THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, Circuit Court Judge

Case No. 2014-CP-10-07038
Appellate Case No. 2019-000833

Wendy C.H. Wellin, ... Respondent,

v.

Peter Wellin, Cynthia W. Plum, and Marjory W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/b November 2, 2009, ... Appellants,

v.

Wendy C.H. Wellin, Individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001, Hamilton College, Keith S. Wellin Florida Revocable Living Trust, Campbell Hart, and Heather Lane, ... Respondents,

In the Matter of: Keith S. Wellin.

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

Pursuant to Rules 219(b), 221(a), and 240, SCACR, Appellants Peter Wellin, Cynthia W. Plum, and Marjory W. King (collectively the "Wellin Children") request rehearing or rehearing *en banc* of the Panel's June 13, 2019 order dismissing this appeal and denying the Wellin Children's emergency Petition for a Writ of Supersedeas. The Wellin Children respectfully submit that the Panel overlooked or misapprehended the procedural history of this case, the nature of the circuit court's Order being challenged on appeal, and the parallels between the instant appeal and the Supreme Court's holding in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C.

534, 538–39, 773 S.E.2d 144, 146 (2015). In addition, the Panel seemingly failed to consider several of the Wellin Children's arguments as to why the circuit court's Order was immediately appealable, and overlooked the Rules' clear mandate and justifications for enforcing the automatic appellate stay until the Wellin Children have exhausted their appellate remedies. Accordingly, the Wellin Children respectfully request this Court withdraw the Panel's order of dismissal, reinstate the appeal, and stay the trial below until a remittitur has been issued.

ARGUMENT[1]

The Panel's dismissal of this appeal overlooked or misapprehended the facts, issues, and relevant procedural posture of this case, and the way in which this case parallels the situation presented in *Morrow*. Further, the Panel's denial of the Petition for a Writ of Supersedeas overlooked the plain language of the applicable Court Rules and the sound policy reasons supporting those rules. Each is explained in turn below.

I. The Panel's dismissal of the appeal overlooked or misapprehended relevant facts and controlling law.

The Wellin Children asserted in their prior briefing, and reassert now, that this case is, from a procedural standpoint, precisely analogous to *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the circuit court issued an order purporting to bifurcate the trial of the plaintiffs' claims, permitting only certain claims to proceed against certain defendants but indicating the outcome of those claims might be dispositive of other untried claims. *Id.* at 536, 773 S.E.2d at 145. The plaintiffs appealed the order and this Court

[1] This Petition presumes the readers' familiarity with the relevant factual and procedural background set out on pages 2–5 of the Wellin Children's Return to the Motions to Dismiss filed on June 7, 2019, and discussed in *Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019), *available at* 2019 WL 2313587, which is a recently-decided appeal in a related matter arising from a related dispute between the same parties.

dismissed the appeal finding that the order was not immediately appealable. *Id.* The plaintiffs then petitioned the South Carolina Supreme Court for a writ of certiorari, which the Court granted. *Id.* The Supreme Court held the trial court's order—though styled as one for bifurcation—was immediately appealable because it "affect[ed] a substantial right" by effectively granting "potential" summary judgment on certain issues not included in the truncated trial and depriving plaintiffs of their substantive right to be the architects of their case. *Id.* at 538–39, 773 S.E.2d at 146. Specifically, the Supreme Court indicated that the immediately appealable error in *Morrow* was that the trial court intended for one trial before one jury on one set of claims against one party to be potentially dispositive of a different set of claims against different parties implicating potentially different standards and burdens of proof. *See id.* at 539, 773 S.E.2d at 146.

