

RECEIVED

Aug 10 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND AND YORK COUNTIES
Court of Common Pleas
Jean Hoefler 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. 2020-000845

Ex Parte: United States Fidelity and Guaranty Company, Appellant,
v.
Peter D. Protopapas, in his capacity as Receiver of Covil Corporation, Respondent,

In Re:

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

v.

CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS
Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CNA
Holdings, Inc., f/k/a Hoechst Celanese Corporations; Celanese Corporation f/k/a Hoechst
Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.);
Cleaver Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc.,
f/k/a Daniel Construction Company, Inc.; Fluor Daniel Services Corporation; Foster Wheeler
Energy Corporation; General Electric Company; MP Supply, Inc. f/k/a Mill-Power Supply Co.
and Mill-Power Supply Company; Resolute FP US, Inc.; Union Carbide Corporation; United
States Fidelity and Guaranty Company; Uniroyal, Inc., f/k/a United States Rubber Company,
Inc.; and United Conveyor Corporation, Defendants,

AND

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

v.

Air & Liquid Systems Corporation, Individually and as Successor-in-Interest to Buffalo Pumps,
Inc.; Airco, Inc.; Airgas USA, LLC, f/k/a National Welding Supply, Inc.; Albany International
Corp.; Asten-Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company; Beloit
Corporation; Black Clawson Converting Machinery, LLC, Individually and as a Subsidiary of
Davis-Standard LLC; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor
by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric
Corporation; CGR Productions, Inc., f/k/a Carolina Gasket and Rubber Company; CAN

Holdings, Inc., f/k/a Hoechst Celanese Corporation; Celanese Corporation f/k/a Hoechst Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.; Covil Corporation; Crane Co.; Crown Cork & Seal Company, Inc.; Daniel International Corporation; Davis-Standard Corporation, LLC; Dezurik, Inc. d/b/a Dezurik-Apco Williamette Eagle, Inc.; Fisher-Klosterman, Inc., as Successor-in-Interest to Buell Engineering Co.; Flowserve Corporation, Individually and as Successor-in-Interest to Durco Pumps; Fluor Enterprises, Inc., f/k/a Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll- Rand Company; Linde, LLC f/k/a The Boc Group, Inc., f/k/a Airco, Inc.; Marsulex Environmental Technologies Corporation, Individually and as Successor-in-Interest to Buell Engineering Co.; Marsulex Environmental Technologies, LLC, as Successor-in-Interest to Buell Engineering Co.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Peerless Pump Company; Presnell Insulation, Inc.; Riley Power, Inc., Individually and as Successor-in-Interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco Corporation; SPX Cooling Technologies, Inc., f/k/a Marley Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Co.; Sterline Fluid Systems (USA) LLC; Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company; Union Carbide Corporation; Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; United Conveyor Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; and Zurn Industries, Defendants.

AND

Charles T. Hopper and Rebecca Hopper, Plaintiffs,

v.

Air & Liquid Systems Corp.; 3M Company; Advance Auto Parts, Inc.; Armstrong International, Inc.; Blackmer Pump Company; BW/IP, Inc.; CBS Corporation; CNA Holdings, LLC; Carrier Corporation; Circor Instrumentation Technologies, Inc.; Continental Tire the Americas, LLC; Covil Corporation; Crane Co.; Crosby Valve, LLC; Daniel International Corporation; E.I. du Pont de Nemours and Company; Fisher Controls International, LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Ford Motor Company; Foster Wheeler Energy Corporation; Gardner Denver, Inc.; General Electric Company; Genuine Parts Company; Georgia Power Company; Goodrich Corporation; Gorman-Rupp Company; Goulds Pumps, Incorporated; Grinnell, LLC; Hobart Brothers LLC; Honeywell International, Inc.; IMO Industries, Inc.; Ingersoll-Rand Company; International Paper Company; ITT LLC; The Lincoln Electric Company; Metropolitan Life Insurance Company; Miller Electric Mfg., LLC; National Automotive Parts Association; Newco Valves, LLC; O'Reilly Auto Enterprises, LLC; O'Reilly Automotive Stores, Inc.; Resolute FP US Inc.; Shell Oil Company; South Carolina Electric & Gas Company; South Carolina Public Service Authority; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc.; Southern Insulation, Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Trane U.S.; Uniroyal Holding Inc.; Viking Pump, Inc.; Weir Valves & Controls USA, Inc.; The William Powell Company; Yeargin Potter Smith Construction, Inc.; Yuba Heat Transfer Corporation; and Zurn Industries, Defendants,

AND

James Michael Hill, Plaintiff,

v.

