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Dec 11 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. 2023-001461
Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; ACL Asbestos Co.; ACL Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company, Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries, Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable

LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls Us, Inc.;
Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell
Company; Wind Up, Ltd.; Yuba Heat Transfers LLC; Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited is the

Appellant.

and

Peter D. Protopapas, Asbestos Corporation Limited's Duly Appointed Receiver is Respondent.

**THE RECEIVER FOR ASBESTOS CORPORATION LIMITED'S MOTION TO
SUPPLEMENT THE RECORD AND FOR SANCTIONS FOR FRAUD ON THE COURT**

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AND MORGAN, LLC

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ATTORNEYS FOR THE RECEIVER

Peter D. Protopapas, the duly-appointed receiver for the insurance assets of Asbestos Corporation Limited (the “Receiver”), submits this Motion to Supplement the Record and for Sanctions for Fraud on the Court.

INTRODUCTION

Since Asbestos Corporation Limited (“ACL”) filed its Notice of Appeal on September 13, 2023, the Receiver has come into possession of documents that directly bear on the issues in this case, and which reveal that ACL has committed fraud upon this Court, the circuit court, and injured claimants. This information is well known to ACL’s insurers, who have sat idly by while ACL lied to South Carolina courts.

On August 21, 2023, ACL represented to the circuit court:

- “We have no insurance to tender against. It’s just that simple. I’m not paid by insurance. It would make no sense not to tender, Your Honor.”
- “[W]e have gone through [what] we can find and we know of and there is no coverage for us to tender against.”
- “[T]here’s nothing [showing] that we have insurance.”
- “Why would they not move forward and tender if there was something there to tender for?”
- “[B]ut there was nothing to tender. ... This [chart of historical insurance] doesn’t prove that this insurance is in place.”

Attached as Exhibit B is the most recent annual report from ACL’s chief financial officer, Mario Simard, to ACL’s excess insurers. This communication, dated February 15, 2023, encloses ACL’s “[r]eport of the asbestos litigation as of December 31, 2022,” including summaries of the number of claims pending, dismissed and settled, and summaries of expense and indemnity paid

for such claims. ACL has hundreds of millions of dollars of insurance.¹

PROCEDURAL BACKGROUND

On August 21, 2023, the circuit court held a hearing on Respondents' motions to hold ACL in contempt, strike its answer, and to appoint a receiver for ACL's insurance assets. In opposing Respondents' motions, ACL repeatedly represented to the court that ACL had no insurance available that provides coverage for the asbestos litigation against it.

Following the hearing, the circuit court granted Respondents' motions and appointed Mr. Protopapas as Receiver for ACL's insurance assets, directing him to "investigate the existence of all insurance or indemnification coverages or claims relating thereto which are potentially available to ACL."

ACL has appealed the orders that led to the Receiver's appointment and has sought to shut down any investigation of its insurance while its appeal is pending. To that end, ACL recently filed a procedurally defective petition for supersedeas and for a stay—asking this Court to rule that the circuit court and the Receiver "lack jurisdiction" to investigate what ACL refers to as its "so called" insurance assets.

Notwithstanding ACL's continuing attempts at obstruction and delay, in the three months since his appointment, the Receiver has begun investigating ACL's potential insurance as directed by the circuit court. Recently, in the course of that investigation, the Receiver was provided with documents that show that ACL's counsel's statements to the circuit court at the August 21, 2023 hearing regarding ACL's purported lack of insurance were unequivocally false.

¹ According to the report, the first named insured on ACL's excess coverage was General Dynamics Corporation. It appears ACL was included as an insured under these policies because General Dynamics had an ownership interest in ACL when the policies were issued.

Accordingly, the Receiver submits this motion to supplement the record to provide the Court with the documentation demonstrating ACL's false statements. Additionally, the Receiver respectfully moves for attorneys' fees and such other sanctions that the Court may deem appropriate as result of ACL's fraud on the court. In the alternative, the Receiver requests the Court remand this case to the circuit court for further proceedings to investigate and make findings regarding ACL's fraudulent representations.

A. ACL Represents to the Circuit Court That It Has No Insurance

At the August 21, 2023 hearing on Respondents' motions that ultimately resulted in the circuit court appointing the Receiver, ACL through counsel ("ACL Counsel"), was questioned by the circuit court regarding the existence of insurance coverage for asbestos claims against ACL.

In the course of a lengthy back-and-forth between the court and through ACL Counsel, ACL Counsel repeatedly represented that ACL had "no insurance" and "no coverage" to which it could tender the asbestos claims against it.

A complete copy of the official transcript of the August 21, 2023 hearing is attached as Exhibit A to this motion.² Set forth below are excerpts from the circuit court's inquiry into ACL's insurance, and ACL's responses:

MS. McVEY [Respondents' counsel]: Your Honor, we know that there is insurance for ACL. We know that they're depleting it. I don't understand why they're not tendering these

² Multiple attorneys representing insurers that issued insurance policies covering ACL—including counsel representing Travelers Casualty and Surety Company, Century Indemnity Company, Federal Insurance Company, Continental Insurance Company, National Union Insurance Company of Pittsburgh, Pa., Certain London Market Insurers, Lexington Insurance Company, First State Insurance Company, and Zurich American Insurance Company, as well as affiliates of the same—appeared at the August 21, 2023 hearing in front of the circuit court (because they were present for other receivership matters being heard that day, including a hearing regarding ACL affiliate, Atlas Turner Inc.) See Exhibit D, Excerpts from Transcripts of Aug. 21, 2023 (listing counsel appearances). At no point did counsel for ACL's insurers—whether at the August 21, 2023 hearing, or at any time thereafter—communicate to the circuit court to correct ACL's false statements that it had no insurance.

cases to their insurance carrier, who have policies who would cover Mr. Tibbs and other South Carolinians. . . .

* * *

THE COURT: And most particularly, Mr. Brown, [the documents ACL has made available to Respondents] are not any kind of insurance information about coverage that would have been available. All of these policies back at that time were per-occurrence policies. They cover things like this, even though mesothelioma has a latency period of many years. It's when the occurrence took place that those policies come alive. The insurance industry now calls them legacy policies.

If [ACL] had [at least one historical insurance settlement setting up a qualified settlement fund] with the Maryland [Casualty Company], they had others. But as a Quebec corporation, they had no problem with setting up a qualified settlement fund to take care of asbestos claims back in the '80s that were '70s policies. They would have no problem bringing that forward today.

I feel quite confident, while they're still in business, as big a corporation as they were, they had commercial general liability [CGL] policies, probably per-occurrence coverage. And that's what they're trying to seek.

MR. BROWN: And I will answer Ms. McVey's question, which is why have we not tendered. **We have no insurance to tender against. It's just that simple. I'm not paid by insurance. It would make no sense not to tender, Your Honor.**

* * *

THE COURT: ACL is going to have records from—if they have got a company who has now set up to manage these old claims and it was set up with the ability to, in 1989, go back and dig up '71 policies and settle these matters that are contained in this [settlement] agreement [with Maryland Casualty], they have got the ability to look at those same records and find out whether there's coverage for these matters that are alleged in the Tibbs case.

MR. BROWN: And **we have gone through [what] we can find and we know of and there is no coverage for us to tender against.**

THE COURT: Well, that's your contention, but they're entitled to depose the people that you had go through those records and ask them what they looked at and so forth. It's not acceptable to say, "We're just not going to tender anybody because it's too old and everybody is dead." You have got people now, is what you're

representing to me, who looked at old records and says there's no coverage. Isn't that right?

MR. BROWN: Attorneys.

THE COURT: I don't care whether they're attorneys or who they are. There are people that are looking at some record of ACL's to make the representation that you're making, upon your oath as a lawyer in this court today, which is they don't have any coverage. They are entitled to look at the same material that your internal people looked at and make their own determination about that. That's what discovery in 30(b)(6) is all about.

MR. BROWN: I understand exactly what Your Honor is saying. I respectfully disagree. I believe 30(b)(6)—I can read the rule. I understand what it says. I also read lots of articles where 30(b)(6) is a huge problem within the judicial system in and of itself by going in and trying to create witnesses, and circuit courts have put limitations on that.

THE COURT: Mr. Brown, you just, not three minutes ago, told me, "We have looked to see if there are any policies." You looked at something to make that representation, and you're a good enough lawyer, you don't make representations that aren't true. I have ultimate respect for your integrity and your ability to sort out the facts in this case, but if your folks—your clients, whether they be attorneys for the client or whatever—looked, they looked at something. And you are a good enough trial lawyer to know we're entitled to see what they looked at...

* * *

MR. BROWN: Okay. Our argument was that, at the time of them filing for this receivership in Tibbs, nobody can show—nobody can claim—**there's nothing [showing] that we have insurance** and that we're out there muddling, which is the word that continues to be used—

THE COURT: The insurance has to be discovered by looking at your records or having someone who is familiar enough with the corporation to take a look. You, obviously, have some people that you think are capable of taking a look because you're representing to the Court that there is no insurance. It's an affirmative representation. They are entitled to explore whether you have been given correct information by your client about that. That is the argument that they are making now.

MR. BROWN: And, again, I understand Your Honor's argument—well, position on this.

* * *

MS. McVEY [on reply]: ... I want to show you what the receiver for Atlas Turner filed. And this goes to the argument of whether or not there's insurance applicable to ACL and Atlas Turner, and they're intertwined. And if you look at the document that's filed, there is—this came from discovery responses that Asbestos Corporation answered in an old case. And in that, you see a listing of, I don't know, 20 or 30 insurance policies. And my fast math is not great, but it looks like it's about \$2 billion—billion with a "b"—of insurance.³

* * *

THE COURT [to Mr. Brown]: You're the third lawyer that's taken this. Two other lawyers could not get these people [at ACL] to cooperate one bit, except to say, "We don't have to do anything and we're not doing anything and we're not even going to provide a 30(b)(6)," which . . . [the] Quebec Records Act certainly doesn't effect. But they said no to everything.

Appointing a receiver would give someone, who is very knowledgeable about how to find insurance coverage, the ability to at least take a look at what apparently unknown people that you have checked with say they looked at and couldn't find anything.

He found an enormous amount of potential coverage. Now, does—have I seen the insurance policies? Has he? I don't know. Probably not yet. But he has at least found coverage for this corporation—CGL-type coverage with very reputable, known insurance companies that started out in the '60s with 200,000 and is now up to \$2 million, \$4 million. I mean, these are big insurance coverages that Mr. Protopapas found and indicates are potential suspected insurance programs with Atlas.

They're asking that that same methodology be used to discover insurance policies of ACL. And I don't understand why ACL is fussing about that. These policies protect them. And these policies stand good for claims that are going to be made because their stuff came into the stream of commerce, if that can be proven, and I have to take it as proven at this moment.

³ A copy of the ACL insurance schedule that Ms. McVey provided to the circuit court is attached as Exhibit C to this motion.

MR. BROWN: And I think Your Honor hit the nail—hit a nail on the head. **Why would they not move forward and tender if there was something there to tender for?**

THE COURT: Well, that's what I don't understand. There at least was some that Mr. Protopapas had showed, and apparently, they can't agree to nobody.

MR. BROWN: **This chart is just a chart of insurance. It doesn't indicate that that insurance is there, binding, valid, and applicable today.**

THE COURT: Well, let's argue about all of that. They have come forward with some showing that there are policies that pertain to this very dispute and cover this very corporation for times that are involved in this lawsuit. That gives you the right to at least move forward and make some kind of discovery of that, and your client is just stonewalling. That's all it is. They don't want to tender to anybody any insurance. Apparently, that's the position they have put you into, rather awkward, I think, for you.

MR. BROWN: Again, I'm not going to belabor the point, **but there was nothing to tender.** It's not offered for me to say that. **This doesn't prove that this insurance is in place.**

* * *

THE COURT: One of the concerns I have got, Mr. Brown . . . in this very case is whether a hot fraud would take place, meaning whether this corporation would attempt to convert some of these assets into cash at this very moment before entitlement to coverage is ascertained by someone on behalf of the State. Because what you're telling me that is occurring now is that Atlas is making no attempt and ACL is making no attempt to locate policies because they say there aren't any.

Here sits a receiver who has found some, and we can now look and see if they provide coverage. But saying I'm going to stonewall it and then say that's the excuse for not even taking a look is something I don't understand the logic of from their point of view, but it promotes some real potential skullduggery if it's not shown the light of day before we go any further with the lawsuit.

MR. BROWN: And, again, I understand Your Honor's position, and **I stand by my arguments previously** . . . as well as the fact that, with all due respect, the requirements of the statute for receivership are not met in this case . . . and . . . [one] should not be

. . . appointed. It would be improper. And if we take the toothpaste out, we'd never be able to get it back in.

Exhibit A at 12:21-25; 24:2-24; 25:18-27:13; 35:2-18; 38:3-13; 43:9-45:9; 45:15-46-18 (emphasis added).

B. ACL and Its Insurers Seek to Stop the Receiver's Investigation

Following the hearing, by order dated September 8, 2023, the circuit court appointed Mr. Protopapas as receiver ACL's insurance, granting him "the power and authority [to] fully administer all insurance assets of [ACL] and take any and all steps necessary to protect the interests of ACL whatever they may be." Exhibit E, Sept. 8, 2023 Order Granting Plaintiffs' Motion to Appoint a Receiver at 6. The Receiver's charge is to "investigate the existence of all insurance or indemnification coverages or claims relating thereto which are potentially available to ACL." *Id.* at 7. In the three months since his appointment by the circuit court, the Receiver has endeavored to investigate potential insurance available to ACL, but has encountered evasion and delay tactics from ACL (as well as many of its insurers) at every turn.

