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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Opinion No. 6037
Appellate Case No. 2020-001437

Peter D. Protopapas, as Receiver for Covil Corporation, Respondent,

v.

Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company;
United States Fidelity and Guaranty Company; and Zurich
American Insurance Company Defendants,

of which

United States Fidelity and Guaranty Company is the Appellant.

PETITION FOR REHEARING AND REHEARING EN BANC

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INTRODUCTION

More than thirty years ago, Covil Corporation (“Covil”) was judicially dissolved pursuant to a now long-final order. The South Carolina Code is clear that a *judicial* dissolution cannot happen absent the publication of notice of the dissolution, which is exactly what Judge Simmons ordered Covil’s prior receiver to do in 1992. When Judge Simmons subsequently approved of and affirmed the receiver’s work, finding that the receiver fully complied with the court’s prior orders and thereafter judicially dissolving Covil, Judge Simmons necessarily found that notice of the dissolution had been published. The court’s final order judicially dissolving Covil would have been invalid otherwise.

In affirming the decision below, the panel upheld a collateral attack on that final order by a new receiver who inexplicably sought and obtained a ruling by a different circuit judge that the statute of repose applicable to dissolved corporations was unavailable to Covil, effectively invalidating Covil’s prior judicial dissolution decades after the fact. Respectfully, for the reasons discussed below, USF&G requests the Court rehear this case, including *en banc*, and vacate the circuit court’s order. Rule 221(a), SCACR.

ARGUMENT

I. The Receiver lacked standing to deprive Covil of a critical statute of repose defense.

The panel should reconsider its decision because it finds standing for the Receiver where none exists. The panel accepts that in order for a plaintiff to seek relief from a court, it must have standing to do so. Standing has three familiar components: the plaintiff must have suffered a concrete “injury-in-fact,” that injury must have a causal connection to the defendant’s conduct, and a favorable decision must be able to “redress the injury.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). A mere

“interest” in the litigation does not confer standing. *E.g., Kleckley v. Nw. Nat. Cas. Co.*, 338 S.C. 131, 135, 526 S.E.2d 218, 220 (2000).

The panel concluded the Receiver had standing to seek an order stripping Covil of its statute of repose defense because “the Receiver clearly has an interest in determining whether Covil is subject to future claims,” because “Covil has suffered injury through the conduct of USF&G in the Hutto (and perhaps other) asbestos litigation,” and because “Covil’s potential future liability and proper available defense relates concretely to the management of Covil’s assets and is particularly pertinent to any claims handling or bad faith claims that may remain against USF&G.” (Op. at 7.)

There is no question that the current Receiver—charged with responsibility for acting on *behalf* of Covil—has an interest in determining whether Covil may be subject to future claims. While that interest may have justified efforts to *minimize* Covil’s liabilities, neither Covil nor its current Receiver suffered any injury that could have possibly been redressed by the Receiver’s request for a ruling greatly *increasing* Covil’s liabilities. Yet, that is precisely what the Receiver sought by his request for an order that Covil’s prior judicial dissolution and its accompanying statute of repose posed no obstacle to the continued assertion of tort actions against Covil for years to come.

Similarly, there is no dispute that a receiver can have standing to pursue valid claims for insurance coverage. But while insurance coverage issues may be disputed, nonetheless insureds and their insurers share a common interest in defending the insured from third-party claims and minimizing the insured’s liabilities. No interest in pursuing insurance coverage or insurance bad

faith claims provides the insured—whether or not a receiver is standing in its shoes—with a legitimate interest in affirmatively seeking to deprive itself of a critical defense.¹

Because the Receiver lacked standing to seek a ruling from the circuit court that was designed to create, rather than limit, Covil’s liability going forward, the panel’s decision should be reconsidered accordingly and the circuit court’s order vacated for this threshold reason.

II. The panel wrongly disregarded the South Carolina Code’s requirements for a judicial dissolution, permitted an improper collateral attack, and improperly rejected the legal presumption that should have been afforded to the prior dissolution.

There is no dispute that Judge Simmons judicially dissolved Covil in 1992. He entered an order specifically saying so (R. pp. 700–06), and the panel acknowledged as much on Page 1 of its decision. (Op. at 1.) But this undisputed point has significant legal implications that the panel appears to have overlooked and which are dispositive here.

