

Nov 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Appellate Case No. 2023-001096
Case No. 2022-CP-40-03834

Donna B. Welch, individually and as Personal Representative of the Estate of Melvin G. Welch, deceased, Respondent

v.

Advance Auto Parts, Inc., American Honda Motor Co., Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor to Atlas Asbestos Co, a foreign company, Bahnson, Inc., Covil Corporation; Daniel International Corporation, Davis Mechanical Contractors, Inc., Ellington Insulation Company, Inc., Fluor Constructors International f/k/a Fluor Corporation, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Parts, Inc. individually and as successor-in-interest to Carquest Corporation, Goodrich Corporation f/k/a The B. F. Goodrich Company, The Goodyear Tire & Rubber Company, Graybar Electric Company, Inc., Honeywell International, Inc. individually and as successor-in-interest to Allied Signal, Inc., as successor to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner Morse Tec LLC, and successor-by-merger to Borg-Warner Corporation, Occidental Chemical Corporation as successor to Durez Corporation, O'Reilly Automotive Stores, Inc., Paramount Global f/k/a ViacomCBS Inc., f/k/a CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor-by-merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation, Pneumo Abex LLC successor-in-interest to Abex Corporation, Redco Corporation f/k/a Crane Co., Reinz Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly owned subsidiary of Dco LLC, Rust Engineering & Construction, Inc., Rust International Inc., Southern Insulation, Inc., Spirax Sarco, Inc., Union Carbide Corporation, Westrock MWV, LLC individually and as successor-in-interest to Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

Of which Atlas Turner, Inc., is the

Appellant.

**RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO CONFIRM
AUTOMATIC STAY OR, ALTERNATIVELY, VERIFIED PETITION FOR
SUPERSEDEAS**

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INTRODUCTION

Appellant Atlas Turner filed a Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas. Its request, which parrots significant portions of its appeal brief, is contrary to the plain language of Rule 62(a), SCRPC, and S.C. Code Ann. §14-3-450. Atlas Turner's arguments are also contrary to the Court of Appeals' September 8, 2023, order in *Childers v. Davis Mechanical*, in which this court recognized that receiverships are exempted from automatic appellate stays by both Rule 62 and S.C. Code § 14-3-450.

Further, the need for the Receiver to retain power to act during the pendency of this appeal is demonstrated by Atlas' deliberate spoliation of insurance assets which would otherwise be available to satisfy judgment in Respondent Donna Welch's favor.

In addition to failing to provide this Court with adequate reason to stay a properly ordered receivership, Atlas Turner has again inappropriately attacked South Carolina courts. As it did in its appeal brief, Atlas Turner cites to the "Judicial Hellholes" website. This website was created by the American Tort Reform Foundation for the sole purpose of disparaging the judicial systems of various States including South Carolina. Atlas Turner's second citation to this website violates various South Carolina rules of attorney civility and should not be condoned by this Court.

BACKGROUND

After holding Atlas Turner in contempt for defying its discovery order, the Richland County Court of Common Pleas struck Atlas Turner's answer.¹ Subsequently, the trial court instituted a receivership to marshal and protect Atlas Turner's insurance assets.² Atlas Turner challenges these orders in this current appeal.

¹ Ex. 1, 6/20/23 Order Striking Atlas Turner's Answer.

² Ex. 2, 6/21/23 Order on Plaintiffs' Motion to Appoint Receiver.

Atlas Turner sold asbestos products throughout the United States for decades. The Complaint in this matter alleges Melvin Welch developed mesothelioma and subsequently died from exposures to asbestos-containing products and materials manufactured, sold, and/or distributed by Atlas Turner and used by or near Mr. Welch in South Carolina. Mr. Welch, joined by his wife Respondent Donna Welch, filed suit in the Richland County Court of Common Pleas, South Carolina, in July of 2022, seeking recovery for their injuries.³ In response, Atlas Turner challenged the trial court's authority to exercise personal jurisdiction on the basis that it is a Canadian company.

Atlas Turner's sales of asbestos products included sales to South Carolina. The record includes evidence showing Atlas Turner sold products to various companies operating in South Carolina, some of which were named as co-defendants in this case. Deposition testimony from an Atlas Turner representative⁴ showed the company sold asbestos-containing products for use at South Carolina facilities as early as 1964.⁵

Mrs. Welch also tendered Atlas Turner's own 1968 customer list, showing that for years it sold asbestos insulation to Covil Corporation, located in Greenville, South Carolina.⁶ A subsequent customer list showed additional Atlas Turner shipments directly into South Carolina.⁷ Finally,

³ Mr. Welch died from mesothelioma on April 17, 2023. Mrs. Welch now maintains this lawsuit in both her personal capacity and as Personal Representative for the Estate of Melvin G. Welch.

⁴ Atlas Turner refused to produce a corporate witness in this matter. As such, Mrs. Welch was forced to designate testimony obtained in other cases.

⁵ **Ex. 3**, 5/11/87 Andrew C. Richardson deposition (attached as Exhibit 8 to Plaintiff's Response in Opposition to Defendant Atlas Turner, Inc.'s Motion for Protective Order, at 52:11-17; 54:4-8).

⁶ **Ex. 4**, Atlas Turner 1968 customer list (attached as Exhibit 4 to Response in Opposition to Defendant Atlas Turner, Inc.'s Motion for Protective Order). Once again, this evidence was independently gathered by Mrs. Welch's counsel from other sources and other cases, as Atlas Turner refused to produce discovery in this matter.

⁷ **Ex. 5**, Atlas Turner 1968-1970 customer list (attached as Exhibit 5 to Response in Opposition to Defendant Atlas Turner, Inc.'s Motion for Protective Order)

tendered documents show Atlas Turner sold asbestos insulation to co-Defendant Guy M. Beaty & Company while it was operating in South Carolina.⁸

Despite selling asbestos products directly into the United States, Atlas Turner and affiliated Canadian asbestos companies⁹ have challenged the jurisdiction of U.S. courts for decades. They have also refused to participate in discovery, claiming they are excused from such obligations by the Quebec Business Concerns Record Act (“QBCRA”).

Given Atlas Turner’s resistance to the court’s jurisdiction, the Welches promptly tendered jurisdictional discovery about Atlas Turner’s presence in South Carolina and its sale of products into the state. The Welches amended their discovery and deposition request at least three times, including arranging for the deposition to be conducted remotely. Atlas Turner did not respond to any of the Welches’ discovery requests.

Instead, Atlas Turner sought protective orders, requesting the trial court relieve it from any obligation to participate in the discovery phase, asserting a lack of personal jurisdiction and that

⁸ **Ex. 6**, Atlas Turner order invoices from Guy M. Beaty (attached as Exhibit 3 to Response in Opposition to Defendant Atlas Turner, Inc.’s Motion for Protective Order). Atlas Turner’s 1968-1969 Customer List shows “Newtherm” pipe covering frequently contained asbestos. **Ex. 5**, p. 3.

⁹ The interrelationship between Atlas Turner and other Canadian asbestos companies including Atlas Asbestos Co., Atlas Turner Inc., Bell Asbestos and Asbestos Corporation Ltd. has long been recognized by U.S. courts. *See, e.g., Roberts v. Owens-Corning Fiberglass Corp.*, 101 F.Supp.2d 1067, 1082 (S.D.IN. 1999), recognizing and reciting the interrelationship of various Quebec asbestos companies. *See also, Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 643-44 (simultaneous considering motions relating to Atlas Turner, Bell Asbestos, and Asbestos Corporation Ltd., and referencing them collectively as “Canadian Defendants”). *See also, Ex. 7*, Defendant Atlas Turner, Inc.’s Motion for Protective Order and memorandum of Law in Support on Behalf of Itself and Defendant Atlas Asbestos Co., p. 1, FN 1 (“Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company”); **Ex. 8**, Memorandum of Agreement Between Atlas Turner and Royal Insurance Company of Canada (attached as exhibit A to Receiver’s Notice of Atlas Turner, Inc.’s Misleading Representations and Filing of Evidence of Potential Insurance Liquidation, “Memorandum of Agreement” showing Bell and Atlas were both named insureds under same insurance policy.) Also of note, in another pending South Carolina asbestos case, Asbestos Corporation Ltd. has filed an appeal in this Court relating to the same issues raised in this appeal. *See, Tibbs v. 3M Company*, Appellate Case No. 2023-001461.

the QBCRA eliminated its obligation to participate in discovery. lack of personal jurisdiction and, after months of contending that Canadian law prevented it from participating in discovery, that the Welches had insufficient evidence to demonstrate that Melvin Welch was exposed to asbestos or asbestos-containing products attributable to Atlas Turner.

On April 19, 2023, the trial court heard argument on Atlas Turner’s motions for protective order, motion to dismiss, and motion for summary judgment. The trial court denied the motions, stating:

I will direct that the 30(b)(6) witness be prepared sufficient to respond, all right, to time periods prior to the records that they have been able to, by other means, gather, and that . . . Atlas Turner, successor to Atlas Asbestos Company, also, be compelled to produce records for the periods of time that [] they have been requested in discovery for information prior to 1968.¹⁰

Despite this directive from the trial court, Atlas Turner’s counsel made it very clear that Atlas Turner would never produce a witness or its records, asserting its “client will not have witness available tomorrow or ever.”¹¹

Atlas was warned of the consequences of not complying with the trial court’s order.¹² Holding true to its threat of non-compliance, Atlas Turner did not produce a representative for deposition or produce relevant documents as directed by the trial court. Atlas Turner did, however, file an Answer to the Welches’ Complaint on April 24, 2023. Even in light of the trial court’s adverse ruling on the matter, Atlas Turner held steadfast to its position that the trial court lacked personal jurisdiction over it.

¹⁰ **Ex. 9**, 4/19/23 Hearing Transcript, p. 20:19-21:2.

¹¹ *Id.* at 21:8-9.

¹² *Id.* at 23:11-14.

After the trial court held Atlas Turner in contempt for its failure to comply with its orders and directives,¹³ Mrs. Welch filed a motion for sanctions in the form of striking Atlas Turner's answer and requested a receiver be appointed. She requested the trial court levy sanctions against Atlas Turner for its failure to comply with the trial court's orders and directives in the form of striking Atlas Turner's answer. She then requested that if the answer was struck, a receiver should be appointed to protect Atlas Turner's insurance assets and satisfy claims against it.

On June 20 and 21, 2023, the trial court entered two orders. The first struck Atlas Turner's answer.¹⁴ The second appointed a receiver for Atlas Turner's insurance interests.¹⁵ In the Order striking Atlas Turner's answer, the trial court detailed Atlas Turner's repeated defiance of its orders and the Court's efforts to avoid sanctioning Atlas Turner. Specifically, the trial court noted that the "Court attempted to ascertain Atlas' positions on these matters and whether Atlas would participate in discovery or otherwise comply with this Court's orders."¹⁶

In its second order, the trial court held a receiver was necessary to marshal and protect Atlas Turner's insurance assets.¹⁷ The court reiterated that Atlas Turner was in contempt for its failure to comply with the Orders and that its answer had been struck as a sanction for that failure.¹⁸ The trial court also explained that receiverships were not just for insolvent entities and could be instituted when a debtor:

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

¹³ **Ex. 10**, 5/4/23 Hearing Transcript, p. 12:14-19:10.

¹⁴ **Ex. 1**, 6/20/23 Order Striking Atlas Turner's Answer.

¹⁵ **Ex. 2**, 6/21/23 Order on Plaintiffs' Motion to Appoint a Receiver.

¹⁶ **Ex. 1**, 6/20/23 Order Striking Atlas Turner's Answer, p. 2.

¹⁷ **Ex. 2**, 6/21/23 Order on Plaintiffs' Motion to Appoint a Receiver.

¹⁸ *Id.*, p. 2.

the risk of losing his debt from the delay of obtaining judgment and return of nulla bona on the execution.¹⁹

Finally, the trial court determined “the moral fraud of Atlas’ personal jurisdiction claims . . . and [Atlas Turner’s] continued refusal to participate in this that warrants the appointment of a receiver.”²⁰

Atlas Turner appealed the orders striking its answer and appointing a receiver. The appeal addressing the merits of these issues is ongoing. At present, Atlas Turner and Respondent have tendered their initial briefs. Atlas Turner now seeks to have the receiver’s powers stayed during the pendency of the appeal.

ARGUMENT

1. The Appointment of a Receiver Was Not a Sanction

Atlas Turner’s motion states its receivership was imposed pursuant to the trial court’s “power to sanction discovery violations under Rule 37, SCRPC.”²¹ This representation is knowingly inaccurate. The plain language of the trial court’s orders makes clear that the sanction imposed by the trial court was the striking of Atlas Turner’s answer and entry of default. The trial court’s subsequent order appointing a receiver was not a sanction, but rather was for the purpose of investigating and preserving Atlas Turner’s insurance assets which might be available to satisfy a judgment against Atlas Turner. Given that Atlas Turner was already in default, the trial court acted well within its discretion to appoint a receiver to investigate and preserve its assets.

¹⁹ *Id.*, p. 3, citing, *Virginia Carolina Chemical v. Hunter*, 84 S.C. 214 (1909).

²⁰ *Id.*

²¹ Appellant’s Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas, p. 11. *See also*, Appellant’s Motion, p. 6, FN 13 (referencing receiver order as “an improper discovery sanction.”).

Atlas Turner's motion improperly mischaracterizes the trial court's order appointing a receiver. For this initial reason, Atlas Turner's request for a stay is without merit and should be denied.

2. Receivership Orders are Not Subject to Rule 241's Automatic Stay.

A. Rule 62(a) exempts receiverships from the automatic stay

Typically, a notice of appeal automatically stays the relief ordered in the appealed order, judgment, or decree or decision. Rule 205, SCACR. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. However, Rule 62(a), SCRCR provides exceptions to Rule 205's automatic stay.

Automatic Stay; Exceptions--Injunctions, Receivership, and Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. *Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.* The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal. (emphasis added).

Pursuant to this rule, the receivership over Atlas Turner's insurance assets should not be automatically stayed during this appeal.

Atlas Turner's motion recognizes receivership actions are exempted from the provisions Rule 205 via Rule 62(a). To avoid this result, Atlas Turner seemingly argues that Rule 62(a) only applies to cases where the sole purpose of the action was to appoint a receiver. According to Atlas Turner, "the term 'receivership' action refers to a type of action that is different from the instant

personal injury lawsuit,” and “the instant action is not a ‘receivership action.’”²² In support of this argument, it cites *U.S. v. S. Growth Indus., Inc.*, 251 S.C. 404, 406, 162 S.E.2d 849, 850 (1968) and *Lindsay v. Main Ins. Co.*, 281 S.C. 331, 332, 315 S.E.2d 166, 167 (Ct. App. 1984).²³

Neither case supports Atlas Turner’s argument. In fact, neither case even addresses Atlas Turner’s argument that there is a distinction between a “receivership action” and a lawsuit in which a receiver is appointed. Neither case attempts to define “receivership action,” nor does either case discuss appellate stays or Rule 62’s exceptions to automatic stays.

In fact, the only connection either *S. Growth Indus.* or *Lindsay* have to this matter is that they are two of the eight South Carolina cases containing the phrase, “receivership action.”²⁴ Seven of those eight cases, including *S. Growth Indus.* and *Lindsay*, merely say the words “receivership action” without providing any analysis or discussion of the term.²⁵

Notably, Atlas Turner does not cite the eighth case, which contains a nearly page long footnote about the argument Atlas Turner is making. In *Porter v. Brown*, 149 S.C. 151, 146 S.E. 810 (1929), Justice Cothran’s concurring opinion, joined by two other justices, recognizes, “[i]t is a well-established rule that in order to authorize the appointment of a receiver it is essential that there be at the time of the appointment a suit pending in which relief other than the mere appointment of a receiver is sought.” 146 S.E. at 813-814. Justice Cothran went on to attach an

²² Appellant’s Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas, p. 12.

²³ *Id.*

²⁴ Respondent conducted a word search for the phrase “receivership action” in Westlaw, searching all South Carolina state court cases.

²⁵ The other five Westlaw results containing the phrase “receivership action” are *Whilden v. Chapman*, 80 S.C. 84, 61 S.E. 249 (1908); *Ex Parte Planters’ Bank. King Hardware Co. v. McGill*, 122 S.C. 241, 115 S.E. 299 (1922); *State Board of Bank Control v. Sease*, 188 S.C. 133, 198 S.E. 602 (1938); *Cohen v. Standard Acc. Ins. Co.*, 194 S.C. 533, 9 S.E.2d 222 (1940); and *Ex Parte Miller*, 192 S.C. 164, 5 S.E.2d 865 (1939).

extended footnote of authorities supporting this position,²⁶ including, among others, the following quotations,

- + “As a general rule a receivership is a purely ancillary remedy and cannot be maintained in a proceeding instituted solely for that purpose.”²⁷
- + “The general rule is that a receiver cannot be appointed except in a pending cause,”²⁸
- + “It is well settled as a general rule that the appointment of a receiver is an ancillary remedy in aid of the primary object of the litigation between the parties.”²⁹
- + “The remedy is a provisional or auxiliary one invoked as an adjunct or aid of the principal relief sought by the action and never as the ultimate object of the action.”³⁰
- + “It is fundamental that there is neither in law nor in equity any such thing as a plain receivership action, i.e., an action in which a receiver is the only desideratum. In short, the appointment of a receiver by a Court of Equity, except in rare cases arising out of lunacy or infancy, is ancillary wholly to some other action having some definite relief in view.”³¹
- + “A receiver may only be appointed in a pending case. A suit does not lie for the sole purpose of appointing a receiver, but the Court must have jurisdiction of the suit on some other ground before it can make the appointment.”³²
- + “There is, of course, no such thing as an action brought distinctively for the mere appointment of a receiver. Such an appointment, when made, is ancillary to or in aid of the action brought. Its purpose is to preserve the property pending the litigation so that relief awarded by the judgment, if

²⁶ *Porter*, at FN1.

²⁷ *Id.*, citing, 23 R. C. L. par. 5, p. 11

²⁸ *Id.*, citing, 34 Cyc. p. 28.

²⁹ *Id.*, citing, 34 Cyc. P. 29.

³⁰ *Id.*, citing, 8 Fletcher, Cyclopedic Corporations, par. 5222.

³¹ *Id.*, citing, *Price et al. v. Bankers' Trust Company* (Mo. Sup. 1915) 178 S.W. 745; also *Continental Trust Co. v. Brown et al.* (Tex. Civ. App. 1915) 179 S.W. 939; *District No 21, etc. v. Bourland*, 169 Ark. 796, 277 S.W.546 (1925); *Vila v. Grand Island, etc.*, 68 Neb. 222, 94 N.W. 136, 97 N.W. 613, 63 L.R.A. 791, 110 Am. St. Rep. 400, 4 Ann. Cas. 59 (1903); *Bank of Meadville v. Hardy*, 94 Miss. 687, 48 So. 731 (1909).

³² *Id.* citing, *Baltimore Bargain House v. St. Clair et al.*, 58 W.Va. 565, 52 S.E.660 (1906); *Meyers Bros. v. Harman Bros.*, 78 W.Va. 560, 89 S.E. 146 (1916).

any, may be effective. The authority conferred upon the Court to make the appointment necessarily presupposes that an action is pending before it, instituted by someone authorized by law to commence it.”³³

Porter thus refutes Atlas Turner’s arguments. Furthermore, the numerous authorities cited by the *Porter* concurrence establish what constituted the “existing practice” of receiverships as contemplated by S.C. Code Ann. 15-65-10(5). This statute, which governs the appointment of a receiver in South Carolina, permits a court to appoint a receiver “[i]n such other cases as are provided by law or may be in accordance with the existing practice . . .” *Porter* demonstrates that the trial court’s receivership order in this case is fully in accord with the “existing practice” of South Carolina courts.

Contrary to Atlas Turner’s claims, South Carolina has never required a completely independent action to appoint a receiver for a case to be considered a “receivership action,” and has always recognized a receivership may arise in relation to a “suit pending in which relief other than the mere appointment of a receiver is sought.” *Porter*, 146 S.E. at 813-814.

Atlas Turner provides this Court with no basis to conclude that there is a distinction between a “receivership action” and an “action in which a receiver is appointed” for purposes of Rule 62 analysis. This is because there is no logical basis to create such a distinction. Rule 62 unambiguously applies to any matter in which a South Carolina court appoints a receiver. Atlas Turner’s citation to two irrelevant cases, while ignoring a case which explicitly addresses the issue, is without merit.

B. S.C. Code Ann. § 14-3-450 exempts receiverships from the automatic stay

Rule 62(a) is not the only authority which exempts receiverships from being stayed on appeal. South Carolina’s legislature also enacted statutory authority for the same principle. S.C.

³³ *Id.*, citing, French Bank Case, 53 Cal. 495.

Code Ann. § 14-3-330(4) sets forth the jurisdictional powers of the appellate courts to determine receivership matters. It states, “[t]he Supreme Court shall have appellate jurisdiction . . . and shall review upon appeal: . . . (4) [a]n interlocutory order or decree in a court of common pleas. . . granting, continuing, modifying, or refusing the appointment of a receiver.”

S.C. Code Ann. § 14-3-450 addresses stays during §14-3-330 appeals. Pursuant to this statute, “[i]n case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below *shall not be stayed* during the pendency of such appeal unless otherwise ordered by the court below.”³⁴ Thus, both South Carolina statutes and court rules provide that receiverships are not stayed by appeals.

C. This Court recently declined to stay a receivership under similar circumstances.

Further support that Rule 62 and S.C. Code § 14-3-450 apply to this matter is evidenced by this Court’s September 8, 2023, Order in the matter of *Childers v. Davis Mechanical*, appellate case no. 2023-000727. Like this case, in that matter a receiver was appointed as part of an underlying personal injury case.³⁵ Also like this case, the *Childers* appellants requested the receivership be stayed during the pendency of the appeal.³⁶ In denying appellants’ request for stay, this Court entered the following order:³⁷

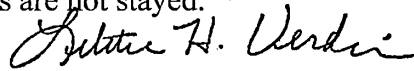
³⁴ Emphasis added.

³⁵ **Ex. 13**, 8/27/21 Order appointing receiver over Payne & Keller Company, *Childers v. Davis*, Fifth Circuit, South Carolina case no. 2021-CP-40-03484.

³⁶ **Ex. 14**, Appellants’ Emergency Motion to Clarify and Enforce Rule 205, *Childers v. Davis Mechanical*, South Carolina Court of Appeals case no. 2023-000727.

³⁷ Attached as **Ex. 15**, 9/8/23 Order clarifying receivership order not stayed during appeal, *Childers v. Davis Mechanical*, South Carolina Court of Appeals case no. 2023-000727.

After consideration of Respondent's "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal. *See* Rule 62(a), SCRCP ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. §14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.



FOR THE COURT

Thus, less than two months ago this Court recognized the stay exceptions of Rule 62(a) SCRCP and S.C. Code Ann. §14-3-450 apply to appeals arising from receivership orders entered in personal injury actions. Respondent Donna Welch respectfully requests this Court follow this precedent and deny Atlas Turner's request that the receivership order in this case be stayed.

D. Other South Carolina courts have appointed receiverships for "live" entities

Atlas Turner attempts to distinguish itself from *Childers* and other South Carolina receiverships by claiming "most (if not all) involved essentially 'dead' companies, for lack of a better expression, where no one fought the appointment of a receivership at that time."³⁸ Atlas Turner goes on to claim "[u]pon information and belief, outside of the purported Atlas and Asbestos Corporation Limited receiverships, none of the prior receiverships have been against 'live' companies with boards of directors making decisions about corporate governance and operations."³⁹

³⁸ Appellant's Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas, p. 15.

³⁹ *Id.*

It is unclear what efforts Atlas Turner made to review “most (if not all)” other South Carolina receiverships. But a recent highly publicized South Carolina receivership belies Atlas Turner’s claim.

Beach v. Gregory M. Parker, Inc.,⁴⁰ is a South Carolina civil wrongful death case involving convicted murderer Alex Murdough. In that case, the plaintiffs requested a receiver be appointed to take control of Alex Murdough’s assets, as well as assets held by his son, Buster Murdaugh. Although neither Alex nor Buster are dead, presiding judge Daniel D. Hall appointed co-receivers to preserve their assets.⁴¹ As set forth in Judge Hall’s order,

After careful consideration of all information and arguments presented by the parties, this Court finds that Plaintiff’s application to appoint the Co-Receivers is meritorious under S.C. Code §15-65-10, the Court’s equitable powers, and general principles of fraud and deceit under South Carolina law.⁴²

Also finding a temporary injunction was appropriate, Judge Hall recognized such actions were necessary “to prevent irreparable injury, damage or loss to Plaintiff’s ability to recover damages from these Defendants.”⁴³ Among other powers granted to the Murdaugh receivers was the power to “investigate the existence of all insurance coverages potentially available to Alex Murdaugh and Buster Murdaugh in receivership, including as an ‘additional insured’ under coverage for another person.”⁴⁴

Both Alex and Buster Murdaugh are alive, just as Atlas Turner is “alive.” And just as Atlas Turner opposed the appointment of a receiver in this case, so too did Alex and Buster Murdaugh

⁴⁰ Fourteenth Circuit, South Carolina case no. 2019-CP-25-00111.

⁴¹ **Ex. 11**, 11/4/21 Order Granting Temporary Injunction and Appointing Co-Receivers and Co-Receivers’ Counsel, *Beach v. Gregory M. Marker, Inc.*, Fourteenth Judicial Circuit, South Carolina case no. 2019-CP-25-00111.

⁴² *Id.*, p. 2.

⁴³ *Id.*, p. 2.

⁴⁴ *Id.*, p. 6. This authority is nearly identical to the powers vested in Atlas Turner’s receiver in this case.

oppose the appointment of a receiver in that case.⁴⁵ Neither fact precluded the trial court from appointing a receiver in that case.

Atlas Turner's suggestion that receivers should only be appointed for "dead" entities finds no support in South Carolina law and is in fact contradicted by a recent highly publicized South Carolina receivership. For this additional reason, Atlas Turner's motion for stay should be denied.

3. The Receiver Should Be Allowed to Act to Preserve Atlas Turner's Insurance Assets During This Appeal.

Perhaps recognizing that the automatic stay provisions of Rule 205 do not apply to the receivership order in this case, Atlas Turner alternatively asks for a supersedeas. This request should be denied for both procedural and substantive reasons.

Procedurally, Atlas Turner failed to first request supersedeas from the trial court as required by South Carolina law. Substantively, Atlas Turner has already acted to spoliage certain insurance assets which would otherwise have been available to pay a judgment against it. Thus, Atlas Turner's request for supersedeas is both procedurally and substantively without merit.

A. Atlas Turner failed to request supersedeas from the trial court.

Rule 241(d)(1) governs the procedure for obtaining supersedeas in South Carolina. It requires,

Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal. The issuance of an ex parte order or decision, or an unnecessary delay by the lower court or administrative tribunal in ruling on this application shall constitute an extraordinary circumstance.

⁴⁵ **Ex. 12**, 10/28/21Murdaugh Defendants' Response in Opposition to Plaintiff's Motion for a Preliminary Injunction and Appointments of Co-Receivers and Co-Receivers' Counsel, *Beach v. Gregory M. Parker, Inc.*, South Carolina case no. 2019-CP-25-00111.

Atlas Turner’s motion attempts to handwave away this “extraordinary” requirement in a footnote to its motion.⁴⁶ This footnote summarily claims “it is impracticable” to first request relief from the trial court, “and/or there is otherwise good cause” for permitting Atlas Turner to ignore Rule 241(d)(1). However, this single sentence footnote fails to offer any explanation, let alone an “extraordinary circumstance,” justifying why Atlas Turner failed to request supersedeas from the trial court before filing the instant motion.

B. Atlas Turner has already spoliated insurance assets

Not only are there no “extraordinary circumstances” supporting supersedeas, but the circumstances that do exist weigh in favor of the receiver maintaining active control over Atlas Turner’s insurance assets.

Documents obtained by the receiver and submitted to the trial court show Atlas Turner had multiple policies worth millions of dollars of insurance coverage in the 1960s and 1970s.⁴⁷ However, as early as 1985 Atlas Turner began engaging in scheme to purposefully withdraw its defenses and allow trial courts to enter default judgment against it in twenty-two asbestos personal injury claims.⁴⁸ Atlas Turner adopted this strategy with the expectation that plaintiffs would be unable to collect on default judgments.⁴⁹ According to an Atlas Turner letter to its Ohio local counsel,

Over the last two years, the posture of Bell Asbestos Mines, Limited and Atlas Turner Inc in the U.S. asbestos litigation has changed considerably. For economic and other considerations, with which you are already acquainted, Bell and Atlas have taken a minimal defense posture and have proceeded to default judgments in

⁴⁶ See, Appellant’s Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas, p. 13, FN 18.

⁴⁷ **Ex. 16**, listing of Atlas Turner insurance policies (submitted to trial court as exhibit A to 8/20/23 Notice of Filing by receiver Peter D. Protopapas).

⁴⁸ **Ex. 17**, Report of the Receiver of the Insurance Assets of Atlas Turner and Response to Certain Insurer Third-Party Defendants’ Motion to Stay the Third-Party Action, p. 2-5.

⁴⁹ *Id.*

several cases. After reviewing the overall situation, and in contemplation of additional decisions regarding the position of Bell and Atlas in the U.S. asbestos litigation, I must advise you at this time that all matters involving Bell Asbestos Mines Limited and/or Atlas Turner Inc are to be transferred immediately to Thomas P. Meaney, Jr., Esq.⁵⁰

This strategy has continued for decades and continues to be utilized by Atlas Turner in this case. In fact, after the receiver initiated this third-party action against Atlas Turner's insurers, individuals purporting to act on Atlas Turner's behalf advised its insurers that Atlas Turner was not tendering the asbestos claims pending before this Court and that no defense or indemnity should be provided by Atlas Turner's insurers.