In the instant litigation, the circuit court's May 15, 2019 Order commits the same error as in *Morrow*. The Order granted a motion by the Estate (*i.e.*, the decedent's fourth wife, Wendy) to "bifurcate" the trial and stated the trial would "decide the issues of undue influence and testamentary capacity for the relevant period of time." The Order, however, is not a bifurcation order in any normal sense. Rather, the circuit court's Order expressly prohibits the Wellin Children from pursuing their counterclaims during the trial and, instead, holds that the jury's findings on the issues of capacity and undue influence—which involve different elements and different burdens of proof than the Wellin Children's counterclaims against Wendy—will "likely" be dispositive of certain unspecified portions of "the federal litigation."[2] *See* Circuit Court Order (May 15, 2019) at 3–4. As the Supreme Court held in *Morrow*, any order—regardless of how it is named—that effectively grants judgment on or disposes of certain claims excluded from a

[2] Litigation pending in federal court is largely overlapping with the state court litigation and includes all of the Wellin Children's claims against Wendy.

truncated trial is immediately appealable because it deprives the plaintiffs of their substantive right to be the architects of their own case. *See* 412 S.C. at 538–39, 773 S.E.2d at 146.

Furthermore, in *Morrow*, the South Carolina Supreme Court held that, "[t]o prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal." *Morrow*, *Id.* at 539, 773 S.E.2d at 146–47. Likewise, in this case, preventing the Wellin Children from appealing the order immediately would encourage piecemeal litigation because, after this truncated trial, the losing party would be forced to appeal (without waiting to see whether, when, and how any future phases of trial might proceed) or else waive their rights to do so. *See Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868, 870 (2019) (upholding appeal "following a bifurcated hearing [in which] a claim or defense has been finally determined."). And if the appellate court(s) decided the supposedly "bifurcated" trial was improper, the parties would be required to relitigate those issues again—at substantial cost and time to the court and the parties—in a proper trial.

The Panel's misapprehension of the facts and law in the instant appeal is apparent from its statement in the June 13, 2019 order dismissing the appeal that "[t]his case is distinguishable from *Morrow* as the underlying bifurcation order in this case does not state or even suggest that the first phase of the bifurcated trial will be dispositive of any claim tried in the second phase of the trial." (Order of Dismissal p. 2.) The fact that the circuit court's order does not discuss a second phase of trial, however, actually *supports* the immediate appealability of that order. Neither the circuit court's order nor any other pronouncement from the circuit court has discussed whether there will be a second phase of trial *because the circuit court and the opposing parties believe the truncated trial on the severed issues may be dispositive of the entire case* and any subsequent trial on the untried claims will be unnecessary. *See, e.g.*, Circuit Court Order (May 15, 2019) at 3–4

(anticipating the trial of the severed claims could be dispositive of other claims between the parties); Estate's Mem. in Supp. of the Mot. to Bifurcate at 7 (arguing that severing the trial of the claims in this way would "streamline" the remainder of the case and that the first trial "could be dispositive of the entire case");[3] *id.* at 8 (arguing the trial of the two claims with the more onerous burden for the Wellin Children could also be dispositive of "the Wellin Children's individual tort claims against Mrs. Wellin"); Hearing Tr., at 27:25 to 28:1 (Feb. 11, 2019) (attorney for Wendy arguing that, if Wendy and the Estate are successful during the severed trial, "it eviscerates the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy);[4] *id.* at 42:23 to 43:1 (Judge Addy recognizing that if the issue of undue influence were tried separately from the Wellin Children's tort claims, the resulting trial of the former would "do it in one step and it has an effect. That's your entire case").

Another parallel between *Morrow* and the instant suit is that the circuit court's order "prevent[s] [the Wellin Children] from being architects of their own complaint, and deprives them of bringing their case against the defendant of their choosing." *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. Wendy, the person the Wellin Children are suing and from whom the Wellin Children are seeking to recover, will have no claims asserted against her during the first phase of trial. Further, the circuit court's Order forces the Wellin Children into a Hobson's choice of either (i) choosing to introduce evidence, arguments, and witnesses to support their position on the issues of undue influence and incapacity, knowing that if the jury rules against them they might be precluded from "relitigating" those facts in a subsequent trial of their tort claims against Wendy,

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[3] The Estate's memorandum was attached to the Wellin Children's Return to the Motions to Dismiss as Exhibit D.

