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Nov 27 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

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.

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

*\*Counsel identified on next page*

CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
James D. Gandy, III (SC Bar No. 11925)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Attorneys for Appellant*

Appellant, Atlas Turner, Inc., incorrectly identified in this action as Atlas Turner, Inc., as successor to Atlas Asbestos Co., for itself and on behalf of Atlas Asbestos Co. (all of whom are referred to in the singular as “Atlas”),<sup>1</sup> by and through its undersigned counsel, files this reply to Respondent’s opposition to Appellant's motion to confirm automatic stay or, alternatively, verified petition for supersedeas.

Respondent Welch's arguments nearly mirror those raised by Mr. Protopapas. As a result, and in an effort to not continuously repeat the same matters over and over, Atlas hereby incorporates its response to Mr. Protopapas’ request for dismissal of Appellant’s verified petition for supersedeas. There are a few issues which were not addressed by Mr. Protopapas which Atlas feels must be addressed in this reply. They are not lengthy, but Atlas wishes to set the record straight.

Respondent continues to act as if *Childers v. Davis Mechanical* established beyond any reason that receiverships are exempt from stays. *Childers* came about after a motion was made to grant relief from a receivership which had already been entered. While Respondent believes this makes no difference and that the motion to dissolve should be treated as a motion for a receivership, the simple fact is they are two different things under the law. *Childers* did not address the very specific issue that is before this court. *Childers* involved a dissolved corporation. As such, the issue of whether it was properly dissolved, whether the statute of repose came into play with regard to the corporation being dissolved and whether it could ultimately be brought back into existence so as to face litigation in South Carolina were all present. This case involves a Canadian

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<sup>1</sup> Atlas Asbestos Co. and Atlas Turner, Inc. are incorrectly identified in this action as separate Defendants. Atlas Asbestos Co. and Atlas Turner, Inc. are not different entities, but rather different names for the same entity, which was formerly named Atlas Asbestos Co. but is now named Atlas Turner, Inc.

corporation that is not dissolved, is not trying to take advantage of any statute of repose, but rather seeks to have the circuit court comply with S.C. Ann. § 15-65-10 before granting a receivership. This statute clearly limits the authority of the circuit court to grant a receivership under certain circumstances which are not present in this case. It is interesting and not a mere poor choice of words that S.C. Code Ann. 15-65-10 (the receivership statute) addresses “property within this State of foreign corporations.”

To the best of counsel's knowledge, no case law has been cited by Respondent that *Sangamo Weston, Inc. v. National Sur. Corp.*, 307 S.C. 143, 414 S.E.2d 127 (1992) and S.C. Code § 38-61-10 somehow merge so all insurance is now considered “property within the State of a foreign corporation” so that they are to be considered in-state assets for purpose of a receivership. The simple fact is Atlas Turner is a Canadian corporation. It does not have assets located in this state as those terms are used in the receivership statute. Neither counsel nor the court has cited authority supporting their position. If the statute is not met for the appointment of a receivership, then everything Mr. Protopapas does in this case is subject to being reversed. If he has negotiated deals with various entities and resolved cases where he had no such authority to do so, they very well cannot be undone.

Atlas does not dispute the fact that South Carolina courts have appointed receivership for live entities provided they met the requirements of S.C. Code Ann § 15-65-10. In this case Atlas does not meet any of the requirements.. Respondent goes on to try and show some sort of comparison with this purported receivership and the one from the Alex and Buster Murdaugh litigation. Not only is the Murdaugh case absolutely inconsistent with the case at hand because the court had evidence that someone was in the process of or moving assets at that very time to try and place them out of reach of the court's jurisdiction. Here, Respondent and Mr. Protopapas rely on

actions that took place in the 1980s as alleged evidence to support a receivership in 2023. That is entirely different from the receivership ordered in the Murdaugh case. Respondent argues that because of something that may have happened almost 40 years ago, it is critically important for Mr. Protopapas to retain authority over all of Atlas' insurance assets to make sure it does nothing further. Not only is this lacking in logic and in any temporal relationship between the act complained of and the lawsuit at hand, it is merely nothing more than an attempt to paint Atlas in a negative light so as to support the actions of the circuit court and allowing Mr. Protopapas to take total control over Atlas' insurance assets even though the terms of the applicable statute have not been met.