On July 24, 2023, the Receiver received two letters from Resolute Management, Inc. (one on behalf of Continental and one on behalf Certain London Market Insurers), stating each has been "advised by Atlas that Atlas is controlling and defending its own interests, and [that the Receiver is] not objecting to Atlas's control of its own defense." Further, the letters asserted that "Atlas is not tendering the Asbestos Lawsuits [to Continental or Certain London Market Insurers] for defense and indemnity," and therefore, "given that Atlas is not tendering the Asbestos Lawsuits, there is no defense or indemnity being requested."⁵¹

This information makes it clear that Atlas Turner and its insurers have acted in concert to "lose or materially injure" Atlas Turner's insurance interests not only in this case, but in most or every case in the United States for almost 40 years. It is thus critically important for the receiver in this matter to retain authority over Atlas Turner's insurance assets, to ensure that Atlas Turner does nothing further to spoliage its own insurance assets in an effort to deny recovery to those

⁵⁰ **Ex. 18**, 9/24/85 Atlas Turner letter (submitted to trial court as exhibit A to Report of the Receiver of the Insurance Assets of Atlas Turner and Response to Certain Insurer Third-Party Defendants' Motion to Stay the Third-Party Action).

⁵¹ **Ex. 17**, Report of the Receiver of The Insurance Assets of Atlas Turner and Response to Certain Insurer Third-Party Defendants' Motion to Stay the Third-Party Action, p. 5.

injured and killed by its asbestos products in the United States. For this final reason, the ongoing service of a receiver during this appeal is not only appropriate but is necessary to preserve Atlas Turner's insurance assets from further spoliation.

4. Atlas Turner's Continuing Characterization of South Carolina Courts as a "Judicial Hellhole" is Inappropriate

As it did in its initial appeal brief, Atlas Turner's motion again refers to South Carolina courts as a "judicial hellhole."⁵² Footnote 10 of its motion cites to "Judicial Hellholes," a website created by the American Tort Reform Foundation and designed for the sole purpose of disparaging the judicial system. Atlas Turner's citation to this industry and insurance fabricated propaganda is inappropriate and a violation of South Carolina's rules and professional standards for multiple reasons. Such reasons include,

1. falsely accusing South Carolina courts of "hostility to defendants in asbestos cases,"
2. making untrue and unsupported assertions that South Carolina courts have forced other defendants into a position in which they had "no choice but to settle for inflated value. . ." and,
3. suggesting South Carolina is a "judicial hellhole" in violation of the "Lawyer's Oath" and the South Carolina Rules of Professional Conduct.

Atlas Turner claims that South Carolina courts show "hostility to defendants in asbestos cases,"⁵³ and have left other asbestos defendants "no choice but to settle for inflated value . . ."

⁵²Appellant's Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas, p. 6, FN 10.

⁵³ The Judicial Hellholes 2023 entry for South Carolina complains at length about sanctions imposed on Cleaver Brooks in another asbestos matter. To the extent this Court gives such arguments any consideration, it should take judicial notice that, 1) the South Carolina Court of Appeals upheld those sanctions, *Howe v. Air & Liquid Systems Corp.*, 2021 WL 5626487 (S.C. Ct. App. 2021), *rehearing denied*, and 2) Cleaver Brooks voluntarily dismissed its appeal while it was pending before the Supreme Court. *See* June 22, 2023, Supreme Court Order dismissing appeal, Appellate Case No. 2022-000368.

These assertions are untrue, unprovable, and unsupported.⁵⁴

Further, Atlas Turner’s characterization of South Carolina as a “judicial hellhole” is a violation of South Carolina’s attorney rules for civility. South Carolina lawyers “must act in a dignified and professional manner, with proper respect for the parties, witnesses, opposing counsel, and for the Court. When a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system, and, as well, disservices his client.” *In re Goude*, 296 S.C. 510, 512, 374 S.E.2d 495, 497 (1988).

Rule 402(h)(3) SCACR establishes the requirements for the admission to practice law in South Carolina and contains the “Lawyer’s Oath.” This oath includes the clause, “I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them. . . .”

Atlas Turner’s motion violates this oath. “It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.” S.C. R. Prof. Conduct. 8.4(d). The South Carolina Supreme Court has taken a dim view of attorneys disparaging South Carolina’s legal system, noting attorneys are subject to discipline for “engag[ing] in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute. . . .” *In re Anonymous Member of the South Carolina Bar*, 392 S.C. 328, 334, 709 S.E.2d 633, 636 (2011) (edits in original).

The interests protected by the civility oath are the administration of justice and integrity of the lawyer-client relationship. The State has an interest in ensuring a system of regulation. . . . Such conduct not only compromises the integrity of the judicial process, it also undermines a lawyer’s ability to objectively represent his or her client.

We caution the bar that henceforth, this type of conduct could result in a public sanction.”

⁵⁴ Given that settlement agreements typically include confidentiality provisions, it is unclear how Atlas Turner could have any information about settlements with other parties absent a breach of confidentiality by settling defendants.

Id., 392 S.C. at 337-38, 709 S.E.2d at 638.

Atlas Turner's initial refusal to recognize South Carolina courts' authority over it provided sufficient basis for the trial court to sanction it. Atlas Turner further showed its contempt for South Carolina courts by citing to "Judicial Hellholes" in its appeal brief. It now repeats these disparaging statements in its motion requesting a stay. This complete lack of respect for South Carolina courts is at the heart of this appeal, showing Atlas Turner's utter contempt for the courts of this state. For these reasons, Respondent Donna Welch respectfully requests this Court disregard Atlas Turner's citation to Judicial Hellholes, deny its motion for stay, and take any such other actions as this Court deems appropriate.

CONCLUSION

For the foregoing reasons, Plaintiff Donna Welch asks this Court to deny Appellant's Motion to Confirm Automatic Stay or, Alternatively, Verified Petition for Supersedeas.

Respectfully submitted, November 15, 2023

s/Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

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ATTORNEYS FOR PLAINTIFF

November 15, 2023

Columbia, South Carolina.

EXHIBIT 1

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF RICHLAND

)

FOR THE FIFTH JUDICIAL CIRCUIT

**MELVIN G. WELCH and
DONNA B. WELCH**

)

C/A NO. 2022-CP-40-03834

)

Plaintiffs,

)

V.

)

ORDER STRIKING ATLAS TURNER'S ANSWER

3M COMPANY

)

f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY, et al.

)

)

Defendants.

)

)

)

BACKGROUND

On May 11, 2023, this Court found Atlas Turner, Inc. f/k/a Atlas Asbestos Company (“Atlas”) to be in contempt of Court. The Court based its contempt order on Atlas’ flat refusal to comply with this Court’s orders to produce documents, a witness or otherwise participate in discovery. As part of this Court’s order on contempt, the Court ordered Plaintiffs to brief the issue of the sanction requested.

On May 11, 2023, Plaintiffs filed their brief requesting that this Court strike Atlas' pleadings. Atlas' response was filed on May 15, 2023 and Plaintiffs' reply was filed on May 18, 2023. The Court reviewed and considered all of the briefing and evidence of the parties.

As set forth by this Court in its contempt order, Atlas failed to produce a witness as ordered by the Court. Atlas has also refused to identify a witness or a date on which it will

produce a witness. Moreover, Atlas has wholly failed to produce any documents as requested by the 30(b)(6) notice properly served on it.

On May 4, 2023, in an attempt to resolve Atlas' intransigence, this Court held a status conference. Counsel for Atlas and counsel for Plaintiff were present. This Court attempted to ascertain Atlas' positions on these matters and whether Atlas would participate in discovery or otherwise comply with this Court's orders. After a robust discussion with the parties, it was clear to this Court that Atlas does not intend to participate in this matter and that this Court's orders on discovery will continue to be ignored. In fact, on June 15, 2023, Counsel for Atlas confirmed that Atlas will not produce a witness or participate in any discovery.

LAW AND ANALYSIS

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.* Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* "If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

"In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated "[t]he entire thrust of the

discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* “Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Atlas has failed to produce a witness. Indeed, it has articulated its intent not to over and over again. Atlas has refused to participate in meaningful discovery. It has refused to produce documents. Given this intentional and willful refusal to participate in discovery, the court hereby strikes Atlas’ pleadings.

AND IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Other

So Ordered

Jean H. Toal

EXHIBIT 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

MELVIN G. WELCH and
DONNA B. WELCH

Plaintiffs,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY, et al.

Defendants.

ORDER ON PLAINTIFFS' MOTION TO APPOINT A RECEIVER

This order follows the Court’s order finding Atlas Turner Inc. f/k/a Atlas Asbestos Company (“Atlas”) in contempt of court and this Court’s entry of an order striking Atlas’ pleadings. Before the Court is Plaintiffs’ Motion to Appoint a Receiver over Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd (“Atlas”).

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets¹ of Atlas. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are

¹ This term is defined below.

reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court's Receiver in locating and marshalling those assets.

PROCEEDURAL BACKGROUND

On May 11, 2023, this Court found Atlas to be in contempt of Court. The Court based its contempt order on Atlas' flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery. As part of this Court's order on contempt, the Court ordered Plaintiffs to brief the issue of the sanction requested.

On May 11, 2023, Plaintiffs filed their brief requesting that this Court strike Atlas' pleadings. Atlas' response was filed on May 15, 2023 and Plaintiffs' reply was filed on May 18, 2023. After considering the briefing of the parties, this Court determined that striking Atlas' answer was the appropriate sanction for contempt of this Court's orders.

Now, having struck Atlas' answer, Atlas is in default.²

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).³

² 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)

³ A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the unopposed striking of Atlas' answer. Atlas further argues that there is no evidence of its insolvency, yet it refuses to comply with this Court's orders to discovery that and many other issues. The Court does not believe it is appropriate for Atlas to use this refusal as a sword. Regardless, other elements of the receivership statute are satisfied and thus, this argument is unavailing.

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, Atlas’ has been struck, and thus only a ministerial action being left for Atlas to be in judgment, a receiver to take possession of and, to the extent necessary, litigate Atlas’ insurance assets 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 Atlas’ personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas 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 Atlas’s insurance carriers.” 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. 1st 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 Atlas. Even assuming Atlas’ interpretation of §15-65-10 is correct, to the extent they exist, Atlas’ Insurance Assets⁴ 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.

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.

⁴ 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.

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 Atlas]” *Id.*⁵ Thus the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

Atlas continues to ignore the jurisprudence of this state which directly addresses its due process argument. Atlas ignores, again, the teachings of the South Carolina Supreme Court in *Sangamo*.

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. Atlas sold its poison 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,

⁵ As more fully set forth above, the funds at issue appear to be the proceeds from settlements involving insurance contracts designed to protect lives, interests and property within the state and thus would also be governed by substantive South Carolina law.

whatever insuring assets of Atlas 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 Atlas. 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 Atlas Turner, Inc. and any subsidiaries, accept service on behalf of Atlas, engage counsel on behalf of Atlas and take any and all steps necessary to protect the interests of Atlas whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of Atlas as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which the Atlas 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 Atlas; redirect the delivery of any such mail addressed to the Atlas or any business of the Atlas, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to Atlas 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 Atlas; 4) hire any person necessary to accomplish any right or power under this Order; and 5) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property

of Atlas may be situated, and to review and obtain copies of all documents related to insurance assets of Atlas.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas. 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 Atlas or any entity for whom Atlas 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 Atlas to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of Atlas and its subsidiaries, successors, and assigns, is appropriate. Peter Protopapas is hereby appointed the receiver over Atlas consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

EXHIBIT 3

794

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA

3 -----
4 THOMAS L. CANNON, JR., CIVIL ACTION

5 Plaintiff,

6 v.

7 OWENS-ILLINOIS, INC., et al,

8 Defendants. NO. 84-1950
9 -----

10 Lancaster, Pennsylvania
11 Monday, May 11, 1987

12 Transcript of testimony of

13 ANDREW C. RICHARDSON, as taken by and before
14 Denise Cornelius, Registered Professional
15 Reporter and Commissioner of the Commonwealth
16 of Pennsylvania, at the Brunswick Motor Lodge,
17 Queen and Chestnut Streets, commencing at 10:45
18 o'clock in the forenoon.
19
20
21
22

23 A. WILLIAM ROBERTS, JR. & ASSOCIATES
24 Registered Professional Reporters
25 54 1/2 Broad Street
Charleston, South Carolina 29401
803-722-8414

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I N D E X

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E X H I B I T S

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P-5	Documents re: Sprayed "Limpet" asbestos	120

Richardson

1 ANDREW C. RICHARDSON, having been
2 first duly sworn, was examined and testified as
3 follows:

4 MS. MELTZER: Just preliminarily,
5 before we get going, this is Laura Meltzer of the
6 law firm of Goldfein and Joseph. We represent Mr.
7 Richardson today in this deposition. Mr.
8 Richardson was served with a subpoena to appear
9 for this deposition and the subpoena was a duces
10 tecum requesting certain documents. Prior to the
11 start of this deposition, I presented Mr. Rogers
12 with copies of documents and Mr. Rogers is free to
13 delve into them with the witness. These are the
14 only documents that Mr. Richardson has in his
15 position and they are as responsive as we can be
16 to the documents that were requested in the
17 subpoena. With that understanding, you're free to
18 go forward.

19 MR. ROGERS: For the sake of
20 clarity, we might want to go ahead and mark these
21 as a group as the documents you just mentioned.

22 MS. MELTZER: That's fine.

23 MR. ROGERS: And we could mark them
24 as Plaintiff's Exhibit 1 and I'd like -- you
25 indicated previously that these were your copies?

Richardson

1 MS. MELTZER: Those are my copies.
2 I don't have an extra set to give to you.

3 MR. ROGERS: Can we leave them in
4 the custody of the court reporter to make copies
5 and return those to you?

6 MS. MELTZER: Sure. I think the
7 record should also reflect that these documents
8 have been utilized at several other depositions of
9 Mr. Richardson and have been discussed previously,
10 so if you have access to those, you will see that
11 they have been testified to previous to today.

12 MR. ROGERS: Do you know what
13 depositions they have been used in?

14 MS. MELTZER: I can't tell you at
15 the moment. I don't have the depositions. I can
16 give you the captions. I just don't remember
17 offhand who they are, but I can give you the
18 caption, things of that nature. Off the record.

19 (Discussion is held off the
20 record.)

21 (Exhibit Plaintiff's-1 marked for
22 identification.)

23 MR. ROGERS: I will note for the
24 record that Plaintiff's Exhibit Number 1 consists
25 of a number of documents totaling forty-four pages

Richardson

1 the potential was for the product because AC&S had
2 come up with another spray product that could be
3 competitive.

4 Q. That would have been the Armaspray
5 you referred to?

6 A. Yes.

7 Q. So you would just go around and
8 visit the sublicensees to see what job they were
9 doing and what jobs might be on the horizons?

10 A. Not really. The subject of that
11 trip was to find out if there was any activity by
12 the competitive product and whether the respective
13 offices possibly could continue to purchase and
14 apply "limpet".

15 Q. These district managers and
16 branches managers, these were all AC&S employees?

17 A. Yes.

18 Q. So during this trip, you weren't
19 really looking at the applicators, you were just
20 talking to the managers of the various regional
21 districts?

22 A. Correct.

23 Q. The next document in this group is
24 on the Atlas Asbestos letterhead and it's
25 captioned "Limpet" Projects, the Pulp and Paper

Richardson

1 Industry. I show that to you. Do you recall
2 those jobs?

3 A. Yes.

4 Q. Would you have had direct
5 familiarity with each of those jobs?

6 A. No.

7 Q. And if you didn't have direct
8 familiarity with it, it would have been handled
9 through a district manager?

10 A. Yes.

11 Q. I'd like to ask you about a couple
12 jobs here, if you don't mind me coming over here.
13 This job here for West Virginia Pulp and Paper at
14 North Charleston, South Carolina, general
15 equipment which is dated 4-15-64, do you remember
16 that job?

17 A. No.

18 Q. What branch manager or district
19 manager would have handled that?

20 A. Charlotte, I think.

21 Q. Do you know who the branch manager
22 in Charlotte was?

23 A. Yes, his name was Joe Webber.

24 Q. And he would have been an Atlas
25 employee or AC&S employee?

Richardson

1 A. AC&S.

2 Q. Was he an independent agent or was
3 he an employee?

4 A. No, he was an employee of AC&S.

5 Q. And he had an office in Charlotte?

6 A. Yes.

7 MR. HANLY: I'm sorry. Could I get
8 that name again?

9 THE WITNESS: Webber, W-e double
10 b-e-r.

11 BY MR. ROGERS:

12 Q. Do you know who the applicator
13 would have been?

14 A. AC&S.

15 Q. So these were all jobs that AC&S
16 did?

17 A. Right.

18 Q. Why is this on Atlas letterhead if
19 it included a period before Atlas was the North
20 American head licensee, if you know?

21 A. This was taken from AC&S job
22 records that were compiled by me and put in my
23 stationery or Atlas' stationery for a reason, I'm
24 not sure of.

25 Q. So this would have been compiled by

Richardson

1 you at some time subsequent to 1967 concerning
2 events at the time indicated on the contract date?

3 A. Yes.

4 Q. There's another job further down
5 here, also at West Virginia Pulp and Paper, which
6 is called West Bay Co. in Charleston, South
7 Carolina. Do you recall that job?

8 A. No.

9 Q. Would that job have also been
10 handled by Mr. Webber?

11 A. Probably.

12 Q. And the applicator, as far as you
13 know, would have been AC&S?

14 A. Yes.

15 Q. Were there other licensed
16 applicators in the Charleston area?

17 A. Yes, I think there was a building
18 materials applicator there.

19 Q. Do you recall their name?

20 A. No.

21 Q. If I could attempt to refresh your
22 recollection, do you recall the name Guy M.
23 Deatty?

24 A. Yes.

25 Q. Is that it?

Richardson

1 A. Yes.

2 Q. Wait a minute. Guy M. Beatty. Guy
3 M. Beatty was a purchaser of other insulation
4 products. I'm not sure about the "limpet".

5 Q. Of other K & M products?

6 A. Yes.

7 Q. They were a K & M distributor?

8 A. Yes.

9 Q. But you're not sure whether they
10 were a licensed applicator for "limpet"?

11 A. I don't think they were.

12 MR. HANLY: Wait. I'm a bit
13 confused now, Tom, because I thought we were
14 talking about a period subsequent, certainly, to
15 1962.

16 MR. ROGERS: 1964 is the day.

17 MR. HANLY: And your reference is
18 to Keasbey & Mattison products?

19 MR. ROGERS: No. He said that
20 apparently he recognized that name because of an
21 association between Guy M. Beatty and
22 Keasbey-Mattison which presumably would have
23 pre-dated 1962. Okay.

24 BY MR. ROGERS:

25 Q. And you don't recall right now who

C E R T I F I C A T E

I, Denise Cornelius, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action that I am not interested in the event nor outcome of this litigation.

Denise Cornelius

Certified Shorthand Reporter

License No. XI01279

Notary Public of New Jersey

Dated: May 20, 1987

JURAT

I, ANDREW C. RICHARDSON, do hereby
certify that I have read the foregoing transcript
of my testimony taken on May 11, 1937, and have
signed it subject to the following changes:

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
-------------	-------------	-------------------

ANDREW C. RICHARDSON

DATE _____

Sworn and subscribed to before me this _____
_____ day of _____, 19 .

NOTARY PUBLIC

EXHIBIT 4

Schedule

The following are customers in the Southeast United States to whom Atlas sold asbestos insulation. We have no records prior to 1968.

Guy M. Beatty & Co.	Chattanooga, Tennessee and Charlotte, North Carolina	1967 1969 1970 1971 1972 1973
Krafft-Murphy Co.	Alexandria, Virginia	1967 1968 1969 1970
National Cork Co.	Pensacola, Florida	1967 1968 1969
Brennan Insulation Co.	Knoxville, Tennessee	1968 1969 1970 1971 1972 1973
Covil Insulation Co.	Greenville, South Carolina	1968 1969 1970 1971 1972 1973
Johns-Manville Sales Corp.	Tampa, Florida	1968
McCormick Asbestos Co.	Baltimore, Maryland	1968 1969 1970 1971
C.E. Thurston & Sons Inc.	Richmond, Virginia	1968 1970
Adamo Insulation Co.	Tampa, Florida	1969 1970
Goheen Insulation Inc.	Memphis, Tennessee	1969
Greenwald Industries	Hyattsville, Maryland	1969
Memphis Insulation Sales & Contractors Inc.	Memphis, Tennessee	1969

ACCS Ins.	Pensacola, Florida	1970 1971
Breeding Insulation Co. Inc.	Nashville, Tennessee	1970
Cauple-Hyatt Inc.	Hopewell, Virginia	1970
Crocker-Stallings Inc.	Baltimore, Maryland	1970 1971
Morgan Insulation Co.	Memphis, Tennessee	1970
L.D. Powell Co.	Memphis, Tennessee	1970
Wallace & Gale Co.	Baltimore, Maryland	1970 1971 1972 1973
Wallace Asbestos Co.	Baltimore, Maryland	1970 1971 1972 1973
North Brothers Co.	Atlanta, Georgia	1971 1972 1973
Piedmont Insulation Inc.	Salisbury, North Carolina	1971
L.D. Powell Co.	Memphis, Tennessee	1971
Process Insulators Inc.	Tampa, Florida	1971
Landscape Products Inc.	Towson, Maryland	1972 1973
M.G. Industries Inc.	Hyattsville, Maryland	1972 1973
Norport Supply Co. Inc.	Norfolk, Virginia	1972 1973
Palco Industries Inc.	Richmond Virginia	1972 1973

EXHIBIT 5

We have no record of sales made prior to 1968 and no detail (apart from the year and the amount of sales made in 1968 and 1969 and some in 1970 also.

Sales of products to companies listed on Exhibit A

Name

Johns-Manville Sales Corp.	1968	No record	7,469.40
	1969	No record	3,360.00
	1972	Asbestos cement sheets	861.77
Covil Insulation Co.	1968	No record	11,958.68
	1970	Asbestos insulation (Newtherm)	57,836.91
	1971	" (Newtherm)	98,828.59
	1972	" (Newtherm)	33,449.87
Delaware Insulation Co.	1973	Non-asbestos insulation (Newtherm)	3,144.15
Fuller-Austin Co.	1972	Asbestos insulation (Newtherm)	352.25
Porter-Hayden Co.	1970	No record	150.31
	1971	Asbestos insulation (Newtherm) & asbestos cement cylinders	1,374.59
	1972	Asbestos cement cylinders	3,185.76
	1973	" " "	3,228.00
	1974	Non-asbestos insulation (Newtherm), asbestos cement cylinders & asbestos cement sheets	10,031.46
	1975	Asbestos cement insulated board	1,528.11
	1976	Asbestos cement cylinders, asbestos cement sheets & asbestos cement insulated board	9,059.51
North Brothers Insulation Co.	1971	Asbestos insulation (Atlasite)	8,760.60
	1972	" " "	140,729.42
Armstrong Contracting & Supply Co.	1967	No record	4,388.75
	1968	No record	26,519.59
	1969	No record	66,140.44
	1970	Asbestos insulation (Newtherm)	112,121.17
		Asbestos fibre(Limpet)	
	1971	Asbestos insulation (Newtherm)	105,100.18
		Asbestos fibre(Limpet)	

EXHIBIT C

Armstrong Contracting &
Supply Co. (cont'd)

1972	Asbestos Insulation (Newtherm)	109,492.21
	Asbestos fibre(Limpet)	
1973	Non-asbestos insulation (Newtherm)	126,729.10
1974	Asbestos cement patio pots & non-asbestos in- sulation (Newtherm)	120,207.99
1975	Asbestos cement sheets, Asbestos cement patio pots & Non-asbestos insulation (Newtherm)	9,352.85
1976	Asbestos cement patio pots & non-asbestos insulation (Newtherm)	57,206.95

Philip Carey Corp.
Daniel Construction Co.

1969	No record	107.63
1970	No record	2,749.00
1975	Asbestos cement sheets & stainless steel hard- ware	212,611.71
1976	Asbestos cement sheets & stainless steel hard- ware	159,542.59

Guy M. Beatty & Co.

1967	No record	7,062.01
1970	Asbestos insulation (Newtherm)	2,091.69
1971	" " "	16,903.54
1972	" " "	33,960.27
1973	Non-asbestos insulation (Newtherm)	1,413.23

Industrial Insulation Co. Inc.

1969	No record	560.79
1970	Asbestos insulation (Newtherm)	1,369.63
1971	" " "	904.80
1972	" " "	2,379.24

<u>Name</u>	<u>Amount</u>	<u>Dates</u>
Canadian General Insurance Company	\$500,000	? - 1/10/64
The Royal Insurance Company, Ltd.	\$1,000,000	3/31/69 - 6/30/69
Canadian General Insurance Company	\$1,000,000	6/30/69 - 3/31/72
Federal Insurance Company	\$1,000,000	3/31/72 - 7/31/75
Lloyd's Underwriters	\$500,000 (2 layers \$2,000,000 excess - primary)	3/13/62 - 4/23/62
Lloyd's Underwriters	\$1,000,000 (2 layers \$4,000,000 excess - primary)	4/23/62 - 6/19/65
Lloyd's Underwriters	\$1,000,000 (2 layers \$4,000,000 excess - primary)	6/19/65 - 3/31/68
Lloyd's Underwriters	\$1,000,000 (2 layers \$4,000,000 excess - primary)	3/31/68 - 3/31/71
Federal Insurance Company	\$5,000,000 (excess - primary)	3/31/71 - 7/31/75
The Royal Insurance Company, Ltd.	\$1,000,000	1/10/64 - 4/1/69

Schedule

The following are other defendants to whom Atlas has sold asbestos materials. We have no records prior to 1968.

<u>Name</u>	<u>Date</u>	<u>Amount</u>	<u>Shipped to</u>
Johns Manville Products Corp.	1971	100.05	Georgia
	1972	977.41	"
	1973	6,884.52	Texas-90%; Ga & N.Y.
	1974	709.16	Georgia
Standard Asbestos Manufacturing Co.	1967	256.94	No record
	1968	54.80	" "
	1969	202.45	" "
	1973	230.40	Missouri
Armstrong Cork Company	1967	45.32	No record
Owens-Corning Fiberglass Corp.	1969	536.96	No record
	1970	2,029.17	" "
	1973	17,189.49	Aruba (stopover N.Y.)
	1972	4,866.13	Iran & S.C.
	1973	2,217.49	South Carolina
Certain-teed Products Corp.	1968	37.00	No record
	1971	4,724.72	Pennsylvania
Keene Corp.	1970	9,683.94	No record 60%; N.Y. 39% & Alabama 1%
Fibreboard Corp.	1971	10,058.90	California

EXHIBIT 6

Guy M. Beaty & Co.

CONTRACTORS — DISTRIBUTORS

P. O. BOX 1656 — 522 S. ELLIOTT ST.

PHONE ED 3-8625-6

CHARLOTTE, N. C.

ORDER **Nº 11226**DATE ~~XXXXXX~~ **3-7-67****Atlas Asbestos Company**TO **Montreal, Canada**SHIP **Us- here**
TO:**IMPORTANT**

Render Invoices in Triplicate.

Any materials shipped on this Purchase Order after the 25th of the month will be considered as a first of the following months billing and discounted accordingly.

AT ONCE

When.....

Via: **SAL-P&N** delivery

1/2"	10 ctns.	1" thk. NewTherm pipe coering w/std. canvas
3/4"	15 ctns. 25	ditto
1 1/4"	20 ctns. 30	ditto
1 1/2"	30 ctns. 40	ditto
2"	40 ctns. 80	ditto
2 1/2"	30 ctns. 40	ditto
3"	30 ctns. 40	ditto
4"	30 ctns. 50	ditto
5"	20 ctns.	ditto
6"	30 ctns. 60	ditto
2"	15 ctns.	1 1/2" thk. NewTherm pipe covering w/std. canvas
2 1/2"	10 ctns.	ditto
3"	40 ctns.	ditto
4"	20 ctns.	ditto
5"	20 ctns.	ditto
6"	60 ctns.	ditto
8"	40 ctns.	ditto
6"	3 ctns.	2" thk. NewTherm pipe covering w/std. canvas
8"	25 ctns.	ditto
10"	2 ctns.	ditto

CONFIRMING DO NOT DUPLICATE

2X6X36 - 50 ctns 130 lbs.

1 1/2 X 6 X 36 - 50 " "

Guy M. Beaty & Co.**ILB**

N. C. SALES TAX NO. — 60-01826

S. C. SALES TAX NO. — 99-80679

By.....

GMB03273

DIVISION OF BELL ASBESTOS MINES, LIMITED
HEAD OFFICE
5600 HOCHELAGA ST. MONTREAL 5, QUE.
AREA CODE 514
TEL. 259-2531

MONTREAL
5600 HOCHELAGA
AREA CODE 514
TEL. 259-2531

TORONTO
131 BROWN'S LINE
AREA CODE 416
TEL. 259-9281
766-2453

VANCOUVER
833 CUNDY AVE.
ANNACIS INDUSTRIAL ESTATE
NEW WESTMINSTER
AREA CODE 604
TEL. 521-7751

EDMONTON
10443 - 123RD. ST.
AREA CODE 403
TEL. 488-6443
488-2882

[illegible]

EVTRA CORV

PPG_001077

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, et al.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT ATLAS TURNER, INC.’S MOTION FOR PROTECTIVE ORDER AND
MEMORANDUM OF LAW IN SUPPORT ON BEHALF OF ITSELF AND
DEFENDANT ATLAS ASBESTOS CO.**

Defendant Atlas Turner, Inc., sued incorrectly as successor to Atlas Asbestos Co., (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through its undersigned counsel, and pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, files this motion seeking to be relieved from designating and producing a corporate representative for deposition, and from producing any information or documents, pursuant to the Notices of 30(b)(6) Deposition of Atlas Asbestos Co. and Atlas Turner, Inc. served by Plaintiffs in this case. First, nearly all the discovery Plaintiffs seek is merits discovery, and the Court should stay discovery as to Atlas Turner until the Court rules on Defendant Atlas Turner’s Motion to Dismiss for Lack of Personal Jurisdiction. Second, in the event the Court does not grant Atlas Turner’s motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by Plaintiffs’

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

Notices of 30(b)(6) Deposition because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices. Third, in the event the Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' Notices of 30(b)(6) Deposition, because of the Quebec Business Concerns Records Act (QBCRA), which subjects Atlas Turner to criminal penalties in Quebec if it produces information and documents sought by Plaintiffs in the Notices of 30(b)(6) Deposition. In support of this motion, Atlas Turner states as follows:

BACKGROUND

On July 25, 2022, Plaintiffs filed their original Complaint. Plaintiffs subsequently amended their Complaint several times, and most recently filed their Third Amended Complaint on November 3, 2022, in which they named approximately sixty five (65) Defendants. In response, Atlas Turner has timely filed Motions to Dismiss for Lack of Personal Jurisdiction and Memoranda in Support with accompanying affidavit and has filed an Amended Memorandum with affidavits and deposition testimony (Amended Memorandum with exhibits was filed December 30, 2022).