[4] The transcript of the hearing on the Estate's Motion to Bifurcate was attached to the Wellin Children's Return to the Motions to Dismiss as Exhibit E.

or (ii) choosing instead to reserve those arguments, evidence, and facts for a possible future tort and breach of contract trial, and thus be hamstrung in their prosecution of the issues of incapacity and undue influence, which are based on the same evidence as the Wellin Children's tort and breach of contract claims. The Hobson's Choice effect of the Order is particularly important because these choices will be pervasive throughout the trial. Counsel for the Wellin Children will have to choose as to each piece of evidence whether to present it to maximize the chance of prevailing in the present or holding it back to mitigate the risk of a possible future finding that a fact was "actually litigated" and hence gives rise to collateral estoppel in a future trial. Preservation of a record as to these choices that would enable the appellate courts in the future to provide a meaningful review would pose potentially unsurmountable challenges. It would be similar to disqualification of counsel, which the Supreme Court has found is immediately appealable because it is "one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken." *Hagood v. Sommerville*, 362 S.C. 191, 197–98, 607 S.E.2d 707, 710 (2005).

The Panel's order of dismissal misapprehended yet another aspect of *Morrow*. Specifically, the Panel believed the instant appeal "is distinguishable from *Morrow* as the underlying bifurcation order in this case does not state or even suggest that the first phase of the bifurcated trial will be dispositive of any claim tried in the second phase of trial . . . ." (Order at 2.) This supposed distinction, however, is actually a point of *similarity* between this case and *Morrow*. The trial court's order in *Morrow* (like the circuit court's Order here) did not expressly and definitively state that summary judgment would be granted as to certain claims after the initial trial. Rather, the effect of the *Morrow* "bifurcation" order was merely the "*potential*" to dispose of untried claims.

Morrow, 412 S.C. at 538–39, 773 S.E.2d at 146 (emphasis added).[5] Here too, the circuit court's order is premised on what it believes to be a likelihood that the truncated trial might be dispositive of untried claims. Indeed, the circuit court held that its "bifurcation" order "will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation." Circuit Court Order (May 15, 2019) at 4. But the bifurcation will only promote efficiency and economy if the first phase of trial *is* dispositive of certain claims that are not tried. That is, the circuit court's order either promotes efficiency and disposes of certain untried claims, or it is entirely inefficient because the same claims will be tried twice. The Panel's Order failed to address this critical point.

In sum, the circuit court's order is immediately appealable pursuant to the Supreme Court's opinion in *Morrow*, and this Court should reinstate the appeal.

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[5] This point was a salient one to the Supreme Court. During the oral argument in *Morrow*, the Supreme Court asked counsel for the parent corporations—*i.e.*, the parties who had obtained the "bifurcation" order and who were arguing that it was not immediately appealable—whether he would stipulate that, if the plaintiffs lost the first phase of trial, the plaintiffs nevertheless would have the right to pursue their claims against the corporate defendants. *See Morrow* Oral Argument Tr., at 19:25 – 20:6 (January 13, 2015) (attached as Exhibit H to the Wellin Children's Return to the Motions to Dismiss). Counsel would not so stipulate. *See id.* at 20:5. Of course, this question would not have made any sense if the Supreme Court interpreted the trial court's order as one that actually granted summary judgment—as opposed to granting "potential" summary judgment—as to certain claims that would not be litigated in the first phase of trial. Here too, Wendy not only refuses to stipulate that the Wellin Children will be permitted to pursue all their claims against her even if the Wellin Children lose the first phase of trial; she also argues the Wellin Children losing the first phase of trial would "eviscerate[] the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy. *See* Hearing Tr., at 27:25 to 28:1 (attached as Exhibit E to the Wellin Children's Return to the Motions to Dismiss); *see also* Memorandum in Support of Motion to Bifurcate (attached as Exhibit D to the Wellin Children's Return to the Motions to Dismiss), at 7 (Wendy as Special Administrator arguing that the first trial "could be dispositive of the entire case").

II. The Panel overlooked the Wellin Children's arguments that the Order below violated due process, deprived them of a mode of trial, and effectively struck a portion of their pleadings.

