

RECEIVED

Apr 26 2021

SC Court of Appeals

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. 2020-001437
Circuit Court Case Nos. 2019-CP-40-02285 and 2019-CP-40-06956

Peter D. Protopapas, in his capacity as Receiver of Covil Corporation..... Plaintiff,

v.

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

And

Sandra S. Hutto, Individually and as Personal Representative of the Estate of Donald L. Hutto and Brian Hutto and Candace H. Youngblood,..... Plaintiffs,

v.

Covil Corporation; Sentry Insurance A Mutual Company; Southern Insulation, Inc.; Starr Davis Company, Inc.; Starr Davis Company of South Carolina, Inc.; United States Fidelity & Guaranty Company; Zurich American Insurance Company; 3M Company; AECOM; Armstrong International, Inc; Aurora Pump Company; BW/IP, Inc.; Carboline Company; CBS Corporation; CGR Products, Inc.; Daniel International Corporation; Fisher Controls International, L.L.C.; Fluor Constructors International, Inc.; Fluor Enterprises, Inc.; Foster Wheeler Energy Corporation; The Goodyear Tire And Rubber Company; Grinnell, LLC; Hajoca Corporation; IMG Industries, Inc.; John Crane, Inc.; Metropolitan Life Insurance Company; Spirax Sarco, Inc.; Trane U.S., Inc.; Uniroyal Holding, Inc.; Velan Valve Corporation; Viking Pump, Inc.; Weir Valves & Controls U.S.A., Inc..... Defendants,

Of which:

United States Fidelity and Guaranty Company is the Appellant,

And

Covil Corporation, by and through its Receiver, Peter D. Protopapas and Peter D. Protopapas, in his capacity as Receiver of Covil Corporation are the..... Respondents.

USF&G’S RESPONSE TO THE RECEIVER’S MOTION TO DISMISS THIS APPEAL AS IT
RELATES TO THE *HUTTO V. COVIL CORP.* CASE

The Receiver was appointed through an order issued in *Taylor v. Air & Liquid Systems Corp.*, Case No. 2018-CP-40-04940 (Richland County Nov. 2, 2018), an asbestos personal-injury case to which USF&G is not a party, and in which Covil no longer has any potential exposure to liability. There is not, nor has there ever been, a “receivership court” established, nor is there any “In re: Covil Receivership” proceeding. Accordingly, everything that happens with respect to the Receiver is necessarily done on an *ad hoc*, case-by-case basis. Because of this background, USF&G consents to the Receiver’s motion to dismiss the *Hutto* portion of this appeal, and does so for two reasons:

First, despite the request to dismiss the *Hutto* version of this appeal, the appeal remains viable and proper with respect to the *Protopapas* case, as the order on appeal was issued in both cases. Dismissal of one of the two cases from which the appeal arises will not impact the Court’s consideration of the potentially dispositive issue on appeal: namely, the effect of the circuit court’s prior dissolution of Covil and the expiration of the statute of repose that followed that judicial dissolution. The Receiver concedes as much in the motion. (*See* Motion at 4 (“Further, USF&G’s appeal of the same issue in the *Protopapas* action would still be pending for this Court’s consideration despite a dismissal of the now-moot *Hutto* appeal.”); *id.* (acknowledging that “these issues are currently pending before the Court in the appeal from the *Protopapas* action”).)

Second, the motion is a welcome concession from the Receiver that an order issued in one case on the so-called “asbestos docket” is not applicable to every other cases pending on that “docket.” This is an about-face from the Receiver’s position historically.

As USF&G explained in its opening appellate brief, it has become a common occurrence for the Receiver to seek, and for the circuit court to grant, non-case specific relief to the “receivership” through motions filed in individual—and often wholly unrelated—actions found on the “asbestos docket,” including cases to which USF&G is not even a party. (USF&G Br. at 12–13 n.21.) The Receiver then takes those generic rulings and threatens to seek sanctions if USF&G makes an argument to preserve the same issue in a different case, even when the prior ruling has not yet been subject to appellate review. *E.g.*, Receiver’s Motion in *Finch v. USF&G*, Case No. 2019-CP-40-03003 (Richland County Dec. 23, 2020).

The Receiver’s litigation tactic to chill advocacy by threatening to seek sanctions is a naked attempt to deter USF&G from asserting its defenses and preserving its issues, and it is abusive and vexatious. But the Receiver’s motion to dismiss the *Hutto* appeal is based on mootness, and he now concedes as follows: “If the issue [on appeal] arises in any other case, USF&G will have the ability to obtain appellate review of the issue at that time.” (Motion at 4.) And he continues: “[T]here are no collateral consequences to the parties if the *Hutto* appeal were to be dismissed.” (*Id.* at 5.)

In light of the Receiver’s concession to this Court that an issue should be raised in “any other case” in order to be preserved for appellate review, and that there are no “collateral consequences” to other cases by having the *Hutto* appeal dismissed, USF&G is pleased that the Receiver is retreating from his improper posturing regarding USF&G’s basic obligation to raise and seek rulings on issues in each matter before the circuit court in order to preserve its position for appellate review.

Accordingly, for the reasons stated above, USF&G consents to the Receiver’s motion to dismiss this appeal with respect to the *Hutto* matter.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
todd.carroll@wbd-us.com
S.C. Bar No. 74000
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

SIMPSON THACHER & BARTLETT LLP

Andrew T. Frankel (*admitted pro hac vice*)
afrankel@stblaw.com
Mary Beth Forshaw (*admitted pro hac vice*)
mforshaw@stblaw.com
Alan Turner (*admitted pro hac vice*)
aturner@stblaw.com
Michael S. Carnevale (*admitted pro hac vice*)
michael.carnevale@stblaw.com
425 Lexington Avenue
New York, NY 10017
(212) 455-3073

Attorneys for Appellant United States Fidelity and
Guaranty Company

April 26, 2021

RECEIVED

Apr 26 2021

SC Court of Appeals

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 Response to the Receiver's Motion to Dismiss This Appeal as it Relates to the *Hutto v. Covil Corp.* Case

Parties Served:

Jescelyn Tillman Spitz (jspitz@rplegalgroup.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanon@smithrobinsonlaw.com)

Counsel for the Respondent Receiver for Covil Corporation

By: /s/ M. Todd Carroll

April 26, 2021