THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean H. Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

Appellate Case No. 2022-001722

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

v.

Pennsylvania National Mutual Casualty Insurance Company, Appellant.

Of whom Pennsylvania National Mutual Casualty Insurance Company is the Appellant.

APPELLANT'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

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INTRODUCTION

The appeal in this case centers on whether the Circuit Court appropriately denied a party a right to a jury trial where (a) the party demanded a jury trial in its pleading, and (b) factual issues were set to be tried. Specifically, the Circuit Court entered an order denying Defendant/Appellant Pennsylvania National Mutual Casualty Insurance Company's ("Penn National") right to a jury trial of factual issues in this case. As required by decades of precedent from this Court and from the Supreme Court of South Carolina, Penn National immediately appealed this order so as to avoid any waiver of its right to a jury trial. Plaintiff/Respondent Covil Corporation, by and through its appointed Receiver, Peter D. Protopapas ("Covil"), moved to dismiss this appeal as being somehow "frivolous." In a one sentence order, a single judge from this Court granted Covil's motion to dismiss without any explanation.

Penn National petitions this Court for a rehearing of the motion to dismiss appeal on three grounds: (1) the dismissal of Penn National's appeal of the Circuit Court's order affecting the mode of trial directly conflicts with clear precedent from the Supreme Court requiring such appeals; (2) the dismissal was improper because there is no statutory authority or precedent from the appellate courts of this State that allows dismissal of an appeal in a civil case based on its alleged "frivolousness;" and (3) the dismissal creates new law that allows one party to nullify the other party's right to a jury trial by demanding a non-jury trial in declaratory judgment actions where factual issues are in dispute. The dismissal of Penn National's appeal was premature and wholly unfounded. Penn National respectfully requests that this Court accept its petition, vacate the order dismissing this appeal, and allow this appeal to proceed to a consideration of its merits.

I. The Dismissal Of The Present Appeal Conflicts With The Supreme Court's Declaration That Orders Affecting The Mode Of Trial Must Be Immediately Appealed.

The Supreme Court of South Carolina has clearly and unequivocally established that orders affecting the mode of trial must be appealed immediately and a party's failure to do so waives that party's right to a jury trial.

> This Court has held that orders affecting the mode of trial affect substantial rights under S.C. Code Ann. § 14-3-330(2) (1977) and must, therefore, be appealed immediately. Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue. Here, Client's failure to immediately appeal the order designating this case as a non-jury matter bars his current appeal of that issue.

Lester v. Dawson, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (internal citations omitted). *See also, Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008); *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993); *Creed v. Stokes*, 285 S.C. 542, 542-43, 331 S.E.2d 351, 352 (1985); *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 389-90 (Ct. App. 2004). *See also*, Jean Hoefer Toal, et al., *Appellate Practice in South Carolina*, 156 (3rd ed. 2016) ("The purpose of permitting immediate appeal in these cases is to preserve a party's constitutional right to a trial by jury which would otherwise be lost.").

In the present case, Penn National demanded a jury trial in its Answer consistent with the requirements of the South Carolina Rules of Civil Procedure. (App., p. 30). During a status conference, Covil requested a non-jury trial on its claims against Penn National. (App., p. 39). In response to this request for a non-jury trial, Penn National sent a letter to the Circuit Court requesting that its right to a jury trial be honored and preserved (App., p. 57), which the Circuit Court agreed to do (App. p. 58). When the Circuit Court subsequently refused to set this case for a jury trial, Penn National filed a Motion to Confirm Jury Trial Demand on December 2, 2022.

(App., pp. 44-59). The Circuit Court then entered an order on December 7, 2022, denying Penn National's right to a jury trial on the issues in this case and instead ordered that these issues be "scheduled for a non-jury trial." (App., p. 4-5).