Advance Auto Parts, Inc.; 4520 Corp., Inc., Successor-in-Interest to Benjamin F. Shaw Company; Air & Liquid Systems Corporation, individually and as Successor-in-Interest to Buffalo Pumps; Alcoa, Inc., successor to Reynolds Metals Company; Aurora Pump Company; BW/IP, Inc., individually and as Successor-in-Interest to Byron Jackson Pumps; CB&I Group Inc., individually and as Successor-in-Interest to The Shaw Group, successor to Benjamin F. Shaw Company; CB&I Laurens, Inc., f/k/a B.F. Shaw, Inc.; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; Celanese Corporation; CAN Holdings, LLC, f/k/a Celanese Corporation f/k/a Hoechst Celanese Corporation, sued individually and as Successor-in-Interest to Fiber Industries, Inc.; Circor Instrumentation Technologies, Inc., individually and f/k/a Hoke Inc.; Cleaver Brooks, Inc., f/k/a Aqua-Chem, Inc., d/b/a Cleaver-Brooks Division; Covil Corporation; Crane Co.; Crosby Valve, LLC; Dana Companies LLC; Daniel International Corporation; The Dow Chemical Company; Federal-Mogul Asbestos Personal Injury Trust, sued as successor to Felt-Products Manufacturing Co.; Fisher-Controls International, LLC, wholly owned subsidiary of Emerson Electric Company; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Enterprises, Inc.; Foster Wheeler Energy Corporation; General Electric Company; Genuine Parts Company, d/b/a Rayloc, a/k/a NAPA; The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Gorman-Rupp Company; Hollingsworth & Vose Company; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as Successor-in-Interest to Bendix Corporation; Imerys Talc America, Inc., f/k/a Luzernac America, Inc., individually and as Successor-in-Interest to United Sierra Division of Cyprus Mines, Cyprus Industrial Minerals Company and Windsor Minerals, LLC; Ingersoll-Rand Company; International Paper Company; ITT LLC, f/k/a ITT Corporation, ITT Industries, Inc., individually and as successor to ITT Fluid Products Corp., ITT Hoffman ITT Bell & Gossett Company and ITT Marlow; Johnson & Johnson; Johnson & Johnson Consumer Companies LLC, a subsidiary of Johnson & Johnson; Mallinckrodt LLC; Maremont Corporation; McDermott International, Inc., individually and as Successor-in-Interest to The Shaw Group, successor to Benjamin F. Shaw Company; McNeil (Ohio) Corporation; McNeil & NRM, Inc.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Mine Safety Appliances Company, LLC; National Automotive Parts Association; OfficeMax, Incorporated, f/k/a Boise Cascade Corporation; Pneumo Abex, LLC, individually and as Successor-in-Interest to Abex Corporation; R.J. Reynolds Tobacco Company, individually and as Successor-by-Merger to Lorillard Tobacco Company LLC, f/k/a Lorillard Tobacco Company; Resolute FP US Inc., individually and as Successor-in-Interest to Bowater, Inc.; Reynolds American, Inc., individually and as Successor-by-Merger to The American Tobacco Company; Riley Power, Inc., f/k/a Riley Stoker Corporation and D.B. Riley, Inc.; Spence Engineering Company, Inc.; Spriax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as Successor-in-Interest to Marley Cooling Towers Co.; Union Carbide Corporation; United Conveyor Corporation; The William Powell Company; and Zurn Industries, LLC, individually and as Successor-in-Interest to Zurn Industries, Inc., Defendants,

AND

Denver D. Taylor and Janice Taylor, Plaintiff's

v.

Air & Liquid Systems Corporation; Aurora Pump Company; BASF Catalyst LLC; BASF Corporation; BorgWarner Morse Tec, LLC; CBS Corporation; CAN Holdings, LLC; Cameron International Corporation; Carrier Corporation; Carver Pump Company; Caterpillar, Inc.; Celanese Corporation; Cleaver-Brooks, Inc.; Continental Tire The Americas, LLC; Covil Corporation; Crane Co.; Daniel International Corporation; Fisher Controls International, LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Frito-Lay, Inc.; Gardner Denver, Inc.; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Grinnell, LLC; Hobart Brothers LLC; Ingersoll-Rand Company; International Paper Company; ITT LLC; John Crane, Inc.; The Lincoln Electric Company; Linde, LLC; McNeil (Ohio) Corporation; McNeil & NRM, Inc.; McWane, Inc.; Metropolitan Life Insurance Company; Resolute FP US Inc.; Riley Power, Inc.; Spriax Sarco, Inc.; SPX Cooling Technologies, Inc.; Springs Global US, Inc.; Trane US, Inc.; Viking Pump, Inc.; Warren Pumps, LLC; Weir Valves & Controls USA, Inc.; York International Corporation; and Zurn Industries, LLC, Defendants.

