THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable David P. Caraker, Jr.

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APPELLATE CASE NO. 2026-000074

_____

Delores Holloway……...……Respondent,

v.

The South Carolina Ports Authority…… Appellant.

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MEMORANDUM REGARDING APPEALABILITY OF INTERLOCUTORY ORDER

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I. INTRODUCTION

The Circuit Court's orders denying South Carolina Ports Authority's ("SCPA") Motion to Dismiss and subsequent Motion to Reconsider are immediately appealable. Although the orders are interlocutory, they conclusively reject SCPA's assertion of sovereign immunity and a statutory bar under the South Carolina Tort Claims Act ("SCTCA") and require SCPA to remain in litigation – the very right sovereign immunity protects against.

The Circuit Court's rulings are not tentative or conditional; rather, they finally determine SCPA is not entitled to dismissal based on sovereign immunity or a statutory bar, and SCPA must continue to defend this action notwithstanding those asserted protections. In doing so, the Circuit Court expressly construed § 15-78-70(d) and controlling authority interpreting the statute and definitively determined that the settlement agreement at issue did not constitute a settlement "under the Act" as a matter of law.

Rule 203(b)(1), SCACR, permits immediate appellate review where postponement would defeat the right asserted, and the Circuit Court's conclusive rejection of SCPA's immunity defenses presents precisely that circumstance.

Because the orders finally resolve SCPA's immunity defense and expose SCPA to continued litigation that SCPA contends the Circuit Court lacks authority to require, the orders affect a substantial right that may not be adequately protected by appeal from a final judgment. South Carolina appellate courts recognize that an order affecting a substantial right is immediately appealable where postponement of review would defeat the right asserted. Accordingly, the orders are immediately appealable under Rule 203(b)(1), SCACR.

II. FACTUAL BACKGROUND

On or about October 18, 2024, Respondent executed an agreement titled "SETTLEMENT AGREEMENT" naming SCPA as a party and a beneficiary of the agreement. (Ex A, Settlement Agreement). On January 24, 2025, Respondent filed suit against SCPA in Georgetown County Court of Common Pleas related to the same occurrence that gave rise to the settlement agreement. SCPA filed a Motion to Dismiss Respondent's suit on the basis the suit was barred under the doctrine of sovereign immunity and Section 15-78-70(d) of the South Carolina Code. The Circuit Court denied SCPA's Motion to Dismiss and SCPA timely filed a Motion to Reconsider, which was also denied. As a result, SCPA has filed this appeal.

III. GOVERNING STANDARD FOR INTERLOCUTORY APPEALS

Under Rule 203(b)(1), SCACR, appeals generally lie only from final judgments, unless an interlocutory order affects a substantial right. South Carolina appellate courts recognize that an interlocutory order affects a substantial right where postponement of appellate review until final judgment would defeat the right asserted or render it incapable of adequate protection. *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 333, 426 S.E.2d 777, 779 (1993).

A "substantial right" is one that cannot be adequately protected by appeal from final judgment. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 111-12, 662 S.E.2d 40, 42 (2008); *see* S.C. Code Ann. § 14-3-330(2). Where an interlocutory order conclusively determines a legal issue and delaying review would defeat the right asserted, immediate appellate review is appropriate. *Mid-State Distribs.*, 310 S.C. at 333, 426 S.E.2d at 779.

Thus, the focus of the appealability inquiry is not whether the underlying case remains pending, but whether the order finally resolves an issue that cannot be meaningfully reviewed after final judgment.

IV. THE DENIAL OF SOVEREIGN IMMUNITY IMPLICATES A SUBSTANTIAL RIGHT

A. Sovereign Immunity Protects Against Suit Itself

South Carolina law treats sovereign immunity as jurisdictional in nature. *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 333, 566 S.E.2d 536, 545 (2002). Specifically, the Court in *Faile* stated that South Carolina law treats sovereign immunity as a limitation on the authority of the courts to entertain suit against a governmental entity absent an express statutory waiver. *Id.* Because sovereign immunity limits the Court's authority to proceed, the denial of an immunity defense bears directly on whether a governmental entity may be required to continue defending an action notwithstanding its assertion of immunity. Any waiver of sovereign immunity must be strictly construed in favor of the governmental entity. *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999).