In accordance with this State's jurisprudence, Penn National was required to, and did, immediately appeal the order entered by the Circuit Court that denied Penn National's right to a jury trial of the factual issues in this case. The Court of Appeals' dismissal of this mandatory appeal, without any explanation, is directly in conflict with the Supreme Court's mandate and decades of precedent. Therefore, Penn National respectfully requests that this Court accept its petition for rehearing and its suggestion for a rehearing *en banc*, vacate the dismissal, and allow this appeal to proceed for a consideration on the merits.

II. The Dismissal Of The Present Appeal Is Improper Because It Is Based Solely On Respondent's Unfounded Argument That The Appeal Is Frivolous.

The appellate courts of South Carolina have consistently enforced a party's right to appeal, oftentimes liberally construing statutory provisions to ensure that the right to appeal is preserved. *See, Haughton v. Order of United Commercial Travelers*, 108 S.C. 73, 74-75, 93 S.E. 393, 393-94 (1917) ("Our decisions show that this Court is very reluctant to dismiss appeals on technical grounds. Therefore, we have construed the statutes and rules of Court liberally in favor of the right to appeal."); *O'Rouke v. Atlantic Paint Co.*, 91 S.C. 399, 403, 74 S.E. 930, 931 (1912) ("The Court should give a liberal construction to the Constitution and statutes, in favor of the right to appeal.").

Dismissal of an appeal in a civil case has generally only been allowed in two instances: (1) when the appellate court does not have jurisdiction over the appeal because of failure to adhere to appellate rules regarding timely filing of an appeal or because the appeal is interlocutory; and (2) when the appeal is moot. *See, e.g., S.C. Coastal Conservation League v.*

Dominion Energy S.C., Inc., 432 S.C. 217, 223-24, 851 S.E.2d 699, 702 (2020) (affirming dismissal of appeal on mootness grounds); *Wachesaw Plantation E. Cmty. Servs. Ass'n v. Alexander*, 414 S.C. 355, 360, 778 S.E.2d 898, 901 (2015) (finding that issuance of deed did not moot the appeal of a foreclosure sale and remanding case to Court of Appeals for decision on merits); *Fields v. Regional Med. Ctr.*, 363 S.C. 19, 26-29, 609 S.E.2d 506, 509-11 (2005) (considering and ultimately denying respondent's motion to dismiss appeal on jurisdictional grounds); *Byrd v. Irmo High School*, 321 S.C. 426, 430-32, 468 S.E.2d 861, 863-64 (1996) (denying motion to dismiss appeal on mootness grounds based on exception to doctrine); *Wallace v. Interamerican Trust Co.*, 264 S.C. 563, 569, 144 S.E.2d 813, 816 (1965) (granting motion to dismiss appeal of discovery order as being interlocutory); *Deal v. Deal*, 85 S.C. 262, 264, 67 S.E. 241, 242 (1910) (granting motion to dismiss appeal because order was interlocutory); *Atkins v. Wilson*, 417 S.C. 3, 18, 788 S.E.2d 228, 236 (Ct. App. 2016) (denying motion to dismiss appeal on jurisdictional grounds because appellant timely filed notice of appeal); *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 413 S.C. 642, 646, 776 S.E.2d 575, 577 (Ct. App. 2015) (granting motion to dismiss appeal because court did not have jurisdiction based on untimely filing of notice of appeal).

Neither basis for the dismissal of an appeal exists in the present case. This Court clearly has jurisdiction to consider the issues on appeal. Penn National timely filed its Notice of Appeal. In fact, Penn National filed its Notice of Appeal on the same day that the Circuit Court entered its order denying Penn National's right to a jury trial in this case. (App. pp. 4-5: Order entered 12/7/2022; Notice of Appeal filed 12/7/2022). Additionally, the order on appeal is one affecting the mode of trial, and is therefore immediately appealable. *Lester*, 327 S.C. at 266, 491 S.E.2d at 241. The issue on appeal, whether Penn National has a right to a jury trial of the factual issues in

this case, has also not been rendered moot by any subsequent actions. Indeed, Covil did not cite either of these reasons in its motion to dismiss Penn National's appeal. Therefore, no basis exists for this Court's summary dismissal.