ACL appealed the orders that led to the Receiver's appointment and has taken the position that, simply because it filed a Notice of Appeal, the receivership action in the circuit court, and the Receiver's investigation, must come to a dead stop until ACL's appeal is resolved. To that end, ACL recently filed a petition for supersedeas asking this Court to "confirm" that a stay is in place, to rule that the Receiver "lacks jurisdiction." As set forth in the Receiver's (and Respondents') December 4, 2023 responses, ACL's petition to this Court was procedurally improper—because

ACL was required to file the petition in the circuit court in the first instance.⁴ ACL has since requested to withdraw its petition for supersedeas.

In the meantime, the Receiver has filed in the circuit court a third-party insurance coverage action seeking declaratory judgment as to the handful of ACL insurers that were identified in the chart that was discussed at the August 21, 2023 hearing (Exhibit C hereto).⁵ Joining in ACL's efforts to obstruct the Receiver's investigation, the third-party insurer-defendants have filed motions to dismiss the Receiver's complaint, and have sought protective orders from the circuit court—adopting as their own ACL's contentions that the receivership is improper and should be dissolved, that there is an “automatic stay” of the third-party coverage action, and that the circuit court and the Receiver “lack jurisdiction” to investigate ACL's insurance while ACL's appeal is pending. The insurers' motions remain pending in the circuit court.

Two of the ACL insurer-defendants, Century Indemnity Company and Federal Insurance Company (collectively, the “Chubb Insurers”) have filed a motion to intervene in ACL's appeal for the purpose of challenging the validity of the Receiver's appointment—again parroting ACL's arguments seeking to “enforce” a stay against the Receiver, and contending that the circuit court and Receiver do not have “jurisdiction” during the appeal. The Chubb Insurers' filings to this Court seek to defeat all discovery into ACL's insurance policies, and fail to disclose to this Court that ACL misrepresented its purported lack of insurance to the circuit court. The Chubb Insurers' motion remains pending in this Court at the time of filing.

⁴ This Court dismissed a nearly identical motion filed by ACL's affiliate, Atlas Turner, Inc., as procedurally improper by order dated December 1, 2023. *See* Exhibit G, Order Denying Motion to “Enforce” Stay and for Supersedeas, Appellate Case No. 2023-001096.

⁵ The Receiver did not name ACL insurer Maryland Casualty Company as a third-party defendant in light of the settlement agreement and release that had been previously produced by Maryland Casualty's counsel and which was discussed at the August 21, 2023 hearing.

C. The Receiver Obtains Evidence Revealing That ACL Made False Statements to the Circuit Court

Notwithstanding these efforts to obstruct his investigation, the Receiver has managed to obtain significant additional information regarding ACL's insurance—including documents and communications between ACL and its insurers that directly contradicts the statements that ACL made to the circuit court at the August 21, 2023 hearing.

Specifically, Great American Insurance Company ("GAIC")—an insurance company located in Ohio—recently produced to the Receiver various documents that ACL had provided in communications to GAIC. These documents show that ACL has for years provided regular updates to excess insurers regarding the status of ACL's U.S. asbestos liabilities, as well as the impairment of ACL's insurance program's limits of liability through the payment of costs of ACL's asbestos litigation.

The most recent annual report from ACL's chief financial officer, Mario Simard, to the excess insurers is attached as Exhibit B hereto. This communication dated February 15, 2023, encloses ACL's "[r]eport of the asbestos litigation as of December 31, 2022," including summaries of the number of claims pending, dismissed and settled, and summaries of expense and indemnity paid for such claims.

Notably, Mr. Simard's letter states that "[a]s previously advised, Asbestos Corporation Limited and its primary insurers are in agreement that the primary insurance coverage has been completely exhausted," but goes on to state that "**Asbestos Corporation Limited presently finances the costs of the asbestos litigation using the third and fourth excess layer coverage**" (emphasis added).

This statement by ACL’s CFO in February 2023 directly contradicts the repeated representations that ACL has no insurance that it made to the circuit court six months later at the August 21, 2023 hearing.

Many additional documents produced by GAIC confirm the existence of multiple layers of excess insurance coverage available to ACL with respect to U.S. asbestos liabilities. For example, attached at Exhibit F hereto is a chart that was provided to GAIC in 2011, depicting multiple years of hundreds of millions in liability insurance available to ACL for U.S. asbestos litigation and providing “details of the impairment of the excess insurance policies **presently triggered and used in the financing of ACL’s litigation costs**” (emphasis added).⁶

These communications directly from ACL and its representatives confirm that ACL has been accessing excess liability insurance policies to finance the costs of its U.S. asbestos litigation for many years. There is simply no way to reconcile the statements made by ACL to the circuit court—that it has looked for and has no insurance—with the statements that ACL has been making to excess insurers like GAIC, that it is “presently financing” asbestos litigation through excess insurance policies providing coverage to ACL.

D. Documents Located by the Receiver also Demonstrate that ACL’s Bases for Resisting Respondents’ Discovery Were Premised on Falsehoods

The ACL documents obtained by the Receiver also shows that ACL’s principal basis for resisting discovery in the circuit court below—the purported restrictions of the Quebec Business Concerns Records Act (QBCRA)—was nothing but a self-serving ruse. ACL regularly sends detailed reports and detailed information to insurers in the United States—including to GAIC in

⁶ These communications from ACL appear to fill out some of the details of the approximately \$2 billion in excess insurance coverage that was discussed at the August 21, 2023 hearing based on a historical schedule of insurance that had no specific policy information as to the excess coverage. See Exhibit C.

Ohio—without any concern that communicating insurance information would put ACL at risk of civil or criminal penalties under the QBCRA. In addition, even if the QBCRA in some way limited ACL’s discovery obligations in the circuit court—and it does not—any information that has been sent either to or from ACL’s insurers in the United States over many years is information that is already “lawfully in the United States,” and thus falls within what even ACL Counsel concedes is an established exception to the QBCRA. *See Exhibit A* at 31:9-14 (“There’s an exception, of course, as Your Honor is aware, where documents are lawfully within America. That’s what most courts and judges have done in these cases, sat there and said, ‘If you have documents that are lawfully in America, you produce them. If you don’t, rely on the Act.’”). Accordingly, the QBCRA did not and does not stand in the way of ACL providing truthful disclosures regarding its insurance coverage in the circuit court.⁷

E. Subsequent to the Hearing, Neither ACL Nor Its Insurers Have Corrected ACL’s False Representations

Following the August 21, 2023 hearing and the subsequent orders leading to appointment of the Receiver, ACL has directed all its efforts to seeking to reverse those orders and shutting down the Receiver’s ability to investigate ACL’s insurance. In multiple filings with this Court, ACL has never corrected nor sought to clarify the false statements that it made to the circuit court in the proceedings that led to the orders on appeal.

Indeed, in its most recent petition for supersedeas (improperly filed in this Court instead of the circuit court), ACL continues to refer to “so-called” insurance assets and never acknowledges

⁷ The documents also show that—while ACL has refused to substantively participate in South Carolina asbestos litigation in violation of the circuit court’s orders—it has litigated tens of thousands of asbestos claims in multiple jurisdictions throughout the country—resulting in hundreds of millions in indemnity and expenses. *See Exhibit B*, at GAIC_ACL_000038.

that it does in fact have active insurance that is presently financing its asbestos litigation costs. *See, e.g.*, ACL’s Petition for Supersedeas, Nov. 22, 2023, at 18.

In addition, multiple attorneys representing many of ACL’s insurers were present at the August 21, 2023 hearing. They heard in person ACL’s false statements to the circuit court that ACL had no insurance for its asbestos liabilities. None of ACL’s insurers’ attorneys spoke up to correct ACL’s false statement at that time, and none have taken steps thereafter to correct the record, whether in the circuit court or in this Court. Instead, all of ACL’s insurers’ efforts in the South Carolina courts have been directed toward joining ACL’s in opposing appointment of the Receiver, seeking protective orders from discovery, asking this Court to “confirm” an automatic stay, and otherwise shutting down the circuit court receivership action and the Receiver’s ability to continue his investigation however possible.

ARGUMENT

“Where an appeal . . . is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending . . . parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” Rule 269, SCACR. Fraud upon the court is “that species of fraud, which does, or attempts to, subvert the integrity of the Court itself . . . so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Chewing v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Fraud on the court occurs when a party “has acted with an intent to deceive or defraud the court.” *Id.* (quoting *United States v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)).

ACL's false statements to the circuit court constitute fraud on the court. As recounted above in detail, ACL represented to the circuit court multiple times that ACL had looked and was unable to locate insurance providing coverage for its asbestos litigation:

- “We have no insurance to tender against. It’s just that simple. I’m not paid by insurance. It would make no sense not to tender, Your Honor.”
- “[W]e have gone through [what] we can find and we know of and there is no coverage for us to tender against.”
- “[T]here’s nothing [showing] that we have insurance.”
- “Why would they not move forward and tender if there was something there to tender for?”
- “[B]ut there was nothing to tender. ... This [chart of historical insurance] doesn’t prove that this insurance is in place.”

Moreover, it is perfectly clear that the circuit court understood these statements by ACL Counsel to be affirmative representations to the court that ACL did not have insurance coverage currently available for the asbestos claims at issue:

- “You have got people now, is what you’re representing to me, who looked at old records and says there’s no coverage. Isn’t that right?”
- “There are people that are looking at some record of ACL’s to make the representation that you’re making, upon your oath as a lawyer in this court today, which is they don’t have any coverage.”
- “Mr. Brown, you just, not three minutes ago, told me, “We have looked to see if there are any policies.” You looked at something to make that representation, and you’re a good enough lawyer, you don’t make representations that aren’t true. I have ultimate respect for your integrity and your ability to sort out the facts in this case, but if your folks—your clients, whether they be attorneys for the client or whatever—looked, they looked at something. And you are a good enough trial lawyer to know we’re entitled to see what they looked at...”

- “The insurance has to be discovered by looking at your records or having someone who is familiar enough with the corporation to take a look. You, obviously, have some people that you think are capable of taking a look because you’re representing to the Court that there is no insurance. It’s an affirmative representation.”

In the more than three months since the August 21 hearing, ACL has not communicated to the circuit court or this Court seeking to withdraw or correct any of the false statements.

Moreover, the communications between ACL and GAIC (an insurer located in the United States), which have come to light through the Receiver’s investigation, show that ACL has intentionally concealed extensive documentation regarding of its insurance policies, while representing to the court that it looked for and had located no policies.

“The 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.” *Samples v. Mitchell*, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997) (internal quotations omitted). As one Circuit Court Judge has explained:

In describing the role of discovery in a lawsuit, courts often refer to the child’s game of “blind man’s bluff,” explaining that the discovery process is designed to prevent such guessing games. *See, e.g., U.S. v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958). Here, the child’s game reflected by the actions of the [Defendants] is more akin to ‘Go Fish,’ where Plaintiff’s counsel continually ask for discoverable material and instead of handing over that material, defense counsel makes opposing counsel “go fish” until they happen to stumble upon crucial witnesses and critical documents.

Order Granting Sanctions, December 29, 2025, *Greenberg v. Five Star Quality Care, Inc., et al.*, Civil Action No. 2013-CP-40-03071 (Richland Cty., South Carolina) (Gee, J.).

Here, ACL has intentionally concealed documents and information regarding its insurance coverage, representing that there was no insurance. This conduct constitutes fraud on the court. ACL’s fraud began in the circuit court and is continuing in this Court as ACL would have this

Court make a ruling in this appeal based on its fraudulent representations. It is imperative that these misrepresentations be corrected in the record on appeal.

CONCLUSION

Through fraud on the court, ACL has engaged in a scheme to conceal insurance that provides coverage for bodily injury claims brought by asbestos claimants in South Carolina. Although it is not necessary to demonstrate prejudice to establish fraud on the court, here the Receiver has been forced to undertake substantial efforts to investigate ACL's insurance, while ACL and its insurers sit on information and documentation that directly refutes ACL's misrepresentations. The Receiver therefore respectfully requests that this Court grant its motion to supplement the record, award the Receiver attorneys' fees incurred to date in the investigation of ACL's insurance coverage, and impose such other sanctions on ACL that it considers appropriate as a remedy for ACL's fraud on the court. In the alternative, the Receiver requests the Court remand this case to the circuit court for further proceedings to investigate and make findings regarding ACL's fraudulent representations.

December 11, 2023

Respectfully submitted,

/s/ Jonathan M. Robinson

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EXHIBIT A

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
 4 JOHN A. TIBBS and)
 MARGARET B. TIBBS,)
 5 Plaintiffs,)
 6 vs.) Case No. 2023-CP-40-01759
 7 3M COMPANY, et al.,)
 8 Defendants.)
 -----X

9 August 21, 2023

10 B E F O R E:

11 The Honorable Justice Jean H. Toal, Presiding Judge

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

13 Thiele McVey, Esq.
 Attorney for Plaintiffs

14 Stephen Brown, Esq.
 Attorney for ACL

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25 Court Reporter: Bobbi Fisher, RPR
 SC Official Court Reporter III

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E X H I B I T S

(None.)

P R O C E E D I N G S

(The following proceedings started at 9:28 a.m.):

THE COURT: Good morning, ladies and gentlemen. We have got a good many matters today and some very late flying-in-the-door material that got to me -- some of it is still not to me. What I could find pretty late last night, I have tried to read, but I cannot tell you that I'm completely familiar with some of these very late filings, but I am not going to postpone these things. I'm going to try to go through them and see what I can do; and what I can't do, we'll come back at a later time and revisit. But I'm going to go through this agenda as it now stands, so that's how we're going to proceed.

