

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jul 26 2023

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

S.C. SUPREME COURT

Case No. 2020-CP-40-02098

Appellate Case No. 2023-001079

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

Respondent,

v.

Pennsylvania National Mutual Casualty Insurance, Co.,

Petitioner.

MOTION TO EXPEDITE

This is the *seventh* frivolous appellate filing submitted by Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) in the case since last May. This Court has warned Covil’s insurers that filing frivolous appeals to delay trial proceedings would not be tolerated, stating

We, in turn, expect the parties and their attorneys in this and any other case to fully cooperate with the trial court in order to ensure the case is tried or otherwise disposed of in a timely manner. Any action taken for the purpose of delaying the disposition of this case will, under appropriate circumstances, merit the imposition of sanctions under Rule 269, SCACR.

See March 9, 2021 Order, Appellate Case No. 2020-001670.¹ Penn National is aware of this

¹ Unfortunately, this is not the first time Covil’s insurers have attempted to abuse our appellate courts to subvert justice and delay scheduled trials. On December 21, 2020, other insurers of

admonishment from the Supreme Court against filing appeals in an attempt to delay the adjudication of cases involving Covil.²

Nonetheless, Penn National filed its latest, last minute frivolous Notice of Appeal to delay the commencement of a December 12, 2022 trial on narrow issues of insurance coverage law that are not triable to a jury. The three Causes of Action pleaded by the Receiver for Covil Corporation (“the Receiver”) against Penn National are all actions for Declaratory Judgment. The circuit court’s order confirming a non-jury trial on these declaratory judgment causes of action noted that it was not an appealable order.

However, in contradiction to decades of case law governing appealability and the non-jury nature of a declaratory judgment action seeking the interpretation of an insurance policy, Penn National nonetheless appealed the December 7, 2022 Order of the Honorable Jean Hoefler Toal confirming that this declaratory judgment action would proceed as a non-jury trial beginning at 9:30 a.m. on December 12, 2022. Although the scheduling order setting the case for a December non-jury trial was entered on September 16, 2022, Penn National waited until three business days before the trial was set to begin to appeal. After Penn National’s appeal, the circuit court postponed

Covil, in a separate case, filed a Notice of Appeal from an unappealable bifurcation order setting a bench trial on certain non-jury matters on January 11, 2021. *See* Appellate Case No. 2020-001663. Two days after filing the Notice of Appeal, the insurer filed an emergency Petition for a Writ of Prohibition with the South Carolina Supreme Court requesting the Supreme Court review the same bifurcation order and prevent the bench trial from proceeding. *See* Appellate Case No. 2020-001670. The insurer later withdrew its Petition on January 4, 2021. *Id.* This Court dismissed the appeal on January 6, 2021, as not immediately appealable. The Supreme Court declined to review this dismissal. *See* Appellate Case No. 2021-000462. On March 9, 2021, the Supreme Court issued an order noting its expectation that “the parties and their attorneys in this and any other case . . . fully cooperate with the trial court in order to ensure the case is tried or otherwise disposed of in a timely manner” and cautioning that “[a]ny action taken for the purpose of delaying the disposition of this case will, under appropriate circumstances, merit the imposition of sanctions.” *See* Appellate Case No. 2020-001670.

² *See* Appellate Case No. 2022-000785, Return to Petition for Writ of Certiorari at 9 n.7.

the December trial until such a time that the case is remitted. This appeal is simply another attempt in a long line of recent attempts by Penn National to abuse our rules of procedure to subvert justice and delay circuit court rulings on important matters of South Carolina insurance law.

The Court of Appeals dismissed Penn National's interlocutory appeal on February 8, 2023, and denied rehearing on June 6, 2023.

The circuit court held a status conference in the case on June 7, 2023, following the Court of Appeals' denial of rehearing in the matter. The circuit court issued a scheduling order setting a trial in the matter on September 11, 2023. Exhibit A. The circuit court set a pre-trial hearing for August 21, 2023. Exhibit B.

Penn National filed a Petition for Writ of Certiorari with this Court on July 6, 2023, and the Receiver has filed a Return to the Petition.

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Peter D. Protopapas, in his capacity as the Receiver, by and through the undersigned counsel, respectfully requests this Court expedite consideration of this Petition for Writ of Certiorari. This declaratory judgment action was set for a non-jury trial on December 12, 2022, but has now been frivolously delayed by this improper appeal—Penn National's fifth improper appeal since last May. The trial in this matter has already been delayed over seven months due to this appeal, and the circuit court and parties are available to try the case in September. Because time is of the essence, the Receiver respectfully requests this Court expedite its consideration of the petition.

(Signature page follows)

Respectfully submitted,

s/Shanon N. Peake

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July 26, 2023.