In the Third Amended Complaint, Plaintiffs allege that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company ("Daniel") at the Monsanto Chemical Plant [aka Chemstrand], in Greenwood, SC "in the mid-late 1960s" and was exposed to, among other things, asbestos-containing insulation products.² Plaintiffs also allege that Mr.

² See Third Amd. Complaint at ¶ 91.

Welch later worked as an “automobile mechanic at various job sites” in the “late 1970s to the mid-late 2000s” and was exposed to asbestos from “clutches, gaskets, and brakes.”³ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing “friction products” such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.⁴

On October 7, 11, 12, and 14, 2022, Mr. Welch was deposed and testified about his alleged asbestos exposure.⁵ Excerpts from the transcript dated October 7 are attached as Exhibit 1; excerpts from the transcript dated October 11 are attached as Exhibit 2; excerpts from the transcript dated October 12 are attached as Exhibit 3.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. See Exhibit 1, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” See Exhibit 1, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. See Exhibit 1, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. See Exhibit 1, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. See Exhibit 3, at pp. 74, 72-73. More specifically, Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing

³ See Third Amd. Complaint at ¶ 93.

⁴ See Third Amd. Complaint at ¶ 98.

⁵ No one appeared on behalf of Atlas Turner at the deposition.

new insulation on the pipes; and he was working under or below the insulators. See Exhibit 2, at pp. 90, 92, 96, 98. Not surprisingly, Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. See Exhibit 2, at p. 45. After working for Daniel at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. See Exhibit 1, at p. 19; see Exhibit 2, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. See Exhibit 1 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. See Exhibit 1, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. See Exhibit 1, at pp. 52-65.

In summary, Mr. Welch testified that he allegedly worked around asbestos-containing pipe insulation products while employed by Daniel at the Monsanto/Chemstrand Greenwood plant from approximately 1965 to 1966 and that he went into the Air Force from 1967 to 1970. Thereafter, he alleges he worked as a brake mechanic with asbestos-containing brake material from approximately 1977 until he retired around 2000, and alleges that he worked with asbestos-containing automotive brakes, gaskets, and clutches from approximately 1958 through the 2000s.

Defendant Atlas Turner was and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. See Affidavit of Richard Dufour dated September 7, 2022, which is attached as Exhibit 4, at ¶ 3.

Further, although Atlas Turner did manufacture asbestos-containing products, all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Montreal, Quebec, Canada. See Exhibit 4, at ¶ 3.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. See affidavit of Richard Dufour dated December 28, 2022, attached as Exhibit 5, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. See Exhibit 5, at ¶ 13. Thus, Mr. Welch's cause of action did not arise out of or relate to the defendant's "contacts" with the forum because Atlas Turner had no contacts with the forum during the relevant time period. See *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S. E. 2d 128, 131 (1992); *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1780 (2017).

On December 6, 2022, Plaintiffs served via email Plaintiffs' Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena Duces Tecum and Plaintiffs' Notice of 30(b)(6) Deposition of Defendant Atlas Turner, Inc. and Subpoena Duces Tecum ("30(b)(6) Notices"). A copy of each 30(b)(6) Notice is attached as Exhibits 6 and 7. The 30(b)(6) Notices contain 74 topics for questioning and 23 document requests. Plaintiffs scheduled the depositions for February 2, 2023 and requested that documents be produced no later than January 3, 2023, which is 28 days from the date the 30(b)(6) Notices were served. As set forth in Exhibits A and B of the 30(b)(6) Notices, Plaintiffs seek testimony and documents nearly all of which are related to merits discovery that are wholly unrelated to the question of the Court's personal jurisdiction over Atlas Turner.

LEGAL STANDARD

Pursuant to Rule 26(c), SCRCP, “[u]pon motion by a party... and for good cause shown, the court in which the action is pending... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including... (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions...; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters....” When the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E. 2d 852, 854 (1994).

If a person requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is “relevant and necessary” to the case. In determining whether a protective order is necessary, the trial judge is required to weigh the factors of whether the information sought is “relevant and necessary” evidence against any particularized harm the opposing party may suffer. In determining whether information is necessary, the party seeking the information must “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” The trial court must determine whether there are reasonable alternatives available to discover the information.

Hollman v. Woolfson, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009) (citing *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 474-76, 674 S.E.2d 154, 162-63 (2009); *Hamm*, 312 S.C. at 241, 439 S.E.2d at 854) (internal citations omitted).

Because Atlas Turner’s due process rights will be violated if it is required to participate in general discovery prior to this Court’s deciding whether it has personal jurisdiction over Atlas Turner, this Court should preclude Plaintiffs from requiring Atlas Turner to produce a corporate representative and produce information and documents in response to Plaintiffs’ 30(b)(6) Notices

until it determines whether it has personal jurisdiction over Atlas Turner. Further, in the event the Court does not grant Atlas Turner's motion to dismiss, then this Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by the 30(b)(6) Notices because of the absence of any current or former employees or individuals with personal knowledge and the inability to educate a witness due to the lack of most relevant records and because of the QBCRA.

ARGUMENT

I. Requiring Atlas Turner to Produce a Corporate Representative, Information, and Documents Before the Court Has Determined Whether It Has Personal Jurisdiction Over Atlas Turner Would Subject Atlas Turner to Particularized Harm.

Good cause for a protective order exists when a party will suffer particularized harm if the challenged discovery takes place. *Hamm*, 312 S.C. at 241, 439 S.E. 2d at 854. First, as explained in Atlas Turner's Motion to Dismiss and Amended Memorandum in Support, there is no general jurisdiction over Atlas Turner. As for specific jurisdiction, Atlas Turner lacks contacts with South Carolina sufficient for this Court to exercise specific personal jurisdiction over it. Atlas Turner did not manufacture or sell asbestos-containing friction products such as automotive brakes, clutches, or gaskets. Thus, the only relevant jobsite is the Monsanto/Chemstrand Greenwood plant where Mr. Welch was employed by Daniel and the relevant time period is 1966 or any time prior to 1966; and Atlas Turner has no records of sales to any company in South Carolina prior to 1968. Therefore, Atlas Turner could not anticipate being haled into this Court and there are no contacts with South Carolina out of which Mr. Welch's suit can arise. Consequently, requiring Atlas Turner to participate in general discovery in this matter violates Atlas Turner's due process rights and constitutes a particularized harm to Atlas Turner. Moreover, Plaintiffs are not even entitled to jurisdictional discovery because they cannot demonstrate enough facts to support a *prima facie*

showing of personal jurisdiction. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151-153, 723 S.E. 2d 835, 839-841 (2012). Based on bare allegations in the face of specific denials, the Court should not permit even limited discovery if it will be a fishing expedition. *Id.* at 151, 723 S.E. 2d at 840.

Second, precluding Plaintiffs from moving forward with the deposition is necessary to ensure that Atlas Turner is not forced to risk waiving its jurisdictional defense. Participation in substantive discovery has been found to waive a defendant's personal jurisdiction defense. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 564, 787 S.E. 2d 498, 510 (2016). To allow the deposition to proceed in this circumstance, thereby possibly forcing an involuntary "waiver" of the jurisdictional defense, is unfair and violates due process.

II. In the Event the Court Does not Grant Atlas Turner's Motion to Dismiss, Requiring Atlas Turner to Produce a Corporate Representative for Deposition, or Produce Information or Documents Sought by the 30(b)(6) Notices, Would Subject Atlas Turner to Particularized Harm Because it Lacks Individuals with Personal Knowledge and for the Most Part Does Not Maintain or Possess the Records That Would be Necessary to Educate a Witness to be Able to Testify to Matters Contained in the 30(b)(6) Notices.

As noted in Mr. Dufour's affidavit dated December 28, 2022, Atlas Turner ceased all operations in 1986; it has no current employees; it has no former employees competent to testify to the topics listed in the 30(b)(6) Notices, and for the most part does not even maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices; and to the extent that relevant records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec. *See Exhibit 5 at ¶¶ 10, 11, 14, 15.*

If a corporation genuinely cannot provide an appropriate designee because it does not have the information, cannot reasonably obtain it from other sources, and still lacks knowledge after

reviewing all available information, then its obligations under the Rule cease. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 690 (S.D. Fla. 2012). Further, a party cannot produce documents it does not possess, and a party cannot create documents that do not exist. *See United States v. Remain at Home Senior Care, LLC*, Case No. 1:17-cv-01493-JMC, at *5-6 (D.S.C. Jan. 14, 2022).

Due to Atlas Turner's unique circumstances, in the event the Court denies Atlas Turner's motion to dismiss, this Court should not order Atlas Turner to produce a corporate representative for deposition, or produce information or documents sought by the 30(b)(6) Notices.

III. In The Event the Court Does Not Grant Atlas Turner's Motion to Dismiss, Then Requiring Atlas Turner to Produce a Corporate Representative for Deposition, or Produce Information or Documents Sought by the 30(b)(6) Notices, Would Subject Atlas Turner to Further Harm Because of The QBCRA.

A. The QBCRA Prohibits Atlas Turner Under Threat of Criminal Penalties from Providing Business Records, or Information from Business Records, Located in Quebec.

Atlas Turner is a Quebec corporation whose office is located in the province. Under Section 2 of the QBCRA, a copy of which is attached as Exhibit 8:

Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial, or administrative authority outside Quebec, remove or cause to be removed, or send or cause to be sent, from any place in Quebec to a place outside Quebec, any document or résumé or digest of any document relating to any concern.

The term "document" is defined as "any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern." QBCRA, § 1(a). The term "concern" is defined as "any business concern in Quebec." QBCRA, § 1(b). The term "requirement" is defined as "any demand, direction, order, subpoena or summons." QBCRA § 1(c). The exception in Section 3 is limited to intra-company transfer in the normal course of

business, the sale of securities, and as “authorized by any law of Quebec or of the Parliament of Canada, in accordance with their respective jurisdictions.” QBCRA, § 3. Any person who infringes the provisions of Section 2 **shall** be guilty of contempt of court. QBCRA § 5 (emphasis added).

Quebec courts have made clear that other Quebec “concerns” would be subject to criminal penalties if they produced in U.S. litigation information or documents from their files in Quebec, and these opinions apply to Atlas Turner. In *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal, February 24, 1984), a copy of which is attached as Exhibit 9, the Court of Appeal ruled that, if a witness was required to consult business records or archives of the employer, a Quebec “business concern,” in order to provide his testimony, such testimony would fall under the prohibition set out in Section 2 of the QBCRA. See Exhibit 9 at p. 11. Further, Judge Beauregard stated that “the filing ... of the documents ... joined to an examination of an agent of [Asbestos Corporation Limited] (“ACL”) whose testimony on these documents will be taken down by a stenographer who will translate his notes for the purposes of the foreign tribunal is equivalent, ... to the transmission out of Quebec of a ‘résumé or summary’ of the files of [ACL].” *Id.* at p. 11. Also, Judge Tyndale’s opinion, which follows the opinion of Judge Beauregard, states the QBCRA “[o]bviously ... forbids production of the documents Moreover, inspection by an attorney acting for Respondent would be useless unless he took notes, and this would lead to the export of a résumé or digest. *Id.* at pp. 1-2.

In *Pelnar v. Ins. Co. of North America* (Court of Appeal, Montreal, June 25, 1985) a copy of which is attached as Exhibit 10, the court held that the prohibition set out in Section 2 of the QBCRA is not only aimed towards business concerns, their officers or employees, but equally towards any persons who may have, or have had, in their possession documents or résumés thereof. See Exhibit 10 at pp. 5-6. Further, Quebec courts have ruled that the application of the

QBCRA did not require a preliminary request from the Attorney General. See *Lac D'Amiante Du Quebec Limited v. Procureur General De La Province De Quebec* (Court of Appeal, R.D.J., 287, 1989), a copy of which is attached as Exhibit 11, at p. 289. In addition, in *Renault v. Bell Asbestos Mines, Ltd.* (Court of Appeal, Montreal, August 13, 1980), a copy of which is attached as Exhibit 12, the court ruled that the word “document” related to much more than just accounting documents and that the QBCRA must be interpreted liberally and broadly. See Exhibit 12 at pp. 4-5.

Court opinions outside of Quebec that ignore the QBCRA do not magically transmute Atlas Turner’s predicament.⁶ Such decisions only show that Atlas Turner is beholden to two masters – stuck between facing criminal penalties in its domicile or displeasing this Court if it does not produce discovery to Plaintiffs’ satisfaction. Atlas Turner takes its discovery obligations seriously but also asks this Court to recognize and consider that Atlas Turner cannot please both masters at the same time. Application of fairness to the situation should enable Plaintiffs to obtain as much discovery as possible while not subjecting Atlas Turner to criminal penalties in its domicile. Several of this Court’s sister courts have reached this precise result.

⁶ Atlas Turner is aware of two decisions in South Carolina in which the Courts have ruled unfavorably as to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384 (D.S.C. 1988); and *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992). These cases are not binding on the Court. In addition, in *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal February 24, 1984), the Quebec Court of Appeal decided that if a witness is required to consult records or archives, such testimony would fall under the prohibition of the Section 2 of the QBCRA. See Exhibit 9. Further, in *Lac D'Amiante Du Quebec Limited*, the Court held that the application of the QBCRA did not require a preliminary request from the Attorney General. See Exhibit 11, at p. 289. Therefore, the South Carolina federal courts’ interpretations in *Lyons* and *Central Wesleyan* are erroneous and should not be based on their own interpretations of the law after the highest court in Quebec already ruled on the issue.

For example, in *Jenness v. Turner and Newall Ltd.*, No. 83-61-L (D. N.H. Dec. 5, 1984), a copy of which is attached as Exhibit 13, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. Exhibit 13, at p. 1. ACL admitted that it had sold asbestos to the plaintiff's employer but could not "give the detailed answers that are required to be given to plaintiff's interrogatories without reference to [ACL's] business records located in Canada." *Id.* at p. 2. As a result, the plaintiff moved for sanctions against ACL when it did not comply with the court's discovery order. The U.S. District Court for the District of New Hampshire described ACL's predicament: ACL found itself "between the Scylla of the criminal sanctions of the [QBCRA] and the Charybdis of the civil sanctions of this Court." *Id.* at p. 2. Considering ACL's quandary, the *Jenness* court found that ACL had "made a good faith effort to comply with this Court's order to answer the interrogatories" and that ACL's "fear that answering the interrogatories or giving the depositions would violate the [QBCRA] to be well founded." *Id.* at p. 3. The court ordered ACL to answer the plaintiff's interrogatories from documents and information that existed outside Quebec but that ACL did not have to answer the interrogatories from documents and information contained within Quebec. *Id.* at pp. 3-4.

Similarly in *Maryland v. Keene Corp.*, No. 1108600 (Md. Cir. Ct. July 10, 1986), a copy of which is attached as Exhibit 14, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 14, at pp. 1-2. The *Keene* court concluded that because the QBCRA's potential penalties were "an annoyance, embarrassment and undue burden" to ACL, the court was "not convinced that it [wa]s necessary for ACL to face" the QBCRA's sanctions. *Id.* at p. 2. The court ordered that any of ACL's United States-based documents and information were discoverable but that "ACL's Canadian documents should enjoy the full protection which this Court can afford to them...." *Id.* at 3.

Further, in *Fears v. Cassair Mining, Corp.*, No. 91-98C(5) (E.D. Mo. Jan. 5, 1993), a copy of which is attached as Exhibit 15, the U. S. District Court for the Eastern District of Missouri did not find the analysis in *Lyons* persuasive because it did not deal with the Canadian courts' interpretation of the QBCRA or with the prior rulings of American courts. Rather, it adopted the *Jenness* and *Keene* courts' reasoning, concluding that "the approach taken by [those] courts is equitable and just in that it provides a broad opportunity for plaintiffs to achieve the discovery to which they are entitled without exposing [ACL] to criminal sanctions in Quebec." Exhibit 15, at p. 3. The *Fears* court allowed discovery into ACL's documents and information contained in the United States but upheld the QBCRA's prohibition on discovery into ACL's Quebec documents and information. *Id.*

B. Atlas Turner Cannot Answer Most of the Topics or Produce Most of the Documents in the 30(b)(6) Notices Without Violating the QBCRA.

Given Quebec court opinions interpreting the scope of the QBCRA, and lacking any source for information not subject to the QBCRA, Atlas Turner is unable to answer the Topics and Requests for Production contained in the 30(b)(6) Notices.

1. Topics

Virtually all of these Topics seek information relating to Atlas Turner's activities from many years ago, and Atlas Turner either has no relevant documents or is prevented from providing information from any existing documents because of the QBCRA. In fact, the company has been closed since 1986. See Exhibit 5 at ¶ 10. Also, Atlas is unaware of any individual with personal knowledge of these Topics from whom it can obtain this information; and, to the extent that relevant records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec. See Exhibit 5 at ¶¶ 14 and 15. Atlas is prohibited by the QBCRA from providing any information gleaned from its company records and

other documents located in Quebec, or even acknowledging the existence of the information and documents, and therefore cannot respond under threat of criminal prosecution. Thus, notwithstanding any other objections to particular topics, Atlas is between the proverbial “rock and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties.

2. Requests for Production

The same explanation with respect to the QBCRA applies to Atlas Turner’s inability to produce documents in response to nearly all of Plaintiffs’ requests. Atlas Turner either does not have the vast majority of relevant documents or the existing documents would be subject to the QBCRA. As discussed above, Atlas Turner is prohibited from producing any documents from its files in Quebec by the QBCRA, or even acknowledging the existence of responsive documents. As with its ability to answer Plaintiffs’ Topics, and notwithstanding any other objections to particular topics, Atlas Turner is between the proverbial “rock and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties. The QBCRA precludes Atlas Turner from producing the documents requested by Plaintiffs’ from its Quebec files, or even acknowledging the existence of such documents.

C. Based on the Unique Situation Involving Atlas Turner and the QBCRA, Atlas Turner is Entitled to Deferential Treatment under the Comity Principles of International Law.

Atlas Turner is not a typical asbestos defendant. Because it faces criminal penalties if it violates the QBCRA, it should be treated with deference. Consequently, this Court should make a comity analysis using the factors set forth in *Societe Nationale Industrielle Aerospatiale v. United States District Court for Southern District of Iowa*, 482 U.S. 522, 107 S.Ct. 2542 (1987) (*Aerospatiale*) and Restatement (Third) of Foreign Relations Law of the United States, § 442

(1987) (Restatement).⁷ In *Aerospatiale*, the Supreme Court dealt with a French “Blocking Statute.” The Court directed that district courts could find their guide to a comity analysis using factors articulated in the *Restatement. Aerospatiale*, 482 U.S. at 544, footnote 28. These factors are (1) the importance to the...litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

A comity analysis using the factors set forth in *Aerospatiale* supports deferential consideration for Atlas Turner. As for the second factor – the degree of specificity – many of plaintiffs’ requests are overly broad. For example, Topic 65 asks: beginning in the year that Defendant first manufactured, marketed, produced...sold...any asbestos-containing products and continuing through the present day, the identity [sic] each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person’s current or last known address and whether the person is currently alive or dead, if known. Also Topic 69 is “All information relating to the Defendant’s knowledge of asbestos.” As for the third factor – the origination of the information – this factor weighs heavily in favor of Atlas Turner since the information sought did not originate

⁷ Atlas Turner is aware of at least one decision in South Carolina in which the court referenced *Aerospatiale* in relation to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384 (D.S.C. 1988). In addition, the court in *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992) ruled unfavorably as to the QBCRA. See footnote 6 in this Memorandum. These two cases are not binding on this Court. This Court should adopt the reasoning set forth in *Fears, Jenness and Keene*.

in the United States. As for the fourth factor – the availability of alternative means for securing the information – this factor weighs in favor of Atlas Turner as will be discussed below.

D. Plaintiffs Have Alternative Sources for Information and Documents They Seek From Atlas Turner.

Plaintiffs have a number of alternative U.S. sources for many of the documents and much of the information contained therein which they seek here. Atlas Turner has no business records or other responsive documents in the United States in its possession, custody, or control. However, plaintiffs’ counsel, who are sophisticated and a premier asbestos plaintiffs’ law firm, undoubtedly have access to purported Atlas documents collected by other asbestos plaintiff’s counsel around the country in various lawsuits (“Repositories”). Plaintiffs’ counsel could also obtain various depositions that were taken many years ago. Further, plaintiffs can obtain, or have obtained in the past, information from co-defendants’ document productions, including co-defendants Daniel International and Pharmacia (Monsanto). If plaintiffs’ counsel have any relevant documents, Atlas Turner requests that they produce these documents. Plaintiffs should be able to obtain information they seek without exposing Atlas Turner to potential criminal penalties. Discovery should be the retrieval of available information from the least burdensome source.⁸

IV. Plaintiffs Cannot Demonstrate that Atlas Turner’s Requested Protective Order Will Impair Their Case.

After the party seeking the protective order demonstrates good cause by showing a particularized harm from the discovery, the party seeking the discovery must come forward and show that the information sought is “both necessary and relevant” to the case. *Hamm*, 312 S.C. 238, 242, 439 S.E.2d 854. Because the Court lacks personal jurisdiction over Atlas Turner,

⁸ Atlas Turner reserves the right to serve additional objections to the 30(b)(6) Notices should the Court order that a deposition may go forward.

Plaintiffs can make no such showing. As Atlas Turner shows in its Motion to Dismiss and Amended Memorandum in Support, this action should be dismissed pursuant to South Carolina law and the Due Process Clause of the United States Constitution. Further, Plaintiffs have alternative sources for information and documents they seek from Atlas Turner. Plaintiffs have not demonstrated a basis for jurisdictional discovery, much less a need for merits discovery in this action, and cannot show that the discovery they seek through the 30(b)(6) Notices is necessary and relevant to the case, nor that it is narrowly tailored to the allegations in the Third Amended Complaint.

CONCLUSION

For the reasons stated above, Atlas Turner respectfully requests that this Court issue a protective order precluding a deposition of Atlas Turner's corporate representative and precluding the production of documents pursuant to Plaintiffs' 30(b)(6) Notices pending the resolution of Atlas Turner's personal jurisdictional challenge. Further, in the event the Court does not grant Atlas Turner's Motion to Dismiss, the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' 30(b)(6) Notices, because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices. Finally, in the event this Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought

by the 30(b)(6) Notices, because of the QBCRA, which subjects Atlas Turner to criminal penalties in Quebec if it produces information or documents sought by Plaintiffs' 30(b)(6) Notices.

By the signature below, counsel for Atlas Turner affirms that he has communicated orally and in writing with opposing counsel and has attempted in good faith to resolve the matters contained in the motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

January 3, 2023

EXHIBIT 8

MEMORANDUM OF AGREEMENT

B E T W E E N

BELL ASBESTOS MINES, LTD., a corporation having its head office and principal place of business in the Province of Quebec at Thetford Mines, herein acting and represented by Mtre Alain Dulude, its Legal Counsel

hereunto duly authorized by virtue of the By-laws of the corporation and by virtue of a Resolution of its Board of Directors adopted at a meeting held on the tenth day of December, 1986, a certified copy whereof is annexed to these presents after having been signed for identification.

PARTY OF THE FIRST PART
(hereinafter referred to as «Bell»)

A N D

ROYAL INSURANCE COMPANY OF CANADA, herein acting and represented by Jean-Guy Houde, its Claims Manager (Quebec), duly authorized for all purposes hereof as he hereby declares.

PARTY OF THE SECOND PART
(hereinafter referred to as «Royal»)

A N D

ATLAS TURNER INC., a corporation having its head office and principal place of business at 5600 Hochelaga Street, in the City of Montreal, herein acting and represented by Mtre Alain Dulude, its Legal Counsel

hereunto duly authorized by virtue of the By-laws of the corporation and by virtue of a Resolution of its Board of Directors adopted at a meeting held on the sixteenth day of December, 1986, a certified copy whereof is annexed to these presents after having been signed for identification.

PARTY OF THE THIRD PART
(hereinafter referred to as «Atlas Turner»).

WHEREAS ROYAL issued insurance policies which were in force during the period January 10, 1964 to June 30, 1969 (hereinafter referred to as the «policies»), it being understood that the word «policies» is defined to include and mean, also, endorsements, renewals, extensions, insuring agreements and additional insuring agreements as well as any other policy, binder or document of any nature at

.../2

any time issued; and

WHEREAS the policies were subscribed to and issued in the Province of Quebec and, in consequence, are governed by the laws of Quebec; and

WHEREAS these policies designated the following named insureds:

« BELL ASBESTOS MINES LIMITED and/or
ATLAS ASBESTOS COMPANY LIMITED and/or
ATLAS ASBESTOS COMPANY, DIVISION OF
BELL ASBESTOS MINES LIMITED »;

and

WHEREAS the charter of one of the above named insureds, namely, ATLAS ASBESTOS COMPANY, LIMITED (the correct name) was surrendered on January 19, 1968 but, in fact, it had ceased to do any business as of the 30th day of September, 1963, having sold all of its assets to BELL, including the right to use the words «atlas asbestos company division»; and

WHEREAS ATLAS TURNER INC. was incorporated under the Canada Business Corporations Act on December 21, 1976 under the name ATLAS ASBESTOS COMPANY LTD., which name was changed to ATLAS TURNER INC. on March 1, 1979; and

WHEREAS as and from the mid-1970's, BELL and ATLAS TURNER became the target of over Seven Thousand (7,000) lawsuits in the United States by litigants who claim to have sustained personal injuries as a result of exposure to asbestos fibers and asbestos products and/or who claim to have sustained property damages relating to the existence in various immoveables of these products; and

WHEREAS BELL and/or ATLAS TURNER have asserted that they were entitled to coverage under the policies and, over the years, have forwarded to ROYAL copies of proceedings in the lawsuits above-mentioned; and

WHEREAS ROYAL has denied from the outset that there was any coverage under the policies with respect to these lawsuits, a position which it has maintained steadfastly to this date; and

.../3



WHEREAS BELL and ATLAS TURNER have threatened to institute legal proceedings against ROYAL with a view to having the dispute resolved in a court of law; and

WHEREAS ROYAL, inter alia, has threatened to invoke non-disclosure of material facts at the time of issuance of the policies as a ground for demanding the nullity thereof; and

WHEREAS the parties hereto acknowledge that protracted litigation with respect to their dispute would be time-consuming and costly; and

WHEREAS the parties hereto have decided to prevent litigation by concluding a contract of transaction, the whole in accordance with Articles 1918 et seq. of the Civil Code of Lower Canada.

NOW THEREFORE THIS MEMORANDUM OF AGREEMENT WITNESSETH:

1. The Preamble hereof forms an integral part of the Agreement;
2. BELL acknowledges to have received at the execution hereof from ROYAL a sum of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) in CANADIAN CURRENCY in full and final satisfaction of any and all claims, demands and rights of action of any nature whatsoever which it may have or pretend to have in connection with the policies, either in its own right or as the result of operations conducted by ATLAS ASBESTOS COMPANY as a DIVISION OF BELL, it being further acknowledged by BELL that payment of the said sum has been made by way of two (2) cheques, one payable to its order in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) and the other payable to MONTREAL TRUST COMPANY in the amount of TWO MILLION DOLLARS (\$2,000,000.00), the whole as set forth in Paragraph 11 hereof;
3. BELL further acknowledges that the present payment has been made by ROYAL without any admission of liability and solely with a view to avoiding protracted litigation;
4. ATLAS TURNER now acknowledges that it has no claim whatsoever to assert with respect to the policies and that the payment hereby made to BELL, coupled with the latter's undertakings hereinafter stipulated to pay claimants, constitute sufficient cause and consideration for it to intervene in the present Agreement;

.../4



5. In consideration of the present payment, BELL and ATLAS TURNER forever release and discharge ROYAL from any and all liability, past, present or future, with respect to claims of any nature whatsoever which could conceivably fall under the coverage afforded by the policies, acknowledging hereby that ROYAL has satisfied and fulfilled all of its alleged obligations and duties for the entire limits during the period of coverage;

6. In further consideration of the present payment, BELL and ATLAS TURNER undertake to indemnify, forever save harmless and assume at their own expense the defence of ROYAL from and against any and all claims, demands or rights of action which may be asserted, made or instituted against ROYAL under the policies, before any Court or Tribunal having jurisdiction, and by any person or corporation, whether named in the policies or not;

7. In further consideration of the present payment, BELL and ATLAS TURNER expressly represent and guarantee that no other person or corporation, including parent, affiliated or subsidiary companies, excess or umbrella insurers, successors and assigns, is entitled to any alleged proceeds, benefits or indemnities in virtue of the policies, and that the undertaking to guarantee and indemnify ROYAL, as provided in Paragraph 6 hereof, shall apply mutatis mutandis to this paragraph as well;

8. BELL and ATLAS TURNER acknowledge that their renunciation in advance to any further claims under the policies holds true for facts which may be unknown at the present time, that this Agreement will prevent them from asking for the nullity or cancellation of the present settlement for any cause whatsoever, including error of fact or of law, and that they have transacted with ROYAL generally upon all matters between them;

9. BELL and ATLAS TURNER hereby undertake to cease and desist, as and from the date hereof, from sending any further claims, writs or other proceedings to ROYAL and acknowledge that the latter would not have entered into this Agreement without this express undertaking on their part;

10. BELL and ATLAS TURNER expressly represent and guarantee that, as of this date, they will not submit, voluntarily, copies of the policies to any third party and especially to anyone who would be likely to make use of them in a court of law, it being agreed with ROYAL that no such third party would have any right, title or interest in the policies;

.../5

Handwritten signatures and initials, including what appears to be 'M.D.', 'G.', and '10 per'.