MOTION FOR SANCTIONS

Pursuant to section 15-36-100 of the South Carolina Code, Peter D. Protopapas, in his capacity as the Receiver for Covil Corporation (“Respondent”), by and through the undersigned counsel, respectfully requests this Court award attorney’s fees and sanctions against United States Fidelity and Guaranty Company (“USF&G”) and its attorneys for pursuing this frivolous appeal when it was not a party to the underlying action and never moved to intervene as a party, as clearly required by South Carolina law.

FACTUAL BACKGROUND

On June 5, 2020, USF&G filed a Notice of Appeal from the following orders of the Honorable Jean Hofer Toal: (1) April 10, 2020 Order approving settlements between Respondent and Sentry Insurance A Mutual Company (“Sentry”); Respondent and TIG Insurance Company, as successor to Ranger Insurance Company (“TIG”); and Respondent and Hartford Accident and Indemnity Company and First State Insurance Company (“Hartford”) (collectively, “Settling

Insurers”) and establishing a Qualified Settlement Fund (“QSF”); and (2) May 6, 2020 Order denying USF&G’s motion to reconsider and motion to stay. However, USF&G was not a party to the cases it attempted to appeal and never moved to intervene as a party. USF&G has, at all times applicable hereto, asserted its non-party status and reiterated it was not subject to the jurisdiction of the circuit court.¹ In fact, USF&G admitted and reasserted its non-party status to these cases in its Notice of Appeal. *See* June 5, 2018 Notice of Appeal (“Please take notice that non-party United States Fidelity and Guaranty Company” and “USF&G is not a party to these matters”).

On June 11, 2020, Respondent filed a Motion to Dismiss the appeal because of USF&G’s inability to appeal. On June 12, 2020, the Court sent the parties a letter indicating a “preliminary review of the order(s) challenged on appeal indicates it might not be appealable” and requested the parties file memoranda addressing the issue of appealability within ten days. USF&G filed a Return to the Motion to Dismiss on June 22, 2020, and submitted over 1200 pages of superfluous documents as exhibits. Respondent filed an appealability memoranda on June 22, 2020, and a Reply to USF&G’s Return on June 26, 2020. On July 30, 2020, the Court issued an order dismissing the appeal due to USF&G’s non-party status and failure to intervene as a party below.

APPLICABLE LAW

The South Carolina Frivolous Proceedings Sanctions Act (“the Act”) governs frivolous conduct of parties and their attorneys. *See* S.C. Code Ann. § 15-36-100. The Act precludes sophisticated litigants, such as USF&G, from filing frivolous objections and motions and engaging in delay tactics for the mere sake of delay. The Act requires all motions, pleadings, and other documents to be signed by at least one attorney of record licensed to practice law in South Carolina

¹ For example, on April 20, 2020, USF&G filed “Non-Party USF&G’s Motion to Stay” and “Non-Party USF&G’s Motion to Reconsider, Alter, or Amend Approval Order of April 10, 2020.”

or a pro se litigant. *See* S.C. Code Ann. § 15-36-10(A)(1). According to the Act, an attorney's signature on a pleading, motion, or other document certifies:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(A)(3).

The Act allows a party and/or an attorney to be sanctioned for (1) filing a frivolous pleading, motion, or document; (2) "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts;" or (3) "making frivolous arguments a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for extension, modification, or reversal of existing law." S.C. Code Ann. § 15-36-10(A)(4). An attorney's act of filing a frivolous pleading, motion, or document is sanctionable if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based[.]

Id. On its own or upon the motion of a party, the Court may award any sanction the Court “considers just, equitable, and proper under the circumstances.” S.C. Code Ann. § 15-36-10(B)(2). Sanctions may include reasonable costs and attorney’s fees, a reasonable fine to the Court, or a directive of nonmonetary nature. S.C. Code Ann. § 15-36-10(G). In determining whether to award sanctions pursuant to the Act, the Court should consider (1) the number of parties, (2) the complexity of the claims and defenses, (3) the length of time available to investigate, (4) information disclosed or undisclosed through discovery or investigation, (5) previous violations of the provisions of this section, (6) the response of the person alleged to have violated the Act, and (7) other factors the Court deems equitable. S.C. Code Ann. § 15-36-10(E). Thus, the Act affords this Court the opportunity to review and sanction frivolous conduct.

