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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice (Ret.) and Acting Circuit Court Judge
Case No. 2020-CP-40-04385

Court of Appeals Appellate Case No. 2023-000252

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

vs.

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); 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 (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually,

Of which 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); Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually, are theAppellants.

APPELLANTS' JOINT PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COUNSEL

Counsel for Petitioners¹ certify that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on July 6, 2023.

QUESTION PRESENTED

Did the Court of Appeals err in dismissing Petitioners' appeals of an order denying their motions to enforce a Pennsylvania court's liquidation order enjoining litigation against an insurance company and its assets (including rights of action), where immediate appeal is expressly permitted by S.C. Code Ann. § 14-3-330(4) and the holding in *Williams v. Northwestern Security Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992) ("*Williams*")?

STATEMENT OF THE CASE

This case presents a question of critical importance under the Uniform Insurer Rehabilitation and Liquidation Acts.

Respondent Southern Insulation, Inc. ("Southern") filed an action against Petitioners in violation of certain injunctive provisions in a Pennsylvania court's Liquidation Order (defined below). South Carolina, like many other states, has enacted its version of the Uniform Insurance Rehabilitation and Liquidation Act, S.C. Code Ann. § 38-27-10 *et seq.* ("IRLA" or "the Act"). Under S.C. Code Ann. § 38-27-430(a), South Carolina courts must give full faith and credit to injunctions in liquidation orders from "reciprocal" states that have enacted parallel statutory schemes. This Court considered the issue in *Williams* and held: 1) that an injunction issued by an

¹ Petitioners Intact Insurance Group USA Holdings Inc. (sued herein as OneBeacon Insurance Group, Ltd.) ("Intact Inc.") and Intact Insurance Group USA LLC (sued herein as OneBeacon Insurance Group LLC) ("Intact LLC") are collectively referenced as "Intact." Petitioners Trebuchet US Holdings, Inc., Trebuchet Investments Limited, Trebuchet Group Holdings Limited (f/k/a Armour Group Holdings Limited), Brad S. Huntington, individually, and John C. Williams, individually are collectively referenced as "Trebuchet."

out-of-state court acting under a parallel statutory framework must be enforced and 2) a trial court's failure to do so is subject to immediate appeal under S.C. Code Ann. § 14-3-330(4).²

As a result, the Court of Common Pleas “refused an injunction” by denying Petitioners’ motions to dismiss. Because that refusal was immediately appealable, the Court of Appeals erred when it dismissed Petitioners’ appeal and denied Petitioners’ timely petition for rehearing.

BACKGROUND

Prior to its dissolution in 1991, Southern allegedly exposed employees and customers to asbestos-containing products that, in turn, allegedly exposed Southern to substantial tort-related liability. Second Amended Complaint (“SAC”) ¶¶ 1, 24.³

Bedivere Insurance Company (“Bedivere”) is a Pennsylvania-based insurer currently undergoing liquidation in Pennsylvania’s Commonwealth Court. Prior to its adoption of the name Bedivere in 2015, it was known as Potomac Insurance (prior to February 1, 1982) and OneBeacon Insurance Company (from August 28, 2001 to February 9, 2015).⁴

² In another case arising from the asbestos docket in the Court of Common Pleas, the Court of Appeals has also taken up the issue of whether an order refusing to dissolve a receivership is subject to immediate appeal under S.C. Code Ann. § 14-3-330(4). *See Childers v. Davis Mechanical Contractors, Inc.*, Appellate Case No. 2023-00727 (S.C. Ct. App.).

³ A copy of the Second Amended Complaint is attached as **Exhibit 1** to Intact’s March 6, 2023 Return to Southern’s Motion to Dismiss the Appeal filed in the South Carolina Court of Appeals. The facts and procedural history are fully set forth in Petitioners’ respective Returns in opposition to Southern’s Motion to Dismiss Appeal (the “Intact Return” and “Trebuchet Return”). Petitioners refer to any referenced document by its exhibit number in earlier briefing on Southern’s motion to dismiss in the Court of Appeals for this Court’s ease of reference (e.g., Exhibit 2.B to the Intact Return references the Exhibit B attached to Exhibit 2 of Intact’s Return).

⁴ OneBeacon Insurance Company was a subsidiary of OneBeacon Insurance Group LLC, which was later re-named Intact LLC. *See* SAC ¶¶ 4, 29. Respondent Trebuchet US Holdings, Inc. purchased Bedivere, closing the transaction on December 23, 2014, after public notice and comment and an extensive regulatory review. *See generally Crosby Valve, LLC v. Department of Ins.*, 131 A.3d 1087, 1089–90 (Pa. Commw. Ct. 2016); *see also* SAC ¶ 39.

