

Dec 28 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

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

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.

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

April 19, 2023
Columbia, South Carolina

B E F O R E:

THE HONORABLE JEAN H. TOAL, JUDGE.

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There were no exhibits entered during this hearing.

P R O C E E D I N G S

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

ATLAS ASBESTOS/ATLAS TURNER'S MOTION TO

DIMISS/PROTECTIVE ORDER/SUMMARY JUDGMENT

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

MR. TRAYLOR: Good morning, Your Honor.

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

MR. TRAYLOR: Yes.

THE COURT: -- court reporter --

MR. TRAYLOR: Yes, Your Honor.

THE COURT: -- and who you represent.

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

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

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

5 THE COURT: When --

6 MR. TRAYLOR: -- 30th.

7 THE COURT: When did you file that?

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

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

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

12 THE COURT: I see. Okay.

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

16 THE COURT: Right.

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

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

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

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

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

24 THE COURT: Well --

25 MR. TRAYLOR: The affidavit --

1 THE COURT: -- Mr. Traylor --

2 MR. TRAYLOR: Okay.

3 THE COURT: -- all this is kind of a roundabout.
4 Here's what they say.

5 MR. TRAYLOR: Right.

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

12 MR. TRAYLOR: Okay.

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

15 MR. TRAYLOR: Okay.

16 THE COURT: I'm gonna --

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

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

21 MR. TRAYLOR: Okay.

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

23 MR. TRAYLOR: Well --

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

1 about, all right, the niceties of jurisdiction.

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

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

10 THE COURT: Yes. I am.

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

19 THE COURT: Mister --

20 MR. TRAYLOR: -- after --

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

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

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

13 THE COURT: I see --

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

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

24 THE COURT: Okay. I understand you completely.

25 MR. TRAYLOR: Thank you, Your Honor.

1 THE COURT: All right. Ms. McVey.

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

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

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

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

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

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

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

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

3 THE COURT: Oh, this is stuff --

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

5 THE COURT: -- you found otherwise?

6 MS. MCVEY: Yes, ma'am.

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

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

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

10 MR. TRAYLOR: Should be in the exhibits.

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

13 MR. TRAYLOR: Yes, ma'am.

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

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

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

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

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

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

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

8 THE COURT: Oh, okay.

9 MS. MCVEY: -- in response --

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

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

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

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

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

20 THE COURT: Exactly.

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

22 THE COURT: Okay.

23 MS. MCVEY: Your Honor --

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

1 MS. MCVEY: That's right.

2 THE COURT: All right.

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

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

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

10 THE COURT: All right. Yeah.

11 MS. MCVEY: -- summary judgment?

12 THE COURT: Mr. Traylor?

13 MR. TRAYLOR: Yes, Your Honor.

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

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

19 THE COURT: Oh, okay. No --

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

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

24 MR. TRAYLOR: Right.

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

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

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

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

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

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

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

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

17 MR. TRAYLOR: I -- I --

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

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

21 THE COURT: Yes, sir.

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

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

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

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

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

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

24 I -- I . . .

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

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

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

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

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

14 THE COURT: It's the same argument.

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

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

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

3 MR. TRAYLOR: And --

4 THE COURT: -- all right.

5 MR. TRAYLOR: -- the --

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

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

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

21 MR. TRAYLOR: Thank you, Your Honor.

22 THE COURT: Very good. All right.

23 MS. MCVEY: And, Your Honor --

24 THE COURT: All right. Ms. McVey?

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

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

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

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

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

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

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

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

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

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

12 MR. TRAYLOR: Well, I --

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

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

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

20 THE COURT: We --

21 MR. TRAYLOR: We don't --

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

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

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

11 THE COURT: When --

12 MR. TRAYLOR: -- witness.

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

15 MS. MCVEY: Monday.

16 THE COURT: Monday?

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

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

1 we will not have a witness tomorrow.

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

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

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

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

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

24 THE COURT: Right.

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

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

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

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

9 THE COURT: Right.

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

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

25 MS. MCVEY: Thank you, Your Honor.

1 MR. TRAYLOR: Thank you, Your Honor.

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

5 MR. TRAYLOR: I'm sorry?

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

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

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

11 MR. TRAYLOR: Right.

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

13 MR. TRAYLOR: The last one up.

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

15 MR. TRAYLOR: Yes, ma'am.

16 THE COURT: Yeah. All right.

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

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

21 MS. MCVEY: Right.

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

24 MR. TRAYLOR: Yes, Your Honor.

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

1 right.

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

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

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

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

9 MS. TECHMAN: Yes, Your Honor.

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

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

14 THE COURT: I got it.

15 MS. TECHMAN: Okay.

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

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

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

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

22 THE COURT: Yeah. You can --

23 MS. TECHMAN: -- clerk?

24 THE COURT: -- give me that.

25 MS. TECHMAN: Thank you very much.

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

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

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

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

6 THE COURT: Very good.

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

8 THE COURT: You may proceed.

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

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

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

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

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

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

14 MR. HOLDER: Thank you, Your Honor.

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

1 pipe fitters, insulators, welders.

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

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

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

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

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

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

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

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

7 THE COURT: Well --

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

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

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

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

20 "No."

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

24 He says, "Fair."

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

1 not, "I never did."

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

4 "No. I could not tell you."

5 That's what he says, right?

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

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

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

19 THE COURT: Okay.

20 MR. HOLDER: -- so . . .

21 THE COURT: Okay.

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

23 THE COURT: All right.

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

1 THE COURT: No. All right.

2 MR. HOLDER: Okay.

3 THE COURT: Any reply, Ms. Techman?

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

8 THE COURT: All right.

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

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

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

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

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

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

25 MS. TECHMAN: Thank you, Your Honor.

1 THE COURT: All right.

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

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

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

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

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

7 THE COURT: No. We're --

8 MR. MERIWETHER: -- right?

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

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

14 MR. MERIWETHER: Then --

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

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

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

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

19 THE COURT: Okay.

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

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

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

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

5 THE COURT: Okay. Very good.

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

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

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

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

[illegible]

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

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

Amber Payne

Amber J. Payne, CVR

Date: July 3, 2023

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS
2022-CP-40-03834

MELVIN G. WELCH and)
DONNA B. WELCH,)

PLAINTIFFS,)

vs.)

TRANSCRIPT OF RECORD

3M COMPANY)
ACCEL PERFORMANCE GROUP, LLC,)
ADVANCE AUTO PARTS, INC.,)
AMERICAN HONDA MOTOR CO., INC.)
ATLAS ASBESTOS CO,)
ATLAS TURNER, INC.,)
AUTOZONE, INC.,)
BAHNSON, INC.,)
BEATY INVESTMENTS, INC.,)
BELDEN INC.,)
BELDEN WIRE & CABLE COMPANY,)
BRIDGESTONE AMERICAS TIRE,)
OPERATIONS, LLC,)
CAROLINA TOOL COMPANY,)
COPELAND CORPORATION, LLC,)
COVIL CORPORATION,)
DANIEL INTERNATIONAL)
CORPORATION, DAVIS MECHANICAL)
CONTRACTORS, INC.,)
DCO, LLC, EATON CORPORATION)
ELLINGTON INSULATION COMPANY,)
INC., FISHER CONTROLS)
INTERNATIONAL, LLC,)
FLUOR CONSTRUCTORS,)
INTERNATIONAL,)
FLUOR CONSTRUCTORS)
INTERNATIONAL, INC.,)
FLUOR DANIEL SERVICES)
CORPORATION, FLUOR)
ENTERPRISES, INC.,)
FORD MOTOR COMPANY,)
GENERAL ELECTRIC COMPANY,)
GENERAL PARTS, INC.,)
GENUINE PARTS COMPANY,)
GOODRICH CORPORATION,)
THE GOODYEAR TIRE & RUBBER)
COMPANY, GRAYBAR ELECTRIC)
COMPANY, INC., HEAT & FROST)

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

May 4, 2023
 Columbia, South Carolina

BEFORE:

THE HONORABLE JEAN TOAL, JUDGE.