Instead, Covil based its motion to dismiss solely on its characterization of Penn National's appeal as "frivolous."[1] Even if this characterization were accurate—which it is not—this is clearly not a basis upon which to dismiss an appeal in a civil case, particularly one affecting a constitutional right. *See, e.g.*, *Fishburne v. Minott*, 72 S.C. 567, 569, 52 S.E. 648, 648 (1905) (refusing to "entertain such a motion" which sought to strike case "on the ground that the same is frivolous and vexatious"). Indeed, Covil did not cite to any case law in its motion to dismiss where this Court has granted a motion to dismiss an appeal on the grounds of frivolousness.[2]

The Order from this Court granting Covil's motion to dismiss is contrary to and directly conflicts with the Supreme Court's decision in *Sumter Hardwood Co. v. Fitchette*, 133 S.C. 149, 130 S.E. 881 (1925). In *Sumter*, upon motion by the plaintiff, the circuit court referred the action to a master for determination of all issues. The defendant immediately appealed this decision and the plaintiff moved to dismiss the appeal. The Supreme Court began its analysis by reference to the "well-settled" canon that "if an order deprives a party of the mode of trial which the law allows him, it is appealable." *Id.* at 151, 130 S.E. at 882. The Supreme Court then found

[1] In its motion to dismiss, Covil also consistently (without citation or other support) refers to the present appeal as Penn National's "third" appeal in this case. This is wholly false and improperly attempts to both dissuade this Court from considering the merits of this appeal and inappropriately bias this Court against Penn National. In truth, Penn National has filed **ONE** other appeal in this case. The previous appeal was from a discovery order dated May 5, 2022, in which the Circuit Court ordered Penn National to digitize its entire historical repository of insurance policies (approximately 18 million pages of documents) and allow Covil, its Receiver and its attorneys full and unfettered access to same. (See, Appellate Case No. 2022-000761).

[2] Indeed, the case law from South Carolina appellate courts is clear: assertions of frivolousness can only be considered in dismissals of appeals in criminal cases and only after counsel has filed an *Anders* brief and the court has made a full examination of the record on its own. *See, e.g.*, *State v. McKennedy*, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002).

that the circuit court improperly referred the case to a master as defendant was allowed to have the factual issues in the case decided by a jury. Therefore, the Supreme Court concluded:

> The judgment of this Court is that the motion of the plaintiff to dismiss the appeal of the defendant be refused, that the order of reference be reversed, and that the case be remanded to the Circuit Court without prejudice to a motion by the plaintiff to amend its complaint if so advised.

Id. at 155-56, 130 S.E. at 884.

Similarly, in the present case, this appeal is appropriately in front of this Court. It is clear and without question that this Court has jurisdiction over the appeal of the Circuit Court's denial of Penn National's jury trial demand. It is similarly beyond doubt that the issue on appeal has not been rendered moot due to any subsequent actions. Therefore, this Court should have "refused" Covil's motion to dismiss this appeal, as directed by the *Sumter Hardwood* Court, and instead should have allowed the merits of this appeal to be fully considered by this Court.

III. This Court's Dismissal Of Penn National's Appeal Creates New Law That Would Allow One Party To Nullify Another Party's Right To A Jury Trial By Merely Demanding A Non-Jury Trial In A Declaratory Judgment Action.

The present appeal is from an order directing that this case be scheduled for a non-jury trial. Covil argued in its motion to dismiss appeal that the present case is one that merely seeks an interpretation of insurance policy language, which is not subject to a jury trial. However, Covil's actions in this case belie its assertions to this Court. First, at no time did Covil affirmatively state in its motion to dismiss that there were, in fact, no factual issues in this case.[3] In truth, Covil could not so state. If Covil believed that there were no material issues of

[3] Instead, Covil argued that Penn National did not identify any factual issues that justified a jury trial. (Mot., p. 8; Reply, p. 2). That is clearly untrue. Both parties filed Proposed Findings of Fact and Conclusions of Law in this case, consonant with the trial court's instructions. Covil conveniently did not provide these documents to this Court with its Motion to Dismiss Appeal. These documents, however, were submitted by Penn National for this Court's consideration when ruling on Covil's Motion to Dismiss Appeal. (Supp. App., pp. 1-94).

genuine fact, Covil should and would have moved for summary judgment. *See*, Rule 56(c), SCRCP. However, Covil did not do so. Instead, Covil specifically requested a trial. (App., p. 1).

