

RECEIVED

Mar 13 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefler Toal, Chief Justice (Ret.) and Acting Circuit Court Judge

Case No. 2020-CP-40-04385

Appellate Case No. 2023-000252

Southern Insulation, Inc., through its Receiver, Peter D. Protopapas,Respondent,

vs.

OneBeacon Insurance Group, Ltd.; OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); R.V. Chandler & Associates, Inc.; Chandler Rental Properties, Inc.; Thomas S. Chandler; Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; Gene N. Norville; the South Carolina Property and Casualty Insurance Guaranty Association; Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited; Brad S. Huntington, individually; and John C. Williams, individually,

Of which OneBeacon Insurance Group, Ltd.; OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); Trebuchet US Holdings, Inc; Trebuchet Investments Limited; Trebuchet Group Holdings Limited; Brad S. Huntington, individually; and John C. Williams, individually, are Appellants.

**RESPONDENT’S REPLY TO
MOTION TO DISMISS APPEAL**

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules, Respondent Peter D. Protopapas, as the Receiver for Southern Insulation, Inc. (“Southern”), respectfully submits this consolidated Reply to Appellants’ separately filed Returns to Respondent’s Motion to Dismiss

Appeal.¹ This case has not proceeded beyond the Motions to Dismiss because Appellants continue to engage in procedural jousting rather than litigation on the merits. After an improper removal to federal court was remanded, Appellants now appeal the denial of their Motions to Dismiss. Appellants claim to fit within a narrow statutory window that is not open to them. For the reasons below, Appellants cannot appeal the trial court’s interlocutory Order denying their Motions to Dismiss.

DISCUSSION

1. South Carolina Code section 14-3-330 does not apply.

a. The trial court did not refuse to enforce an injunction.

Relying almost entirely on *Williams v. Northwestern Sec. Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992), Appellants argue that the trial court’s Order denying their Motions to Dismiss is appealable as one “refusing an injunction” under section 14-3-330(4) of the South Carolina Code. (OneBeacon Ret. 5).

While the circumstances may be similar, one critical difference distinguishes this case from *Williams* and is fatal to Appellants’ argument: in *Williams*, the liquidated insurer was a party to the action and the sole appellant. Here, the liquidated insurer (Bedivere) is neither party nor appellant. This important distinction renders *Williams* inapplicable and the denial Order unappealable.

Williams involved the following scenario:

On November 2, 1989, a North Carolina state court entered an Order of Rehabilitation for Northwestern [Security Life Insurance Company]. The rehabilitation was unsuccessful and on May 2, 1990, the North Carolina **state court entered an Order of Liquidation**

¹ The OneBeacon and Trebuchet Appellants each filed their own appeals of the trial court’s denial of their Motions to Dismiss (the “Order”), and their appeals have been consolidated. References to the “Appeal” or the “consolidated Appeal” are to both appeals of the Order.

for Northwestern. On September 5, 1990, Respondent **Williams filed the complaint against Northwestern**, Toyota Credit Corporation, and World Omni Financial Corporation alleging that they had conspired to repossess his car. On October 17, 1990, **Northwestern moved to be dismissed** from the action pursuant to S.C. Code Ann. § 38-27-430(a) (1989) and the injunction which the North Carolina court issued. The trial judge denied the motion and **Northwestern appealed**.

307 S.C. at 463, 415 S.E.2d at 809 (emphasis added). Because the plaintiff in *Williams* sued the liquidated insurer, which the liquidation order prohibited, the Supreme Court found that the trial court's denial of the insurer's Motion to Dismiss had "refused" the North Carolina injunction. *Id.* at 464, 415 S.E.2d at 809. Importantly, the *Williams* court limited the scope of its ruling to the particular facts of that case. *See id.* ("Under these facts, we agree."). The decision was fact-based and limited.

The determinative facts in *Williams* do not fit the case here. Bedivere, Southern's liquidated insurer, is neither a party to this appeal nor to this action. Although Bedivere was a party prior to its entry into liquidation, Respondent then dismissed it from the action – specifically to comply with the Pennsylvania Commonwealth Court's Order of Liquidation ("Liquidation Order," attached as Exhibit 1), which enjoins actions against Bedivere or its Liquidator.

According to the plain language of section 14-3-330(4), the trial court's denial Order is appealable only if it "refused" an injunction contained in the Liquidation Order. As shown in Section 2 of this Reply, the Liquidation Order's stay of litigation only precludes suit against specific entities, which do not include Appellants, and Respondent's suit is not encompassed within the types of actions enjoined by the Liquidation Order. Since Appellants cannot fit within sub-section (4) to establish the Order's appealability, this Court does not have appellate jurisdiction to review the Order.

b. The rest of South Carolina Code § 14-3-330 does not apply, either.

In a footnote, the Trebuchet Appellants argue “the Order may also be appealable pursuant to S.C. Code Ann. § 14-3-330(1) and (2).” (Trebuchet Ret. 8 n.3). In addition to this argument’s equivocal nature, the Trebuchet Appellants have abandoned the argument by asserting it in conclusory fashion without any citation to supporting authority. *See Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) (recognizing an issue is abandoned on appeal when it “is not argued within the body of the brief but is only a short conclusory statement”). The mere citation to subsections of the appealability statute cannot rescue this disingenuous argument.

On the merits, the argument also fails. As stated in Respondent’s Motion, the Order does not finally determine any matter concerning any party’s causes of action or defenses, and the Trebuchet Appellants have entirely failed to state what they believe has been “finally decided” such that section 14-3-330(1) applies. *See Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (“An order [that] involves the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’” (quoting *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993))). The Trebuchet Appellants also fail to identify any substantial right they allege is implicated by the Order, or how such a purported right cannot be remedied on appeal after final judgment. *See Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) (“The provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be

avoided and most errors can be corrected by the remedy of a new trial.”). And to the extent the Trebuchet Appellants argue “the very fact of litigating this case” violates a substantial right, (Trebuchet Ret. 8 n.3), this is incorrect. *See Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991) (“Avoidance of trial is not a ‘substantial right’ entitling a party to immediate appeal of an interlocutory order.”).

2. The Liquidation Order does not preclude Respondent’s action against Appellants.

Broad though it may be, the Liquidation Order only bars actions against certain entities, and none of those protected entities are defendants here. The Liquidation Order provides:

Unless the Liquidator consents thereto in writing, no action at law or in equity, including, but not limited to, an arbitration or mediation, the filing of any judgment, attachment, garnishment, lien or levy of execution process against Bedivere or its assets, shall be brought **against Bedivere or the Liquidator or against any of their employees, officers or liquidation officers** for acts or omissions in their capacity as employees, officers or liquidation officers of Bedivere or the Liquidator, whether in this Commonwealth or elsewhere, nor shall any such existing action be maintained or further prosecuted after the effective date of this Order.

Exhibit 1, at 6 (emphasis added).

Here, the action does not include “Bedivere or the Liquidator or . . . any of their employees, officers or liquidation officers.” They are not parties, and the Liquidator has made no move to intervene. The injunction that Appellants contend was “refused” is in fact, by its own terms, not implicated or violated because Appellants are defendants here, and Bedivere is not.

Rather, Appellants are defendants for their bad acts that Respondent alleges drove Bedivere into liquidation and caused direct harm to Respondent. Those same defendants now seek to use the Liquidation Order as a shield. This fact was part of the trial court’s rationale in denying Appellants’ Motions to Dismiss:

THE COURT (to Appellants): [O]n the one hand, Bedivere does nothing. The Liquidator does nothing. And you get to hide behind that to say nobody can pursue . . . my bad acts because they got to wait till the Liquidator does This is an attempt to go after you all [the Appellants] directly. And you are hiding behind that liquidation to say, oh, we get the protection of the liquidator and Bedivere so that we can continue to enjoy the fruits of undercutting and destroying Bedivere. That's just not a very appealing argument to me.

Southern Insulation, Inc. v. State Auto, et al., 2020-CP-40-04385, Jan. 27, 2023 Motion to Dismiss Transcript of Record (“Transcript”), attached in full hereto as Exhibit 2; at 30:21-25; 31:17-22.

The OneBeacon Appellants seek to broaden the stay in the Liquidation Order beyond its express terms to try to protect themselves from accountability. (*See* OneBeacon Ret. 5–6). The only South Carolina case (other than *Williams*) cited by the OneBeacon Appellants in support of their position, *Antinopoulos v. DS Contractors, Inc. et al.*, also supports Respondent’s position. In that case, a defendant insured of The Home Insurance Company, a liquidating insurer, moved to stay the action against it in accordance with a New Hampshire liquidation order which provided, in relevant part:

To the full extent of the jurisdiction of the Court and the comity to which the orders of the court are entitled, **all actions or proceedings against an insured** of the Home in which The Home has an obligation to defend the insured **are stayed for a period of six months** from the date of the Order and such additional time as the Court may determine

Antinopoulos v. DS Contractors, Inc.; Synco Sys., Inc.; Kinco, Ltd. of Charleston; and Parex, Inc., 01-CP-10-632, Sept. 26, 2003 Order Granting Motion of Defendant Parex, Inc. for Stay, at 3 (emphasis added), attached as Exhibit 3. The trial court in *Antinopoulos* granted the defendant insured’s motion pursuant to section 37-27-430 of the South Carolina Code (discussed below)²

² Exhibit 3, at 4.

because in that case the stay explicitly protected the defendant insured. That is, the express language of the injunction in that case precluded litigation against a party in the case. In contrast, Appellants seek to preclude litigation against them because of an injunction prohibiting actions against someone else.

Antinopoulos does not support Appellants' argument that Bedivere's Liquidation Order has been "refused" or is not being honored because Respondent's claims against them have been allowed to proceed. If anything, *Antinopoulos* demonstrates that the plain language of a litigation stay must be taken literally and given proper effect in determining whether it applies. Here, the Liquidation Order's stay does not protect Appellants from being named defendants in the action.

Similarly, section 38-27-430, which Appellants argue required the trial court to enforce the Liquidation Order, is not implicated here. That statute provides, in relevant part:

The courts of this State **shall give full faith and credit to injunctions against the liquidator or the company** or the continuation of existing actions **against the liquidator or the company**, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states.