In 2019, Peter D. Protopapas was appointed as Southern’s Receiver. First Amended Complaint (“FAC”) ¶ 1.⁵ Southern named Bedivere, among others, as a defendant in its FAC, filed November 10, 2020. Although it has not produced the underlying policies, Southern alleged that Bedivere issued insurance policies to Southern that provided defense and indemnity for asbestos claims against Southern. *Id.* ¶ 6. Southern tendered asbestos lawsuits to Bedivere for defense and indemnity, and Southern alleged that Bedivere admitted it insured Southern and undertook its obligations under a reservation of rights. *Id.* ¶¶ 36–37. Southern sought, among other things, a declaration of coverage under the Bedivere policies and the construction of those policies. *Id.* ¶ 52.

On March 11, 2021, Bedivere entered liquidation proceedings in the Commonwealth Court of Pennsylvania. SAC ¶ 57. The Bedivere Order of Liquidation in the Commonwealth Court of Pennsylvania (the “Liquidation Order”)⁶ vests in the Liquidator “title to all property, assets, contracts and rights of action of Bedivere of whatever nature and wherever they may be located.” Liquidation Order ¶ 4. It also establishes 1) the Commonwealth Court’s *in rem* jurisdiction over all assets wherever they may be located and regardless of whether they are held in the name of Bedivere or any other name, 2) its exclusive authority to determine whether assets belong to Bedivere or another party, and 3) its exclusive jurisdiction over all determinations of the amount, validity, and priority of the claims against Bedivere. *Id.*

To protect this exclusivity, the Liquidation Order explicitly enjoins the commencement or continuation of any action against Bedivere *or its assets* absent written consent of the Liquidator.

⁵ A copy of the First Amended Complaint is attached as **Exhibit 2.B** to the Intact Return filed in the South Carolina Court of Appeals.

⁶ A copy of the Liquidation Order is attached **Exhibit 2.A** to the Intact Return filed in the South Carolina Court of Appeals.

Id. ¶ 13. It also enjoins all persons claiming secured, priority, or preferred interests in property or assets of Bedivere from taking “any steps whatsoever” to exercise such rights. *Id.* ¶ 14.

Southern moved to dismiss⁷ Bedivere on January 7, 2022, stating that it had filed claims against Bedivere in the liquidation under the direction of the Commonwealth Court of Pennsylvania. *See Exhibit 2.A* to the Intact Return (Liquidation Order) ¶¶ 10, 12.

With its claims against Bedivere pending in the liquidation, Southern filed its SAC on February 18, 2022, adding Petitioners as parties defendant. The SAC omits Bedivere as a named party defendant but asserts numerous claims that fall squarely within the ambit of the injunction in the Liquidation Order:

- Southern’s claims concern its tender of asbestos suits against it for defense and coverage under Bedivere policies, and it seeks declarations of coverage and terms of those policies. SAC ¶¶ 27–31, 59, 82.
- Southern alleges Intact stripped Bedivere of its assets before selling Bedivere to Trebuchet in 2014, leading to Bedivere’s demise in 2021 and making it “impossible for Bedivere to satisfy its obligation to Southern under the policies issued by [Bedivere]”. SAC ¶¶ 35–38, 136.
- Southern similarly alleges that Trebuchet later caused a “fraudulent incurrence of obligations” on Bedivere that, in turn, damaged Southern. *Id.* ¶¶ 145–52.
- Southern alleges that Petitioners’ actions were designed to hinder policyholders. SAC ¶ 50; *id.* ¶¶ 146, 161.
- Southern specifically claims that it seeks “assets of Bedivere” (that it alleges Intact acquired and retained) and that, at different times, Petitioners were Bedivere’s alter egos, constituting a single business enterprise.⁸ SAC ¶¶ 126, 154, 172, 177–78, 182–83. Southern likewise seeks an attachment of Bedivere assets alleged to be in the possession of Petitioners. *See* SAC ¶ 136 (seeking “an attachment ... against the assets fraudulently transferred from [Bedivere *f/k/a* OneBeacon Insurance Company] to OneBeacon or its other affiliates” and

⁷ A copy of the Southern Motion to Amend is attached as **Exhibit 2.C** to the Intact Return filed in the South Carolina Court of Appeals.

