

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. 2020-001663
Circuit Court Case No. 2019-CP-40-03003

RECEIVED

Dec 23 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, 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 EMERGENCY MOTION TO ENFORCE RULE 205

USF&G has appealed an order from the circuit court that deprives USF&G of its constitutional right to a jury trial. The order was issued on December 9, 2020, and sets a bench trial for January 11, 2021. Despite the pendency of this mode-of-trial appeal, the circuit court has sent correspondence to the parties stating that it intends to proceed with the bench trial on January 11th unless this Court orders otherwise.

USF&G does not make this motion lightly, but because the circuit court is disregarding this Court's exclusive jurisdiction over a mode-of-trial appeal, and because the bench trial is scheduled to take place in less than three weeks, USF&G respectfully moves for an emergency order from this Court that enforces Rule 205, SCACR, and enjoins the circuit court's bench trial.

BACKGROUND

The Plaintiffs have asserted several legal claims and a single equitable claim against USF&G, all of which rely on overlapping facts. Through those claims, the Plaintiffs are attempting to transfer decades of tort liability of the Covil Corporation—a Greenville-based insulator that has been dissolved since the early 1990s, but which continues to be a serial defendant in asbestos litigation—to Covil’s historic insurance carriers.

On December 9, 2020, the circuit court issued an order that set for trial only a bench trial on the Plaintiffs’ equitable claim, while putting off until a later date a trial on the legal claims. This improperly deprived USF&G of its constitutional right to a jury trial on the factual issues that are common among all of the claims. Those facts must be decided by a jury, and the jury’s decision then becomes binding on the circuit court when resolving the equitable claim. *Johnson v. S.C. Nat’l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987).¹

Because the December 9th order deprived USF&G of its right to a jury trial, it is immediately appealable under South Carolina Code § 14-3-330(2) and, in fact, must be immediately appealed. *See, e.g., 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

¹ Where there are fact issues that are common to the equitable and legal claims, it is well established that the legal claims must be decided *first* by the jury, given that a court’s findings on those issues would bind the parties under principles of collateral estoppel and res judicata, thereby impairing constitutional jury trial rights. This principle has been established consistently, including by the United States Supreme Court on multiple occasions, *e.g., Beacon Theaters, Inc. v. Westover*, 359 U.S. 500 (1959); the South Carolina Supreme Court, *e.g., Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014); *Johnson v. S.C. Nat’l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987); the South Carolina Court of Appeals, *e.g., Plantation Fed. Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013); *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (Ct. App. 2004), and numerous other courts throughout the country. Despite the fact that it is undisputed that there are myriad common issues here, in its December 9, 2020 order, the circuit court required that the bench trial proceed before the numerous legal claims, in clear violation of these principles. This is the issue pending on appeal before this Court.

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))).

Accordingly, on December 21, 2020, USF&G timely served and filed its notice of appeal of the December 9th order. The next day, the circuit court judge sent an email to counsel stating that, despite the appeal and this Court’s exclusive jurisdiction over the mode-of-trial issue pending before this Court, “I will go forward with the Finch Trial on Jan. 11, 2020 [sic] unless the Court of Appeals directs otherwise.” (Ex. A, at Email from Judge Toal.) Shortly thereafter, counsel for the Plaintiffs responded to the circuit court’s email and asked for a status conference for the purpose of establishing a bench trial without live testimony and without the ability to cross-examine witnesses, all over USF&G’s objection. (*Id.*, at Email from Mr. Smith.) The circuit court’s insistence on proceeding with trial despite the pendency of this appeal and the trial court’s lack of jurisdiction necessitates this emergency motion.

ARGUMENT

Respectfully, the circuit court has no jurisdiction to proceed with the bench trial, as that is the very subject of this appeal. *See* Rule 205, SCACR (stating that “[u]pon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal”); *see also Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘*matters affected by the appeal*’” (quoting *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012))) (emphasis supplied by the Supreme Court); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) (“This Court has exclusive jurisdiction over an appeal upon the service of a Notice

of Intent to Appeal.”); *Tillman*, 398 S.C. at 255 & n.3, 728 S.E.2d at 51 & n.3 (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); *Binkley v. Burry*, 352 S.C. 286, 294, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Once an appeal is filed, the appellate court has exclusive jurisdiction over the matter.”).

Nor can the circuit court issue an order to reacquire jurisdiction and require trial to proceed despite the pendency of this appeal. For one, it lacks the power to do so because the issue of USF&G’s right to a jury trial is now within this Court’s exclusive jurisdiction, as noted above. *See Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter[] affected by the appeal’ under Rules 205 and 241(a).”) (brackets supplied by this Court).

