

# The South Carolina Court of Appeals

Lenora Childers, Individually and as Personal  
Representative of the Estate of Lewis C. Childers,  
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,  
Inc.; General Boiler Casing Company, Inc.; HEFCO,  
Inc.; J.R. Deans Company, Inc.; Payne & Keller  
Company; SFB, Incorporated; Stafford Insulation  
Company; Standard Insulation Company of N.C., Inc.;  
Systra Engineering, Inc.; United Construction Co. of  
Rome, Inc.; Wind Up, Ltd., Individually and as  
Successor-in-Interest to Pipe & Boiler Insulation, Inc.  
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of  
Rome, Inc.; Wind Up, Ltd., Individually and as  
Successor-in-Interest to Pipe & Boiler Insulation, Inc.  
f/k/a Carolina Industrial Insulating Co.; and Payne &  
Keller Company, By and Through Their Duly Appointed  
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and  
as Successor to Northern Insurance Company of New  
York, Maryland All American General Insurance  
Company, and Maryland Casualty Company); Allstate  
Insurance Company; John Tighe; Sean Antony Beatty;  
Dennis William Cahill; Catherine Ann Carlino; Andre  
Lefebvre; David Dean Shumway; Gil Chandler; Michael  
Davenport; Linda Young Pettigrew; Gwyn Wallace  
Fuller; Daniel Robert Keddie; Julie Ann Fortune;  
Michael John Crall; James Francis Meehan; Larry Gene  
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital  
Corp.; Admiral Insurance Company; Continental

Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

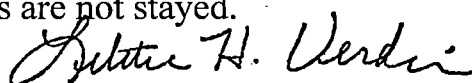
Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

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ORDER

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After consideration of Respondent's "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal. *See* Rule 62(a), SCRPC ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. §14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.



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FOR THE COURT

Columbia, South Carolina

**FILED**  
**Sep 08 2023**

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cc:

Wesley Brian Sawyer, Esquire  
Matthew Todd Carroll, Esquire  
Mary Elizabeth O'Neill, Esquire  
Harry Lee, Esquire  
Brian Montgomery Barnwell, Esquire  
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