S.C. Code Ann. § 38-27-430(a) (emphasis added). Pursuant to the statute, the Court must give "full faith and credit" to the Liquidation Order's injunction barring actions "against the liquidator or [Bedivere];" that injunction has been respected by this action, as neither Bedivere nor its liquidator is a party to this action.

During the hearing on Appellant's Motions to Dismiss, the Court observed that it could give full faith and credit to the Liquidation Order, while still allowing Respondent to proceed with its action. The two were not mutually exclusive:

THE COURT: Well, there's nothing that ousts South Carolina of jurisdiction simply by that liquidation. There's nothing in their act that does that [W]e can give full faith and credit to the

liquidation and still allow -- this is something that is very ancillary to the liquidation. This is an attempt to go after you all [the Appellants] directly.

Exhibit 2, at 31:8-18. Therefore, the trial court did not refuse to give full faith and credit to the Liquidation Order by allowing this action to proceed because the Liquidation Order does not preclude litigation against Appellants.

3. Respondent has not brought claims that belong to the Liquidator, because those claims could not have been brought by Bedivere and are thus not “assets” of Bedivere.

The Liquidation Order vests in the Liquidator those “rights of action” Bedivere could have asserted.³ Appellants argue that Respondent’s claims against them infringe on the Liquidator’s authority to bring claims on Bedivere’s behalf and interfere with the Liquidator’s marshalling of Bedivere assets. But neither is true.⁴ Regardless of its powers, as one “standing in the shoes” of the insolvent Bedivere, the Liquidator is only possessed of those assets and claims belonging to Bedivere. Respondent’s claims do not belong to and are therefore not “assets” of Bedivere, and so they do not belong to the Liquidator.

a. Bedivere could not bring claims based on alter ego because only third parties can bring such claims, and so the Liquidator cannot bring Southern’s claims based on alter ego.

Respondent has alleged that the OneBeacon, and later the Trebuchet Appellants were controlling persons who dominated Bedivere and collaborated with Bedivere’s agents to commit

³ See Exhibit 1, at 2 (“The Liquidator is vested with title to all property, assets, contracts and rights of action (assets) of Bedivere of whatever nature and wherever located, whether held directly or indirectly, as of the date of filing of the Petition for Liquidation.”).

⁴ The Liquidation Order does not in fact enjoin Bedivere’s unsecured creditors from bringing actions against third parties other than the specific entities described above. The Liquidation Order does, however, enjoin secured creditors and creditors seeking priority or preferred status from pursuing claims against Bedivere’s assets. See Section 543 of Article V, 40 P.S. § 221.43, which is cited at Footnote 9, below. In other words, once again Appellants’ argument does not show that the trial court has refused an injunction.

the bad acts on which Respondent's claims here are based. Respondent has alleged alter ego liability, caused by Appellants' undercapitalization, siphoning of funds, influence as dominant shareholders, and use of Bedivere's funds to pay for Appellants' other lines of business, all of which are factors supporting Appellants' alter ego liability directly to Respondent, which is different from being the *de facto* alter ego of Bedivere, as Appellants imply.⁵

“[C]ourts apply the alter ego theory and disregard a company's separate identity for the benefit of **third parties**, *e.g.*, creditors of the corporation, who would suffer an unjust loss or injury unless the . . . parent corporation were held liable for the subsidiary's debts.” *Spartan Tube & Steel v. Himmelspach (In re RCS Engineered Prods. Co.)*, 102 F.3d 223, 225-26 (6th Cir. 1996) (emphasis added). The general rule is that the corporate veil is pierced only for third parties, like Southern, and never for the benefit of the corporation. 18 Am. Jur. 2d *Corporations* § 46 (1985). The Liquidator cannot bring claims on behalf of Bedivere that are based on alter ego liability because the doctrine is for the benefit of third parties (like Southern) and not for the subservient entity (which here is Bedivere).

⁵ The OneBeacon Appellants suggest Respondent's claims are barred because Appellants and Bedivere are alleged to be alter egos and to constitute a single business enterprise. (OneBeacon Ret. 7–8). But no alter ego or single business enterprise finding has yet been made in the underlying action or Bedivere's liquidation proceedings, and Appellants denied Respondent's alter ego and single business enterprise allegations in their Answers to Respondent's Second Amended Complaint. As a result, Appellants cannot now attempt to broaden the Liquidation Order's reach to stay Respondent's claims against them on this basis. Furthermore, any alter ego finding would not automatically prevent Respondent from maintaining its claims against Appellants. *Cf. Alvarez v. Ward*, No. 1:11cv03, 2011 U.S. Dist. LEXIS 151873, at *10 (W.D.N.C. Oct. 17, 2011) (“A plaintiff, however, may allege a direct cause of action against the alter ego that is not subject to the bankruptcy stay.”).

b. In an action against Appellants, Bedivere would be barred by in pari delicto from asserting Southern's claims; similarly, the Liquidator would be barred.

Respondent, in opposing Appellants' Motions to Dismiss in the trial court, argued that if Bedivere had attempted to bring claims against Appellants similar to those brought by Respondent, Appellants would have raised the defense of in pari delicto, since such claims would allege that Bedivere was complicit in the same bad acts on which those claims were based and thus Bedivere would be barred from bringing such claims. In pari delicto is an affirmative defense that prevents a plaintiff who participated in the same wrongdoing as the defendant from recovering damages from that wrongdoing. *Anderson v. Cordell (In re Infinity Bus. Grp., Inc.)*, 628 B.R. 213, 248, 2021 U.S. Dist. LEXIS 65185, at *73 (D.S.C. Mar. 31, 2021). The Liquidator, as successor to Bedivere, is subject to any legal or equitable defenses that could have been raised against Bedivere. *See Grayson Consulting, Inc. v. Wachovia Sec., LLC (In re Capital)*, 2008 Bankr. LEXIS 4109, at *6 (Bankr. D.S.C. June 10, 2008) (finding that *in pari delicto* is an equitable defense which can be asserted against a plaintiff who shares fault with the defendant).

Respondent argued to the trial court that whether in pari delicto would apply is a question of fact that has yet to be determined. Given the very preliminary stage of the case against Appellants (Respondent has not yet received discovery from Appellants), Respondent argued it should be allowed to determine the facts. The trial court agreed: "Discovery will elucidate a lot of [th]ings that are still out there about this matter."⁶

Furthermore, Respondent has alleged that, unlike Appellants, Southern is an innocent third-party that suffered harm from the bad acts of both the badly behaving debtor (Bedivere – not a defendant here) and the third parties (Appellants – who are defendants here), each of which

⁶ Exhibit 2, at 32:13-14. Although the uncorrected transcript states "feelings," the actual word was "things."

Appellants were, at times, the ultimate controlling persons of Bedivere. Appellants were all *in pari delicto* with Bedivere.

Because Bedivere is in liquidation, Appellants argue the Liquidator has the ultimate say over Respondent's claims. This is a classic straw-man argument—and if it is honored, the wrongdoers, and no one else, will benefit. The Liquidator has made no move to sue any of the Appellants or to intervene in this action. The trial court recognized this:

THE COURT (to Respondent): Well, what you're saying is that this crowd, these two, are just hiding behind the liquidator

MR. RICHARDSON: Right. They created the very situation they're now waving as a shield in this courtroom to try and protect themselves from damages they –

THE COURT: Now that they have a liquidator, you can't pursue the bad people who caused them to be in liquidation.

Exhibit 2, at 22:12-23.

Meanwhile, Respondent itself is in receivership, and its Receiver is seeking to pursue his mandate to recover Southern's assets so it can respond to meritorious asbestos personal injury claims. Respondent is the one party that did not participate in the bad acts that brought us here, and Southern has been injured as a result of those acts. Consistent with equity principles—including that “[e]quity eschews mechanical rules; it depends on flexibility”—Respondent argued that where two persons are tasked with recovering the assets of respective debtors, the one who is actively trying to recover for completely innocent asbestos victims, from solvent bad actors that would profit if recovery were mechanically denied, should be the one allowed to proceed. *See Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946). Respondent would never get its day in court against these bad actors otherwise. The trial court agreed. See Exhibit 2, at 22:12-23.

4. Respondent is bringing its own direct claims against Appellants.

Appellants characterize Respondent's claims as "derivative," but this is not the case. Respondent is suing for direct harm to itself and is seeking only those damages to which it personally is entitled.⁷ Even if Respondent's injuries were viewed as secondary to the injuries suffered by Bedivere, Respondent's claims are *not* derivative. *See In re Refco Sec. Litig.*, 2011 U.S. Dist. LEXIS 103129, at *52-53 (S.D.N.Y. July 5, 2011) (claims of creditors suing for damages caused by third parties who aided and abetted the acts of the wrongdoing insiders were not "derivative" like those of shareholders suing for harm to their corporation – "derivative" claims in the *in pari delicto* sense are those claims held by the debtor corporation, where the one suing on the corporation's behalf is the one stepping into its shoes).

In *Refco*, the creditors (like Respondent) were allowed to sue even though their injury was secondary to the party suffering the primary injury (the debtor). Their claims were not derivative. "The case law establishes that the plaintiffs who have been barred by *in pari delicto* [in other cases] are only those who are actually invoking a right to sue for the damages suffered by the [debtor] corporation." *Id.* at *63 (emphasis added). When *in pari delicto* applies, it "does not cover a plaintiff's claim for damages that, while indirect, are actually suffered by *both* the [debtor] corporation *and* the [creditor] plaintiff." *Id.* (emphasis added). Here, Respondent asserts direct claims against Appellants for the damages Respondent has suffered because of Appellants' bad acts.

"A large number of cases hold that if a corporation is barred from suing for harm to the corporation due to *in pari delicto*, those claims can then be brought by creditors of the wrongdoing

⁷ Although Respondent's Second Amended Complaint requested alternative remedies in connection with its claims, Respondent is not pursuing inconsistent remedies. *See* Exhibit 2, at 24:22-25; 25:1-5.

corporation. The right of creditors to bring their own claims when the [Trustee] is barred is a function of the Wagoner Doctrine.” *Id.* at *57; *see also id.* at *57 n.9 (“[T]he courts have consistently held that the Wagoner Doctrine and *in pari delicto* . . . are ‘substantively identical.’”) As stated previously, Bedivere is barred by the *in pari delicto* doctrine from suing Appellants for Respondent’s claims. Respondent may therefore sue Appellants for the injury they have caused to it.