The first matter is Tibbs against Asbestos Corporation. This is Plaintiff's motion to hold Asbestos Corporation in contempt and to strike answer and Plaintiff's motion to appoint a receiver.

Ms. McVey?

MS. McVEY: Good morning, Justice Toal. I know you drove in this morning, so we really appreciate the time.

THE COURT: Look here, everybody had to make an effort this morning.

MS. McVEY: That's right.

I think Eva is stuck.

THE COURT: Hang on. Eva's trapped. Okay. We got

1 it.

2 Just -- of course, just as a reminder for all of
3 you: I hope all of you have given your cards to the court
4 reporters. We have got the State court reporter and we
5 have a privately engaged court reporter. I'd advise you
6 to give them all your attorney cards, anyone who has got
7 any concern about the record and receiving it. And when
8 you address the Court, of course you always state your
9 name and the party you represent, even if you have to do
10 that two or three times during the course of this matter.
11 We do that for our court reporters to be sure they keep up
12 with all these various cases.

13 In this case, Tibbs, we're talking about
14 2023-CP-40-01759.

15 Ms. McVey, you may proceed.

16 MS. McVEY: Thank you, Your Honor. Thiele McVey for
17 the plaintiffs in this case.

18 And, Your Honor, just for the record, as you know,
19 the August block is now fully settled, and so all of those
20 motions are off the docket. So, hopefully, it will be a
21 little bit of a lighter day today. We'll see.

22 Judge, I want to introduce you to Asbestos
23 Corporation Limited, but you have a lot of this background
24 already because they're related to Atlas Turner.

25 THE COURT: Right. But I believe that because there

1 are so many moving parts to this thing now, I think making
2 each record complete by some recitation on all sides of
3 the basics of the controversy is probably a pretty good
4 idea.

5 MS. McVEY: Absolutely. So, with that, let me go
6 over a little bit of the background with Atlas -- I'm
7 sorry -- Asbestos Corporation. They supplied asbestos to
8 companies and contractors throughout the Southeastern
9 United States, but they followed the same type of playbook
10 that Atlas Turner does. They filed a motion to dismiss
11 for lack of personal jurisdiction, and despite doing that,
12 they refused to engage in any kind of jurisdictional
13 discovery, even limited jurisdictional discovery.

14 Despite that refusal, we found and submitted to Your
15 Honor, during the motion to dismiss, sales into South
16 Carolina of raw asbestos. You heard the motion to dismiss
17 on July 10th, and you denied their motion to dismiss for
18 lack of personal jurisdiction. And during that hearing,
19 orally in open court, you ordered them to produce a
20 witness and to fully answer discovery.

21 On July 19th, you issued that order from that
22 July 10th hearing and stated in your order, "Failure to
23 answer the court-ordered discovery and to provide a
24 corporate representative for deposition shall result in
25 ACL being held in contempt."

1 In short, Your Honor, just like Atlas Turner, ACL is
2 refusing to comply with your orders, but this time,
3 they're trying to not be quite as defiant. And let me
4 explain that a little bit.

5 Well, they -- first of all, they flat out refused to
6 produce a 30(b)(6) witness. This time, though, they don't
7 just say, "We're not doing it," they say, "We're not doing
8 it because it's too hard. This corporation -- this stuff
9 happened a long time ago. We don't have a witness that we
10 can produce."

11 And, Your Honor, if that were the accepted legal
12 standard in asbestos cases, no one would put up a
13 corporate representative. They have a duty to educate a
14 witness with all the prior stuff. They have refused to do
15 that.

16 THE COURT: Well -- and moving forward from that,
17 one of the very reasons that I have appointed receivers
18 for corporations that are not active or corporations that
19 do not cooperate is to try to discover their only --
20 sometimes their only asset, which is insurance, but the
21 other reason to do it is so that there is then some
22 entity -- the receiver, who operates on the basis of the
23 benefit to the corporation. And I did that beginning with
24 the Covil case when I discovered that the representation,
25 for years, pretended that Covil had someone to accept the

1 service and was active in the case but just couldn't
2 locate their files because they were so old, but it turned
3 out that the insurance companies were really running the
4 show, saying that there was no coverage but settling for
5 low amounts.

6 And under that scenario, in the Covil case, that
7 resulted in a good many receiverships being created here
8 to deal with corporations who supply asbestos-containing
9 materials here and, therefore, have status as a potential
10 defendant in matters here.

11 And, also, the receiver has the ability then to
12 answer 30(b)(6) requirements and to try to find corporate
13 records of other things, because as we know, even though
14 you Plaintiffs don't like it, 30(b)(6) witnesses don't
15 sometimes have direct knowledge, but they have knowledge
16 that the corporation can speak to its affairs and its
17 operation because of business records, normal exceptions
18 to hearsay.

19 MS. McVEY: Yes, ma'am.

20 THE COURT: So I just give you that by way of
21 supplementing what you were going to say. This is another
22 in a long line of cases in which the Court has tried to
23 protect the integrity of the process and the discovery of
24 assets by the use of a receiver who can then cause this
25 corporation to adequately respond to 30(b)(6).

1 MS. McVEY: That's right.

2 THE COURT: Now, ACL has resisted the appointment of
3 a receiver.

4 MS. McVEY: And, Your Honor, we are -- let me walk
5 through where we are in terms of that as well. Just in
6 full disclosure, Mr. Brown -- and this is the third law
7 firm to represent Atlas Turner and ACL. You know, they
8 were represented by Nelson Mullins and then Murphy
9 Grantland and now Clement Rivers.

10 And we have had some pretty candid conversations
11 with Mr. Brown, but what he essentially said is, "Look,
12 I'm going to give you some old transcripts from ACL, I'm
13 going to answer one set of interrogatories." They didn't
14 answer the second set of interrogatories.

15 THE COURT: Right. You submitted those. I have
16 read them.

17 MS. McVEY: Okay.

18 THE COURT: I'm familiar with those.

19 MS. McVEY: So you know all the history. It's not
20 enough. They have -- they're fail- -- they're not
21 complying with your order. And so, Your Honor, I believe
22 that they should be held in contempt. And if they are
23 held in contempt for refusing to engage in discovery
24 period -- and they made it clear; they're not going to
25 produce a witness and they're not going to produce

1 documents, period.

2 We have argued -- they want to rely on this Quebec
3 Records Act. I'm happy to discuss that with you. That is
4 -- we argued that with Atlas Turner. That's a case and an
5 act that Judge Joe Anderson ruled on in Lyon (ph) saying
6 it doesn't apply.

7 THE COURT: Yes. I find it interesting in these
8 last set of briefings that several United States District
9 Court for the District of South Carolina decisions, not
10 just Judge Anderson but others over the years, have ruled
11 on the applicability of the Quebec Records Act to
12 discovery proceedings.

13 MS. McVEY: That's right.

14 And, Your Honor, they want to rely on that. But of
15 course the statute is, even if it were appropriate and it
16 applied and it could prevent them from producing
17 discovery, which I don't think it does, but even if it
18 did, the statute itself is not self-enforcing and, in
19 fact, it requires a petition by the Attorney General in
20 Canada to a district judge for an order requiring the
21 documents not to be sent out of the province. They have
22 made no allegation that that is happening or that it will
23 happen or anything else.

24 Your Honor, we strongly believe that they cannot
25 just say, "We're not going to produce discovery," and not

1 be held -- not be sanctioned for that.

2 THE COURT: Does the Quebec Records Act, in your
3 opinion, prevent them from appointing a 30(b)(6)
4 representative in discovery matters?

5 MS. McVEY: It does not. And they aren't even
6 saying it does. They're just saying, "We're not going to
7 do it because it's too hard." Even more importantly, they
8 refuse to produce documents. And, you know, this Act kind
9 of came into effect before there were photocopiers, for
10 example, that could easily reproduce documents. It just
11 doesn't apply. And almost every Court who has looked at
12 that agrees it cannot prevent discovery when jurisdiction
13 is appropriate, as you have found here.

14 Your Honor, we believe, because of their refusal to
15 comply, this will be now the second hearing on this, with
16 their refusal to comply. They should be held in contempt.
17 And if you hold them in contempt, we believe the
18 appropriate sanction is to strike their answer, and so we
19 would ask you to do that.

20 If you decide to hold them in contempt and strike
21 their answer -- and I think it has to be in that order --
22 then, Your Honor, we would move to have a receiver
23 appointed over ACL. And, again, it's a limited
24 receivership in some ways. It would allow the receiver to
25 marshal the insurance assets to the extent there are any

1 insurance assets. It would also allow them -- allow him
2 to control the defense -- hire counsel and control the
3 defense. Because what's happening is ACL and Atlas Turner
4 is not tendering these cases to the insurance carriers,
5 and we know, Judge, that there is a ton of insurance.

6 We also know, based on the receiver's filing in
7 Atlas Turner, that the liquidation of insurance assets is
8 a real concern. My concern is that they are going to
9 liquidate these policies -- "they" being ACL -- and then
10 take the money and keep it in Canada where they think we
11 can't get to it.

12 Your Honor, we know that they know how to do that
13 because the receiver filed -- and I'll hand it up -- an
14 Agreement of Transaction, Settlement, and Release between
15 Asbestos Corporation Limited and the Maryland Casualty
16 Company. And this is from 1989. And I'll hand it up to
17 you, but it's essentially establishing a fund to pay
18 victims who have been hurt by ACL's conduct. And so
19 Maryland Casualty Company gave ACL millions of dollars to
20 pay asbestos victims.

21 And, Judge, I'm happy to hand this up. And I have
22 highlighted --

23 THE COURT: Hang for a minute. Let me just --

24 MS. McVEY: Yes, ma'am.

25 THE COURT: -- identify this. And I assume this is

1 something Mr. Brown is aware of.

2 Mr. Brown; right?

3 MR. BROWN: Yes, ma'am.

4 THE COURT: It's Agreement of Transaction,
5 Settlement, and Release between Asbestos Corporation
6 Limited and the Maryland Casualty Company, bearing the
7 form date of July the 18th, 1989. And it's a document
8 that looks like it's a complete copy of that agreement
9 signed by Asbestos Corporation Limited and Maryland
10 Casualty. Attached to it is an email from Lindsay Valek
11 at Rikard & Protopapas to Stephanie Hanes, and it's a
12 tender to Continental CNA and Resolute of Atlas Turner --

13 MS. McVEY: Judge, I --

14 THE COURT: -- actions -- causes of action, and it
15 lists them. These are all causes of action that I'm
16 familiar with. Almost all of them are pending in front of
17 me at this time.

18 MS. McVEY: And that was a filing that
19 Mr. Protopapas made on Friday.

20 THE COURT: Right.

21 MS. McVEY: Your Honor, we know that there is
22 insurance for ACL. We know that they're depleting it. I
23 don't understand why they're not tendering these cases to
24 their insurance carrier, who have policies who would cover
25 Mr. Tibbs and other South Carolinians. And I have a very

1 large concern that, without a receiver, ACL will do what
2 it is attempting to do in Atlas Turner.

3 Your Honor -- I'm sorry.

4 THE COURT: Let me ask this question: The Maryland
5 policies that are an issue in this agreement ACL made with
6 Maryland back in 1989 are policies from '67 to '71, three
7 different policies with those effective periods.

8 And it looks to me like this document sets up
9 something similar to our qualified settlement funds. We
10 have set up a variety of qualified settlement funds for
11 asbestos cases involving insurance companies for
12 corporations for which a receiver has been appointed, and
13 the receiver and receiver's counsel have negotiated with
14 insurance companies a settlement of their liabilities,
15 much like what Maryland is doing in this agreement, which
16 creates qualified settlement funds whose funds then stand
17 for the tendering of claims for the periods covered by the
18 policies for which the settlement is reached.

19 Now, are any of the actions that are currently
20 pending affected by this qualified settlement fund or do
21 you know?

22 MS. McVEY: I don't know, but they may be. And my
23 concern is, I don't know how many other ones there are.

24 THE COURT: Yes, that was the next question I was
25 going to ask. Are you aware of others? I would be

1 surprised if there were not others.

2 MS. McVEY: That's my concern. I know
3 Mr. Protopapas filed, in Atlas Turner, another document
4 like that that involved Atlas Turner, but I don't know.
5 And part of the problem when they won't participate --

6 THE COURT: Well, that's what a receiver would do --

7 MS. McVEY: That's right.

8 THE COURT: -- would be to suss this out.

9 I don't understand what you mean by "limited
10 receivership." Why wouldn't I just set up a receivership
11 like a normal receivership?

12 MS. McVEY: You would. And it would be to target --
13 because ACL is an ongoing corporation, although, I think
14 all they do is deal with asbestos lawsuits. I don't think
15 they do anything else.

16 THE COURT: Right. We dealt with corporations whose
17 sole function is to deal with management of old claims
18 when they were still actively in an asbestos-related
19 business.

20 MS. McVEY: That's right. So it would be limited
21 only in the sense that they would affect the policies that
22 would be in play in the United States, in South
23 Carolina --

24 THE COURT: Right.

25 MS. McVEY: -- and it would allow him to control the

1 defense in the sense that we need to be able to tender --
2 he needs to be able to tender the Tibbs case and other
3 cases to these carriers. Right now, I believe what the
4 carriers will say is ACL is saying, "We don't need you to
5 come in here."

