

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case Nos. 2020-CP-40-01226

Appellate Case No. 2020-

Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas,

Respondent,

v.

Pennsylvania National Mutual Casualty Insurance Company,

Appellant.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Peter D. Protopapas, in his capacity as the Receiver for Covil Corporation (“the Receiver”), by and through the undersigned counsel, respectfully requests this Court dismiss the Notice of Appeal filed by Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) on September 14, 2020.

Penn National attempts to appeal an order filed by the Honorable Jean Hoefer Toal on August 13, 2020. However, on August 23, 2020, Penn National filed a motion for reconsideration of the August 13, 2020 order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The Receiver filed a response to Penn National’s motion for reconsideration on August 27, 2020. This motion is currently pending before Chief Justice Toal. Because Chief Justice Toal must still

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consider and rule on Penn National’s motion for reconsideration, the August 13, 2020 order is not yet final and appealable.¹ *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).

Accordingly, Respondent respectfully requests this Court dismiss Penn National’s Notice of Appeal of the August 13, 2020 order as premature and remand this case to the circuit court to rule on Penn National’s motion for reconsideration.

(Signature page follows)

¹ The Receiver has been a party in several coverage litigation lawsuits involving Covil Corporation’s insurers. The Receiver would note that Covil’s insurers have repeatedly filed interlocutory and improper appeals requiring the Receiver to file motions to dismiss and occupying the time of this Court and the South Carolina Supreme Court to review improper appeals and issue orders of dismissal. *See* October 16, 2019 Order, Appellate Case No. 2019-001651 (dismissing Zurich American Insurance Company, United States Fidelity and Guaranty Company, and Sentry Insurance a Mutual Company’s notices of appeal because the appealed order was an interlocutory discovery order); October 16, 2019 Order, Appellate Case No. 2019-001654 (denying petition for writ of certiorari to review an interlocutory discovery order); February 13, 2020 Order, Appellate Case No. 2020-000206 (dismissing Zurich American Insurance Company and United States Fidelity and Guaranty Company’s notices of appeal as improper due to timely pending post-trial motions); May 22, 2020 Order, Appellate Case No. 2020-000749 (denying petition for writ of mandamus and finding it “not appropriate” because recusal decision was not ministerial); June 17, 2020 Order, Appellate Case No. 2020-000791 (dismissing United States Fidelity and Guaranty Company’s petition for a writ of supersedeas as improper due to no pending appeal); July 30, 2020 Order, Appellate Case No. 2020-000845 (dismissing United States Fidelity and Guaranty Company’s appeal due to its status as a non-party to the action).

Respectfully submitted,

s/ Shanon N. Peake

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, Third Floor

Columbia, South Carolina 29205

(803) 254-5445

ATTORNEYS FOR RESPONDENT

September 15, 2020.

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PROOF OF SERVICE

I certify that a true copy of the Motion to Dismiss in this case has been served on the following, this 15th day of September, 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 March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

David G. Harris II – dharris@goldbergsegalla.com

David L. Brown – dbrown@goldbergsegalla.com

Brady A. Yntema – byntema@goldbergsegalla.com

(Signature page follows)

s/ Shanon N. Peake

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, Third Floor

Columbia, South Carolina 29205

(803) 254-5445

*Attorneys for Respondent Covil Corporation, by and
through its duly appointed Receiver, Peter D. Protopapas*

September 15, 2020

From: [Shanon Peake](#)
To: ["dharris@goldbergsegalla.com"](#); ["dbrown@goldbergsegalla.com"](#); ["byntema@goldbergsegalla.com"](#)
Cc: [Jon Robinson](#); [Murrell Smith](#); [Jescelyn Spitz](#); [Lindsay Valek](#); [Dot Faulkenberry](#)
Subject: Civil Corporation v. Pennsylvania National - Motion to Dismiss
Date: Tuesday, September 15, 2020 2:12:00 PM
Attachments: [Motion to Dismiss .pdf](#)
[Proof of Service - Motion to Dismiss.pdf](#)

Counsel,

Please find attached the Receiver's Motion to Dismiss the Notice of Appeal filed September 14, 2020 that we are filing with the Court of Appeals today, served on you pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020.

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

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