In sum, because Respondent’s claims against Appellants are not assets of Bedivere and do not seek to recover any assets of Bedivere,⁸ the relevant portions of the Liquidation Order⁹ do not apply to this action any more than the litigation stay does, and the Trebuchet Appellants’ reliance on those provisions is misplaced. (*See* Trebuchet Ret. 3–4).

5. The denial Order does not foreclose Appellants’ ability to raise their issues later, when the record is full—thus the appeal should be dismissed.

In ruling on Appellants’ Motions to Dismiss, the trial court noted that if this action were not allowed to proceed, Respondent, who may be the only innocent party here, might have no remedy¹⁰ – because of the acts of others:

Well, the one thing I -- that just stands out to me in this whole mélange of entities that were involved in this thing is that there’s one entity that isn’t bad and didn’t do anything wrong. And it looks like everybody else is kind of hiding. But Southern is the one that didn’t -- nobody, I think -- I mean, Potomac, all these other entities,

⁸ See Footnote 7, above.

⁹ *See* Exhibit 1, at 2 (“The Liquidator is vested with title to all property, assets, contracts and rights of action (assets) of Bedivere of whatever nature and wherever located, whether held directly or indirectly, as of the date of filing of the Petition for Liquidation.”); *id.* at 6 (“All secured creditors or parties, pledges, lienholders, collateral holders or other persons, claiming secured, priority or preferred interests in any property or assets of Bedivere, are hereby enjoined from taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of Bedivere except as provided in Section 543 of Article V, 40 P.S. § 221.43.”).

¹⁰ Southern ought to be able to explore this possibility during discovery. *See* Exhibit 2, at 20:13-22; 21:18-25; 22:1-10.

Bedivere, all participated in a scheme that stripped out the long-tail assets available for use in these claims. Now, how does the one innocent party get to suffer this -- a calamity not of its making, but of the making of people who committed, arguably, fraud?

Exhibit 2, at 11:2-12.

The Court also noted that in considering a Motion to Dismiss, the Court must view the pleadings in the light most favorable to the nonmoving party. That, coupled with the fact that no discovery in the case has yet occurred, solidified the Court's finding that Appellants' Motions to Dismiss should be denied at this point:

On OneBeacon's motion to dismiss, denied. And that certainly at this stage and looking at the pleadings in the light most favorable to the nonmoving party, and in light of the arguments I've heard today, I'm even more convinced that this motion to dismiss should be denied at this time. Discovery will elucidate a lot of [th]ings that are still out there about this matter. And the same goes with Trebuchet and its motion to dismiss. It's denied, and again on the same basis.

Exhibit 2, at 32:8-16.

As this Court has noted, there should be reluctance in reviewing issues that are not immediately appealable, since “[i]nterlocutory appellate tinkering tends to disrupt litigation’s forward progress” – particularly where the case has been “stuck in appellate jousting rather than litigated on the merits” *Davis v. S.C. Dep’t of Corrs.*, 2022 S.C. App. Unpub. LEXIS 100 (S.C. Ct. App. Feb. 23, 2022). Respondent is not seeking to usurp any claims or other assets that belong to the Liquidator; it is requesting to be allowed to move forward with litigating the merits of this action, which is not aimed at, and does not bring claims belonging to, Bedivere or its Liquidator.

CONCLUSION

Respondent's claims against Appellants do not implicate the Liquidation Order, so the trial court's Order denying Appellants' Motions to Dismiss did not "refuse" any injunction contained within it. Because the Order denying Appellants' Motions to Dismiss is not appealable, Respondent respectfully requests that this Court immediately dismiss this appeal.

Respectfully submitted,

/s/Matthew Richardson

Matthew Richardson (S.C. Bar No. 15647)
Eric B. Amstutz (S.C. Bar No. 363)
WYCHE, P.A.
807 Gervais Street, Suite 301
Columbia, SC 29201
803-254-6542
mrichardson@wyche.com
eamstutz@wyche.com

Brian M. Barnwell (S.C. Bar No. 78249)
RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803-978-6111
bb@rplegalgroup.com

John B. White, Jr. (S.C. Bar No. 5996)
Marghretta H. Shisko (S.C. Bar No. 100106)
Griffin L. Lynch (S.C. Bar No. 72518)
JOHN B. WHITE, JR. P.A.
291 S. Pine Street
P.O. Box 2465 (29304)
Spartanburg, SC 29302
(864) 594-5988
jwhite@johnbwhitelaw.com
mshisko@johnbwhitelaw.com
glynch@johnbwhitelaw.com

Attorneys for Respondent

March 13, 2023

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman,	:	
Insurance Commissioner of the	:	
Commonwealth of Pennsylvania,	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 1 BIC 2021
	:	
Bedivere Insurance Company,	:	
	:	
Respondent	:	

ORDER OF LIQUIDATION

AND NOW, this 11th day of March, 2021, upon consideration of the Petition for Liquidation of Bedivere Insurance Company (Bedivere) filed by Jessica K. Altman, Insurance Commissioner of the Commonwealth of Pennsylvania, and upon the unanimous consent of the Board of Directors of Bedivere and the sole shareholder of Bedivere, Trebuchet US Holdings, Inc., it is hereby ORDERED that:

1. The Petition for Liquidation is GRANTED, and Bedivere is ordered to be liquidated pursuant to Article V of The Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §§ 221.1 – .63 (Article V).

2. Insurance Commissioner Jessica K. Altman and her successors in office, if any, are hereby appointed Statutory Liquidator of Bedivere and directed to take possession of Bedivere’s property, business and affairs in accordance with Article V and to administer them pursuant to the orders of this Court.

3. The Liquidator is hereby vested with all the powers, rights and duties authorized under Article V and other applicable statutes and regulations.

ASSETS OF THE ESTATE

4. The Liquidator is vested with title to all property, assets, contracts and rights of action (assets) of Bedivere of whatever nature and wherever located, whether held directly or indirectly, as of the date of filing of the Petition for Liquidation. All assets of Bedivere are hereby found to be *in custodia legis* of this Court and this Court asserts jurisdiction as follows: (a) *in rem* jurisdiction over all assets wherever they may be located and regardless of whether they are held in the name of Bedivere or in any other name; (b) exclusive jurisdiction over all determinations as to whether assets belong to Bedivere or to another party; (c) exclusive jurisdiction over all determinations of the validity and amounts of claims against Bedivere; and (d) exclusive jurisdiction over the determination of the priority of all claims against Bedivere.

5. The Liquidator is directed to take possession of all assets that are the property of Bedivere. Specifically, the Liquidator is directed to:

a. Inform all banks, investment bankers, companies, other entities or other persons having in their possession assets which are, or may be, the property of Bedivere, unless otherwise instructed by the Liquidator, to deliver the possession of the same immediately to the Liquidator, and not disburse, convey, transfer, pledge, assign, hypothecate, encumber or in any manner dispose of the same without the prior written consent of, or unless directed in writing by, the Liquidator.

b. Inform all producers and other persons having sold policies of insurance issued by Bedivere to account for and pay all unearned commissions

and all premiums, collected or uncollected, for the benefit of Bedivere directly to the Liquidator within 30 days of notice of this Order and that no producer, reinsurance intermediary or any other person shall disburse or use monies which come into their possession and are owed to, or claimed by, Bedivere for any purpose other than payment to the Liquidator.

c. Inform any premium finance company that has entered into a contract to finance a policy that has been issued by Bedivere to pay any and all premium owed to Bedivere to the Liquidator.

d. Inform all attorneys employed by or retained by Bedivere or performing legal services for Bedivere as of the date of this Order that, within 30 days of notification, they must report to the Liquidator the name, company, claim number (if applicable) and status of each matter they are handling on behalf of Bedivere; the full caption, docket number and name and address of opposing counsel in each case; an accounting of any funds received from or on behalf of Bedivere for any purpose in any capacity; and further, that the Liquidator need not make payment for any unsolicited report.

e. Inform any entity that has custody or control of any data processing equipment and records (including but not limited to source documents, all types of electronically stored information, or other recorded information) relating to Bedivere to transfer custody and control of such documents, in a form readable by the Liquidator, to the Liquidator as of the date of this Order, upon request.

f. Inform any entity furnishing claims processing or data processing services to Bedivere to maintain such services and transfer any such accounts to the Liquidator as of the date of this Order, upon request.

6. Bedivere's directors, officers and employees shall: (a) surrender peaceably to the Liquidator the premises where Bedivere conducts its business; (b) deliver all keys or access codes thereto and to any safe deposit boxes; (c) advise the Liquidator of the combinations and access codes of any safe or safekeeping devices of Bedivere or any password or authorization code or access code required for access to data processing equipment; and (d) deliver and surrender peaceably to the Liquidator all the assets, books, records, files, credit cards, and other property of Bedivere in their possession or control, wherever located, and otherwise advise and cooperate with the Liquidator in identifying and locating any of the foregoing.

7. Bedivere's directors, officers and employees are enjoined from taking any action, without the prior approval of the Liquidator, to transact further business on behalf of Bedivere. They are further enjoined from taking any action that would waste the assets of Bedivere or would interfere with the Liquidator's efforts to wind up the affairs of Bedivere.

CONTINUATION AND CANCELLATION OF POLICIES

8. All Bedivere policies and contracts of insurance, whether issued within this Commonwealth or elsewhere, in effect on the date of this Order will continue in force for the lesser of the following: (1) 30 days from the date of this Order; (2) until the normal expiration of the policy or contract providing insurance coverage; (3) until the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy; or (4) until the Liquidator has effected a transfer of the policy obligation to an assuming insurer pursuant to Section 523(8) of Article V, 40 P.S. § 221.23(8).

NOTICE AND PROCEDURE FOR FILING CLAIMS

9. No judgment or order against Bedivere or its insureds entered after the date of filing of the Petition for Liquidation, and no judgment or order against Bedivere or its insureds entered at any time by default or by collusion, will be considered as evidence of liability or of quantum of damages by the Liquidator in evaluating a claim against the estate of Bedivere.