The Panel also overlooked or misapprehended the Wellin Children's argument that the circuit court's orders being challenged on appeal violate their due process rights and deny them a mode of trial by effectively denying them a meaningful and substantive jury trial. *See generally* Wellin Children's Return to the Motions to Dismiss at 18–23. The Panel's Order dismissing the appeal fails to mention this argument at all. The trial court's imposition of an arbitrarily-chosen, unsupported, and grossly-insufficient time limit on the trial was based not on any understanding or analysis of the number of witnesses and exhibits, but rather was merely an unvarnished effort to force a settlement or to pressure the parties to "elect" a nonjury trial. *See id.* Additional comments made by the circuit court less than 24 hours before the Panel dismissed the instant appeal further confirm the Wellin Children's arguments.[6] *See* Hearing Tr. at 10 (June 12, 2019) (attached hereto as **Exhibit A**) (Judge Addy: "I really think it would behoove everybody . . . to give serious consideration to doing this nonjury because that will prevent us from being limited to the two weeks that I am going to permit in this particular case."); *id.* at 12 (Judge Addy: "If you all want to do this as a bench trial, we can forget about next week and forget about the week after that, and I can find some other time to do that."); *id.* at 21 (Judge Addy: "Again, if it was nonjury, I would do it all. I would do it all and give you guys all the time in the world.").

[6] The status conference before Judge Addy had not yet occurred when the Wellin Children filed their Return to the Motions to Dismiss the appeal, nor were the Wellin Children able to alert this Court of the contents of that conference before the Court issued its Order dismissing the appeal. The conference concluded at 4:54 p.m. on June 12, 2019, and the Panel issued its ruling dismissing the appeal at 3:16 p.m. on June 13, 2019. Accordingly, these comments were not before the panel. However, the arguments and evidence before the Panel at the time of its ruling were sufficient to reveal the immediate appealability of the Order challenged on appeal, and these more recent comments merely provide additional confirmation for what was already apparent.

The circuit court's Order establishing the mode of trial wrongly threatens to deprive the Wellin Children of a jury trial on their claims in which all the applicable evidence is presented and the jury is instructed on the applicable standards for the Wellin Children's claims against Wendy. *See* Wellin Children's Return to the Motions to Dismiss at 18–23 (and cases cited therein). This deprivation involves a substantial right and is immediately appealable, regardless of whether the ruling is characterized by the circuit court as a bifurcation order. *See Morrow*, 412 S.C at 539, 773 S.E.2d at 146. Moreover, because the order *may* be immediately appealed, it *must* be immediately appealed. *See Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (stating a party that fails to appeal an order affecting a substantial right waives the right to appeal that issue later). Here, just as in *Morrow*, the circuit court's ruling placed a limitation on the relief sought by and available to the Wellin Children, forcing them to present their evidence and arguments but without an opportunity to recover the damages sought in their counterclaims (and, rather, a chance of a verdict that would later be used by Wendy to foreclose them from ever litigating their claims). Interlocutory rulings such as this one regarding the mode of trial or limitations on relief may be, and must be, immediately appealed. *See Foggie v. CSX Transp., Inc.* 313 S.C. 98, 431 S.E.2d 587 (1993).

The Panel further overlooked or misapprehended the Wellin Children's argument that the circuit court's challenged order effectively struck out part of their pleading and was thus immediately appealable. *See generally* Wellin Children's Return to the Motions to Dismiss at 17–18. The Panel's Order dismissing the appeal fails to mention or specifically rule on this argument. Because the effect of an order, not the label or title placed on it, is what determines appealability, and because the effect of the circuit court's order in the instant litigation was to "remove[] material issues[s] from the case, thereby preventing the issue[s] from being litigated on the merits," the

order is immediately appealable. *See id.* at 17 (quoting *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011)).

For the foregoing reasons, the circuit court's order is immediately appealable and this Court should reinstate the appeal.

III. The Panel's denial of the Petition for a Writ of Supersedeas overlooked or misapprehended relevant Court Rules and the sound policies supporting them.

