

IN 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

Case No. 2019-CP-40-03003

Appellate Case No. 2020-001663

RECEIVED

Dec 31 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 Guarantee Company; Zurich American Insurance Company; and Wall, Templeton & Haldrup, P.A.,.....Defendants,

Of Which

United States Fidelity and Guarantee Company is the.....Appellant.

**THE RECEIVER’S RETURN TO USF&G’S NOTICE OF WITHDRAWAL
OF THE EMERGENCY MOTION TO ENFORCE RULE 205, SCACR**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Peter D. Protopapas, in his capacity as the Receiver for Covil Corporation (“the Receiver”), by and through the undersigned counsel, respectfully submits this short Return to United States Fidelity and Guarantee Company’s (“USF&G”) Notice of Withdrawal of USF&G’s Emergency Motion to Enforce Rule 205, SCACR, filed on December 30, 2020. While the Receiver is glad USF&G has decided to

withdraw this unnecessary Motion, the Receiver submits this Return to correct the misrepresentations contained in USF&G's Notice of Withdrawal.

First, USF&G wants this Court to believe that the circuit court "changed its position" because of USF&G's Petition for Writ of Prohibition in the Supreme Court and Emergency Motion to Enforce Rule 205 in this Court, substantively identical motions simultaneously filed on December 23, 2020. *See* Notice of Withdrawal at 2. This is not true.

The circuit court has consistently set forth its position that the order on appeal is not immediately appealable. The circuit court stated in its December 22, 2020 email that it did not believe the order on appeal was immediately appealable and so the trial would proceed on January 11, 2021 unless this Court indicated the order was immediately appealable. (App. 17). The circuit court reiterated its position via email on December 23, 2020 that the bench trial would go forward on January 11, 2021 only if the Court of Appeals granted the Receiver's Motion to Dismiss and the South Carolina Supreme Court did not issue a Writ of Prohibition. The circuit court repeated this same position for a third time at the status conference on December 29, 2020, which was held without objection from any party. The circuit court held the status conference to discuss the procedure if the trial moved forward on January 11, 2021, in light of the complications of the COVID-19 pandemic and the Supreme Court's guidance on how to best balance the safety of litigants, attorneys, and judicial employees with the necessity for efficient and effective access to the justice system.

Second, in conjunction with misstating that the circuit court changed its position, USF&G argues that "[t]he immediate appealability of th[e] order is not subject to legitimate dispute." *Id.* This is also not true. As briefed in the Receiver's Motion to Dismiss currently pending before the Court, the bifurcation order is not immediately appealable, and the Receiver incorporates those

arguments herein. The circuit court has consistently maintained its belief that the order is not immediately appealable but is awaiting a decision on this issue by this Court prior to proceeding with the January 11, 2021 trial—as the court stated to USF&G on December 22, 23, and 29, 2020.

Accordingly, USF&G’s statement that the circuit court changed its position due to USF&G’s Petition for Writ of Prohibition and Emergency Motion to Enforce Rule 205 is inaccurate. Furthermore, USF&G’s statement that there can be no dispute that its appeal is appropriate is inaccurate. USF&G’s ill-conceived appeal is part of the larger pattern of inaccurate statements and inappropriate appellate filings. *See, e.g.*, October 16, 2019 Order, Appellate Case No. 2019-001651 (dismissing Zurich American Insurance Company’s, USF&G’s, and Sentry Insurance a Mutual Company’s notices of appeal because the appealed order was an interlocutory discovery order); February 13, 2020 Order, Appellate Case No. 2020-000206 (dismissing Zurich American Insurance Company’s and USF&G’s notices of appeal as improper due to timely pending post-trial motions); June 17, 2020 Order, Appellate Case No. 2020-000791 (dismissing USF&G’s petition for a writ of supersedeas as improper due to no pending appeal); July 30, 2020 Order, Appellate Case No. 2020-000845 (dismissing USF&G’s appeal due to its status as a non-party to the action). Respectfully, the Court should ignore all statements in USF&G’s latest filing other than the withdrawal itself because the statements are false and inaccurate.

The Receiver respectfully requests this Court grant his Motion to Dismiss the appeal so that the trial may proceed on January 11, 2021.

(Signature page follows)

Respectfully submitted,

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

s/G. Murrell Smith, Jr.

Jonathan M. Robinson (SC Bar #68285)

G. Murrell Smith, Jr. (SC Bar #66263)

Shanon N. Peake (SC Bar #102723)

Austin T. Reed (SC Bar #102808)

2530 Devine Street, 3rd Floor

Columbia, SC 29205

(803) 254-5445

ATTORNEYS FOR THE RECEIVER

This 31st Day of December 2020.

Columbia, South Carolina