

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT
CASE NUMBER: 2020-CP-40-02098

Covil Corporation, by and through its
duly appointed receiver Peter D.
Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual
Casualty Insurance Company; Sam J.
Crain & Co., Inc.; and South Carolina
Property & Casualty Insurance
Guaranty Association,

Defendants.

RECEIVED

May 31 2022

SC Court of Appeals

ORDER

Penn National moves this Court to reconsider its May 5, 2022 Order on Discovery Motions, which addressed: (1) Ellis & Winters LLP's March 22, 2022 report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court's November 5, 2021 Discovery Order; (2) the Receiver's February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; (3) the Receiver's March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents and Penn National's April 7, 2022 Motion to Seal; and (4) Penn National's December 22, 2021 Motions to Quash.

Upon consideration of Penn National's Motion for Reconsideration, the Receiver's Opposition to Penn National's Motion for Reconsideration, and for good cause shown, it is **HEREBY ORDERED** that Penn National's Motion for Reconsideration is **DENIED**. By separate

ELECTRONICALLY FILED - 2022 May 26 3:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

Order Penn National's 2022 Motion to Seal Exhibit 1 has been granted with consent of the Receiver.

This matter is an ongoing discovery issue, revolving around Penn National's refusal to produce insurance policies, and thus is not immediately appealable. Accordingly, a Motion for Reconsideration is inappropriately raised. The South Carolina Supreme Court has held, "an order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision." *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005)(See, *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974); *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985)). Pursuant to S.C. Code § 14-3-330(1), intermediate orders that involve the merits of the case may be immediately appealed and pursuant to S.C. Code § 14-3-330(2), interlocutory orders affecting a substantial right may be immediately appealed. An order which involves the merits, "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Id.* (Citing, *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780)). An order affecting a substantial right must "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* (Citing, *Id.* at 335 n. 4, 426 S.E.2d at 780 n. 4). Orders involving discovery disputes such as this do not qualify as appealable Orders.

Additionally, Penn National's Motion for Reconsideration does not recite an accurate reflection of this Court's Order or the activity of the parties in this protracted discovery dispute. The Receiver's reply, filed May 18, 2022, in opposition to Penn National's Motion for Reconsideration is a completely accurate recital of the law and facts of this discovery dispute and of the Orders of this Court including the May 5, 2022 Order on discovery motions. This Order must be immediately obeyed.

It is **SO ORDERED**.

[Electronic Signature on Following Page]



Richland Common Pleas

Case Caption: Covil Corporation By And Through Its Receiver , plaintiff, et al vs
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al
Case Number: 2020CP4002098
Type: Order/Other

So Ordered

Jean H. Toal