Second, even if this was an issue that could be addressed through a motion to lift the automatic stay under Rule 241—which it is not—that rule specifically requires courts to “consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. In other words, an order granting or lifting a stay pending appeal should be used to “preserve,” ***not*** destroy, “jurisdiction of the appeal,” and to “prevent,” ***not*** promote, “a contested issue from becoming moot.”

An order lifting the automatic stay and permitting a bench trial to proceed while the mode of trial is on appeal to this Court would moot the appeal altogether—exactly the opposite outcome envisioned by Rule 241, and entirely contrary to the unbroken body of South Carolina appellate

decisions that requires parties to immediately appeal mode-of-trial rulings or otherwise waive the issue. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (“[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* Jean H. Toal, et al., *Appellate Practice in South Carolina* 156 (3d ed. 2016) (“Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.”); *id.* at 145 (“Orders denying a party’s right to a mode of trial must be appealed immediately, and a party runs the risk of waiving the right to appeal if that party fails to so immediately appeal.”); *id.* at 157 (reiterating that “these orders must be appealed immediately”).

Accordingly, USF&G respectfully requests that the Court issue an order enforcing its exclusive jurisdiction over the mode-of-trial issue on appeal and enjoining the circuit court from moving forward with the bench trial in contravention of USF&G’s rights and Rule 205, SCACR.²

CONCLUSION

If the circuit court proceeds with the bench trial while the mode-of-trial issue has been perfected for appellate review and is pending before this Court, USF&G would have a Hobson’s Choice: either participate in a bench trial and risk waiving its constitutional right to a jury trial, or refuse to participate in the bench trial and risk waiving its right to defend itself from liability.

² Respectfully, the circuit court’s correspondence indicates the trial judge’s view that the order depriving USF&G of its right to a jury trial is not immediately appealable. That is incorrect as a matter of law based on the authorities cited above and in USF&G’s Notice of Appeal, but it is also an issue that is exclusively within this Court’s jurisdiction to address. *See, e.g., State v. Cooper (In re Cooper)*, 342 S.C. 389, 398, 536 S.E.2d 870, 875–76 (2000) (holding that the Supreme Court and the Court of Appeals resolve disputes that arise under the Appellate Court Rules).

This is not fair to any litigant, and it is exactly the type of impossible situation that Rule 205 forecloses. USF&G therefore requests that the Court issue an order enforcing its exclusive jurisdiction over this appeal and enjoining the circuit court from moving forward with the bench trial that is at issue in the order on appeal.

Because of the extremely short timeframe between the December 9th order and the January 11th trial date, USF&G also respectfully requests that the Court grant this motion on an expedited basis so that the litigants and the circuit court can proceed with certainty as quickly as possible.³

Signature Page Attached

³ Because of the urgency of this situation and the constitutional right at stake, USF&G is raising this same issue to the Supreme Court by way of a petition for an extraordinary writ. USF&G certainly means no disrespect to this Court by making such a parallel filing; it does so only because time is of the essence in order to avoid forcing the Hobson's Choice described above in the text, and USF&G must preserve its rights using all available avenues for relief.

Respectfully submitted,

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Attorneys for Appellant United States Fidelity and
Guaranty Company

December 23, 2020

Exhibit A

Correspondence from Circuit Court and
Respondents' Counsel Regarding
Proceeding with Bench Trial Despite
Pendency of Appeal

Carroll, Todd

From: Murrell Smith <murrell@smithrobinsonlaw.com>
Sent: Tuesday, December 22, 2020 1:05 PM
To: Toal, Jean; O'Neill, Elizabeth; Perry, Christina M.
Cc: A Hager; A Turner; Andy Frankel; C Dillard; Charles W. Branham, III; Chelsea Jaqueline Clark ; Courtney Welshimer; Daniel W. Nelson; Dot Faulkenberry; E. Moultrie; G Sorenson; Gretchen Hardy; Jason R. Meltzer; Jescelyn T. Spitz; Jim Cox; John S. Wilkerson; Jonathan M. Holder; Jon Robinson; K Campbell; Kassell Law Firm; Kim Smith; L Fetner; Lindsay; M Norton; M W Hardee; Madison Butler; Mary Beth Forshaw; matt Abee; Matthew T. Richardson; Nancy Patterson ; Noah P. Sullivan; R Kneece; S Clause; S Fanning; S Flores; S Pepin; S Rodriguez; Shanon Peake; Stacey Wascom; T Gilliland; T Kowalewski; Theile B. McVey; Tiffani; Carroll, Todd; V Baker; V. Kelp; Valerie Williams; W Davis; Warren C. Powell, Jr.; William T. Stanley
Subject: RE: Finch v. USF&G 2019-CP-40-03003