⁸ Petitioners deny that they ever operated as alter egos or as a single business enterprise with Bedivere, but Southern should not be heard to allege that they are alter egos—one and the same in the eyes of the law—and yet contend that it is not suing Bedivere or seeking Bedivere’s assets.

an “order requiring OneBeacon to pay Bedivere’s obligations.”); *id.* ¶ 151 (seeking “an attachment...against the assets owned by Bedivere prior to the Merger” undertaken by the Trebuchet of Bedivere, EFIC, Lamorak, and Potomac II and “an order requiring the Trebuchet Defendants to pay the [Bedivere] Insurance Policy obligations to Southern.”).

- The SAC seeks as its remedy construction of policies allegedly issued by Bedivere to Southern and payment of monies allegedly due under those policies. *See* SAC ¶¶ 59, 88, 109, 136, 151.

Petitioners moved before the Richland County Court of Common Pleas to enforce the Liquidation Order and dismiss the claims against them in accordance with S.C. Code Ann. § 38–27–430 and *Williams v. Northwestern Security Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992), and on other grounds. The court denied Petitioners’ motions orally at the conclusion of argument on January 27, 2023, then entered a Form 4 Order denying the motions on February 7, 2023.

Petitioners timely filed notices of appeal on February 21, 2023. Southern moved to dismiss the appeal, Petitioners opposed the motion, and the Court of Appeals granted Southern’s motion to dismiss on April 13, 2023.⁹ Petitioners filed a Joint Petition for Rehearing on April 27, 2023.

On June 30, 2023, the Bedivere Liquidator filed in the Pennsylvania Commonwealth Court the Liquidator’s Application and Petition for Issuance of a Rule to Show Cause on the Southern Insulation Litigation Parties (“Liquidator’s Application”), which seeks an order directing Southern and the Intact and Trebuchet Defendants to dismiss the underlying claims in South Carolina based on the Liquidation Order and the Liquidator’s statutory powers. On July 5, 2023, Petitioners filed a Motion to Supplement the Record in the Court of Appeals to include the Liquidator’s

⁹ The filings and orders by the Court of Appeals are incorporated herein by reference and would be included in the Appendix, which is not being prepared in accord with this Court’s August 25, 2021 administrative order suspending the requirement to file an Appendix. *See Southern Insulation, Inc., through its Receiver, Peter D. Protopapas v. OneBeacon Insurance Group, Ltd., et al.*, No. 2023-000252 (S.C. Ct. App.).

Application.¹⁰ The Court of Appeals stated by letter of July 6, 2023, that it “will take no action” on Petitioners’ Motion to Supplement the Record.

The Court of Appeals denied Petitioners’ petition for rehearing on July 6, 2023.¹¹

SUMMARY OF ARGUMENT

The Court of Appeals concluded that Petitioners’ appeal should be dismissed as interlocutory because 1) Bedivere, the insurer subject to the out-of-state Liquidation Order, is not a party to this action; 2) Southern alleged wrongdoing “by Appellants only”; 3) Petitioners are not referenced in the Bedivere Liquidation Order; and 4) therefore the trial court order denying Petitioners’ motions to dismiss was not immediately appealable because the order did not refuse an injunction. In reaching these conclusions, the Court of Appeals too narrowly construed *Williams v. Northwestern Security Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992), and overlooked key allegations by Southern and provisions in the Liquidation Order that show the trial court did in fact refuse an injunction in the Trial Court Order. Specifically, the Court of Appeals failed to account for the following:

1. A trial court order denying a motion to dismiss may be *appealed* under *Williams* if the trial court’s order refuses an injunction, and whether that appeal is successful—i.e., whether Southern’s complaint against Petitioners is barred by the injunction set forth in the Liquidation Order—is a merits question that should be decided after full briefing and argument;

¹⁰ A copy of the Liquidator’s Application is attached as **Exhibit 1** to the July 5, 2023 Joint Motion to Supplement the Record filed in the Court of Appeals.

¹¹ On July 12, 2023, Southern filed a Motion to Amend and Restate the Second Amended Complaint to Dismiss Certain Alternative Claims. *See Southern Insulation, Inc., through its Receiver, Peter D. Protopapas v. OneBeacon Insurance Group, Ltd., et al.*, 2020-CP-40-04385 (S.C. Ct. Comm. Pl.). The proposed “Restated Second Amended Complaint” (“RSAC”) attached to the motion violates the Liquidation Order just as does the SAC, in that the RSAC seeks declarations of coverage and recovery under Bedivere policies, alleges asset stripping and fraudulent incurrence of obligations by Petitioners, respectively, alleges that Petitioners’ actions were intended to hinder policyholders, and alleges that Petitioners’ actions unreasonably reduced the assets of Bedivere. As of the date of filing of this Petition, the Court of Common Pleas has not acted on the motion. Even if leave to amend were to be properly granted, in light of its common allegations with the SAC, the RSAC would not moot this Petition.