Because sovereign immunity operates as a limitation on the court's authority to entertain suit, an order conclusively rejecting a governmental entity's immunity defense determines, as a practical matter, whether the entity must continue defending the action notwithstanding its assertion of immunity. *Faile*, 350 S.C. at 333, 566 S.E.2d at 545 (2002). Where a court has required a governmental entity to proceed through litigation after rejecting an immunity defense, the jurisdictional protection asserted is at risk of being undermined in a manner that may not be adequately remedied through post-judgment review.

Accordingly, where, as here, the Circuit Court conclusively rejects a governmental entity's assertion of sovereign immunity and declines to dismiss it from the action, the resulting order implicates a substantial right that may not be adequately protected by appeal from final judgment. *Mid-State Distribs.*, 310 S.C. at 333, 426 S.E.2d at 779.

B. Section 15-78-70(d) Confirms the Substantial Nature of The Right at Issue

The SCTCA further underscores the substantial nature of the right asserted by SCPA. Section 15-78-70(d) provides that when a claimant enters into a settlement "under this chapter," the settlement "constitutes a **complete bar to any action**" against the governmental entity arising out of the same occurrence. S.C. Code Ann. § 15-78-70(d) (emphasis added).

By employing mandatory and absolute language, providing that a qualifying settlement "constitutes a complete bar to any action" § 15-78-70(d) operates to foreclose further litigation against a governmental entity once the statute applies. In denying SCPA's Motion to Dismiss and Motion to Reconsider, however, the Circuit Court conclusively determined, as a matter of law, that the settlement agreement executed by Plaintiffs did not constitute a settlement "under this Act," notwithstanding that SCPA was *expressly named* as a party in the settlement agreement. In this case, the Circuit Court conclusively determined, as a matter of law, that § 15-78-70(d) does not apply and SCPA must remain in litigation. The Circuit Court's determination fully and finally resolves SCPA's statutory immunity defense and leaves no further issue for the Circuit Court to decide with respect to the availability of the statutory bar.

In fully and finally ruling against SCPA, the Circuit Court misinterpreted and misapplied *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), *Wade* to resolve, as a matter of law, the availability of the statutory bar under § 15-78-70(d) to conclude that because the settlement was funded by a private insurer and characterized as a covenant not to execute, it could not, as a matter of law, constitute a settlement "under the Act" for purposes of § 15-78-70(d). In Wade v. Berkeley County, the South Carolina Supreme Court held that a covenant not to execute is a "settlement between the parties to the agreement" triggering the application of § 15-78-70(d). 348 S.C. 224, 228, 559 S.E.2d 586, 587-88 (2002). The Supreme Court held that "while a covenant

not to execute is not a release, it is nonetheless a settlement between the parties to the agreement" and that the court of appeals erred in ruling that § 15-78-70(d) does not apply to covenants not to execute. Id. at 229, 559 S.E.2d at 587.

But South Carolina law does not elevate form over substance in determining whether an agreement constitutes a settlement. Courts have recognized that covenants not to execute are treated as settlement agreements where they resolve liability arising from the same occurrence, even if payment is sourced from insurance or structured to preserve claims against other parties. In this case, the Circuit Court concluded that the agreement at issue could not constitute a settlement "under the Act" because it was characterized as a covenant not to execute and funded by a private insurer. That legal determination, based on the label and funding mechanism of the agreement rather than its operative effect, was dispositive of SCPA's statutory immunity defense under § 15-78-70(d) and left no further issue for the Circuit Court to resolve on that question.

Furthermore, the *Wade* case is primarily distinguishable from the current facts because the governmental entity was not named on the settlement agreement in *Wade*. Here, SCPA was named in the settlement agreement as a party to the settlement agreement. The Circuit Court's focus on the payor in *Wade* is misplaced and is not a consideration applicable to the § 15-78-70(d) analysis. Because § 15-78-70(d) provides that a qualifying settlement "constitutes a complete bar to any action" against a governmental entity, the statute operates to foreclose further litigation when it applies S.C. Code Ann. § 15-78-70(d). Where, as here, a Circuit Court conclusively rejects the applicability of that statutory bar based on its construction of governing precedent and the language of the settlement agreement itself, delaying appellate review until after final judgment risks depriving the governmental entity of a right that may not be adequately protected by post-judgment appeal. *Town of Summerville*, 378 S.C. 107, 111-12, 662 S.E.2d at 42 (2008).