APPEARANCES:

THEILE MCVEY, ESQ.
Attorney for the Plaintiffs

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

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Mr. Traylor? Mr. Traylor.

20 MR. TRAYLOR: Yes.

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

1 complete information about what's being said.

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

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

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

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

20 MR. TRAYLOR: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

25 They haven't filed anything other than their

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

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

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

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

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

25 MR. TRAYLOR: Your Honor --

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

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

11 THE COURT: Which motion are you talking about?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

18 THE COURT: All right, sir.

19 MR. TRAYLOR: -- on that.

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

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

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

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

1 opportunity.

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

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

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

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

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

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

4 THE COURT: All right. Anything further?

5 MR. TRAYLOR: Nothing, Your Honor.

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

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

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

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

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

1 corporation.

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

13 Anything further?

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

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

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

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

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

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

8 Anything further?

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

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

May 4, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JOHN A. TIBBS AND MARGARET B. TIBBS,
Plaintiffs,

vs. C/A No.: 2023-CP-40-01759

ASBESTOS CORPORATION, ET AL.
Defendants.

MELVIN G. WELCH AND DONNA B. WELCH,
Plaintiffs,

vs. C/A No.: 2022-CP-40-03834

ATLAS TURNER, ET AL.
Defendants.

MOTIONS HEARING
BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, August 21, 2023

TIME START: 9:27 a.m.

TIME END: 11:36 a.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.

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E X H I B I T S

(None were proffered.)

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P R O C E E D I N G S

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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 still not to me. What I could find pretty late last night, I 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. It's the 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.

1 THE COURT: Everybody had to make an effort
2 this morning, not just me.

3 MS. MCVEY: Judge, just --

4 THE COURT: Of course, just as a reminder
5 for all of you, I hope all of you have given
6 your cards to the court reporter. And you've
7 got a state court reporter and you have a
8 privately engaged court reporter. I advise you
9 to give them all your attorney cards. Anyone
10 who's got any concern about the record or
11 receiving it.

12 And when you address the Court, of course,
13 you always state your name and the party you
14 represent. Even if you have to do that a good
15 many times during the course of this matter.
16 You do that for our court reporters to be sure
17 they keep up with all these various cases.

18 In this case, Tibbs, we are talking about
19 2023-CP-40-01759.

20 Ms. McVey, you may proceed.

21 MS. MCVEY: Thank you, Your Honor. Theile
22 McVey for the plaintiffs in this case. And Your
23 Honor, just for the record, as you know, the
24 August block has now wholly settled and so all
25 of those motions are off the docket. So

1 hopefully, it will be a little bit of a lighter
2 day. We'll see.

3 Judge, I want to introduce you to Asbestos
4 Corporation Limited, but you have a lot of this
5 background already because they're related to
6 Atlas Turner.

7 THE COURT: Right, but I believe that
8 because there are so many moving parts to this
9 thing now, I think making each record complete
10 by some recitation on all sides of the basics of
11 the controversy is a probably a good idea.

12 MS. MCVEY: Absolutely. So with that, let
13 me give a little background on Asbestos
14 Corporation. They supplied asbestos to
15 companies and contractors throughout the
16 Southeastern United States, but they follow the
17 same type of playbook that Atlas Turner does.

18 They filed a motion to dismiss for lack of
19 personal jurisdiction and despite doing that,
20 they refused to engage in any kind of
21 jurisdictional discovery, even limited
22 jurisdictional discovery.

23 Despite that refusal, we found and
24 submitted to Your Honor during the motion to
25 dismiss sales into South Carolina of raw

1 asbestos.

2 You heard the motion to dismiss on
3 July 10th, and you denied their motion to
4 dismiss for lack of personal jurisdiction. And
5 during that hearing, orally in open court, you
6 ordered them to produce a witness and to fully
7 answer discovery.

8 On July 19th you issued that order from
9 that July 10th hearing, and you stated in your
10 order "Failure to answer the court-ordered
11 discovery and to provide a corporate
12 representative for deposition shall result in
13 ACL being held in contempt."

14 In short, Your Honor, just like Atlas
15 Turner, ACL is refusing to comply with your
16 order, but this time they're trying to not to be
17 quite as defiant. And let me explain that a
18 little bit.

19 Well, first of all, they flat out refused
20 to produce a 30(b)(6) witness. This time,
21 though, they don't just say "we're not doing
22 it," they say, "We're not doing it because it's
23 too hard. This corporation stuff happened a
24 long time ago. We don't have a witness we can
25 produce."

1 And, Your Honor, if that were the accepted
2 legal standard in asbestos cases, no one would
3 put up a corporate representative. They have a
4 duty to educate a witness with all the prior
5 stuff. They refuse to do that.

6 THE COURT: Well, and moving forward from
7 that, one of the very reasons that I have
8 appointed receivers for corporations that are
9 not active or corporations that do not cooperate
10 is to try to discover their only -- sometimes
11 their only asset was insurance; but the other
12 reason to do it is so that there is then some
13 entity, the receiver, who operates on the basis
14 of the benefit to the corporation.

15 And I did that beginning with the Covil
16 case when I discovered that the representation
17 for years pretended that Covil had someone that
18 accepted service and was active in the case but
19 just couldn't locate their files because they
20 were so old.

21 MS. MCVEY: Right.

22 THE COURT: But it turned out that the
23 insurance companies were really running the
24 show, saying that there was no coverage but
25 settling for low amounts. And it was that

1 scenario in the Covil case that resulted in a
2 good many receiverships being created here to
3 deal with corporations who supply
4 asbestos-containing materials here and,
5 therefore, have status as a potential defendant
6 in matters here.

7 And also the receiver has the ability then
8 to answer 30(b)(6) requirements and to try to
9 find corporate records of other things. Because
10 as we know, even when Plaintiffs don't like it,
11 30(b)(6) witnesses don't sometimes have direct
12 knowledge. But they have knowledge that the
13 corporation can speak to its affairs and its
14 operation because of business records. Normal
15 exceptions to hearsay.

16 MS. MCVEY: Yes, ma'am.

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

24 MS. MCVEY: That's right.

25 THE COURT: Now, ACL has resisted the

1 appointment of the receiver.

2 MS. MCVEY: Your Honor, we are -- let me
3 walk through where we are in terms of that as
4 well.

5 Just for in full disclosure, Mr. Brown --
6 and this is the third law firm to represent
7 Atlas Turner and ACL. They were previously
8 represented by Nelson Mullins and Murphy
9 Grantland and now Clement Rivers. We've had
10 some pretty candid conversations with Mr. Brown.

11 But what he essentially said is, look, I'm
12 going to give you some old transcripts from ACL.
13 I'm going to answer one set of interrogatories.
14 They didn't answer the second set of
15 interrogatories.

16 THE COURT: You submitted those. I've read
17 them. I'm familiar with those.

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

1 We have argued they want to align this
2 Quebec Records Act. I'm happy to discuss that
3 with you. We argued that with Atlas Turner.
4 That's a case -- an act that Judge Joe Anderson
5 ruled on and saying doesn't apply.

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

13 MS. MCVEY: That's right. And, Your Honor,
14 they want to rely on that. But, of course, the
15 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
18 if it did, the statute itself is not
19 self-enforcing. And, in fact, it requires a
20 petition by the attorney general in Canada to a
21 district judge for an order requiring the
22 documents not to be sent out of the province.

23 They have made no allegation that that's
24 happening or that it will happen or anything
25 else.

1 Your Honor, we strongly believe that they
2 cannot just say we're not going to produce
3 discovery and not be held -- not be sanctioned
4 for that.

5 THE COURT: Doesn't Quebec Records Act, in
6 your opinion, prevent them from appointing a
7 30(b)(6) representative in a discovery matter?