2. An order that refuses an injunction when an injunction is asserted as a basis to dismiss a lawsuit is immediately appealable under S.C. Code Ann. § 14-3-330(4) and *Williams* and is not limited to those cases where an insurer in liquidation is a party to the lawsuit; and
3. The Liquidation Order enjoins action against Bedivere or its assets, yet Southern alleges that Petitioners were, at different times, alter egos of Bedivere, that Petitioners stripped assets of Bedivere, and that Southern is entitled to attach the assets of Bedivere allegedly in possession of Petitioners.

ARGUMENT

This Court should grant certiorari and reverse the Court of Appeals' order dismissing Petitioners' appeal so that this appeal can proceed on the merits. The Court of Common Pleas' denial of Petitioners' motions to dismiss was clearly an "order refusing an injunction": both motions argued that Southern's claims violate the injunctive provisions of the Liquidation Order issued by Pennsylvania's Commonwealth Court.

First, Petitioners asserted that, by seeking to recover for injuries originally inflicted on Bedivere, Southern's claims were derivative in nature and intruded on the exclusive authority of Bedivere's Liquidator in violation of the liquidation-related injunction issued by Pennsylvania's Commonwealth Court. *Second*, because Southern alleges Petitioners were, at different times, alter egos of Bedivere, any claims against Petitioners are, as a matter of law, claims against Bedivere. *Third*, Southern seeks declarations as to coverage under the Bedivere policies and amounts owed under them. *Fourth*, Southern seeks to attach or recover the assets of Bedivere, which it alleges the Petitioners wrongly obtained and now possess. As set forth in detail in the briefs before the Court of Common Pleas, these allegations and related remedies directly contravene the Pennsylvania Commonwealth Court's Liquidation Order and injunction. The Liquidation Order and injunction vest Bedivere's Liquidator with sole and exclusive possession of all of Bedivere's assets, including Bedivere's rights of actions against third-parties. They also prohibit any actions

by creditors or other third parties implicating those assets, including “taking any steps whatsoever” to exercise purported rights in property of Bedivere. By rejecting these arguments, the Court of Common Pleas clearly “refused” to honor the Commonwealth Court’s injunction, rendering its decision immediately appealable under S.C. Code Ann. § 14-3-330(4) and *Williams*. The Court of Appeals erred when it ignored these facts, misconstrued the underlying law, and dismissed Petitioners’ appeal.

Enforcement of liquidation orders and injunctions is a matter of critical import under the reciprocal Uniform Insurance Rehabilitation and Liquidation Acts in South Carolina, Pennsylvania, and elsewhere. These reciprocal statutory schemes are intended to ensure equitable apportionment among creditors of an insolvent insurance company and to lessen the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process. *See* 40 P.S. § 221.1; S.C. Code. Ann. § 38-27-30. Both Pennsylvania and South Carolina acknowledge the crucial role of comity and reciprocity in any successful liquidation process and the vesting of title over the insurer’s assets in the insurer’s domiciliary state. *Compare* 40 P.S. § 221.55 (“The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this Commonwealth.”) *with* S.C. Code Ann. § 38-27-930 (“The domiciliary liquidator of an insurer domiciled in a reciprocal state is...vested by operation of law with the title to all of the assets, property, contracts and rights of action, agents’ balances, and all of the books, accounts, and other records of the insurer located in this State.”). Southern’s lawsuit against Petitioners seeks a preference to alleged assets of Bedivere allegedly in possession of Petitioners, seeks to usurp the Liquidator’s title to rights of action of Bedivere, and seeks a policy construction that may be inconsistent with that reached by the

Liquidator in Pennsylvania. In doing so, Southern’s claims disrupt the orderly liquidation process enacted in both South Carolina and Pennsylvania. Further, the dismissal of Petitioners’ appeal conflicts with this Court’s decision in *Williams*.

