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Oct 24 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Joan H. Toal  
Acting Circuit Court Judge

Appellate Case No. 2023-000727

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. Dean  
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.,  
Payne & Keller Company, and PBI QSF, LLC, 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  
American General Insurance Company, and Maryland Casualty  
Company); Allstate Insurance Company; John Tighe; Sean  
Anthony 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, Birmingham Fire 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, L.L.C., Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party Defendants,

of which

Payne & Keller Company, by and through its 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 f/k/a Stonewall Insurance Company, individually and as successor in interest to Stonewall Surplus Lines Insurance Company; Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company; and Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company are the .....

Appellants.

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**MOTION BY UNDERLYING THIRD-PARTY DEFENDANT ZURICH AMERICAN INSURANCE COMPANY TO BE ADDED TO APPEAL**

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ROBINSON GRAY STEPP & LAFFITTE, LLC  
Kevin K. Bell  
Post Office Box 11449  
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(803) 227-1111  
*Counsel for Zurich American Insurance Company*

Currently on appeal is an Order Denying Third-Party Defendant Travelers Casualty and Surety Company's Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership, entered on March 31, 2023. The appeal was separately initiated by Travelers Casualty and Surety Company and by 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, formerly known as Stonewall Insurance Company; and The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company, all of whom are third-party defendants in the action below. The separate notices of appeal were consolidated for consideration by this Court.

Due to subsequent events in the underlying action involving matters affected by this appeal, Zurich American Insurance Company ("Zurich"), also a third-party defendant, moves that it be added to this appeal as an appellant for the purpose of protecting its interests in matters occurring subsequent to the perfecting of this appeal. If added, Zurich will coordinate its actions with the current Appellants and proceed in a manner that does not increase the burden on this Court or prejudice Respondent.

Respectfully submitted,

s/ Kevin K. Bell

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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,

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Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe &  
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Appellants.

**PROOF OF SERVICE**

Pursuant to Rule 262(c)(3), SCACR, I certify that I have caused the **MOTION BY UNDERLYING THIRD-PARTY DEFENDANT ZURICH AMERICAN INSURANCE COMPANY TO BE ADDED TO APPEAL** to be served on the following counsel of record by AIS email at the following addresses:

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s/ Kevin K. Bell  
\_\_\_\_\_  
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*Counsel for Zurich American Insurance Company*

Columbia, South Carolina  
October 24, 2023

**From:** [Toni Hawkins](#)  
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**Cc:** [Kevin K. Bell](#)  
**Subject:** 2023-000727 Childers v Davis Mechanical appeal - Zurich American Insurance Company Motion and Joinder  
**Date:** Tuesday, October 24, 2023 12:47:30 PM  
**Attachments:** [image001.png](#)  
[Zurich Motion to Be Added to Appeal.pdf](#)  
[Proof of Service - Zurich Motion to be Added to Appeal.pdf](#)  
[Zurich Joinder in Emergency Motion to Clarify and Enforce Rule 205.pdf](#)  
[Proof of Service - Zurich Joinder in Emergency Motion to Clarify and Enforce Rule 205.pdf](#)

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Attached for service upon you please find Zurich American Insurance Company's Motion to be Added to Appeal and Joinder in Support of Emergency Motion to Clarify and Enforce Rule 205 which are being filed with the Court of Appeals today along with Proofs of Service.

A copy of this email will be filed with the Proofs of Service.

Thank you,  
Toni Hawkins



**TONI HAWKINS** PARALEGAL

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