Counsel takes personal offense at argument that by referencing in a footnote the fact that South Carolina has been listed as a judicial hellhole is a violation of South Carolina rules and professional standards for attorneys. Counsel did nothing more than refer to an article regarding concerns with our asbestos docket. Counsel has nothing but the utmost respect for the circuit court judge presiding over this case. For approximately 30 years counsel has appeared before the Supreme Court with Chief Justice Toal sitting throughout most of those years, the Court of Appeals and the Fourth Circuit Court of Appeals. Although I no longer keep count, I can say I have been involved directly or indirectly in well over 150 appeals over 30 years. Never once have I been advised that I was about to or violating a rule or professional standard or been called upon for violating the rules of civility. The circuit court stating something I said was "glib" is about as bad as I have been. I take my professional obligations and my reputation seriously. Citing an article does not make one "undignified or unprofessional" just because counsel or even the Court disagrees with it.

If counsel believes I have engaged in conduct as she claims in section 4 of her opposition, I strongly suggest that she take what action the rules deem appropriate. Disagreeing respectfully with a court's ruling is not the equivalent of avoiding the respect or courtesy due to courts of justice or judicial officers. Reading Respondent's reply, it appears that she has made a claim that citing judicial hell holes somehow renders me unfit to be an attorney. Such statement should only be made very carefully. Taken to its logical extreme, anyone who previously criticized activities in the 14th judicial circuit and the fact that it was listed as a judicial hell hole over venue rulings would also be guilty of violating the lawyer's oath as well as the rules and regulations applicable to attorneys. Interestingly, after criticism for being named a judicial hell hole, our General Assembly took action change to venue laws which had been the source of most of the criticism.

### **CONCLUSION**

For the foregoing reasons, this Court needs to affirm that there is an automatic stay in this case or grant a writ of supersedeas and issue a stay so that Mr. Protopapas is not free to dismantle Atlas Turner with Atlas Turner potentially having no means of redress if it is found that Mr. Protopapas incorrectly or erroneously engaged in activities for which he was not properly appointed under the law.

*[signature on following page]*

*[Signature page for Appellant's Reply to Respondent's Opposition to Appellant's Motion to Confirm Automatic Stay Or, Alternatively Verified Petition for Supersedeas, Appellate Case No. 2023-001096]*

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Stephen L. Brown  
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
James D. Gandy, III (SC Bar No. 11925)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488  
*Attorneys for Appellant*

Charleston, South Carolina

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Case No. 2022-CP-40-03834  
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Donna B. Welch, individually and as Personal Representative of the Estate of  
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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.  
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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.

**PROOF OF SERVICE**

*\*Counsel identified on next page*

CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
Russell G. Hines (SC Bar No. 72100)  
James D. Gandy, III (SC Bar No. 11925)  
25 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
P.O. Box 993 (29402)  
(843) 720-5488

*Attorneys for Appellant*

I, Stephen L. Brown, of Clement Rivers, LLP, attorneys for Appellant, hereby certify that **APPELLANT’S REPLY TO RESPONDENT’S OPPOSITION TO APPELLANT’S MOTION TO CONFIRM AUTOMATIC STAY OR, ALTERNATIVELY VERIFIED PETITION FOR SUPERSEDEAS** was served on all other parties to this appeal on November 27, 2023, via email (see attached) to their counsel of record:

Theile B. McVey, Esquire  
[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)  
Jamie D. Rutkoski, Esquire  
[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)  
KASSEL MCVEY ATTORNEYS AT LAW  
1330 Laurel Street  
P.O. Box 1476  
Columbia, SC 29202-1476