A. S.C. Code Ann. § 14-3-330(4) and *Williams* only require a dispute over the applicability of an injunction and do not require an insurer to be a party for an action to be appealable.

i. An order is immediately appealable under S.C. Code Ann. § 14-3-330(4) and Williams when an injunction is asserted as a basis to dismiss the suit and the trial court refuses the injunction.

Petitioners appeal an order refusing an injunction under S.C. Code Ann. § 14-3-330(4).¹² In *Williams*, a named-defendant insurance company was subject to an out-of-state liquidation order. 307 S.C. at 463, 415 S.E.2d at 809. After the trial court refused to honor the injunction, the Supreme Court of South Carolina determined that the appeal was proper because the defendant in *Williams* argued the injunction barred the suit and the trial court refused to follow the injunction. *Id.* at 464, 415 S.E.2d at 810 (“[The insurer in liquidation] argues that when the trial judge denied

¹² S.C. Code Ann. § 14-3-330(4) provides in full:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

its motion to dismiss, *the injunction in effect was refused thereby bringing the order within the parameters of subsection (4)*. Under these facts, we agree.”) (emphasis added). In other words, an appeal under § 14-3-330(4) is allowed immediately from an order where the parties dispute the application of an injunction and its impact on the case. *See id.*; *see also* 24 S.C. Jur. *Rules of Civil Procedure* § 12.2 (“if a motion to dismiss is based on an injunction issued by the court of another state, then the denial will be immediately appealable under the clear terms of section 14-3-330(4)”) (citing *Williams*, 307 S.C. at 464, 415 S.E.2d at 810); Jean Hoefler Toal, et al., *Appellate Practice in South Carolina* at Ch. 8, Section V, ¶ 9 (3d ed. 2016) (“Where the trial judge denies a motion to dismiss, which has the effect of refusing an injunction, the order is appealable under section 14-3-330(4).”) (citing *Williams*, 307 S.C. at 464, 415 S.E.2d at 810).

Moreover, whether a trial court order is immediately *appealable* under *Williams* is a different question from whether that appeal is ultimately successful. To decide this Petition, this Court need not reach whether the Liquidation Order bars Southern’s complaint against Petitioners. Whether Petitioners are correct regarding the injunction’s scope and effect is a merits question that should be decided after full briefing and argument of this appeal. It is only necessary now to decide if Petitioners, like the *Williams* defendant, assert that an injunction bars Southern’s action. As the briefing in the trial court, the Trial Court Order, and the briefing before the Court of Appeals and in this Court show, Petitioners moved to dismiss based on the injunction in the Liquidation Order.¹³ As in *Williams*, this case is immediately appealable under S.C. Code Ann. § 14-3-330(4).

¹³ As referenced above, Petitioners moved to dismiss under both the Liquidation Order and S.C. Code Ann. § 38-27-430. *See* Intact Return at **Exhibit 3** (“This motion is made based on the Order of Liquidation entered against Bedivere Insurance Company, S.C. Code Ann. § 38-27-430, and Rule 12(b).”); *see also* Trebuchet Return at **Exhibit C** (“By seeking to collect from the Trebuchet Defendants based on purported injuries to Bedivere, Plaintiff’s lawsuit directly contravenes the Commonwealth Court’s Order and the exclusive authority of Bedivere’s Liquidator.”).

- ii. Williams and S.C. Code Ann. § 14-3-330(4) do not require that an insurer subject to another state’s liquidation order be a party to the lawsuit for an order refusing an injunction to be immediately appealable.**

While *Williams* addressed a case where the insurer subject to a liquidation order was a party, nothing in the opinion suggests that S.C. Code Ann. § 14-3-330(4) is limited to those cases where the insurer in liquidation is a party. *Williams* instead requires only that the lower court’s action refuse an injunction. *See Williams*, 307 S.C. at 464, 415 S.E.2d at 810 (“[The insurer in liquidation] argues that when the trial judge denied its motion to dismiss, the injunction in effect was refused thereby bringing the order within the parameters of subsection (4). Under these facts, we agree.”). Here, both Petitioners moved to dismiss under S.C. Code Ann. § 38-27-430 and the Liquidation Order’s injunction because Southern 1) seeks assets of Bedivere, 2) seeks to assert rights of action belonging in the first instance and exclusively to Bedivere, through its Liquidator, 3) seeks determination of Bedivere’s liability to Southern under the alleged policies, and 4) alleges Petitioners were, at different times, alter egos of Bedivere. Like *Williams*, Petitioners asserted before the trial court that an injunction is in effect which enjoins Southern’s case and requires dismissal of Southern’s claims. Accordingly, the trial court order refused an injunction when it denied Petitioners’ motions to dismiss, rendering the Order immediately appealable under S.C. Code Ann. § 14-3-330(4).