11. It is understood and acknowledged that out of the present payment of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00), the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) shall be applied in partial reimbursement of a much larger amount already paid in satisfaction of various judgments and/or through out-of-court settlements as indemnities to numerous claimants; and that the balance of TWO MILLION DOLLARS (\$2,000,000.00) shall be deposited in a trust account with MONTREAL TRUST COMPANY (the Trustee), which amount shall be used exclusively for the payment of indemnities to claimants alleging damages related to the use of asbestos, either in satisfaction of judgments or through out-of-court settlements; and with the undertaking as well that ROYAL shall receive from the Trustee, at its Montreal branch office, on or before the fifteenth (15th) day of February of each year (beginning in 1988) an annual statement establishing:

- i) the amounts paid;
- ii) the names of the beneficiaries; and
- iii) the balance outstanding in the said trust account,

such statement to be duly certified by the Trustee's authorized representative, this undertaking to remain in force until the trust account has been entirely extinguished; failing which BELL and ATLAS TURNER shall pay to ROYAL a penalty of ONE HUNDRED DOLLARS (\$100.00) per day until such time as their obligations hereunder are fulfilled.

Interest received from time to time by the Trustee may be used either to pay claimants or to defray the costs of defence in connection with the litigation in the United States.

If any monies remain in the trust account when all the litigation in the United States has been settled, such monies shall be paid by the Trustee to BELL;

12. The present Agreement has been drawn up in English pursuant to the express wish of the parties;

La présente convention a été rédigée en anglais

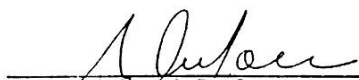
.../6



suivant la volonté expresse des parties.

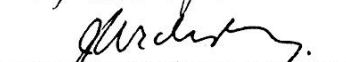
IN WITNESS WHEREOF the parties have executed
five (5) counterparts of this Memorandum of Agreement at Montreal,
this eighteenth day of December, 1986.

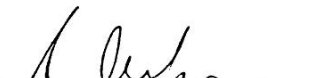
WITNESSES:

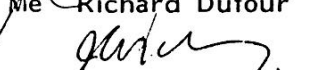

Me Richard Dufour


Mtre J. Arclen Blakely


Me Richard Dufour


Mtre J. Arclen Blakely


Me Richard Dufour


Mtre J. Arclen Blakely

BELL ASBESTOS MINES, LTD.

By:


Mtre Alain Dulude

ROYAL INSURANCE COMPANY OF CANADA

By:


Jean-Guy Houde -
Claims Manager (Quebec)

ATLAS TURNER INC.

By:

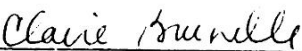

Mtre Alain Dulude

EXTRAIT DU PROCÈS-VERBAL DE LA RÉUNION DU
CONSEIL D'ADMINISTRATION DE LES MINES D'AMIAN-
TE BELL LTÉE, TENUE À THETFORD-MINES, QUÉBEC,
LE 10 DÉCEMBRE 1986

Sur proposition dûment faite et appuyée, il est unanimement résolu:

1. D'ACCEPTER de transiger avec La Royale du Canada Compagnie d'Assurance (ci-après-appelée «La Royale»), relativement au différend entre celle-ci et Les Mines D'Amiante Bell Ltée et Atlas Turner Inc. en regard du litige de l'amiante aux Etats-Unis et des polices d'assurance émises par La Royale;
2. D'AUTORISER le conseiller juridique de la compagnie, Me Alain Dulude, de signer une convention intitulée «Memorandum of Agreement», dont copie fut soumise à l'assemblée, approuvée par celle-ci et annexée au présent procès-verbal, moyennant un paiement global de Deux Millions Cinq Cent Mille (\$2,500,000.00) dont Deux Millions (\$2,000,000.00) sera versé au Montréal Trust et Cinq Cent Mille (\$500,000.00) aux Mines D'Amiante Bell Ltée.
3. DE CONSENTIR à tous les termes et conditions dudit «Memorandum of Agreement» lequel contient, entre autre, une quittance complète et finale de toute réclamation que la compagnie a ou pourrait avoir contre La Royale et qui constitue de même une transaction au sens des articles 1918 et ss. du Code civil du Bas-Canada.

THETFORD-MINES (Québec)
le 18 décembre 1986.


Me Claire Brunelle
Secrétaire



EXTRAIT DU PROCÈS-VERBAL DE LA RÉUNION DU
CONSEIL D'ADMINISTRATION DE ATLAS TURNER INC.
TENUE À MONTRÉAL, QUÉBEC, LE 16 DÉCEMBRE
1986.

Sur proposition dûment faite et appuyée, il est unanimement résolu:

1. D'ACCEPTER de transiger avec La Royale du Canada Compagnie d'Assurance (ci-après appelée «La Royale»), relativement au différend entre celle-ci et Les Mines D'Amiante Bell Ltée et Atlas Turner Inc. en regard du litige de l'amiante aux Etats-Unis et des polices d'assurance émises par La Royale;
2. D'AUTORISER le conseiller juridique de la société, Me Alain Dulude, de signer une convention intitulée «Memorandum of Agreement», dont copie fut soumise à l'assemblée, approuvée par celle-ci et annexée au présent procès-verbal.
3. DE CONSENTIR à tous les termes et conditions dudit «Memorandum of Agreement» lequel contient, entre autre, une quittance complète et finale de toute réclamation que la Société a ou pourrait avoir contre La Royale et qui constitue de même une transaction au sens des articles 1918 et ss. du Code civil du Bas-Canada.

MONTREAL (Québec)

le 18 décembre 1986.

Claire Brunelle

Me Claire Brunelle
Secrétaire-adjointe

Alain Dulude

EXHIBIT 9

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	2022-CP-40-03834
	)	
	)	
	)	
	)	
MELVIN G. WELCH,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
3M COMPANY, et al,	)	
DEFENDANT.	)	
	)	

April 19, 2023
Columbia, South Carolina

B E F O R E:

THE HONORABLE JEAN H. TOAL, JUDGE.

A P P E A R A N C E S:

DAVID TRAYLOR, ESQ.
Attorney for Defendant

THEILE B. MCVEY, ESQ.
Attorney for Plaintiff

JENNIFER TECHMAN, ESQ.
Attorney for Defendant

JONATHAN HOLDER, ESQ.
Attorney for Plaintiff

AMBER PAYNE, CVR
Circuit Court Reporter

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E X H I B I T S

There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began at
10:07 a.m.)

ATLAS ASBESTOS/ATLAS TURNER'S MOTION TO
DISMISS/PROTECTIVE ORDER/SUMMARY JUDGMENT

THE COURT: All right. What's the next thing? All right. That's Welch, all right. And the first one is Atlas Asbestos, Atlas Turner's Motion to Dismiss, Protective Order, Summary Judgment, and Spirax's Motion for Summary Judgment. So I'm gonna hear Atlas -- Atlas Turner's Motion to Dismiss, etc., first.

MR. TRAYLOR: Good morning, Your Honor.

THE COURT: Good morning. Now, remember you always recite your name for our --

MR. TRAYLOR: Yes.

THE COURT: -- court reporter --

MR. TRAYLOR: Yes, Your Honor.

THE COURT: -- and who you represent.

MR. TRAYLOR: David Traylor, T-r-a-y-l-o-r, on behalf -- or representing Atlas Turner, Inc., on behalf of itself and defendant, Atlas Asbestos, Co. I'll just refer to them as "Atlas."

Your Honor, we filed a number of motions to dismiss for lack of personal jurisdiction. We have

1 not filed an answer, so we're standing on the papers
2 that we filed. We have filed an amended motion to
3 dismiss for lack of personal jurisdiction on
4 December --

5 THE COURT: When --

6 MR. TRAYLOR: -- 30th.

7 THE COURT: When did you file that?

8 MR. TRAYLOR: What I want to do today is focus
9 primarily on --

10 THE COURT: When did you file the amended motion?

11 MR. TRAYLOR: In -- on December 30th, Your Honor.

12 THE COURT: I see. Okay.

13 MR. TRAYLOR: What I want to do today is to focus
14 primarily on the motion to dismiss that was set
15 forth in our motion for summary judgment.

16 THE COURT: Right.

17 MR. TRAYLOR: And the plaintiff's memo in opposition
18 because that -- that's the first time we had
19 opposition and our reply.

20 I -- if -- if you'll bear with me, I want to
21 just mention several facts which we think make this
22 case unique. First of all, the plaintiff worked for
23 Daniel at the Monsanto Plant (phonetic) in
24 Greenwood, South Carolina from 1965 to 1966, or
25 either from 1966 until early 1967. The latest date

1 is from a Social Security printout that I, I guess,
2 along with everybody else, received in late March.
3 But the latest date he worked would have been in the
4 second quarter of 1967 at this Monsanto Plant, and
5 the earliest he would have worked would have been
6 1965, but it's about a nine-month period.

7 After he worked for Daniel at the Monsanto
8 Plant, he went into the Air Force and then he had a
9 career as a brake mechanic. Just a couple of
10 further points about his work history, he was an
11 instrument technician helper for Daniel at the
12 Monsanto Plant. He testified that he was -- that --
13 that Daniel was performing new work. He claims that
14 insulators were above him using pipe covering. He
15 thought the -- the insulators were Daniel employees.
16 He did not know the manufacturer or brand of the
17 pipe covering. He did not know the composition,
18 although he said, "It felt like fiberglass."

19 It was the only job where he claims exposure to
20 pipe insulation. And we submitted an affidavit in a
21 number of our filings, particularly in the December
22 30th, but, also, in -- in the reply to the
23 protective order.

24 THE COURT: Well --

25 MR. TRAYLOR: The affidavit --

1 THE COURT: -- Mr. Traylor --

2 MR. TRAYLOR: Okay.

3 THE COURT: -- all this is kind of a roundabout.

4 Here's what they say.

5 MR. TRAYLOR: Right.

6 THE COURT: They say that Atlas Turner is a
7 successor to Atlas Asbestos Company, a Canadian
8 company that supplied asbestos insulation,
9 specifically Newtherm and Limpet, all right, to
10 products at the Monsanto Plant in the time period
11 that this guy --

12 MR. TRAYLOR: Okay.

13 THE COURT: -- worked there. So let's deal with
14 that.

15 MR. TRAYLOR: Okay.

16 THE COURT: I'm gonna --

17 MR. TRAYLOR: That's fine, Your Honor. Okay. I
18 just wanted --

19 THE COURT: And -- and that's all they need to do to
20 avoid summary judgment.

21 MR. TRAYLOR: Okay.

22 THE COURT: They placed that in, so --

23 MR. TRAYLOR: Well --

24 THE COURT: -- I am not going to respond, all right.
25 I -- I won't, all right, spend any time worrying

1 about, all right, the niceties of jurisdiction.

2 They -- this company is a successor in the interest
3 of a supplier at Monsanto during the time when he
4 says he was exposed. Whether it's a short duration,
5 long duration, long ago, or whatnot, that will be a
6 battle of the evidence, but that, in the terms of
7 jurisdiction, is all I need.

8 MR. TRAYLOR: Okay. Your Honor, and you're
9 referring to, I assume their response to --

10 THE COURT: Yes. I am.

11 MR. TRAYLOR: -- our motion. And, Your Honor, I
12 would submit, first of all, that none of those
13 exhibits support what they say. I mean, I can go --
14 and we went through in our reply on Pages 12 through
15 14 and itemized and analyzed each one of those
16 exhibits. And none of those exhibits support that,
17 either
18 they're --

19 THE COURT: Mister --

20 MR. TRAYLOR: -- after --

21 THE COURT: -- Mr. Traylor, right now we are having
22 a discussion of jurisdiction. We are not talking
23 about weight of evidence; we are not talking about
24 whether it proves their case. We are simply talking
25 about what I have in front of me at this moment,

1 either by way of what's brought in the complaint or
2 by way of anything else that's been placed, all
3 right -- all right, in contention in reply to your
4 motion about jurisdiction. And it, all right, is
5 sufficient to establish jurisdiction. It says your
6 company was the supplier of Monsanto during the time
7 he worked.

8 MR. TRAYLOR: Well, I -- I hear Your Honor - excuse
9 me. And I would respectfully -- to at least assert
10 that we -- the -- an examination of those exhibits
11 is totally inconsistent with the assertions. And we
12 set forth in our brief -- our

13 THE COURT: I see --

14 MR. TRAYLOR: -- memorandum every one of them. And
15 in a -- and -- and what they actually do is support
16 our position that either there were no sales before
17 1968 to South Carolina, or there were -- and there
18 were no references to Monsanto before 1968 in any of
19 those exhibits, which were Exhibits 13 through 22.

20 So -- and -- and based on that, we believe that
21 the cause of action cannot arise from any alleged
22 contacts when there's no evidence to support any
23 contacts.

24 THE COURT: Okay. I understand you completely.

25 MR. TRAYLOR: Thank you, Your Honor.

1 THE COURT: All right. Ms. McVey.

2 MS. MCVEY: Yes, ma'am, Your Honor.

3 Your Honor, I'm gonna hand up just a couple of
4 exhibits, the exhibits we're talking about. And
5 I've highlighted for you -- first, let me make sure
6 the record is clear, that Atlas has refused to
7 engage in any discovery, either jurisdictional
8 discovery or anything else. So they get to say,
9 "You can't prove that we were here during the right
10 time periods, because we refuse to engage."

11 So what we did is we found out, guess what, of
12 course they were supplying to South Carolina. They
13 were supplying to Covil in South Carolina, a South
14 Carolina corporation, and they were supplying to Guy
15 M. Beaty, both of whom were Defendants in this case.

16 All right. So I'm going to hand you the first
17 thing, which is an Atlas list. It lists all their
18 customers; it starts in 1967. Now, it has Guy M.
19 Beaty and Covil listed on here. It says, "We don't
20 have any records prior to 1968." We don't know if
21 that's true or not, because they won't let us do the
22 discovery that we need to do, which I'm gonna ask
23 you to order them to do.

24 But I want to show you this customer list,
25 which is more than satisfies the Supreme Court

1 precedent in the Ford case, which says that, "Atlas
2 purposely availed themselves of this forum in South
3 Carolina." Mr. Welch is a South Carolina resident.
4 THE COURT: All right. But just for the record,
5 this is a schedule, "Following the customers in the
6 Southeast United States to whom Atlas sold asbestos
7 insulation. We have no record prior to 1968."
8 First on the list, "Guy M. Beaty, Chattanooga,
9 Tennessee and Charlotte, North Carolina." Well, I'm
10 very familiar with that company; they supply a lot
11 of South Carolina companies, including all things
12 we're talking about here, and the reference are '67
13 through '73, all right.
14 MR. TRAYLOR: Your Honor, may I ask --
15 THE COURT: Covil Corporations, Greenville, South
16 Carolina. Extremely, they were probably the biggest
17 insulator, all right, in South Carolina, and
18 insulated at all these plants we're talking about.
19 This is '68 through '73, all right, certainly
20 they're not going to be able to hide behind, "We --
21 we don't have any records." All right. Those are
22 sufficient in my view to establish, all right,
23 jurisdictional facts sufficient, all right, to deny
24 any motion to dismiss for lack of jurisdiction.
25 MS. MCVEY: Thank you, Your Honor. And -- and I

1 have, of course, more exhibits. I'm happy to hand
2 them up to you, actually on
3 asbestos -- Atlas Asbestos Company documents, its
4 sales records to Guy M. Beaty, February 23rd, 1967,
5 when clearly Mr. Welch --
6 THE COURT: All right.
7 MS. MCVEY: -- was working.
8 THE COURT: You want to hand that up?
9 MS. MCVEY: So I'll hand that up to you. I'm gonna
10 hand all of these to you. I don't know that you
11 need them all, but -- and these were all Mr. Traylor
12 (as spoken) exhibits that
13 were --
14 MR. TRAYLOR: Could you just tell me the exhibits?
15 I apologize, the ones -- you don't have the numbers?
16 MS. MCVEY: I -- I don't have the --
17 MR. TRAYLOR: Okay.
18 MS. MCVEY: -- numbers because I just pulled them,
19 but it's all the ones that were attached to our --
20 and I can --
21 THE COURT: (To Mr. Traylor) This is stuff that you
22 gave them, so --
23 MS. MCVEY: No. They haven't given us anything.
24 This is stuff --
25 THE COURT: Okay.

1 MS. MCVEY: -- that we found. Do you need to see
2 them?

3 THE COURT: Oh, this is stuff --

4 MR. TRAYLOR: I can give you the numbers --

5 THE COURT: -- you found otherwise?

6 MS. MCVEY: Yes, ma'am.

7 MR. TRAYLOR: -- if you just want the numbers.

8 MS. MCVEY: I -- I don't have them.

9 THE COURT: It doesn't have any numbers on it.

10 MR. TRAYLOR: Should be in the exhibits.

11 THE COURT: I'll take care of that, Mr. Traylor, but
12 it's certainly --

13 MR. TRAYLOR: Yes, ma'am.

14 THE COURT: -- is got "Atlas Asbestos Company" on
15 it, and "Guy M. Beaty, Charlotte, North Carolina,"
16 all right. And it's Newtherm, all right, it's FOB,
17 Montreal to Charlotte, and it's a Newtherm-type
18 covering, all right.

19 MS. MCVEY: And -- and, Your Honor, so the --

20 THE COURT: And it's got the blocks of it; we know
21 exactly what that is.

22 MS. MCVEY: And -- and just for the record, it's --

23 THE COURT: All right. I mean, this is plenty
24 sufficient. This is on your company's own billing
25 head. All right. What I'm gonna ask you is I'm

1 gonna give these back to you, all right, Ms. McVey.
2 You can show them to him, Mr. Traylor, and, all
3 right, then just put them all together and make
4 them, all right, Plaintiff's Exhibit 1, or I can
5 make them Court's exhibits.

6 MS. MCVEY: Your Honor, we'll do that. They were
7 attached to our motion, I believe --

8 THE COURT: Oh, okay.

9 MS. MCVEY: -- in response --

10 THE COURT: Well, if they were attached to the
11 motion --

12 MR. TRAYLOR: We've already got them.

13 THE COURT: -- he's already seen them.

14 MS. MCVEY: So he's seen them, I just didn't have
15 exhibit numbers on them, so that's my -- that's my
16 bad.

17 And -- and the other thing, just for the
18 record, is this Newtherm is proprietary to Atlas, so
19 when you say --

20 THE COURT: Exactly.

21 MS. MCVEY: -- "Newtherm," we know it's Atlas.

22 THE COURT: Okay.

23 MS. MCVEY: Your Honor --

24 THE COURT: It's under "and limited for a
25 proprietary to limited"?

1 MS. MCVEY: That's right.

2 THE COURT: All right.

3 MS. MCVEY: Your Honor, I'm happy to address the
4 summary judgment motion, or I didn't know if you
5 wanted to do jurisdiction and then we can move on to
6 --

7 THE COURT: Yeah. Let's go on to summary judgment,
8 as well.

9 MS. MCVEY: (To Mr. Traylor) Do -- did you argue --

10 THE COURT: All right. Yeah.

11 MS. MCVEY: -- summary judgment?

12 THE COURT: Mr. Traylor?

13 MR. TRAYLOR: Yes, Your Honor.

14 THE COURT: All right. If -- if you've seen those
15 and they're attached, then I will take them back.
16 No -- no sense in looking if
17 you --

18 MR. TRAYLOR: Oh, we don't have a copy of --

19 THE COURT: Oh, okay. No --

20 MR. TRAYLOR: Can I just address each one of them
21 with -- or how do you --

22 THE COURT: You know, Mr. Traylor, I -- we've got a
23 lot to do today.

24 MR. TRAYLOR: Right.

25 THE COURT: This is -- if you take a look at them,

1 they're your company's records. They're during the
2 time period we're talking about. They shipped to
3 Guy M. Beaty, which is a, all right --

4 MR. TRAYLOR: It's a North Carolina --

5 THE COURT: -- to Celanese, DuPont, all right, and
6 for Owens Corning.

7 MS. MCVEY: And Covil. And there's Covil documents
8 in there, as well.

9 THE COURT: And they're Covil documents in there,
10 too. They're -- and they're also suppliers to the
11 three companies we're talking about, so, all right,
12 you know --

13 MR. TRAYLOR: I'm just gonna address these briefly,
14 if that's all right.

15 THE COURT: It is not all right to go on and on
16 about it.

17 MR. TRAYLOR: I -- I --

18 THE COURT: If you've got some general comment to
19 make, you make it.

20 MR. TRAYLOR: You -- you want to look at these?

21 THE COURT: Yes, sir.

22 MR. TRAYLOR: I have two -- at least two comments.
23 First of all, sales to Guy M. Beaty are sales to a
24 North Carolina company, and they have nothing to do
25 with the Monsanto Plant. Sales to Covil are '68 or

1 later, which is exactly what we said, that there are
2 no records of sales to any South Carolina company
3 prior to 1968, and Mr. Welch is gone by 1967. The -
4 - the sales to --

5 THE COURT: Unh-unh. The -- the -- what you
6 supplied was something that said, "The following are
7 customers in the Southeast United States to whom
8 Atlas sold asbestos insulation. We have no records
9 prior to 1968." It didn't purport to, all right,
10 say anything confining it to South Carolina. You
11 said you don't have any records prior to 1968 for
12 the Southeast of the United States. That's what
13 this --

14 MR. TRAYLOR: Well, the affidavit says, "No sales --
15 no records of sales to companies in South Carolina
16 prior to 1968." That's in --

17 THE COURT: And what they're contending is this:
18 You supplied to a wholesaler or installer, all
19 right. Covil was both, who then supplied to these
20 South Carolina plants. That's what they're saying.

21 MR. TRAYLOR: Okay. And, Your Honor, there's no
22 evidence that there's any Atlas product at a
23 Monsanto Plant, at least prior to 1968.

24 I -- I . . .

25 THE COURT: Well, I -- I disagree with you based on

1 what has been submitted by Plaintiff, all right --
2 all right. And I just -- I've tried enough of these
3 asbestos cases to know about this supply chain
4 situation. So I know that there is at least some
5 evidence that would allow jurisdiction to be
6 asserted against your company.

7 MR. TRAYLOR: Okay. And, now, I thought we were
8 talking about the summary judgment, though, it may
9 be --

10 THE COURT: Well, let's talk about the summary
11 judgment.

12 MR. TRAYLOR: -- the summary judgment is the same
13 argument --

14 THE COURT: It's the same argument.

15 MR. TRAYLOR: -- Your Honor, and I don't -- and I --
16 I do not believe, and I'm 99 and three quarters
17 percent positive, that none of those records show
18 sales of any Atlas product to a company in South
19 Carolina prior to 1968, and Mr. Welch is gone by
20 then.

21 THE COURT: But, again, that's because you don't
22 have any records. But this is an indication that --
23 that these -- these columns -- and they actually
24 kind of, all right -- all right, not completely
25 consistent, because you say it's -- you don't have

1 anything prior to 1968, but some of these columns
2 show records from 1967 --

3 MR. TRAYLOR: And --

4 THE COURT: -- all right.

5 MR. TRAYLOR: -- the --

6 THE COURT: And, all right. So I don't know what
7 the status of your records is, but I think showing
8 the supply to these
9 particular -- particularly Beaty and Covil, which
10 were very active in South Carolina, all right, in
11 those years, all right, is at least, all right,
12 enough of an indication for the presence of this
13 equipment, because you sold this stuff way before
14 1968. It's just you don't have the sales records
15 for it.

16 MR. TRAYLOR: If you look at all of their records,
17 there's no -- the only 1967 record is to Beaty and -
18 -

19 THE COURT: Your objection is noted and your
20 arguments are noted.

21 MR. TRAYLOR: Thank you, Your Honor.

22 THE COURT: Very good. All right.

23 MS. MCVEY: And, Your Honor --

24 THE COURT: All right. Ms. McVey?

25 MS. MCVEY: -- and I -- I don't want to step on any

1 toes, but I need to make sure it's clear. They've
2 refused to give us any discovery, period. So we've
3 proven that they're in South Carolina at the -- the
4 places where our guy was working on our own.

5 We have a deposition scheduled tomorrow to get
6 further discovery, so my -- my hope is that the
7 Court is going to deny summary judgment based on
8 even the facts we've developed so far. Deny their
9 motion to dismiss for lack of personal jurisdiction,
10 and compel them to prepare a 30(b)(6) witness
11 tomorrow. That's what it's been noticed for.
12 They've -- they've known it's been noticed, and we
13 really to need get that deposition, because Welch
14 could be the first case up.

15 THE COURT: Exactly. That's why I'm growing
16 impatient about where we stand right now on this
17 thing. All right. All right. I will deny the
18 motion for summary judgment.

19 I will direct that the 30(b)(6) witness be
20 prepared sufficient to respond, all right, to time
21 periods prior to the records that they have been
22 able to, by other means, gather, and that the -- all
23 right -- and that -- all right -- Atlas Turner,
24 successor to Atlas Asbestos Company, also, be
25 compelled to produce records for the periods of time

1 that -- that they have been requested in discovery
2 for information prior to 1968.

3 MS. MCVEY: Thank you, Your Honor, and I -- I would
4 like to ask Mr. Traylor -- I fear that Atlas is not
5 going to show up tomorrow for their deposition.

6 THE COURT: I want to know right now what the
7 situation is on that?

8 MR. TRAYLOR: Your Honor, my client will not have a
9 witness available tomorrow or ever.

10 THE COURT: Well, all right, what do you plan to
11 about that? Were you --

12 MR. TRAYLOR: Well, I --

13 THE COURT: -- just not gonna prepare and hope that
14 you, all right, got summary judgment?

15 MR. TRAYLOR: Your Honor, I -- I'm just advising the
16 Court what the -- the client will -- will not --
17 will not have a witness available tomorrow.

18 MS. MCVEY: Will they have a witness available the
19 following week or the following month?

20 THE COURT: We --

21 MR. TRAYLOR: We don't --

22 THE COURT: -- this case is set for trial, Mr.
23 Traylor.

24 MR. TRAYLOR: I understand, Your Honor. This -- you
25 know, the -- the procedural history here was that we

1 filed a motion for a protective order early on. We
2 asked for a hearing and then, you know, we never got
3 a -- the -- the hearing was postponed, and then we
4 filed a -- a motion. The -- the deposition, if you
5 will, was withdrawn, and then it was refiled. We
6 stood on our motion for lack of personal
7 jurisdiction as part of the reason for not putting
8 up a witness, so we will not have a witness
9 available tomorrow, Your Honor. The client will not
10 present a --

11 THE COURT: When --

12 MR. TRAYLOR: -- witness.

13 THE COURT: -- when -- all right. The case is
14 scheduled for trial when Ms. McVey?

15 MS. MCVEY: Monday.

16 THE COURT: Monday?

17 MS. MCVEY: Yes, ma'am. It -- I'm just -
18 I -- what I'm -- I -- I would like Atlas to be
19 candid with this Court that I don't think they
20 intend to ever have a witness available, even if you
21 gave them more time, and so I just want to confirm
22 that.

23 MR. TRAYLOR: I -- I'm not in a position to confirm
24 or deny that. I'm in a position to say that I've
25 discussed with my client; my client advised us that

1 we will not have a witness tomorrow.

2 THE COURT: Well, I direct that you have a witness
3 Monday, all right, and, that that witness and you be
4 prepared to come here to the courthouse. I deny
5 your motion for summary judgment on the substantive
6 findings, as well as on jurisdictional findings, all
7 right?

8 And, Ms. McVey, prepare an order to that effect
9 as quickly as you can so that will be filed and in
10 the record.

11 All right. The consequence of not coming will
12 certainly mean that further action will be taken
13 with respect to, all right, their status in any
14 judgment entered against them.

15 MR. TRAYLOR: Your Honor, and -- and I, also, need
16 to advise the Court that we filed a motion to quash
17 the plaintiff's trial subpoena, which is set for
18 Monday.

19 MS. MCVEY: Just in brief response, of course, the
20 Jolly appellate decisions agree that Plaintiffs can,
21 of course, subpoena a trial defendant to trial to
22 appear. That's been affirmed in the Jolly case and
23 cert was denied on that issue in the Supreme Court.

24 THE COURT: Right.

25 MS. MCVEY: Your Honor, there's clear precedent they

1 would be in violation of a court order should they
2 decide not to attend.

3 THE COURT: Right. And I will deny the motion to
4 quash.

5 MR. TRAYLOR: And, Your Honor, we would respectfully
6 object to -- we believe that there's no personal
7 jurisdiction. It's fine. We understand, Your Honor,
8 for --

9 THE COURT: Right.

10 MR. TRAYLOR: -- and, also, Atlas is a -- a Canadian
11 company, and we don't believe they're subject to the
12 subpoena power of the Court.

13 THE COURT: All right. Well, the, all right, out-
14 of-country companies, all right, have been, required
15 if their product is put into the stream of commerce
16 and injures people in this country and in the State
17 of South Carolina, to respond to subpoenas, so I
18 don't agree with that analysis. And there are
19 several cases in the tort realm even issued by the
20 South Carolina Supreme Court that say that. So the
21 subpoena, all right, is not gonna be quashed, and
22 they're gonna be required to come and if they don't,
23 you need to be here, all right? And we will deal
24 with the consequences.

25 MS. MCVEY: Thank you, Your Honor.

1 MR. TRAYLOR: Thank you, Your Honor.

2 THE COURT: If the case, otherwise, resolves with
3 everyone else, all right, and we still have cases
4 ready to go to trial on Monday, you need to be here.

5 MR. TRAYLOR: I'm sorry?

6 THE COURT: If the other -- there are now --

7 MR. TRAYLOR: There are three other cases ahead of
8 us.

9 THE COURT: -- three other -- there's some other
10 cases.

11 MR. TRAYLOR: Right.

12 THE COURT: This one is the first one up; is it not?

13 MR. TRAYLOR: The last one up.

14 THE COURT: All right. Oh, this is Welch?

15 MR. TRAYLOR: Yes, ma'am.

16 THE COURT: Yeah. All right.

17 MS. MCVEY: And, Your Honor, I'll tell you that I
18 expect that this is gonna be the first -- the Welch
19 case.

20 THE COURT: That's what I expect, too.

21 MS. MCVEY: Right.

22 THE COURT: And so, all right, you need to be here
23 in all circumstances, unless you resolve the thing.

24 MR. TRAYLOR: Yes, Your Honor.

25 THE COURT: Okay. Welch -- all right, then -- all

1 right.