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Chief Justice Toal

Thank you for your response to my letter of December 17th and Ms. O'Neill's letter of December 21st. In light of the fact that the trial is proceeding on January 11th 2021, we would respectfully request a status conference next week to address the trial procedure under the new Covid-19 Supreme Court Order, outstanding Pre-trial issues , the Starr Davis and Southern Insulation matters mentioned in my December 17th correspondence. We will make ourselves available for a status conference at the Court's convenience. With trial rapidly approaching, the sooner that we can have this status conference, the better. We will be prepare a list of issues that we believe need to be addressed at this status conference and would request the other parties do the same if the Court schedules the same. Please let me know if you have any questions. I hope everyone has a Happy Holiday Season. Murrell



G. Murrell Smith, Jr.

Attorney at Law

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From: Toal, Jean <JToal@sccourts.org>
Sent: Tuesday, December 22, 2020 9:47 AM
To: O'Neill, Elizabeth <Elizabeth.ONeill@wbd-us.com>; Perry, Christina M. <cmperry@sccourts.org>
Cc: A Hager <ahager@turnerpadget.com>; A Turner <aturner@stblaw.com>; Andy Frankel <afrankel@STBLAW.COM>; C Dillard <CDillard@TurnerPadget.com>; Charles W. Branham, III <tbranham@dobslegal.com>; Chelsea Jaqueline Clark <cclark@brunerpowell.com>; Courtney Welshimer <Courtney.Welshimer@stblaw.com>; Daniel W. Nelson

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Subject: RE: Finch v. USF&G 2019-CP-40-03003

Dear Ms. O'Neill: Regarding your letter to me of yesterday, Dec. 21, 2020: (1) I was not aware of USF&G's appeal of my order of Dec. 9, 2020 in the Finch case. I notice that your letter shows my electronic mail address incorrectly, and perhaps that is why I have not received a courtesy copy of your appeal. My email address is: jtoal@sccourts.org, not ToalJ@sccourts.org. Please send me a copy of this filing and any other filings in connection with an appeal of my orders in Finch. (2) I will go forward with the Finch Trial on Jan. 11, 2020 unless the Court of Appeals directs otherwise. My order dealt with your client and others' motions to dismiss the alter ego claims which I denied, and plaintiffs motion to bifurcate which I granted. I do not believe either of these matters is immediately appealable. That said, I will in all events react to Mr. Smith's proposals regarding the bench trial. I note that his suggestions are very much in line with the recent orders of the Supreme Court on court activity in these Covid times. (3) Regarding the reconsideration motion you discuss, your client is not a party in any of these cases. These cases are not related in any way to the Finch v. USF&G matter. Best regards, Jean Toal

From: O'Neill, Elizabeth [<mailto:Elizabeth.ONEill@wbd-us.com>]

Sent: Monday, December 21, 2020 6:28 PM

To: Toal, Jean <JToal@sccourts.org>; Perry, Christina M. <cmperry@sccourts.org>

Cc: A Hager <ahager@turnerpadget.com>; A Turner <aturner@stblaw.com>; Andy Frankel <afrankel@STBLAW.COM>; C Dillard <CDillard@TurnerPadget.com>; Charles W. Branham, III <tbranham@dobslegal.com>; Chelsea Jaqueline Clark <cclark@brunerpowell.com>; Courtney Welshimer <Courtney.Welshimer@stblaw.com>; Daniel W. Nelson <dnelson@gibsondunn.com>; Dot <dot@smithrobinsonlaw.com>; E. Moultrie <emoultrie@kassellaw.com>; G Sorenson <GSorenson@turnerpadget.com>; G. Murrell Smith, Jr. <murrell@smithrobinsonlaw.com>; Gretchen Hardy <gretchen.hardy@morganlewis.com>; Jason R. Meltzer <jmeltzer@gibsondunn.com>; Jescelyn T. Spitz <jspitz@rplegalgroup.com>; Jim Cox <jcox@wyche.com>; John S. Wilkerson <jwilkerson@turnerpadget.com>; Jonathan M. Holder <jholder@dobslegal.com>; Jonathan M. Robinson <jon@smithrobinsonlaw.com>; K Campbell <kcampbell@brunerpowell.com>; Kassell Law Firm <firm@kassellaw.com>; Kim Smith <kim.smith@nelsonmullins.com>; L Fetner <Lfetner@brunerpowell.com>; Lindsay <lindsay@rplegalgroup.com>; M Norton <mnorton@brblegal.com>; M W Hardee <mwhardee@bellsouth.net>; Madison Butler <madison.butler@morganlewis.com>; Mary Beth Forshaw <mforshaw@stblaw.com>; matt Abee <matt.abee@nelsonmullins.com>; Matthew T. Richardson <MRichardson@wyche.com>; Nancy Patterson <nancy.patterson@morganlewis.com>; Noah P. Sullivan <nsullivan@gibsondunn.com>; R Kneece <rkneece@turnerpadget.com>; S Clause <sclause@brblegal.com>; S Fanning <sfanning@kassellaw.com>; S Flores <sflores@turnerpadget.com>; S Pepin <spepin@dobslegal.com>; S Rodriguez <srodriguez@brblegal.com>; Shanon N. Peake <shanonp@smithrobinsonlaw.com>; Stacey Wascom