8 MS. MCVEY: It does not. And they aren't
9 even saying it does. They're just saying we're
10 not going to do it because it's too hard. Even
11 more importantly, they refuse to produce
12 documents. And this act kind of came into
13 effect before there were photo copiers, for
14 example, that could easily reproduce documents.
15 It just doesn't apply.

16 And almost every court who has looked at
17 that agrees it cannot prevent discovery when the
18 jurisdiction is appropriate, as you have found
19 here.

20 Your Honor, we believe because of their
21 refusal to comply, this will be now the second
22 hearing on this with the refusal to comply, they
23 should be held in contempt. And if you hold
24 them in contempt, we believe the appropriate
25 sanction is to strike their answer. So we would

1 ask you to do that.

2 If you decide to hold them in contempt and
3 strike their answer, I think it has to be in
4 that order, then, Your Honor, we would move to
5 have a receiver appointed over ACL.

6 And, again, it's a limited receivership in
7 some ways. It would allow a receiver to marshal
8 the insurance assets to the extent there are any
9 insurance assets. It would also allow them --
10 allow him to control the defense-hired counsel
11 and control the defense. Because what's
12 happening is ACL and Atlas Turner is not
13 tendering these cases to the insurance carriers.
14 And we know, Judge, that there is a ton of
15 insurance.

16 We also know, based on the receiver's
17 filing at Atlas Turner, that the liquidation of
18 insurance assets is a real concern. My concern
19 is that they are going to liquidate these
20 policies, they being ACL, and then take the
21 money and keep it in Canada where they think we
22 can't get to it.

23 Your Honor, we know that they know how to
24 do that because the receiver filed, and I'll
25 hand it up, an Agreement of Transaction

1 Settlement and Release between Asbestos
2 Corporation Limited and the Maryland Casualty
3 Company. And this is from 1989.

4 And I'll hand up to you, but it's
5 essentially establishing a fund to pay victims
6 who have been hurt by ACL's conduct. And so
7 Maryland Casualty Company gave to ACL millions
8 of dollars to pay asbestos victims.

9 Judge, I'm happy to hand this up. And I've
10 highlighted --

11 THE COURT: Hang for a minute and let me
12 just identify this.

13 MS. MCVEY: Yes, ma'am.

14 THE COURT: I assume this is something
15 Mr. Brown is aware of. Mr. Brown?

16 MR. BROWN: Yes, ma'am.

17 THE COURT: It's Agreement of Transaction
18 Settlement and Release between Asbestos
19 Corporation Limited and the Maryland Casualty
20 Company bearing the formal date July the 18th,
21 1989. And it's a document that looks like it's
22 a complete copy of that agreement signed by
23 Asbestos Corporation Limited and the Maryland
24 Casualty.

25 It is -- attached to it is an email from

1 Lindsay Valek at Rikard and Protopapas to
2 Stephanie Haynes. And it's a tender to
3 Continental CNA and resolute of Atlas Turner
4 actions -- causes of action. And it lists them.
5 These are all causes of action that I'm familiar
6 with. Almost all of them are pending in front
7 of me at this time.

8 MS. MCVEY: And that was a filing that
9 Mr. Protopapas made on Friday.

10 THE COURT: Right.

11 MS. MCVEY: Your Honor, we know that there
12 is insurance for ACL. We know that they are
13 depleting it. I don't understand why they're
14 not tendering these cases to their insurance
15 carrier who have policies who would cover
16 Mr. Tibbs and other South Carolinians.

17 And I have a very large concern that
18 without a receiver, ACL will do what it is
19 attempting to do, and Atlas Turner.

20 Your Honor --

21 THE COURT: Let me --

22 MS. MCVEY: I'm sorry.

23 THE COURT: Let me ask you this question.
24 The Maryland policies that are in issue in this
25 agreement ACL made with the Maryland back in

1 1989 are policies from '67 to '71. Three
2 different policies with those affected periods.

3 And it looks to me like this document sets
4 up something similar to our qualified settlement
5 funds. We've set up a variety of qualified
6 settlement funds for asbestos cases involving
7 insurance companies for corporations for which a
8 receiver has been appointed.

9 And the receiver and receiver's counsel
10 have negotiated with insurance companies a
11 settlement of their liabilities, much like the
12 Maryland has been in this agreement, which
13 creates a qualified settlement funds whose funds
14 then stand for the tendering of claims for the
15 periods covered by the policies for which the
16 settlement is reached.

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

20 MS. MCVEY: I don't know. But they may be.
21 And my concern is I don't know how many other
22 ones there are.

23 THE COURT: Yes, that was the next question
24 I was going to ask. Are you aware of others? I
25 would be surprised if there were not others.

1 MS. MCVEY: That's my concern. I know
2 Mr. Protopapas filed and Atlas Turner another
3 document like that that involved Atlas Turner,
4 but I don't know.

5 THE COURT: That's what a receiver would
6 do.

7 MS. MCVEY: That's right.

8 THE COURT: Would be to assess the -- I
9 don't understand what you mean by the limited
10 receivership? Why wouldn't I just set up a
11 receivership like the normal receivership?

12 MS. MCVEY: You would. And it would be to
13 target -- because ACL is an ongoing corporation,
14 although all they do is deal with asbestos
15 lawsuits.

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

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

24 THE COURT: Right.

25 MS. MCVEY: And it would allow him to

1 control the defense in the sense that we need to
2 be able to tender -- he needs to be able to
3 tender the Tibbs cases and other cases to these
4 carriers.

5 THE COURT: Right.

6 MS. MCVEY: Right now, I believe what the
7 carriers would say is ACL is saying "We don't
8 need you to come in here." I don't know without
9 doing discovery, which they refuse to
10 participate in, why that is, where the insurance
11 is, and all that kind of stuff.

12 THE COURT: Right.

13 MS. MCVEY: Your Honor, I think it has to
14 be they're in contempt. The answer is struck.
15 And if that happens, the appointment of the
16 receiver would take place.

17 I do want to address just briefly, we have
18 moved to have Mr. Protopapas appointed to
19 receiver. You have a lot of experience with
20 him. And ACL says in their briefing, this is a
21 quote, "That a receiver should not be appointed.
22 This is especially true when the proposed
23 receiver is one suggested by Plaintiff's counsel
24 who serves in such roles repeatedly. An entity
25 over which he attempts to assert authority in an

1 existing Canadian corporation with no assets in
2 South Carolina."

3 Now, you know the quality of
4 Mr. Protopapas' work.

5 THE COURT: Let's back up for a minute.

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

15 MS. MCVEY: That's right.

16 THE COURT: Isn't that correct?

17 MS. MCVEY: Yes, ma'am. The case law is
18 clear on that, and you have ruled that way many
19 times.

20 THE COURT: Right.

21 MS. MCVEY: So we believe there are assets
22 here. There is insurance that would cover South
23 Carolinians' claims here. But I also want to
24 say it's not just Chief Justice Jean Toal who
25 has appointed Mr. Protopapas as a receiver, but

1 the Delaware Business Board just recently
2 appointed him.

3 THE COURT: The Wisconsin court also
4 recently appointed Mr. Protopapas.

5 MS. MCVEY: That's right. I think other
6 courts have recognized his expertise in this
7 field, and so we believe he would be the
8 appropriate --

9 THE COURT: If you look in the broader
10 scheme of things of mass torts in this country,
11 receivers are quite often appointed to marshal
12 assets and to manage claims. Whether it's the
13 famous 9-11 mass tort cases against the
14 governments of several countries and so forth,
15 or whether it's more typical class-action-type
16 things.

17 Individual corporations similarly who are
18 financially distressed or set up only to handle
19 old claims typically have receivers appointed
20 maybe sometimes in several different states to
21 marshal assets that would affect claims in that
22 state.

