

EXHIBIT
B

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
)
Sherica Powell, et al.,)
)
Plaintiffs,)
)
vs.)
)
Jolly Ehiabhi, et al.,)
)
Defendants.)
The South Carolina Ports Authority,)
)
Third-Party Plaintiff,)
)
vs.)
)
American Millennium Insurance Company,)
)
Third-Party Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE 15TH JUDICIAL CIRCUIT

Case #: 2025CP2200086

**ORDER DENYING MOTION TO
RECONSIDER**

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SC Court of Appeals

This matter comes before the Court on two motions filed by Defendant South Carolina Ports Authority (“SCPA”) pursuant to Rule 59(e), SCRCP: (1) a Motion to Reconsider the Court’s Order denying SCPA’s Motion to Dismiss; and (2) a Motion to Reconsider the Court’s Order staying American Millennium Insurance Company’s Motion to Dismiss SCPA’s Third-Party Complaint. The Court has reviewed the motions, the record, and the applicable law, and finds no basis to alter its prior rulings.

I. Legal Standard

The decision to grant or deny a motion under Rule 59(e), SCRCP, lies within the sound discretion of the trial court. *Pollard v. Cnty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). Rule 59(e) motions may be granted to correct a clear error of law or to prevent

manifest injustice and allows a court to correct its own errors before appellate review. *Pacific Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

II. Motion to Reconsider Denial of SCPA's Motion to Dismiss

In its October 13, 2025 Order, the Court denied SCPA's Motion to Dismiss after concluding that the October 19, 2024 covenant not to execute did not constitute a settlement "under the South Carolina Tort Claims Act" such that S.C. Code Ann. § 15-78-70(d) would bar Plaintiff's claims against SCPA. The Court concluded that "The settlement...was pursuant to an indemnity agreement between two parties, and by a private insurance company, thus not under the Tort Claims Act." *See* October 13, 2025 Order.

SCPA now claims that the Court erred in concluding that the covenant not to execute was not a settlement "under the South Carolina Tort Claims Act" for purposes of S.C. Code Ann. § 15-78-70(d). No memorandum in opposition appears to have been filed in response to SCPA's Motion to Reconsider the denial of its Motion to Dismiss.

As the Court noted in its Order, *Wade v. Berkeley County* makes clear that § 15-78-70(d) applies only where there is a settlement or judgment under the Act. *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002). Here, the record reflects that the settlement was funded and executed by a private insurer. While SCPA was named as an insured and/or covenantee in the settlement document, that fact alone does not convert an insurance settlement into a settlement "under the Act." The Court further rejects that a settlement becomes one "under the South Carolina Tort Claims Act" merely because a governmental entity is named as a covenantee and/or insured. To hold otherwise would allow any settlement, so long as a governmental entity is named, to operate as a statutory bar, regardless of whether the governmental entity actually settled a Tort Claims Act claim.

Accordingly, SCPA has not shown that the Court misconstrued *Wade*, misconstrued § 15-78-70(d), or committed a clear error of law. Although SCPA was a named defendant at the time the covenant not to execute was executed, the settlement itself must be entered pursuant to the Tort Claims Act, which did not occur here.

III. Motion to Reconsider Stay of AMIC's Motion to Dismiss

Additionally, this Court entered an order staying AMIC's Motion to Dismiss the Third-Party Complaint pending resolution of the federal declaratory judgment action. SCPA contends the stay must be reconsidered because (1) Deferring to the federal action violates SCPA's sovereign immunity and Eleventh Amendment protections; and (2) Rule 12(b)(8), SCRPC, requires this Court to proceed because the state action was filed first. The Court finds no error in its decision to stay the proceedings.

First, the stay did not decide SCPA's liability, waive sovereign immunity, or rule on the merits of the federal action. Instead, the stay was intended to avoid duplicative litigation and the risk of inconsistent rulings on related issues. Further, this Court's stay does not decide upon any of SCPA's claims or defenses.

Second, the Court is not persuaded that Rule 12(b)(8) requires dismissal or prevents a stay. Rule 12(b)(8), SCRPC, governs dismissal based on a pending action; it does not strip this Court of its authority to stay proceedings where appropriate. Although SCPA filed its Third-Party Complaint one day before AMIC filed the federal action, the two actions are not the same. The federal action seeks a declaration regarding insurance coverage and includes additional parties and issues not fully presented in the state third-party action. Thus, one case seeks affirmative relief while the other seeks declaratory relief. Under these circumstances, the Court has discretion to stay the proceedings in the interest of judicial economy and avoid potentially inconsistent rulings.

Finally, the Court finds no merit in the argument that the stay violates the Eleventh Amendment. A temporary stay pending resolution of related issues does not subject SCPA to a constitutional violation of judicial power.

IV. Conclusion

After reconsideration of the record and the parties' arguments, the Court finds that SCPA has not demonstrated a clear error of law or fact, nor shown that reconsideration is necessary to prevent manifest injustice.

Accordingly, both:

1. SCPA's Motion to Reconsider the Order Denying its Motion to Dismiss, and
2. SCPA's Motion to Reconsider the Order Staying AMIC's Motion to Dismiss

are hereby **DENIED**.

It is so ordered.



Georgetown Common Pleas

Case Caption: Sherica Powell , plaintiff, et al VS Jolly Ehiabhi , defendant, et al

Case Number: 2025CP2200086

Type: Order/Other

IT IS SO ORDERED

s/ David P. Caraker, Jr.