Second, in requesting a non-jury trial, Covil proposed a pretrial order (which was subsequently adopted by the Circuit Court without alteration) that required the parties to submit proposed findings of fact and conclusions of law, lists of trial exhibits, lists of witnesses to include expert witnesses, and motions in limine. (App., pp. 1-3). If indeed Covil believed that there were no factual issues to be tried, Covil would not have requested a trial on the issues in the case with witnesses and exhibits.

Finally, and significantly, Covil actually filed with the Circuit Court "Receiver for Covil Corporation's Proposed Findings of Fact and Conclusions of Law." This document contained thirty-one (31) pages of what Covil requested as "PROPOSED FINDINGS OF FACT." (Supp. App., pp. 1-35). These proposed factual findings include: whether Penn National issued policies of insurance in addition to the two policies which were stipulated to by Penn National; whether and when injuries occurred in fourteen asbestos liability cases asserted against Covil; if such a duty existed, when Penn National's duty to preserve its historic policies was triggered; whether Penn National "destroyed" policies potentially applicable to Covil's asbestos liability with culpable intent; the propriety of Penn National's business decision to store its historic policies by policy number; the underwriting intent in issuing policies to Covil; and the adequacy of Penn National's search for additional policies. (*Id.*). To suggest in its Motion to Dismiss Appeal that Penn National is not entitled to a jury trial because this case is merely about the interpretation of insurance policy language is disingenuous and clearly contradicts filings actually made by Covil in this case.[4]

[4] Covil is also judicially estopped from taking this position in its Motion to Dismiss Appeal because it is inconsistent with the position Covil has taken in requesting a non-jury trial and filing its proposed findings of fact.

In its Reply in support of its Motion to Dismiss, Covil attempts to obfuscate the fact that it has previously taken the position that there are factual issues in this case by demanding that this Court strike Penn National's filing of the parties' Proposed Findings of Fact and Conclusions of Law. There is no basis for this argument. Prior to the issuance of the order in this case, the Circuit Court was well aware that: (1) Covil did not move for summary judgment, but rather requested a non-jury trial in this case; (2) the parties were required to file their respective list of exhibits and witnesses for trial; and (3) the parties were required to file their respective proposed findings of fact and conclusions of law. The scheduling order providing deadlines for these submissions was entered by the Circuit Court on September 16, 2022. (App., p. 1-4). Indeed, the parties filed their respective proposed findings of fact and conclusions of law on December 5, 2022, prior to the issuance of the Circuit Court's order denying Penn National's right to a jury trial in this case on December 6, 2022. (Supp. App., pp. 1-94) Clearly, prior to issuing its order, the Circuit Court understood the nature of the matter before it, including that the parties contended that there were factual issues to be determined that required the presentation of witness testimony and exhibits at a trial.

It is axiomatic that a party is entitled to a jury trial even as to claims asserted under the Uniform Declaratory Judgment Act. S.C. Code Ann. § 15-53-90 ("When a proceeding under this chapter involves the determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. All existing rights to jury trials are hereby preserved."). *See also, Leggette v. Smith*, 226 S.C. 403, 416, 85 S.E.2d 576, 582 (1955) ("And, irrespective of

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See, *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004) ("Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. The purpose of the doctrine is to ensure the integrity of the judicial process …") (internal citations omitted).

this provision of the statute, it is clear that the right of jury trial in what is essentially an action at law may not be denied a litigant merely because his adversary has asked that the controversy be determined under the declaratory procedure.") (internal quotations and citations omitted).