Several weeks after the Wellin Children had filed their Notice of Appeal in the instant appeal, and while the briefing on the question of immediate appealability was still ongoing, the circuit court informed the parties that despite the pendency of the appeal, it intended to proceed with trial commencing in a matter of days. In response, the Wellin Children promptly filed an emergency Petition for Writ of Supersedeas on June 7, 2019, requesting that this Court order the circuit court to stay the trial of this matter pending resolution of this appeal. In the order of dismissal, the Panel denied the Petition, stating only that the underlying order was not immediately appealable. (Order of Dismissal p. 1.) Nearly simultaneously with this Court's issuance of its Order denying the Petition and dismissing the appeal, the circuit court informed the parties that the truncated trial set to begin on June 17, 2019, had been postponed to an indefinite date in the future. Both the Panel's denial of the Petition and the circuit court's apparent intent to proceed with trial in the future while the Wellin Children are still pursuing their appellate remedies are wrong for the following reasons.

As explained in the Wellin Children's Petition, the appellate court rules expressly state the filing of a Notice of Appeal divests the trial court of jurisdiction over all matters decided in and affected by the Order being appealed. *See* Rules 205 & 241(a), SCACR. The fact that the appealability of the lower court's order is disputed is immaterial to this analysis. The Rules establishing the automatic appellate stay make no exception for situations where one party or even

the trial court thinks the order is not immediately appealable. Indeed, even if a Panel of this Court or if the Court *en banc* concludes this Order is not immediately appealable, under the clear language of the Rules, the Order is nevertheless automatically stayed unless and until there is a remittitur.

This rule makes sense and is supported by considerations of fairness and efficiency. The contrary rule, espoused by the circuit court and the Panel in the instant litigation, invites trial judges to roll the dice, speculating that the appeal will eventually be dismissed with finality and that the trial held in the meantime will be valid, but taking the risk that—if the order being appealed is, in fact, held to be immediately appealable—the trial will have been a sizeable waste of the parties' and the court's resources. This sort of gamble is not (and should not) be the law. Again, reference to *Morrow* is instructive. In *Morrow*, a single Judge of this Court initially dismissed the appeal as interlocutory. A panel of this Court subsequently affirmed. If the trial court in *Morrow* had at that point proceeded to try the case without waiting for the Morrows to petition for rehearing, petition for certiorari, brief the merits, argue the case to the Supreme Court, and obtain an opinion from the Supreme Court, that trial would have been a nullity. So too here. The Panel should have granted the Petition for a Writ of Supersedeas or otherwise made clear that the lower court is divested of jurisdiction to proceed with trial unless and until a remittitur is issued.

CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court grant rehearing, deny Respondents' motion to dismiss, and reinstate the appeal.

[*SIGNATURE PAGE ATTACHED*]

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June 28, 2019

Exhibit A

to the Wellin Children's Petition for Rehearing and
Suggestion for Rehearing *En Banc*

Appellate Case No. 2019-000833

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON — NINTH JUDICIAL CIRCUIT

- - -

Wendy C.H. Wellin, Petitioner, vs. Peter Wellin, Cynthia W. Plum and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust U/A/D November 2, 2009, Respondents, Counter-Petitioners, and Counterclaimants, vs. Wendy C.H. Wellin, Individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust U/A/D December 11, 2001, Hamilton College, Keith S. Wellin Florida Revocable Living Trust, Campbell Hart, and Heather Lane, Counter-Respondents,	Civil Action No. 2014-CP-10-07038

(Caption continues on Page 2)

HEARING BEFORE:
HONORABLE FRANK R. ADDY, JR.

DATE TAKEN:	Wednesday, June 12, 2019
TIME BEGAN:	2:00 p.m.
TIME ENDED:	4:54 p.m.
LOCATION:	McCormick County Courthouse 133 South Mine Street McCormick, South Carolina
REPORTED BY:	Cynthia First, RPR, CRR, CBC EveryWord, Inc. P.O. Box 1459 Columbia, South Carolina 29202 803-212-0012

(Caption Continued)

and	)
	)
Friendship Management, LLC,	)
	)
Intervenor Plaintiff	)
	)
vs.	)
	)
Wendy C.H. Wellin,	)
	)
Defendant.	)
	)
IN THE MATTER OF:	)
	)
KEITH S. WELLIN	)

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December 11, 2001

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grounds we have in our motion that I'd like to address, if I may.