2 **SPIRAX SARCO'S MOTION FOR SUMMARY JUDGMENT**

3 THE COURT: Spirax Sarco's motion for summary
4 judgment. Ms. Techman?

5 MS. TECHMAN: Good morning, again, Your Honor.
6 Yesterday we did file a reply. I would like to hand
7 that up if that is acceptable to you.

8 THE COURT: Hang on for a minute. Just as in Welch?

9 MS. TECHMAN: Yes, Your Honor.

10 THE COURT: All right. Hang on a second. Okay. Go
11 ahead.

12 MS. TECHMAN: May I hand one to you, Your Honor? I
13 hate to make you dig.

14 THE COURT: I got it.

15 MS. TECHMAN: Okay.

16 THE COURT: I just want to use mine, because I've
17 got notes on it.

18 MS. TECHMAN: Okay. So you have the reply that was
19 filed yesterday?

20 THE COURT: (To the Law Clerk) You got it now?

21 MS. TECHMAN: May I give one to the --

22 THE COURT: Yeah. You can --

23 MS. TECHMAN: -- clerk?

24 THE COURT: -- give me that.

25 MS. TECHMAN: Thank you very much.

1 THE COURT: I got -- I've got it here some place.

2 MS. TECHMAN: I'm sure. I'm sure.

3 THE COURT: Okay. All right. Yeah. All right.

4 MS. TECHMAN: And I've -- I have handed one to Mr.
5 Holder and Ms. McVey, as well --

6 THE COURT: Very good.

7 MS. TECHMAN: -- there's one for them to share.

8 THE COURT: You may proceed.

9 MS. TECHMAN: Thank you very much, Your Honor.

10 Jennifer Techman for Spirax Sarco. I -- I know the
11 Court has read the papers and we are appreciative of
12 that; I will not read those to you. Your Honor,
13 I'll say that in this reply, we have pointed out
14 what is unique about this case. Mr. Welch, himself,
15 has affirmatively denied working on steam traps, and
16 he has affirmatively testified that he's never
17 worked in proximity to anyone else working on a
18 steam trap. Mr. Welch primarily, I believe, worked
19 with and around friction products as a mechanic.

20 The case as to Sarco concerns a --
21 appropriately a one-year time period when Mr. Welch
22 was at the Monsanto or the Chemstrand Plant in South
23 Carolina. And so the question before the Court is --
24 -- pardon me -- Was there an exposure attributable to
25 Sarco during his time at Monsanto? And, Your Honor,

1 there is no evidence of record that there was such
2 an exposure. We have the testimony of Mr. Welch,
3 himself, that he did not work on steam traps. He
4 did not work around anyone else working on steam
5 traps.

6 Plaintiffs direct the Court to some sales
7 records, and I'd like to briefly address those.
8 They indicate that things called "strainers" and
9 things called "drainers" were sold. Those are
10 stainless steel products. And unless the Court has
11 questions, I will yield the floor.

12 THE COURT: Okay. Very good. All right. Mr.
13 Holder?

14 MR. HOLDER: Thank you, Your Honor.

15 Jonathan Holder on behalf of the Welch family,
16 the plaintiffs. In response to Spirax Sarco's
17 motion for summary judgment, I would
18 -- again, this is another bystander exposure case.
19 He was a helper to instrumentation crew. This is
20 the same type of work that was testified about in
21 the Tommy Glenn trial where there would be a crew of
22 about four men; they're going along the line, doing
23 a lot of control valves and -- and those types of
24 things. He also stated that every day he was
25 working around all the other trades: electricians,

1 pipe fitters, insulators, welders.

2 Our position will be he would be inevitably
3 exposed to these steam traps being worked on by
4 being around these other workers on these lines
5 every day. But the product ID comes -- and, I
6 think, a very -- it was difficult to make this
7 product ID, based on their lack of records, but the
8 fact that we were able to, I thought was pretty
9 impressive. The -- and they don't have records
10 before the 1990s. They tell us that during the '60s
11 and '70s, 99 percent of their steam traps were sold
12 through distributors, so they wouldn't have direct
13 sales, anyway.

14 When we ask, "Okay. Well, what's the list of
15 distributors?" They couldn't give us the answer and
16 had no -- said there was no way they could find out
17 the distributors in the '70s and the '80s. One of
18 the sales records from the '90s -- or it was on a
19 spreadsheet, showed that the steam trap (as spoken)
20 that were sold to Monsanto in the '90s were from a
21 supplier, McJunkin; that is the name of the company.

22 We were able to locate through other documents
23 back from the '70s where there was a McJunkin
24 materials list where McJunkin was already supplying
25 Sarco strainers in the 1970s to the -- excuse me --

1 to the Monsanto Plant. We believe that this is, at
2 least, a scintilla of evidence that would show that
3 you've got the Sarco steam traps and strainers at
4 the premises at the time originally when Mr. Welch
5 is working as a helper for the instrumentation crew.
6 I know the time -- the timing is not absolutely
7 lined up, but we believe that it at least indicates
8 that through the evidence.

9 And, finally, we believe that that establishes
10 through the corporate testimony that there was a
11 possibility, more likely than not, that there was
12 some asbestos-containing parts associated with the
13 strainers that were provided.

14 THE COURT: Well, now, I understand what you say
15 with respect to Mr. Rattle (phonetic), the corporate
16 rep, about, all right, these traps and the fact that
17 some of them -- some of these steam traps did --
18 were asbestos-contained -- not the smaller, screwed
19 on ones that we talked about before. All right.
20 But what do you do with the fact that she contends
21 that Welch completely excluded Sarco from something
22 he worked on or worked around?

23 MR. HOLDER: I know that that is a -- a tough point,
24 and our only -- or our response to that is that he
25 couldn't have known what he was -- what he didn't

1 know, I guess. If you're down the line, even 20
2 feet, you may not -- and it's never your job to ever
3 work on a trap, you might not know that that's --
4 that there's a trap there being working on. And I
5 think that's kind of the -- the best that we can say
6 there is that --

7 THE COURT: Well --

8 MR. HOLDER: -- he just wouldn't have known, but
9 we're saying it's inevitable that he would have
10 known.

11 THE COURT: Well, that's not your best argument, all
12 right. Mr., all right, Holder, but here's what, all
13 right, Welch said.

14 And, again, it's -- Welch does not say, "I did
15 not ever work around Sarco stream -- steam traps. I
16 did not work around anyone who was working on," all
17 right, "the Sarco steam traps."

18 What Welch says is this, "Are you familiar with
19 what a steam trap is?"

20 "No."

21 All right. "As far as you know, you were never
22 in close proximity to anyone working on a steam
23 trap, fair?"

24 He says, "Fair."

25 It's all as far as he knows, all right. It's

1 not, "I never did."

2 "You cannot offer any testimony you were ever
3 exposed to asbestos from a steam trap?"

4 "No. I could not tell you."

5 That's what he says, right?

6 MR. HOLDER: Right. And he did -- right. And
7 that's what I meant why he didn't know what he
8 didn't know. And then we -- so we have to rely on
9 the places that he was working and the records --
10 what the records indicate. When we have a lack of
11 records we then have to show, "Well, okay. What's
12 the earliest we can find from the other records
13 showing that they were supplying to this plant," and
14 that's what we're doing.

15 THE COURT: And what's the earliest supply record
16 you have?

17 MR. HOLDER: We have that McJunkin material list in
18 the '70s, and he was there in '66 --

19 THE COURT: Okay.

20 MR. HOLDER: -- so . . .

21 THE COURT: Okay.

22 MR. HOLDER: On that, we will submit.

23 THE COURT: All right.

24 MR. HOLDER: Do you have any other specific
25 questions?

1 THE COURT: No. All right.

2 MR. HOLDER: Okay.

3 THE COURT: Any reply, Ms. Techman?

4 MS. TECHMAN: Your Honor, briefly. The McJunkin
5 record is at Plaintiff's opposition, Exhibit 7. I
6 have a copy of the -- if it's convenient for the
7 Court. You may not need it.

8 THE COURT: All right.

9 MS. TECHMAN: It specifically refers to "20 mesh S/S
10 screen, Sarco Type ST," that's a -- a stainless
11 steel strainer.

12 THE COURT: Right. But how about the testimony of
13 Rattle (phonetic)? That's your corporate rep.

14 MS. TECHMAN: Yes, Your Honor. Ms. -- my client has
15 records dating back to 1987, historical records.
16 They didn't have a need to have a litigation hold
17 prior to that time in connection with the
18 litigation. This Exhibit 6 is a result of my
19 client's search for what they do have in their sales
20 records. It's pretty darn small. I see we're all
21 wearing glasses. I think the earliest date here is
22 '92. From '92 onward, they did not have a gasket,
23 but they produced these in the spirit of cooperating
24 with discovery and full disclosure. There's no
25 indication that Mr. Welch worked in the '90s at a

1 place relevant to us, but we -- we're mindful of
2 your rulings, and we disclosed what we found, which
3 is in the '90s.

4 Separately, on the issue of distributors, the -
5 - my client has searched hundreds of current
6 distributors and thousands of past distributors.
7 Contacted them all, mindful of what this Court has
8 said about a party's obligation to investigate
9 records. Their products were, by and large, sold by
10 distributors, and they have investigated to look for
11 any records that some third party might have. They
12 have not located them, but I'm not surprised, and on
13 occasion, there is going to be a record like
14 something from McJunkin, who was a distributor.
15 This refers to a Sarco strainer.

16 THE COURT: Right. Okay. All right. This is a
17 close call. All right. So close that it might well
18 be that this is what gets presented, all right, in
19 the trial of this case. But I would grant a motion
20 for a directed verdict to close the plaintiff's
21 case, but I am going to say, all right, that summary
22 judgment is denied at this point. There is at least
23 a scintilla, and that's all they need to show right
24 now.

25 MS. TECHMAN: Thank you, Your Honor.

1 THE COURT: All right.

2 (Off the record from 10:41 a.m. until
3 11:56 a.m.)

4 THE COURT: This is "Melvin G. Welch against 3M,"
5 2022-CP-40-03834, all right. And I place upon the
6 record that I've just learned that Mr. Melvin Welch
7 has passed away. All right. And I had -- I have
8 previously directed, all right, that Atlas Asbestos,
9 all right, to produce its corporate representative
10 for a deposition this coming Monday per the subpoena
11 that had already been served on Atlas. I will
12 direct, renew my order that that be done even though
13 the case will be continued, all right, in order to
14 deal with the death of Mr. Welch and the appointment
15 of a personal representative and the amendment of
16 the pleadings.

17 The case will be placed on the June trial
18 roster, and, all right, the corporate representative
19 for Atlas will either appear per my order and
20 subpoena, all right, or appear within an agreed
21 period of time, not to exceed two weeks.

22 MR. MERIWETHER: Thank you, Your Honor. Might I
23 clarify, since I am fairly new to this fray, might I
24 clarify that when you are ordering them to appear,
25 so often, particularly for these international

1 depositions, appearances by Zoom. We're not talking
2 about having to march whatever corporate
3 representative we got -- if we got one. We're not
4 talking about marching them into the courthouse on
5 Monday. We're talking about putting them up on a
6 Zoom, either there or within two weeks --

7 THE COURT: No. We're --

8 MR. MERIWETHER: -- right?

9 THE COURT: -- talking about a personal appearance,
10 all right, somewhere, all right, it would generally
11 be Ms. McVey's office.

12 MS. MCVEY: But we'll work with you on the place,
13 but I would like to --

14 MR. MERIWETHER: Then --

15 MS. MCVEY: -- have it in person.

16 MR. MERIWETHER: -- that's why I needed to clarify.

17 MR. EARLY: Okay. I want to go to Canada.

18 MS. MCVEY: I -- let's go.

19 THE COURT: Okay.

20 MR. EARLY: Judge, we can -- just so we can set --
21 June is not, you know, our term. We'll have to work
22 out orders --

23 THE COURT: I just put in the back of the line.

24 MR. EARLY: That's fine. We're fine with that,
25 Judge.

1 MS. MCVEY: And -- and, Your Honor, I will -- just
2 so the record is clear, the Love, Davis, Lamb
3 (phonetic) cases are still on for trial on Monday, I
4 -- my hope is they will be resolved by tomorrow.

5 THE COURT: Okay. Very good.

6 MS. MCVEY: And I will let everybody know that.

7 THE COURT: Excellent. Excellent. Thank you so
8 much.

9 (Whereupon, the within hearing was
10 concluded at 12:01 p.m.)

11 (*This transcript may contain quoted material.
12 Such material is reproduced as read or quoted by the
13 speaker.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina on April 19th, 2023.

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



Amber J. Payne, CVR

Date: July 3, 2023

Notary public for South Carolina

My commission expires August 12, 2029

EXHIBIT 10

STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS

2022-CP-40-03834

MELVIN G. WELCH and)

DONNA B. WELCH,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

3M COMPANY)

ACCEL PERFORMANCE GROUP, LLC,)

ADVANCE AUTO PARTS, INC.,)

AMERICAN HONDA MOTOR CO., INC.)

ATLAS ASBESTOS CO,)

ATLAS TURNER, INC.,)

AUTOZONE, INC.,)

BAHNSON, INC.,)

BEATY INVESTMENTS, INC.,)

BELDEN INC.,)

BELDEN WIRE & CABLE COMPANY,)

BRIDGESTONE AMERICAS TIRE,)

OPERATIONS, LLC,)

CAROLINA TOOL COMPANY,)

COPELAND CORPORATION, LLC,)

COVIL CORPORATION,)

DANIEL INTERNATIONAL)

CORPORATION, DAVIS MECHANICAL)

CONTRACTORS, INC.,)

DCO, LLC, EATON CORPORATION)

ELLINGTON INSULATION COMPANY,)

INC., FISHER CONTROLS)

INTERNATIONAL, LLC,)

FLUOR CONSTRUCTORS,)

INTERNATIONAL,)

FLUOR CONSTRUCTORS)

INTERNATIONAL, INC.,)

FLUOR DANIEL SERVICES)

CORPORATION, FLUOR)

ENTERPRISES, INC.,)

FORD MOTOR COMPANY,)

GENERAL ELECTRIC COMPANY,)

GENERAL PARTS, INC.,)

GENUINE PARTS COMPANY,)

GOODRICH CORPORATION,)

THE GOODYEAR TIRE & RUBBER)

COMPANY, GRAYBAR ELECTRIC)

COMPANY, INC., HEAT & FROST)

INSULATION COMPANY, INC.,)
HENNESSY INDUSTRIES, LLC,)
HONEYWELL INTERNATIONAL, INC.)
INDUSTRIAL HOLDINGS)
CORPORATION JOHNSON CONTROLS,)
INC., MERITOR, INC.,)
METROPOLITAN LIFE INSURANCE)
COMPANY, MORSE TEC, LLC,)
MW CUSTOM PAPERS, LLC,)
OCCIDENTAL CHEMICAL)
CORPORATION, O'REILLY AUTO)
ENTERPRISES, LLC,)
O'REILLY AUTOMOTIVE STORES,)
INC., PARAMOUNT GLOBAL,)
PFIZER, INC., PHARMACIA, LLC,)
PIEDMONT INSULATION, INC.,)
PNEUMO ABEX, LLC,)
REDCO CORPORATION, RILEY)
POWER, INC., ROCKWELL)
AUTOMATION, INC.,)
RUST ENGINEERING &)
CONSTRUCTION, INC.,)
RUST INTERNATIONAL, INC.,)
SAINT-GOBAIN ABRASIVES, INC.,)
SCHNEIDER ELECTRIC USA, INC.,)
SOUTHERN INSULATION, INC.,)
SPIRAX SARCO, INC.,)
UNION CARBIDE CORPORATION,)
VISTRA INTERMEDIATE COMPANY,)
LLC,)
WESTROCK MWV, LLC,)
WIND UP, LTD.,)
ZF ACTIVE SAFETY US, INC,)
DEFENDANTS,)

May 4, 2023
Columbia, South Carolina

BEFORE:

THE HONORABLE JEAN TOAL, JUDGE.

APPEARANCES:

THEILE MCVEY, ESQ.
Attorney for the Plaintiffs

DAVID TRAYLOR, ESQ.
WILLIAM WOOD, ESQ.
ROBERT MERIWETHER, ESQ.
Attorneys for the Defendants Atlas Turner

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: This morning we have the matter of Melvin
2 G. Welch and Donna Welch against 3M. This is
3 2022-CP-40-03834.

4 All right. This morning is a status conference on
5 the status of defendant Atlas Turner, Inc., and certain
6 hearings were held with respect to motions for summary
7 judgment with respect to Atlas and issues regarding its
8 cooperation with the procedure and its presence in this
9 case.

10 Mr. Meriwether and Mr. Traylor are here on behalf of
11 Atlas, and Ms. McVey is here on behalf of the Welch
12 family. So Ms. McVey, I'm going to give it to you.

13 MS. MCVEY: Thank you, Your Honor. I'm going to talk
14 loud, but if you need me to talk louder because of that
15 noise, let me know.

16 Judge, you accurately recited the history. Just by
17 way of further background, you recall that you heard both
18 Atlas' motion to dismiss for lack of personal jurisdiction
19 and a motion for summary judgment, as well as our motion
20 to compel.

21 You denied both of Atlas' motions and granted our
22 motion to compel. What Atlas had decided was that they
23 did not believe there was personal jurisdiction despite
24 sales of asbestos products in South Carolina. You -- so
25 they refused to participate in discovery.

1 After you denied their motion to dismiss and motion
2 for summary judgment and granted our motion to compel, you
3 ordered them to produce a witness for a 30(b)(6)
4 deposition. That notice had been pending for some time on
5 the Monday following that trial.

6 We offered to even give them an additional two weeks
7 to produce a witness, if they were going to produce that
8 witness. Mr. -- I've been communicating with both
9 Mr. Traylor and Mr. Meriwether, and let me be clear that I
10 do not believe that Atlas' failure to produce a witness is
11 in any way to do with these lawyers.

12 THE COURT: I agree with that and so find on the
13 record. Mr. Traylor and Mr. Meriwether have -- their firm
14 has been engaged to represent this client, and they have
15 deciduously tried to communicate with them about this
16 matter and their presence.

17 MS. MCVEY: But, Your Honor, my understanding -- and
18 I'm sure Mr. Traylor and Mr. Meriwether can clarify is
19 that Atlas is going to refuse to participate in any
20 discovery either deposition or written discovery, and Your
21 Honor, they are going to and have defied your order.

22 Parties to litigation just cannot do that. It's not
23 the way our system is set up, and you can imagine the
24 chaos that would ensue if every defendant behaved like
25 Atlas is currently behaving.

1 Your Honor, at this point because of the multiple
2 violations of your order, we would ask that you hold them
3 in contempt, Atlas, of course, not these lawyers. I would
4 like to submit proposed orders to you outlining what we
5 would like. That may include striking an answer. It may
6 include striking an answer and appointing a receiver.

7 We would like to figure out what assets they have.
8 We would like to a damages hearing. I want to be able to
9 brief it to you and make sure we are asking for
10 appropriate things, but the purpose of the status
11 conference today, of course, is to really figure out are
12 they going to comply with your order. I don't think they
13 are. They certainly have not yet.

14 They are already in violation of your order, Your
15 Honor. So we would ask that a contempt finding be made
16 against Atlas Asbestos Corporation and Atlas Turner for
17 their refusal to engage in this lawsuit.

18 THE COURT: All right. Thank you, Ms. McVey.

19 Mr. Traylor? Mr. Traylor.

20 MR. TRAYLOR: Yes.

21 THE COURT: Both you and I have hearing deficits and
22 both wear hearing aids. I am well aware of that, so be
23 very sure that we are communicating because my sympathies
24 lie completely with you. We both have the same issues, so
25 be sure that we're all communicating such that you have

1 complete information about what's being said.

2 MR. TRAYLOR: Thank you, Your Honor. David Traylor
3 on behalf of Atlas Turner, Inc. on behalf of itself and
4 Atlas Asbestos Company.

5 Your Honor, I appreciate your sympathy with my
6 hearing aids. I'm still getting used to them. It's like
7 an echo for me. I don't know whether I'm talking too loud
8 or talking too softly.

9 THE COURT: Well, if it's any comfort to you, I --
10 because of too much penicillin as a child with head
11 infections which attacked the 8th cranial nerve have been
12 wearing hearing aids since my 30s, and I am now 79.

13 I am deeply sympathetic, but the technology has
14 gotten way better than it was when I first started wearing
15 hearing aids when it was just one piece of chewing gum in
16 one ear which didn't do much of anything except amplifying
17 everything, but you just be sure that everything goes
18 according to your understanding in this hearing and have
19 my complete cooperation in that.

20 MR. TRAYLOR: Thank you, Your Honor.

21 I want to, I guess, start by saying, you know, I am
22 always willing to communicate with the client to see if --
23 you know, what they can do.

24 As far as -- I need to state that they do feel
25 strongly about their jurisdictional motion, and also they

1 are a corporation in Quebec, Canada. They have to balance
2 the law in Canada in Quebec and the American discovery
3 rules and that and I understand. I would ask at least the
4 Court consider the fact that they are subject to the
5 Quebec Business Concerns Records Act.

6 As far as the motions and what the plaintiffs end up
7 filing, I just -- I'm not sure. And maybe I didn't hear
8 it properly, but I don't remember that the plaintiffs
9 filed a motion to compel. I'll just cite that for the
10 record, and you know, what I can say is that I am willing
11 to continue to communicate with the client.

12 I would like opportunities to respond or at least
13 have written motions at some point that we can respond to,
14 and I would also make one point. I just -- from a point
15 of personal request or note, I guess on the record -- or I
16 hate to put it on the record, but I do have a vacation
17 where I'm supposed to take my wife to Florida to visit her
18 mother who is 97 years old for Mothers Day. I'm leaving
19 on May 12th and coming back on the 19th.

20 I would respectfully request that, you know, before
21 any motions are filed that I be given an opportunity for
22 that. I just -- and I understand -- you know, I'll have
23 to deal with what I have to deal either way. Other than
24 that, I think I'll just rely on the prior filings that we
25 have made, Your Honor.

1 THE COURT: All right. Well, let me first say this.
2 This case is scheduled for trial when, Ms. McVey?

3 MS. MCVEY: In August, the August block.

4 THE COURT: This case is scheduled for trial in
5 August, and the deadlines we're hitting now are the
6 ordinary deadlines pursuant to Judge Gary Hill's old
7 order.

8 We filed asbestos litigation -- as you are very well
9 aware because you're experienced in this area for years.
10 I have ruled that their jurisdictional argument does not
11 prevail, and therefore, they are within the jurisdiction
12 of this court.

13 They have had a long business history of selling
14 asbestos products in this country that have found their
15 way into every state of the union. This is not an
16 inexperienced company at all. It's a very experienced
17 company that depends heavily on the American market for
18 the sale of their products.

19 I can't conceive that they have been permitted in
20 every state of the union that had very similar
21 jurisdictional rules to the rules of South Carolina to
22 simply say we're not going to cooperate with your court
23 process because we're a Quebec corporation. That simply
24 is not an adequate excuse for their failure to cooperate.

25 They haven't filed anything other than their

1 jurisdictional motion, but the discovery issues have been
2 ongoing. They have been noticed for a good long time that
3 the deposition of their corporate representative needed to
4 be taken.

5 They can't just not respond to that and say hey
6 because I've got a motion pending about jurisdiction, I'm
7 not going to cooperate with discovery. That's not how our
8 system works, and they have not cooperated in any way with
9 discovery.

10 So now we come up to a point where we move in the
11 process of our deadlines pretrial for trying these types
12 of complicated cases to a point where their corporate rep,
13 they have refused to tender their corporate representative
14 for a deposition. That can't -- I can't allow that to
15 happen.

16 This is a pending case. It hasn't been dismissed as
17 to them. Their jurisdictional matter has been determined,
18 and they must cooperate. It's just that simple.

19 Now, certainly, I will give you protection for
20 May 12th through the 19th, but I will simply say to you it
21 comes very late in the process to suddenly interpose that
22 on Atlas' behalf when they have asked you to convey to me
23 today that they are not going to cooperate. That's what I
24 hear you saying.

25 MR. TRAYLOR: Your Honor --

1 THE COURT: And, you know, you've gotten
2 Mr. Meriwether as your co-counsel. You're fully able to
3 handle these matters, so that's the dilemma I find myself
4 in, Mr. Traylor. If you have any response to that, I
5 would love to hear it.

6 MR. TRAYLOR: Well, I would at least -- I would
7 appreciate the opportunity, and I believe we would be
8 entitled to make -- if the plaintiffs file various
9 motions, we would be entitled to have appropriate time to
10 respond, you know.

11 THE COURT: Which motion are you talking about?

12 MR. TRAYLOR: Well, I guess it really just depends on
13 what motions they file.

14 THE COURT: Well, right now what they've asked me to
15 do is to hold you all in contempt because I ordered the
16 taking of the corporate reps deposition the Monday after
17 we had that hearing and they did not comply with that.

18 In fact, I was sent word that they were not going to
19 comply with that; that they were not going to tender a
20 corporate rep, not then or at any other time that was
21 suggested because Ms. McVey suggested in open court it
22 could be Monday or it could be at some other time that was
23 mutually agreeable.

24 As what I understand she is saying today is that you
25 all are not authorized -- it's not your fault, but you

1 were not authorized by the client to agree to any date
2 because they take the position they are not subject to the
3 jurisdiction of this court, but they are subject to the
4 jurisdiction of this court. I've made that determination.

5 So now we're dealing first with what to do with their
6 failure and their affirmative refusal to tender the
7 corporate representative, and I'm asked today to find that
8 that conduct is in contempt of my order, which it
9 certainly is, and Ms. McVey says upon the finding of
10 contempt, she will then file a motion for sanctions which
11 is yet to be filed. But she was giving you a preview for
12 what she would intend to put in a motion for sanctions,
13 and that would include such things as summary judgment.
14 That would also include such things as striking the
15 answer. That would also include such things as appointing
16 a state receiver.

17 I have granted that kind of relief in a lot of
18 different cases, some involving defendants who are
19 incorporated in South Carolina and some involving
20 defendants who are not incorporated in South Carolina but
21 who have done business in South Carolina, put into the
22 stream of commerce materials that are used in South
23 Carolina. And on that basis, we have jurisdiction here.
24 That's what I've determined.

25 Now, you're not -- you do not need to respond today

1 to any of that. She was just out of courtesy giving the
2 Court and you a preview of what she would intend to put in
3 what will be a filed motion for sanctions.

4 When that motion is filed, she will --I will then
5 hopefully receive a response in the normal time from you,
6 and then I'll schedule it for a hearing.

7 I want to consider that at the earliest possible time
8 because this case is scheduled for August, and I want to
9 get these things ironed out one way or another. Even if
10 it means appointing a receiver, but that's to be
11 determined. That's a long way of saying that today you do
12 not have to respond because she has not made the motion
13 for sanctions.

14 Today she has only said, "Judge, we have a situation
15 where you've ordered something. They have now
16 affirmatively defied that order, and I am asking that they
17 be found in contempt of that order with a motion for
18 sanction to follow."

19 MR. TRAYLOR: Judge, I guess the only thing I would
20 ask the Court to at least consider -- I know in the Lyons
21 case where Judge Anderson dealt with a similar matter --

22 THE COURT: Give me the citation for that please,
23 sir.

24 MR. TRAYLOR: Yes, Your Honor. It's 119 F.R.D. 384
25 1988, and Judge Anderson at least -- it's noted that

1 consideration of foreign law should be considered in
2 dealing with sanctions.

3 THE COURT: Well, there's no question for what
4 foreign law could be considered. Thus far, I have not
5 been supplied with anything that tells me -- I am looking
6 at all of your materials that have been filed that gives
7 me any information about the Lyons case or anything else
8 to do with all you say in here is they're a Quebec
9 corporation. They take the position that Quebec law
10 controls, and they don't have to follow American law or
11 South Carolina law.

12 I have not been cited with anything out of Quebec law
13 or South Carolina law that tells me what that's based on.
14 Judge Anderson could only have said that foreign law could
15 be considered, I'm sure, but that would be on the basis of
16 the citation of specific law to control the issue. I've
17 not been provided with anything like that in this case.

18 MR. TRAYLOR: Well, Your Honor, we filed a motion for
19 a protective order.

20 THE COURT: I've got all of that right here.

21 MR. TRAYLOR: And it includes all of the case law
22 from Canada, and it includes a reference to the Lyons case
23 and other similar cases.

24 THE COURT: Right.

25 MR. TRAYLOR: But we did -- you know, I would

1 respectfully note that we did include that in our motion
2 for protective order.

3 THE COURT: I note that but, you know, this motion
4 for a protective order is -- I mean, what -- you've got a
5 motion to dismiss and a motion for summary judgment, and I
6 suppose those pieces of law if they're applicable at all
7 would be applicable to those motions.

8 But I don't understand how a protective order is
9 supposed to -- by citing Quebec law is supposed to render
10 the jurisdiction of South Carolina with respect to
11 products put in the stream of commerce to South Carolina
12 by your client and used in South Carolina, allegedly, to
13 the injury of a party in this lawsuit, I don't understand
14 how Quebec law affects the jurisdiction of this court over
15 Atlas to consider that matter.

16 MR. TRAYLOR: All I would say, Judge, is you said we
17 didn't cite to you any cases --

18 THE COURT: You cited to cases that talk about what
19 their status is, but you don't cite to any cases that say
20 because of that Quebec law South Carolina does not have
21 jurisdiction over this corporation for products put into
22 the stream of commerce for the State of South Carolina and
23 used in South Carolina to the injury of the party.

24 I see this stuff. I read all this stuff. I've got
25 notes all over this, but nothing in that law pertains to

1 what we're talking about which is that -- it's simply
2 argued if you're a Quebec corporation, you're not subject
3 to any law in South Carolina, pretends that what happens
4 when the product leaves your hands is not something that
5 subjects you to any jurisdiction in the state. We know
6 that's not true. That's completely contrary to our
7 products liability law around the country.

8 MR. TRAYLOR: Your Honor, the only thing I can say in
9 response to that is, you know, we included the citations
10 from Canada to support that.