V. THE ORDERS ARE FINAL AS TO THE IMMUNITY ISSUE

Although the underlying action remains pending, the orders denying SCPA's Motion to Dismiss and Motion to Reconsider are final as to the issue of sovereign immunity. The Circuit Court did not reserve the issue, defer its ruling, or identify any further factual development relevant to immunity. Instead, the court conclusively rejected SCPA's assertion of sovereign immunity and declined to dismiss SCPA from the action, leaving no further immunity-related issue for the Circuit Court to decide. That rejection rested on the Circuit Court's definitive construction of § 15-78-70(d) and its determination that the settlement agreement could not, as a matter of law, trigger the statutory bar.

An interlocutory order is immediately appealable if it finally determines a substantial matter forming the whole or a part of a cause of action or defense. *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 333, 426 S.E.2d 777, 779 (1993). Here, postponing review would require SCPA to continue litigating claims it contends are barred as a matter of jurisdiction, thereby risking irreparable loss of the asserted immunity.

Federal caselaw is in accord. Under federal law, the denial of sovereign immunity of a state, as reflected in the Eleventh Amendment, is an immediately appealable issue. *Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993).

Neighboring states similarly recognize the importance of sovereign immunity and allow immediate appeals of the denial of its recognition. *Craig ex rel. Craig v. New Hanover Cty. Bd. of Educ.*, 363 N.C. 334 (N.C. 2009) (denial of sovereign immunity is a substantial right and immediately appealable); *Richmond Cty. Bd. of Educ. V. Cowell*, 225 N.C. App. 583 (Ct. App. N.C. 2013) (same); Ga. St. § 5-6-34(a)(15) (providing an immediate appeal from the denial of sovereign immunity); Fla. R. App. Proc. 9.130(a)(3)(C)(xi) (providing an immediate appeal from

the denial of sovereign immunity). As a result, the orders denying SCPA's sovereign immunity defense are final orders on the issue of sovereign immunity.

VI. POSTPONING REVIEW WOULD IRREPARABLY UNDERMINE PUBLIC POLICY

Considerations of public policy further support immediate appellate review of orders that conclusively reject a governmental entity's assertion of sovereign immunity, particularly where delaying review would require the expenditure of public resources on litigation that may ultimately be barred as a matter of law. Sovereign immunity reflects the principle that the scope of the State's exposure to suit is determined by legislative choice rather than judicial expansion. The South Carolina Supreme Court has explained that the scope of sovereign immunity and any waiver thereof is determined by the General Assembly, and that statutory waivers of immunity must be strictly construed. *Steinke*, 336 S.C. at 396, 520 S.E.2d at 154.

VII. CONCLUSION

The Circuit Court's orders denying SCPA's Motion to Dismiss and Motion to Reconsider conclusively reject SCPA's assertion of sovereign immunity and a statutory bar under the SCTA. Sovereign immunity is a substantial right that protects governmental entities from suit itself, not merely from liability. The Circuit Court's definitive determination that the settlement agreement at issue was not entered "under the Act" conclusively forecloses the statutory immunity defense absent appellate review. That right will be irreparably lost if appellate review is delayed until final judgment. Accordingly, the orders are immediately appealable under Rule 203(b)(1) SCACR, and this Court has jurisdiction to consider SCPA's appeal.

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Respectfully submitted,

s/ Nicholas C.C. Stewart
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January 22, 2026
Charleston, South Carolina

EXHIBIT

A

SETTLEMENT AGREEMENT

This Agreement and Covenant Not to Execute is entered and agreed between **American Millenium Insurance Company**, as liability insurance carrier for **Randy David Anderson, Jolly Ehiabhi, and Anagkaso LLC DBA Anagkaso Logistic, and SC Ports Authority** (jointly "Covenanteess"), **Randy David Anderson, Jolly Ehiabhi, Anagkaso LLC DBA Anagkaso Logistic, and South Carolina Ports Authority** ("Insured"), and **Delores Holloway** ("Claimant").

WITNESSETH

WHEREAS, Delores Holloway suffered bodily injuries from an automobile accident that occurred on January 25, 2023. Claimant asserts that Insureds were at fault in causing the accident, which resulted in the injuries and damages sustained by Claimant, and that Claimant is legally entitled to recover damages from Insureds in a sum in excess of One Million Dollars and No/100 ($1,000,000.00); and

WHEREAS, Insureds had in force and effect at the time of the accident a policy of insurance with American Millenium Insurance Company insuring them against loss from liability imposed by law for damages arising out of the use of the automobile involved in the accident, with liability coverage limits of One Million Dollars and No/100 ($1,000,000.00) for each accident; and

WHEREAS, Claimant believes that other insurance policies may provide underinsured motorist coverage benefits, additional liability coverage (e.g. insurance upon the trailer), and/or excess liability coverage; and