DISCUSSION

The Court should award sanctions because USF&G has deployed improper tactics to obstruct and delay rulings from South Carolina courts and frustrate the purpose of the Receivership, even when it means filing frivolous motions, memoranda, and appeals that a reasonable attorney would know were not supported by law.

By way of background, the Receiver and the Settling Insurers filed a Joint Motion to Establish a Qualified Settlement Fund on March 4, 2020, and joint motions to approve the three settlement agreements on March 5, 6, and 16, 2020. The circuit court set a hearing on the motions

for March 23, 2020. On March 19, 2020, counsel for USF&G sent an email correspondence to the circuit court and others notifying the circuit court, that in light of a COVID-19 Administrative Order, USF&G would “look forward to Monday’s hearing being rescheduled at an appropriate time.” The circuit court informed USF&G the hearing was not cancelled because the Chief Justice of the South Carolina Supreme Court, by Administrative Order, had permitted such hearings to proceed. Undaunted, on March 20, 2020 (the Friday afternoon before the Monday hearing), Counsel for USF&G filed a frivolous non-party objection to the establishment of the Qualified Settlement Fund and the approval of the three settlements which necessitated the Court to postpone the hearing to allow the Receiver and Settling Insurers time to respond to USF&G’s newly raised and meritless objection. USF&G improperly filed the objection despite not being a party to the action or settlements. The circuit court denied USF&G’s objection, approved the settlement agreements, and established the QSF on April 10, 2020.

Even after Respondent raised USF&G’s inability to object to the settlement agreements and the April 10, 2020 Order due to its status as a non-party, and the circuit court found it lacked an ability to object due to its status as a non-party, USF&G did not attempt to intervene as a party in the action. Instead, USF&G filed a motion to reconsider the April 10, 2020 Order reasserting its status as a non-party, which was again denied by the circuit court due to USF&G’s non-party status. USF&G made a conscious effort not to intervene as a party in these actions, despite the circuit court repeatedly informing USF&G it would not have the ability to raise any objections until it formally intervened in the actions. *See, e.g.*, April 10, 2020 Order, C/A No. 2015-CP-46-02155, at 11 (“[T]he Objecting Insurers repeated assertion that they are non-parties to the case (and their decision not to intervene) is fatal to their objections because they do not have standing to challenge the Motions under their own theory.”) and May 6, 2020 Order, C/A No. 2015-CP-46-

02155, at 16 (“The fact remains that they are not parties, despite having had months to intervene in these proceedings.”).

USF&G then proceeded to file this frivolous appeal to further disrupt the settlement agreements and delay the establishment and operation of the QSF, despite the South Carolina Appellate Court Rules and South Carolina law clearly requiring an entity to be a party in order to have the ability to appeal an order. *See* Rule 201(b), SCACR (“Only a *party* aggrieved by an order . . . may appeal.” (emphasis added)). As Respondent noted in his Motion to Dismiss, the proper procedure for USF&G to object to the settlements or the circuit court’s orders would have been to formally intervene as a party pursuant to Rule 24 of the South Carolina Rules of Civil Procedure and submit itself to the jurisdiction of the court. *See Condon*, 354 S.C. at 640, 583 S.E.2d at 433 (explaining Rule 24 “provides for both intervention of right and permissive intervention, and requires that . . . “a person desiring to intervene shall serve a motion to intervene upon the parties” (quoting Rule 24, SCRCPP)).

As *Condon* clearly explains, “everyone” is “required . . . to formally intervene and become a named party before he can file an appeal.” *Id.* at 642, 583 S.E.2d at 434. Further, as this Court noted in its Order dismissing the appeal, *Ex parte S.C. Dep’t of Motor Vehicles* required dismissal of this appeal due to USF&G’s failure to intervene as a party in this action. 390 S.C. 457, 458, 702 S.C.2d 568, 568 (2010) (dismissing an appeal brought by the South Carolina Department of Motor Vehicles based on its failure to intervene as a party below). The requirement that a litigant must be a party in order to appeal an order and the procedure for intervening as a party in a matter are not particularly complex, which satisfies the second factor of the Act. Further, USF&G had ample opportunity to intervene as a party in this matter, was warned by the circuit court that it should

intervene as a party in order to object to the settlement agreements, and chose not to intervene, which satisfies the third factor of the Act.