6 And I don't know, without doing discovery, which
7 they refused to participate in, why that is, where the
8 insurance is, all that kind of stuff.

9 THE COURT: Right.

10 MS. McVEY: Your Honor, so I think it has to be
11 they're in contempt, the answer is struck, and if that
12 happens, then the appointment of a receiver would take
13 place.

14 Now, I do want to address just briefly. They -- we
15 have moved to have Mr. Protopapas appointed the receiver.
16 You have a lot of experience with him. And ACL says in
17 their briefing -- and this is a quote -- that "a receiver
18 should not be appointed. This is especially true when the
19 proposed receiver is one suggested by Plaintiff's counsel,
20 who serves in such roles repeatedly, an entity over which
21 he attempts to assert authority as an existing Canadian
22 corporation with no assets in South Carolina."

23 Now, you know the quality of Mr. Protopapas's
24 work --

25 THE COURT: Well, let's back up for a minute. With

1 respect to assets in South Carolina, as we know, the case
2 law is that, if there is a claim pending in South Carolina
3 where South Carolina has proper jurisdiction, as there
4 would be at least on the basis of averment so far made
5 with the products that were put into the stream of
6 commerce in South Carolina by ACL, then the insurance
7 that's in place for those claims is regarded as an asset
8 present in South Carolina.

9 MS. McVEY: That's right.

10 THE COURT: Isn't that correct?

11 MS. McVEY: Yes, ma'am. The case law is clear on
12 that, and you have ruled on that many times.

13 THE COURT: Right.

14 MS. McVEY: So we believe of course there are assets
15 here. There's insurance that would cover South
16 Carolinians' claims here.

17 But I also want to say, it's not just Chief Justice
18 Jean Toal who has appointed Mr. Protopapas as a receiver
19 but the Delaware business court just recently appointed
20 him.

21 THE COURT: Well, the Wisconsin court also recently
22 appointed Mr. Protopapas.

23 MS. McVEY: That's right. So I think other courts
24 have recognized his expertise in this field, and so we
25 believe he would be the appropriate person.

1 THE COURT: And, quite honestly, if you look in the
2 broader scheme of things of mass courts in this country,
3 receivers are quite often appointed to marshal assets and
4 to manage claims. The famous 9/11 mass tort cases against
5 the governments of several countries and so forth that --
6 or whether it's more typical class action-type things,
7 individual corporations similarity -- or financial
8 distress are set up only to handle old claims, typically
9 have receivers appointed maybe sometimes in several
10 different states to marshal assets that would affect
11 claims in that state.

12 MS. McVEY: That's right. It's a very common
13 tool --

14 THE COURT: Right.

15 MS. McVEY: -- used.

16 And so, Your Honor, thank you for hearing me. I'm
17 happy to answer any questions, but we believe they should
18 be held in contempt, their answer struck, and a receiver
19 appointed.

20 THE COURT: Very good.

21 Mr. Brown.

22 MR. BROWN: Thank you, Your Honor. May it please
23 the Court?

24 If you don't mind, Your Honor, I'd like to go in
25 reverse order just to -- it might make everything go a

1 little easier.

2 THE COURT: Sure. However you wish to handle it,
3 Mr. Brown.

4 MR. BROWN: And I apologize; I have got stuff spread
5 everywhere.

6 THE COURT: That's all right. Me too.

7 MR. BROWN: I have never met Mr. Protopapas in my
8 career, unfortunately. The comment or the quote that was
9 put in the brief about a receiver being independent and
10 should not be the person suggested by the plaintiff came
11 from the 1930-something case that has been cited both in
12 Ms. McVey's briefs to this Court and this Court's order.
13 That was straight from our Supreme Court.

14 THE COURT: Well, I'll put that in the context for
15 you right now, Mr. Brown, that -- when that's the
16 beginning of any kind of receivership, that case may have
17 some applicability, but this receiver has performed as a
18 receiver now in 17 or 18 different asbestos cases
19 involving different plaintiffs, involving different
20 lawyers.

21 And the inferences made in that old case and the
22 inferences made in your brief that somehow or another the
23 receiver is the tool of the plaintiff or too close to the
24 plaintiff -- I appointed Mr. Protopapas as the receiver in
25 the first Covil case not by anybody's recommendations but

1 because of my knowledge of Mr. Protopapas. And he has now
2 operated in a good many receiverships, and I will assure
3 you, he is a vigorous defender in the receiverships in
4 which a proper settlement fund has been established. He
5 does not settle cases casually. He protects the fund,
6 just as any defense lawyer would do.

7 The attorneys he handles -- he hires to handle the
8 defense are well-recognized defense lawyers to the nth
9 degree in this state and vigorously represent the
10 defense's point of view.

11 So I know -- I'm familiar with the case you cite.
12 It has no applicability to what we're talking about here,
13 in my view.

14 MR. BROWN: And I understand Your Honor's position
15 on that, but that's where that came from. In the response
16 they filed, they referred to me as making a thinly veiled
17 defamation attempt. It was a never thinly veiled attempt
18 at defamation. It was simply Ms. McVey specifically
19 requested him in her motion.

20 THE COURT: Well, she did because of the experience
21 we have all had with Mr. Protopapas in these many other
22 receiverships.

23 MR. BROWN: And I understand. And I was, Your
24 Honor, just going by the ruling or the language that the
25 Supreme Court had used in that case --

1 THE COURT: Yes, sir.

2 MR. BROWN: -- and then relied on by this Court in
3 its ruling.

4 With regard to ACL, ACL, as Your Honor is aware, is
5 the Thetford mines in Quebec. It is a live Canadian
6 corporation.

7 THE COURT: Is it set up for any other purpose than
8 to handle claims -- old claims against ACL?

9 MR. BROWN: Yes, Your Honor. It also --

10 THE COURT: It has an ongoing independent business?

11 MR. BROWN: It operates with regard to certain
12 properties it owns up there, trying to --

13 THE COURT: Right. That's typical of companies that
14 are set up after the active manufacturing and sale of
15 products as long as it's out of the way and all these
16 claims they manage properties of the corporation as well
17 as claims against -- the most famous is J&J Corporation,
18 which was set up separately to do just that for Johnson &
19 Johnson.

20 MR. BROWN: It has been doing this since the 1980s
21 when it stopped with asbestos, Your Honor. So it is a --

22 THE COURT: And it actively, apparently, negotiated
23 this agreement with the Maryland -- with regard to setting
24 up a qualified settlement fund to take care of certain
25 asbestos claims.

1 MR. BROWN: In 1989 --

2 THE COURT: Right.

3 MR. BROWN: -- and as Your Honor pointed out,
4 relating to policies from 1967 to 1971 -- and I'd point
5 out that that agreement was negotiated, and by its very
6 terms, is governed by the law of Quebec.

7 THE COURT: Yeah, that's fine. I understand.

8 MR. BROWN: In this particular case, Your Honor, I
9 did -- Ms. McVey and I have had good conversations or
10 conversations and never heated or to things of that --
11 anything of that nature.

12 THE COURT: You are both pros of the first tier. I
13 respect both of you tremendously, and I am confident that
14 the exchanges on behalf of your client are professional in
15 every way. And I say that with all sincerity to you.
16 You're a fine lawyer and so is she. So I don't -- you
17 don't need to get into what your clients want you to say
18 about each other.

19 MR. BROWN: I'm not worried about what my client
20 wants to say; I'm worried about what Steve Brown wants to
21 say --

22 THE COURT: Well, I --

23 MR. BROWN: -- based upon his research and his
24 appearances in front of Your Honor.

25 THE COURT: Well, I understand. You don't need to

1 tarry on that. Let's get to the meat of this thing.

2 MR. BROWN: Well, let me get to my point, which is,
3 it's not that it's too much for us to produce a 30(b)(6).
4 It's not that we don't want to produce a 30(b)(6).
5 They're all dead.

6 THE COURT: No, sir. Now, Mr. Brown, somebody is
7 paying you, and it's ACL. And it may be their insurance
8 company. I don't know. But you're not here as a gift.
9 You're here because a company is actively engaging a very
10 fine lawyer to represent them.

11 I have had many of these corporation situations in
12 which the corporation has not operated for many years,
13 says it has no records, but when you appoint a 30(b)(6)
14 representative, that 30(b)(6) does not have to have ever
15 operated within the company. That 30(b)(6) is the
16 repository of businesses records and other records such as
17 insurance records that can be found that pertain to the
18 claims being made against it.

19 And this excuse that they're all dead is not
20 something that carries much weight with me. I have had
21 many, many corporations -- including Covil, the most
22 famous one -- where everybody that would have had anything
23 to do with this is no longer with us. It didn't prevent
24 them from appointing a very competent 30(b)(6)
25 representative to marshal their records and speak to

1 matters with regard to claims against them.

2 MR. BROWN: And those cases, Your Honor, I believe
3 you had a different factual setup to deal with, because I
4 understand that Your Honor thinks very little of the
5 Quebec Business Records Concern Act. We have a situation
6 and we cited some cases. I understand what Judge Anderson
7 did. I read his case. His opinion is, obviously, not
8 binding on Your Honor. You make your own decisions on
9 these, obviously, and we cited other cases from around the
10 country from other district courts that have looked at
11 this issue, and they said, "You know what, we understand"
12 -- one of them, I had to go to look up Greek mythology to
13 understand that quote they were using about --

14 THE COURT: Scylla and Charbdis. Very -- very
15 famous quote.

16 MR. BROWN: Well, I'm poorly educated because I had
17 no clue and had to go look it up. But in any event...

18 THE COURT: Two rocks, you gotta steer between them.

19 MR. BROWN: Having done that, Your Honor, that is
20 where we are, because with regard to the 30(b)(6),
21 Ms. McVey is correct in this one point. There are certain
22 things I can give her -- I have a rolling cart over here,
23 and I can show -- it's this big --

24 THE COURT: I have seen a sample of those things.
25 They're not what she's asking for.

1 MR. BROWN: I understand that, Your Honor.

2 THE COURT: And most particularly, Mr. Brown, they
3 are not any kind of insurance information about coverage
4 that would have been available. All of these policies
5 back at that time were per-occurrence policies. They
6 cover things like this, even though mesothelioma has a
7 latency period of many years. It's when the occurrence
8 took place that those policies come alive. The insurance
9 industry now calls them legacy policies.

10 If they had one with the Maryland, they had others.
11 But as a Quebec corporation, they had no problem with
12 setting up a qualified settlement fund to take care of
13 asbestos claims back in the '80s that were '70s policies.
14 They would have no problem bringing that forward today.

15 I feel quite confident, while they're still in
16 business, as big a corporation as they were, they had
17 commercial general liability policies, probably
18 per-occurrence coverage. And that's what they're trying
19 to seek.

20 MR. BROWN: And I will answer Ms. McVey's question,
21 which is why have we not tendered. We have no insurance
22 to tender against. It's just that simple. I'm not paid
23 by insurance. It would make no sense not to tender, Your
24 Honor.

25 THE COURT: Well, how about when, in relation to the

1 Maryland, did y'all quit buying insurance? Or do you
2 know?

3 MR. BROWN: I don't know, Your Honor.

4 THE COURT: Well, that's one thing --

5 MR. BROWN: But I know the mid '80s.

6 THE COURT: -- that somebody -- somebody within ACL
7 is capable of digging out. Don't tell me they have burned
8 them all. I don't have fires, now, that --

9 MR. BROWN: There haven't been any fires, Your
10 Honor.

11 THE COURT: They have got their records.

12 MR. BROWN: I haven't claimed any fires. They
13 stopped operations with regard to asbestos in the mid
14 '80s.

15 THE COURT: They're going to have those records,
16 unless you tell me differently.

17 MR. BROWN: Who doesn't have the records?

18 THE COURT: ACL is going to have records from -- if
19 they have got a company who has now set up to manage these
20 old claims and it was set up with the ability to, in 1989,
21 go back and dig up '71 policies and settle these matters
22 that are contained in this agreement, they have got the
23 ability to look at those same records and find out whether
24 there's coverage for these matters that are alleged in the
25 Tibbs case.

1 MR. BROWN: And we have gone through and we can find
2 and we know of and there is no coverage for us to tender
3 against.

4 THE COURT: Well, that's your contention, but
5 they're entitled to depose the people that you had go
6 through those records and ask them what they looked at and
7 so forth. It's not acceptable to say, "We're just not
8 going to tender anybody because it's too old and everybody
9 is dead." You have got people now, is what you're
10 representing to me, who looked at old records and says
11 there's no coverage. Isn't that right?

12 MR. BROWN: Attorneys.

13 THE COURT: I don't care whether they're attorneys
14 or who they are. There are people that are looking at
15 some record of ACL's to make the representation that
16 you're making, upon your oath as a lawyer in this court
17 today, which is they don't have any coverage. They are
18 entitled to look at the same material that your internal
19 people looked at and make their own determination about
20 that. That's what discovery in 30(b)(6) is all about.

21 MR. BROWN: I understand exactly what Your Honor is
22 saying. I respectfully disagree. I believe 30(b)(6) -- I
23 can read the rule. I understand what it says. I also
24 read lots of articles where 30(b)(6) is a huge problem
25 within the judicial system in and of itself by going in

1 and trying to create witnesses, and circuit courts have
2 put limitations on that.

3 THE COURT: Mr. Brown, you just, not three minutes
4 ago, told me, "We have looked to see if there are any
5 policies." You looked at something to make that
6 representation, and you're a good enough lawyer, you don't
7 make representations that aren't true.

