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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND AND YORK COUNTIES  
Court of Common Pleas  
Jean Hoefer Toal, Chief Justice (Ret.)

Case Nos. 2015-CP-46-02155, 2015-CP-46-03456, 2019-CP-40-00076, 2018-CP-40-04680, and  
2018-CP-40-04940

Appellate Case No. 2020-

Zurich American Insurance Company and United States Fidelity and Guaranty Company,  
Appellants

v.

Peter D. Protopapas, in his capacity as Receiver of Covil Corporation, Respondent

*in the following cases:*

Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye  
Smith, Plaintiffs,

v.

Covil Corporation, et al., Defendants,

and

Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin  
Howe, deceased and Jeanette Howe, Plaintiffs,

v.

Covil Corporation, et al., Defendants.

and

Charles T. Hopper and Rebecca Hopper, Plaintiffs,

v.

Covil Corporation, et al., Defendants,

and

James Michael Hill, Plaintiff,

v.

Covil Corporation, et al., Defendants,

and

Denver D. Taylor and Janice Taylor, Plaintiff's  
v.  
Covil Corporation, et al., Defendants.

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**MOTION TO DISMISS**

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Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Peter D. Protopapas, in his capacity as the Receiver for Covil Corporation (Respondent), by and through the undersigned counsel, respectfully requests this Court dismiss the Notices of Appeal filed by Zurich American Insurance Company (Zurich) and United States Fidelity and Guaranty Company (USF&G) on February 7, 2020.

*As to Zurich's Notice of Appeal*

Zurich attempts to appeal an order filed by the Honorable Jean Hoefer Toal on January 8, 2020 and underlying orders filed on September 19, 2019 and October 29, 2019. However, Zurich filed a motion on January 22, 2020, pursuant to Rules 52, 59(e), and 60 of the South Carolina Rules of Civil Procedure, to alter or amend the January 8, 2020 order. This motion is currently pending before Justice Toal. Because Justice Toal must still consider and rule on Zurich's motion to reconsider, the January 8, 2020 order, along with the underlying interlocutory orders of September 19, 2019, and October 28, 2019, are not yet final and appealable. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCPP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."); Rule 203(b)(1) (explaining the time for filing a notice of appeal runs from receipt of written notice of entry of order granting or denying timely motion pursuant to Rule 59). In fact,

in its Notice of Appeal, Zurich admits its Notice of Appeal is improper because its motion is still pending.

*As to USF&G's Notice of Appeal*

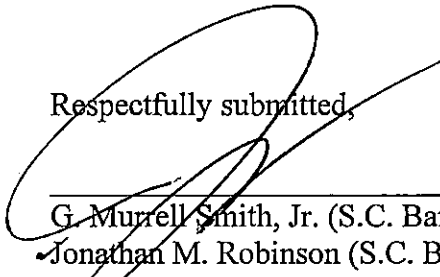
USF&G attempts to appeal numerous orders issued by Justice Toal, including the (1) November 2, 2018 order appointing Respondent, (2) February 28, 2019 order granting Plaintiff's motion to compel attendance at mediation, (3) September 19, 2019 rule to show cause order, (4) October 28, 2019 rule to show cause order, and (5) January 8, 2020 rule to show cause order. Similar to Zurich, USF&G filed a motion to reconsider the January 8, 2020 order in the circuit court on January 17, 2020. This motion is still pending and has not been ruled on by Justice Toal. Because Justice Toal must still consider and rule on USF&G's motion to reconsider, the January 8, 2020 order, along with the underlying interlocutory orders of September 19, 2019, and October 28, 2019, are not yet final and appealable. Furthermore, USF&G's attempt to appeal the November 2, 2018 order appointing Respondent should be dismissed as untimely. Although an order appointing a receiver is an interlocutory order, the appellate courts have jurisdiction to consider appeals from these interlocutory orders. *See* S.C. Code Ann. § 14-3-330(4) (explaining interlocutory orders "granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver" are appealable). Thus, USF&G would have needed to appeal this order within thirty days after receipt of written notice of its entry. *See* Rule 203(b)(1), SCACR. Furthermore, USF&G's attempt to appeal the February 28, 2019 order compelling attendance at mediation is similarly untimely and moot because mediation occurred in March 2019 and USF&G attended mediation. An appeal of this order would seek to reverse the requirement that USF&G attend an already-attended mediation. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("An appellate court will

not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists.”). The order of Justice Toal required USF&G to attend mediation. While USF&G did attend the mediation, it was USF&G’s acts in violation of the South Carolina Alternative Dispute Resolution Rules at and after the court-ordered mediation which contributed, in part, to USF&G’s sanctions.

***Conclusion***

Accordingly, Respondent respectfully requests this Court dismiss Zurich and USF&G’s Notices of Appeal of the January 8, 2020 order, and the underlying orders, as premature and remand this case to the circuit court to rule on their motions. Furthermore, Respondent also requests the Court dismiss USF&G’s appeal of the November 2, 2018 and February 28, 2019 orders as untimely.

Respectfully submitted,



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February 12, 2020.

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