

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jun 11 2021**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Jean H. Toal  
Acting Circuit Court Judge

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Appellate Case No. 2021-000462  
Circuit Court Case No. 2019-CP-40-03003

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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.....Petitioner.

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**RESPONSE TO USF&G'S MOTION FOR EXTENSION OF TIME  
AND REQUEST TO EXPEDITE**

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Respondents, by and through the undersigned counsel, respectfully request this Court deny Appellant United States Fidelity & Guaranty Company's ("USF&G") Motion for Extension of Time to Respond to the Motion for Limited Remand. Rule 240(e), SCACR, indicates the decision of whether to grant or deny a motion requesting an extension of time to file a response to a motion is within this Court's discretion.

While this Court routinely grants extension requests, the history of the various delays in this litigation call for the Court to closely scrutinize the reasons behind USF&G's extension request and deny the extension because it is not warranted. USF&G has previously sought inappropriate relief in our appellate courts in this case and in related litigation and has had numerous appeals and petitions dismissed as improper by both this Court and the Court of Appeals. *See* Appellate Case Nos. 2019-001651, 2019-001654, 2020-000206, 2020-000207, 2020-000791, 2020-000845, 2020-001670, and 2020-001663. This Court has already cautioned USF&G that “[a]ny action taken for the purpose of delaying the disposition of this case will, under appropriate circumstances, merit the imposition of sanctions under Rule 269, SCACR.” Order, Appellate Case No. 2020-001670 (March 9, 2021). Therefore, Respondents request this Court exercise its discretion pursuant to Rule 240(e) to expedite its consideration of these matters. Respondents also request the Court shorten the time prescribed in Rule 240(f) for USF&G to file a Reply to this Response or find that a Reply is not permitted.

In their Motion for Extension of Time, USF&G asserts that it cannot file a response to Respondents' Motion for Limited Remand because it “has not yet had the opportunity to even review the motions that Respondents allegedly may file below.” (Mtn. Ext. Time at 2). However, Respondents' Motion for Limited Remand clearly states the nature of the motions they intend to file, indicating they are requesting a limited remand to allow the circuit court to “consider[ motions] by Respondents to amend their pleadings and remove several causes of action currently asserted against [USF&G], thereby obviating the current need for further appellate review in this action.” (Mtn. Limited Remand at 1–2).

After Respondents filed the Motion for Limited Remand, USF&G's counsel reached out to counsel for Respondents to request clarification on whether Respondents intended to “request

dismissal of all of the non-alter ego claims against USF&G with prejudice or without prejudice,” and counsel for the Receiver responded that they intended to request this dismissal without prejudice. *See* Exhibit A. USF&G’s counsel did not request to see the intended motions at that time or indicate USF&G believed it needed to see the motions prior to responding to Respondents’ Motion for Limited Remand. It is not clear what further information USF&G requires, especially because a response by USF&G to the limited question of whether this Court should remand this action to the circuit court does not have any bearing on USF&G’s ability to fully respond to the forthcoming motions in the circuit court once they are filed. Moreover, to the extent that USF&G objects to the Motion for Limited Remand because it has not had an opportunity to review the forthcoming motions, it could have stated its objection in a Response.

Further, it is important to note that this appeal is already moot as the Order on appeal found that the alter ego claim should be bifurcated with “a bench trial on the alter ego claim [to be] conducted in the Richland County Judicial Center on January 11, 2021” and “[t]he remainder of the case [to be] set for trial on May 11, 2021.” (Order at 4). The ordered dates for these bifurcated trials have already passed, rendering this appeal moot. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.”).

Accordingly, Respondents respectfully request the Court exercise its discretion to deny USF&G’s Motion for Extension of Time and either construe USF&G’s Motion for Extension of Time as an objection to Respondents’ Motion for Limited Remand or require USF&G to file a response within one business day. Respondents further request this Court expeditiously grant the Motion for Limited Remand to allow Respondents to take steps to obviate the need for further

appellate review of this action and to hopefully allow this case to move forward without further unreasonable delay.

RESPECTFULLY SUBMITTED,

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