Publication Was Required by Statute. The General Assembly has created three ways to dissolve a South Carolina company: voluntarily (S.C. Code Ann. §§ 33-14-101 to -107), administratively (*id.* §§ 33-14-200 to -230), or judicially (*id.* §§ 33-14-300 to -330). The requirements for each type of corporate dissolution are defined by statute, and they vary depending on the type of dissolution.

Covil was judicially dissolved. As a matter of South Carolina law, a court may not judicially dissolve a South Carolina corporation without publication of notice of the dissolution,

¹ Additionally, it is unclear what the panel may be referring to in concluding that “Covil has suffered injury through the conduct of USF&G in the Hutto (and perhaps other) asbestos litigation.” (Op. at 7.) Covil was dismissed from the Hutto case (R. pp. 427–28), and in the two cases in which Covil suffered defaults, Covil’s insurers resolved those claims “without any contribution by Covil,” as USF&G noted on page 7 of its opening brief. And even if Covil had suffered some concrete injury as a result of the defense afforded by its insurers—it did not—it is difficult to fathom how a ruling paving the way for additional lawsuits against Covil for years to come could possibly redress any such hypothetical injury.

id. § 33-14-330(b), a point of law the panel never acknowledged. In turn, Section 33-14-107 provides that publishing a single notice of a corporation’s dissolution in a newspaper begins a repose period after which all new claims against the corporation are “barred.” *Id.* § 33-14-107(c).

Tellingly, when owners *voluntarily* dissolve a corporation, they retain discretion as to whether they publish notice of the dissolution. *See id.* § 33-14-107(a) (providing that “[a] dissolved corporation *may* publish notice of its dissolution”) (emphasis added). By contrast, publication is mandatory when, as with Covil, the dissolution ordered by a court. *See id.* § 33-14-330(b) (stating “the court *shall* direct” publication of the dissolution for judicially-dissolved corporations) (emphasis added). By establishing different instructions depending on who is responsible for the dissolution, the General Assembly made publication essential to a judicial dissolution. *See Machin v. Carus Corp.*, 419 S.C. 527, 545, 799 S.E.2d 468, 477 (2017) (“The legislature’s use of two separate terms makes clear that it intended two separate meanings.”).

By requiring publication, the Legislature built finality and repose into the dissolution process so judicially-dissolved corporations do not have indefinite exposure to claims. In other words, when a court dissolves a corporation, there is a certain date after which the corporate entity no longer exists for any purpose, which is the finality and predictability that the law intends:

Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which liability no longer exists.

Society benefits when claims are causes are laid to rest after having been viable for reasonable time. When causes of action are extinguished after such time, society generally may conduct its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission. This is not only for the convenience of society but also due to necessity. At that point, society is secure and stable.

Langley v. Pierce, 313 S.C. 401, 404, 438 S.E.2d 242, 243–44 (1993) (quoting *Kissel v. Rosenbaum*, 579 N.E.2d 1322, 1326–28 (Ind. Ct. App. 1991)).

The panel’s opinion fails to account for this legal requirement for a judicial dissolution, but Judge Simmons could not have lawfully dissolved Covil in 1992 without the notice of dissolution being published. The order judicially dissolving Covil has been final for three decades and is not subject to collateral attack by this Court, *see Atl. Coast Builders & Contrs., LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“While his calculation of damages may have been incorrect, an unappealed ruling, right or wrong, is the law of the case.”); or by the circuit court, *see Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) (“One Circuit Court Judge does not have the authority to set aside the order of another.”); *see generally Long v. McMillan*, 226 S.C. 598, 610, 86 S.E.2d 477, 482 (1955) (the “records of a court cannot be impugned upon matters within its jurisdiction, when offered in evidence, by counter evidence”).

The panel’s failure to account for (a) the South Carolina Code’s requirement of publication as an essential component of Covil’s judicial dissolution, and (b) the limits on the circuit court’s or this Court’s ability to collaterally attack a final order entered by another court, were legal errors that should be reconsidered.

Publication Was Required by the Court. Not only is publishing notice of dissolution required as a matter of South Carolina law for judicially-dissolved corporations, Judge Simmons specifically ordered the court-appointed receiver, Winston Lee, to undertake that precise act as part of Covil’s judicial dissolution:

In addition to the foregoing [notice under Section 33-14-106], and to the extent not already accomplished, the Receiver shall publish the Notice required by § 33-14-107 of the Code of Laws of the State of South Carolina, 1976 as amended.

