

RECEIVED

Aug 18 2021

SC Court of Appeals

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

C.A. No: 2019-CP-40-06243
Appellate Case No. 2021-000648

Peter D. Protopapas, as Receiver for Starr Davis Company, Inc. and Starr Davis
Company of S.C., Inc..... Respondents,

v.

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company;
The Standard Fire Insurance Company; St. Paul Fire and Marine Insurance Company;
The Employers’ Fire Insurance Company; Southeastern Agency Group and M.I.A.
Company, Inc. individually and as successors to or f/k/a Merrimon Insurance Agency,
Inc.; Robert E. Aspray; Nell Ashworth, individually and as personal representative of the
Estate of Robert J. Ashworth; Betty C. D’Amico, individually and as Executor of the
Estate of Julian D’Amico, Jr.; Kayla Keith, individually and as the personal
representative of the Estate of Jerry W. Archer, Sr.; Richard L. Knight II, as personal
representative of the Estate of Teddy L. Knight, Sr., and Linda Knight, individually;
David D. Rollins; James W. Smith and Frances R. Smith; and Linda J. White,
individually and as personal representative of the Estate of Lubert R. White, Jr.,..... Defendants,

Of which

Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company
and The Standard Fire Insurance Company are the Appellants.

JOINT MOTION TO SEAL

Appellants Travelers Casualty and Surety Company and The Standard Fire Insurance
Company (“Travelers”) and Respondents Starr Davis Company, Inc. and Starr Davis Company
of S.C., Inc. (“Starr Davis”), by and through undersigned counsel, respectfully submit this joint
motion to seal certain confidential information referenced in the parties’ appellate briefs and

corresponding exhibits to be included in the appellate record (“Confidential Information”). The parties previously filed the Confidential Information under seal with the circuit court (in the form of redacted versions of both parties’ briefs and filing under seal certain of the exhibits submitted by both parties), and the parties seek to keep the same information protected from public disclosure on appeal because it is confidential and otherwise protected.

For the reasons discussed below, the Confidential Information should be sealed because the parties meet the standard for sealing provided in Rule 41.1 of the South Carolina Rules of Civil Procedure. Additionally, once the parties compile the final record on appeal, they will identify the specific exhibits therein that should be filed under seal.

LAW AND ARGUMENT

Pursuant to Rule 41.1, a motion to file documents under seal must “state the reasons why sealing is necessary” and “explain why less drastic alternatives to sealing will not afford adequate protection.” *See* Rule 41.1(b). In addition, Rule 41.1(b) requires that the movant explain why the following factors support sealing: (1) the need to ensure a fair trial; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality; (4) the public or professional significance of the lawsuit; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents. For the following reasons, the standard for sealing the Confidential Information under Rule 41.1 is met here, and the Court should grant this motion.

First, sealing of the Confidential Information is necessary because it contains common interest protected historical claim file documents and information reflecting communications

between or regarding Travelers and its insured, Starr Davis. If the Confidential Information were not filed under seal and is disclosed publicly, there would potentially be a waiver of the common interest privilege shared between Travelers and Starr Davis, and potential harm to Travelers and/or Starr Davis in connection with the defense of asbestos litigation.

Second, alternatives to sealing, such as redacting the exhibits that Travelers intends to file under seal as part of the record on appeal, will not afford adequate protection because it would require redacting the documents in whole. The parties, however, will only redact those minimal excerpts of their appellate briefs that reference the Confidential Information.

Third, the factors outlined in Rule 41.1(b) either weigh in favor of sealing the Confidential Information or are neutral.¹ As to the third factor, as noted above, the Confidential Information includes documents and information from Travelers' historical claim files that contain sensitive and confidential information regarding Starr Davis. Travelers produced the confidential claim file documents to Starr Davis under an express expectation that they would be treated as confidential so as to avoid a waiver of the common interest privilege and potential harm to Travelers and/or Starr Davis.

As to the fourth and fifth factors, given the public significance of this case, both Travelers and Starr Davis may be prejudiced if the Confidential Information is not sealed, as it is possible that the plaintiffs' bar representing current and future asbestos claimants would utilize the Confidential Information in litigation against Starr Davis and/or Travelers.

¹ The factors that are neutral or not implicated by this motion are: (1) the need to ensure a fair trial; and (2) the need for witness cooperation.

As to the sixth factor, for the reasons discussed above, alternatives other than sealing are not available to protect Travelers' and Starr Davis's legitimate private interests in having the Confidential Information filed under seal.

Finally, as to the seventh factor, if the Confidential Information is filed publicly, Travelers and/or Starr Davis's other insurers may be prejudiced in asbestos personal injury cases or otherwise given that this case has public significance, particularly among the plaintiffs' bar in asbestos litigation.

CONCLUSION

For the reasons set forth herein, the parties respectfully request that the Court grant this motion and enter an order sealing the Confidential Information that is currently redacted in the parties' appellate briefs and corresponding materials to be filed in the appellate record.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
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

STEPTOE & JOHNSON LLP

Harry Lee (*admitted pro hac vice*)
hlee@steptoe.com
1330 Connecticut Avenue,
NW Washington, DC 20036
(202) 429-3000

Attorneys for Appellants Travelers Casualty
and Surety Company and The Standard Fire
Insurance Company

Respectfully submitted,

SMITH ROBINSON HOLLER DUBOSE
AND MORGAN, LLC

By: /s/ Shanon N. Peake
G. Murrell Smith, Jr. (S.C. Bar # 66263)
Jonathan M. Robinson (S.C. Bar # 68285)
Shanon N. Peake (S.C. Bar #102723)
2530 Devine Street, Third Floor
Columbia, South Carolina 29205
(803) 254-5445

Attorneys for Respondents Peter D. Protopapas, as
Receiver for Starr Davis Company, Inc. and Starr Davis
Company of S.C., Inc

August 18, 2021

RECEIVED

Aug 18 2021

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellants, 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): Joint Motion to Seal

Parties Served:

Brian M. Barnwell (bb@rplegalgroup.com)
Jescelyn T. Spitz (jspitz@rplegalgroup.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
John Belton White Jr. (jwhite@spartanlaw.com)
Marghretta Hagood Shisko (mshisko@spartanlaw.com)
Griffin Littlejohn Lynch (glynch@spartanlaw.com)
Christopher Rutledge Jones (jonescr@gmail.com)
Peter George Currence (pete@mscmlaw.com)

Counsel for the Respondents

By: /s/ M. Todd Carroll

August 18, 2021