10. In addition to the notice requirements of Section 524 of Article V, 40 P.S. § 221.24, the Liquidator shall publish notice in newspapers of general circulation where Bedivere has its principal places of business that:

- (a) specifies the last day for the filing of claims against the estate of Bedivere;
- (b) explains the procedure by which claims may be submitted to the Liquidator;
- (c) provides the address of the Liquidator's office for the submission of claims; and
- (d) notifies the public of the right to present a claim, or claims, to the Liquidator.

11. Within 30 days of giving notice of the Order of Liquidation, as set forth in Section 524 of Article V, 40 P.S. § 221.24, and of the procedures for filing claims against the estate of Bedivere, the Liquidator shall file a compliance report with the Court stating, in reasonable detail, the date on which and manner by which these notices were given.

DISTRIBUTION OF ESTATE ASSETS

12. Any and all distribution of assets pursuant to Sections 544 and 546 of Article V, 40 P.S. §§ 221.44, 221.46, including those in payment for costs and expenses of estate administration, shall be made under the direction and approval of the Court.

STAY OF LITIGATION

13. Unless the Liquidator consents thereto in writing, no action at law or in equity, including, but not limited to, an arbitration or mediation, the filing of any judgment, attachment, garnishment, lien or levy of execution process against Bedivere or its assets, shall be brought against Bedivere or the Liquidator or against any of their employees, officers or liquidation officers for acts or omissions in their capacity as employees, officers or liquidation officers of Bedivere or the Liquidator, whether in this Commonwealth or elsewhere, nor shall any such existing action be maintained or further prosecuted after the effective date of this Order. All above-enumerated actions currently pending against Bedivere in the courts of the Commonwealth of Pennsylvania or elsewhere are hereby stayed; relief sought in these actions shall be pursued by filing a proof of claim against the estate of Bedivere pursuant to Section 538 of Article V, 40 P.S. § 221.38.

14. All secured creditors or parties, pledges, lienholders, collateral holders or other persons, claiming secured, priority or preferred interests in any property or assets of Bedivere, are hereby enjoined from taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of Bedivere except as provided in Section 543 of Article V, 40 P.S. § 221.43.

15. In recognition of paragraph 10 of the Petition for Liquidation and the representation therein regarding the December 2020 order issued by the Pennsylvania Insurance Department approving the merger of The Employers' Fire Insurance Company (Employers' Fire), Lamorak Insurance Company (formerly OneBeacon American Insurance Company) (Lamorak), and Potomac Insurance

Company (Potomac) with and into Bedivere, all references herein to Bedivere shall include Employers' Fire, Lamorak, and Potomac.

WORKERS' COMPENSATION AND PERSONAL INJURY PROTECTION CLAIMS

16. The Liquidator is authorized for a period of up to 90 days from the date of this Order to advance funds from the estate of Bedivere to pay workers' compensation indemnity and personal injury protection (PIP) claims on behalf of the state guaranty associations, provided that the guaranty association enters into an agreement that such advances shall be treated as a distribution pursuant to Section 536 of Article V, 40 P.S. § 221.36. The Liquidator shall have the discretion to accept such interim assurances as she deems acceptable in lieu of a formal agreement.



P. Kevin Brobson, President Judge

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS

SOUTHERN INSULATION, INC.,)
)
PLAINTIFF,)
)
VS)
)
STATE AUTO PROPERTY &)
CASUALTY INSURANCE COMPANY,)
ONEBEACON INSURANCE GROUP,)
LLC, ET AL,)
)
DEFENDANTS.)

2020-CP-40-04385

JANUARY 27, 2023

MOTIONS TO DISMISS

TRANSCRIPT OF RECORD

B E F O R E:
THE HONORABLE JEAN TOAL, JUDGE

A P P E A R A N C E S:
Matthew Richardson, Esquire
Brian Barnwell, Esquire
Attorneys for the Plaintiff

Demetri Koutrakos, Esquire
Harry Dixon, Esquire
John Basinger, Esquire
Jeff Grossman, Esquire
Robert Knowlton, Esquire
Elizabeth Black, Esquire
Attorneys for the Defendants

REPORTED BY: Susan W. Hudgins
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

	PAGE	LINE
MOTION HEARING	3	2
RULING BY THE COURT	32	10
CERTIFICATE OF REPORTER	34	1

1 * * * * *

2 THE COURT: The last matter is Southern
3 Insulation against State Auto, OneBeacon's motion to
4 dismiss and Trebuchet's motion to dismiss.

5 Mr. Richardson?

6 MR. RICHARDSON: Thank you very much, Your Honor.
7 I'd like to -- obviously like to give just a quick
8 background. And, you know, we'd be happy, Your Honor, to
9 have them argue their motions after just putting it into
10 context.

11 THE COURT: That's fine. If you want to --

12 MR. KOUTRAKOS: Your Honor, I'm Jim Koutrakos
13 here on behalf of the Intact OneBeacon defendants. Arguing
14 on behalf of Intact OneBeacon is John Basinger from the
15 Saul Ewing Law Firm. It is our motion to dismiss.

16 And I appreciate your willingness to stand up and
17 inform the Court in the manner you deem fit of the facts of
18 the case, but it is our motion, and we'd --

19 THE COURT: Okay. Very well.

20 Go forward, Mr. Basinger.

21 MR. BASINGER: Thank you, Your Honor. May it
22 please the Court. Knowing what time it is, Your Honor,
23 I'll try to be as brief as possible.

24 THE COURT: Thank you so much.

25 MR. BASINGER: Again, so I am representing the

1 defendants that were named as OneBeacon defendants. The
2 current corporate name is Intact, so I will address them as
3 Intact. Southern Insulation through its receiver claims
4 that at some point it was insured by Potomac Insurance
5 which is now known as Bedivere. Bedivere is now in
6 liquidation proceedings in Pennsylvania. Southern accuses
7 Intact of wrongfully stripping assets from Bedivere when
8 they were corporate affiliates before Intact sold Bedivere
9 to the Trebuchet group back in 2014.

10 Southern's claims against Intact are barred for
11 several reasons. First, the liquidation order for Bedivere
12 from the Commonwealth court in Pennsylvania contains an
13 injunction against proceedings such as these against the
14 insurer or its assets. And South Carolina Code Section
15 § 38-27-430 says that courts in California shall give full
16 faith and credit to those injunctions from reciprocal
17 states such as Pennsylvania.

18 Both of those states among many others have
19 enacted very similar model insurers rehabilitation acts and
20 liquidation acts. And those acts establish mechanisms to
21 centralize and allow a central -- a centralized and orderly
22 marshaling of assets and liquidation of an insurer
23 liquidation and then equitable distribution of those assets
24 that are marshaled.

25 Again, South Carolina has determined that this

1 compact is in the state's best interest, and indeed South
2 Carolina has directly benefited from this. As in the
3 Garrou v. Shovelton case that we cited in our brief on
4 page 8 in which a Colorado court enforced an injunction
5 contained in a South Carolina liquidation order. So this
6 is just as much in South Carolina's interest as it is in
7 Pennsylvania's. A decision in which Your Honor was listed
8 as concurring in the South Carolina Supreme Court has
9 enforced such an injunction, one from North Carolina in the
10 Williamson v. Northwestern Security Life Insurance Company
11 case we also cite in our papers.

12 So the liquidation order here clearly bars any
13 actions against Bedivere or its assets. And it's important
14 to note that Southern pleads specifically here that it is
15 seeking the assets of Bedivere, the insurer being
16 liquidated, and says, quote, OneBeacon stripped assets of
17 OneBeacon Insurance Company, later named Bedivere,
18 including its subsidiaries. That's paragraph 124 of the
19 complaint. It also says, quote, OneBeacon effected the
20 transfers over time with the express purpose of OneBeacon
21 or its other affiliates taking Bedivere's assets. This
22 paragraph 130. And one more. OneBeacon and/or its other
23 affiliates acquired and retained step retained the
24 substantial assets of OneBeacon Insurance Company. That's
25 paragraph 154. So it's quite clear from these specific

1 allegations in the complaint that what Southern is saying
2 is these are assets of Bedivere -- and that's contained in
3 the injunction -- and we're trying to come get them here.

4 And so accordingly we are requesting the Court
5 enforce the liquidation order injunction and dismiss the
6 lawsuit. And I note that in its response papers, Southern
7 did not dispute much of what I am saying. It did not
8 address the scope of the injunction order. It did not
9 address South Carolina Code Section § 38-27-430, and it did
10 not cite the Williams case to distinguish it or otherwise.

11 Instead what Southern has done is argued that
12 Bedivere's liquidator's claims for fraudulent transfer,
13 unjust enrichment, and the like would be barred by the
14 doctrine of *in pari delicto*. That is it's saying we expect
15 that if the liquidator sees merit in these potential claims
16 and tries to bring them, they'll be barred by *in pari*
17 *delicto*.

18 Southern relies heavily for that on the *IN RE*
19 *Refco* case that's cited in its papers at which the
20 magistrate's report out of the Southern District of New
21 York. But *IN RE Refco* had dismissed the claims of the
22 plaintiffs there until the trustee had, in fact, advanced
23 those same claims in question and with the judge to be
24 barred from pursuing those by the doctrine of *in pari*
25 *delicto*. So if we are to take Southern's leading case and

1 follow it, this Court should dismiss.

2 Furthermore, the Myatt versus RHBT Financial
3 Corporation case which Southern relies on also for
4 application of in pari delicto, that case states: In the
5 absence of a fraudulent conveyance claim, the receiver of a
6 corporation used to perpetrate fraud may not seek recovery
7 against an alleged third-party co-conspirator of the fraud.
8 And that's 370 South Carolina 391 and 397.

9 And so, again, Myatt then explicitly exempts
10 fraudulent conveyance claims from in pari delicto. And the
11 claims that Southern advances here are fraudulent
12 conveyance and unjust enrichment. And by the way, cases
13 following Myatt have said well, when they said fraudulent
14 conveyance, they also included unjust enrichment. Those
15 cases are not barred by in pari delicto. But, again, I
16 don't think this Court has to get to there because
17 following the Refco case, the correct answer without
18 waiving any of the rights of Southern or negatively
19 affecting those who may be insured is to say you have to go
20 pursue these things, you have to wait and see, or go try to
21 pursue them in Pennsylvania. And I'll note on that that
22 Southern has -- this Court. My recollection is it was a
23 motion to dismiss Bedivere Insurance Company, which it had
24 named as a plaintiff previously, that it had filed a claim
25 in the Bedivere liquidation proceedings in Pennsylvania.