23 MS. MCVEY: That's right. It's a very
24 common tool --

25 THE COURT: Right.

1 MS. MCVEY: -- used. And so, Your Honor, I
2 thank you for hearing me. I'm happy to answer
3 any questions. But we believe they should be
4 held in contempt, their answer struck, and a
5 receiver appointed.

6 THE COURT: Very good. Mr. Brown.

7 MR. BROWN: Thank you, Your Honor. May it
8 please the Court.

9 If you don't mind, Your Honor, I would like
10 to go in reverse order just to make everything a
11 little easier.

12 THE COURT: Sure. However you wish to
13 handle it, Mr. Brown.

14 MR. BROWN: I apologize. I have stuff
15 spread everywhere.

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

17 MR. BROWN: I have never met Mr. Protopapas
18 in my career, unfortunately. The comment or the
19 quote was put in the brief about a receiver
20 being independent and it should not be the
21 person suggested by the plaintiff, came from the
22 1930-something case that has been cited in
23 Ms. McVey's briefs to this Court and this
24 Court's order. That was straight from our
25 Supreme Court.

1 THE COURT: I disagree. I'll put that in
2 context for you right now, Mr. Brown.

3 When that's the beginning of any kind of
4 receivership, that case may have some
5 applicability. But this receiver has performed
6 as a receiver now in 17 or 18 different asbestos
7 cases involving different plaintiffs, involving
8 different lawyers, and the inference is made in
9 that old case. And the inference is made in
10 your brief that somehow or another the receiver
11 is the tool of the plaintiff or too close to the
12 plaintiff.

13 I appointed Mr. Protopapas as the receiver
14 in the first Covil case, not by anybody's
15 recommendation, but because of my knowledge of
16 Mr. Protopapas. And he has now operated in a
17 good many receiverships. And I will assure you,
18 he is a vigorous defender in the receiverships
19 in which a qualified settlement fund has been
20 established. He does not settle cases casually.
21 He protects the fund just as any defense lawyer
22 would do.

23 The attorneys he handles -- he hires to
24 handle the defense are well-recognized defense
25 lawyers to the nth degree in this state and

1 vigorously represent the defense point of view.

2 I'm familiar with the case you cite. It
3 has no applicability to what we're talking about
4 here, in my view.

5 MR. BROWN: I understand Your Honor's
6 position on that, but that's where that came
7 from. In response, they filed, they refer to me
8 as making a thinly veiled defamation attempt --
9 thinly veiled attempt at defamation. It was
10 simply Ms. McVey specifically requested him to
11 enter a motion.

12 THE COURT: She did because the experience
13 we have all had with Mr. Protopapas and these
14 many other receiverships.

15 MR. BROWN: I understand. Your Honor, I
16 was going by the ruling or the language that the
17 Supreme Court had used in that case and they
18 relied on by this Court in its ruling.

19 With regard to ACL, ACL, as Your Honor is
20 aware, is in Thetford Mines, Quebec. It is a
21 live Canadian corporation.

22 THE COURT: Is it set up for any other
23 purpose to handle claims -- old claims against
24 ACL?

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: It has an ongoing independent
2 business?

3 MR. BROWN: It operates with certain
4 properties that it owns up there.

5 THE COURT: Right. That's typical of
6 companies that are set up after the active
7 manufacturing and sale of products as long as
8 it's out of the way and all these claims -- they
9 manage properties of the corporation as well as
10 claims against. Most famous is J&J Corporation,
11 which was set up separately to do just that for
12 Johnson & Johnson.

13 MR. BROWN: It has been doing this since
14 the 1980s when it stopped with asbestos,
15 Your Honor.

16 THE COURT: And it actively apparently
17 negotiated this agreement with the Maryland fund
18 with regard to setting up a qualified settlement
19 fund to take care of certain asbestos claims.

20 MR. BROWN: In 1989.

21 THE COURT: Right.

22 MR. BROWN: And as Your Honor pointed out,
23 relating to policies from 1967 to '71. And I
24 point out that the agreement was negotiated by
25 its very terms is governed by the law of Quebec.

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

3 MR. BROWN: In this particular case, Your
4 Honor, I did -- Ms. McVey and I have had good
5 conversations or a conversation. Never heated
6 or anything of that nature.

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

15 MR. BROWN: I'm not worried about what my
16 client wants to say, I'm worried about what
17 Steve Brown wants to say with his research and
18 his appearances in front of Your Honor.

19 THE COURT: Well, I understand. You don't
20 need to tarry on that.

21 MR. BROWN: Let me get to my point which is
22 it's not that it's too much for us to produce a
23 30(b)(6). It's not that we don't want to
24 produce a 30(b)(6). They're all dead.

25 THE COURT: No, sir. Now, Mr. Brown,

1 somebody is paying you, and it's ACL. It may be
2 their insurance company. I don't know. But
3 you're not here as a gift. You're here because
4 a company is actively engaging a very fine
5 lawyer to represent them.

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

16 And this excuse that they're all dead is
17 not something that carries much weight with me.
18 I have had many, many corporations, including
19 Covil, most famous one, where everybody, they
20 wouldn't have had anything to do with this, was
21 no longer with us. Didn't prevent them from
22 appointing a very confident 30(b)(6)
23 representative to marshal their records and
24 speak to matters with regard to the claims
25 against it.

1 MR. BROWN: In those cases, Your Honor, I
2 believe you had a different factual setup to
3 begin with because understanding Your Honor
4 thinks very little of the Quebec Business
5 Records Concern Act. We have a situation and we
6 have cited some cases.

7 I understand what Judge Anderson did. I've
8 read his case. His opinion is obviously not
9 binding on Your Honor. You make your own
10 decisions on this, obviously.

11 We cited other cases from around the
12 country from other districts courts that have
13 looked at this issue. And they said, you know
14 what? We understand -- one of them I had to go
15 look up Greek mythology to understand the quote
16 they were using about --

17 THE COURT: Scylla and Charybdis. Very
18 famous quote.

19 MR. BROWN: Well, I'm poorly educated
20 because I had no clue and I had to look it up.

21 THE COURT: Two rocks you have to steer
22 between.

23 MR. BROWN: Having done that, Your Honor,
24 that is where we are because with regard to the
25 30(b)(6), Ms. McVey is correct in this one

1 point. There are certain things I can give you.
2 I have a rolling cart over here, and I can
3 share -- it's this big.

4 THE COURT: I've seen a sample of those.
5 They are not what she's asking for.

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

7 THE COURT: Most particularly, Mr. Brown,
8 they are not any kind of insurance information
9 about coverage that would have been available.
10 All these policies back at that time were per
11 occurrence policies. They cover things like
12 this even though mesothelioma had a latency
13 period of many years. It's when the occurrence
14 took place that those policies come alive. And
15 the insurance industry now calls them legacy
16 policies.

17 If they had one with the Maryland, they had
18 others. As a Quebec corporation, they had no
19 problem with setting up a qualified settlement
20 fund to take care of asbestos claims back in the
21 '80s that were '70s policies. They would have
22 no problem bringing that forward today where I
23 feel quite confident while they are still in the
24 business, big a corporation is they were, they
25 had commercial general liability policies,

1 probably with per occurrence coverage. And
2 that's what they're trying to seek.

3 MR. BROWN: And I will answer Ms. McVey's
4 question, which is why have we not tendered? We
5 have no insurance to tender against. It's just
6 that sample. I am not paid by insurance. It
7 would make no sense not to tender, Your Honor.