(R. p. 704.)

Judge Simmons gave Mr. Lee that instruction on May 11, 1992. Six months later, Judge Simmons discharged Mr. Lee after finding “that he has *fully complied with the previous Order of this Court* in liquidating the assets of the Defendants, that his accounting is in order and that the relief sought by him should be approved.” (R. p. 709) (emphasis added).

The Law Presumes Publication. Against this indisputable legal backdrop—and even assuming the circuit court and this Court had authority to invalidate another court’s final orders through a collateral attack (which they do not)—the panel incorrectly held that, as a factual matter, Mr. Lee did not publish notice of Covil’s dissolution. But as discussed further below, this conclusion, like that of the circuit court’s below, impermissibly rested on the *absence of evidence*, not on any actual, affirmative, or substantial evidence demonstrating that the prior receiver failed to publish notice of Covil’s dissolution as the law required and the prior court ordered. This is an error of law requiring reconsideration.

In South Carolina, as elsewhere, the law *presumes* that a court-appointed officer has complied with his or her duties and legal obligations:

“The presumption is always in favor of the correct performance of his duty by an officer The presumption is that no official person, acting under oath of office, will do aught which is against his official duty to do, or will omit aught which his official duty requires to be done.”

Howell v. Littlefield, 211 S.C. 462, 468, 46 S.E.2d 47, 49 (1947) (quoting *Whitcomb v. Manderville*, 90 S.C. 384, 392–93, 73 S.E. 775, 777–78 (1912)).

Unless the presumption is rebutted with substantial affirmative proof, it acts to establish that officials complied with prior orders and duties even where there may be no *direct* proof that they did. In fact, it is precisely where there may be no direct proof that the presumption most often comes into play. *See, e.g., Kirton v. Howard*, 137 S.C. 11, 30, 134 S.E. 859, 866 (1926) (“While the ‘case’ fails to show that the certificate of appointment of the new trustee, Sanders, was indorsed

upon the original deed, if said deed was found, or that such appointment was recorded in the office of the clerk of court, as required in the statute, to which we have called attention, *yet in the absence of any evidence to the contrary, the court is bound to assume that the designated public officers performed the duties required of them by the act.*”) (emphasis added); *Whitcomb*, 90 S.C. at 393, 73 S.E. at 778 (“All persons are presumed to have duly discharged any duty imposed by law.” (quoting *Douglass v. Owens*, 39 S.C. L. 534 (5 Rich. 534, 536))).

The presumption of regularity is not a mere technicality. It has been followed in South Carolina and throughout the country for important policy reasons—it promotes efficiency, fosters trust in public officers, and promotes finality and certainty. Those policy goals work hand-in-glove with the policies of finality and predictability underlying statutes of repose, including those the General Assembly affords to judicially-dissolved South Carolina corporations after the repose period has expired. Yet, the panel summarily dismissed this legal presumption in a brief footnote, stating that it was “reject[ing] USF&G’s argument that a ‘presumption of regularity’ establishing the Prior Receiver faithfully discharged all responsibilities applies to the question of publication.” (Op. at 12 n.6.) This was a fundamental error of law warranting the Court’s reconsideration.

No Evidence Exists to Rebut Presumption. The panel (like the circuit court) incorrectly held that it was USF&G’s burden to “satisfy the necessary predicate of publication” by Mr. Lee. (Op. at 12 n.6.) As the party challenging the prior judicial dissolution and the prior receiver’s compliance with his legal duties, if anything the burden of proof was on the Receiver, not on USF&G. Regardless, where, as here, the law presumes a fact, the burden of proof shifts to the

adverse party. *State Accident Fund v. S.C. Second Injury Fund*, 409 S.C. 240, 246, 762 S.E.2d 19, 22 (2014).²

Here, in addition to improperly shifting the burden of proof to USF&G (the non-moving party), the only “evidence” cited by the panel was (1) the fact that “[t]he master made *no finding*” in his 1992 order that the Prior Receiver “fully complied with the previous Orders of this Court in liquidating the assets of [Covil]” as to whether a notice of dissolution was published (Op. at 11) (emphasis by panel); (2) the unremarkable fact that the Prior Receiver’s accounting “makes *no mention* of funds paid to publish a notice of dissolution *nor does it reference* payment to a newspaper” (*id.* at 12) (emphasis added); and (3) a handwritten note in 2001 by “a different Covil insurer” that this unnamed insurer claim representative was unaware of whether formal notice of dissolution was published (*id.*). None of this suffices to overcome the presumption of regularity.

