

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2020-
Circuit Court Case No. 2019-CP-40-03003

RECEIVED
Dec 21 2020
SC Court of Appeals

Ann Finch, Individually and as Executor of the Estate of Franklin Finch;
and Peter D. Protopapas, as Court-Appointed Receiver for Covil
Corporation, Plaintiffs/
Respondents,

v.

United States Fidelity and Guaranty Company; Zurich American Insurance
Company; and Wall, Templeton & Haldrup, P.A., Defendants,

Of Which

United States Fidelity and Guaranty Company is the Appellant.

USF&G'S NOTICE OF APPEAL

Please take notice that United States Fidelity and Guaranty Company respectfully notices its appeal of the order captioned "Order on Motion to Bifurcate." That order was entered on December 9, 2020, making this appeal timely.

This order is immediately appealable pursuant to South Carolina Code § 14-3-330(2), as it orders the parties to proceed with a bench trial on a single equitable claim prior to a jury trial on the pending legal claims where there are myriad common issues of fact among the legal and

equitable claims. Such a ruling impermissibly impairs USF&G's constitutional right to a jury trial.¹ Because the December 9th Order deprives USF&G of a mode of trial to which it is legally entitled, the order is immediately appealable and must be immediately appealed.²

USF&G further states that all necessary transcripts for this appeal have previously been ordered from and provided by the appropriate court reporters. Finally, the orders approving the *pro hac vice* admission of USF&G's counsel are attached.

Signature Page Attached

¹ *E.g.*, *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014); *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987); *Bateman v. Rouse*, 358 S.C. 667, 676, 596 S.E.2d 386, 391 (Ct. App. 2004).

² *See, e.g.*, *Creed v. Stokes*, 285 S.C. 542, 542–43, 331 S.E.2d 351, 352 (1985) (holding that the appellant waived his right to challenge a mode-of-trial ruling because he did not immediately appeal it); *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 93–94, 800 S.E.2d 488, 490–91 (Ct. App. 2017) (recognizing immediate right to appeal order of reference for determination of issues by master-in-equity in action involving both equitable and legal claims, and reiterating that “[t]he failure to immediately appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue” (quoting *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 377 (Ct. App. 1998))); *Plantation Federal Bank v. Gray*, 401 S.C. 507, 510–12, 737 S.E.2d 515, 517–18 (Ct. App. 2013) (reversing, by way of an immediate appeal, the trial court's order bifurcating trial for a bench trial to be held prior to jury trial); *Bateman*, 358 S.C. at 675, 596 S.E.2d at 390 (“[T]he purpose of requiring an immediate appeal of the denial of the right to a jury trial is to preserve a party's constitutional rights that would otherwise be lost.”); *see also Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539–40, 773 S.E.2d 144, 147 (2015) (“We decline the [respondent's] invitation to base our decision on the manner in which the motion was characterized—one of bifurcation. Our review of trial court orders is not constrained by how the order is styled. The trial court's order is quite distinct from other orders of bifurcation which have come before this Court. We are therefore free to evaluate the trial court's order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable.”) (internal citations omitted).

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below by emailing them as the addresses below:

Pleading(s): USF&G's Notice of Appeal

Parties Served:

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Counsel for the Respondent Receiver for Covil Corporation

By: /s/ M. Todd Carroll

December 21, 2020

RECEIVED
Dec 21 2020
SC Court of Appeals

Carroll, Todd

From: Carroll, Todd
Sent: Monday, December 21, 2020 4:34 PM
To: 'tmcvey@kassellaw.com'; 'jholder@dobslegal.com'; 'Trey Branham'; Jescelyn Spitz; Jon Robinson; Murrell Smith; 'shanon@smithrobinsonlaw.com'; mwhardee; jwhite@spartanlaw.com; Shisko, Marghretta; 'jonescr@gmail.com'; brady.edwards@morganlewis.com; Nancy.patterson@morganlewis.com; 'brad.nes@morganlewis.com'
Cc: 'Frankel, Andy T'; Forshaw, Mary Beth; O'Neill, Elizabeth; 'Carnevale, Michael S.'; Turner, Alan; DuBose, Susan; 'Davis, William P.'; Johnson, Debbie (US)
Subject: service of Notice of Appeal
Attachments: Notice of Appeal (Circuit Court Case No. 2019-CP-40-03003).pdf