11 THE COURT: I agree and if I said to the contrary,
12 then I misstated. I accept that, but looking at that law,
13 it does not address what happens when a product is sold to
14 South Carolina, shipped to South Carolina and used in
15 South Carolina to the injury of a party.

16 MR. TRAYLOR: Well, I would just rely on the
17 briefs --

18 THE COURT: All right, sir.

19 MR. TRAYLOR: -- on that.

20 THE COURT: All right. Before I leave then, is that
21 all you want to offer at this time?

22 MR. TRAYLOR: At this point that is, Your Honor.

23 THE COURT: All right. Mr. Meriwether, anything from
24 you at this point?

25 MR. MERRIWEATHER: No, Your Honor. Thank you for the

1 opportunity.

2 THE COURT: All right. Ms. McVey, anything in reply?

3 MS. MCVEY: Your Honor, just very briefly, I do want
4 to address the Lyons case because it stands for the exact
5 opposite proposition of what Atlas is saying. Judge
6 Anderson, you know, your esteemed colleague in the federal
7 bench, wrote in 1998 when addressing the Quebec Records
8 Act, and I quote, "A United States Court has the power to
9 order any party within its jurisdiction to testify or
10 produce documents regardless of a foreign sovereign's
11 views to the contrary."

12 Of course, that makes perfect sense. You have denied
13 their motion for a protective order. You have found they
14 are, in fact, subject to personal jurisdiction in this
15 case they exposed -- or potentially exclude evidence, and
16 they exposed Mr. Welch to their asbestos-containing
17 product, asbestos insulation product.

18 Judge, they cannot just blow off this Court's order,
19 and that's exactly what they're doing. They should be
20 found in contempt because you have jurisdiction. You have
21 ordered them to comply with discovery, and they have
22 absolutely refused to do it. That is by definition
23 contempt.

24 And so, Your Honor, we would ask for a finding of
25 contempt today and allow me -- I can make it this week a

1 motion for sanctions. It's Thursday. Next week, a motion
2 for sanctions and outline what we would be asking for in
3 that motion.

4 THE COURT: All right. Anything further?

5 MR. TRAYLOR: Nothing, Your Honor.

6 THE COURT: All right. I find that Atlas Turner,
7 Inc., Defendant in the Welch vs. 3M and many others
8 lawsuit is in contempt of my order upon the hearing of
9 this matter of Atlas to provide its corporate
10 representative for deposition.

11 What I understand the position to be of defendant is
12 that they do not have to respond to South Carolina courts
13 with respect to this matter because we have no
14 jurisdiction over them.

15 The averments of the complaint are that Atlas Turner
16 placed into the stream of commerce asbestos insulation and
17 that asbestos insulation was used in South Carolina and
18 that the plaintiffs' clients were injured by that product.

19 On that basis, I denied the motion for protection and
20 the motion to dismiss filed by Atlas and required that
21 their corporate representative be subject to a deposition.

22 I take from what Mr. Traylor has indicated in his
23 presentation on behalf of Atlas that Atlas takes the
24 position that they are not required to respond to any
25 orders of this court because of their status as a Quebec

1 corporation.

2 To the extent that the Lyons case, a 1988 District
3 Court Judge Joe Anderson which involved a Quebec
4 corporation, to the extent that defendant cites that case,
5 that case specifically stands for the proposition that
6 notwithstanding the Quebec Records Act, defendants in
7 lawsuits upon -- in South Carolina, be they a Quebec
8 corporation, are required to respond to discovery and
9 records request from South Carolina courts. Therefore, I
10 will await Ms. McVey's further filings with respect to a
11 motion for sanctions with regard to the contemptuous
12 conduct of Atlas.

13 Anything further?

14 MS. MCVEY: No, ma'am, Your Honor, thank you.

15 THE COURT: Ms. McVey, if you feel the need to put
16 anything further by way of any proposed order on the
17 contempt finding, please do so at the earliest possible
18 time.

19 Mr. Traylor, when you receive that communication, you
20 will have three business days to respond, and then I will
21 deal with that motion and that order.

22 Ms. McVey will then file -- or she may file -- the
23 order has been made now. It simply may be further
24 elaborated in a written order for everybody's convenience
25 including defendants, as well as plaintiffs.

1 Ms. McVey will file the motion for sanctions, and you
2 will have the normal number of days to respond to the
3 motion that she files.

4 I will protect you from any appearance on the matter
5 from May 12th through the 19th and will otherwise select a
6 date for a hearing on that motion at the earliest possible
7 time.

8 Anything further?

9 MS. MCVEY: Not from the plaintiff, Your Honor.
10 Thank you.

11 THE COURT: Thank you so much. I believe that
12 concludes it.

13 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 4th day of May,
2023.

May 4, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

EXHIBIT 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	
	)	CASE NO.: 2019-CP-25-00111
Renee S. Beach, as Personal Representative of	)	
the Estate of Mallory Beach,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	ORDER GRANTING
Gregory M. Parker, Inc. a/k/a Parker's	)	TEMPORARY INJUNCTION
Corporation d/b/a Parkers 55, Richard	)	AND
Alexander Murdaugh, and Richard Alexander	)	APPOINTING CO-RECEIVERS AND
Murdaugh, Jr.,	)	CO-RECEIVERS' COUNSEL
	)	
Defendants.	)	
_____	)	

Before the Court is Plaintiff's motion for a temporary injunction pursuant to Rule 65, SCRCF and the appointment of co-receivers John T. Lay, Jr., Esquire and Peter M. McCoy, Jr., Esquire ("the Co-Receivers") and their counsel, Amy L.B. Hill, Esquire of the law firm Gallivan, White & Boyd, P.A. ("Co-Receivers' Counsel"), pursuant to S.C. Code §15-65-10, the Court's equitable powers, and general principles of fraud and deceit under South Carolina law. Plaintiff's request for injunctive relief and appointment of the Co-Receivers and their counsel is made in regard to all of the Alex Murdaugh Assets, as that term is defined herein, and all of the Buster Murdaugh Assets, as defined herein. Plaintiff seeks an expedited ruling on this Motion, which this Court finds is appropriate given the circumstances.

The term "Alex Murdaugh Assets" as used in this Order shall mean all assets, future interests, beneficial interests, inherited assets, assets transferred, real property, securities, stocks, promissory notes, mortgages, partnership interests, interest in all limited liability companies and similar types of entities, options, bonds, rents, leases, annuities, contract rights, creditor rights,

easements, chattel, livestock, mineral rights, all useful things, liabilities capable of being re-characterized as assets, intellectual property, all rights to name, image or likeness, all publication rights to the events related in any way to Alex Murdaugh and contract rights and all other things, rights and interests without limitation that may be monetized for value, whether known or unknown, whether it is presently owned, held or controlled or was previously owned, held or controlled or will be owned, held or controlled in the future, whether actual or contingent, whether owned, held or controlled directly or indirectly and/or whether owned, held or controlled in whole or in part by Defendant Richard Alexander Murdaugh (“Alex Murdaugh”). For the avoidance of doubt, the term “Alex Murdaugh Assets” includes any and all assets transferred, concealed, hidden, sold, encumbered, or otherwise disposed of which previously were owned, held or controlled by Alex Murdaugh, directly or indirectly and in whole or in part.

The term “Buster Murdaugh Assets” as used in this Order shall mean any or all of the Alex Murdaugh Assets (as defined herein), as well as all intellectual property, all rights to name, image or likeness and all other publication and contract rights to the events related in any way to Alex Murdaugh and/or Buster Murdaugh, whether known or unknown, whether it is presently owned, held or controlled or was previously owned, held or controlled or will be owned, held or controlled in the future, whether actual or contingent, whether owned, held or controlled directly or indirectly and/or whether owned, held or controlled in whole or in part by Defendant Richard Alexander Murdaugh, Jr. (“Buster Murdaugh”) and all other assets, interests, real property including any and all rents, profits or value derived therefrom, personal property, rights, chattel and any other thing whatsoever without limitation which has value or can be monetized for value that were or will be gifted, inherited by, sold or in any other manner transferred to Buster Murdaugh from Alex Murdaugh or any other person, whether such transfer was direct or indirect, whether such transfer

involved intermediary third persons that are alive, deceased, operating or defunct, and whether such transferred assets are held, owned and/or controlled by Buster Murdaugh directly or indirectly and in whole or in part.

Temporary Injunction Granted

After careful consideration of the parties' written memoranda and arguments presented at the hearing, this Court finds that irreparable injury, loss or damage will result to Plaintiff in the absence of a temporary injunction prohibiting each of Defendant Alex Murdaugh and Defendant Buster Murdaugh from hiding, concealing, misappropriating, selling, encumbering, transferring, impairing the value of and otherwise disposing of any of the Alex Murdaugh Assets and any of the Buster Murdaugh Assets. Further, after careful consideration of all information presented to the Court, the Court finds that the balance of equities clearly weighs in favor of issuing a temporary injunction to prevent irreparable injury, damage or loss to Plaintiff's ability to recover damages from these Defendants for the wrongful death of her daughter. Therefore, this Court hereby issues a temporary injunction prohibiting each of Alex Murdaugh and Buster Murdaugh from hiding, concealing, misappropriating, selling, encumbering, transferring, impairing the value of and otherwise disposing of any of the Alex Murdaugh Assets and any of the Buster Murdaugh Assets, in whole or in part, during the pendency and through the final resolution of this lawsuit.

Appointment of Co-Receivers and Counsel; Scope and Terms of Receivership

After careful consideration of all information and arguments presented by the parties, this Court finds that Plaintiff's application to appoint the Co-Receivers is meritorious under the S.C. Code §15-65-10, the Court's equitable powers, and general principles of fraud and deceit under South Carolina law. Therefore, the Court hereby appoints Mr. Lay and Mr. McCoy as Co-Receivers over all Alex Murdaugh Assets and all Buster Murdaugh Assets and grants them the

broad rights, powers and authority as set forth in this Order. In addition, the Court hereby appoints Amy L.B. Hill, Esquire of Gallivan, White & Boyd, P.A. as counsel for the Co-Receivers in this matter, as further set forth herein.

The Court hereby grants, vests, imbues and otherwise empowers the Co-Receivers with the exclusive power and authority as to all of the Alex Murdaugh Assets and all of the Buster Murdaugh Assets (collectively, “the Subject Assets”), with the exclusive power and authority: (i) to investigate, identify and attempt to locate all of the Subject Assets; (ii) to collect, marshal and administer all of the Subject Assets; (iii) to accept service on behalf of Alex Murdaugh and/or Buster Murdaugh with respect to Alex Murdaugh Assets and/or Buster Murdaugh Assets, as the case may be; (iv) to engage counsel on behalf of Alex Murdaugh and/or Buster Murdaugh as it relates to Alex Murdaugh Assets and/or Buster Murdaugh Assets, as the case may be; and (v) to take any and all steps necessary to identify, recover, protect, collect, preserve, receive, manage, liquidate, sell, administer and marshal, and to do all things incidental, necessary and/or appropriate thereto, all of the Subject Assets during the pendency and final resolution of this lawsuit.

The Court’s granting of rights, power and authority by this Order is intended to be as broad as possible for the Co-Receivers to manage and decide all matters related in any way to the Subject Assets, to the express exclusion of any other person(s), except as expressly retained by this Court herein or that the Court is otherwise required to retain under applicable rules or law. In that regard, the Court expressly invalidates all powers of attorney or other grants of authority by Alex Murdaugh to Buster Murdaugh or any other person to act in any capacity with respect to the Subject Assets.

Without limiting any other provision of this Order, the broad rights, powers and authority granted by this Order are inclusive of, but not limited to, the right, power and authority to act in

the following ways with respect to Alex Murdaugh's and Buster Murdaugh's interests in the Subject Assets, taking into consideration the cost benefit analysis and economic viability of performing the following acts, respectively: (a) collect all accounts receivable and all rents from any tenant of any Subject Asset; (b) change locks to all premises at which any of Alex Murdaugh Assets or any of Buster Murdaugh Assets are situated in order to secure Subject Assets; (c) open any mail addressed to any business or professional entity owned solely or in part by Alex Murdaugh or Buster Murdaugh with the exception that Co-Receivers will not open any mail associated with legal clients or legal cases handled by Alex Murdaugh; (d) redirect the delivery of any mail addressed to Alex Murdaugh or to any of his businesses or professional endeavors or to Buster Murdaugh as it may reasonably relate to Buster Murdaugh Assets, so that such mail may come directly to either Co-Receiver; (e) endorse and cash all checks and negotiable instruments payable to Alex Murdaugh, except paychecks for current wages; (f) endorse and cash all checks and negotiable instruments payable to Buster Murdaugh which may relate to the Subject Assets; (f) hire a real estate broker to sell any and all real property and interests in land which constitute an Alex Murdaugh Asset or an Buster Murdaugh Asset; (g) hire any person or company to move and store any and all physical or tangible Subject Assets; (h) insure any Subject Assets (but not the obligation to do so); (i) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau, brokerage firm, custodian, investment adviser or any other third party, all financial records, bank statements, wire transfer records, checks and other financial documentation belonging or pertaining to Alex Murdaugh or concerning any Subject Asset of Alex Murdaugh or Buster Murdaugh; (j) obtain from any landlord, building owner or building manager where his or his business is a tenant, copies of the subject lease, lease application, credit application, payment history and copies of Alex Muraugh's and Buster Murdaugh's checks, wire

transfer records, Venmo records or other records of payment related to any such lease; (k) hire any person or company necessary or appropriate to accomplish any right or power under this Order; (l) direct the liquidation, sale or transfer of any or all the Subject Assets; (m) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any of the Subject Assets may be situated, and to review and obtain copies of all documents related to the same; (n) obtain copies of all tax records, financial records and any other documents and information provided to a certified public accountant (CPA) by Alex Murdaugh, Buster Murdaugh and/or concerning any of the Subject Assets; (o) obtain all tax returns and any other documents associated therewith filed or submitted by Alex Murdaugh, individually or jointly with another person, and by Buster Murdaugh with all local, state and federal governments; (p) attempt to identify all Alex Murdaugh Assets already transferred by him to another person, including but not limited to the Buster Murdaugh Assets, and recover possession, custody, control and title to such assets for potential administration; (q) sign on behalf of Alex Murdaugh or Buster Murdaugh, as applicable, any and all documents related to the identification, collection, administration and disposition of any or all of Alex Murdaugh Assets and/or Buster Murdaugh Assets; (r) partition property owned by any group of persons which includes Alex Murdaugh or constitutes an Alex Murdaugh Asset and/or constitutes a Buster Murdaugh Asset; (s) institute, prosecute, compromise or defend civil suits and actions at law or equity related to any Alex Murdaugh Asset and/or to any Buster Murdaugh Asset in order to preserve such asset if such action is economically feasible considering the value of such Subject Asset; (t) pay from the Subject Assets all brokers, contractors, accountants, servants, administrators, representatives, process servers, consultants and attorneys considered by the Co-Receivers to be necessary or advisable in order for them to take the actions permitted and responsibilities under this Order; and

(u) take whatever other actions the Co-Receivers determine is incidental to, necessary or appropriate to protect and preserve Alex Murdaugh Assets and Buster Murdaugh Assets.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Co-Receivers to reasonably investigate the existence of all insurance coverages potentially available to Alex Murdaugh and Buster Murdaugh in receivership, including as an "additional insured" under coverage for another person.

The Court further orders that, as the Receiver Court, Alex Murdaugh and Buster Murdaugh, respectively, may not be sued in a civil matter outside this Court without obtaining the Co-Receivers' consent or an order of this Court prior to doing so. Likewise, Co-Receivers and Co-Receivers' Counsel may not be sued in their respective receivership capacities in a civil matter outside of this Court without obtaining the Co-Receivers' consent and/or the Co-Receivers' Counsel's consent, as the case may be, or an order of this Court prior to doing so.

The rights, powers and authority granted herein are in addition to, and not in lieu of, all powers vested in the Co-Receivers by applicable law or rule of the Court. The Co-Receivers shall be responsible only to the Court for the performance of the responsibilities as Co-Receivers. The Co-Receivers shall file reports with the Court only upon request of the Court or of a party to this action. The Co-Receivers and Co-Receivers' Counsel, as designated below, shall each serve without bond.

The Court further orders and hereby appoints Amy L.B. Hill, Esquire, of the law firm Gallivan, White & Boyd, P.A. to serve as counsel to the Co-Receivers in all matters associated with the Co-Receivers' duties, responsibilities, rights, powers and authority granted to them through this Order and any additional duties, rights, responsibilities, rights, power and authority vested in them under South Carolina law in regard to this matter.

This Court authorizes the Co-Receivers to, and expects that the Co-Receivers will, determine between them what, if any, division of actions they will permit to be undertaken by one of them and by Co-Receivers' Counsel. The Court does not require or expect that each and every action be undertaken by both Co-Receivers. The Co-Receivers may authorize or otherwise empower Co-Receivers' Counsel to do all things incidental to, necessary or appropriate to the duties, responsibilities, rights, power and authority granted to the Co-Receivers through this Order and any additional duties, rights, responsibilities, rights, power and authority vested in them under South Carolina law.

No bond was offered by Alex Murdaugh or Buster prior to entry of this Order; however, the Court will entertain a future request for bond by Alex Murdaugh or Buster in an amount commensurate with the gravity of the allegations against each Alex and Buster, the facts of this case, potentially aggravating circumstances, and similar verdicts awarded in comparable cases in the county in which this matter is pending.

The rights, powers, and authority granted or created herein are effective immediately and shall remain effective until the final resolution of this litigation, including all appeals, or until a subsequent order of this Court terminating the same upon a showing of just cause or other applicable standard under South Carolina law.

AND IT IS SO ORDERED this ____ day of _____ 2021.

Daniel D. Hall, Circuit Court Judge



Hampton Common Pleas

Case Caption: Renee S. Beach , plaintiff, et al VS Gregory M. Parker, Inc. ,
defendant, et al
Case Number: 2019CP2500111
Type: Order/Appointment of Receiver

So Ordered

s/Daniel D. Hall 2753

EXHIBIT 12

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS

RENEE S. BEACH, as Personal Representative
of the Estate of MALLORY BEACH,

Case No. 2019-CP-25-00111

Plaintiff,

vs.

GREGORY M. PARKER, INC., a/k/a
PARKER'S CORPORATION, d/b/a PARKERS
55; RICHARD ALEXANDER MURDAUGH;
and RICHARD ALEXANDER MURDAUGH,
JR.,

**MURDAUGH DEFENDANTS'
RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION AND
APPOINTMENT OF CO-RECEIVERS
AND CO-RECEIVERS' COUNSEL**

Defendants.

Defendants Richard Alexander Murdaugh ("Alex Murdaugh") and Richard Alexander Murdaugh, Jr. ("Buster Murdaugh") (collectively, "Murdaugh Defendants") by and through their undersigned attorneys, hereby submit a Response in Opposition to Plaintiff's Motion for Preliminary Injunction and Appointment of Co-Receivers and Co-Receivers' Counsel.

I. Plaintiff has failed to establish it is entitled to the drastic remedy of a preliminary injunction under South Carolina Law.

Simply put, Plaintiff's motion for a preliminary injunction improperly seeks a drastic equitable remedy to preserve potential recovery on legal claims.

Under South Carolina law, "[f]or a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law." *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905,

907-908 (2004). The party seeking a temporary injunction has the burden of demonstrating facts and circumstances satisfying each of these elements. *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

A preliminary injunction remedy is a drastic one and ought to be applied with caution. *Id.* (citing *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950)). If there is a failure by the movant to establish *even one* of these three elements, a request for a temporary injunction must be denied. *Shapemasters Golf Course Bldrs., Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 477–78, 602 S.E.2d 83, 85-86 (2004) (emphasis added) (affirming Circuit Court’s denial of a restraining order where the Appellant could not show irreparable harm); *Scratch Golf Co.*, 361 S.C. 121-122, 603 S.E.2d at 907-908 (reversing Master in Equity’s issuance of a preliminary injunction, because the Plaintiff had another available remedy at law).

A. Plaintiff has not shown she would suffer irreparable harm if the injunction is not granted.

Under the first required element, the harm necessary to justify issuance of a preliminary injunction must be irreparable. The United States Supreme Court has explained:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974).

Here, Plaintiff argues that an injunction will “prevent irreparable damage to Plaintiff’s ability to recover financial damages from these Defendants.”¹ However, Plaintiff’s claim for irreparable harm is speculative and unsupported. As explained below, Plaintiff has not established she will likely be entitled to a monetary judgment against the Murdaugh Defendants that will not

¹ Plaintiff’s Motion for Preliminary Injunction and Appointment of Co-Receivers, p. 2.

be satisfied. The court should also consider the offset that would apply to Plaintiff's potential judgment from prior settlement monies already paid to Plaintiff in the subject action as well as insurance coverage available to be pursued as to the Murdaugh Defendants and Defendant Parker's. Further, as expounded below, Plaintiff has an adequate remedy at law. *Sampson*, 415 U.S. at 90 ("The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."). Thus, Plaintiff has not carried its burden to show it will suffer irreparable harm.

B. Plaintiff is unlikely to succeed on the merits against the Murdaugh Defendants.

"A trial court may consider a case's merit to the extent necessary to determine whether a temporary injunction should issue." *Curtis v. State*, 345 S.C. 557, 577, 549 S.E.2d 591, 601 (2001). "[W]hile a judge [ruling on a Motion for temporary injunction] cannot finally decide anything as to the merits, [the judge] can and ought to look into the merits whether they present issues of law or of fact, and consider them to the extent necessary to enable him to exercise his discretion wisely." *Transcontinental Gas Pipeline Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969). In examining the merits, this Court may consider any legal or factual issues subsumed within the matter on which the movant is seeking a temporary injunction. *E.g.*, *Curtis*, 345 S.C. at 577, 549 S.E.2d at 601 (holding that, in ruling on temporary injunction, trial court properly considered constitutionality of statute because plaintiff's claim raised the issue of constitutionality).

Here, Plaintiff has failed to even address this required showing in her Motion. A review of Plaintiff's Complaint and the specific allegations against the Murdaugh Defendants is necessary. Plaintiff has alleged:

As to Defendant Richard Alexander Murdaugh

- u. In knowingly and willfully allowing his minor son, under the age of twenty-one (21), to use Richard Alexander Murdaugh, Jr.'s drivers license to purchase and consume alcohol;
- v. In failing to supervise his son when he knew or should have known that the minor was using another's license to purchase and consume alcohol; and
- w. In such other and further particulars as the evidence in trial may show;

As to Defendant Richard Alexander Murdaugh, Jr.

- x. In knowingly and willfully providing his minor brother, under the age of twenty-one (21), with his driver's license for the purpose of purchasing and consuming alcohol by minors, including his brother;
- y. In knowingly and willfully allowing his minor brother, under the age of twenty-one (21), to use his driver's license for the purpose of purchasing and consuming alcohol by minors, including his brother; and
- z. In such other and further particulars as the evidence in trial may show;

Plaintiff essentially alleges Alex Murdaugh was negligent in (1) allowing his nineteen-year-old son to use Buster Murdaugh's driver license to purchase and consume alcohol and (2) in failing to supervise his nineteen-year-old son. Plaintiff has not carried its burden to show it will likely succeed on his claim for negligent parenting of his nineteen-year-old son.

Further, Plaintiff has not shown she will likely succeed on her claim against Buster Murdaugh for negligence in allegedly providing Paul Murdaugh with his driver's license. Even assuming for purposes of this Motion only, Buster Murdaugh did provide his driver's license to Paul Murdaugh in Columbia, SC, Plaintiff has not shown she will likely meet the elements to establish negligence, including the elements of duty, foreseeability, and proximate cause.

Because the Court has no competent evidence before it of irreparable harm or Plaintiffs' likelihood of success on their claims, Plaintiff's Motion should be denied.

C. Plaintiff has an adequate remedy at law.

Just like the first two elements, Plaintiff's Motion also fails to establish there is an inadequate remedy at law, which the Plaintiff has the burden of establishing. In observance that a preliminary injunction is "a drastic remedy," *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 907, "courts should issue injunctions with caution and only where no adequate remedy exists at law." *Strategic Res. Co.*, 367 S.C. at 545, 627 S.E.2d at 689.

The case *Scratch Golf Company v. Dunes West Residential Golf Properties, Inc.* is instructive. 361 S.C. 117, 119, 603 S.E.2d 905, 906 (2004). In *Scratch Golf*, the plaintiff golf course moved for a preliminary injunction to have the defendant developer place \$4.5 million into an escrow account to provide for a pool that a judgment could be collected from.² *Id.* The Master in Equity granted the motion for a preliminary injunction and ordered the developer's money be put in escrow. *Id.* Ultimately, the South Carolina Supreme Court reversed the trial court and found that the statutory remedy of attachment was available to the plaintiff golf course. *Id.* The plaintiff golf course owner argued an injunction was appropriate because it would suffer irreparable harm having no adequate legal remedy to recover a potential judgment because the developer would move its assets. *Id.* at 122. The *Scratch Golf* Court cited the attachment statute S.C. Code Ann. §15-19-10 and supporting case law to conclude that attachment was the proper remedy to freeze another's assets for the purpose of satisfying a potential judgment. *Id.* The South Carolina Supreme Court explained:

This argument that Scratch Golf asserted—that once it receives a money judgment from its contract and tort action, it may have difficulty *collecting* from the Developer because the Developer may "take its assets and run" out of the state—is not proper justification for why a preliminary injunction should be issued but rather is justification for the statutory remedy of attachment. S.C. Code Ann. § 15–19–10 (2003)[.]

² In that case, Plaintiff submitted evidence of the amount of the potential recoverable damages.

Id., 361 S.C. at 122, 603 S.E.2d at 908.

Scratch Golf is directly on point. Here, Plaintiff has an adequate remedy at law under the attachment statute as *Scratch Golf* explained. The statutory remedy of attachment permits the court “to take a defendants property into legal custody so that it may be applied to the plaintiff’s debt, when established.” *John Deere Plow Co. of St. Louis v. L.D. Jennings, Inc.*, 203 S.C. 426, 27 S.E.2d 571, 572 (1943); S.C. Code Ann. § 15-19-10 (2004). In other words, “[t]he purpose of attachment generally is to take a defendant’s property into legal custody so that it may be applied to the plaintiff’s debt when established.” 7 C.J.S. Attachment § 8.

The case *Grosshuesch v. Cramer* is instructive to explain when a preliminary injunction is appropriate. 367 S.C. 1, 5, 623 S.E.2d 833, 835 (2005). In that case, the South Carolina Supreme Court explained the reasoning in *Scratch Golf* was not applicable because *Grosshuesch* was “an equitable action in which the assets sought to be preserved, specifically \$2 million worth of accounts, monies, and personal property, are the subject of the instant dispute.” *Grosshuesch*, 367 S.C. 1, 5, 623 S.E.2d at 835 (emphasis added). The South Carolina Supreme Court’s comparison of *Scratch Golf* is illustrative:

In *Scratch Golf*, a golf course sued a developer alleging breach of contract and negligence in designing the golf course’s irrigation system. 361 S.C. at 120, 603 S.E.2d at 907. The golf course moved for a preliminary injunction freezing the developer’s assets so there would be a pool of assets out of which any judgment for the golf course could be satisfied. *Id.* The trial court granted the golf course’s request and ordered a large amount of money put in escrow. *Id.* This Court reversed, finding that the golf course’s arguments in favor of an injunction were really justifications for the statutory remedy of attachment. *Id.* at 122, 603 S.E.2d at 908. The golf course argued for an injunction on the grounds that the golf course would suffer irreparable harm having no adequate legal remedy to recover the potential judgment against the developer because the developer would move its assets elsewhere. *Id.* The Court drew guidance from the attachment statute, S.C. Code Ann. § 15–19–10 (2003), and case law, and concluded that attachment was the proper remedy when seeking to freeze

another's assets for the purpose of satisfying a potential judgment. *Scratch Golf*, 361 S.C. at 122–23, 603 S.E.2d at 908.

The trial court incorrectly applied *Scratch Golf* to the instant case. *Scratch Golf* was an action at law, and the attachment issue dealt only with preserving another's assets for satisfaction of a potential judgment. This case is an equitable action in which the assets sought to be preserved, specifically \$2 million worth of accounts, monies, and personal property, are the subject of the instant dispute. As distinguished from attachment, by which the court takes jurisdiction over the defendant's property “as a security for such judgment as a plaintiff may recover,” § 15–19–10, this case involves the quintessential hallmark of an injunction: preservation of the property at issue until the matter has been adjudicated.

Grosshuesch, 367 S.C. at 4–6, 623 S.E.2d at 835 (emphasis added).

Unlike *Grosshuesch*, here, the Murdaugh Defendants’ assets *are not the subject of the lawsuit*. Plaintiff has brought a wrongful death lawsuit arising out of a boating accident and asserted claims for negligence. Thus, this is not the situation where the subject property of the lawsuit would be preserved by issuance of a preliminary injunction. See for example, *Mailsource, LLC v. M.A. Bailey & Assoc.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003) (“‘A temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.’”).

Because Plaintiff has failed to establish there is no adequate remedy at law, the drastic remedy of a preliminary injunction should not be granted.

II. Further, Plaintiff is not entitled to the appointment of a receiver pursuant to S.C. Code Ann. § 15-65-10.

Under South Carolina law, the appointment of a receiver is not permitted in this case. The law is clear a receiver may be appointed by a judge of the circuit court, either in or out of court:

(1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action **and** which is in the possession of an adverse party **and** the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when

judgment upon failure to answer may be had without application to the court[.]

S.C. Code Ann. § 15-65-10 (emphasis added).

In other words:

A receiver may be appointed pre-judgment upon application to the court by either party to a contested action so long as four conditions are met. The applicant must show: (1) an apparent right to property; which is (2) the subject of the action; (3) in the possession of an adverse party; and (4) in danger of being lost, materially injured, or impaired.

21 S.C. Jur. Receivers § 4.

The South Carolina Supreme Court has recently discussed the circumstances under which a receiver may be appointed:

“[T]he appointment of a receiver is within the discretion of the circuit judge.” *Midlands Util., Inc. v. S.C. Dep’t of Health & Env’tl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) (citing *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964)). **“The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.”** *Id.* (citing *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957)). “[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887) (internal quotation marks and citation omitted).