² Footnote 6 on Page 12 of the panel’s opinion begins “[b]ecause USF&G cannot satisfy the necessary predicate of publication,” and it contains a “*see also*” citation that opaquely suggests USF&G did not carry its burden of proof regarding “an affirmative defense.” The Receiver’s motion to “clarify the status of Covil’s receivership” however, did not seek any adjudication of USF&G’s affirmative defenses. It was not brought as a motion for summary judgment under Rule 56, nor as a motion for judgment on any affirmative defense as a matter of law under Rule 12, for example. Nor was this a trial on the merits in which USF&G would have been afforded an opportunity to present and cross-examine witnesses or offer other evidence. The panel opinion did not address this procedural irregularity. Regardless, as noted above, as the proponent of this effort to invalidate Covil’s prior dissolution as a matter of law, any burden was necessarily on the Receiver. And, as also noted above, the legal presumption that applies to Mr. Lee’s conduct as Covil’s prior receiver would have satisfied USF&G’s burden as a matter of law and shifted the burden to the current Receiver to come forward with “substantial evidence” to the contrary regarding Mr. Lee’s conduct. *State Accident Fund*, 409 S.C. at 246, 762 S.E.2d at 22. The current Receiver did not come close to carrying his burden, as there is no evidence, much less “substantial evidence,” showing that Mr. Lee failed to do exactly as he was required by the South Carolina Code and by court order. To the extent the circuit court’s and panel’s ruling suggests that USF&G failed to carry the initial burden or that the burden of proof did not shift to the current Receiver, those are reversible errors of law. *See Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 139 (1986) (reversing and remanding because “the lower court improperly shifted the burden of proof”).

As to the receivership court’s 1992 finding that the prior receiver fully complied with the court’s prior orders, while that constituted affirmative evidence of publication, the fact that this finding did not specifically discuss publication of notice to draw an adverse inference to the contrary is clearly an **absence** of evidence, not affirmative evidence necessary to overcome a presumption. Critically, a legal presumption cannot be overcome by speculation, inadmissible evidence, or negative inferences based on the **absence** of proof. “When a presumption shifts the burden of production to the opposing party, that party must present **substantial evidence** in order to rebut the presumption.” *State Accident Fund*, 409 S.C. at 246, 762 S.E.2d at 23 (emphasis added); see generally *Barr’s Next of Kin v. Cherokee, Inc.*, 220 S.C. 447, 464–68, 68 S.E.2d 440, 448–49 (1951) (vacating a lower court order that relied on inadmissible evidence to overcome a legal presumption). As noted above, the presumption most often applies and is most necessary where direct proof may no longer be available. *E.g., Kirton*, 137 S.C. at 30, 134 S.E. at 866; *Whitcomb*, 90 S.C. at 393, 73 S.E. at 778.³

Moreover, the Greenville court was obviously familiar with and oversaw the prior receiver’s work in the months leading to that order, and there is no reason why that court would have been required to, or as a practical matter would have, set forth each of the prior acts in complying with the court’s prior orders (including the order requiring publication of notice) with that degree of specificity. Nevertheless, the presumption of regularity **presumes** that the prior receiver faithfully performed his duties and complied with his legal obligations in effecting Covil’s judicial dissolution **irrespective** of the Greenville court’s finding that he did so, demonstrating

³ Notably, the judicial records of Covil’s prior dissolution and the work of the prior receiver were, as the record here reflects, in disarray through no fault of USF&G (or Covil for that matter): records were misfiled by the court, incomplete, and in some cases destroyed. (R. 598–603.)

further that the *absence* of a specific finding in that order proves nothing and falls far short of the kind of affirmative proof necessary to overcome the presumption.