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Subject: Finch v. USF&G 2019-CP-40-03003

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Chief Justice Toal:

Attached please find USF&G's correspondence regarding Mr. Smith's December 17, 2020 letter proposing certain procedures for the bench trial of this matter.

Elizabeth O'Neill

Partner
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## Exhibit B

Correspondence from Respondents' Counsel  
Requesting "Bench Trial" Without  
Witnesses

# SMITH ROBINSON

Forward thinking. Results driven.

Smith Robinson Holler DuBose and Morgan, LLC

COLUMBIA 2530 Devine Street, Columbia, SC 29205  
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SUMTER 126 N. Main Street, Sumter, SC 29151  
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CAMDEN 935 Broad Street, Camden, SC 29020  
P: 803.432.1992 F: 803.432.0784

December 17, 2020

Via Email Only

Chief Justice (Ret.) Jean Hoefler Toal  
P.O. Box 12456  
Columbia, SC 29211

***In Re: Asbestos Litigation  
Finch vs. Sentry Casualty Company, et al.  
Case No. 2019-CP-40-03003***

Dear Chief Justice Toal,

I write to ask the Court's guidance on several issues relating to the upcoming *Finch* trial on January 11, 2021.

Given that the issue of alter-ego is a trial to the bench, we suggest that there are two primary methods by which this case can be presented to the Court. First, the parties could put on evidence in the traditional manner with witnesses (live or by video conference, or to the extent that certain witnesses out of subpoena range decline to make themselves available, by videotape) and documents along with closing arguments and opening statements. Plaintiffs estimate that, including anticipated pretrial motion arguments, this could be accomplished in 7-10 trial days.

Alternatively, given that the Court is the finder of fact, each side could prepare proposed findings of facts and conclusions of law with exacting cites to documents and testimony and provide those documents and deposition transcripts to you with the relevant portions highlighted or otherwise marked for ease of use. Then we would propose that each side be permitted to make closing arguments to the Court of approximately 2 hours per side with the plaintiffs reserving 30 minutes for rebuttal. This would ensure that the time the Court staff would be required to be in person would be less than a full day.

I note that the Order of the Supreme Court issued yesterday, and attached here, giving further guidance on proceedings in these unprecedented times clearly gives trial courts permission to conduct non-jury trials in the manner they see fit in light of the conditions and limiting factors the current state of things permit. Additionally, the Order specifically notes that the Court, if it believes the briefing is sufficient, the right to decide matter on the briefing and evidence. We would respectfully suggest that this can be done in the *Finch* matter presently set for trial in front of your honor on January 11.

Similarly, there are a number of *Finch* and other asbestos receivership motions pending before the Court. Plaintiffs respectfully request that this Court rule on the briefs, which are complete, or schedule a hearing on those motions if the Court prefers argument. Those currently pending motions are:

**COVIL RECEIVERSHIP**

***Finch v. Carriers/WTH***

1. Covil's Motion for Partial Summary Judgment on Insurance Coverage Issues
2. Finch/Covil Motion to Pre-Admit Exhibits

**STARR DAVIS RECEIVERSHIP**

***PDP for Starr Davis v. Carriers***

1. Starr Davis Motion for Summary Judgment on Insurance Coverage Issues

**SOUTHERN INSULATION RECEIVERSHIP**

***Hutto***

1. Southern Insulation Motion for Partial Summary Judgment regarding USF&G Duty to Defend

We are happy to provide further specifics in how to conduct these proceedings on the briefs and via submission of evidence if you believe that appropriate. Thank you in advance for your consideration.