This Court and the Supreme Court have held that parties are entitled to jury trials in declaratory judgment actions concerning insurance coverage. *See, State Farm Mut. Auto. Ins. Co. v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 263 S.C. 391, 394-95, 210 S.E.2d 613, 615 (1974) (upholding on appeal jury responses to special interrogatories in declaratory judgment action regarding coverage under a motor vehicle policy); *Government Employees Ins. Co. v. Mackey*, 260 S.C. 306, 316, 195 S.E.2d 830, 834 (1973) ("The issues of fact in this [declaratory judgment action brought by insurer] were properly submitted to the jury with a full and correct charge by the trial judge."); *St. Paul Fire & Marine Ins. Co. v. American Ins. Co.*, 251 S.C. 56, 61, 159 S.E.2d 921, 923 (1968) (holding that issues of fact in insurance coverage action were properly determined by a jury); *Anders v. S.C. Farm Bureau Mut. Ins. Co.*, 307 S.C. 371, 375, 415 S.E.2d 406, 409 (Ct. App. 1992) (reversing the grant of summary judgment for plaintiff because there existed genuine issues of material fact to be determined by a jury); *State Farm Mut. Auto. Ins. Co. v. Turner*, 303 S.C. 99, 100, 399 S.E.2d 22, 22 (Ct. App. 1990) (affirming submission of issues to a jury in declaratory judgment action brought by insurer).

By summarily dismissing Penn National's appeal of the Circuit Court's order referring this case for a non-jury trial and not addressing the merits of this appeal, this Court effectively created new law[5] which sanctions the ability of one party to nullify another party's right to a jury trial in declaratory judgment actions even where factual issues are in dispute. In effect,

[5] Only the Supreme Court can create new law. The Court of Appeals is bound to follow existing precedent. S.C. Const. art. V, § 9; *State v. Phillips*, 416 S.C. 184, 194, 785 S.E.2d 448, 453 (2016) ("[I]t is incumbent upon the court of appeals to apply [the Supreme Court's] precedent.").

this Court has declared that there is no right to a jury trial in declaratory judgment actions. That is not the law in South Carolina. Therefore, the dismissal of Penn National's appeal of the order requiring the factual issues in this case to be determined by a judge instead of a jury should be vacated. Instead, the merits of the appeal should be considered by this Court after full briefing of the issues and a careful analysis of the full record in this case.

IV. The Issue Of Whether Penn National Engaged In Spoliation Of Evidence Is Also A Fact Issue That Must Be Decided By A Jury.

In the order on appeal, the Circuit Court ruled that both the factual issues regarding coverage and the factual issues regarding whether or not Penn National engaged in spoliation of evidence in this case were to be tried without a jury. Covil has taken the position in its motion to dismiss appeal that the factual issues of whether Penn National actually engaged in spoliation of evidence should be decided by the judge and not a jury. Covil did not cite to any case law from South Carolina for this proposition, instead relying on case law from one other jurisdiction, Texas. (Mot., p. 9).

The South Carolina appellate courts have not determined what a party must prove in order to show that another party spoliated evidence, necessitating a sanction. Federal courts, however, have held that a party seeking sanctions regarding spoliation must establish three elements:

(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 U.S. Dist. LEXIS 162714, *5 (4th Cir. 2013). This standard has actually been adopted by the circuit courts in this State. *See, Hopper v. Air & Liquid Sys. Corp.*, 2019 S.C. C.P. LEXIS 5488, Case No. 2019-CP-00076 (S.C. Com. Pl. Order dated Oct. 31, 2019).