This is not the first time USF&G has attempted to take advantage of South Carolina courts when it furthers its objectives while simultaneously objecting to the jurisdiction of South Carolina courts when it may not like a decision by the courts. Unsatisfied and unwilling to abide by South Carolina law and its Rules of Civil and Appellate Procedure, this attempted appeal was another attempt by USF&G manufacture its own rules, procedures, and law to accomplish its purposes. USF&G has previously sought to avoid the established procedural rules of our State by (1) filing a Notice of Appeal from and Petition for Writ of Certiorari in this Court's original jurisdiction of Former Chief Justice Toal's September 19, 2019 interlocutory discovery order, which the Supreme Court dismissed by two orders on October 16, 2019, and (2) filing a Notice of Appeal from Chief Justice Toal's January 8, 2020 contempt order while its motion to reconsider the order was still pending, which this Court dismissed on February 13, 2020, and (3) filing a Petition for Writ of Supersedeas related to Chief Justice Toal's contempt order despite no pending appeal, which the Supreme Court dismissed on June 17, 2020.² *See* Orders in appellate case nos. 2019-001651, 2019-001654, 2020-000206, 2020-000207, and 2020-000791. This appeal is another attempt by

² Furthermore, Zurich American Insurance Company ("Zurich"), who USF&G cited throughout its Return as also having purported rights impaired by the approval of the settlement agreements despite Zurich not joining in USF&G's improper appeal from these orders, has previously joined in these concerted efforts to misuse the appellate court system in order to obstruct the administration of the asbestos docket in South Carolina. In addition to its improper joint attempt with USF&G to appeal the interlocutory discovery order and the non-final contempt order discussed above, Zurich also recently filed a Petition for Writ of Mandamus with the Supreme Court seeking an order of the Court requiring Chief Justice Toal to recuse herself in the asbestos cases pending before her. On May 22, 2020, the Supreme Court denied Zurich's Petition, finding it was "not appropriate" because a recusal decision could not be characterized as ministerial. *See* Order in appellate case no. 2020-000749.

USF&G to manipulate our legal system by choosing which procedural rules it believes should apply to them and which it believes should not.

As shown by USF&G's current and prior inappropriate appeals, USF&G has gone to great lengths to circumvent South Carolina law, rules, and procedures and continues to do so here with this frivolous appeal. USF&G's objections to the settlement agreements are a concerted effort by USF&G to thwart the settlement agreements between Respondent and other insurers who have acknowledged their contractual obligations and resolved these disputes. USF&G has attempted to obstruct and delay rulings from South Carolina state courts and has continuously attempted to divest the circuit court of jurisdiction. As shown by numerous dismissed appellate court filings, USF&G has attempted to block the circuit court's orders and rulings at every turn and continues to do so under the guise of protecting their purported rights.

As a result of USF&G's frivolous objection and attempted appeal, the \$44.5 million settlement payment from Settling Insurers has been encumbered over the past four months. There are numerous cases involving Covil Corporation that are scheduled for trial later this year. As a result of USF&G's delay tactics, Respondent has been unable to attempt to settle these upcoming cases because he has been unable to utilize one of the only assets available to him. Other than the QSF, the only other assets potentially available to Covil Corporation, a company which was dissolved over twenty years ago, to help pay for upcoming litigation are the insurance policies issued by the non-settling insurers.

Accordingly, Respondent requests this Court award attorney's fees and sanctions against USF&G and its attorneys in the amount of the post-judgment interest³ on the \$44.5 million

³ Pursuant to the Supreme Court's January 6, 2020 Order, the current post-judgment interest rate is 8.75% compounded annually.

settlement payment from May 6, 2020, when the circuit court denied USF&G's Motion for Reconsideration, and August 14, 2020, the date this case will be remitted following the dismissal of the appeal. This amount equals approximately \$1,057,174.06.⁴ Respondent believes this sanction is appropriate under the Act in order to discourage USF&G and others from frivolously pursuing non-party appeals which are contrary to the established law of this state in order to obstruct and delay third party settlement agreements. Instead of seeking to intervene as a party, USF&G made a strategic choice to attempt to seek the benefits of party status (filing papers and being heard by courts) while avoiding the burdens (being bound by a judgment). The Court should not permit this type of gamesmanship by USF&G or other litigants. USF&G and its attorneys ignored repeated rulings of the circuit court that it must intervene as a party in order to raise its objections and obstinately pursued this attempted appeal despite established South Carolina law stating only an aggrieved party can appeal an order. Respondent further requests any other sanctions this Court deems just and appropriate under the circumstances. *See* S.C. Code Ann. § 15-36-10(B)(2) (explaining the Court may award any sanction the Court "considers just, equitable, and proper under the circumstances").