Importantly, there is no policy basis for limiting *Williams* to claims asserted *against* an insolvent/liquidated insurer. The prohibition on creditor attempts to recover from third parties for harm inflicted directly on a liquidating entity is a critical component of liquidators’ and liquidating courts’ collaborative ability “[t]o secure an economical, efficient, and orderly liquidation and distribution of the assets of an insolvent corporation for the benefit of all creditors and stockholders[.]” *A.P.I., Inc. v. Home Ins. Co.*, 706 F.Supp. 2d 926, 936 (D. Minn. 2010). Without such exclusivity, creditors frustrated by a sometimes protracted liquidation process could seek to

bypass fellow creditors. Such a result would be untenable. Indeed, as Pennsylvania's Commonwealth Court has previously made clear, injunctions like the one at issue here are expressly intended to prevent creditors from asserting "separate actions in separate states" thereby creating a "race to the courthouse" and competing claims of entitlement among creditors. *Koken v. Fidelity Mut. Life Ins. Co.*, 803 A.2d 807, 822 (Pa. Commw. Ct. 2002). Like other states, South Carolina rejected such an approach by adopting its IRLA. *See* S.C. Code Ann. § 38-27-10, *et seq.* Because this interstate system is built on cooperation, the Court of Common Pleas' failure to honor the Commonwealth Court's injunction will likely compromise not just the Bedivere liquidation in Pennsylvania but *South Carolina's* ability to liquidate its own insolvent insurers: absent the promise of reciprocity, there will be no reason for out-of-state courts to honor similar injunctions issued by South Carolina courts.

Courts have repeatedly held that similar injunction orders bar proceedings against entities alleged to have caused insurers to become insolvent, even where the liquidated insurer was not the party seeking to enforce the injunction. *See, e.g., A.P.I., Inc.*, 706 F.Supp. 2d at 929 (dismissing policyholder claims against third-party based on out-of-state liquidation order and injunction); *Brooklyn Union Gas Co. v. Century Indem. Co.*, No. 403087/2002, 2005 N.Y. Slip Op. 30325 at *6-7 (N.Y. Sup. Ct. Jan. 10, 2005)¹⁴ (dismissing policyholder's claims against a third party who allegedly caused insurer to become insolvent because allowing the plaintiff's claim to proceed "would undermine the very stay that was instituted by the court ordering the liquidation" and thus the principles of reciprocity imposed by state law); *Consolidated Edison Co. v. Am. Home Ins. Co.*, No. 600527/01, Slip Op. at 2, 2005 N.Y. Misc. LEXIS 8439 *1 (N.Y. Sup. Ct. Mar. 29,

¹⁴ As noted in the Intact Return, a copy of *Brooklyn Union Gas Company v. Century Indemnity Company* is available at https://www.nycourts.gov/reporter/pdfs/2005/2005_30325.pdf.

2005)¹⁵ (dismissing claim that third party was “legally responsible for [insolvent insurer’s] coverage obligations to plaintiff” because affording “full faith and credit” to foreign liquidation order foreclosed plaintiff’s claim); *Argon Fin. Group v. Marro*, 897 F. Supp. 568 (D.D.C. 1995); *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 795, 797 (Tex. 1992); *see also Garrou v. Shovelton*, 439 P.3d 65 (Col. Ct. App. 2019) (reversing and remanding for entry of a stay of a medical malpractice claim against the defendant nurse anesthetist following entry of a South Carolina liquidation order for the defendant’s insurer that contained an injunction, and holding that court must give full faith and credit to any injunction order in liquidation proceedings); *Antinopoulos v. DS Contractors, Inc.*, No. 01-CP-10-632, 2003 WL 25465662 (S.C. Ct. Comm. Pl.) (Trial Order) (staying proceedings against insured in light of New Hampshire Order of Liquidation and S.C. Code Ann. § 38-27-430(a)). *See also* Liquidator’s Application ¶¶ 37–72. Accordingly, actions by policyholders like Southern alleging wrongdoing by parties other than an insurer in liquidation can implicate the injunction provisions in liquidation orders even where the insurer in liquidation is not a party to the suit.