WHEREAS, Claimant and American Millenium Insurance Company have negotiated in an attempt to settle Claimant's claim against Insureds wherein American Millenium Insurance Company will pay Eight Hundred, Twelve Thousand, Four Hundred, Fourteen Dollars and Ninety-Six Cents ($812,414.96) of the liability policy limit and coverage to Claimant to obtain a release from Claimant from all claims that have been or may be asserted against Insureds on account of Claimant's bodily injuries and damages; but Claimant is unwilling to provide a release that might be construed to prevent the prosecution of a claim for underinsured motorist coverage benefits, additional liability coverage and/or excess liability coverage(s); and

WHEREAS, Claimant and Covenantees have now agreed on a settlement pursuant to which Covenantees will pay to Claimant Eight Hundred, Twelve Thousand, Four Hundred, Fourteen Dollars and Ninety-Six Cents ($812,414.96) of the liability insurance coverage in consideration for Claimant agreeing to forego any action or proceeding on account of bodily injuries and/or damages that will result in Insured becoming personally liable to pay Claimant or anyone claiming on behalf of Claimant any sum in excess of all liability and or underinsured insurance coverage

limit(s), and for Claimant agreeing to apply such insurance coverage limit(s) in full and complete satisfaction of any and all claims against Covenantees and to protect Covenantees from any loss on account of any claim or judgment based on or arising from Claimant's bodily injuries and damages.

NOW, THEREFORE, Claimant, for and in consideration of the sum of Eight Hundred, Twelve Thousand, Four Hundred, Fourteen Dollars and Ninety-Six Cents ($812,414.96), the receipt and sufficiency of which is acknowledged, agree and covenant as follows:

1. Claimant will not attempt to collect any sum directly from Covenantees by any means, including, but not limited to, execution on or other enforcement of any judgment rendered against Insureds; however, Claimant reserves the right to attempt to establish that Claimant is legally entitled to recover damages from Insureds for bodily injuries, this part of Claimant's undertaking only precluding Claimant from attempting to collect any damages or any other sum directly from Covenantees and/or their assets, or doing anything that would confer such a right on any other person, including, but not limited to, Claimant's underinsured motorist coverage insurance carrier or other liability insurance carrier(s). However, no provision contained herein releases any rights of Claimant against any underinsured motorist carrier, additional liability carrier, and/or excess liability insurance carrier(s).

2. Claimant, individually and for all heirs, personal representatives, assigns, and all other persons claiming or who may claim under or through them, will execute and deliver to Insureds their heirs, personal representatives, and assigns, a full, complete, and unconditional release and full discharge from any and all liabilities, claims, actions, and causes of action of any kind whatsoever on account of Claimant's bodily injuries or other damages, known or unknown, which have resulted or may in the future develop from this accident, upon the occurrence of the earliest to occur of the following events:

A. Settlement of all Claimant's claims for underinsured motorist coverage proceeds, additional liability, and/or excess liability proceeds, and receipt of all such payment(s);

B. Final adjudication of all Claimant's claims to recover underinsured motorist coverage proceeds, additional liability proceeds, and/or excess liability proceeds, and receipt of payment;

C. Final adjudication that Claimant is not entitled to recover underinsured motorist coverage proceeds, additional liability, and excess liability proceeds;

D. Abandonment of Claimant's claims for underinsured motorist coverage benefits, additional liability, and excess liability proceeds; or

E. Expiration of a period of one year after entry of any judgment by Claimant against Insured arising from the motor vehicle accident described above.

If a judgment against Insureds (individually or jointly) for damages arising out of Claimant's bodily injuries or other damages has been entered before the occurrence of the earliest to occur of the foregoing events, Claimant will satisfy the judgment or cause it to be satisfied upon the occurrence of the earliest to occur of those events and will at that time file with each clerk of court in whose office the judgment has been filed such certificate as may be necessary to procure the entry of satisfaction upon the public records of such judgment. Furthermore, Claimant will, immediately upon request execute and deliver such other and further documents as may be required by Insured to demonstrate, record, confirm, and/or effectuate the satisfaction of such judgment.