Sincerely,

*s/G. Murrell Smith, Jr.*

G. Murrell Smith, Jr.

GMS/df

Enclosure

cc: All counsel of record via email only

## Exhibit C

Correspondence from USF&G Objecting to  
Proposed “Bench Trial”



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December 21, 2020

**Via Electronic Mail**

The Honorable Jean H. Toal  
Acting Circuit Court Judge  
ToalJ@sccourts.org

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.*  
Circuit Court Case No. 2019-CP-40-03003  
Response to Plaintiffs' Correspondence of December 17, 2020

Dear Chief Justice Toal:

We write on behalf of USF&G to provide a preliminary response to Mr. Smith's letter of December 17, 2020. As your Honor is aware, USF&G today filed a notice of appeal of the Court's December 9, 2020 Order requiring that a bench trial on plaintiffs' alter ego claims take place before the jury trial on plaintiffs' remaining legal claims. Because of that appeal, we do not believe it necessary for the Court to consider at this time the various abbreviated trial procedures that Mr. Smith proposed for a bench trial, which were raised without any effort to meet and confer with USF&G. In any event, so that the record is clear, USF&G objects to the various proposals, including the proposal that the Court hold argument but not hear live testimony or provide USF&G with an opportunity to cross-examine adverse witnesses. If necessary following the appeal, we will raise with the Court any trial procedure objections that may be appropriate at that time.

As to the other motions that Mr. Smith asks be ruled on that do not pertain to the previously scheduled alter ego trial, USF&G respectfully requests that before any such motions are heard or addressed by the Court relating to the receiverships, the Court first address USF&G's January 17, 2020 motion to reconsider, alter, or amend the Court's order of January 8, 2020 in the *Falls, Howe, Hopper, Hill, and Taylor* actions (as supplemented 2/28/20). That motion has been pending for more than 11 months, notwithstanding USF&G's request for expedited consideration, it has not been heard and was not able to be included in in connection with the last two scheduled hearings in this matter. In addition, the Receiver, through his alter ego expert John Freeman, intends to rely on disputed findings and conclusions in the January 8, 2020 order in the *Falls, Howe, Hopper, Hill, and Taylor* actions in support of the Receiver's

Honorable Jean Toal  
December 21, 2020

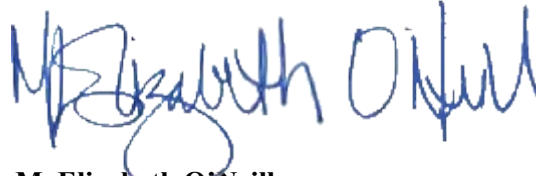
Page Two

claims in the *Finch* action. Accordingly, USF&G again requests that the Court rule on its reconsideration motion and has no objection to the Court doing so on the papers given the length of time it has been pending and the amount of prior briefing.

Finally, counsel for USF&G will be contacting the Receiver to discuss proposed schedules for the Starr Davis and Southern Insulation matters mentioned in Mr. Smith's letter given that the referenced motions have not been fully briefed. We hope not to involve the Court with such scheduling issues unless necessary.

Best regards,

**Womble Bond Dickinson (US) LLP**



**M. Elizabeth O'Neill**

Cc: All Counsel of Record

**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 Emergency Motion to Enforce Rule 205

Parties Served:

Theile B. McVey (tmcvey@kassellaw.com)  
Jonathan M. Holder (jholder@dobslegal.com)  
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W. Brad Nes (brad.nes@morganlewis.com)

*Counsel for the Respondent Receiver for Covil Corporation*

By: /s/ M. Todd Carroll

December 23, 2020

**RECEIVED**  
**Dec 23 2020**  
**SC Court of Appeals**

**Carroll, Todd**

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**From:** Carroll, Todd  
**Sent:** Wednesday, December 23, 2020 1:36 PM  
**To:** 'tmcvey@kassellaw.com'; 'jholder@dobslegal.com'; 'Trey Branham'; 'Jescelyn Spitz'; 'Jon Robinson'; 'Murrell Smith'; Shanon N. Peake; '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 motion to the Court of Appeals  
**Attachments:** USF&G's Emergency Motion to Enforce Rule 205 (Appellate Case No. 2020-001663).pdf; filing letter to Court of Appeals for emergency motion to enforce Rule 205 (Appellate Case No. 2020-001663).pdf

Counsel,

Please find attached an Emergency Motion to Enforce Rule 205 in Appellate Case No. 2020-001663, 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**

**Dec 23 2020**

**SC Court of Appeals**

M. Todd Carroll  
Direct Dial: 803.454.7730  
Direct Fax: 803.381.9130  
E-mail: todd.carroll@wbd-us.com

December 23, 2020

**RECEIVED**

**Dec 23 2020**

**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. 2020-001663  
Circuit Court Case No. 2019-CP-40-03003  
Emergency Motion to Enforce Rule 205

Dear Ms. Kitchings:

Please find accompanying this letter an Emergency Motion to Enforce Rule 205 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 motion 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