The Court of Appeals’ Order narrowly interpreted the Commonwealth Court’s Liquidation Order, reasoning that, because Petitioners are not named therein, the related injunction does not provide them a basis for appeal.¹⁶ With all due respect, the Court of Appeals’ reasoning fails to see the forest for the trees. If the Commonwealth Court’s injunction was intended to apply only to

¹⁵ As noted in the Intact Return, a copy of *Consolidated Edison Company v. American Home Insurance Company* is also available at https://decisions.courts.state.ny.us/fcas/fcas_docs/2005mar/300600527200122sciv.pdf.

¹⁶ Although it is technically true that the Order does not name Petitioners, *see* Liquidation Order ¶ 15, and that Bedivere (as Bedivere or under a prior name) never merged with the Intact or Trebuchet Appellants/Petitioners, that is ultimately irrelevant. Bedivere was, at different times, a subsidiary entity of each. Moreover, Southern asserts that Petitioners were both alter egos of, and/or single business enterprises with, Bedivere.

claims *against* Bedivere (and the insurers merged into it), there would be no reason to include Bedivere’s “rights of action” among the assets it protects. Liquidation Order ¶¶ 2, 4 (“vesting” Pennsylvania’s Insurance Commissioner and Bedivere’s appointed liquidator with all of Bedivere’s “property, assets, contracts and *rights of action (assets)* of Bedivere of *whatever nature and wherever located*, whether held *directly or indirectly*[.]”) (emphases added). Put differently, an insurer-in-liquidation is never going to be a party to an attempt, like Southern’s here, to end-run liquidation proceedings by seeking recovery (for itself) for harm allegedly inflicted on an insurer-in-liquidation.

Only by securing the Bedivere Liquidator’s exclusive right to recover for injuries inflicted *on Bedivere* by *third-parties* can the liquidation framework truly “protect[]...the interests of insureds, creditors, and the public generally.” *Koken v. Steinberg*, 825 A.2d 723, 726 (Pa. Commw. 2003) (quoting 40 P.S. § 221.1(c)). As Pennsylvania courts have observed time-and-again, the indistinguishable interests of an insolvent insurer’s policyholders are “best served” by the liquidator’s singular pursuit of recovery because the “large numbers of identical policies issued render a single forum necessary to dispose equitably of a company’s limited assets.” *Koken v. Fidelity Mut. Life Ins. Co.*, 803 A.2d 807, 820–21 (Pa. Commw. 2002) (discussing exclusivity in context of parallel rehabilitation proceedings).¹⁷

Accordingly, Petitioners are appealing an order that refused an injunction, and there is no requirement under *Williams* that Bedivere be a party for this case to fall within S.C. Code Ann. § 14-3-330(4). This appeal is properly before the Court.

¹⁷ Because insurance companies are generally regulated at the state level, federal bankruptcy procedures are not available, and interstate cooperation in the orderly liquidation and handling of claims of insolvent insurers is paramount. *See, e.g., In re Wilton Amatale*, 968 F.3d 273 (3d Cir. 2020).

B. Southern did not only allege wrongdoing by Petitioners but also alleged that Petitioners are in possession of Bedivere’s assets and were alter egos of Bedivere.

As touched on above, Southern seeks to recover for injuries allegedly sustained by Bedivere in the first instance. *See, e.g.*, SAC ¶¶ 124 (“OneBeacon [Intact] stripped assets of *OneBeacon Insurance Company*, later named Bedivere”); *id.* ¶ 136(a) (seeking “an attachment, or other provisional or post-trial remedy against the assets fraudulently transferred from OneBeacon Insurance Company to OneBeacon or its other affiliates”); *id.* ¶ 151 (seeking “an attachment, or other provisional post-trial remedy, against the assets owned by Bedivere prior to the Merger” currently in Trebuchet Appellants’ possession “and that a portion of these assets may be used to satisfy the Insurance Policy obligations to Southern”)); *see also, id.* ¶¶ 145, 147, 154, 158. All of Bedivere’s assets are expressly subject to the Liquidation Order, which sweeps far more broadly than a simple injunction against suits naming Bedivere as a defendant—it vests the Liquidator in Pennsylvania with title to all of Bedivere’s assets, *including rights of action*. Liquidation Order ¶ 4 (emphasis added). The Liquidation Order also reaffirms the Commonwealth Court’s jurisdiction “over all determinations as to whether assets belong to Bedivere or to another party.” *Id.* ¶ 13. Finally, the Order expressly enjoins parties from “taking any steps whatsoever to ... exercise purported rights in or against any property or assets of Bedivere” except as provided by Pennsylvania statute.¹⁸ *Id.* ¶ 14. *See also* Liquidator’s Application ¶¶ 37–72.