8 THE COURT: Well, how about when in
9 relation to the Maryland did you all quit buying
10 insurance, or do you know?

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

12 THE COURT: Well, that's one thing that
13 somebody -- somebody within ACL is capable of
14 digging out. Don't tell me they burned them
15 all. I've had fires now --

16 MR. BROWN: I don't know of any fires. I
17 haven't claimed any fires.

18 THE COURT: They've got their records.

19 MR. BROWN: They stopped operations with
20 regard to asbestos in the mid '80s.

21 THE COURT: They are going to have those
22 records unless you tell me --

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

24 THE COURT: ACL is going to have records
25 from -- if they've got a company who is now set

1 up to manage these old claims and it was set up
2 with the ability to in 1989, go back and dig up
3 '71 policies and settle these matters that are
4 contained in this agreement, they've got the
5 ability to look at those same records and find
6 out whether there is coverage for these matters
7 that are alleged the Tibbs case.

8 MR. BROWN: And we have gone through and we
9 can find and we know of and there is no coverage
10 for us to tender against.

11 THE COURT: Well, that's your contention,
12 but they are entitled to depose the people that
13 you had go through those records and ask them
14 what they looked at and so forth. It's not
15 acceptable to say we're just not going to tender
16 anybody because it's too old and everybody is
17 dead.

18 You've got people now, is what you're
19 representing to me, who looked at all the
20 records and says there's no coverage. Isn't
21 that right?

22 MR. BROWN: Attorneys.

23 THE COURT: I don't care whether they are
24 attorneys or who they are. There are people
25 that are looking at some records of ACL's to

1 make the representation that you're making, upon
2 your oath as a lawyer in this court today, which
3 is they didn't have any coverage. They are
4 entitled to look at the same material that your
5 internal people looked at and make their own
6 determination about that. That's what discovery
7 and 30(b)(6) is all about.

8 MR. BROWN: I understand exactly what Your
9 Honor is saying. I respectfully disagree. I
10 believe 30(b)(6) -- I can read the rule. I
11 understand what it says. I also read lots of
12 articles where 30(b)(6) is a huge problem within
13 the judicial system in and of itself by going in
14 and trying to create witnesses. And certain
15 courts have put limitations on that.

16 THE COURT: Mr. Brown, you just, not three
17 minutes ago, told me we have looked to see if
18 there are any policies. You looked at something
19 to make that representation. You are a good
20 enough lawyer, you don't make representations
21 that aren't true. I have ultimate respect for
22 your integrity and your ability to sort out the
23 facts in this case.

24 But if your folks, your clients, whether
25 they be attorneys for the client or whatever,

1 looked, they looked at something. And you are a
2 good enough trial lawyer to know we're entitled
3 to see what they looked at. We here in
4 South Carolina, in this case, and Quebec Records
5 Act has nothing to do with that. The Quebec
6 Records Act did not prevent you from entering
7 into this agreement in 1989 when they were a
8 Quebec corporation.

9 This is the same kind of agreement they're
10 trying to effectuate for their clients
11 ultimately, which is some agreement that can
12 look at the insurance coverage and pursue it.

13 MR. BROWN: Your Honor, I will confess, you
14 lost me there. The Quebec Records Act would
15 never stop us from entering into an agreement.
16 It has to do with the production of that
17 agreement here in America.

18 THE COURT: I don't think it has to do with
19 a darn thing with regard to records that have
20 already been produced, and a category of things
21 that, apparently when it suits you, are produced
22 and agreements entered into with insurance
23 companies.

24 MR. BROWN: I respectfully disagree with
25 Your Honor on that issue.

1 THE COURT: All right, sir. I understand.

2 MR. BROWN: With regard, though, I did
3 attempt, I did -- it was important to me to try
4 to show, and you say it's not what Ms. McVey
5 asked for, and I understand that, but tried to
6 do more than was done at Atlas Turner. They
7 talk about the other attorney. The other
8 attorneys had conflicts. They didn't just walk
9 away from this case. My understanding is
10 conflicts developed.

11 However, in this particular case, I wanted
12 to provide things that come through America so
13 the Quebec act would not come into play with
14 them. I gave those to them. You say that's not
15 enough.

16 Again, I understand --

17 THE COURT: Well, if they came to America
18 to talk with you so Quebec Record Act would not
19 apply, then why cannot they sit for a deposition
20 by Ms. McVey? They've already waived any
21 reliance on it if they have come to America to
22 talk to you and show you records or show you how
23 they searched. That makes no sense to me.

24 MR. BROWN: No, ma'am. They did not come
25 to America to show me what we did. What we did

1 was via telephone conferences and Zoom
2 conferences, not them coming to America.

3 Lost throughout all of this is this is a
4 functioning Canadian corporation. The Court
5 might say, no, I've seen these --

6 THE COURT: No. We're fine with that.
7 It's a functioning corporation who refuses to
8 cooperate with South Carolina courts.

9 MR. BROWN: Because it's --

10 THE COURT: It's a functioning corporation
11 whose business it is to manage the assets of a
12 formerly active asbestos business.

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

16 Number two, unlike any other case that I
17 believe we have had within this court, the
18 Quebec act is going to get down to either
19 South Carolina Supreme Court or an applicable
20 court in Canada. And they are going to fight
21 that issue out.

22 THE COURT: Has the attorney general
23 applied for enforcement of this records act?

24 MR. BROWN: Not to my knowledge at this
25 point.

1 THE COURT: Well, isn't that a predicate to
2 having you put this act in any kind of role of
3 impact in this case?

4 MR. BROWN: Don't hold me a hundred percent
5 to this, but I believe it has to do with trying
6 to get your way around or out of contempt. As
7 you have both criminal and civil contempt on
8 this, Your Honor. Criminal and civil contempt
9 for the production of documents that this court
10 says we don't care about.

11 THE COURT: I haven't said a word to that
12 effect. You're mischaracterizing my rulings
13 completely, Mr. Brown.

14 MR. BROWN: My apologies. Let me rephrase
15 it. I believe the last memo filed said
16 basically that's not our problem, not from you.

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

1 1989 for sure.

2 MR. BROWN: The 1989 agreement, Your Honor,
3 I don't believe has anything to do with the
4 Quebec act.

5 THE COURT: Yes, it does. They had to
6 produce to the Maryland corporation all kinds of
7 records. This agreement is replete with the
8 discussion of this agreement and the internal
9 workings of ACL and everything else.

10 MR. BROWN: I believe that document had
11 made its way lawfully into America.

12 THE COURT: Made its way what?

13 MR. BROWN: Lawfully into America. There's
14 an exception, of course, as Your Honor is aware,
15 documents are lawfully within America. That's
16 what most courts and judges have done in these
17 cases. Sat there and said if you have documents
18 that are lawfully in America, you produce them.
19 If you don't, you rely on the act.

20 THE COURT: Well --

21 MR. BROWN: And we list those cases, Your
22 Honor. We talked about them.

23 THE COURT: Yes.

24 MR. BROWN: They're very interested to look
25 how the judges try to balance the best they

1 could.

2 On the contempt, my one point, too, Your
3 Honor, is this: It was not an attempt or an
4 attempt made, Your Honor, to show some good
5 faith, some willingness to try and get to the
6 bottom of this if there's a way to do it. You
7 may not find it sufficient, but there was an
8 effort. It was not a willful disregard or
9 putting of the nose up at Your Honor or counsel
10 or this Court.

11 And so for that reason, we think contempt,
12 which as Your Honor's well aware, our Supreme
13 Court says is something that you need to balance
14 carefully, make sure you're not going too far.
15 Look at what people are trying to do. Was it a
16 deliberate act of disobedience? Or was there an
17 attempt to try to deal with it that's not
18 sufficient, in our opinion, but you know what,
19 it showed at least some good faith. It wasn't
20 willful, wanton disregard. That will be the
21 argument I'm making, Your Honor, on contempt.

22 With regard to the striking of an answer,
23 again, or striking of pleadings, I believe the
24 case law from the Supreme Court says that the
25 court needs to again weigh carefully what has

1 been done, the results from it, how it would
2 come into play, before you simply strike an
3 answer. Which is a severe remedy and one that
4 our court has at times said the courts have gone
5 too far.