Richland Cty. v. South Carolina Dep’t of Revenue, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (emphasis added).

Stated simply, Plaintiff has *no apparent right to property which is the subject of this action*.

This is a wrongful death case arising out of a boat crash and not an action relating to the Murdaugh Defendants’ property or assets. Again, a review of Plaintiff’s allegations against the Murdaugh Defendants is telling:

As to Defendant Richard Alexander Murdaugh

- u. In knowingly and willfully allowing his minor son, under the age of twenty-one (21), to use Richard Alexander Murdaugh, Jr.'s drivers license to purchase and consume alcohol;
- v. In failing to supervise his son when he knew or should have known that the minor was using another's license to purchase and consume alcohol; and
- w. In such other and further particulars as the evidence in trial may show;

As to Defendant Richard Alexander Murdaugh, Jr.

- x. In knowingly and willfully providing his minor brother, under the age of twenty-one (21), with his driver's license for the purpose of purchasing and consuming alcohol by minors, including his brother;
- y. In knowingly and willfully allowing his minor brother, under the age of twenty-one (21), to use his driver's license for the purpose of purchasing and consuming alcohol by minors, including his brother; and
- z. In such other and further particulars as the evidence in trial may show;

Stated another way, this is an action for money damages in a wrongful death case and *not an action to recover property*. A review of South Carolina case law applying the receiver statute prejudgment further illustrates appointment of a receiver in this case is not permitted.

In *Andrick Development Corporation v. Maccaro*, the South Carolina Court of Appeals determined the statutory criteria were satisfied to appoint a receiver. 280 S.C. 103, 104, 311 S.E.2d 95, 96 (Ct. App. 1984). In that case, vendors of a condominium brought an ejectment action against the purchasers in possession of the property. *Id.* The defendants appealed “from an order of the circuit court **appointing a receiver to take possession of a disputed piece of real estate** and collect the rents and profits during the pendency of litigation.” *Id.* (emphasis added). In affirming the appointment of the receiver, the court explained that Section 15–65–10 “authorizes appointment of a receiver before judgment **where the property which is the subject matter of the action** is in the possession of the adverse party, where the **party making application for a**

receiver establishes an apparent right to the property, and where the property, or its rents and profits, are in danger of being lost or materially injured or impaired.” *Id.*, 280 S.C. at 106, 311 S.E.2d at 97 (emphasis added). The *Andrick* Court applied the receiver statute and reasoned:

The statutory criteria were satisfied in this case. The [defendants] were admittedly in possession of the property. As the holder of title to the property, [the plaintiff] had an apparent right to the rents and profits. *Greenwood Loan & Guarantee Association v. Childs*, 67 S.C. 251, 45 S.E. 167 (1903). As the circuit court observed, the [defendants] had no apparent right to take control of the property and collect the rents and profits over [the plaintiff’s] objection. Finally, there was a likelihood that the rents and profits would be dissipated or the property materially impaired. The [defendants] refused to account to [the plaintiff] for the rents received. There was no assurance that regime fees, taxes, and other maintenance charges on the condominium would be paid during the pendency of the litigation. In the circumstances it was reasonable and equitable to place the property under a receiver until the matter of rents and profits was resolved.

Andrick Dev. Corp. v. Maccaro, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (Ct. App. 1984).

Andrick provides an example of when a receiver is properly appointed. The facts of *Andrick* are factually distinguishable from this case so the reasoning has no application. In this case, the Murdaugh Defendants’ property is *not the subject* of the Plaintiff’s lawsuit and Plaintiff is not a holder of title to the Murdaugh Defendants’ property.

By way of another example, in *Kirven v. Lawrence*, the defendants successfully moved for the appointment of receiver in an action where the plaintiffs sought to recover farm land from the defendants. *Kirven v. Lawrence*, 244 S.C. 572, 576, 137 S.E.2d 764, 765 (1964). In that case, the plaintiffs were the widow and grandchildren of the deceased grantee and sought to recover farm land. *Id.* There was an appointment of receiver of land claimed by the plaintiffs when the plaintiffs were not in possession of the land subject of the lawsuit. *Id.* On appeal, the South Carolina Supreme Court determined that until there had been a final determination of all issues at the trial, the right to possession of the disputed property remained in the defendants, and as they apparently did not

have possession when they applied for the appointment of the receiver, the trial judge properly appointed the receiver under his discretion. *Id.* 244 S.C. at, 580, 137 S.E.2d at 768.

In *Kirven*, similar to *Andrick*, a receiver was properly appointed prejudgment when the party had a right to possess the property which was the *subject of the action*. In contrast, in this case, the Murdaugh Defendants' property is *not the subject* of the Plaintiff's lawsuit and Plaintiff is not a holder of title to the Murdaugh Defendants' property.

Plaintiff baselessly concludes: "Plaintiff clearly has, at a minimum an apparent right to the Subject Assets in this wrongful death action."³ Yet Plaintiff does not set forth how the statutory requirements are met and does not even address the requirement that the property must be the *subject* of the pending lawsuit. Under Plaintiff's suggested approach, nearly every tort plaintiff suing a defendant in a personal injury or wrongful death case could request and obtain an appointment of a receiver over defendants' property in anticipation of a future judgment. This unprecedented result would greatly interfere with a person's legal right to possess and hold title to unencumbered property. Of note, Plaintiff has not provided any case law in support of his approach and the Murdaugh Defendants are not aware of any South Carolina courts applying Plaintiff's approach.

Therefore, the prejudgment appointment of a receiver is not permitted under the statute because Plaintiff does not have "an apparent right to property which is the subject of the action."

CONCLUSION

Plaintiff has failed to meet the requirements for a preliminary injunction pursuant to SCRCP Rule 65, including showing it would suffer an irreparable harm, demonstrating it would prevail on the merits, and providing no other adequate remedies exist. Therefore, the Murdaugh

³ Plaintiff's Motion for Injunction and Appointment of Co-Receivers, p. 11.

Defendants respectfully request the Court deny Plaintiff's Motion because a preliminary injunction should not be granted if Plaintiff has failed to establish just *one* of the three required elements.

Further, prejudgment appointment of a receiver is not permitted under South Carolina Code Ann. § 15-65-10 because Plaintiff does not have "an apparent right to property which is the subject of the action" as clearly required by the statute. Therefore, the Murdaugh Defendants also respectfully request the Court deny Plaintiff's Motion because a receiver is not appropriate.

Respectfully submitted,

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October 28, 2021
 Charleston, South Carolina

EXHIBIT 13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
LENORA CHILDERS , Individually and as	)	C/A NO. 2021-CP-40-03484
Personal Representatives of the Estate of	)	
LEWIS C. CHILDERS ,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
Plaintiff,	)	Coordinated Docket
	)	
v.	)	
	)	<u>ORDER</u>
DAVIS MECHANICAL	)	
CONTRACTORS, INC. , et al.	)	
	)	
Defendants.	)	

CAME ON _____, 2021, to be heard the Plaintiff's Motion to Appoint a Receiver Over Payne & Keller Company, pursuant to S.C. Code §15-65-10(4). This Court finds that the application is meritorious under the applicable statute because Payne & Keller Company ("Payne & Keller") dissolved and Payne & Keller, a Texas Corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiff requests for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Payne & Keller, accept service on behalf of Payne & Keller, engage counsel on behalf of Payne & Keller and take any and all steps necessary to protect the interests of Payne & Keller whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Payne & Keller as well as any claims related to the actions or failure to act of Payne & Keller's insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers 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 the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Payne & Keller Insulation, Inc. may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT SO ORDERED this ____ day of _____ 2021.

Jean Hoefer Toal, Chief Justice of the Supreme Court of
South Carolina (Retired), acting as Circuit Court Judge



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al
Case Number: 2021CP4003484
Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

EXHIBIT 14

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joan H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-000727

Lenora Childers, Individually and as Personal Representative of the
Estate of Lewis C. Childers, ... Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories, Inc.;
General Boiler Casing Company, Inc.; HEFCO, Inc.; J.R. Dean
Company, Inc.; Payne & Keller Company; SFB, Incorporated;
Stafford Insulation Company; Standard Insulation Company of
N.C., Inc.; Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-
Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., ... Defendants,

Flame Refractories, Inc., United Construction Co. of Rome, Inc.,
Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe &
Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co.,
Payne & Keller Company, and PBI QSF, LLC, By and Through
Their Duly Appointed Receiver Peter D. Protopapas, ... Third-Party
Plaintiffs,

v.

Zurich American Insurance Company (Individually and as
Successor to Northern Insurance Company of New York, Maryland
American General Insurance Company, and Maryland Casualty
Company); Allstate Insurance Company; John Tighe; Sean
Anthony Beatty; Dennis William Cahill; Catherine Ann Carlino;
Andre Lefebvre; David Dean Shumway; Gil Chandler, Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel
Robert Keddie; Julie Ann Fortune; Michael John Crall; James
Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.;
Arrowpoint Capital Corp.; Admiral Insurance Company;
Continental Insurance Company (Individually and as Successor in
interest to Harbor Insurance Company); Hartford Accident and

Indemnity Company, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd's of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, L.L.C., Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party
Defendants,

of which

Payne & Keller Company, by and through its Receiver Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company f/k/a Stonewall Insurance Company, individually and as successor in interest to Stonewall Surplus Lines Insurance Company; Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company; and Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company are the Appellants.

APPELLANTS' EMERGENCY MOTION TO CLARIFY AND ENFORCE RULE 205

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Birmingham Fire Insurance
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PA; Berkshire Hathaway Specialty
Insurance Company, formerly known
as Stonewall Insurance Company;
and The Continental Insurance
Company, individually and as
successor in interest to Harbor
Insurance Company.

INTRODUCTION

The circuit court appointed Respondent Peter D. Protopapas as the Receiver of Payne & Keller Company (“Payne & Keller”), a former Texas corporation whose existence was terminated by the state of Texas more than 30 years ago. Based on Payne & Keller’s terminated status, which has never been challenged and which has precluded the company from being sued since 1989, Appellant Travelers Casualty and Surety Company (“Travelers”) filed a motion to dissolve the Payne & Keller Receivership established by the South Carolina circuit court, because given the inability of anyone to sue Payne & Keller, continuation of the Receivership is unnecessary and improper.¹

The circuit court denied Appellants’ motion to dissolve the Receivership in an order dated March 30, 2023. The circuit court rejected Appellants’ argument that Texas’s statute of repose for claims against terminated Texas corporations like Payne & Keller precludes claims by or against Payne & Keller more than three years after the date of its dissolution, *i.e.*, 1989, thereby rendering the Receivership pointless and requiring its dissolution. Over Appellants’ objections, the circuit court held that the Receiver had made a prima facie showing that Payne & Keller was terminated as a result of fraud or constructive fraud under a new Texas law, Section 11.153(a) of the Texas Business Organizations Code, such that Texas’s three-year statute of repose does not apply to Payne & Keller. The court also rejected Appellants’ argument that applying Section 11.153(a) would violate the Texas Constitution, as it specifically forbids the retroactive application of the

¹ Appellants AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company, formerly known as Stonewall Insurance Company; and The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company (hereinafter collectively referred to as “Other Insurers,” collectively with Travelers as “Appellants”) joined Travelers’ motion to dissolve.

new statute. The circuit court's order also suggests that a South Carolina state court somehow has the power to revoke the termination of a foreign corporation and reinstate its corporate existence in another state as if the dissolution never happened.

Appellants have appealed the circuit court's order, and this Court has confirmed, on two separate occasions, that the appeal shall proceed. Thus, this Court has squarely before it the various issues raised by Appellants, including whether Texas's statute of repose applies to preclude claims by or against Payne & Keller. Per Rule 205, SCACR, this Court's jurisdiction over the issues on appeal is exclusive—the circuit court is divested of jurisdiction over all matters affected by the appeal, including issues regarding Payne & Keller's supposedly fraudulent termination and the application of Texas's statute of repose.

Unfortunately, after this Court confirmed that it was moving forward with the appeal, the circuit court issued an order on October 5, 2023, that expressly addresses and relies on its own view of the issues on appeal. Specifically, the circuit court's October 5, 2023 order states that Payne & Keller's Texas termination was improper and must be revoked because "Payne & Keller committed, at a minimum, constructive fraud when dissolving and thus revocation of the termination of Payne & Keller pursuant to Section 11.153 of the Texas Business Organizations Code is appropriate." The order relies on arguments copied-and-pasted from the Receiver's opposition to Travelers' motion to dissolve the Receivership. It purports to affirmatively revoke Payne & Keller's termination and to reinstate its corporate existence in Texas.

The circuit court issued its October 5, 2023 order revoking Payne & Keller's termination with the clear awareness that its order addressed and decided issues that were no longer within its jurisdiction. In briefing and at oral argument, Travelers and other parties made clear to the circuit court that per Rule 205, SCACR, these issues are exclusively before this Court, *i.e.*, the order

addressed and decided matters affected by this appeal and, as such, the circuit court is divested of jurisdiction over them. The circuit court effectively conceded this point during hearings in July and August 2023, acknowledging its lack of jurisdiction. Yet the circuit court abandoned that position without warning and issued an order that directly addresses and decides matters that are already within the exclusive jurisdiction of this Court.

To make matters worse, Appellants learned today, October 23, 2023, that the Receiver, without notice to any other party, provided the Texas Secretary of State with a copy of the circuit court's October 5, 2023 order, and asked her to enforce the order and formally revoke Payne & Keller's corporate termination. The Texas Secretary of State apparently issued a "Certificate of Revocation of Dissolution" on October 12, 2023, which the Receiver provided to the circuit court and Appellants for the first time earlier today. These subsequent actions stemming from the circuit court's order further impair one of Payne & Keller's and Appellants' main defenses regarding Payne & Keller's dissolution status and the applicability of Texas's statute of repose—issues that have been on appeal to this Court and are within this Court's exclusive jurisdiction since April 28, 2023, when Appellants filed their notices of appeal.

Appellants do not make this motion lightly. But because the circuit court has chosen to intrude on this Court's exclusive jurisdiction, and the Receiver has taken follow-up actions that further interfere with key issues on appeal, Appellants respectfully move for an emergency order from this Court that enforces Rule 205, SCACR, and enjoins the circuit court and the Receiver from any further efforts to proceed with matters affected by this appeal. Appellants also request that the current deadlines in this appeal be held in abeyance pending resolution of this motion, because if the circuit court's October 5, 2023 order is effective, and the Texas Secretary of State's

October 12, 2023 “Certificate of Revocation” is viewed as controlling despite the circumstances under which it was obtained, it will materially change critical issues in this appeal.

PROCEDURAL BACKGROUND

Ms. Childers Sues Payne & Keller in South Carolina Circuit Court

Payne & Keller is a former Texas corporation that dissolved in 1986 and was terminated by law in 1989. (App. Vol. I 1-5, Dissolution Papers for Frentex Enterprises Company of Texas, f/k/a Payne & Keller Company (Nov. 25, 1986).) Despite its terminated status, on July 14, 2021, the underlying plaintiff in this case, Lenora Childers, commenced an asbestos personal injury case against Payne & Keller and various other defunct companies in South Carolina circuit court. (App. Vol. I 6-44, Compl. dated July 14, 2021, in *Childers v. Davis Mechanical Contractors, Inc.*, Case No. 2021-CP-40-03484.) The apparent purpose of suing only defunct companies was to create a series of unlawful nationwide receiverships.

Ms. Childers Requests and the Circuit Court Appoints a Receiver Over Payne & Keller

On August 23, 2021, Ms. Childers filed a motion asking the circuit court to appoint Peter Protopapas as Payne & Keller’s Receiver, even though Payne & Keller was terminated as a corporation more than 30 years ago and has no property in South Carolina. (App. Vol. I 45-47, Mot. to Appoint dated Aug. 23, 2021.) Four days later, on August 27, 2021—without any notice to Appellants—the circuit court granted Ms. Childers’ motion and appointed Mr. Protopapas as the Receiver for Payne & Keller despite the fact that that company no longer exists. (App. Vol. I 48-51, Order Appointing Receiver dated Aug. 27, 2021.) The circuit court did so without any hearing.² The Receiver, ostensibly acting on behalf of Payne & Keller, a terminated company

² Ms. Childers voluntarily dismissed one of the other nine named defendants. She filed motions seeking the appointment of Mr. Protopapas as a receiver over each of the other eight remaining defendants. The circuit court granted all of these motions without a hearing.

that cannot sue or be sued, subsequently filed an improper third-party insurance coverage complaint against Appellants and other alleged historical insurers of Payne & Keller. (App. Vol. I 52-135, Second Am. Third-Party Compl. dated July 14, 2022.)

Travelers Moves to Dissolve the Receivership

On August 24, 2022, Travelers filed a motion to dismiss the Receiver’s third-party complaint and to dissolve the Receivership. (App. Vol. I 136-69, Mot. to Dismiss and Dissolve dated Aug. 24, 2022.) Other Insurers joined the motion to dissolve the Receivership. (App. Vol. I 170-73, Notice of Mot. and Joinder dated Sept. 19, 2022.) Travelers argued, among other things, that Payne & Keller can no longer sue or be sued under Texas law, so the Receiver’s claims against Travelers, purportedly on Payne & Keller’s behalf, necessarily fail and the Receivership must be dissolved. Travelers also explained that because Payne & Keller is a defunct foreign corporation without any property in South Carolina, the South Carolina circuit court did not have the power to appoint a Receiver over Payne & Keller. The Receivership was improper from the start and must be dissolved.

The Receiver opposed Travelers’ motion. (App. Vol. I 174-97, Receiver for Payne & Keller’s Response to Travelers’ Mot. to Dismiss and Dissolve dated Jan. 13, 2023.) Remarkably, in an effort to avoid Texas’s statutory repose period that has barred any claims by or against Payne & Keller for more than 30 years (*i.e.*, since 1989, three years after its termination), the Receiver speculated in his opposition brief that Payne & Keller may have engaged in some sort of fraud at the time of its 1986 dissolution, and argued that the circuit court—a state court located in South Carolina—should somehow reinstate Payne & Keller’s corporate existence in another state, *i.e.*, Texas. (*Id.* at 181-86.)

The Circuit Court Denies Appellants' Motion to Dissolve

In a March 30, 2023 order, the circuit court denied Appellants' motion to dismiss and dissolve the Payne & Keller receivership. (App. Vol. I 198-207, Order Denying Mot. to Dismiss and Dissolve dated Mar. 30, 2023 (filed Mar. 31, 2023).) The March 30 order not only rejected the dissolution grounds Appellants raised and continued the Receivership, but it also modified the scope and purview of the Receivership by authorizing the Receiver to pursue his unpled fraud theory, with the ultimate goal of revoking Payne & Keller's termination in Texas. (*Id.* at 202.)

Appellants Appeal the Order Denying the Motion to Dissolve

On April 28, 2023, Appellants timely appealed the circuit court's order denying the motion to dissolve the Payne & Keller Receivership. The appeal remains pending before this Court. The appeal asks this Court to decide, among other things:

- Whether the circuit court erred by appointing a Receiver over Payne & Keller, a dissolved Texas corporation that does not have any property in South Carolina, and by denying Travelers' motion to dissolve the Receivership.
- Whether the circuit court erred in finding that alleged liability insurance policies issued by non-South Carolina-based insurers to Payne & Keller in Texas are "property within [South Carolina]" so as to justify the appointment of the Receiver under S.C. Code Ann. § 15-65-10(4).
- Whether the circuit court erred in finding Texas's statute of repose for claims against dissolved Texas corporations like Payne & Keller does not apply to preclude claims by or against Payne & Keller more than three years after the date of its dissolution—1989 for Payne & Keller—thereby rendering the Receivership a nullity and requiring its dissolution.
- Whether the circuit court erred in finding the Receiver had made a prima facie showing that Payne & Keller was terminated as a result of fraud or constructive fraud under Section 11.153(a) of the Texas Business Organizations Code, such that Texas's three-year statute of repose does not apply to Payne & Keller.
- Whether the court erred in finding that the retroactive application of Section 11.153(a) of the Texas Business Organizations Code would not violate the Texas Constitution.

- Whether the circuit court erred in rejecting Travelers’ argument that a South Carolina circuit court does not have the power to revoke the termination of a foreign corporation like Payne & Keller and reinstate its corporate existence in another state, Texas, as if the dissolution never happened.

On May 5, 2023, this Court asked the parties to file memoranda addressing the issue of appealability. In an Order dated August 9, 2023, the Court ruled: “After careful consideration of the parties’ memoranda on appealability, this appeal shall proceed.”

On August 23, 2023, the Receiver filed an “Expedited Motion to Clarify the Court’s Order on Appealability.” In his Motion to Clarify, the Receiver asked the Court to “clarify that the pendency of this appeal does not stay the underlying Receivership action and the Receiver may continue carrying out his court-appointed duties while this appeal is pending.” (Mot. to Clarify at 5.). The Motion to Clarify did not reference the issue of jurisdiction under Rule 205, SCACR; rather, it was limited to the subject of a “stay” at the circuit court level.

On September 8, 2023, the Court issued an Order “clarify[ing] that Appellants’ appeal of the circuit court’s March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed” and “further clarify[ing] that the March 31, 2023 order is not stayed during pendency of this appeal.” (Order dated Sept. 8, 2023 at 1.) The Court explained that “the receivership action and the receiver’s ability to carry out his duties are not stayed.” (*Id.*) Neither the Receiver’s Motion to Clarify nor the Court’s Order addressed the issue of *jurisdiction* under Rule 205, SCACR.

Ms. Childers Moves to Revoke Payne & Keller’s Corporate Termination for the Exact Same Reasons Raised in the Receiver’s Opposition to Appellants’ Now-Appealed Motion to Dissolve

On June 14, 2023, Ms. Childers filed a motion asking the circuit court to revoke the corporate termination of Payne & Keller pursuant to Section 11.153 of the Texas Business Organizations Code. (App. Vol. I 208-214, Pl. Childers’s Mot. to Revoke dated June 14, 2023.)

The motion was copied-and-pasted from the Receiver's opposition to Travelers' motion to dissolve the Receivership, which is now on appeal before this Court. (*Compare* App. Vol. I 209-13, Pl. Childers's Mot. to Revoke at 2-6, *with* App. Vol. I 182-86, Receiver's Opp'n to Travelers' Mot. to Dissolve at 9-13.) Travelers filed an opposition to Ms. Childers's motion to revoke on July 7, 2023, and Other Insurers joined in Travelers' opposition. (App. Vol. I 215-41, Travelers' Opp'n to Pl. Childers's Mot. to Revoke dated July 7, 2023); (App. Vol. I 242-43, Other Insurers' Joinder dated July 7, 2023.) The circuit court held a hearing on the motion on July 10, 2023, at which time it deferred ruling on the motion due to its admitted lack of jurisdiction, *i.e.*, because the Motion to Revoke depends on the resolution of matters that are pending before this Court in the present appeal. For example, the circuit court noted: "I am acutely aware of my role as a circuit court judge. I am not supposed to get outside my guard rails and that's what I don't want to do in connection with something that's pending in front of an appellate court." (App. Vol. I 312, July 10, 2023 Hearing Tr. at 69:7-11.) During a subsequent hearing on August 21, 2023, the Court once again declined to rule on the motion, also because of its lack of jurisdiction. (App. Vol. I 343, August 21, 2023 Hearing Tr. at 64:5-8.)

Ms. Childers Emails the Circuit Court a Proposed Order Granting Her Motion to Revoke

Despite all of this, on September 26, 2023, Ms. Childers's counsel emailed the circuit court judge a proposed order granting her motion to revoke, entitling the order "Findings of Fact and Conclusions of Law on Plaintiffs' [sic] Motion to Revoke the Termination of Payne & Keller Company" (the "proposed order"). (App. Vol. I 359-60, Email from Pl. Childers' Counsel dated September 26, 2023.) Travelers' counsel sent a response email on September 28, 2023, noting again the circuit court's lack of jurisdiction to issue the proposed order due to Rule 205, SCACR, and requesting 10 days to respond if the circuit court intended to consider the proposed order.

(App. Vol. I 361-62, Email from Travelers' Counsel dated Sept. 28, 2023.) The circuit court judge never responded to counsel's email and, instead, before the expiry of 10 days, entered the proposed order submitted by Ms. Childers's counsel. (App. Vol. I 363-71, Findings of Fact and Conclusions of Law on Pl.'s [sic] Mot. to Revoke the Termination of Payne & Keller Company dated Oct. 5, 2023.)

The Circuit Court Revokes Payne & Keller's Termination

The circuit court's October 5, 2023 order is substantially identical to Ms. Childers's proposed order. It purports to revoke Payne & Keller's termination and reinstate its corporate existence in Texas. The order is not only unconstitutional on its face, the circuit court plainly did not have jurisdiction to issue it under Rule 205, SCACR. On October 16, 2023, Appellants filed motions to vacate or reconsider the circuit court's order. (App. Vol. II 1-371, Motion to Vacate or Reconsider; App. Vol. III 1-231, Joinders.)

On October 20, 2023, the circuit court judge emailed the parties:

Chief Justice Toal has scheduled a hearing on the Motion to Vacate or in the Alternative Motion to Reconsider the Court's October 5, 2023 Order filed by Certain Insurers and Travelers' Joinder. She would like to discuss whether she should consider reopening the matter, have an additional hearing at another date or now, and to discuss how to move forward regarding these latest filings. The hearing has been added to the agenda for October 25, 2023 at 9:30 AM.

(App. Vol. III 232-33, Oct. 20, 2023 Circuit Court Email; App. Vol. III 234-35, Oct. 20, 2023 Circuit Court Email.) The Receiver sent a response email asking the circuit court to "schemul[e] Payne & Keller's motions for a different day," even though the Receiver neither filed nor responded to the motion to revoke that was the subject of the scheduled hearing. (App. Vol. III 240, Oct. 20, 2023 Email from the Receiver.) Nonetheless, 35 minutes later, the circuit court approved the Receiver's request to cancel and reschedule the hearing. (App. Vol. III 242, Oct. 20,

2023 Circuit Court Email; App. Vol. III 243, Notice of Cancellation of Hearing.) The hearing has not been rescheduled. All of this occurred after the Receiver had without any form of notice secretly moved ahead in Texas unbeknownst to any other party.

**The Receiver Secretly Asks the Texas Secretary of State to Enforce the
Circuit Court’s Order Revoking Payne & Keller’s Termination
Without Notice to Appellants or This Court**

On October 23, 2023, the Receiver filed with the circuit court a “Notice of Filing,” attaching a “Certificate of Revocation of Dissolution” of Frentex f/k/a Payne & Keller, dated October 12, 2023 and signed by the Texas Secretary of State. (App. Vol. III 246, Oct. 23, 2023 Notice of Filing and Oct. 12, 2023 Certificate of Revocation.) It appears the Receiver secretly sought and obtained this document from the Texas Secretary of State by providing the Secretary of State with a copy of the circuit court’s October 5, 2023 order, and asking the Secretary of State to formally revoke Payne & Keller’s termination. He did not provide any notice to Appellants or this Court of his conduct, which he says he did “[p]ursuant to the [circuit court’s] previous rulings and instructions,” (*id.*), notwithstanding the fact that issues regarding Payne & Keller’s dissolution status and the applicability of Texas’s statute of repose are on appeal and within this Court’s exclusive jurisdiction.

ARGUMENT

Under Rule 205, SCACR, the circuit court did not have jurisdiction to rule on Ms. Childers’s motion to revoke, because the matters raised in the motion are necessarily affected by this appeal, over which this Court has exclusive jurisdiction. As Travelers repeatedly explained to the circuit court (*see, e.g.*, App. Vol. I 216-17, Travelers’ Opp’n to Pl. Childers’s Mot. to Revoke at 2-3), Ms. Childers’s motion to revoke is based entirely—almost word-for-word—on arguments Payne & Keller’s Receiver made in his opposition to Travelers’ motion to dissolve the

Receivership. The circuit court explicitly addressed the Receiver’s termination-by-fraud arguments in its order, and those arguments are presently on appeal before this Court. As a result, under Rule 205, the circuit court did not have jurisdiction to address the motion to revoke or any other “matters affected by the appeal.”

This jurisdictional point is not debatable—it is black-letter law. *See* Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” (emphasis added)); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘matters affected by the appeal’”) (emphasis provided by the Supreme Court) (quotation and other citation omitted); *Lancaster v. Ga.-Pac. Corp.*, 403 S.C. 136, 137, 742 S.E.2d 867, 868 (2013) (“Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court.”); *Tillman v. Oakes*, 398 S.C. 245, 255 & n. 3, 728 S.E.2d 45, 51 & n.3 (Ct. App. 2012) (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”).

Despite the Receiver's efforts to have the appeal dismissed, this Court has rightly determined that the appeal shall proceed. *See* Order dated Aug. 9, 2023 ("this appeal shall proceed"); Order dated Sept. 8, 2023 (reiterating that the appeal "shall proceed"). Because Ms. Childers's motion to revoke asked the circuit court to issue an order to revoke Payne & Keller's Texas termination based on grounds squarely on appeal before this Court, the circuit court lacked the jurisdiction to issue the October 5 order, and it must be vacated or clarified to be without force or effect.

No one—not the circuit court, not Ms. Childers, and not the Receiver—can seriously suggest that the revocation-by-fraud issue raised in the motion to revoke is not a "matter affected by the appeal." Again, the Receiver first made this argument in his opposition to Travelers' motion to dissolve the Payne & Keller Receivership, the resolution of which is now on appeal. (App. Vol. I 216-17, 221-22, 227-29, Travelers' Opp'n to Pl.'s Mot. to Revoke at 2-3, 7-8, 13-15.) The Receiver did so in an effort to avoid Texas's statute of repose, which fully protects Payne & Keller from suit—and bars Payne & Keller or its Receiver from bringing suit against Appellants—and it has done so for over three decades. Effectively, the Receiver has asked the circuit court to revive potential liability for Payne & Keller that has been extinguished as a matter of law since 1989.

The circuit court accepted the Receiver's argument and denied Appellants' motion to dissolve. (App. Vol. I 202, Order Denying Mot. to Dissolve dated Mar. 30, 2023, at 5 (filed Mar. 31, 2023) ("this Court finds the Receiver has made a prima facie showing that Payne & Keller 'was terminated as a result of actual or constructive fraud,' § 11.153(a), and dismissal on the basis of the termination is unwarranted").) The circuit court's March 30 order authorized the Receiver to pursue his fraud theory with the ultimate goal of revoking Payne & Keller's termination under

Texas law. (*Id.* at 5.) Appellants appealed that order, but Ms. Childers then filed a copycat motion asking for the very relief the circuit court said it lacked jurisdiction to provide.