THE COURT: Sure. If I may before you go there, not to interrupt, but just while this is on my mind. Earlier today -- I did ask Judge Young the last yesterday. He's e-mailed it to me today. You've asked for it to be continued to another term of court. And he made this abundantly clear to me yesterday that with all the construction litigation and everything that's going on down in Charleston, as far as date certains, I mean, they are booked until the end of the year and they even have date certains backing up date certains. And people who are requesting date certains, they're now being told, "Look, the calendar is not out for 2020. We'll put you in line, but you're not going to be in a position to jump in front of somebody else for something you're not assigned." As the calendar comes out, then they may put them in line once that calendar of 2020 does come out.

So in terms of continuing it to another term of court, a jury term of court, which is a nice segue to what I was going to suggest, but

in terms of continuing it to another jury term of court, the next -- that won't do anything. And if anything, it potentially may be more disruptive in the sense that I might simply get notification, "Okay. Well, this construction litigation has resolved so, Judge Addy, you can have the term for two or three days."

And then I've got to jump through all the hoops and you all would have to jump through all the hoops. And I know that the Hood Firm was involved in litigation in Anderson County in front of Judge Maddox, I think. It got resolved earlier this week, on Tuesday. So the stars are kind of aligning for Wellin to be tried and resolved next week.

Now, that said, you know, we've had this continuing discussion about jury as opposed to nonjury. I really think it would behoove everybody, and particularly the primary parties involved in this, the children and Ms. Wellin, to give serious consideration to doing this nonjury because that will prevent us from being limited to the two weeks that I am going to permit in this particular case.

I don't know the last time you all tried a

case in Charleston, but the logistics of it are really challenging in the sense that you have to take into account the fact that Charleston is such a spread out -- I know you don't have to take this into account -- I have to take it into account, the fact that Charleston is a very expansive county. The last time I tried a case there, one juror had a one-and-a-half-hour commute every day to get to the courthouse, so you're limited on when you can start. You have to be concerned about lunch breaks. You have to be concerned about obligations with child care, things like that, afterward.

And for a two-hour case involving this sum of money, you're going to be drawing your jury from all and various parts of Charleston County that maybe is not people with seven-figure incomes. I don't know how favorably they're going to view all the parties in this case. And I'm just speaking candidly. But if you are living in a 2,000-square-foot house with a mortgage payment, two car payments, and struggling to live hand to mouth, I don't really know that too many people are going to be jumping up, wanting to hear about this

litigation involving more money than they will ever see in 10 generations in their family. Okay? So that is a risk that you run.

If you are looking to make this wedding -- if the Wellin children absolutely, you know, have to be present for trial, I can meet you halfway, but there's no way that we can do this in a jury format and have it done by Wednesday. I mean, that's simply not -- one side or the other is wanting eight weeks. I can't give you eight weeks. I can give you two weeks. I don't see any way we can reasonably have this done by Wednesday.

If they want to do this or the parties are willing to try this as a bench trial, we can go maybe next week. We can maybe do it later. I don't have to concern myself because they have sufficient courtroom space. If you all want to do this as a bench trial, we can forget about next week and forget about the week after that, and I can find some other time to do that.

But if all the parties want a jury trial, the stars have aligned. We're doing it next week. I'm sorry if that means they're going to have to be missing out on the verdict two weeks

from Friday, but that's just how it's going to have to play out. I don't know if that changes anything or if it's something you need to talk to your clients about. I assume you've already had that conversation. If you want a continuance, that's fine. We can do it nonjury and we'll move it on back.

MR. BRUNSON: Your Honor, we're not willing to waive the jury trial.

THE COURT: We're doing it next week then and the week after. So that's it.

MR. WOOTEN: Your Honor, the other grounds we have in our motion will be filed with the court. And if you don't want me to go --

THE COURT: Go right ahead.

