

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	<i>In Re:</i>
Plaintiff,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al.	)	
	)	
Defendants.	)	

**RECEIVED**  
**Sep 13 2023**  
 SC Court of Appeals

**ORDER ON PLAINTIFFS’ MOTION TO APPOINT A RECEIVER**

This order follows the Court’s order finding Asbestos Corporation Ltd. (“ACL”) in contempt of court and striking ACL’ pleadings. Before the Court is Plaintiffs’ Motion to Appoint a Receiver over ACL’s insurance assets.

**BACKGROUND**

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets<sup>1</sup> of ACL and to allow the Receiver to assume control of the defense of asbestos claims made against Asbestos Corporation, Ltd in the United States. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court’s Receiver in locating and marshalling those assets. Further, Mr. Protopapas is tasked with tendering current and future claims from Plaintiffs suffering from

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<sup>1</sup> This term is defined below.

asbestos disease brought against ACL to which those policies are responsive. Finally, Mr. Protopapas is tasked with the control of the defense of those claims for ACL.

### **PROCEEDURAL BACKGROUND**

On July 19, 2023, this Court ordered ACL to fully answer discovery and to provide a corporate representative for deposition. The Court further held that failure to do so would result ACL being held in contempt. Subsequently, this Court held ACL in contempt and, as a sanction, struck the pleadings of ACL. The Court based its contempt order on ACL's flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery.

Now, having struck ACL's answer, ACL is in default.<sup>2</sup>

### **LAW AND ANALYSIS**

#### **A. Appointment of a Receiver is Appropriate and Warranted**

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).<sup>3</sup>

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<sup>2</sup> The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

<sup>3</sup> A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the striking of ACL's answer.

Historically, receivers are appointed by courts sitting in equity in order to ensure a fair result. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939). Indeed, “[t]he right to have a receiver appointed is an ancient one . . . .” *Pelzer v. Hughes*, 27 S.C. 408 (1887) But where, as here, ACL’s answer has been struck, and thus only a ministerial action being left for ACL to be in judgment, a receiver to take possession of and, to the extent necessary, litigate ACL’s insurance assets as well as to assume control of the defense of asbestos claims made against ACL in the United States is exactly the type of historical circumstances, the Court’s of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay or hinder creditors in the collection of debts—then a court will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and return of nulla bona on the execution.

*Virginia Carolina Chemical v. Hunter*, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of ACL’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL’s continued refusal to participate in this that warrants the appointment of a receiver. Thus, where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer “any insurance assets” including “any claims related to the actions or failure to act of ACL’s insurance carriers.” The Receiver would assume control of the defense of asbestos claims made against ACL in the United States. This Court’s view of the scope of a receiver’s authority is not unique. The United States Supreme Court recognized in *Porter v. Sabin*, 149 U.S. 473 (1893) that “[t]he whole property of the corporation [is] within the jurisdiction of the court which

appointed the receiver, **including all its rights of action**, except so far as already lawfully disposed of under orders of that court, [and] remains in its custody, to be administered and distributed by it.” *Id.* at 480 (emphasis added).

That the South Carolina receivership references “property within this state” is not a limitation on the Receiver’s authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court’s authority to vest a statutory receiver to assert an insolvent corporation’s rights of action. *See e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1<sup>st</sup> Dep. 1942), *aff’d* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded “full faith and credit”). That is the authority given to be given the receiver here.

That authority includes the insurance assets of ACL, including the right to assume control of the defense of asbestos claims made against ACL in the United States and tender claims to applicable insurance policies. Even assuming ACL’s interpretation of §15-65-10 is correct, to the extent they exist, ACL’s Insurance Assets <sup>2</sup> would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

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<sup>2</sup> For purpose of clarity, this Court defines “Insurance Assets” as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

S.C. Code Ann §38-61-10 states that

[a]ll contracts of insurance on property, lives, or interests in this state are considered to be made in the State and all contracts of insurance the applications for which are taken within this State are considered to have been made within this State and are subject to the laws of this State.

In interpreting §38-61-10, the South Carolina Supreme Court held that “[i]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located.” *Sangamo Weston v. Nat’l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (Toal, C.J). The result is that “South Carolina substantive law governs [the insuring assets of ACL]” *Id.* Thus, the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

ACL continues to ignore the jurisprudence of this state which directly addresses its due process argument. Just as here, *Sangamo* argued that §38-61-10 was “unconstitutional.” *Id.* at 131.

The South Carolina Supreme Court there opined that

insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of the law of South Carolina when they respectively provided or received insurance on interests located in this state.

*Id.* ACL sold its products throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent, whatever insuring assets of ACL exist and related claims are subject to the substantive law of

South Carolina and nothing about that result is violative of due process.

### **POWERS OF THE RECEIVER**

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of ACL. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Asbestos Corporation, Ltd. and any subsidiaries, accept service on behalf of ACL, engage counsel on behalf of ACL, to assume control of the defense of asbestos claims made against ACL in the United States, and take any and all steps necessary to protect the interests of ACL whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of ACL against which the ACL may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the ACL; redirect the delivery of any such mail addressed to the ACL or any business of the ACL, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to ACL relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of ACL; 4) hire any person necessary to accomplish any right or power under this Order; 5) to assume control of the defense of asbestos claims made against ACL in the United States; and 6) take all action necessary to gain access to

all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of ACL may be situated, and to review and obtain copies of all documents related to insurance assets of ACL.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of ACL or any entity for whom ACL did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

### **CONCLUSION**

For the foregoing reasons, the appointment of a receiver for ACL to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of ACL and its subsidiaries, successors, and assigns, is appropriate. Moreover, the Court authorizes Mr. Protopapas to assume the control of the defense of all litigation matters pending in the United States against ACL. Peter Protopapas is hereby appointed the receiver over ACL consistent with this order.

**IT IS SO ORDERED.**

***[JUDGE'S SIGNATURE PAGE FOLLOWS]***





Richland Common Pleas

**Case Caption:** John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

**Case Number:** 2023CP4001759

**Type:** Order/Appointment of Receiver

So Ordered

Jean H. Toal