1 So Southern, through its receiver, is already participating
2 in the matters in Pennsylvania. And these matters should
3 be pursued in that case as well.

4 I'll briefly address two related issues which are
5 standing and status of Bedivere as a necessary party. The
6 reciprocal statutes in Pennsylvania and South Carolina, the
7 liquidation statutes, both clearly vest title to all assets
8 of Bedivere in the liquidator in Pennsylvania. That's
9 where all those assets had title. So the liquidator is the
10 one who has standing to bring that claim, the only one who
11 has standing to bring the claim. And, again, Southern
12 specifically pleads that these are assets of Bedivere that
13 it's trying to get its chunk of.

14 Similarly, Southern seeks to have the Court
15 determine what policies were in place at the time and what
16 those policies cover, what the limits are. And, again,
17 that's got to be done in Pennsylvania where Southern has
18 already filed a claim. And, clearly, Bedivere needs to be
19 a party for liability under its policies is going to be
20 adjudicated.

21 Proceeding here without Bedivere also creates a
22 strong possibility of inconsistent rulings on those, so
23 Bedivere is absolutely a necessary party as well. So
24 those -- I think those items are all related and all
25 dictate that this case should be dismissed in favor of the

1 proceedings in Pennsylvania.

2 Again, Southern can ask for whatever relief it
3 would like there. It can seek permission from the
4 liquidator to bring these claims. It can see if the
5 liquidator will bring these claims. And so that's where --
6 that's where the remedies lie is in Pennsylvania in matters
7 in which Southern has told this Court it is already
8 participating there.

9 I have a couple of other grounds, and I'll go
10 over those very briefly. Intact should also be dismissed
11 because its allegations are a collateral attack on the 2014
12 order of the Pennsylvania Department of Insurance that
13 approved OneBeacon's sale or Intact's sale of OneBeacon
14 Insurance Company now known as Bedivere to the Trebuchet
15 group. That was under review for more than a year. The
16 insurance commissioner in Pennsylvania has the statutory
17 authority to rule on those things. It reviewed the
18 finances. It determined that that transaction was fair and
19 appropriate to policyholders. And as we've said, that did
20 go up on appeal in limited fashion in the Crosby Valve
21 case.

22 Also arising out of that transaction, it was a
23 very public -- there was public notice given, of course, of
24 the sale -- of the -- what the transaction was. And so
25 accordingly we submit that the discovery rule cannot toll

1 limitations and thus Southern's claims are barred by
2 limitations and laches. And I won't dwell on that as I
3 expect Your Honor is very aware we briefed that in more
4 detail in our papers. But I don't want to, at this point,
5 dwell on it.

6 Finally, the last ground that I'm going to
7 discuss -- and, again, we have a few other individual
8 grounds that I'll leave on papers. Intact should be
9 dismissed on the basis of personal jurisdiction. Southern
10 does not allege in its response any contacts whatsoever
11 between Intact and South Carolina. Instead it simply
12 argues that the court should disregard the corporate
13 separation and impute all of Bedivere's contacts to the
14 Intact entities. And I respectfully submit to the Court
15 that generalized allegations of alter ego and asset
16 stripping, as we have here, should not be enough to permit
17 that, and Intact should be dismissed also based on lack of
18 personal jurisdiction. But, again, I think the first and
19 foremost thing we have to address is the liquidation order
20 and its injunction.

21 And with that, I know Mr. Grossman has several
22 arguments that are along the same vein. I don't know
23 whether the Court wants to have him come up next or
24 Mr. Richardson or whether I should step down. And I should
25 say I'm also happy to answer any questions the Court may

1 have.

2 THE COURT: Well, the one thing I -- that just
3 stands out to me in this whole melange of entities that
4 were involved in this thing is that there's one entity that
5 isn't bad and didn't do anything wrong. And it looks like
6 everybody else is kind of hiding. But Southern is the one
7 that didn't -- nobody, I think -- I mean, Potomac, all
8 these other entities, Bedivere, all participated in a
9 scheme that stripped out the long-tail assets available for
10 use in these claims. Now, how does the one innocent party
11 get to suffer this -- a calamity not of its making, but of
12 the making of people who committed, arguably, fraud?

13 MR. BASINGER: I understand that those are the
14 allegations, Your Honor, and the answer is --

15 THE COURT: Well, I mean, that's all we're on
16 right now.

17 MR. BASINGER: I understand. But the answer is
18 that under the interstate -- the Insurers Rehabilitation
19 and Liquidation Acts that are entered into by South
20 Carolina, Pennsylvania, and most of the other states, it is
21 a system where all these things -- because everybody can
22 always allege this. Right? Whoever -- whoever -- whatever
23 the parent company for an insurer, there can always be an
24 allegation. You stripped out assets. You left me holding
25 the bag. And that's -- that can happen in every case. And

1 these states have come together, and they've created a
2 system for orderly liquidation. And they say that's fine.
3 Everything has to go through the liquidator in the insurers
4 domiciliary state.

5 And here the domiciliary state is Pennsylvania.
6 The statutory liquidator is the current insurance
7 commissioner of Pennsylvania who is not the one who
8 approved the order. And so the answer is that we don't
9 know, as we sit here today, what amount of assets will be
10 available to satisfy Southern's claims. But what they have
11 to do is what everyone else -- every other policy holder
12 has to do which is to say they can go and they can work
13 with the statutory liquidator. They can ask permission
14 from the statutory liquidator. They can do all these
15 things, but it's centralized, and that's where the assets
16 of Bedivere are going to be marshaled, including causes of
17 action, by the way -- again, the statutes are very, very
18 clear on this -- that all the causes of action of Bedivere
19 belong now to the liquidator. They are vested with the
20 liquidator.

21 And so the answer is that what Southern has to do
22 is go to the liquidator. It has already filed a claim with
23 the liquidator, as they have told us. Right? So when --
24 they're also creating a risk of double recovery here if
25 they -- if they're allowed to proceed in this court against

1 -- along the lines of any claims that belong to Bedivere,
2 which, again, as I read from the complaint, these are
3 claims about Bedivere's assets. This is an indirect
4 injury. And so the answer is they have to go through that
5 process. South Carolina has decided that.

6 THE COURT: Okay.

7 MR. BASINGER: Pennsylvania has decided that.

8 THE COURT: I understand.

9 MR. BASINGER: Thank you, Your Honor.

10 THE COURT: All right, sir?

11 MR. KNOWLTON: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. KNOWLTON: Good morning, Your Honor. I'm
14 Robert Knowlton with Haynesworth Sinkler Boyd. Seated with
15 me at counsel table is Elizabeth Black, my partner.
16 Mr. Jeffrey Grossman with the Stradley Ronan Law Firm in
17 Pennsylvania will argue today. We have submitted the pro
18 hac vice proposed order and gave acknowledgement of receipt
19 of the application.

20 THE COURT: Yes. It's a small group here now,
21 but I've got to do something about these pro hacs. The
22 problem is I don't get them until after everything is
23 already done. It would help me a lot if when y'all do
24 these pro hacs, when you get notice from the Supreme Court,
25 if y'all would send it to me. They don't send it to me.

1 And then we have to laboriously go through the whole pile
2 of things that are filed in this case, which are numerous
3 in all these cases we've got, to try to find the pro hac.
4 So -- but that's not your fault, but I just tell you
5 certainly, your --

6 MR. KNOWLTON: And I did email you a proposed
7 order with the application and the receipt document this
8 week, but...

9 THE COURT: Yeah.

10 MR. KNOWLTON: And I've also got a courtesy copy
11 of the reply brief we filed this morning.

12 THE COURT: Okay. I'm up here on the bench, and
13 y'all are filing reply briefs. Thank you.

14 MR. KNOWLTON: We got it this week --

15 THE COURT: Yes, sir. Okay.

16 MR. KNOWLTON: -- and got it to you as soon as we
17 possibly could, Your Honor.

18 THE COURT: I understand, Mr. Knowlton. I'm not
19 fussing.

20 MR. KNOWLTON: Thank you.

21 MR. GROSSMAN: Good afternoon, Your Honor.
22 Justice Toal, may it please the Court. I'm here on behalf
23 of the Trebuchet defendants. And I will try not to repeat
24 much of what Mr. Basinger relayed to Your Honor this
25 afternoon. I also have the 6:12 flight, so I'm going to be

1 quick.

2 The Trebuchet defendants are different than the
3 OneBeacon defendants. The allegations in the complaint
4 relate to a different period in time. There is no alleged
5 asset stripping performed by the Trebuchet defendants.
6 That's an allegation against the OneBeacon defendants. The
7 allegations against the Trebuchet defendants are that they
8 merged Potomac, Southern's insurer, into Bedivere in 2020.
9 That merger was approved by the Pennsylvania Insurance
10 Department.

11 THE COURT: Well, cut to the chase. The
12 allegation is you didn't tell them everything and Potomac
13 is the bad actor.

14 MR. GROSSMAN: Well, what --

15 THE COURT: And, you know, that's what they're
16 basically saying is that, you know -- and they didn't know
17 -- Southern wasn't told anything. So here kind of behind
18 the curtain, a bunch of assets get eliminated and rights
19 get eliminated that really goes back to attempting to
20 continue to do what Beacon -- what Potomac did.

21 MR. GROSSMAN: Well, there is no allegation that
22 the Trebuchet defendants took assets out in the context of
23 the merger. The allegation is that by merging these
24 entities, Potomac's balance sheet was impaired.

25 THE COURT: That's right. And the tail of

1 liability, therefore, is not able to be --

2 MR. GROSSMAN: That's the issue.

3 THE COURT: -- dealt with.

4 MR. GROSSMAN: But there's no self dealing
5 alleged against the Trebuchet defendants. That's the point
6 that I'm trying to make, Your Honor. It's that the merger
7 resulted in a weakened balance sheet in Potomac. And
8 that's not a fraudulent conveyance.