6 So in this case, I think in the totality of
7 what we've tried to do, maybe not enough to make
8 you happy, Your Honor, but have tried to do, it
9 shows an effort of good faith and an effort to
10 try. And that has been my goal. That is what
11 I'm trying to do.

12 The final thing would be on the
13 receivership. Respectfully -- and I'm not going
14 to reargue Your Honor's previous order, because
15 I realize it's not appropriate. But when you
16 have a Canadian corporation with no assets in
17 South Carolina, Your Honor talks about the
18 insurance. I went back and reread Sagino [sic].
19 and as I recall, the plant at issue there was
20 sitting up in Pickens. Which is a reason
21 recently I believe Joe Anderson and another
22 federal judge have distinguished it in two cases
23 within the last year or so. So I don't know
24 that Sagino gets us as far as the Court has put
25 it.

1 So the third thing is we -- you have an
2 entry of default in the Welch case. The order
3 in the Welch case specifically says that from
4 that point on it's ministerial to get a default
5 judgment. That is not the law. That is not the
6 law.

7 And, in fact, I cite the case law that says
8 even if you have an entry of default, you're not
9 entitled to a default judgment. They still have
10 to prove the entitlement damages.

11 THE COURT: That's been the case -- I've
12 struck an answer before in proceedings like
13 this.

14 MR. BROWN: Yes, ma'am.

15 THE COURT: And that simply means that
16 there's no contest to the averments of the
17 complaint, but you've still got to prove it.
18 And that's what has been done in those cases.

19 MR. BROWN: And taking that to its next
20 step, though, Your Honor, that was used in the
21 order to appoint the receiver to try and treat
22 the Welches almost as if they were creditors.
23 They go under sections 4 and 5, both in Welch
24 and in Tibbs, and they say, well, we're entitled
25 to go into receivership because of the old -- I

1 can't remember the exact quote -- but sort of
2 the old way of doing things.

3 THE COURT: That was Welch -- I don't
4 understand why you're making an argument about
5 Welch. You represent Asbestos Corporation
6 Limited in Tibbs, right?

7 MR. BROWN: Yes, ma'am.

8 THE COURT: Are you representing Atlas
9 Turner in Welch?

10 MR. BROWN: Yes, ma'am.

11 THE COURT: Well, haven't we got that next
12 on the list of cases to be argued?

13 MR. BROWN: We do. I was pointing out
14 presumably about the receivership. In Tibbs,
15 they say there should be a receiver because they
16 ACL is either, one, an insurance company. And
17 counsel has said I really don't know what
18 insurance is out there. I don't know what
19 they've done. I don't know. I don't know. I
20 don't know. I was taken to task in a reply
21 filed by the receiver because of this 1989
22 agreement that Your Honor has in front of you.

23 THE COURT: Yes.

24 MR. BROWN: Okay. Our argument was that at
25 the time of them filing for this receivership in

1 Tibbs, nobody can show. Nobody can claim.
2 There's nothing that we have insurance and that
3 we're out there muddling, which is the word that
4 continues to be used.

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

16 MR. BROWN: Again, I understand, Your
17 Honor's position on this.

18 THE COURT: I'm telling you what they're
19 arguing about establishing a receivership here.

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

1 international border to put a receivership --

2 THE COURT: You say that so glibly. What's
3 your authority for that?

4 MR. BROWN: Statute talks about assets in
5 this state.

6 THE COURT: Yes. Again, we've dealt with
7 that. Our case law regards insurance as an
8 asset in the state, insurance that covers a
9 claim in this state.

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

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

24 MR. BROWN: I would respectfully disagree.
25 Almost every state I think has a statute similar

1 to the one that Sagino was ultimately
2 interpreted.

3 THE COURT: Sangamo.

4 MR. BROWN: Sangamo. I apologize.

5 So would that open the door, Your Honor, to
6 every state who has that statue to be able to
7 come in and get a receivership? How do you deal
8 with that situation?

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

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

20 THE COURT: No, sir. Assets are assets.
21 Whether they are pieces of paper, whether
22 they're contractual agreements, or whether
23 they're a building that's constructed and
24 sitting on the ground. Assets are assets, and
25 they're not limited in that statute in any way.

1 MR. BROWN: Well, I respectfully disagree.

2 THE COURT: All right.

3 MR. BROWN: I believe that this is a
4 Canadian corporation with no assets in this
5 state. It does no business in this state.

6 THE COURT: I think understand your
7 position.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 Ms. McVey in reply.

11 MS. MCVEY: Yes, ma'am. Just briefly. I'm
12 going to show you what the receiver for Atlas
13 Turner filed. And this goes to the argument of
14 whether or not there's insurance applicable to
15 ACL and Atlas Turner. And they're intertwined.

16 If you look at the document that's filed,
17 there is -- this came from discovery responses
18 that Asbestos Corporation answered in an old
19 case. And in that, you see a listing of, I
20 don't know, 20 or 30 insurance policies. And my
21 fast math is not great, but it looks like it's
22 about \$2 billion, billion with a B, of
23 insurance.

24 Now, I don't know what --

25 THE COURT: This is a notice of filing in

1 the Welch case and in the case of Atlas Turner
2 against Zurich, which is a third-party complaint
3 through its duly appointed receiver, Peter
4 Protopapas.

5 Mr. Protopapas was able to third-party
6 Zurich; Federal Insurance; Aetna, also known as
7 Travelers. It's certain underwriters at Lloyds,
8 et cetera. I am very familiar with that
9 litigation. And what it did was to once you got
10 a receiver appointed for Atlas Turner, these
11 policies from the Maryland, from Aetna, from
12 insurance company in North America, from
13 Federal, from Continental, from Aetna, INA
14 again, these are a variety of policies that
15 cover a period of time from 1964 through 1981,
16 that according to the receiver are potential
17 insurance programs of Atlas.

18 I don't think there's any question but
19 they're insurance programs of Atlas. But he
20 says their insurance companies -- programs of
21 Atlas that cover the Welch case.

22 MS. MCVEY: Your Honor, I believe it also
23 covers -- maybe the receiver could speak to --

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

1 MS. MCVEY: So that document came from
2 Asbestos Corporation's Answers to
3 Interrogatories. So it applies to Atlas Turner
4 but it also applies to Asbestos Corporation.

5 THE COURT: Atlas Turner, as we know, was
6 formerly known as Atlas -- Asbestos Company
7 Limited, and it has a business relationship
8 closely intertwined with Atlas Corporation
9 Limited.

10 MS. MCVEY: That's right. So you have
11 that.

12 THE COURT: Or Asbestos Corporation
13 Limited.

14 MS. MCVEY: That's about \$2 billion worth
15 of insurance that would cover this stuff. And I
16 have to say you got a lot of late filings last
17 night. And we were all up late last night and
18 early this morning.

19 THE COURT: I did not have a chance to see
20 all those.

21 MS. MCVEY: I'm just wondering if there's
22 no insurance, why is Travelers, why is CNA, why
23 are Lloyds, why are they coming in and
24 objecting?

25 Your Honor, this is why a receiver brings

1 transparency. All we're asking for is an even
2 playing field that we can do, that we understand
3 what they have and why.

4 And I respectfully think that Section 5 of
5 the receivership statute is very applicable in
6 this case. And, of course, you know that that
7 means a receiver can maybe be appointed by a
8 judge of the circuit court, either in or out of
9 court, in such cases as are provided by law or
10 may be in accordance with the existing practice.

11 And we cite to you an old case, a 1909
12 case, and it's Carolina Chem Company v. Hunter.
13 And it talks about the appointment of a receiver
14 to correct injustice. Particularly when a
15 debtor is trying to defeat his creditors by an
16 act or a course of conduct which indicates moral
17 fraud. A conscious intent to defeat, delay, or
18 hinder its creditors in collection of the debts.