Under the standard adopted by South Carolina federal courts, in order for a party to meet its burden of showing spoliation of evidence, that party has to show whether the evidence actually existed, the opposing party's duty to preserve such evidence, and the opposing party's culpable state of mind. These are all factual findings that are within the purview of a jury. *See, Harleysville Group Ins. v. Heritage Cmtys, Inc.*, 420 S.C. 321, 346, 803 S.E.2d 288, 302 (2017) ("These questions of the insured's intent are factual in nature."); *Shenandoah Life Ins. Co. v. Smallwood*, 402 S.C. 29, 32, 737 S.E.2d 857, 858 (Ct. App. 2013) (reversing directed verdict and finding that insured's intent was a factual issue that should have been decided by a jury). *See also, Evans v. Quintiles Transnational Corp.*, 2015 U.S. Dist. LEXIS 171750, *13-14 (D.S.C. 2015) (holding that on spoliation issues a jury was to resolve "any credibility questions and make a determination, first, as to whether the alleged computer file even existed on Plaintiff's computer, whether and when Quintiles should have reasonably known that the evidence may be relevant to anticipated litigations, and, if so, whether Quintiles willfully lost or destroyed the file.").

Although South Carolina appellate courts have not expressly adopted the federal standard regarding spoliation of evidence, this Court and the Supreme Court have allowed evidence regarding spoliation to go to the jury. *See, Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990) (holding that a jury should be allowed to hear evidence regarding spoliation and make a determination regarding what effect

such evidence had in the case); *Welsh v. Gibbons*, 211 S.C. 516, 46 S.E.2d 147 (1948) (holding that it was proper for a jury to hear evidence regarding the unavailability of evidence and whether to draw an adverse inference); *Gathers v. South Carolina Elec. & Gas Co.*, 427 S.E.2d 687, 689 (Ct. App. 1993) (affirming the trial court's decision to submit evidence of the loss or destruction of evidence to the jury).

The right to a jury trial on issues regarding whether a party engaged in spoliation of evidence must not be ignored by this Court. Instead, this Court should take this opportunity to provide clear guidance regarding how issues of spoliation of evidence are to be determined in this jurisdiction.

CONCLUSION

A single judge summarily and without explanation dismissed Penn National's appeal of an order by the Circuit Court that denied Penn National's constitutional right to a jury trial of the factual issues in this case. This dismissal, however, is contrary to the well-established precedent mandating that a party immediately appeal the denial of a jury trial or risk waiving its constitutional right to a jury trial. Furthermore, this dismissal was not based on this Court's lack of jurisdiction over the appeal or because the factual predicate of the appeal was somehow moot. Instead, the dismissal appeared to be based on the Respondent's bald assertion that the appeal was somehow "frivolous." Frivolousness has never before been used by this Court as a justification to dismiss an appeal outright without consideration of its merits. Allowing to stand a swift dismissal of Penn National's appeal of the order denying its right to a jury trial is contrary to South Carolina law and will create a new rule that parties in declaratory judgment actions are no longer entitled to a jury trial of factual issues. Clearly, this Court did not intend for such a cavalier quashing of a party's fundamental and substantial right to a jury trial. Accordingly,

Penn National respectfully petitions this Court to rehear the motion to dismiss, with a suggestion of an *en banc* rehearing, to vacate the dismissal of its appeal and allow the parties to proceed with the full briefing of the issues on appeal.

February 23, 2023.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean H. Toal, Circuit Court Judge

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

v.

Pennsylvania National Mutual Casualty Insurance Company, Appellant.

PROOF OF SERVICE

I certify that a true copy of Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc* has been served on the following, this 23rd day of February, 2023, by emailing a copy to each attorney listed below using their primary email address listed using their AIS E-mail address pursuant to Rule 262 of the South Carolina Appellate Court Rules:

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February 23, 2023

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The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals

RE: **Petition for Rehearing**
Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas, *Respondent* v. Pennsylvania National Mutual Casualty Insurance Co., *Appellant.*
Case No. 2020-CP-40-002098
Appellate Case No. 2022-001722

Dear Mrs. Kitchings:

I have enclosed for filing the Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc*. I am simultaneously serving a copy of the Petition on the attorneys for Respondent as set forth in the Proof of Service.

Thank you for your assistance with this matter.

Sincerely,

s/Kirby D. Shealy III
Kirby D. Shealy III

KDS/jas

Enclosure

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