THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable David P. Caraker, Jr.

APPELLATE CASE NO. 2026-000075

Sherica Powell .....Respondent,

v.

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

RESPONDENT'S MEMORANDUM REGARDING APPEALABILITY OF INTERLOCUTORY ORDER

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S.C. Code Ann. § 14-3-330(2)

S.C. Code Ann. § 15-78-70(d)

Court Rules

Rule 12(b)(6), SCRCP

Rule 59(e), SCRCP

Rule 203(b)(1), SCACR

Respondent Sherica Powell respectfully submits this Memorandum in response to this Court's Order directing the parties to address the appealability of the interlocutory orders entered below.

INTRODUCTION

This appeal arises from the Circuit Court's denial of Appellant South Carolina Ports Authority's ("SCPA") Motion to Dismiss and subsequent Motion to Reconsider.

At its core, SCPA seeks interlocutory review of a Rule 12(b)(6) ruling rejecting its statutory complete-bar defense under S.C. Code Ann. § 15-78-70(d). The Circuit Court did not deny sovereign immunity as a jurisdictional matter. It did not expand the waiver of governmental immunity under the South Carolina Tort Claims Act ("SCTCA"). It did not hold SCPA subject to suit outside the Act.

Instead, the court determined that the October 19, 2024, Covenant Not to Execute, funded and executed by a private insurer, did not constitute a settlement "under the Act" for purposes of § 15-78-70(d).

Because that ruling can be fully reviewed and corrected, if necessary, on appeal from final judgment, it does not affect a substantial right under Rule 203(b)(1), SCACR. This Court therefore lacks jurisdiction.

STATEMENT OF RELEVANT PROCEDURAL BACKGROUND

On January 24, 2023, Respondent was seriously injured in a multi-vehicle collision in Georgetown County.

On October 19, 2024, Respondent executed a settlement agreement and covenant not to execute with American Millennium Insurance Company ("AMIC"), the liability insurer for the tractor-trailer driver and his employer. The agreement was funded entirely by AMIC.

On January 24, 2025, Respondent filed suit against the driver, his employer, and SCPA.

SCPA moved to dismiss, asserting that because it was named in the settlement agreement as an insured/covenantee, § 15-78-70(d) barred further action.

On October 13, 2025, the Circuit Court denied the Motion to Dismiss, concluding that the settlement was funded and executed by a private insurer pursuant to an indemnity relationship and was therefore "not under the Tort Claims Act."

On December 29, 2025, the Circuit Court denied SCPA's Rule 59(e) Motion to Reconsider, explaining that naming a governmental entity in a private insurance settlement does not convert that agreement into a settlement "under the Act," and that "the settlement itself must be entered pursuant to the Tort Claims Act, which did not occur here."

SCPA filed a Notice of Appeal from those interlocutory orders and now seeks immediate appellate review.

STANDARD GOVERNING INTERLOCUTORY APPEALS

Under Rule 203(b)(1), SCACR, appeals generally lie only from final judgments.

An interlocutory order is immediately appealable only if it affects a substantial right. A substantial right is one that cannot be adequately protected by appeal from final judgment. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 111–12, 662 S.E.2d 40, 42 (2008).

The party seeking interlocutory review bears the burden of demonstrating that postponement of appellate review would defeat the right asserted or render it incapable of adequate protection. *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 333, 426 S.E.2d 777, 779 (1993).

ARGUMENT

I. The Circuit Court's Orders Are Rule 12(b)(6) Merits Determinations

SCPA characterizes the orders as denials of sovereign immunity. The record reflects otherwise.

SCPA raised § 15-78-70(d) through a Rule 12(b)(6) motion to dismiss. The Circuit Court evaluated the statutory text, the settlement agreement, and the holding in *Wade v. Berkeley County*, 348 S.C. 224, 230, 559 S.E.2d 586, 588-89 (2002), and concluded that the agreement did not constitute a settlement "under the Act."