19 Mr. Tibbs has a claim against Asbestos
20 Corporation. They cannot come and ignore every
21 order. I told every lawyer who represents them
22 in the past, if you guys will answer discovery
23 and produce a witness and give us documents,
24 then this goes away. And they refuse. There's
25 no other option that we have other than to get a

1 receiver appointed who can be fair to both sides
2 and give -- force some transparency. And that's
3 what we're asking you to do if you strike their
4 answer and hold them in contempt.

5 THE COURT: Thank you, ma'am.

6 Anything further?

7 MR. BROWN: Briefly, Your Honor, while I
8 grab my pen, which I left up here.

9 THE COURT: Yes, sir.

10 MR. BROWN: The two cases that Ms. McVey
11 talks about are about active frauds ongoing
12 right then at that time. That same time period
13 when the cases were being brought, et cetera.
14 They're all right there put together. Whereas
15 here, Your Honor is looking at something back
16 from 1989. However many years that is.

17 THE COURT: Well, Mr. Brown, here's one
18 thing I'm looking at. In the Welch case, which
19 you referenced when you were making your
20 argument, we're going to get to that in a
21 minute. And this is a document -- a notice of
22 filing dated August 20th, 2023. And that was
23 yesterday. And it lists \$2 billion worth of
24 insurance coverage for your allied corporation,
25 Atlas Turner. And that's not something that

1 took place in 1989. That's something that
2 Mr. Protopapas searched around and found and
3 reported to the court a day ago.

4 MR. BROWN: I will ask --

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

9 MR. BROWN: And I apologize, but I came up
10 late last night and couldn't get a printer to
11 work at the Hilton.

12 Does Your Honor know the range of coverage
13 on that? Because I have not been able to open
14 it.

15 THE COURT: No, but I don't need to know
16 the range of coverage. This thing -- yes, it
17 tells you, for example, very first one, this
18 illustrates, if nothing else, exactly what is
19 happening with trying to get this insurance
20 coverage. Maryland Casualty Company, which was
21 policy for Atlas Turner. From January 1, 1961,
22 to January 1, 1964, \$200,000 occurrence annual
23 aggregate.

24 Occurrence policies. That's what all this
25 is about. Those old per occurrence policies.

1 There came a time when CGL policies quit being
2 written as per occurrence policies. All the
3 ones you see listed on this page, some
4 \$2 billion worth of per occurrence policy,
5 written back before they started changing these
6 policies to making claims made rather than per
7 occurrence.

8 One would have to plow further into these
9 policies to see whether they provide what
10 Mr. Protopapas suspects is coverage. But he dug
11 around and found this just since he's been
12 appointed as receiver. And that's the very
13 reason they want a receiver appointed in Tibbs.

14 You're the third lawyer that's taken this.
15 Two other lawyers could not get these people to
16 cooperate one bit except to say we don't have to
17 do anything, and we're not doing anything, and
18 we're not even going to provide a 30(b)(6),
19 which is a Canadian -- Quebec Records Act
20 certainly doesn't affect. But they said no to
21 everything.

22 Appointing a receiver would give someone,
23 who's very knowledgeable about how to find
24 insurance coverage, the ability to at least take
25 a look at what apparently unknown people that

1 you've checked with say they looked at and
2 couldn't find anything.

3 He found an enormous amount of potential
4 coverage. Now, have I seen the insurance
5 policy? See, I don't know. Probably not yet.
6 But he has at least found coverage for this
7 corporation, CGL-type coverage with very
8 reputable known insurance companies that started
9 out in the '60s with 200,000 is now up to
10 \$2 million, \$4 million.

11 I mean, these are big insurance coverages
12 that Mr. Protopapas found and indicates are
13 potential, suspected insurance programs of
14 Atlas. What they are asking is this same
15 methodology be used to discover insurance policy
16 of ACL.

17 I don't understand why ACL is fussing about
18 that. These policies protect them and these
19 policies stand good for the claims that are
20 going to be made because their stuff came into
21 the stream of commerce, if that can be proven.
22 And I have to take it as true at this moment.

23 MR. BROWN: I think Your Honor hit the
24 nail -- hit a nail on the head. Why would they
25 not move forward and tender if there was

1 something there to tender for?

2 THE COURT: That's what I don't understand
3 there. At least some that Mr. Protopapas has
4 showed that apparently they didn't bring to
5 nobody.

6 MR. BROWN: This chart is a chart of
7 insurance. It doesn't indicate that that
8 insurance is there, binding, valid, and
9 applicable today.

10 THE COURT: Well, let's argue about all of
11 that. They come forward with some showing that
12 there are policies that pertain to this very
13 dispute and cover this very corporation for
14 times that are involved in this lawsuit. That
15 gives you the right to at least move forward and
16 make some kind of discovery with that.

17 And your client has been stonewalling.
18 That's all it is. They don't want to tender to
19 anybody for any insurance. Apparently that's
20 the position they put you in, too. Rather
21 awkward, I think, for you.

22 MR. BROWN: Again, I'm not going to belabor
23 the point, but if there was nothing to tender,
24 it's not awkward for me to say that this doesn't
25 prove that this insurance is in place.

1 And the last thing was getting back to
2 those two cases, Your Honor. There was an
3 ongoing -- sort of a hot fraud right then.
4 Somebody was going out buying \$10,000 worth
5 of --

6 THE COURT: One of the concerns I've got,
7 Mr. Brown, this very case is where a fraud would
8 take place. Meaning whether this corporation
9 would have attempt to convert some of these
10 assets into cash at this very moment before the
11 entitlement to coverage is ascertained by
12 someone on behalf of the estate. Because what
13 you're telling me is -- that is occurring now is
14 that Atlas is making no attempt and ACL is
15 making no attempt to locate policies because
16 they say there aren't any.

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

1 MR. BROWN: Again, I understand Your
2 Honor's position, and I stand by my arguments
3 previously.

4 THE COURT: I understand.

5 MR. BROWN: As well as the fact that with
6 all due respect, the requirements of the statute
7 for a receivership are not met in this case and
8 should not be one appointed. It would be
9 improper. If we take the toothpaste out, we'd
10 never be able to get it back in.

11 THE COURT: Well, okay. Anything further?

12 MS. MCVEY: No, Your Honor.

13 THE COURT: All right. I think there's
14 more than sufficient evidence to indicate that
15 this corporation is deliberately refusing to
16 comply with discovery rules of South Carolina
17 quite apart from the alleged application of the
18 Quebec Business Records Act.

19 The ACL's attorney concedes that a 30(b)(6)
20 representative has nothing to do with the Quebec
21 Business Records Act. And the appointment of a
22 receiver is not anything that is affected by the
23 Quebec Receiver Act. Now, he has other
24 arguments about jurisdiction and so forth and so
25 on, and I understand that. I ruled on that. I

1 ruled on that sometime ago. I ruled there was
2 jurisdiction and when we move forward to
3 deciding what to do about this discovery.

4 This will be my third time revisiting this
5 now. This company has made it clear that they
6 are not going to cooperate with their
7 South Carolina counsel in doing anything that
8 leads to the discovery of business records.

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

18 And the notice of filing in another case in
19 which an aligned corporation, Atlas Turner, is
20 involved, disclosing the location of potential
21 coverage by many American insurance companies of
22 Commercial General Liability insurance policy
23 covering from 1961 to 1982, and perhaps beyond,
24 is enough to indicate there is potential
25 insurance coverage asset which would stand good

1 for claims made in South Carolina for business
2 transactions and material put into the stream of
3 commerce in South Carolina by defendant Atlas
4 Company Limited.

5 To support a finding by this Court that
6 Atlas Corporation, Atlas Company Limited is
7 deliberately ignoring the orders of this Court
8 and the Rules of Civil Procedure of
9 South Carolina and failing to cooperate in any
10 way with producing materials, answering this
11 complaint, or anything else of the like that
12 involves dealing with the status of this matter
13 in South Carolina, I therefore find that ACL is
14 in contempt of this Court and its orders, and I
15 sanction ACL by striking their answer.