Respectfully submitted,

s/ G. Murrell Smith, Jr.

G. Murrell Smith, Jr. (S.C. Bar # 66263)

Jonathan M. Robinson (S.C. Bar # 68285)

Shanon N. Peake (S.C. Bar #102723)

Smith Robinson Holler DuBose and Morgan, LLC

2530 Devine Street, Suite 1B

Columbia, South Carolina 29205

⁴ At a rate of 8.75% compounded annually, the \$44.5 million settlement amount would gain approximately \$324,479.48 per month in post-judgment interest. The period of time between May 6, 2020, and the date of remittal is three months and eight days. Thus, the post-judgment interest from May 6, 2020 to August 6, 2020 would equal \$973,437.50, and the post-judgment interest for the remaining eight days from August 6, 2020 to August 14, 2020 would equal approximately \$83,736.56, or approximately \$10,467.07 per day.

(803) 254-5445

Robert G. Rikard (S.C. Bar # 12340)
Jescelyn Tillman Spitz (S.C. Bar # 101880)
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, SC 29201
(803) 978-6111

ATTORNEYS FOR RESPONDENT

August 10, 2020.

RECEIVED

Aug 10 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND AND YORK COUNTIES
Court of Common Pleas
Jean Hoefler 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. 2020-000845

Ex Parte: United States Fidelity and Guaranty Company, Appellant,
v.
Peter D. Protopapas, in his capacity as Receiver of Covil Corporation, Respondent,

In Re:

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

v.

CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS
Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CNA
Holdings, Inc., f/k/a Hoechst Celanese Corporations; Celanese Corporation f/k/a Hoechst
Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.);
Cleaver Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc.,
f/k/a Daniel Construction Company, Inc.; Fluor Daniel Services Corporation; Foster Wheeler
Energy Corporation; General Electric Company; MP Supply, Inc. f/k/a Mill-Power Supply Co.
and Mill-Power Supply Company; Resolute FP US, Inc.; Union Carbide Corporation; United
States Fidelity and Guaranty Company; Uniroyal, Inc., f/k/a United States Rubber Company,
Inc.; and United Conveyor Corporation, Defendants,

AND

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

v.

Air & Liquid Systems Corporation, Individually and as Successor-in-Interest to Buffalo Pumps,
Inc.; Airco, Inc.; Airgas USA, LLC, f/k/a National Welding Supply, Inc.; Albany International
Corp.; Asten-Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company; Beloit
Corporation; Black Clawson Converting Machinery, LLC, Individually and as a Subsidiary of
Davis-Standard LLC; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor
by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric
Corporation; CGR Productions, Inc., f/k/a Carolina Gasket and Rubber Company; CAN

Holdings, Inc., f/k/a Hoechst Celanese Corporation; Celanese Corporation f/k/a Hoechst Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.; Covil Corporation; Crane Co.; Crown Cork & Seal Company, Inc.; Daniel International Corporation; Davis-Standard Corporation, LLC; Dezurik, Inc. d/b/a Dezurik-Apco Williamette Eagle, Inc.; Fisher-Klosterman, Inc., as Successor-in-Interest to Buell Engineering Co.; Flowserve Corporation, Individually and as Successor-in-Interest to Durco Pumps; Fluor Enterprises, Inc., f/k/a Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll- Rand Company; Linde, LLC f/k/a The Boc Group, Inc., f/k/a Airco, Inc.; Marsulex Environmental Technologies Corporation, Individually and as Successor-in-Interest to Buell Engineering Co.; Marsulex Environmental Technologies, LLC, as Successor-in-Interest to Buell Engineering Co.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Peerless Pump Company; Presnell Insulation, Inc.; Riley Power, Inc., Individually and as Successor-in-Interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco Corporation; SPX Cooling Technologies, Inc., f/k/a Marley Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Co.; Sterline Fluid Systems (USA) LLC; Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company; Union Carbide Corporation; Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; United Conveyor Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; and Zurn Industries, Defendants.