8 I have ultimate respect for your integrity and your
9 ability to sort out the facts in this case, but if your
10 folks -- your clients, whether they be attorneys for the
11 client or whatever -- looked, they looked at something.
12 And you are a good enough trial lawyer to know we're
13 entitled to see what they looked at. We here in South
14 Carolina in this case -- and Quebec Records Act has
15 nothing to do with that.

16 The Quebec Records Act does not prevent you from
17 entering into this agreement in 1989 when they were a
18 Quebec corporation. This is the same kind of agreement
19 they're trying to effectuate for their clients ultimately
20 which is some agreement that can look at the insurance
21 coverage and pursue it.

22 MR. BROWN: Your Honor, I would confess, you lost me
23 there. The Quebec Records Act would never stop us from
24 entering into an agreement. It has to do with the
25 production of that agreement here and in Maryland.

1 THE COURT: I don't think it has to do with a darn
2 thing with regard to records that have already been
3 produced and a category of things that, apparently when it
4 suits you, are produced and agreements entered into with
5 insurance companies.

6 MR. BROWN: I just respectfully disagree with Your
7 Honor on that issue.

8 THE COURT: All right. I understand.

9 MR. BROWN: With regard, though, I did -- on
10 contempt, I did -- it was important to me to try to show
11 -- and you say it's not what Ms. McVey asked for, and I
12 understand that -- but tried to do more than was done at
13 Atlas Turner. They talked about the other attorneys. The
14 other attorneys had conflicts. They didn't just walk away
15 from this case. My understanding is conflicts developed.

16 However, in this particular case, when I've -- I
17 wanted to buy things that have come through America so
18 that the Quebec Act would not come into play with them.
19 It goes to them. You say that's not enough. Again, I
20 understand --

21 THE COURT: Well, if they came to America to talk
22 with you so the Quebec Records Act would not apply, then
23 why can't they sit for a deposition by Ms. McVey? They
24 have already waived any reliance on it if they have come
25 to America to talk to you and show you records or show you

1 how they searched. That makes no sense to me.

2 MR. BROWN: No, ma'am, they did not come to America
3 to show me what we did. What we did was via telephone
4 conferences and Zoom conferences, not them coming to
5 America.

6 Lost throughout all of that is this a functioning
7 Canadian corporation. The Court might say, No, I have
8 seen these --

9 THE COURT: No, we're fine with that. It's a
10 functioning corporation who refuses to cooperate with
11 South Carolina courts. It's a functioning corporation
12 whose business is to manage the assets of a formally
13 active asbestos business.

14 MR. BROWN: And that is a portion of what it does.
15 It's not set up as some new corporation to manage these
16 claims as Your Honor has said.

17 Number two, unlike any other case that I believe we
18 have had within this court, the Quebec Act is going to get
19 down to either South Carolina Supreme Court or a court in
20 Canada, and they can fight that issue out eventually.

21 THE COURT: Has the Attorney General applied for
22 enforcement of this Records Act?

23 MR. BROWN: Not to my knowledge at this point.

24 THE COURT: Well, isn't that a predicate to having
25 you put this Act in any kind of role of impact in this

1 case?

2 MR. BROWN: Don't hold me 100 percent to this, but I
3 believe it has to do with trying to get your way around or
4 out of contempt. Because you have both criminal and civil
5 contempt on this, Your Honor -- criminal and civil
6 contempt for the production of documents that this Court
7 says we don't care about.

8 THE COURT: I haven't said a word to that effect.
9 And you're mischaracterizing --

10 MR. BROWN: I apologize.

11 THE COURT: -- my rulings completely, Mr. Brown.

12 MR. BROWN: Well, let me rephrase it. I believe the
13 last memo filed said, basically, that's not our problem,
14 not from you, but from --

15 THE COURT: Well, exactly. That's the lawyers
16 talking. My orders have been pretty clear about this,
17 which is, this whole scenario that was pitched by your
18 client that says we want to do it so much but we're
19 prevented by this Act, it would have to do with a scenario
20 in which the Quebec government actively pursued them for
21 some sort of violation of the Quebec Act. That hasn't
22 been done. It wasn't done back way back in 1989, for
23 sure.

24 MR. BROWN: The 1989 agreement, Your Honor, I don't
25 believe has anything to do with --

1 THE COURT: Yes, it does. They had to produce to
2 the Maryland corporation all kinds of records. This
3 agreement is replete with the discussion of this agreement
4 and the internal workings of ACL and everything else.

5 MR. BROWN: And I believe that document had made its
6 way lawfully into America --

7 THE COURT: Made its way what?

8 MR. BROWN: Lawfully into America.

9 There's an exception, of course, as Your Honor is
10 aware, where documents are lawfully within America.
11 That's what most courts and judges have done in these
12 cases, sat there and said, "If you have documents that are
13 lawfully in America, you produce them. If you don't, rely
14 on the Act."

15 And we list those cases, Your Honor. We talk about
16 them. And if you -- they're very interesting to go look
17 how the judges tried to balance as best they could.

18 On the contempt, my one point, too, Your Honor, is
19 this: It was not an attempt -- or an attempt was made,
20 Your Honor, to show some good faith, some willingness to
21 try and get to the bottom of this, if there's a way to do
22 it. You may not find it sufficient, but there was an
23 effort. It was not a willful disregard or putting the
24 nose up at Your Honor or counsel or this Court.

25 And so, for that reason, we think contempt, which

1 Your Honor is well aware our Supreme Court says is
2 something that you need to balance carefully and make sure
3 you're not going too far, look at what people are trying
4 to do. Was it a deliberate act of disobedience, or was
5 there an attempt to try to deal with it that's not
6 sufficient in our opinion, but you know what? It showed
7 at least some good faith. It wasn't willful and wanton
8 disregard. That would be the argument I would make to
9 Your Honor on contempt.

10 With regard to the striking of an answer, again --
11 or striking of pleadings, I believe the case law from the
12 Supreme Court says that the Court needs to, again, weigh
13 carefully what has been done, the results from it, how it
14 will come into play before you simply strike an answer,
15 which is a severe remedy and one that our Court has at
16 times said that courts have gone too far in.

17 So, in this case, I think -- and the totality of
18 what we have tried to do, maybe not enough to make that,
19 Your Honor, but have tried to do. It shows an effort of
20 good faith and an effort to try, and that has been my
21 goal. That is what I'm trying to do.

22 And then the final thing would be on the
23 receivership. Respectfully -- and I'm not going to
24 re-argue Your Honor's previous order because I realize
25 it's not appropriate, but when you have a Canadian

1 corporation with no assets in South Carolina -- Your Honor
2 talks about the insurance. I went back and reread
3 Sangamo, and as I recall, the plant in issue there was
4 setting up in Pickens, which is a reason recently, I
5 believe, Joe Anderson and another federal judge have
6 distinguished it in two cases within the last year or so.
7 So I don't know that Sangamo gets us as far as the Court
8 has put it.

9 And then the third thing is, you have an entry of
10 default in the Welch case. The order in the Welch case
11 specifically says that, from that point on, it's
12 ministerial to get a default judgment. That is not the
13 law. That is not the law. And, in fact, I cite case law
14 that says, even if you have an entry of default, you're
15 not entitled to a default judgment. You still have to
16 prove -- they still have to prove the entitlement of
17 damages.

18 THE COURT: That's been the case -- I struck an
19 answer before in proceedings like this.

20 MR. BROWN: Yes, ma'am.

21 THE COURT: And that simply means that the --
22 there's no contest to the averments of the complaint. But
23 you've still got to prove -- and that's what has been done
24 in those cases.

25 MR. BROWN: And taking that to its next step,

1 though, Your Honor, that was used in the order to appoint
2 a receiver to try and treat the Welchs almost as if they
3 were creditors. They go under Sections 4 and 5 in both
4 Welch and in Tibbs, and they say, "Well, we're entitled to
5 get a receivership because of the old" -- I can't remember
6 the exact quote, but sort of the old way of doing
7 things in equity --

8 THE COURT: How does Welch -- I don't understand why
9 you're making an argument about Welch. You're
10 representing Asbestos Corporation Limited in Tibbs; right?

11 MR. BROWN: Yes, ma'am.

12 THE COURT: Are you representing Atlas Turner in
13 Welch?

14 MR. BROWN: Yes, ma'am.

15 THE COURT: All right. Well, haven't we got that
16 next on the list of cases to be argued?

17 MR. BROWN: We do. I was pointing out simply about
18 the receivership. In Tibbs, they say there should be a
19 receiver because ACL was, one, either an insurance company
20 -- and counsel has said, "I really don't know what
21 insurance is out there. I don't know what they have done.
22 I don't know. I don't know. I don't know."

23 I was taken to task in a reply filed by the receiver
24 because of this 1989 agreement that Your Honor has in
25 front of you.

1 THE COURT: Yes.

2 MR. BROWN: Okay. Our argument was that, at the
3 time of them filing for this receivership in Tibbs, nobody
4 can show -- nobody can claim -- there's nothing that we
5 have insurance and that we're out there muddling, which is
6 the word that continues to be used --

7 THE COURT: The insurance has to be discovered by
8 looking at your records or having someone who is familiar
9 enough with the corporation to take a look. You,
10 obviously, have some people that you think are capable of
11 taking a look because you're representing to the Court
12 that there is no insurance. It's an affirmative
13 representation. They are entitled to explore whether you
14 have been given correct information by your client about
15 that. That is the argument that they are making now.

16 MR. BROWN: And, again, I understand Your Honor's
17 argument -- well, position on this.

18 THE COURT: I'm telling you about what they're
19 arguing about --

20 MR. BROWN: I understand.

21 THE COURT: -- under the status of the suits here.

22 MR. BROWN: I understand. However, they have not
23 met the requirements to get a receivership under the
24 statute. They have not. It limits Your Honor from going
25 out of this state against a non-South Carolina

1 corporation. It also limits Your Honor from going across
2 an international border to put a receivership --

3 THE COURT: Well, you say that so glibly, but what's
4 your authority for that?

5 MR. BROWN: The statute that talks about assets in
6 this state?

7 THE COURT: Yes. And, again, we dealt with that.
8 Our case law regards insurance as an asset in this state.
9 It's insurance that covers a claim in this state.

10 MR. BROWN: And I have read Sangamo, Your Honor, and
11 I have read the cases that follow it, and I believe that,
12 in that case, you had a specific insured entity plant up
13 in Pickens County.

14 THE COURT: We have a specific insured entity here,
15 a company that you say is still alive and operational. We
16 have sufficient proof at this stage of the proceedings to
17 indicate that they placed asbestos in the stream of
18 commerce in South Carolina at many locations. That means
19 that they can be a defendant in a South Carolina lawsuit,
20 and their insurance is regarded as being an asset of
21 theirs located here because it covers claims here.

22 MR. BROWN: And I would respectfully disagree.
23 Almost every state, I think, has a statute similar to the
24 one that Sagamo [sic] was ultimately interpreting.

25 THE COURT: Sangamo.

1 MR. BROWN: Sangamo. I apologize.

2 And so, would that open the door, Your Honor, not to
3 every state that has that statute, to be able to come in
4 to get a receivership? How do you deal with that
5 situation?

6 THE COURT: I have been dealing with it for about
7 three years now, and it's worked pretty well. And it
8 resulted in the same kind of agreement that your clients
9 entered into when the Maryland wanted to buy a piece with
10 respect to asbestos claims in 1989. That's the same kind
11 of thing they're attempting to do here, and they've got
12 the right to at least explore that.

13 MR. BROWN: Insurance, to me, based upon my reading
14 of the case law, is something very different than a
15 physical asset.

16 THE COURT: No, sir. Assets are assets whether they
17 are pieces of paper, whether they're contractual
18 agreements, or whether they're buildings constructed and
19 sitting on the ground. Assets are assets. They're not
20 limited in that statute in any way.

21 MR. BROWN: Well, I respectfully disagree. I
22 believe that this is a Canadian corporation with no assets
23 in this state. It does no business in this state.

24 THE COURT: I think I understand your position.

25 MR. BROWN: Okay. Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 Ms. McVey, in reply?

3 MS. McVEY: Yes, ma'am. Just briefly.

4 I want to show you what the receiver for Atlas
5 Turner filed. And this goes to the argument of whether or
6 not there's insurance applicable to ACL and Atlas Turner,
7 and they're intertwined.

8 And if you look at the document that's filed, there
9 is -- this came from discovery responses that Asbestos
10 Corporation answered in an old case. And in that, you see
11 a listing of, I don't know, 20 or 30 insurance policies.
12 And my fast math is not great, but it looks like it's
13 about \$2 billion -- billion with a "b" -- of insurance.

14 Now, I don't know what --

15 THE COURT: This is a notice of filing in the Welch
16 case and in the case of Atlas Turner against Zurich, which
17 is a third-party complaint through its duly-appointed
18 receiver, Peter Protopapas. Mr. Protopapas was able to --
19 third-party Zurich; Federal Insurance; Aetna, also known
20 Travelers; Certain Underwriters at Lloyd's; etc. I am
21 very familiar with that litigation, and what it did was
22 to -- once you got a receiver appointed for Atlas Turner,
23 these policies from the Maryland, from Aetna, from
24 Insurance Company of North America, from Federal, from
25 Continental, from Aetna, INA again, these are a variety of

1 policies that cover a period of time from 1964 through
2 1981 --

3 MS. McVEY: And Your Honor --

4 THE COURT: -- that, according to the receiver, are
5 potential insurance programs of Atlas -- I don't think
6 there's any question of whether they're insurance programs
7 of Atlas, but he says they're insurance companies --
8 programs of Atlas that cover the Welch case.