The court did not hold that sovereign immunity was waived beyond the SCTCA. It did not conclude that SCPA lacks immunity generally. It ruled that SCPA failed to establish the statutory elements necessary to invoke § 15-78-70(d).

That is a merits determination concerning application of a statutory defense, not a ruling depriving SCPA of jurisdictional immunity from suit.

South Carolina law does not recognize automatic interlocutory appeals from every denial of a governmental immunity defense. The cases SCPA cites, such as *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002), and *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), address sovereign immunity on appeal from final judgment, not interlocutory orders.

II. SCPA's Reliance on Federal and Out-of-State Authority Does Not Establish Appealability Under South Carolina Law

SCPA relies heavily on federal collateral-order doctrine cases, including *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993), involving Eleventh Amendment immunity in federal court.

South Carolina appellate jurisdiction is governed by Rule 203(b)(1), SCACR, and S.C. Code Ann. § 14-3-330(2), not by the federal collateral-order doctrine.

The Eleventh Amendment implicates federal subject matter jurisdiction in a way distinct from the SCTCA. South Carolina courts have not adopted a categorical rule permitting interlocutory appeals from denial of governmental immunity.

Similarly, decisions from North Carolina, Georgia, and Florida reflect policy choices of those jurisdictions. They do not alter South Carolina's restrictive approach to interlocutory appeals.

III. Postponement of Review Will Not Defeat Any Substantial Right

The dispositive inquiry is whether delaying review until final judgment would irreparably destroy SCPA's asserted right or render it incapable of adequate protection. It would not.

If SCPA ultimately prevails on its § 15-78-70(d) defense, this Court can reverse any adverse judgment and direct dismissal. The statutory defense will remain fully available on appeal from final judgment.

The mere burden of litigation, standing alone, does not constitute a substantial right warranting immediate appeal under Rule 203(b)(1). See *Town of Summerville*, 378 S.C. at 111-12.

Every defendant who loses a motion to dismiss must proceed with litigation. That reality does not render interlocutory review appropriate.

Allowing immediate appeals from every denial of a sovereign immunity motion would significantly erode the finality rule and invite piecemeal litigation, particularly in cases involving governmental entities. South Carolina has consistently declined to expand interlocutory review absent clear direction from the Supreme Court.

IV. Section 15-78-70(d) Does Not Transform This Ruling Into an Immediately Appealable Order

Section 15-78-70(d) provides that a qualifying settlement "constitutes a complete bar to

any further action." That language describes the effect of the defense if established. It does not address appellate jurisdiction.

Many affirmative defenses, such as statute of limitations, res judicata, or collateral estoppel, operate as complete bars when proven. Denial of those defenses is not immediately appealable.

SCPA's disagreement with the Circuit Court's interpretation of *Wade* and application of § 15-78-70(d) presents a classic merits issue suitable for review after final judgment. Even if the Circuit Court erred, that error can be fully corrected at that time.

CONCLUSION

The Circuit Court's orders denying SCPA's Motion to Dismiss and Motion to Reconsider are interlocutory rulings on a Rule 12(b)(6) statutory defense. They do not deprive SCPA of jurisdictional immunity, do not expand the waiver of sovereign immunity under the SCTCA, and do not affect a substantial right that cannot be adequately protected by appeal from final judgment.

Because postponement of review will not defeat SCPA's asserted right or render it incapable of adequate protection, this Court lacks jurisdiction under Rule 203(b)(1), SCACR. Respondent respectfully requests that the appeal be dismissed.

Respectfully submitted,

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February 14, 2026
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Feb 17 2026
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PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, and Order No. 2024-04-24-01(d), I certify that a true and correct copy of Respondent's Memorandum Regarding Appealability of Interlocutory Order was served upon Appellant, through Appellant's counsel of record, by electronic mail transmission to counsel's primary email addresses as listed in the Attorney Information System on February 14, 2026, as follows:

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