MR. WOOTEN: And I will if you would like me to, but if you've already decided, then I don't --

THE COURT: No. Maybe there's something that I missed that would convince me that a continuance is warranted. Go right ahead.

MR. WOOTEN: Okay. Well, we think that it should be -- there should not be a trial next week because there is a stay in place under the rules, the court of appeals rules, because we

And in fact Mrs. Wellin's attorney, at the hearing on the motion to bifurcate, said if we, the children, lose the first phase of trial, it eviscerates our lawsuit. And the idea is that, Your Honor, either this first trial is going to streamline the case such that if we lose, we don't get to pursue all of our claims against Mrs. Wellin or we don't get to put all the evidence in that we want to, in which case we are prejudiced in a way that is not contemplated by the law on bifurcation. We're prejudiced horribly. We're not able to put in our claims, our best claims, ever because we have a trial only on the claims they want to try and not on ours.

Or the only other option, Your Honor, is that after this first phase of trial, we can fully litigate our tort claims against Mrs. Wellin, in which case there was no efficiency whatsoever. We have the same trial again after this trial.

And so there really are only two options. Either it's horribly prejudicial in denying our clients the right to try the claims they would like to try or it's horribly inefficient

because we're going to have the same trial twice.

So, Your Honor, I'm arguing the merits of the -- the merits of the bifurcation briefly, again, Your Honor, but of course the issue is you don't need to decide whether our arguments are good or not to decide whether the automatic stay applies. The automatic stay is -- it applies irrespective of how good or bad our arguments are on the merits of the appeal. The automatic stay applies upon filing notice of the appeal.

But we also, Your Honor, very strongly object to a trial being limited to two weeks. I heard what you just said, Your Honor --

THE COURT: I cannot -- two weeks for the guy who lives in a 2,000-square-foot house where he's going without pay over a multigazillion-dollar estate is inherently unfair to any juror. I cannot ask a guy to take $20 a day in jury compensation when we are litigating this. That's the simple truth of the matter, and I realize that is not your concern.

But I would strongly recommend that if

you, in your mind, simply lop off a couple of zeros, that's what's got everybody up in arms about this case. This case is no different from somebody who passes away with a $100,000. It's the same standard in terms of testamentary capacity. It's exactly the same procedure.

And what's got everybody worked up is the money that's involved in this case, which I agree is amazingly substantial. But that's exactly what is going to turn off every juror that you folks want to have to decide this matter. And it's also what prevents me from saying, "Okay. You can have more time to litigate this matter."

Again, if it was nonjury, I would do it all. I would do it all and give you guys all the time in the world. It's jury. We don't have all the time in the world for those reasons. And I have to be sympathetic to that even though you're not. It has to be tried in two weeks. That's the most I can give you.

MR. WOOTEN: Your Honor, if I can just make two points on that.

THE COURT: Sure.

MR. WOOTEN: One is, Your Honor, I think

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, Circuit Court Judge

Case No. 2014-CP-10-07038
Appellate Case No. 2019-000833

Wendy C.H. Wellin, ... Respondent,

v.

Peter Wellin, Cynthia W. Plum, and Marjory W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/b November 2, 2009, ... Appellants,

v.

Wendy C.H. Wellin, Individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001, Hamilton College, Keith S. Wellin Florida Revocable Living Trust, Campbell Hart, and Heather Lane, ... Respondents,

In the Matter of: Keith S. Wellin.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by e-mailing and mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

APPELLANTS' PETITION FOR REHEARING

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June 28, 2019

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June 28, 2019

Via hand delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Petition for a Writ of Rehearing and Suggestion for Rehearing *En Banc*
Wendy C.H. Wellin v. Peter Wellin at al.
Appellate Case No. 2019-000833
Our File No. 039113/01500

Dear Ms. Kitchings:

Please find enclosed an original and seven copies of Petition for Rehearing and Suggestion for Rehearing *En Banc* in the above-referenced matter. We ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is a Firm check for the petition filing fee described in Rule 240, SCACR, and a proof of service on the parties' counsel.

Very truly yours,

Miles E. Coleman

Enclosure
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James B. Hood, Esq.
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