9 MS. McVEY: And, Your Honor, I believe it also
10 covers -- and maybe the receiver could speak to --

11 THE COURT: The receiver doesn't need to speak right
12 now. This speaks for itself.

13 MS. McVEY: So this is -- that document came from
14 Asbestos Corporation's answers to interrogatories.

15 THE COURT: Right.

16 MS. McVEY: So it applies to Atlas Turner but it
17 also applied to Asbestos Corporation.

18 THE COURT: Well, Atlas Turner, as you know, was
19 formally known as Atlas -- Asbestos Company Limited, and
20 it has a business relationship closely intertwined with
21 Atlas Corporation Limited.

22 MS. McVEY: That's right. And so you have that.

23 THE COURT: Or Asbestos Corporation Limited.

24 MS. McVEY: That's about \$2 billion worth of
25 insurance that would cover this stuff. And I have to say,

1 you got a lot of late filings last night. We were all up
2 late last night and early this morning.

3 THE COURT: I know. I did not have a chance to see
4 all those.

5 MS. McVEY: Well, I'm just wondering, if there's no
6 insurance, why is Travelers, why is CNA, where are
7 Lloyd's, why are they coming in and objecting?

8 Your Honor, this is why a receiver brings
9 transparency. All we're asking for is an even playing
10 field that we can do -- that we understand what they have
11 and why.

12 And I respectfully think that Section 5 of the
13 receivership statute is very applicable in this case, and
14 of course you know that that means a receiver can -- may
15 be appointed by a judge of the circuit court, either in or
16 out of court, in such cases as are provided by law or may
17 be in accordance with the existing practice.

18 And we cite to you an old case, a 1909 case, and
19 it's Carolina Chem Company vs. Hunter. And it talks about
20 the appointment of a receiver to correct injustice,
21 particularly when a debtor is trying to defeat his
22 creditors by an act or course of conduct which indicates
23 moral fraud, a conscious intent to defeat, delay, or
24 hinder its creditors in collection of the debts.

25 Mr. Tibbs has a claim against Asbestos Corporation.

1 They cannot come and ignore every order. And I told every
2 lawyer who represents them in the past, "If you guys will
3 answer discovery and produce a witness and give us
4 documents, then this goes away," and they refuse. There's
5 no other option that we have other than to get a receiver
6 appointed who can be fair to both sides and force them
7 transparency, and that's what we're asking you to do, if
8 you strike their answer and hold them in contempt.

9 THE COURT: Thank you, ma'am.

10 Anything further?

11 MR. BROWN: Just briefly, Your Honor, while I grab
12 my pen that was left up here.

13 THE COURT: Yes, sir.

14 MR. BROWN: There's two cases that Ms. McVey talks
15 about, are about active frauds ongoing right then at that
16 time -- that same time period when the cases were being
17 brought, etc. They're all right there put together.
18 Whereas here, Your Honor is looking at something back from
19 1989, however many years that is.

20 THE COURT: Well, Mr. Brown, here's one thing I'm
21 looking at in the Welch case that you referenced when you
22 were making your argument -- we're going to get to that in
23 a minute -- and this is a document -- a notice of filing
24 dated August the 20th, 2023. And that was yesterday. And
25 it lists \$2 billion worth of insurance coverage for your

1 allied corporation, Atlas Turner. And that's not
2 something that took place in 1989. That's something that
3 Mr. Protopapas searched around and found and reported to
4 the Court a day ago.

5 MR. BROWN: Okay. And I will --

6 THE COURT: If a receiver were appointed for ACL, my
7 bet is you would find that's the same body of insurance
8 program information for ACL, if you looked hard enough.

9 MR. BROWN: And I apologize, but I came up late last
10 night and couldn't get a printer to work at the Hilton.
11 Does Your Honor know the range of coverage on that?
12 Because I have not been able to open it.

13 THE COURT: No, but I -- I don't need to know the
14 range of coverage. This thing, yes, it tells you -- for
15 example, the very first one -- and this illustrates, if
16 nothing else, exactly what is happening with trying to get
17 this insurance coverage.

18 Maryland Casualty Company policy -- this was for
19 Atlas Turner -- from January 1, 1961, to January 1, 1964,
20 \$200,000 occurrence annual aggregate. Occurrence
21 policies. That's what all this is about: These old
22 per-occurrence policies.

23 There came a time when CGL policies quit being
24 written as per-occurrence policies. All the ones you see
25 listed on this page, some \$2 billion worth are

1 per-occurrence policy written back before they started
2 changing these policies to make them claims made rather
3 than per occurrence.

4 One would have to plow further into these policies
5 to see whether they provide what Mr. Protopapas suspects
6 is coverage, but he dug around and found this just since
7 he's been appointed as receiver. And that's the very
8 reason they want a receiver appointed in Tibbs.

9 You're the third lawyer that's taken this. Two
10 other lawyers could not get these people to cooperate one
11 bit, except to say, "We don't have to do anything and
12 we're not doing anything and we're not even going to
13 provide a 30(b)(6)," which is a Canadian -- Quebec Records
14 Act certainly doesn't effect. But they said no to
15 everything.

16 Appointing a receiver would give someone, who is
17 very knowledgeable about how to find insurance coverage,
18 the ability to at least take a look at what apparently
19 unknown people that you have checked with say they looked
20 at and couldn't find anything.

21 He found an enormous amount of potential coverage.
22 Now, does -- have I seen the insurance policies? Has he?
23 I don't know. Probably not yet. But he has at least
24 found coverage for this corporation -- CGL-type coverage
25 with very reputable, known insurance companies that

1 started out in the '60s with 200,000 and is now up to
2 \$2 million, \$4 million. I mean, these are big insurance
3 coverages that Mr. Protopapas found and indicates are
4 potential suspected insurance programs with Atlas.

5 They're asking that that same methodology be used to
6 discover insurance policies of ACL. And I don't
7 understand why ACL is fussing about that. These policies
8 protect them. And these policies stand good for claims
9 that are going to be made because their stuff came into
10 the stream of commerce, if that can be proven, and I have
11 to take it as proven at this moment.

12 MR. BROWN: And I think Your Honor hit the nail --
13 hit a nail on the head. Why would they not move forward
14 and tender if there was something there to tender for?

15 THE COURT: Well, that's what I don't understand.
16 There at least was some that Mr. Protopapas had showed,
17 and apparently, they can't agree to nobody.

18 MR. BROWN: This chart is just a chart of insurance.
19 It doesn't indicate that that insurance is there, binding,
20 valid, and applicable today.

21 THE COURT: Well, let's argue about all of that.
22 They have come forward with some showing that there are
23 policies that pertain to this very dispute and cover this
24 very corporation for times that are involved in this
25 lawsuit. That gives you the right to at least move

1 forward and make some kind of discovery of that, and your
2 client is just stonewalling. That's all it is. They
3 don't want to tender to anybody any insurance.
4 Apparently, that's the position they have put you into,
5 rather awkward, I think, for you.

6 MR. BROWN: Again, I'm not going to belabor the
7 point, but there was nothing to tender. It's not offered
8 for me to say that. This doesn't prove that this
9 insurance is in place.

10 And the last thing was -- getting back to those two
11 cases, Your Honor. There was an ongoing hot -- sort of a
12 hot fraud right then. Somebody was going out and buying
13 \$10,000 worth of --

14 [Overlapping conversation.]

15 THE COURT: One of the concerns I have got,
16 Mr. Brown --

17 MR. BROWN: -- right at the same time of a
18 receivership.

19 THE COURT: -- in this very case is whether a hot
20 fraud would take place, meaning whether this corporation
21 would attempt to convert some of these assets into cash at
22 this very moment before entitlement to coverage is
23 ascertained by someone on behalf of the State. Because
24 what you're telling me that is occurring now is that Atlas
25 is making no attempt and ACL is making no attempt to

1 locate policies because they say there aren't any.

2 Here sits a receiver who has found some, and we can
3 now look and see if they provide coverage. But saying I'm
4 going to stonewall it and then say that's the excuse for
5 not even taking a look is something I don't understand the
6 logic of from their point of view, but it promotes some
7 real potential skullduggery if it's not shown the light of
8 day before we go any further with the lawsuit.

9 MR. BROWN: And, again, I understand Your Honor's
10 position, and I stand by my arguments previously --

11 THE COURT: I understand.

12 MR. BROWN: -- as well as the fact that, with all
13 due respect, the requirements of the statute for
14 receivership are not met in this case --

15 THE COURT: I understand. I understand.

16 MR. BROWN: -- and should not be -- should not be
17 one appointed. It would be improper. And if we take the
18 toothpaste out, we'd never be able to get it back in.

19 THE COURT: Well, okay.

20 All right. Anything further?

21 MS. McVEY: No, Your Honor.

22 RULING

23 THE COURT: All right. I think there is more than
24 sufficient evidence to indicate that this corporation is
25 deliberately refusing to comply with discovery rules of

1 South Carolina quite harsh on the alleged application of
2 the Quebec Business Records Act.

3 The ACL's attorney concedes that a 30(b)(6)
4 representative has nothing to do with the Quebec Business
5 Records Act, and the appointment of a receiver is not
6 anything that is effected by the Quebec Business Act.
7 Now, he has other arguments about jurisdiction and so
8 forth and so on, and I understand that, but I've ruled on
9 that. I ruled on that some time ago. I ruled that there
10 was jurisdiction, and we moved forward to deciding what to
11 do about this discovery.

12 This would be my third time revisiting this now.
13 This company has made it clear that they are not going to
14 cooperate with their South Carolina counsel in doing
15 anything that leads to the discovery of business records.

16 The discovery of -- already of the agreement I have
17 referenced of July 18th, 1989, between this very
18 corporation, Asbestos Corporation Limited, and its
19 insurer, Maryland Casualty Company, indicates enough at
20 this moment in the proceedings to justify a much more
21 detailed examination by discovery of the records and
22 information from ACL as to its insurance program.

23 And the notice of filing in another case in which an
24 allied corporation, Atlas Turner, is involved, disclosing
25 the location of potential coverage by many American

1 insurance companies of commercial general liability
2 insurance policies covering from 1961 to 1982, and perhaps
3 beyond, is enough to indicate that there is potential
4 insurance coverage assets which would stand for claims
5 made in South Carolina for business transactions and
6 material put into the stream of commerce in South Carolina
7 by Defendant Atlas Company Limited to support a finding by
8 this Court that Atlas Corporation -- Atlas Company Limited
9 is deliberately ignoring the orders of this Court and the
10 Rules of Civil Procedure of South Carolina in failing to
11 cooperate in any way with producing materials, answering
12 this complaint, or anything else of the like that involves
13 dealing with the status of this matter in South Carolina.

14 I, therefore, find that this -- that ACL is in
15 contempt of this court and its orders, and I sanction ACL
16 by striking their answer.

17 I ask Ms. McVey to, within the next five business
18 days, to get to me and to Mr. Brown a proposed order
19 memorializing the rulings I have made. And I give
20 Mr. Brown five days after that to make any response that
21 he wishes to make.

22 The ruling stands as it is made now but will be
23 further memorialized by an order that I will file in this
24 matter that details the rulings I have just made.

25 All right. That's Tibbs.

1 MR. BROWN: May I clear up one question or one
2 sentence, Your Honor? You stated that I had conceded that
3 the Quebec Business Records --

4 THE COURT: If you -- if I have made a finding with
5 which you disagree, you can certainly deal with that in
6 the reply you make. I'm not going to relitigate my ruling
7 right now.

8 MR. BROWN: I didn't want --

9 THE COURT: I made a ruling. It may be that it was
10 Ms. McVey that may have pitched the Quebec Records Act
11 does not prevent the appointment of a 30(b)(6). If so,
12 I'll withdraw that. I don't put it on you that you
13 conceded anything on behalf of this client. Okay?

14 MR. BROWN: Thank you so much.

15 THE COURT: All right.

16 All right. Next is Welch against Atlas Turner,
17 motion for stay.

18 MS. McVEY: And, Judge, just for clarity, you struck
19 their answer -- held them in contempt, struck their
20 answer. And are you appointing Mr. Protopapas as
21 receiver?

22 THE COURT: Oh, absolutely. I'm sorry. For the
23 reasons stated as this argument was made in my discussion
24 of the history of the appointment of receivers in asbestos
25 cases in South Carolina for the purpose of marshaling the

1 assets of defendant corporation and providing an active
2 defense for the defendant corporation, I find that
3 Asbestos Corporation Limited has absolutely and
4 deliberately refused to cooperate in any way with this
5 litigation in South Carolina, and therefore, the
6 appointment of a receiver is necessary in order to have a
7 receiver that can adequately defend this corporation.

8 And the fact that this corporation is represented to
9 be an ongoing corporation with assets makes it all the
10 more important to this corporation that, if there's
11 insurance available, it is used rather than to invade the
12 assets of what Mr. Brown represents is an ongoing
13 corporation with assets which would otherwise have to
14 stand good for any claims that were made and proved here.

15 So, for all of those reasons, a receiver is needed
16 to marshal these assets and provide a real defense and not
17 simply "We're not going to cooperate" a defense. It may
18 be that Mr. Protopapas will move to undue the contempt
19 after he is appointed and be allowed to file an answer,
20 and I would consider that, but at the moment, the activity
21 on behalf of ACL is completely defiant of the orders of
22 this Court and the law of South Carolina.

23 I find that Mr. Protopapas is a highly capable
24 receiver who has been appointed to operate without fear or
25 favor in many asbestos cases in South Carolina, and he has

1 taken his role as a defender of the corporations for which
2 he is appointed as receiver with the utmost seriousness
3 and has not only marshaled their assets but defended
4 against unwarranted claims, invalid claims, or claims
5 which he considers to be more than what is appropriate to
6 be put forward out of the assets he marshals.