Likewise, the fact that, as the panel states, the prior receiver's accounting "makes no mention of funds paid to publish a notice of dissolution nor does it reference payment to a newspaper" (Op. at 11–12) is legally irrelevant. As with absence of a specific finding detailing publication of notice in the court's dissolution order, the absence of details about publication of notice in the prior receiver's accounting is clearly just that: the absence of proof, which is insufficient. Beyond that fundamental flaw, the panel does not address the fact that Mr. Lee's accounting contained two categories of unenumerated expenses, either of which could have easily included publication of a single notice in a local Greenville newspaper in 1992: "Attorney Costs" of \$100, and "Receiver Expense" of \$1576.50. (R. p. 710.) It is legal error for the panel to have drawn an adverse inference and assumed Mr. Lee ignored both the South Carolina Code and an order from Judge Simmons because his accounting contains generalized categories of expenses, rather than having a specific line item for the cost of publishing a single notice.

Finally, so too was it error for the panel to rely on "a 2001 claim file activity memorandum from a different Covil insurer" regarding whether "formal notice was filed." (Op. at 12.) This third-party memorandum is classic inadmissible hearsay. Rule 802, SCRE. Even if it could have been considered (and it should not have been), it is hardly "substantial evidence" that undercuts the presumption that Mr. Lee did precisely what the South Carolina Code required him to do and what Judge Simmons ordered him to do.

This "memorandum" was nothing more than handwritten notes from an unknown author, apparently produced by Zurich American Insurance Company, which is not even a party to this appeal. It was purportedly written in 2001, nearly a decade after Covil's judicial dissolution. It

purports to record notes from a conversation that its unknown author had with a lawyer who was retained to defend Covil in underlying asbestos litigation, and who (like Covil's insurers) was *not involved in Covil's judicial dissolution*. Clearly, the scrawl of an unknown author, who had no responsibility for Covil's dissolution, regarding defense counsel's secondhand-at-best speculation of what Mr. Lee may have done a decade earlier with respect to Covil's judicial dissolution cannot possibly suffice as "substantial evidence" to overcome the law's presumption that Mr. Lee faithfully performed his duties and did what he was required to do by both the South Carolina Code and a direct order from Judge Simmons.

* * * * *

The current Receiver asked the circuit court in Richland County to deprive Covil of the benefit of the statute of repose that, by law, should have been available to Covil based on a judicial dissolution entered in Greenville County more than three decades ago. Instead of undertaking a forensic exploration as to what the record may have reflected as respects the court-appointed receiver's efforts to wind up Covil's affairs thirty-one years earlier, the law presumes Mr. Lee did what was required of him by the South Carolina Code and by Judge Simmons. Neither the current Receiver nor the panel opinion cites to a single case in South Carolina or elsewhere where a presumption was simply rejected out of hand in this manner, or overcome by the kind of negative implication, speculation, and the absence of evidence as relied on here to justify the collateral attack on a long-final judicial dissolution. Indeed, the need to afford finality to a corporation's prior dissolution, the acts of a prior receiver in fulfilling his duties, and a prior court's findings and orders, is particularly acute in this case. All of these facts, findings, and orders occurred or were entered decades ago, and they are being wrongly revisited in the context of an improper collateral attack by a party who lacks standing and where direct evidence is no longer readily available.

Accordingly, the panel’s conclusion that “evidence in the record supports the special circuit court’s finding that publication of the dissolution notice necessary to trigger the statute of repose did not occur during the Prior Receivership” was patently incorrect and based on a flawed analysis as a matter of law. (Op. at 12.) The panel’s opinion does not address or account for any of the legal principles discussed above—the South Carolina Code’s requirement that judicial dissolutions must include publication of the dissolution, the inappropriate shifting of the burden of proof to USF&G, the legal presumption attaching to Mr. Lee’s work, the finality of Judge Simmons’s orders, and the inability of one court to collaterally attack the findings and orders of another. Respectfully, the panel decision should be reconsidered and vacated, and the Court should make clear that the statute of repose under South Carolina Code § 33-14-107 bars all pending and future claims against Covil.⁴

III. The panel’s repeated reliance on a void, non-final circuit court order was improper.

Just as the panel’s ruling on the merits improperly relied on the absence of evidence to overcome a legal presumption, so too did the panel improperly appear to rely on inaccurate and baseless statements contained in a January 8, 2020 order from the circuit court, which cannot be considered in this appeal for numerous reasons.⁵

⁴ The panel declined to address the Receiver’s retroactivity arguments and how the statute of repose would resolve current and future claims against Covil under a prior version of the statute, but there is no legitimately retroactivity issue presented here. Even if there were, either version of Section 33-14-107 would bar all claims against Covil for the reasons discussed in USF&G’s appellate briefs.