9 But more to the point, Your Honor, Southern's
10 claims are not personal claims. They've argued in their
11 opposition that they're suing in their own name for rights
12 that they hold under their own policy. That does not make
13 what they are alleging in their complaint direct claims.
14 What they are alleging in their complaint are harms to
15 Bedivere with respect to the Trebuchet defendants and the
16 OneBeacon defendants are harms to Bedivere that made
17 Bedivere insolvent and unable to pay their claims in full.
18 Not a direct claim. If they had deposited money with
19 Potomac as collateral and one of these defendants took that
20 collateral, that's a personal claim. This is an indirect
21 derivative claim that they have asserted, and it's right
22 out of their pleadings.

23 In their fraudulent conveyance camp, they
24 alleged, quote, the Trebuchet defendants caused the assets
25 of Bedivere to become subject to the liabilities and

1 obligations of EFIC Lamarac and Potomac II. They continue
2 to state, quote, leaving Southern's insurance policies
3 without support needed to pay the claims of Southern.
4 That's an indirect claim. They also allege Bedivere's
5 merger caused Bedivere to incur obligations without
6 receiving in return equivalent value by making it
7 impossible for Bedivere to satisfy its obligations. In
8 their negligence count they state, quote, the Trebuchet
9 defendants acted unreasonably in causing the transfer of
10 liabilities to Bedivere which was insufficiently
11 capitalized to support the liabilities of the merged
12 companies leaving Bedivere with insurance liabilities that
13 were not funded or supported by sufficient assets.

14 THE COURT: Okay. I'm aware of the claims. What
15 are you saying in reaction to that?

16 MR. GROSSMAN: My reaction to that, Your Honor,
17 is that these are all derivative claims. They have
18 directly pled into the claims of the Bedivere liquidator.
19 It is the sole exclusive authority of the Bedivere
20 liquidator to be able to pursue claims for lost Bedivere
21 assets.

22 THE COURT: Okay. I understand.

23 MR. GROSSMAN: They're common to all
24 policyholders. The liquidation order expressly states that
25 the liquidator is vested with all property assets,

1 contracts, and rights of action of Bedivere of whatever
2 nature and wherever located. And it goes on to state that
3 the Pennsylvania Commonwealth court is in custodia legis --
4 I'm sorry -- of all assets of Bedivere and it exercises
5 entering jurisdiction over all assets.

6 THE COURT: I've got all that. I've read that
7 just as you're reading it to me. What's your conclusion to
8 that?

9 MR. GROSSMAN: The conclusion, Your Honor, is
10 that Southern is impermissibly asserting claims that belong
11 to the Bedivere liquidator.

12 THE COURT: Okay. I've got you.

13 MR. GROSSMAN: There's an injunction that says
14 they can't do that.

15 THE COURT: Okay. I've got you.

16 MR. GROSSMAN: Now, moving on to what they're
17 contending in response. The in pari delicto doctrine.
18 This is procedurally awkward, Your Honor, because this is
19 an affirmative defense. It's not the substantive element
20 of their claim, and it does not inform whether these claims
21 that they have asserted are the assets of Bedivere or not.

22 It's substantively also not applicable. When the
23 defendant acts with an adverse interest to the plaintiff,
24 the defense doesn't apply. So not only do we have the
25 fraudulent conveyance and the unjust enrichment exceptions

1 to the entire delicto doctrine, but we have allegations
2 right out of Southern's complained that the Trebuchet
3 defendants acted with adverse interest to Bedivere. They
4 harmed the assets of Bedivere. When that is the
5 allegation, the defense does not apply.

6 Your Honor, we have a national system to
7 liquidate insolvent insurers. Every state, or most states,
8 have this statute. And it depends on folks giving full
9 faith and credit to the liquidation orders entered by other
10 courts. If that were not the case, every insurer
11 insolvency would lead to a race to the courthouse where
12 policyholders would be asserting claims that belong to the
13 liquidator or belong to the liquidating estate in order to
14 target those outside of the liquidation and get paid first.

15 That's what Southern is trying to do here. It's
16 jumping the line. If its claims are correct, if all of
17 these defendants did terrible things to Bedivere, it is for
18 the liquidator to recover those assets so that they benefit
19 all policyholders, not just Southern.

20 Let me pause there, Your Honor, and see if you
21 have any questions on that portion of our argument.

22 THE COURT: None.

23 MR. GROSSMAN: Okay. We have also raised
24 personal jurisdiction.

25 THE COURT: I understand. And I've heard so much

1 about personal jurisdiction today, I understand your
2 arguments. They don't need to be repeated at this hour of
3 the day.

4 MR. GROSSMAN: Thank you, Your Honor. We will
5 rely on our papers in that regard.

6 THE COURT: Very good.

7 Mr. Richardson?

8 MR. RICHARDSON: Your Honor, thank you very much
9 for the opportunity to respond. I think it's important
10 that we clarify just right off the bat this issue about IN
11 RE: Refco and the derivative versus direct claims because
12 there's a serious mischaracterization of that case in the
13 brief this morning. Very clearly, in the latter part of
14 that decision, the court decided that the trustee was
15 barred from pursuing the claims versus third parties. That
16 would be the liquidator in this case versus third parties,
17 like the defendants in this case, in pari delicto for
18 creditors, like Southern here, to be able to bring down
19 claims. I mean, where the trustee is barred, where the
20 trustee stands in the shoes of the wrongdoer who was, by
21 the way -- we seem to gloss over -- was totally dominated
22 and controlled by these defendants.

23 Now, again, we're at a 12(b)6 stage, Your Honor.
24 And we've made these allegations. There's no question
25 about that. And we're at a stage where these defendants

1 know that the -- every inference and all doubt is resolved
2 in favor of the of the complaint and the allegations we've
3 made. So when we're making these strong allegations, we
4 know we're gonna get into discovery and we might find out
5 some different issues, and that's one of the things that,
6 Your Honor, we can -- we can deal with some of these issues
7 if need be if the facts are different.

8 On the four corners of the complaint, we know
9 that in Refco, the creditors were allowed to sue -- that's
10 Southern -- even though their injury was secondary to the
11 party suffering the primary injury. That's the insurer.
12 We know what we've alleged. I mean, it's -- clearly, we've
13 alleged these defendants were bad actors. Stripped assets,
14 stuffed all the dog tails out of liabilities and a lot of
15 other substantial liabilities into a Pandora's box and
16 tried to bury it within two months of the merger that they
17 asked, that Pennsylvania actually approved. We know that
18 they're bad actors. But the question is, why does the
19 liquidation of the insured that they caused get to be used
20 as a shield for these defendants for their bad acts causing
21 damages to us, to Southern.

22 And that's why Refco made it clear that these --
23 their claims are not derivative, they're not derivative,
24 even if they may be -- you know, even though they may be
25 similar claims. In fact, it goes on to say when this in

1 pari delicto applies, it does not cover a plaintiff's claim
2 for damages that, while indirect, are actually suffered by
3 both the debtor and the creditor. That's the debtor, the
4 insurance company, they put into bank -- into liquidation
5 and the creditor, Southern, who's not gotten the benefit of
6 their bargain because of these bad acts. And so ultimately
7 the mere fact that Potomac -- excuse me -- the Southern's
8 insurer, Bedivere, in insolvency might be able to bring a
9 similar claim does not mean that Southern doesn't have its
10 own cause of action against these defendants, and it
11 doesn't mean they're suing on behalf of the debtor.

12 THE COURT: Well, what you're saying is that this
13 crowd, these two, are just hiding behind the liquidator --

14 MR. RICHARDSON: Right.

15 THE COURT: -- when it's Bedivere, the
16 liquidator's entrusted company, is the one that got hurt so
17 bad by all their shenanigans.

18 MR. RICHARDSON: Right. They created the very
19 situation they're now waving as a shield in this courtroom
20 to try and protect themselves from the damages they --

21 THE COURT: Now that they have a liquidator, you
22 can't pursue the bad people who caused them to be in
23 liquidation.

24 MR. RICHARDSON: Right. Now let's talk about the
25 limitations on the liquidator. No question the liquidator

1 gets all the authority it needs up in Pennsylvania as to
2 the debtor. Right? We read the liquidation order. It's
3 two things. It's, one, the assignment of the title of the
4 property and the assets and all the things so that they can
5 marshal whatever's left and then put it together for the
6 creditors of the company.

7 And by the way, we know from the example Home
8 it's been decades that that litigation's still going on.
9 And in several, many, of these liquidations, the
10 policyholders end up getting nothing. It just goes to the
11 other creditors of the entity because this is such
12 undercapitalized. And because it has so many long tail
13 liabilities, that's very likely a possibility here with
14 Southern.

15 So there's no reason to look beyond just what the
16 liquidation order says. It gives assignment of the title
17 to the debtors assets. Go marshal them and put them
18 together and pay out those claims however you can do it.
19 It also contains a stay of litigation, but it stays the
20 litigation as to the debtor, not as to third parties for
21 their own wrongful conduct directed at causing injuries in
22 a state like South Carolina. And that stay of litigation
23 is something which Southern honored. It dismissed the
24 claims against the insurer. It foul played and got in the
25 back of the line for the -- for whatever comes out of the

1 estate up in Pennsylvania. And there's nothing wrong with
2 that, and it doesn't affect these because, as Rule 19(a)2
3 states, this Court can make any kind of adjustments and any
4 kind of rulings it needs to on the factors you've got to
5 consider when there's an allegedly indispensable party who
6 we know cannot be added here. That's why they're arguing
7 you've got to add them is because they know they can't be.
8 It's just another use of his shield.

9 Well, once you've got that situation, the Court
10 must look at whether in good equity and good conscience,
11 you must continue this lawsuit regardless of the fact that
12 there's this insolvent defendant, insolvent insurer, that
13 they put in insolvency that can't be joined. And the
14 second factor there is that in fashioning the relief here,
15 this Court, the receivership court, can protect both the
16 receiver and its obligations to marshal the resource
17 assets, of Southern and to protect against the prejudices
18 and possibly even avoid all prejudices, not only against
19 these defendants, but also against the insolvent insurer --

20 THE COURT: Bedivere.

21 MR. RICHARDSON: We're not asking for any -- we
22 know we're not going to get it. We alleged a lot of
23 alternative claims for relief: Equitable, tort, fraudulent
24 conveyance, declaratory judgment. We're not getting all of
25 that. We know we're getting our damages and nothing more.