Southern’s claims against Petitioners, including but not limited to its allegations of asset-stripping and fraudulent transfer, as well as its attempt to attach or recover the assets of Bedivere, together and separately violate the Liquidation Order by usurping Bedivere’s right to 1) collect any assets to which it is entitled and 2) to assert any causes of action based on injuries it allegedly

¹⁸ Southern has filed a proof of claim in the Bedivere Liquidation as required by ¶ 13 of the Liquidation Order yet seeks duplicate findings and relief here. *See Exhibit 2.C* to the Intact Return, p. 2.

sustained at the hands of third-parties. Similarly, Southern’s claims intrude upon the Commonwealth Court’s *in rem* jurisdiction over all of Bedivere’s assets and its exclusive authority to determine the validity, amounts, and priority of claims against Bedivere. *Id.* ¶ 4. Put simply, Southern’s claims against the Petitioners fall squarely within the injunctive provisions of the Liquidation Order.

Other courts have frequently held that liquidation orders from sister states bar creditors, such as Southern, from asserting similar claims. *See, e.g., A.P.I., Inc.*, 706 F. Supp. 2d at 937, 939 (dismissing claims because the liquidation order “vest[ed] the Liquidator with exclusive authority” to pursue such claims and prohibited plaintiffs from “recover[ing] damages relating to Home’s res, which the Liquidator has sole authority to protect and manage.”); *Boedeker v. Rogers*, 746 N.E.2d 625, 635-36 (Ohio App. Ct. 2000); *Corcoran v. Frank B. Hall & Co., Inc.*, 545 N.Y.S.2d 278, 284-85 (1st Dept. 1989) (liquidator had exclusive standing to assert claims for fraudulent transfers and other common law remedies against holding company where such claims were on behalf of the insurance company, its creditors and policyholders).

Moreover, despite acknowledging that it is prohibited from suing Bedivere,¹⁹ Southern is attempting to sue Bedivere because it alleges Petitioners and Bedivere were, at different times, alter egos. By contending that Petitioners and Bedivere were alter egos and/or constituted a single business enterprise, SAC ¶¶ 175–83, Southern alleges that in the eyes of the law, its claims against Petitioners *are claims against Bedivere* because the corporate distinction between Bedivere and Petitioners must be disregarded. *See, e.g.,* Southern’s Joint Response to the Motions to Dismiss at 23–24 n.10, 26, 34 (under single enterprise theory, courts regard multiple corporations as the same

¹⁹ *See, e.g., Exhibit 5* to the Intact Return (Southern’s Joint Response to the Motions to Dismiss) at 35 (“Southern is prohibited from directly litigating against Potomac [(Potomac was a predecessor of Bedivere)], due to the automatic stay in place resulting from Potomac’s liquidation”).

enterprise) (citing *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 652-53, 817 S.E.2d 273, 279 (2018), among others).

Accordingly, the Court overlooked these allegations by Southern concerning Bedivere, the effect of the injunction, and relevant law, which show Petitioners' appeal is properly before this Court under S.C. Code Ann. § 14-3-330(4) and *Williams*.

CONCLUSION

The Court of Appeals overlooked relevant facts and law in granting the motion to dismiss this appeal. As set forth above, under S.C. Code Ann. § 14-3-330(4) and *Williams*, the Trial Court Order is immediately appealable because it refused an injunction. Moreover, Southern alleged more than just wrongdoing by Petitioners; it also alleged causes of action that, if successful, would entitle Southern to recover the assets of Bedivere as a preference over Bedivere's other, similarly situated policyholders; and thus, Southern's claims implicate the Liquidation Order. Petitioners respectfully request this Court grant this petition for certiorari and vacate the order dismissing Petitioners' appeals so that this appeal can proceed on the merits.

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August 4, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Court of Appeals Appellate Case No. 2023-00252

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

vs.

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); 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 (f/k/a Armour Group Holdings Limited); Brad S. Huntington, individually; and John C. Williams, individually, Defendants

Of which 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); Trebuchet US Holdings, Inc.; Trebuchet Investments Limited; Trebuchet Group Holdings Limited (f/k/a Armour Group holdings Limited); Brad S. Huntington, individually; and John C. Williams, are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that, on this date, a copy of **Appellants' Joint Petition for Writ of Certiorari** has been served upon Respondent's counsel listed below via email, as follows:

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August 4, 2023