*and*

Aaron D. Chapman, Esquire  
[achapman@dobslegal.com](mailto:achapman@dobslegal.com)  
Charles W. Branham, III, Esquire  
[tbranham@dobslegal.com](mailto:tbranham@dobslegal.com)  
Ka’Leya Q. Hardin, Esquire  
[khardin@dobslegal.com](mailto:khardin@dobslegal.com)  
Todd Barnes, Esquire  
[tbarnes@dobslegal.com](mailto:tbarnes@dobslegal.com)  
DEAN OMAR BRANHAM SHIRLEY, LLP  
302 N. Market Street, Suite 300  
Dallas, TX 75202

*Attorneys for Respondent*

Peter D. Protopapas, Esquire  
[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)  
John K. Chandler, Esquire  
[jchandler@rplegalgroup.com](mailto:jchandler@rplegalgroup.com)  
Brian M. Barnwell, Esquire  
[bb@rplegalgroup.com](mailto:bb@rplegalgroup.com)  
RIKARD & PROTOPAPAS, LLC  
2110 N. Beltline Blvd.  
Columbia, SC 29204

*Receiver for “insurance assets”  
of Atlas Turner, Inc. per appealed order*

G. Murrell Smith, Jr., Esquire  
[murrell@smithrobinsonlaw.com](mailto:murrell@smithrobinsonlaw.com)  
Jonathan M. Robinson, Esquire  
[jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com)  
Shannon N. Peake, Esquire  
[shanonp@smithrobinsonlaw.com](mailto:shanonp@smithrobinsonlaw.com)  
SMITH ROBINSON HOLLER  
DUBOSE AND MORGAN, LLC  
2530 Devine Street  
Columbia, SC 29205

*Attorneys for Receiver for “insurance assets”  
of Atlas Turner, Inc. per appealed order*

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Stephen L. Brown  
Stephen L. Brown (SC Bar No. 66468)

*Attorneys for Appellant*

Charleston, South Carolina

November 27, 2023

## Bell, Pollyana (Polly)

---

**From:** Bell, Pollyana (Polly)  
**Sent:** Monday, November 27, 2023 6:19 PM  
**To:** 'tmcvey@kassellaw.com'; 'jrutkoski@kassellaw.com'; 'EMoultrie@kassellaw.com';  
'pdp@rplegalgroup.com'; 'jchandler@rplegalgroup.com'; 'bb@rplegalgroup.com';  
'lindsay@rplegalgroup.com'; 'achapman@dobslegal.com'; 'khardin@dobslegal.com';  
'tbranham@dobslegal.com'; 'tbarnes@dobslegal.com'; 'lshirley@dobslegal.com';  
'murrell@smithrobinsonlaw.com'; 'jon@smithrobinsonlaw.com'; 'shanonp@smithrobinsonlaw.com'  
**Cc:** 'Stephen Brown (sbrown@yclaw.com)'; 'Hines, Russell'; 'Gandy, III, James D. (Tripp)'; 'Justman, Aimee'; 'Olive, IV, Graydon'  
**Subject:** Welch v. Atlas Turner, Inc.; Appellate Case No. 2023-001096 (CR 230593)  
**Attachments:** Appellant's Reply to Respondent's Opposition to Mot. to Confirm Automatic Stay etc.pdf

Enclosed please find Appellant's Reply to Respondent's Opposition to Appellant's Motion to Confirm Automatic Stay or, Alternatively Verified Petition for Supersedeas for service upon you in the above-referenced matter.

Thank you,

Pollyana Bell  
Project Assistant  
Commercial Litigation Practice Group  
Phone:(843)720-5488 | Fax:(843)579-1369



**CLEMENT RIVERS, LLP**  
25 Calhoun Street • Suite 200 • Charleston, SC 29401  
704 699 9999