in this allegation in the Rollins Lawsuit, Mr. Rollins was not exposed to asbestos during this time period until the asbestos was brought home to him by his step-father. Therefore, it cannot reasonably be argued that Covil had not yet relinquished control of its product when Mr. Rollins was exposed. Accordingly, the products hazard exclusion should have precluded coverage for the Rollins Lawsuit.

The completed operations hazard exclusion may also apply. As alleged in the Rollins Lawsuit, Mr. Rollins alleged that he was exposed to asbestos from 1973 until 2001. If Covil is correct (again, Penn National did not get timely notice of the Rollins Lawsuit, and therefore, was not privy to what the discovery in that case showed), Covil's liability to Mr. Rollins arises out of the asbestos products brought by Covil to the Bowater facility at which Mr. Rollins' stepfather worked.[4] However, Mr. Rollins was not exposed to the asbestos while Covil employees

[4] Covil's current argument regarding Mr. Rollins' asbestos exposure from Covil's products (i.e., only during Covil's alleged work at the Bowater facility at which Mr. Rollins' stepfather worked) actually contradicts the allegations in the Complaint filed in this action. In the Complaint, Covil alleged that its liability to Mr. Rollins arose

performed their operations in his presence. Indeed, Mr. Rollins was only a child at that time and not working at all. Mr. Rollins was exposed to asbestos that his step-father brought home. The Fourth Circuit has held that claims arising from exposure to asbestos that occurred during the insured's operation and continued thereafter are included within the completed operations hazard. See, *Generali Ins. Co. v. United States Fire Ins. Co.*, 886 F.3d 346, 354 (4th Cir. 2018); *In re Wallace & Gale Co.*, 385 F.3d 820, 833-34 (4th Cir. 2004).

In truth, this Court has not yet analyzed or interpreted the products hazard exclusion and the completed operations hazard exclusion in the context of asbestos litigation. As the asbestos docket in South Carolina includes the litigation of coverage available for asbestos liability, this Court's review and interpretation of these exclusions would provide much needed guidance in pending coverage cases in this State. Covil has not presented any arguments as to why this Court should not provide this guidance regarding the operation of these two exclusions. Penn National respectfully requests that this Court accept its Petition for Writ of Certiorari and review the Court of Appeals' decision regarding the products hazard exclusion and the completed operations exclusion.

CONCLUSION

Because of the seeming rush-to-judgment nature of the present case, this case is actually uniquely positioned to allow this Court to address novel issues in a straightforward manner. In its decision, the Court of Appeals addressed two novel questions of law: (1) whether attendance at a court-ordered mediation serves to waive an insurer's late-notice defense; and (2) the

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out of asbestos exposure "a. at a facility in 1986 and 1988; b. at Bowater's Rock Hill/Catawba plant; c. at a Celanese facility as part of an ongoing business relationship; d. at a Hoechst Celanese facility and Hoechst Fibers facility; and e. at such other places as the record supports." (App. p. 21, ¶ 11) Again, because Penn National did not receive timely notice of the Rollins Lawsuit and could not participate in that Lawsuit, and no discovery was done in the present case before Covil moved for partial summary judgment, Penn National could not confirm or refute the dates and circumstances of Mr. Rollins' exposure to Covil's products.

construction of the products hazard exclusion and the completed operations exclusion in the context of asbestos liability claims. This case presents the opportunity for this Court to review the former decision in the absence of any case law from around the country that similarly so holds. With regard to the interpretation of specific exclusions, this case presents this Court with the occasion of construing these exclusions within the context of a limited Record, therefore allowing this Court to provide its analysis in the absence of any contingencies. Finally, this Court can also correct the Court of Appeals' decision that found summary judgment was appropriate in this case even though Penn National had no opportunity to participate in discovery and was not privy to any discovery in the underlying Rollins Lawsuit based on Covil's failure to provide timely notice of the same. Penn National respectfully requests that this Court grant its Petition for Writ of Certiorari in its entirety.

Respectfully submitted, this 5th day of May, 2022.

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