7 So I find he is a completely independent receiver
8 who has done a very, very capable job in other
9 receiverships and will be appointed in this one.

10 All right. That's that.

11 (The above hearing concluded at 10:33 a.m.)
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CERTIFICATE OF COURT REPORTER

State of South Carolina)
County of Richland)

RE: John Tibbs vs. 3M Company, et al.

I, Bobbi J. Fisher, Registered Professional Reporter (RPR) and Official Court Reporter III for 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 hearing of the captioned case in the Court of Common Pleas for Richland County, South Carolina, on the 21st of August, 2023.

Submitted: August 28, 2023

____/s/ Bobbi Fisher_____

Bobbi J. Fisher, RPR

Official Court Reporter III

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES (FORM 800) OF THE ATTACHED TRANSCRIPT FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

EXHIBIT B



SOCIÉTÉ ASBESTOS LIMITÉE

840, boulevard Ouellet, Thetford Mines (Québec) Canada G6G 7A5

VIA E-MAIL ONLY

February 15, 2023

TO ALL EXCESS COVERAGE INSURERS

RE: Insured: Asbestos Corporation Limited
Reference: General Dynamics Corporation Excess Insurance Program

Dear Madam:
Dear Sir:

Please find enclosed our Report of the asbestos litigation as of December 31, 2022 which provides the following information:

1. Summary of Plaintiffs — Bodily Injury: by state, showing how many plaintiffs have settled or dismissed their Complaint and the number of pending plaintiffs;
2. Summary of Bodily Injury Claims for the year 2022 by state;
3. Summary of Claims — Property Damage: by year, showing how many claims have been settled or dismissed and the number of pending claims;
4. 2022 Summary of Expense and Indemnity Fees for Bodily Injury by quarter;
5. Cumulative Summary of Expense and Indemnity Paid as of December 31, 2022.

As previously advised, Asbestos Corporation Limited and its primary insurers are in agreement that the primary insurance coverage has been completely exhausted. Asbestos Corporation Limited presently finances the costs of the asbestos litigation using the third and fourth excess layer coverage.

Trusting the enclosed information will be of interest to you, we remain,

Yours truly,
ASBESTOS CORPORATION LIMITED

Mario Simard
Chief Financial Officer

MS/ads
Enclosures

SUMMARY OF BODILY INJURY CLAIMS

ASBESTOS CORPORATION LIMITED

STATE	PLAINTIFFS SERVED	PLAINTIFFS SETTLED	PLAINTIFFS DISMISSED	PLAINTIFFS PENDING AS OF 12/31/2022
ALABAMA	16	0	16	0
ALASKA	6	5	1	0
ARIZONA	5	1	4	0
ARKANSAS	259	6	253	0
BRITISH COLUMBIA	56	0	56	0
CALIFORNIA	6,810	2,747	3,890	173
COLORADO	1	0	1	0
CONNECTICUT	388	192	196	0
DELAWARE	773	48	720	5
FLORIDA	12	4	8	0
GEORGIA	129	73	56	0
HAWAII	10	0	10	0
IDAHO	32	27	5	0
ILLINOIS	1462	388	1061	13
INDIANA	494	8	485	1
IOWA	2	1	1	0
KENTUCKY	2	0	2	0
LOUISIANA	9,305	1030	2,554	5,721
MAINE	12	0	12	0
MARYLAND	672	2	670	0
MASSACHUSETTS	1,546	1,154	392	0
MICHIGAN	1,438	320	1,106	12
MINNESOTA	119	93	25	1
MISSISSIPPI	1,164	0	1,164	0
MISSOURI	726	55	668	3
MONTANA	1	1	0	0
NEVADA	2	1	1	0
NEW HAMPSHIRE	16	10	6	0
NEW JERSEY	4,969	3,800	1,141	28
NEW MEXICO	1	0	1	0
NEW YORK	970	428	510	32
NORTH CAROLINA	89	74	15	0
NORTH DAKOTA	388	277	65	46
OHIO	13,631	3,733	9,897	1
OKLAHOMA	1	0	1	0
OREGON	377	211	165	1
PENNSYLVANIA	3,244	1,587	1,593	64
PUERTO RICO	65	0	65	0
QUEBEC	1	0	1	0
RHODE ISLAND	18	3	15	0
SOUTH CAROLINA	300	238	62	0
TENNESSEE	2	0	2	0
TEXAS	4,124	81	4,043	0
UTAH	11	0	11	0
VIRGINIA	195	79	116	0
WASHINGTON	996	752	244	0
WEST VIRGINIA	2,193	2,078	115	0
WISCONSIN	8	2	6	0
TOTAL	57,041	19,509	31,431	6,101

STATE	PLAINTIFFS PENDING AS OF 12/31/2021	PLAINTIFFS SERVED 2022	PLAINTIFFS SETTLED 2022	PLAINTIFFS DISMISSED 2022	PLAINTIFFS PENDING AS OF 12/31/2022
ALABAMA	0				0
ALASKA	0				0
ARIZONA	0				0
ARKANSAS	0				0
BRITISH COLUMBIA	0				0
CALIFORNIA	162	13		2	173
COLORADO	0				0
CONNECTICUT	0				0
DELAWARE	8	1		4	5
FLORIDA	0				0
GEORGIA	0				0
HAWAII	0				0
IDAHO	0				0
ILLINOIS	71	17	3	72	13
INDIANA	2			1	1
IOWA	0				0
KENTUCKY	0				0
LOUISIANA	5,722	5	5	1	5,721
MAINE	0				0
MARYLAND	0				0
MASSACHUSETTS	0				0
MICHIGAN	17	7	4	8	12
MINNESOTA	1				1
MISSISSIPPI	0				0
MISSOURI	6			3	3
MONTANA	0				0
NEVADA	0				0
NEW HAMPSHIRE	0				0
NEW JERSEY	20	10		2	28
NEW MEXICO	0				0
NEW YORK	33	8	6	3	32
NORTH CAROLINA	0				0
NORTH DAKOTA	42	5		1	46
OHIO	2		1		1
OKLAHOMA	0				0
OREGON	1				1
PENNSYLVANIA	66	20	8	14	64
PUERTO RICO	0				0
QUEBEC	0				0
RHODE ISLAND	0				0
SOUTH CAROLINA	0				0
TENNESSEE	0				0
TEXAS	0				0
UTAH	0				0
VIRGINIA	0				0
WASHINGTON	3		1	2	0
WEST VIRGINIA	0				0
WISCONSIN	0				0
TOTAL	6,156	86	28	113	6,101

SUMMARY - PROPERTY DAMAGE CLAIMS SERVED

<u>Year</u>	<u>Plaintiffs</u>
1983	5
1984	25
1985	47
1986	6
1987	16
1988	2
1989	2
1990	3
1991	1
1992	0
1993	0
1994	0
1995	0
1996	1
1997-2022	<u>0</u>
	108

Plaintiffs settled as of December 31, 2022	12
Plaintiffs dismissed as of December 31, 2022	96
Plaintiffs pending as of December 31, 2022	0

ASBESTOS CORPORATION LIMITED

2022
 Summary of Expense and Indemnity
 Bodily Injury
 (U.S. Dollars)

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Expense	\$340,390.03	\$375,889.70	\$309,746.81	\$329,557.82	\$1,355,584.36
Indemnity	\$281,000.00	\$82,000.00	\$110,000.00	\$395,000.00	\$868,000.00
TOTAL	\$621,390.03	\$457,889.70	\$419,746.81	\$724,557.82	\$2,223,584.36

ASBESTOS CORPORATION LIMITED

Cumulative Summary of Expense and Indemnity Paid
as of December 31, 2022
(U.S. Dollars)

	EXPENSE	INDEMNITY	TOTAL
BODILY INJURY			
As of 12/31/2022	\$115,359,898	\$108,331,103	\$223,691,001
PROPERTY DAMAGE			
As of 12/31/2022	\$1,100,678	\$128,045	\$1,228,723
TOTAL	\$116,460,576	\$108,459,148	\$224,919,724

EXHIBIT C

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



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.

----- 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.
(C) 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>Per 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

EXHIBIT D

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----x
 4 LENORA CHILDERS,)
 5 Individually and as Personal)
 6 Representative of the Estate)
 7 of LEWIS C. CHILDERS,)
 8)
 9 Plaintiff,)
 10 vs.)
 11 DAVIS MECHANICAL)
 12 CONTRACTORS, INC., et al.,)
 13)
 14 Defendants.)
 15 -----x

Case No. 2021-CP-40-03484

16 FLAME REFRACTORIES, INC.,)
 17 et al,)
 18)
 19 Third-Party Plaintiff,)
 20)
 21 vs.)
 22 ZURICH AMERICAN INSURANCE)
 23 COMPANY, et al.,)
 24)
 25 Defendants.)
 -----x

August 21, 2023

B E F O R E:

The Honorable Justice Jean H. Toal, Presiding Judge

21
 22
 23
 24
 25 Court Reporter: Bobbi Fisher, RPR
 SC Official Court Reporter III

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

1
2 Thiele McVey, Esq.
Attorney for Plaintiff Childers

3
4 Jonathan Robinson, Esq.
Attorney for Payne & Keller

5 Wesley Sawyer, Esq.
6 Attorney for National Union Ins. Co. Of
Pittsburgh; Berkshire Hathaway; Continental Ins.
7 Co./London Market Ins; AIG Property & Casualty
Co.; Lexington Insurance Company

8 Aaron Hayes, Esq.
First State Ins. Co.

9
10 Kevin Bell, Esq.
Zurich American Insurance Company

11 Todd Carroll, Esq.
12
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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
 4 MELVIN G. WELCH and)
 5 DONNA B. WELCH,)
 6)
 7 Plaintiffs,)
 8 vs.) Case No. 2022-CP-40-03834
 9)
 10 3M COMPANY, et al.,)
 11)
 12 Defendants.)
 13 -----X

August 21, 2023

B E F O R E:

The Honorable Justice Jean H. Toal, Presiding Judge

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

Thiele McVey, Esq.
Attorney for Plaintiffs

Victor Rawl, Esq.
Attorney for Certain Underwriters at Lloyd's

Todd Carroll, Esq.
Attorney for Travelers

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

EXHIBIT E

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

ORDER ON PLAINTIFFS’ MOTION TO APPOINT A RECEIVER

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

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets¹ of ACL and to allow the Receiver to assume control of the defense of asbestos claims made against Asbestos Corporation, Ltd in the United States. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court’s Receiver in locating and marshalling those assets. Further, Mr. Protopapas is tasked with tendering current and future claims from Plaintiffs suffering from

¹ This term is defined below.

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

PROCEEDURAL BACKGROUND

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

Now, having struck ACL's answer, ACL is in default.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 striking of ACL's answer.

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

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

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

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

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

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

That the South Carolina receivership references “property within this state” is not a limitation on the Receiver’s authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court’s authority to vest a statutory receiver to assert an insolvent corporation’s rights of action. *See e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 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 ACL, including the right to assume control of the defense of asbestos claims made against ACL in the United States and tender claims to applicable insurance policies. Even assuming ACL’s interpretation of §15-65-10 is correct, to the extent they exist, ACL’s Insurance Assets ² 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.

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

S.C. Code Ann §38-61-10 states that

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

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

B. Due Process has not and will not be violated

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

The South Carolina Supreme Court there opined that

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

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

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

POWERS OF THE RECEIVER

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

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

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

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

Case Number: 2023CP4001759

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

EXHIBIT F

DUFOUR MOTTET

(Société en responsabilité limitée)

ANNIE BREAULT
abreault@dufourmottet.com

November 29, 2011

VIA E-MAIL

Ms. Mary A. Bohlig, CCLA
Claim Specialist
GREAT AMERICAN INSURANCE COMPANY
Tower 19S
301 E. Fourth Street
Cincinnati, OH 45202

**SUBJECT: Insured: Asbestos Corporation Limited / General Dynamics
Claim No: 990-020031
Our reference : Great American Insurance Company**

Dear Ms. Bohlig:

We are in response to your letter dated November 15, 2011, addressed to Mr. Mario Simard.

We understand that you will now handle this file in replacement of Mr. Ted Mueller and will update our records accordingly. We would appreciate being informed if you are also handling this matter on behalf of Agricultural Insurance Company.

As requested, you will find attached a coverage chart of all excess carriers indicating which layers are impaired or exhausted.

Also, we are sending the Summary of the Bodily Injury Claims showing the total numbers of claims filed, dismissed, settled and pending, the whole as of October 31, 2011.

Finally, we are sending the details of the impairment of the excess insurance policies presently triggered and used in the financing of ACL's litigation costs.

Should you need any additional information, do not hesitate to contact the undersigned.