AND

Charles T. Hopper and Rebecca Hopper, Plaintiffs,

v.

Air & Liquid Systems Corp.; 3M Company; Advance Auto Parts, Inc.; Armstrong International, Inc.; Blackmer Pump Company; BW/IP, Inc.; CBS Corporation; CNA Holdings, LLC; Carrier Corporation; Circor Instrumentation Technologies, Inc.; Continental Tire the Americas, LLC; Covil Corporation; Crane Co.; Crosby Valve, LLC; Daniel International Corporation; E.I. du Pont de Nemours and Company; Fisher Controls International, LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Ford Motor Company; Foster Wheeler Energy Corporation; Gardner Denver, Inc.; General Electric Company; Genuine Parts Company; Georgia Power Company; Goodrich Corporation; Gorman-Rupp Company; Goulds Pumps, Incorporated; Grinnell, LLC; Hobart Brothers LLC; Honeywell International, Inc.; IMO Industries, Inc.; Ingersoll-Rand Company; International Paper Company; ITT LLC; The Lincoln Electric Company; Metropolitan Life Insurance Company; Miller Electric Mfg., LLC; National Automotive Parts Association; Newco Valves, LLC; O'Reilly Auto Enterprises, LLC; O'Reilly Automotive Stores, Inc.; Resolute FP US Inc.; Shell Oil Company; South Carolina Electric & Gas Company; South Carolina Public Service Authority; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc.; Southern Insulation, Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Trane U.S.; Uniroyal Holding Inc.; Viking Pump, Inc.; Weir Valves & Controls USA, Inc.; The William Powell Company; Yeargin Potter Smith Construction, Inc.; Yuba Heat Transfer Corporation; and Zurn Industries, Defendants,

AND

James Michael Hill, Plaintiff,

v.

Advance Auto Parts, Inc.; 4520 Corp., Inc., Successor-in-Interest to Benjamin F. Shaw Company; Air & Liquid Systems Corporation, individually and as Successor-in-Interest to Buffalo Pumps; Alcoa, Inc., successor to Reynolds Metals Company; Aurora Pump Company; BW/IP, Inc., individually and as Successor-in-Interest to Byron Jackson Pumps; CB&I Group Inc., individually and as Successor-in-Interest to The Shaw Group, successor to Benjamin F. Shaw Company; CB&I Laurens, Inc., f/k/a B.F. Shaw, Inc.; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; Celanese Corporation; CAN Holdings, LLC, f/k/a Celanese Corporation f/k/a Hoechst Celanese Corporation, sued individually and as Successor-in-Interest to Fiber Industries, Inc.; Circor Instrumentation Technologies, Inc., individually and f/k/a Hoke Inc.; Cleaver Brooks, Inc., f/k/a Aqua-Chem, Inc., d/b/a Cleaver-Brooks Division; Covil Corporation; Crane Co.; Crosby Valve, LLC; Dana Companies LLC; Daniel International Corporation; The Dow Chemical Company; Federal-Mogul Asbestos Personal Injury Trust, sued as successor to Felt-Products Manufacturing Co.; Fisher-Controls International, LLC, wholly owned subsidiary of Emerson Electric Company; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Enterprises, Inc.; Foster Wheeler Energy Corporation; General Electric Company; Genuine Parts Company, d/b/a Rayloc, a/k/a NAPA; The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Gorman-Rupp Company; Hollingsworth & Vose Company; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as Successor-in-Interest to Bendix Corporation; Imerys Talc America, Inc., f/k/a Luzernac America, Inc., individually and as Successor-in-Interest to United Sierra Division of Cyprus Mines, Cyprus Industrial Minerals Company and Windsor Minerals, LLC; Ingersoll-Rand Company; International Paper Company; ITT LLC, f/k/a ITT Corporation, ITT Industries, Inc., individually and as successor to ITT Fluid Products Corp., ITT Hoffman ITT Bell & Gossett Company and ITT Marlow; Johnson & Johnson; Johnson & Johnson Consumer Companies LLC, a subsidiary of Johnson & Johnson; Mallinckrodt LLC; Maremont Corporation; McDermott International, Inc., individually and as Successor-in-Interest to The Shaw Group, successor to Benjamin F. Shaw Company; McNeil (Ohio) Corporation; McNeil & NRM, Inc.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Mine Safety Appliances Company, LLC; National Automotive Parts Association; OfficeMax, Incorporated, f/k/a Boise Cascade Corporation; Pneumo Abex, LLC, individually and as Successor-in-Interest to Abex Corporation; R.J. Reynolds Tobacco Company, individually and as Successor-by-Merger to Lorillard Tobacco Company LLC, f/k/a Lorillard Tobacco Company; Resolute FP US Inc., individually and as Successor-in-Interest to Bowater, Inc.; Reynolds American, Inc., individually and as Successor-by-Merger to The American Tobacco Company; Riley Power, Inc., f/k/a Riley Stoker Corporation and D.B. Riley, Inc.; Spence Engineering Company, Inc.; Spriax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as Successor-in-Interest to Marley Cooling Towers Co.; Union Carbide Corporation; United Conveyor Corporation; The William Powell Company; and Zurn Industries, LLC, individually and as Successor-in-Interest to Zurn Industries, Inc., Defendants,