Counsel,

Please find attached a Notice of Appeal in *Finch and Protopapas, as Receiver for Covil Corporation v. United States Fidelity & Guaranty Company, Zurich American Insurance Company, and Wall Templeton & Haldrup*, Circuit Court Case No. 2019-CP-40-03003, which we are electronically filing with the Court of Appeals today and are serving on you via this email, as permitted by Section (g)(3) of Supreme Court Order 2020-05-29-02. Best regards,

Todd

RECEIVED
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SC Court of Appeals

Carroll, Todd

From: Carroll, Todd
Sent: Monday, December 21, 2020 4:42 PM
To: 'Shanon Peake'
Subject: FW: service of Notice of Appeal
Attachments: Notice of Appeal (Circuit Court Case No. 2019-CP-40-03003).pdf

Shanon,

My apologies—it looks like I may have inadvertently left a “p” out of your email address when typing them in below. Best,

Todd

From: Carroll, Todd
Sent: Monday, December 21, 2020 4:34 PM
To: 'tmcvey@kassellaw.com' <tmcvey@kassellaw.com>; 'jholder@dobslegal.com' <jholder@dobslegal.com>; 'Trey Branham' <tbranham@dobslegal.com>; Jescelyn Spitz <jspitz@rplegalgroup.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Murrell Smith <murrell@smithrobinsonlaw.com>; 'shanon@smithrobinsonlaw.com' <shanon@smithrobinsonlaw.com>; mwhardee <mwhardee@bellsouth.net>; jwhite@spartanlaw.com; Shisko, Marghretta <mshisko@spartanlaw.com>; 'jonescr@gmail.com' <jonescr@gmail.com>; brady.edwards@morganlewis.com; Nancy.patterson@morganlewis.com; 'brad.nes@morganlewis.com' <brad.nes@morganlewis.com>
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Subject: service of Notice of Appeal

Counsel,

Please find attached a Notice of Appeal in *Finch and Protopapas, as Receiver for Covil Corporation v. United States Fidelity & Guaranty Company, Zurich American Insurance Company, and Wall Templeton & Haldrup*, Circuit Court Case No. 2019-CP-40-03003, which we are electronically filing with the Court of Appeals today and are serving on you via this email, as permitted by Section (g)(3) of Supreme Court Order 2020-05-29-02. Best regards,

Todd

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December 21, 2020

RECEIVED
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SC Court of Appeals

Via Electronic Filing

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

Re: Ann Finch, Individually and as Executor of the Estate of Franklin Finch; and Peter D. Protopapas, as Court-Appointed Receiver for Covil Corporation v. United States Fidelity and Guaranty Company; Zurich American Insurance Company; and Wall, Templeton & Haldrup, P.A.
Appellate Case No. 2020-
Circuit Court Case No. 2019-CP-40-03003
Notice of Appeal

Dear Ms. Kitchings:

Please find accompanying this letter a Notice of Appeal in the above-referenced matter. The Notice is being e-filed pursuant to Section (c)(5) of Supreme Court Order 2020-05-29-02. Pursuant to that same section, we shall mail the filing fee that accompanies this Notice within five days of this filing.

We have also served this filing via email on counsel for the Plaintiffs/Respondents, as permitted by Section (g)(3) of that Order. A copy of that service email is attached as well.

If the Court has any difficulty opening these electronically-submitted materials, please let us know, and we will be pleased to submit them via an alternate method.

Best regards,

/s/ M. Todd Carroll

Attachments

cc: Counsel for Plaintiffs/Respondents