Yours truly,
DUFOUR, MOTTET



Annie Breault

Enclosures

LAYERS OF EXCESS COVERAGE

LAYERS OF EXCESS COVERAGE					
7th					STATE PENNSYLVANIA 9 M ZURICH 5 M EMPL. WAUSAU 2 M AETNA 5 M CONCORDE 10,625 M INTERNAT. SURPLUS 6,375 M (From 10-03-76) FIRST STATE 3 M (From 10-03-76) LEXINGTON 3,4525 M (From 12-31-76) LLOYD'S (VH1636) 80,5475 M 125 M
6th			* AETNA 2 M * LLOYD'S (uUFL606) 1 M * FEDERAL 4 M * INA 3 M * STONEWALL 5 M * EMPL. WAUSAU 2 M * STATE PENNSYLVANIA 14 M * NORTH RIVER 6 M * ZURICH 6 M * EMPL. REINSURANCE 5 M 48 M * (From 10-16-74) (vs 50M)	AETNA 2 M LLOYD'S (UFL1606) 1 M INA 3 M STONEWALL 5 M EMPL. WAUSAU 2 M STATE PENNSYLVANIA 14 M NORTH RIVER 6 M ZURICH 6 M CENTRAL NATIONAL 7 M EMP. REINSURANCE 5 M 51 M (vs 50M)	LLOYD'S (VH1635) 31,816625 M PURITAN 2,065 M (From 10-03-76) 33,881625 M (vs 37.5M)
5th	AETNA 3,5 M EMPLOYERS COM. UNION 7,55 M LLOYD'S (K23202) 4 M AMERICAN 3 M ST-PAUL 2 M HOME 5 M LUMBERMENS 5 M FEDERAL 1 M UNITED STATES FIRE 8,2 M ROYAL INDEMNITY 1 M AMERICAN HOME 7,75 M FIRST STATE 2 M GREAT AMERICAN 0,5 M (vs 50M) 50,5 M	STATE PENNSYLVANIA 25 M (From 10-16-74) LLOYD'S (UFL1586) 7,5 M (From 10-16-74) NORTH RIVER 17,5 M (From 10-16-74) 50 M	STATE PENNSYLVANIA 25 M (From 11-14-75 : 27,5M) LLOYD'S (UFL1586) 7,5 M AMERICAN BANKERS (From 11-14-75 : 4,5M) NORTH RIVER 17,5 M (From 11-14-75 : 10,5M) (From 11-14-75 : 50M) 50 M	STATE PENNSYLVANIA 5,6 M (From 10-03-76 : 6.6M) LLOYD'S (VH1633) 37,3669 M PURITAN 1,16 M (From 10-03-76) (From 12-31-76 : 2.935M) FIDELITY 1,84115 M (From 12-31-76) (From 12-31-76 : 48.743050M) 45,96805 M (vs 48.75M)	
	04/01/73 - 07/01/73	07/01/73 - 07/01/74	07/01/74 - 07/01/75	07/01/75 - 07/01/76	07/01/76 - 07/01/77

GAIC_ACL_000881

LAYERS OF EXCESS COVERAGE

	04/01/73 - 07/01/73	07/01/73 - 07/01/74	07/01/74 - 07/01/75	07/01/75 - 07/01/76	07/01/76 - 07/01/77
10th					
9th					
8th					

LAYERS OF EXCESS COVERAGE

7th	INTERNAT. SURPLUS	2,5 M	GRANITE STATE	16 M	LANDMARK	2 M	LLOYD'S (PY161680)	24 M	GUARANTEE	1 M
			LLOYD'S (UKL1061)	3,5 M	LLOYD'S (PY117679)	12,5 M	INA	13 M	INTERNAT. SURPLUS	6,75 M
	HOME	5 M	LLOYD'S (UKL1062)	8 M	LEXINGTON	7 M	ZURICH	5 M	LLOYD'S (PY037481)	23,25 M
			NAT. UNION FIRE	5 M	AETNA	10 M	EXCESS	5 M	ROYALE BELGE	1 M
	STATE PENNSYLVANIA	12,5 M	HOME	5 M	GRANITE STATE	7 M	INTERNAT. SURPLUS	1,5 M	INA	13 M
			EMPL. MUTUAL	5 M	CALIFORNIA UNION	3 M	ROYALE BELGE	1 M	MIDLAND	5 M
	NAT. UNION FIRE	5 M	LEXINGTON	3,5 M	INA	2,5 M	BERMUDA	0,5 M		
		25 M	INTERNAT. SURPLUS	2,5 M	INTERNAT. SURPLUS	2 M		50 M		
			ZURICH	1,5 M	INTEGRITY	1 M				
				50 M	EXCESS	47 M				
6th	FIRST STATE	4 M	FIRST STATE	4 M	AIU	5 M	LLOYD'S (PY161580)	21 M	INTERNAT. SURPLUS	3,85 M
	INTERNAT. SURPLUS	5 M	INTERNAT. SURPLUS	5 M	EMPL. MUTUAL	5 M	EMPL. MUTUAL	5 M	IDEAL MUTUAL	3,5 M
	ZURICH	5 M	ZURICH	5 M	EUROPEAN GEN.	3 M	TRANSIT CAS.	5 M	SAFETY MUTUAL	10 M
	GRANITE STATE	5 M	LLOYD'S (UKL1060)	2,175 M	BERMUDA	1,65 M	EVANSTON	5 M	CENTAUR	2 M
	LLOYD'S (UJL0670)	0,65 M	AIU	5 M	LEXINGTON	3 M	INTERNAT. SURPLUS	3,65 M	ZURICH	5 M
	LLOYD'S (UJL0671)	5,35 M	GREAT ATLANTIC	1 M	INTERNAT. SURPLUS	2 M	CALIFORNIA UNION	3 M	ROYALE BELGE	1 M
		25 M	SWISS REINS.	1 M	LLOYD'S (PY117579)	3,75 M	ZURICH	1,7 M	LLOYD'S (PY037381)	24,65 M
			ALLIANZ VERG.	0,5 M	GRANITE STATE	18,9 M	BERMUDA	1,65 M		50 M
			BERMUDA	0,975 M	NAT. UNION FIRE	5 M	ROYALE BELGE	1 M		
			MUTUELLE GEN.	0,35 M	ZURICH	1,7 M	CENTAUR	1 M		
				25 M	ALLIANZ VERG.	1 M	INA	1 M		
						50 M	IDEAL MUTUAL	0,5 M		
							BERMUDA	0,5 M		
								50 M		
	5th	PURITAN	5 M	LLOYD'S (ukl1058)	3,4175 M	LLOYD'S (PY117479)	10,5 M	LLOYD'S (PY161480)	28,3 M	GUARANTEE
STATE PENNSYLVANIA		2,7 M	LLOYD'S (UKL1059)	1,5825 M	NAT. UNION FIRE	5 M	IDEAL MUTUAL	1 M	LLOYD'S (PY037281)	25,3 M
LLOYD'S (UJL0668)		5,5825 M	PURITAN	5 M	CALIFORNIA UNION	2 M	BERMUDA	1,2 M	IDEAL	1,5 M
LLOYD'S (UJL0669)		1,7175 M	AIU	5 M	AIU	5 M	GREAT ATLANTIC	0,5 M	INA	1 M
NAT. UNION FIRE		5 M	NAT. UNION FIRE	5 M	INTEGRITY	2 M	INTEGRITY	6 M	INTEGRITY	6 M
GRANITE STATE		5 M	GRANITE STATE	5 M	AMERICAN HOME	1 M	CALIFORNIA UNION	2 M	AMBASSADOR	5 M
		25 M		25 M	GREAT ATLANTIC	0,5 M	SOUTHERN AMERICAN	1 M		40 M
					PURITAN	7 M		40 M		
					GRANITE STATE	7 M				
						40 M				
07/01/77 - 07/01/78		07/01/78 - 07/01/79		07/01/79 - 07/01/80		07/01/80 - 07/01/81		07/01/81 - 07/01/82		

LAYERS OF EXCESS COVERAGE

10th		LLOYD'S (UKL1067) 37 M NORTHBROOK 5 M BERMUDA 5 M UNION INDEMNITY 2 M CALIFORNIA UNION 1 M 50 M				
9th	AETHNA 3,29375 M (From 01-01-78) LLOYD'S (WJ2121) 12,717 M (From 01-01-78) LLOYD'S (UKL0201) 8,98925 M (From 01-01-78) 25 M	INTEGRITY 4,5 M MIDLAND 4,5 M PRUDENTIAL 4 M AMER. CENTENNIAL 3 M CALIFORNIA UNION 2 M BERMUDA 0,25 M SWISS REINS. 1,5 M HAFTPFLICHTVERBAND 1 M CENTRAL NATIONAL 1 M LLOYD'S (UKL1066) 20,835 M LLOYD'S (UKL1065) 7,415 M 50 M				
8th	LLOYD'S (E002695) 5 M PRUDENTIAL 5 M RIUNIONE ADRIATICA 1 M LEXINGTON 4 M NORTHBROOK 5 M MISSION 5 M (From 01-01-78) 25 M	AETNA 10 M INA 10 M LONDON CO. (UKL1063) 2,725 M LLOYD'S (UKL1064) 6,95 M HOME 5 M GRANITE STATE 3 M LANDMARK 2 M CALIFORNIA UNION 2 M BERMUDA 1,325 M LEXINGTON 7 M 50 M	LLOYD'S (PY117779) 50,4 M AIU 7 M ZURICH 5 M NAT. UNION FIRE 5 M MIDLAND 5 M INTERNAT. SURPLUS 4,5 M UNION INDEMNITY 2 M CENTRAL NATIONAL 1 M HAFTPFLICHTVERBAND 1 M BERMUDA 7,6 M INA 10 M INTEGRITY 1,5 M 100 M	NORTHBROOK 10 M BERMUDA 5,5 M MIDLAND 2 M HAFTPFLICHTVERBAND 1 M LLOYD'S (PY161780) 64,5 M TRANSIT CASUALTY 10 M CONTINENTAL 5 M AGRICULTURAL 2 M (Cancelled 12-17-80) NEW ENGLAND 2 M (From 12-17-80) 100 M	LLOYD'S (PY037581) 10,8 M SAFETY MUTUAL 17,5 M NORTHBROOK 12,5 M INTERNAT. SURPLUS 10 M TRANSIT CASUALTY 10 M INA 6 M CONTINENTAL 5 M NEW ENGLAND 5 M ALLIANZ 5 M COLUMBIA CASUALTY 5 M GUARANTEE 5,5 M MIDLAND 2 M PEOPLE'S 2 M HARTFORD 1,7 M CENTRAL NAT. 1 M HAFTPFLICHTVERBAND 1 M 100 M	
	07/01/77 - 07/01/78	07/01/78 - 07/01/79	07/01/79 - 07/01/80	07/01/80 - 07/01/81	07/01/81 - 07/01/82	

EXHIBIT G

The South Carolina Court of Appeals

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

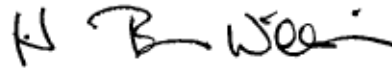
Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes
Company, Defendants,

of which Atlas Turner, Inc. is the Appellant.

Appellate Case No. 2023-001096

ORDER

Appellant's motion to "confirm" the automatic stay or, alternatively, petition for supersedeas is denied. Appellant failed to petition the circuit court first or to satisfactorily establish that extraordinary circumstances made it impracticable to do so. *See* Rule 241(d)(1), SCACR ("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."). Because Appellant did not first petition the circuit court to supersede its order, the petition is denied.



C.J.

FOR THE COURT

Columbia, South Carolina

cc:

Aaron Daniel Chapman, Esquire
John D. Kassel, Esquire
Theile Branham McVey, Esquire
Jamie Rae Rutkoski, Esquire
Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire
James D. Gandy, III, Esquire
Peter Demos Protopapas, Esquire
John Kenneth Chandler, Esquire
Brian Montgomery Barnwell, Esquire
Ka'Leya Q. Hardin, Esquire
Todd Barnes, Esquire

FILED
Dec 01 2023

RECEIVED

Dec 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Jean Hoefler Toal, Circuit Court Judge

Case No. 2023-CP-40-01759
Appellate Case No. 2023-001461

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden 3 North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable

LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.;
Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell
Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, Defendants,

Of which, Asbestos Corporation Limited is the Appellant,

and

Peter D. Protopapas, Asbestos Corporation Limited's Duly Appointed Receiver, is Respondent.

PROOF OF SERVICE

I certify that a true copy of the Receiver for Asbestos Corporation Limited's Motion to Supplement the Record and For Sanctions for Fraud on the Court in this case has been served on the following, this 11th day of December, 2023, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

Counsel Served: **E-Mail**

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*Attorneys for Century Indemnity Company and
Federal Insurance Company*

s/Jonathan M. Robinson
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Jonathan M. Robinson (S.C. Bar 68285)
Shanon N. Peake (S.C. Bar 102723)
Smith Robinson Holler DuBose and Morgan, LLC
2530 Devine Street, Third Floor
Columbia, South Carolina 29205

Attorneys for Receiver Peter D. Protopapas

December 11, 2023

From: [Dot Faulkenberry](#)
To: sbrown@ycrlaw.com; rhines@ycrlaw.com; tgandy@ycrlaw.com; dchumen@yahoo.com; [Theile McVey](#); jrutkoski@kassellaw.com; [Kevin K. Bell](#); [Aaron Chapman](#)
Cc: [Jon Robinson](#); [Shanon Peake](#); [Murrell Smith](#)
Subject: Tibbs v. Asbestos Corporation Limited, et al., Case No. 2023-001461
Date: Monday, December 11, 2023 2:57:00 PM
Attachments: [Receiver's Motion to Supplement the Record and for Sanctions for Fraud on the Court, 3.pdf](#)
[Exhibits A-G combined, 2.pdf](#)

On behalf of Jonathan Robinson, please find attached for service a copy of the Receiver's Motion to Supplement the Record and For Sanctions for Fraud on the Court that we are filing today.

Thank you,
Dot

SMITH ROBINSON
Forward thinking. Results driven.
Smith Robinson Holler DuBose and Morgan, LLC
www.SmithRobinsonLaw.com

Dot Faulkenberry
Paralegal

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