AND

Denver D. Taylor and Janice Taylor, Plaintiff's

v.

Air & Liquid Systems Corporation; Aurora Pump Company; BASF Catalyst LLC; BASF Corporation; BorgWarner Morse Tec, LLC; CBS Corporation; CAN Holdings, LLC; Cameron International Corporation; Carrier Corporation; Carver Pump Company; Caterpillar, Inc.; Celanese Corporation; Cleaver-Brooks, Inc.; Continental Tire The Americas, LLC; Covil Corporation; Crane Co.; Daniel International Corporation; Fisher Controls International, LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Frito-Lay, Inc.; Gardner Denver, Inc.; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Grinnell, LLC; Hobart Brothers LLC; Ingersoll-Rand Company; International Paper Company; ITT LLC; John Crane, Inc.; The Lincoln Electric Company; Linde, LLC; McNeil (Ohio) Corporation; McNeil & NRM, Inc.; McWane, Inc.; Metropolitan Life Insurance Company; Resolute FP US Inc.; Riley Power, Inc.; Spriax Sarco, Inc.; SPX Cooling Technologies, Inc.; Springs Global US, Inc.; Trane US, Inc.; Viking Pump, Inc.; Warren Pumps, LLC; Weir Valves & Controls USA, Inc.; York International Corporation; and Zurn Industries, LLC, Defendants.

PROOF OF SERVICE

I certify that a true copy of the Respondent's Motion for Sanctions in this case has been served on the following, this 10th day of August, 2020, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's May 29, 2020 Amended Order. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's May 29, 2020 Amended Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina attorneys.

Pleading: Motion for Sanctions
Parties served: William Pearce Davis (wdavis@brblegal.com)
Matthew Todd Carroll (todd.carroll@wbd-us.com)
Kevin A. Hall (kevin.hall@wbd-us.com)
Bryant Sparks Caldwell (bryant.caldwell@wbd-us.com)
Attorneys for USF&G

(Signature page follows)

s/Shanon N. Peake

Shanon N. Peake (SC Bar No. 102723)
Smith Robinson Holler DuBose and Morgan, LLC

2530 Devine Street

Columbia, SC 29205

T: (803) 254-5445

shanonp@smithrobinsonlaw.com

Attorney for Respondent Peter D. Protopapas, in his
capacity as the Receiver for Covil Corporation

August 10, 2020.

From: [Shanon Peake](#)
To: wdavis@brblegal.com; todd.carroll@wbd-us.com; kevin.hall@wbd-us.com; bryant.caldwell@wbd-us.com
Cc: [Jon Robinson](#); [Murrell Smith](#); [Dot Faulkenberry](#); [Lindsay Valek](#)
Subject: Appellate Case No. 2020-000845
Date: Monday, August 10, 2020 4:28:00 PM
Attachments: [Proof of Service - Motion for Sanctions.pdf](#)
[Motion for Sanctions.pdf](#)

Good Afternoon All,

Please find attached a copy of the Motion for Sanctions and Proof of Service Respondent is filing in the Court of Appeals today, served on you pursuant to subsection (g)(3) of the South Carolina Supreme Court's May 29, 2020 Amended Order discussing the operation of the appellate courts during the coronavirus emergency.

Thank you,
Shanon



Shanon Peake
Attorney at Law

E: shanonp@smithrobinsonlaw.com Columbia Office
P: 803.254.5445 2530 Devine Street
D: 803.704.1102 Columbia, SC 29205
F: 803.254.5007

RECEIVED
Aug 10 2020
SC Court of Appeals

CONFIDENTIALITY NOTICE: The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.