The circuit court's willingness to sign Ms. Childers's proposed order granting the motion to revoke is particularly disappointing, and surprising, given that the circuit court previously acknowledged the jurisdictional prohibition. (App. Vol. I 312, July 10, 2023 Hearing Tr. at 69:7-11 ("THE COURT: I am acutely aware of my role as a circuit court judge. I am not supposed to get outside my guard rails and that's what I don't want to do in connection with something that's pending in front of an appellate court. MR. LEE: It [*i.e.*, Rule 205 covers] matters affected by the appeal, not the same case, not the same claim, not the same motion, but -- THE COURT: It does say that."); *id.* at 36:3-4 ("THE COURT: The Court of Appeals is going have the right to make that finding [regarding constructive fraud]".)) The circuit court also indicated that there would be another hearing before it decided whether to take any action on the motion to revoke. (*See id.* at 78:6-19 ("[MR. SAWYER:] Just for point of clarification, the impact holding pending a ruling by the court, will there be another hearing. I have points I wanted to put on the record, but I don't want to waste the court's time if we're going to have the Court of Appeals. THE COURT: Yes, I should say that and make that clear, that this is an adjourned proceeding, not a -- MR. SAWYER: We're not closing the book. THE COURT: Or a paused proceeding, I guess you could say. I am not declaring the hearing at an end. I am pausing it or adjourning it until I receive further information. Right now, my main concern is the Court of Appeals and my authority. . . .").) At that time, the circuit court judge refused to consider the motion, concluding "I am going to hold my ruling in abeyance until we hear from the Court of Appeals," because "I don't want to step beyond my boundaries with the Court of Appeals." (*Id.* at 75:8-9, 14-16.)

Simply put, the circuit court openly admitted its concern that it did not have jurisdiction to rule on Ms. Childers's motion to revoke because the issues raised in that motion are squarely before this Court. Nothing has changed.

As an apparent justification for violating Rule 205, SCACR, the circuit court's October 5 order granting the motion to revoke notes that the Payne & Keller Receivership action is not "stayed" (App. Vol. I 363-64, Order at 1-2), citing this Court's September 8, 2023 Order. But this Court's September 8, 2023 Order relates only to the subject of a stay, not jurisdiction. Order dated Sept. 8, 2023 ("the receivership action and the receiver's ability to carry out his duties are not stayed."). The existence of a stay does not address, and has nothing to do with, the circuit court's lack of jurisdiction to rule on Ms. Childers's motion when matters affecting that motion are on appeal. The absence of a stay obviously does not mean the presence of circuit court jurisdiction. Rule 205 and the case law enforcing it are clear that lower courts have no power to proceed with matters that are affected by a pending appeal. *See supra* at 11.

Simply put, the circuit court is and was divested of jurisdiction to rule on Ms. Childers's motion under Rule 205, and the question of a stay was irrelevant to that analysis:

Note that the existence or nonexistence of a stay under Rule 241 does not control the [lower] court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal under Rules 205 and 2041(a).

Toal, *Appellate Practice in South Carolina*, at 121 (citing *Tillman*).

As discussed above, without any notice to Appellants, the Receiver apparently provided the Texas Secretary of State with a copy of the circuit court's October 5, 2023 order, and asked her to enforce the order and formally revoke Payne & Keller's termination and reinstate its corporate existence in Texas. On October 12, 2023, the Texas Secretary of State issued a

“Certificate of Revocation,” which purports to revoke Payne & Keller’s termination as of October 12, 2023. The Receiver did not notify Appellants of the “Certificate of Revocation” until October 23, 2023, when he filed a “Notice of Filing” with the circuit court. He did so only after the circuit court indicated that it was reconsidering its October 5, 2023 order. (App. Vol. III 236-244, Circuit Court Email and the Receiver’s Response.) This Court needs to step in immediately to stop any further efforts to undermine this Court’s exclusive jurisdiction over the issues on appeal.

CONCLUSION

Appellants respectfully request that the Court issue an order enforcing its exclusive jurisdiction under Rule 205, SCACR, confirming that the circuit court did not have jurisdiction to issue its October 5, 2023 order, and enjoining the circuit court and the Receiver from any further efforts to proceed with matters affected by this appeal.

If the circuit court’s October 5, 2023 order and the Receiver’s efforts to use the Texas Secretary of State’s October 12, 2023 “Certificate of Revocation” are allowed to continue, it would materially add to and change the issues in this appeal. As a result, Appellants respectfully request that the current deadlines in this appeal be held in abeyance pending resolution of this motion. Appellants also respectfully request that the Court grant this motion on an expedited basis so that the parties, this Court, and the circuit court can proceed with certainty as quickly and efficiently as possible.

Signature Page Attached

Respectfully submitted,

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*Counsel for Appellants AIG Property Casualty Company, formerly
known as Birmingham Fire Insurance Company; National Union
Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway
Specialty Insurance Company, formerly known as Stonewall
Insurance Company; and The Continental Insurance Company,
individually and as successor in interest to Harbor Insurance
Company.*

October 23, 2023

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Appellants' Emergency Motion to Clarify and Enforce Rule 205

Parties Served:

Peter D. Protopapas (pdp@rplegalgroup.com)
Brian M. Barnwell (bb@rplegalgroup.com)
John B. White, Jr. (jwhite@johnbwhitelaw.com)
Marghretta H. Shisko (mshisko@johnbwhitelaw.com)
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Scott Shutte (scott.schutte@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)

Counsel for Respondent Payne & Keller Corp., through its Receiver Peter D. Protopapas

October 23, 2023

EXHIBIT 15

The South Carolina Court of Appeals

Lenora Childers, Individually and as Personal
Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,
Inc.; General Boiler Casing Company, Inc.; HEFCO,
Inc.; J.R. Deans Company, Inc.; Payne & Keller
Company; SFB, Incorporated; Stafford Insulation
Company; Standard Insulation Company of N.C., Inc.;
Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; and Payne &
Keller Company, By and Through Their Duly Appointed
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and
as Successor to Northern Insurance Company of New
York, Maryland All American General Insurance
Company, and Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony Beatty;
Dennis William Cahill; Catherine Ann Carlino; Andre
Lefebvre; David Dean Shumway; Gil Chandler; Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace
Fuller; Daniel Robert Keddie; Julie Ann Fortune;
Michael John Crall; James Francis Meehan; Larry Gene
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital
Corp.; Admiral Insurance Company; Continental

Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

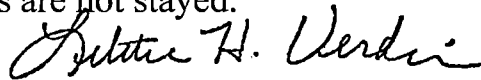
AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

ORDER

After consideration of Respondent's "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal. *See* Rule 62(a), SCRCP ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. §14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.



FOR THE COURT

Columbia, South Carolina

FILED
Sep 08 2023

cc:

Wesley Brian Sawyer, Esquire
Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Harry Lee, Esquire
Brian Montgomery Barnwell, Esquire
John Belton White, Jr., Esquire
Marghretta Hagood Shisko, Esquire
Brady Edwards, Esquire
Scott Shutte, Esquire
Christopher Rutledge Jones, Esquire
G. Murrell Smith, Jr., Esquire

Jonathan M. Robinson, Esquire
Shanon N. Peake, Esquire

EXHIBIT 16

Exhibit «B»

Maryland Casualty Company Policy
No. 56C-104668 from January 1
1961 to January 1, 1964

\$200,000/occurrence
annual aggregate
\$1,000,000

Maryland Casualty Company Policy
No. 56-C-106117 from January 1,
1964 to January 1, 1967

\$200,000/occurrence
annual aggregate
\$1,000,000

Maryland Casualty Company Policy
No. 56C-107294 from January 1,
1967 to January 1, 1970

\$1,000,000/occurrence
sub-limit \$200,000
person, annual
aggregate BI limit
\$1,000,000

Maryland Casualty Company Policy
No. 56-108541 from January 1,
1970 to May 21, 1970

\$1,000/occurrence
sub-limit \$200,000
person, annual
aggregate \$1,000,000

Maryland Casualty Company Policy
No. 56-108801 from May 21, 1970
to October 1, 1971

\$3,000,000

Continental Insurance Company
Policy No. 3147150 from
October 1, 1971 to December 6,
1971

\$3,000,000

Federal Insurance Company Policy
No. CGL-4400523 from December 6,
1971 to July 31, 1975

\$2,000,000

Aetna Life & Casualty Insurance
Co. Policy No. 51-985LG26921SCA
from July 31, 1975 to April 1,
1976

\$2,000,000/occurrence
\$2,000,000 aggregate

Aetna Life & Casualty Insurance
Co. Policy No. 51-985LG26920SCA
from April 1, 1976 to July 1, 1976

\$2,000,000/occurrence
\$2,000,000 aggregate

Aetna Life & Casualty Insurance
Co. Policy No. 51-985LG30513SCA
from July 1, 1976 to July 1, 1977

\$2,000,000/occurrence
\$2,000,000 aggregate

Aetna Life & Casualty Insurance
Co. Policy No. 985LG31719SCA
from July 1, 1977 to July 1, 1978

\$2,000,000/occurrence
\$2,000,000 aggregate

Insurance Company of North America
from July 1, 1978 to July 1, 1981
#CJL-5971

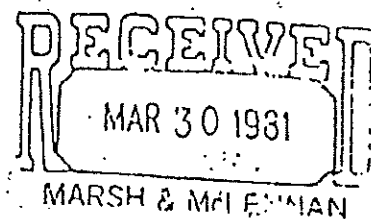
\$ 500,000/occurrence
\$4,000,000 annual
aggregate

Insurance Company of North America
from July 1, 1981 to February 12, 1982
#CJL-5971

\$2,000,000/occurrence
\$4,000,000 annual
aggregate

EXHIBIT B

ELECTRONICALLY FILED - 2023 Aug 20 9:11 PM - RICHLAND - COMMON PLEAS - CASE# 2022CP4003884



A. Primary Coverage-

<u>PRIMARY</u>	<u>LIMITS</u>	<u>APPROXIMATE BODILY INJURY DEDUCTIBLE</u>
Maryland Casualty Co. Policy #56C-106117 1/1/57 to 2/2/67*	Unknown	Unknown
Maryland Casualty Co. Policy #56-107294 1/1/67 to 1/1/70	\$200,000 per person. \$1,000,000 annual aggregate.	None
Maryland Casualty Co. Policy #56-108451 1/1/70 to 5/21/70	\$200,000 per person. \$1,000,000 aggregate.	None
Maryland Casualty Co. Policy #56-108801 5/21/70 to 10/1/71	\$3,000,000	None
Continental Insurance Co. Policy #3147150 10/1/71 to 12/6/71	\$3,000,000	None
Federal Insurance Co. Policy #CGL-4400523 12/6/71 to 7/31/75	\$2,000,000	None
Aetna Life & Casualty Policy #51-985LG26921SCA 7/31/75 to 4/1/76	\$2,000,000 per occurrence \$2,000,000 aggregate.	\$250,000 per occurrence. \$2,000,000 aggregate

*There is a possibility of earlier coverage which is under investigation.

Aetna Life & Casualty Policy #51-985LG26920SCA 4/1/76 to 7/1/76	\$2,000,000 per occurrence \$2,000,000 aggregate.	\$250,000 per occurrence. \$2,000,000 aggregate.
Aetna Life & Casualty Policy #51-985LG30513SCA 7/1/76 to 7/1/77	\$2,000,000 per occurrence \$2,000,000 aggregate.	\$250,000 per occurrence. \$2,000,000 aggregate.
Aetna Life & Casualty Policy #985LG31719SCA 7/1/77 to 7/1/78*	\$2,000,000 per occurrence \$2,000,000 aggregate.	\$500,000 per occurrence. \$9,100,000 aggregate. <i>first year.</i>
Insurance Co. of North America Policy #CGL-5971 7/1/78 to 7/1/81	\$2,000,000 per occurrence. \$4,000,000 aggregate. per policy year.	\$500,000 per occurrence \$4,000,000 aggregate per policy year.

*ACL retained 53.67% of losses between \$500,000 and \$1 million and 43.67% of losses between \$1 million and \$2 million.

B. Excess Coverage-

No excess coverage prior to July 1, 1973. From that date forward coverage was provided by numerous carriers at the following aggregate amounts:

07/73 to 10/74	\$ 98,000,000
10/74 to 07/76	198,000,000
07/76 to 07/77	298,000,000
07/77 to 11/77	123,000,000
11/77 to 01/78	148,000,000
01/78 to 07/78	173,000,000
07/78 to 07/79	298,000,000
07/79 to 07/80	298,000,000
07/80 to date	298,000,000

ASBESTOS CORPORATION LIMITEDChronological Schedule of CGL

<u>Insurer</u>	<u>Coverage Occurrence/Aggregate</u>	<u>Policy Number</u>	<u>Term</u>	
			<u>Inception</u>	<u>- Expiration</u>
Maryland	200,000/1,000,000	56C104668	1/1/61	- 1/1/64
Maryland	200,000/1,000,000	56C106117	1/1/64	- 1/1/67
Maryland	200,000/1,000,000	56C107294	1/1/67	- 1/1/70
Maryland	200,000/1,000,000	56C108541	1/1/70	- 1/1/73 (C)
Maryland	3,000,000/3,000,000	56C108801	5/21/70	- 1/1/73 (C)
Continental	3,000,000/3,000,000	3147450	10/1/71	- 10/1/74 (C)
Federal	2,000,000/2,000,000	4400523	12/6/71	- Open (C)
Aetna	2,000,000/2,000,000	51LG26921 SCA	7/31/75	- 4/1/76
Aetna	2,000,000/2,000,000	51LG26920 SCA	4/1/76	- 7/1/76
Aetna	2,000,000/2,000,000	51LG30513 SCA	7/1/76	- 7/1/77
Aetna	2,000,000/2,000,000	51LG31719 SCA	7/1/77	- 7/1/78
INA	2,000,000/4,000,000	CGL 5971	7/1/78	- 7/1/79
INA	2,000,000/4,000,000	CGL 5971	7/1/79	- 7/1/80

- Cancelled before policy expiration

11/18/80

EXHIBIT 17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MELVIN G. WELCH and	)	
DONNA B. WELCH,	)	
	)	
Plaintiffs,	)	CASE NO. 2022-CP-40-03834
	)	
v.	)	REPORT OF THE RECEIVER OF
	)	THE INSURANCE ASSETS OF
	)	ATLAS TURNER AND RESPONSE TO
	)	CERTAIN INSURER THIRD-PARTY
3M COMPANY, <i>et al.</i> ,	)	DEFENDANTS' MOTION TO STAY
	)	THE THIRD-PARTY ACTION
Defendants.	)	

Peter D. Protopapas, as Receiver for the Insurance Assets of Atlas Turner Inc., f/k/a Atlas Asbestos Company (“Atlas”), submits this Report and Response (i) to provide an interim report to the Court on the Receiver’s investigation into Atlas’s potential Insurance Assets to respond to asbestos personal injury liabilities in this Court, and (ii) to seek guidance from the Court with regard to future activity in light of recent filings by Third-Party Defendants The Continental Insurance Company (“Continental”) and Certain Underwriters at Lloyd’s, London and Certain London Market Companies (“Certain London Market Insurers”) seeking to “enforce an automatic stay.”

Report on Investigation to Date

The Receiver’s investigation to date into Atlas’s potential Insurance Assets has already uncovered evidence that Atlas had (and likely still has) insurance responsive to U.S. asbestos claims—but that Atlas has elected to adopt a strategic “posture” of minimal engagement, with its insurers (acting either in concert with Atlas or independently) withdrawing their defense of Atlas, resulting in the entry of default judgments against Atlas in asbestos litigation across the country.

A. Prior Atlas litigation reveals the adoption of a strategy change in 1985 to avoid U.S. jurisdiction.

In his research, the Receiver located a multi-plaintiff case in Ohio, in which Atlas appears to have purposefully withdrawn its defense and allowed a trial court to enter default judgments against it on 22 asbestos personal injury claims, with the expectation (or belief) that the underlying plaintiffs would be unable to collect on the default judgments entered against it. *See Antoine v. Atlas*, 66 F.3d 105 (6th Cir. 1995).

As recounted in the pleadings and related documents the Receiver has reviewed, in December 1990,¹ plaintiffs, represented by Ness Motley, sued Atlas and a series of insurers who they believed were responsible for the Atlas liabilities—including Royal Insurance (Arrowood), Certain London Market Insurers, Canadian General (Aviva), Federal and Chubb—to collect on the previously entered default judgments. That action, filed in the federal district court for the Southern District of Ohio, was captioned *Antoine v. Atlas Turner*, No. 1:90-cv-02231.

The *Antoine* case revealed a purposeful plan on the part of Atlas, which previously had actively participated in the U.S. asbestos personal injury litigation, to abruptly withdraw, in 1985, its defense in the *Antoine* case and its defense of U.S. asbestos litigation as a whole. In a September 24, 1985 letter to Atlas’s long-time Ohio counsel, James Conroy, Alain Dulude of Atlas Turner explained:

Over the last two years, the posture of Bell Asbestos Mines, Limited and Atlas Turner Inc in the U.S. asbestos litigation has changed considerably. For economic and other considerations, with which you are already acquainted, **Bell and Atlas have taken a minimal defense posture and have proceeded to default judgments in several cases.** After reviewing the overall situation, and in

¹ The Receiver believes that Plaintiffs may have elected to initiate the action to recover funds in 1990 because by that time, the Societe National de L’Amiante, the Canadian state-owned entity that had acquired Atlas, had sold Atlas and ceased to exist. *See Vasura v. AC&S*, 84 F. Supp. 2d 531, 534 (S.D.N.Y. 2000) (“[w]ithout question Atlas Turner was not a foreign state in 1999 when this lawsuit was filed, having been sold a decade earlier [in 1989] by Societe Nationale de L’Amiante.”).

contemplation of additional decisions regarding the position of Bell and Atlas in the U.S. asbestos litigation, I must advise you at this time that all matters involving Bell Asbestos Mines Limited and/or Atlas Turner Inc are to be transferred immediately to Thomas P. Meaney, Jr., Esq.

Exh. A. Despite the change in counsel, Mr. Conroy received a Notice of Application for Default Judgment as to Atlas in the 22 asbestos personal injury cases. *See* Exh. B, Deposition of J. Conroy, at 16-17. Conroy “immediately contacted Mr. Meaney on the telephone,” as requested in Dulude’s letter, and messengered the documents to Mr. Meaney’s office. *Id.* at 17. Even though Mr. Meaney received the telephone call and documents, Atlas allowed the default to proceed. The court entered default judgments on December 17, 1985. *See* Exh. C, Order on Motion to Set Aside Default Judgments, N.D. Ohio, No. 1:90-cv-02231, at 4.

The “minimal defense posture” Atlas adopted in 1985 appears predicated on its status, at that time, as a subsidiary of a company owned by the Province of Quebec, which it argued made it immune to litigation in the United States. As the federal district court noted in his order denying Atlas’s motion to set aside the default judgments, Atlas was “a subsidiary of Societe National de L’Amiante, a Crown Corporation established pursuant to a Parliamentary Act of the Province of Quebec,” and therefore was “‘an agency or instrumentality of a foreign state’ and a ‘foreign state’ within the meaning of 28 U.S.C. 1603(b).” *Id.* at 3. Therefore, “Atlas does not dispute that it received copies of the default judgments; it simply argues that the default judgments were not properly served upon it in accordance with the [Foreign Sovereign Immunities Act].” *Id.* at 4.

Discovery in the *Antoine* case also revealed that during this period of the Atlas strategy change, at least one of Atlas’s insurers, Chubb, withdrew its defense of Atlas in the asbestos cases. Although it certainly is curious, the Receiver has not yet been able to ascertain what prompted Chubb’s decision—at the same time Atlas adopted its “minimal defense posture”—to suddenly withdraw its defense of Atlas. In his deposition, Atlas’s former Ohio counsel, James Conroy,

testified only, I “was advised in late March of 1985 that I was no longer to—that if I was to continue representing these companies, it would be direct representation as far as payment of fees and that Chubb no longer had an obligation to defend.” Exh. B at 306. Conroy noted Chubb’s decision to withdraw its defense in his initial letter to Thomas Meaney on October 29, 1985: “Further to our conversation of October 28, 1985, enclosed you will find a list of those Atlas and/or Bell cases which our records indicate were active as of the date of declination of coverage by Chubb Insurance.” Exh. D, letter from J. Conroy to T. Meaney, Oct. 29, 1985.

B. *Atlas applies its avoidance strategy across the U.S.*

Atlas repeated its practice of attempting to avoid claims, by allowing defaults, in multiple other actions across the U.S. *See, e.g., Straub v. A.P. Green, Inc.*, 38 F.3d 448 (9th Cir. 1994) (considering Atlas’s defaults in three separate California asbestos personal injury cases).

In subsequent asbestos cases across the U.S., Atlas took further actions to advance its avoidance strategy, invoking jurisdictional defenses and refusing to provide meaningful discovery. *See, e.g., In re Connecticut Asb. Litig.*, 677 F. Supp. 70 (D. Conn. 1986) (denying Atlas Turner’s motion to dismiss for lack of personal jurisdiction); *Dapkunas v. AC&S, Inc.*, No. 85-2184, 1986 WL 561 (E.D. Pa. Dec. 29, 1986) (same).

Perhaps most notably, after a \$4 million judgment against it in an asbestos personal injury case, Atlas sought to avoid payment with a motion to dismiss on jurisdictional grounds. The trial court granted the motion, but on appeal, the Second Circuit reversed the ruling, holding that Atlas had waived its jurisdictional defense. *Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58 (2d Cir. 1999). Still seeking to avoid payment, Atlas sought to set aside the verdict. *See Hamilton v. Atlas Turner, Inc.*, 96 F. Supp. 2d 352 (S.D.N.Y. 2000). The court denied the motion, and granted plaintiff’s motion to compel discovery related to Atlas’s assets in the United States that could be used to pay

the judgment in the case. The trial court's order on the motion to compel made clear Atlas's intent to avoid inquiries into its assets: "The sources and location of any assets of Atlas Turner in the United States are proper avenues of inquiry and are not shielded by the attorney-client privilege. The scheduled depositions will proceed at the convenience of counsel." *Id.* at 357.

C. Atlas's activities here show a similar effort to avoid U.S. asbestos claims and thwart the Receiver's efforts to investigate and marshal its Insurance Assets.

After the Receiver initiated this third-party action against Atlas's insurers, individuals purporting to act on Atlas's behalf advised Atlas's insurers that Atlas was not tendering the asbestos claims pending before this Court and that no defense or indemnity should be provided by Atlas's insurers. Specifically, on July 24, 2023, the Receiver received two letters from Resolute Management, Inc. (one on behalf of Continental and one on behalf Certain London Market Insurers), stating each has been "advised by Atlas that Atlas is controlling and defending its own interests, and [that the Receiver is] not objecting to Atlas's control of its own defense. Further, the letters asserted that "Atlas is not tendering the Asbestos Lawsuits [to Continental or Certain London Market Insurers] for defense and indemnity," and therefore, "given that Atlas is not tendering the Asbestos Lawsuits, there is no defense or indemnity being requested." Exhs. E and F, July 24, 2023 Letters from Resolute Management to Peter Protopapas. These arranged declinations of coverages appear to be designed to thwart the Receiver's investigation and marshaling of Atlas's Insurance Assets to respond to the asbestos claims before this Court.

Interlocutory Appeal and Associated Issues

Both Continental and Certain London Market Insurers recently filed motions asserting that an automatic stay applies to this third-party action, prohibiting the Receiver from pursuing claims against Atlas's insurers, because Atlas has filed a notice of appeal as to various orders of this Court. If they are correct, the Receiver cannot, at present, fulfill his court-assigned duties and is concerned

that individuals purporting to act on Atlas's behalf may take further actions that jeopardize Atlas's Insurance Assets. However, even if a stay does apply, the Receiver submits there are actions the Court could take to preserve Atlas's Insurance Assets during the pendency of the appeal:

a. **Order Lifting Stay Under Rule 241(c)(2).** First, the Court may enter an order under Rule 241(c)(2) of the South Carolina Appellate Court Rules, lifting any automatic stay to "prevent a contested issue from becoming moot." Such action appears warranted here considering the ongoing efforts of individuals purporting to act on Atlas's behalf to avoid the authority of this Court, to avoid the asbestos claims pending before this Court, and the risk that such individuals might seek to fraudulently transfer, impair or otherwise prejudice Insurance Assets that otherwise would be available to respond to asbestos claims in this court.

b. **Allow Insurance Asset Discovery to Continue.** Second, even if the Court concludes that the stay applies and should not be lifted as to the substantive proceedings in this third-party action, pending the Atlas appeal, the Court might lift the stay, in part, to permit the Receiver to continue his ongoing investigation into Atlas's Insurance Assets while Atlas's appeal is pending. Specifically, the Court could allow fact discovery to proceed in the third-party action, while holding in abeyance substantive rulings regarding the insurers' obligations to provide coverage for specific asbestos liabilities, pending resolution of the appeal. Again, such limited relief appears warranted under Rule 241(c)(2).

c. **Enter a Preservation Order.** Finally, as a corollary to, or as alternative to, lifting the stay in whole or in part to "prevent a contested issue from becoming moot," the Court could (and arguably should) enter a "preservation order" instructing Atlas, its insurers, and all agents and counsel for Atlas and its insurers to preserve all information regarding Atlas's Insurance

Assets, and not to transfer, impair or otherwise prejudice any Insurance Assets during the pendency of this matter unless and until the Court orders otherwise.

Continental and Certain London Market Insurers' Pending Motions to Dismiss

Although they assert that this third-party action is automatically stayed, Continental and Certain London Market Insurers included in their August 15, 2023 filings alternative motions to dismiss, motions for a more definite statement, and the like. Of course, if the Court should determine that a stay applies, as these Third-Party Defendants contend, these alternative motions are filed in contravention of such stay and are not properly before the Court. If, on the other hand, the Court concludes that a stay does not apply or should be lifted to allow these motions to be presented and heard, the Receiver will respond, at the appropriate time, to the substance of the alternative motions raised in the filings of Continental and Certain London Market Insurers.

Dated: August 18, 2023

Respectfully submitted,

/s/ Duke K. McCall III

Duke K. McCall III

SC Bar No. 66466

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW Washington,

DC 20004-2541

duke.mccall@morganlewis.com

***Attorney for the Receiver of Atlas Turner, Inc.
f/k/a Atlas Asbestos Company, Ltd.***

EXHIBIT 18



September 24, 1985

James P. Conroy, Esq.
Porter, Wright, Morris & Arthur
925 Euclid Avenue
Suite 1500, Huntington Building
Cleveland, Ohio
44115 U.S.A.

171-2700

Dear Mr. Conroy:

Over the last two years, the posture of Bell Asbestos Mines, Limited and Atlas Turner Inc in the U.S. asbestos litigation has changed considerably. For economic and other considerations, with which you are already acquainted, Bell and Atlas have taken a minimal defense posture and have proceeded to default judgments in several cases. After reviewing the overall situation, and in contemplation of additional decisions regarding the position of Bell and Atlas in the U.S. asbestos litigation, I must advise you at this time that all matters involving Bell Asbestos Mines Limited and/or Atlas Turner Inc are to be transferred immediately to Thomas P. Meaney, Jr., Esq. of Burkner, Haber & Berick, 300 National City Bank Building, Cleveland, Ohio 44114 U.S.A. You will be contacted shortly by a representative of the Burke, Haber & Berick office to effectuate an orderly and efficient transfer of the files.

Please understand that this transfer is not the result of any dissatisfaction with your representation of Bell and/or Atlas but is instead an action which is required for the efficient and expeditious handling of the matters involving Bell and Atlas.

Thank you for your cooperation in the past and your anticipated cooperation in this transfer.

Very truly yours,

ATLAS TURNER INC

Alain Dulude

9.26.85
[Handwritten notes and stamps]
DULU

AD/bm

cc: Thomas P. Meaney, Jr., Esq.



RECEIVED

Nov 15 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Richland County
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Appellate Case No. 2023-001096
Case No. 2022-CP-40-03834

Donna B. Welch, individually and as Personal Representative of the Estate of Melvin G. Welch, deceased, Respondent,

v.

Advance Auto Parts, Inc., American Honda Motor Co., Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor to Atlas Asbestos Co, a foreign company, Bahnson, Inc., Covil Corporation; Daniel International Corporation, Davis Mechanical Contractors, Inc., Ellington Insulation Company, Inc., Fluor Constructors International f/k/a Fluor Corporation, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Parts, Inc. individually and as successor-in-interest to Carquest Corporation, Goodrich Corporation f/k/a The B. F. Goodrich Company, The Goodyear Tire & Rubber Company, Graybar Electric Company, Inc., Honeywell International, Inc. individually and as successor-in-interest to Allied Signal, Inc., as successor to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner Morse Tec LLC, and successor-by-merger to Borg-Warner Corporation, Occidental Chemical Corporation as successor to Durez Corporation, O'reilly Automotive Stores, Inc., Paramount Global f/k/a Viacomcbs Inc., f/k/a CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor-by-merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation, Pneumo Abex LLC successor-in-interest to Abex Corporation, Redco Corporation f/k/a Crane Co., Reinz Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly owned subsidiary of Dco LLC, Rust Engineering & Construction, Inc., Rust International Inc., Southern Insulation, Inc., Spirax Sarco, Inc., Union Carbide Corporation, Westrock MWV, LLC individually and as successor-in-interest to Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

Of whom Atlas Turner, Inc., is the

Appellant.

PROOF OF SERVICE

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I, Elizabeth Moultrie, of Kassel McVey, hereby certify that **RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO CONFIRM AUTOMATIC STAY OR, ALTERNATIVELY, VERIFIED PETITION FOR SUPERSEDEAS** were served on all the parties to this appeal on November 15, 2023, via email to their counsel of record:

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Receiver for "insurance assets"

of Atlas Turner, Inc. per appealed order



Elizabeth C. Moultrie