3. Claimant will not cause to be enrolled or otherwise entered any judgment against Insureds in an amount in excess of the applicable liability coverage paid by or on behalf of Covenantees under this Agreement plus the amount of any underinsured motorist coverage, additional liability coverage, and/or excess liability coverage proceeds claimed to be available and/or received by Claimant. If any judgment is entered, Claimant will promptly satisfy that portion of the judgment with respect to the applicable liability coverage paid by or on behalf of the Covenantees under this Agreement, and will file a certification of such partial satisfaction with each clerk of court in whose office the judgment is enrolled to be entered on the face of the judgment. If a judgment against an Insured is entered in excess of the applicable liability coverage paid by or on behalf of Covenantees under this Agreement, Claimant will promptly satisfy the judgment with respect to such excess and will file a certification of such satisfaction with each clerk of court in whose office the judgment is enrolled to be entered on the face of the judgment, upon the occurrence of the earliest to occur of those events listed in paragraph 2 above.

4. Claimant understands and further agrees and covenants that Covenantees has not admitted and do not admit liability for or fault in the collision or with respect to Claimant's bodily injuries and damages. Nothing in this Agreement and Covenant Not to Execute shall be construed to prevent Insured from defending against any claim of Claimant. Nothing in this Agreement and Covenant Not to Execute shall be construed to prevent Insured from asserting claims or demands, by suit or counterclaim or otherwise against Claimant or any other person, or any damages sustained by Insured in the accident; and this Agreement and Covenant Not to Execute may not be used in any way against Covenantees.

5. Claimant acknowledges and understands that certain liens may exist on these settlement proceeds, such as liens arising from medical services and/or treatment rendered by various medical providers. In further consideration of the sum paid, Claimant agrees that any and all outstanding liens will be satisfied out of these proceeds, specifically including but not limited to any lien held by the government of the United States or by the State of South Carolina, pursuant to any Medicare or Medicaid program. Claimant expressly stipulates and agrees to hold forever harmless Covenantees from any and all actions, causes of action, demands and/or claims of any nature whatsoever which may be made or instituted by any such lienholders for the purpose of enforcing any lien attaching to these settlement proceeds.

6. Claimant understands and acknowledges that neither Insureds, American Millenium Insurance Company, nor any person representing or claiming to represent them has made any representation or statement that (a) Claimant has a claim for underinsured motorist coverage, additional liability insurance coverage, and/or excess liability insurance coverage, (b) the settlement here in evidence will not affect such a claim for underinsured motorist coverage, additional liability coverage, and/or excess liability coverage, or (c) this Agreement and Covenant Not to Execute will protect Claimant from any successful assertion by Claimant's underinsured motorist carrier, additional liability insurance, and/or any excess liability insurance carrier of any defense to Claimant's claim for such coverage. Claimant agrees not to assert any claim against Covenantees or any person or entity representing them on account of this Agreement and Covenant Not to Execute.

7. Claimant understands and further covenants and agrees that this Agreement and Covenant Not to Execute shall and does constitute a release and satisfaction of any lien that might otherwise arise or attach by reason of entry of a judgment against Covenantees as a result of the bodily injuries or other damages sustained by Claimant. This instrument may be pleaded as a complete satisfaction of any judgment against Insureds and as a complete bar to and release of any claim against the assets of Insureds. No future action or inaction by Insured, except express revocation and renunciation of this instrument, may be construed as a relinquishment, waiver, or abandonment of the rights, benefits, and effects of this Agreement and Covenant Not to Execute.

8. Notwithstanding anything to the contrary, Claimant does not waive, limit, or release in any way any potential liability insurance carrier and/or underinsured motorist carrier because of the terms and conditions stated herein.

9. All agreements and understandings between the parties hereto are embodied and expressed herein and the terms of this Agreement and Covenant Not to Execute are contractual and are not mere recitals. Claimant further acknowledges

and represents that Claimant has read this Agreement and Covenant Not to Execute and understands it to be a full, final, and binding agreement. If, after the execution of this instrument, any provision or the application thereof to any party or circumstance shall, to any extent, be or become invalid or unenforceable, the remainder of these provisions shall not be affected thereby and every other provision of this instrument shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF Claimant executes this Agreement and Covenant Not to Execute on ***October 18***, ***2024***.

Delores Holloway

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

David P. Caraker, Jr., Circuit Court Judge

APPELLATE CASE NO. 2006-000074

Delores Holloway .....Respondent,

v.

The South Carolina Ports Authority .....Appellant.

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, and Order No. 2024-04-24-01(d), I certify that I have served the Memorandum Regarding Appealability of Interlocutory Order on all counsel of record by electronic mail to the Respondent's counsel of record utilizing counsel's primary email address listed in the Attorney Information System, on January 22, 2026, as follows:

Toyya Brawley Gray at toyya@brawleygraylaw.com

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