1 But we can -- at this stage, Your Honor, we can make those
2 allegations, even inconsistently if necessary, and we don't
3 think they've existed. But to deal with the bad acts that
4 happened here, and then the hiding it, and so that's why
5 almost all of these issues are tied together.

6 But let's don't stop just at the order of
7 liquidation, which is not the sword that they're trying to
8 use it as here. Let's look at the statutes that they claim
9 are so important and powerful. And and by the way, four --
10 excuse me. Let's start with South Carolina § 38-27-430.
11 That's the statute they say we don't address. That statute
12 addresses in the first sentence South Carolina resident
13 insurers and alien insurers domiciled in South Carolina.
14 This is a foreign insurer that's insolvent. It has nothing
15 to do with the first sentence of that statute. It just
16 doesn't apply.

17 The second sentence doesn't apply because that is
18 just the full faith and credit for the liquidation order.
19 So it just sends us right back to the liquidation order,
20 which we've already complied with. And that's -- and
21 that's all -- and that's all we got to do.

22 In Pennsylvania statutes, if we want to go to
23 those, we know that the liquidator in Sections § 221-28 and
24 23 may give the liquidator the power to bring these causes
25 of action. And they could do it. They just don't, and

1 they have it. In fact, the statute's about to run. And so
2 it's no problem for them. If they want to come down here
3 and intervene, we'd be hearing from them right now. But we
4 haven't.

5 And so we got these -- what these statutory
6 provisions, though, do not say is that the liquidator has
7 an exclusive right to bring the creditor Southern's claims,
8 the direct claims, that they have for their own damages
9 based on actions of third parties. There's nothing in that
10 statutory scheme that reaches that far. This doesn't --
11 they don't even have related to bankruptcy jurisdiction in
12 these statutory schemes. And so this statute does not
13 prevent Southern from bringing these claims. And in any
14 event, the liquidator hasn't done so.

15 And, Your Honor, we could go on and on into the
16 issues and the facts of Southern claims. You know, we know
17 they're related to the insurance contract. We're not
18 hiding from that. But its damages may be derivative from
19 the damages done to, you know, the insolvent insurer.

20 THE COURT: Well, I've read your brief and all
21 the exhibits.

22 MR. RICHARDSON: Thank you, Your Honor.

23 So let me just make sure I've dealt with
24 everything. We know personal jurisdiction, we actually
25 didn't even talk about how the tortious acts and omissions

1 outside the state can cause injury in the state is game
2 over under that period too.

3 Your Honor, the two pots of money here, we talked
4 about insolvent insurer's estate, whatever pennies or
5 quarters we're gonna get in that isn't going to be a double
6 recovery. It ain't going to be a significant recovery
7 anyway. And it was caused by the acts of these defendants,
8 which we'll get into in discovery. Discovery and almost
9 all of these issues can be revisited. We know that from
10 the cite by defendants in 12(h)2.

11 Ultimately, Your Honor, obviously I don't think
12 that the affirmative defenses and statute of limitations
13 which we've dealt affirmatively with in our complaint, need
14 or should be decided at this point. Those are factual
15 questions. We've stated our claims. And Rule 15 is just a
16 strange argument. And by the way, we're not outside the
17 statute of limitations. We don't even need relation back.
18 All we had to do was file a new complaint, so there's
19 absolutely no prejudice whatsoever that they could even
20 allege on that front.

21 So, Your Honor, the only thing I haven't
22 mentioned that I guess I should is this approval order.
23 Let's just say that the -- we appreciate the defendants
24 citing Crosby versus Crosby Valve case, where the -- where
25 they tried to appeal and tried to challenge it because it

1 clearly states that all judicial remedies are preserved.

2 THE COURT: All right. Yeah.

3 MR. RICHARDSON: So, Your Honor, again, I'm happy
4 to address in more detail anything that I haven't touched
5 on. And we think the briefs govern most of it.

6 THE COURT: Thank you.

7 MR. RICHARDSON: Particularly at this stage.

8 THE COURT: Thank you very much.

9 Counsel, briefly?

10 MR. BASINGER: Very briefly, Your Honor. Excuse
11 me. Again, a lot of emphasis on IN RE Refco. I have a
12 copy of it if Your -- if the Court would prefer, I can hand
13 it up. But I -- but if you've read it and don't need it,
14 that's fine also. Yes, do what IN RE Refco said and say
15 Southern, you have to sit down unless and until there's
16 actually an adjudication that the liquidator is barred by
17 in pari delicto. That's what that case was for. Again,
18 we, you know -- and I can't -- I can't stress enough a
19 point that I think both I and Mr. Grossman made that this
20 is a statutory scheme that says Southern and people like it
21 don't get to jump the line. I mean, somebody --

22 THE COURT: Well, they contend they're not
23 jumping the line. They got in line and filed their claim
24 with respect to the liquidator. But they're saying you
25 can't -- it's third parties -- adopt as a shield the

1 liquidator's situation. Your situation is quite apart from
2 that.

3 MR. BASINGER: It's not --

4 THE COURT: And Refco certainly has got a bunch
5 of languages in it that underscores that.

6 MR. BASINGER: It's not a shield, Your Honor, and
7 it's -- but, again, those causes of action under the
8 statute and the -- and the liquidation order, all these
9 causes of action because he -- because Southern's claim is
10 saying OneBeacon, you wrongfully damaged Bedivere, and,
11 therefore, Bedivere can't pay my claim. And so it is --
12 under the Refco verbiage, it is an indirect claim. And
13 what the statutes and the liquidation order say is that
14 claim belongs to, and only to, the liquidator.

15 THE COURT: I understand. I understand your
16 argument.

17 MR. BASINGER: With that, Your Honor, I'll rest.

18 THE COURT: All right.

19 MR. GROSSMAN: I just want to --

20 THE COURT: Please, briefly.

21 MR. GROSSMAN: Very briefly one point, Your
22 Honor.

23 THE COURT: I want you to make your airplane.

24 MR. GROSSMAN: Thank you. I appreciate that.

25 And it's been an interesting discussion. The

1 stay that's been entered by the court in Pennsylvania that
2 Mr. Richardson says Southern has fully comply with says
3 that all parties claiming preferred interests in any assets
4 of Bedivere are hereby enjoined from taking any steps
5 whatsoever --

6 THE COURT: Let me just stop you right there.
7 He's not claiming the assets of Bedivere.

8 MR. GROSSMAN: He is. Paragraph --

9 THE COURT: You all are OneBeacon, and whatever
10 the other one is, y'all are not Bedivere; y'all are
11 independent actors out there. You're not Bedivere.

12 MR. GROSSMAN: But the claims against these bad
13 actors for the allegations that have been made are the
14 assets of Bedivere. And his complaint, Southern's
15 complaint, at Paragraph 151 says affirmatively that they're
16 seeking to attach the assets of Bedivere. That's exactly
17 what they're trying to do here.

18 THE COURT: Right. But you --

19 MR. GROSSMAN: They pled right into this
20 injunction.

21 THE COURT: You play right into the argument
22 they're making because on the one hand, Bedivere does
23 nothing. The liquidator does nothing. And you get to hide
24 behind that to say nobody can pursue these -- my bad acts
25 because they got to wait till the liquidator does.

1 MR. GROSSMAN: We're not. We're not saying that.
2 The liquidator can absolutely pursue them. But not only
3 that, Your Honor, Southern can go to the proper forum,
4 Pennsylvania, and bring these claims there. And the
5 Pennsylvania Commonwealth court with exclusive interim
6 jurisdiction over the assets of Bedivere will determine
7 whether Southern can pursue these claims or not.

8 THE COURT: Well, there's nothing that ousts
9 South Carolina of jurisdiction simply by that liquidation.
10 There's nothing in their act that does that. So, you
11 know --

12 MR. GROSSMAN: Well, that gets back to the
13 statute that we're talking about that requires South
14 Carolina to give full faith and credit to liquidation --

15 THE COURT: Yeah, we can give full faith and
16 credit to the liquidation and still allow -- this is
17 something that is very ancillary to the liquidation. This
18 is an attempt to go after you all directly. And you are
19 hiding behind that liquidation to say, oh, we get the
20 protection of the liquidator and Bedivere so that we can
21 continue to enjoy the fruits of undercutting and destroying
22 Bedivere. That's just not a very appealing argument to me.

23 MR. GROSSMAN: The optics of this are not lost on
24 me, Your Honor, but we have a national system for insurance
25 solvency.

1 THE COURT: There's not going to be undermined by
2 somebody going after a company that otherwise hides behind
3 the shield that they can...

4 MR. GROSSMAN: I understand what you're saying.
5 I respectfully disagree, Your Honor.

6 THE COURT: Well, I understand. Okay. Good.

7 MR. GROSSMAN: Thank you.

8 THE COURT: All right. On OneBeacon's motion to
9 dismiss, denied. And that certainly at this stage and
10 looking at the pleadings in the light most favorable to the
11 nonmoving party, and in light of the arguments I've heard
12 today, I'm even more convinced that this motion to dismiss
13 should be denied at this time. Discovery will elucidate a
14 lot of feelings that are still out there about this matter.

15 And the same goes with Trebuchet and its motion
16 to dismiss. It's denied, and again on the same basis. I
17 don't generally write orders on things that are denied
18 because then I'd appeal them. If people have burning
19 desires, they can submit something. And if I like it, I'll
20 sign it; and if I don't, I won't. Thank you very much.
21 This court is adjourned.

22 MR. KNOWLTON: Your Honor?

23 THE COURT: Yes.

24 MR. KNOWLTON: Could we just have a Form 4 order
25 denying those motions?

1 THE COURT: I don't have a Form 4 order with me
2 right now. Why don't you just submit me a little order,
3 Robert, on your thing, and I'll sign it. Yours doesn't
4 need a whole lot of elucidation. Right? We.