⁵ (*See, e.g.*, Op. at 3 (stating that the January 8, 2020 order “describe[es] troubling issues that have arisen in Covil’s asbestos litigation involving Insurers”); *id.* at 7 (“The record reveals years of concerning conduct on the part of USF&G and others as they prepared for the onslaught of asbestos litigation to come.”); *id.* at 8 n.4 (“Abundant evidence in this record establishes USF&G’s problematic claims handling and litigation practices related to Covil.”).) The panel also stated: “The deliberate decisions to default in the two 2018 cases further reflect the need for the special circuit court’s appointment and clarification orders.” (*Id.* at 8 n.4.) This is directly contrary to the actual record, which contains an affidavit from Mark Wall, Esq, explaining that the alleged

First, the factual allegations contained in the January 8, 2020 order are simply not true. That order was drafted by the current Receiver and entered by the circuit court despite having no jurisdiction over USF&G, *as it was not a party to any of the cases in which it was entered*, nor was it ever served with a summons or a subpoena or anything else that would have even allowed jurisdiction to attach. Under those circumstances, the January 8, 2020 order is void *ab initio*. See, e.g., *Long v. McMillan*, 226 S.C. 598, 608–09, 86 S.E.2d 477, 482 (1955) (holding that a contempt order is “absolutely void” if the entity against which it is entered is not “allowed to offer evidence and argument in his defense,” and that “disobedience of a void Order, Judgment, or Decree, or one issued without jurisdiction of subject matter and parties litigant, is not ‘contempt’”).

USF&G timely filed a Rule 59 motion to reconsider that order in each of the five cases in which it was entered, citing numerous grounds to vacate it. The Court can take judicial notice of the pendency of that motion. Rule 201, SCRE. USF&G’s Rule 59 motion was filed on January 17, 2020, and it remains pending to this day, more than three-and-a-half years later. USF&G has made its intent to appeal this extraordinary order clear by filing a precautionary notice of appeal with this Court on February 7, 2020, and a precautionary petition with the Supreme Court for a writ of supersedeas to ensure that courts did not mistakenly rely on the January 8, 2020 order while the Rule 59 motion remains pending.⁶ Under these circumstances, rehearing is necessary to ensure that the panel’s decision was not wrongly based on that non-final, void-on-its-face, factually

“default” in those cases resulted from confusion as to whether service had been effected on Covil. (R. pp. 136–40.) Mr. Wall specifically testified: “In fact, the Carriers never made a decision to place Covil into default.” (R. p. 139.) The actual record evidence is impossible to square with the panel’s statement on this point.

⁶ The Supreme Court denied the petition on that basis, holding that it could not issue a writ of supersedeas until an appeal is pending. (Appellate Case No. 2020-000791.) The circuit court’s multi-year failure to rule on the Rule 59 motion continues to prevent USF&G from obtaining appellate review.

baseless and legally erroneous order. *Cf. Wessinger v. Rauch*, 288 S.C. 157, 159, 341 S.E.2d 643, 644 (Ct. App. 1986).

CONCLUSION

For the reasons set forth above, USF&G respectfully requests that the Court grant its petition for rehearing, vacate the panel's and circuit court's decisions, and issue an order finding that claims against Covil are barred based on the statute of repose for dissolved South Carolina corporations.

SUGGESTION OF REHEARING *EN BANC*

Pursuant to Rule 219, SCACR, USF&G requests that the Court rehear this matter *en banc*. Though the standards for *en banc* consideration are narrow, this case readily meets them, as the panel's decision affirms what appears to be the first time in South Carolina history where a court-appointed receiver has been authorized to create, rather than limit, liability for the company over which he has been appointed. This is a dangerous precedent that should not be endorsed, especially in light of the fact that the same circuit court judge has appointed the same receiver over two dozen companies now, always at the request of the same plaintiffs' attorneys.

Respectfully submitted,

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