

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

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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**RECEIVED**

**Jun 23 2021**

**S.C. SUPREME COURT**

Ann Finch, Individually and as Executor of 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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MOTION TO STRIKE LETTER

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USF&G respectfully moves the Court for an order striking the Respondents' letter of June 22, 2021, that requests the Court expedite its review of this case. For one, such a request must be made by motion, not by a skeletal, informal letter. Rule 240(a), SCACR. For that reason alone, the Court should strike the letter.

Second, and perhaps more importantly, there is no basis whatsoever for such a request—either in the letter itself, or in the record. As the Court is aware, USF&G filed this appeal because its constitutional right to a jury trial has been imperiled by the Respondents' procedural jockeying before the circuit court. When the circuit court agreed to conduct a non-jury trial on an equitable claim before a jury could evaluate legal claims that arise out of the same set of facts, hornbook

South Carolina law required USF&G to appeal that ruling immediately in order to preserve its constitutional right to a jury trial.

In an apparent attempt to dodge appellate review, the Respondents first asked this Court to issue a “limited remand” so that they can purportedly seek to dismiss their legal claims without prejudice so that they can re-file those same claims down the road and, in effect, end-run the constitutional safeguard of an impartial jury. Such gamesmanship flies in the face of the constitutional requirement that USF&G’s jury trial rights must be preserved “inviolable.” S.C. Const. art. I, § 14; Rule 38(a), SCRC.P.

Now, seeking to sidestep careful scrutiny of their gamesmanship, the Respondents ask the Court to hurriedly brush aside USF&G’s constitutionally-guaranteed rights without any basis for doing so. At most, they suggest that this Court should rush to disregard USF&G’s rights because the circuit court is scheduled to hear other trials in the “asbestos docket” on July 12, 2021. But that date has nothing to do with this case: this case is not and has never been scheduled for trial that day. No one—the litigants, counsel, third-party witnesses, no one—has prepared for the unfair surprise that the Respondents casually propose in their letter. It would be unconscionable to schedule a trial (jury or otherwise) with virtually zero notice during a global pandemic when every witness—except for Ms. Finch’s own counsel—lives out of state.

It is important that the Court not lose sight of what the Respondents are suggesting here. They are asking this Court to voluntarily forfeit jurisdiction over an appeal with major procedural implications—as all orders below from both the circuit court and the Court of Appeals are contrary to controlling decisions of this Court—and to do so over the objection of the party whose actual constitutional rights are at stake. The basis for their request is a hypothetical motion that they may file with the circuit court, but that no one has ever seen. And now they are asking the Court—

through a letter instead of a motion that complies with the South Carolina Appellate Court Rules—to quickly grant their request because in three weeks the asbestos court will be holding trials in other cases.

The Court should not endorse such litigation behavior. It should grant this motion and strike the Respondents' letter accordingly.

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