5 MR. KNOWLTON: We won't say anything except
6 denied.

7 THE COURT: That's fine. That's fine.

8 MR. KNOWLTON: Thank you, Your Honor.

9 THE COURT: I mean, this record stands for that
10 just as good as a Form 4.

11 MR. GROSSMAN: Nice to meet you.

12 (The proceedings were concluded at 4:55 PM.

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina (Retired), do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 27th day of January 2023.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 27, 2023

S/Renee Tollison
Circuit Court Reporter (Retired)

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

Peter C and Constance C Antinopoulos
 Plaintiff

v

Parex, Inc , et al
 Defendant

check box above indicating submitting party

CASE NO

01
98 - CP - 10 - 00632

**MOTION INFORMATION FORM
AND COVER SHEET**

name, S C Bar no and address of plaintiff's attorney
Andrew K. Epting, Jr

telephone fax
e-mail other

Name, S C Bar no and address of defendant's attorney

Steven W Ouzts SC # 2945
Turner Padgett Graham & Laney
PO Box 1473
Columbia, SC 29202

telephone 803-227-4244 fax 803-227-4305
e-mail swo@tpgl.com other

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion

Estimated Time Needed

Court Reporter Needed YES / NO

SECTION II: Motion Type

- Written motion attached
 Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order

Steven W. Ouzts
Signature of Attorney for Plaintiff / Defendant

9/23/2003
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT 25 00
 EXEMPT (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter _____
 Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
 Other

JUDGE _____

CODE _____ Date _____

CLERK'S VERIFICATION

Collected by _____
(print name)

DATE FILED

- MOTION FEE COLLECTED _____
 CONTESTED - AMOUNT DUE _____

ICC
to copy
Mason

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Peter C and Constance C Antinopoulos,)

Plaintiffs,)

vs)

DS Contractors, Inc , Synco Systems, Inc ,
Kinco, Ltd of Charleston, and Parex, Inc)

Defendants)

and)

DS Contractors, Inc ,)

Third-Party Plaintiff,)

vs)

Paul Jones,)

Third-Party Defendant)

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) DOCKET NO 01-CP-10-632
)
)
)

**ORDER GRANTING MOTION OF
DEFENDANT PAREX, INC. FOR STAY**

FILED
2003 OCT -8 PM 4:19
BY: [Signature]
CLERK OF COURT

On Thursday, September 18, 2003 the Court held a hearing on the motion of the defendant Parex, Inc to stay this action in accordance with an order entered by the Superior Court of Merrimack County, New Hampshire in *In the Matter of the Liquidation of The Home Insurance Company*, Docket No 03-E-0106 (Superior Court, Merrimack County, New Hampshire) Parex, Inc is an insured of The Home Insurance Company under a commercial general liability insurance policy or policies applicable to this action and commercial umbrella policies that are potentially applicable The complaint alleges property damage that occurred

RMD/1

because of continuous water leakage into Plaintiffs' house during a period of time within the policy periods of one or more of the insurance policies issued by The Home Insurance Company to Parex. Pursuant to its policy obligations, The Home Insurance Company undertook to defend its insured by retaining counsel to represent Parex in this action.

On June 13, 2003 the Superior Court of Merrimack County, New Hampshire, acting on a verified Petition for Order Liquidation filed on behalf of the New Hampshire Department of Insurance, declared The Home Insurance Company insolvent and ordered the liquidation of its assets in accordance with the New Hampshire Insurers Rehabilitation and Liquidation Act, N.H. Rev. Stat. Ann. §§ 402-C:1 through 402-C:61. A copy of the New Hampshire Superior Court's Order of Liquidation of The Home Insurance Company is attached to this Order. As it relates to Parex's motion, the Order states as follows in subsection (y):

“To the full extent of the jurisdiction of the Court and the comity to which the orders of the court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18.”

South Carolina has a corresponding Insurers Rehabilitation and Liquidation Act, which is located in S.C. Code Ann. §§ 38-27-10 through 38-27-1000. Regarding the effect to be given to liquidation orders and related injunctions by the courts of other states, S.C. Code Ann. § 38-27-430(a) states, in pertinent part, that “[t]he courts of this State shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states.” In Williams v. Northwestern Sec. Life Ins. Co., 307 S.C. 462, 415 S.E.2d 809 (S.C. 1992), the South Carolina Supreme Court applied this statute and held in similar circumstances that an order of the North

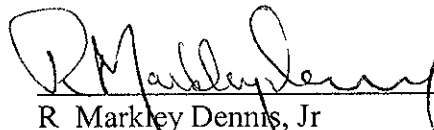
RMDA/2

Carolina Superior Court enjoining legal proceedings against an insurance company undergoing liquidation in North Carolina was entitled to full faith and credit in the courts of South Carolina

This Court finds that the injunction included in the Order of Liquidation entered June 13, 2003 by the Superior Court of Merrimack County, New Hampshire *In the Matter of the Liquidation of The Home Insurance Company*, Docket No 03-E-0106 is entitled to full faith and credit in the courts of South Carolina Therefore, for the reasons stated herein, the motion of Parex is granted, and discovery as to Parex is stayed until December 13, 2003

AND IT IS SO ORDERED

This 26th day of September 2003


R. Markley Dennis, Jr
Presiding Judge

RMD/3

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Rehabilitation of
The Home Insurance Company

ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C 15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C.20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C 5, RSA 402-C.19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that

- (a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;
- (b) The Home is declared to be insolvent,
- (c) Sufficient cause exists for an order to liquidate The Home;
- (d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;
- (e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order,
- (f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found,
- (g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home),
- (h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation:

(i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;

(j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator,

(k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home,

(l) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court

(m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C 28 and RSA 402-C 5, except to the extent the Liquidator sees fit and obtains leave to intervene;

(n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions.

(1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

(2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator,

(3) enforcing any judgment against The Home or its property,

(4) any act to obtain possession of property of The Home or to exercise control over property of The Home,

(5) any act to create, perfect, or enforce any lien against property of The Home,

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C.34,

(o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or

administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order,

(p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings,

(q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator,

(r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation,

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

(s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval,

(t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C 25, I

(u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;

(v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

tribunal with respect to all or any portion of the estate of The Home located outside the United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates,

(w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;

(x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18,

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period,

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C.25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire, and

(bb) The deadline for the filing of claims pursuant to RSA 402-C 26, II, RSA 402-C 37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date 6/13/03
Time _____

By Kenneth M. Quire
Presiding Justice

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefler Toal, Chief Justice (Ret.) and Acting Circuit Court Judge

Case No. 2020-CP-40-04385

Appellate Case No. 2023-000252

Southern Insulation, Inc., through its Receiver, Peter D. Protopapas,Respondent,

vs.

OneBeacon Insurance Group, Ltd.; OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); R.V. Chandler & Associates, Inc.; Chandler Rental Properties, Inc.; Thomas S. Chandler; Jean B. Ownbey, as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; Gene N. Norville; the South Carolina Property and Casualty Insurance Guaranty Association; Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited; Brad S. Huntington, individually; and John C. Williams, individually,

Of which OneBeacon Insurance Group, Ltd.; OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC); Trebuchet US Holdings, Inc; Trebuchet Investments Limited; Trebuchet Group Holdings Limited; Brad S. Huntington, individually; and John C. Williams, individually, are Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that, on this date, a copy of Respondent’s Reply to its Motion to Dismiss Appeal has been served upon counsel via email, as follows:

Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite #200 (29201)
P. O. Box 1390
Columbia, SC 29202-1390

jimkoutrakos@callisontighe.com
harrydixon@callisontighe.com

Paul M. Hummer (admitted *pro hac vice*)
Sean T. O'Neill (admitted *pro hac vice*)
Saul Ewing LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
215-972-7777
paul.hummer@saul.com
sean.oneill@saul.com

John A. Basinger (admitted *pro hac vice*)
1270 Avenue of the Americas
New York, NY 10020
212-980-7200
john.basinger@saul.com

Attorneys for Defendants/Appellants *OneBeacon Insurance Group, Ltd. (f/k/a White Mountains Insurance Group, Ltd., f/k/a CGU Insurance Company, f/k/a Commercial Union Corporation, f/k/a General Accident Insurance Company of America); OneBeacon Insurance Group LLC (n/k/a Intact Insurance Group USA LLC)*

Robert Y. Knowlton, Esquire
Elizabeth H. Black, Esquire
Haynsworth Sinkler Boyd, PA
1201 Main Street, 22nd Floor
P. O. Box 11889
Columbia, SC 29211-1889
bknowlton@hsblawfirm.com
eblack@hsblawfirm.com

Jeffrey D. Grossman, Esquire
Stradley Ronon Stevens & Young, LLP
2005 Market Street, Suite #2600
Philadelphia, PA 19103
jgrossman@stradley.com
(*pro hac vice admission application pending*)

Attorneys for Defendants/Appellants *Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited; Trebuchet US Holdings, Inc.; Brad S. Huntington; and John C. Williams*

Walter R. Frye, III, Esquire
John H. Scully, Esquire

Eller Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
wfrye@etblawfirm.com
jscully@etblawfirm.com

Attorneys for Defendants R.V. Chandler & Associates, Inc.; Thomas S. Chandler; Jean B. Ownbey as Trustee of the Thomas S. Chandler, Sr. Living Trust u/d 4/06/06; and Gene N. Norville

Allen Leland DuPre, Esquire
Lyles & Associates, LLC
1037 Chuck Dawley Blvd., Suite G100
Mt. Pleasant, SC 29464
ald@lylesfirm.com

Attorney for Defendant Chandler Rental Properties, Inc.

Erik T. Norton, Esquire
Harrell Martin & Peace, PA
135 Columbia Avenue
Chapin, SC 29036
erik@hmp-law.com

Attorneys for Defendant South Carolina Property & Casualty Insurance Guaranty Association

Respectfully submitted,

/s/Matthew T. Richardson
Matthew T. Richardson (S.C. Bar No. 15647)
Eric B. Amstutz (S.C. Bar No. 363)
WYCHE, P.A.
807 Gervais Street, Suite 301
Columbia, SC 29201
(803) 254-6542
mrichardson@wyche.com
eamstutz@wyche.com
Attorney for Respondent

March 13, 2023