16 I ask Ms. McVey to, within the next five
17 business days, to get to me and to Mr. Brown a
18 proposed order memorializing the rulings I have
19 made.

20 And I give Mr. Brown five days after that
21 to -- make any response that he wishes to make.

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

1 All right. That's Tibbs.

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

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

9 MR. BROWN: I don't want to relitigate.

10 THE COURT: I made a ruling. It may be
11 that it was Ms. McVey that made the pitch the
12 Quebec Records Act --

13 MR. BROWN: We'll clean that up.

14 THE COURT: -- does not prevent the
15 appointment of 30(b)(6), if so, I'll withdraw
16 that.

17 MR. BROWN: I'll clean it up.

18 THE COURT: I don't put it on you that you
19 concede anything on behalf of this client.
20 Okay.

21 MR. BROWN: Thank you. Sorry, Your Honor.

22 THE COURT: All right. Next is Welch
23 against Atlas Turner. Motion to lift stay.

24 MS. MCVEY: Judge, for just clarity, you
25 struck their -- hold them in contempt, struck

1 their answer.

2 And are you appointing Mr. Protopapas as
3 receiver?

4 THE COURT: Absolutely. I'm sorry. The
5 reasons stated as this argument was made in my
6 discussion of the history of appointment of
7 receivers in asbestos cases in South Carolina
8 for the purpose of marshaling the assets of the
9 defendant corporation and providing an active
10 defense for the defendant corporation, I find
11 that Atlas -- that Asbestos Corporation Limited
12 has absolutely and deliberately refused to
13 cooperate in any way with this litigation in
14 South Carolina, and, therefore, the appointment
15 of a receiver is necessary in order to have a
16 receiver that can adequately defend this
17 corporation.

18 And the fact that this corporation is
19 represented being an ongoing corporation with
20 assets makes it all the more important to this
21 corporation that if there is insurance
22 available, it is used rather than to invade the
23 assets of what Mr. Brown represents is an
24 ongoing corporation of assets which would
25 otherwise have to stand good for any claims made

1 and proved here.

2 So for all those reasons, a receiver is
3 needed to marshal these assets and provide a
4 real defense and not simply we're not going to
5 cooperate in a defense. It may be that
6 Mr. Protopapas will move to undo the contempt
7 after he's appointed and be allowed to file an
8 answer. And I would consider that.

9 But at the moment, the activity on behalf
10 of ACL is completely defiant of the orders of
11 this Court and the law of South Carolina.

12 I find that Mr. Protopapas is a highly
13 capable receiver whose been appointed to operate
14 without fear or favor in many asbestos cases in
15 South Carolina, and he has taken his role as a
16 defender of the corporations for which he is
17 appointed receiver with the utmost seriousness
18 and has not only marshaled their assets but
19 defended against unwarranted claims, invalid
20 claims, or claims which he considers to be more
21 than what is appropriate to be put forward out
22 of the assets he marshals. So I find he is a
23 completely independent receiver who has done a
24 very, very capable job and other receiverships
25 and will be appointed in this one.

1 All right. That's that. Welch.

2 MS. MCVEY: Thank you, Your Honor. Are you
3 good to go forward?

4 THE COURT: Yes.

5 MS. MCVEY: Theile McVey for the Welch
6 family.

7 Judge, I have called this a motion to lift
8 stay, but I think that's not what I'm really
9 trying to do here. I want to be clear that the
10 receiver does not believe there's a stay in
11 place, and he's right.

12 By way of background only, you've just gone
13 over this with ACL, but you recall that Atlas
14 Turner filed a motion to dismiss for lack of
15 personal jurisdiction, refused to comply with
16 discovery, refused to produce a witness. We
17 moved to hold them in contempt. You held them
18 in contempt and struck their answer, and then
19 ordered Mr. Protopapas to come in and find
20 insurance assets for Atlas Turner.

21 And when you did that, Atlas Turner
22 appealed each of those orders, the contempt
23 order, the sanctioned order, and the receiver
24 order. And, of course, they have every right to
25 do that, and that is what they are doing.

1 But what we don't want to have happen is
2 during the pendency of the appeal, Atlas Turner
3 deplete any of the potential assets that if the
4 Court of Appeals affirms, the receiver could
5 marshal to pay potential creditors.

6 And so the receiver points to, and I read
7 it again last night, Rule 62. And that talks
8 about the stay of proceedings to enforce a
9 judgment. And it's 62(a), talks about automatic
10 stays and the exceptions, which include
11 injunctions, receiverships, and accountings.

12 And it says "Except as stated herein, no
13 execution shall issue upon a judgment nor shall
14 proceedings be taken for its enforcement until
15 the expiration of ten days after its entry.
16 Unless otherwise ordered by the court, and an
17 interlocutory or final judgment in an action for
18 an injunction, or in a receivership action or a
19 judgment or an order directing an accounting,
20 shall not be stayed."

21 So, Your Honor, while we are stayed I think
22 as to the other orders that you issued, we do
23 not believe that Mr. Protopapas is stayed as to
24 attempting to discover and marshal those assets.

25 Why is it so important in this case? Well,

1 for a couple of reasons. During this appellate
2 process, which takes a long time in
3 South Carolina, they're just overworked up
4 there, I think, and so the appeals process takes
5 a long time. What we don't want them to do is
6 what we know they have done in the past, which
7 is liquidate these insurance policies and put
8 them in some sort of QSF.

9 Now, I handed you the one involving Atlas
10 Asbestos Corporation, but the receiver filed
11 another one as to Atlas Turner. I'm going to
12 hand this up to you, Judge.

13 And this looks like, again, an agreement
14 with Atlas Turner.

15 THE COURT: I've been handed a document
16 that says Welch against 3M. This is 2022 --
17 2020-CP-40-03834. This document is a notice of
18 Atlas Turner in its misleading representations
19 and filing of evidence of potential insurance
20 litigation. This is dated August the 18, 2023,
21 by Mr. Protopapas as the receiver for
22 Atlas Turner.

23 And it's an agreement between a certain
24 asbestos mine in Canada, the Royal Insurance
25 Company of Canada, and Atlas Turner, Inc., and

1 it deals with policies of insurance and Royal
2 enforced from 1964 to 1969. And liquidates
3 those policies for the payment into a trust of
4 \$2,500,000 Canadian for liabilities in
5 connection with operations for Atlas as a
6 division of this mine and sets up a payment
7 schedule.

8 And it was signed on the 18th of
9 December 1986.

10 MS. MCVEY: That's right. So Atlas says in
11 their brief about why the receiver shouldn't
12 continue to do his duties. They say, and I'm
13 quoting, According to the plaintiff, this
14 necessity, the request to lift stay is borne of
15 the potential that exists due to the believed
16 liquidity of Atlas' insurance assets. That
17 Atlas might divest itself of the very assets
18 intended to be protected by the appointment of a
19 receiver. And they say no evidence of these
20 speculative theories has been offered into
21 evidence by the plaintiff.

22 Now, not that they don't say that there
23 isn't any evidence or that Atlas doesn't have
24 it, just that plaintiffs haven't provided any.
25 Well, now we have. This is a real concern about

1 them depleting their asset. And it's
2 interesting to hear Mr. Brown say there is no
3 insurance responsive to these claims when
4 clearly there is a whole bunch of insurance
5 that's out there. And I don't -- do they
6 deplete \$2 billion of insurance? Where is the
7 money? Where are these qualified settlement
8 funds that have been set up?

9 Your Honor, there is a real threat that
10 Atlas will continue to do that. And all we're
11 asking -- and I don't even think you need to
12 rule on this, but I wanted to bring this to the
13 Court because the carriers and Atlas are saying
14 that the receiver is stayed.

15 We submitted letters to you that
16 Mr. Protopapas filed where Atlas is refusing to
17 tender these cases and these insurance
18 companies. Some of whom are here today that
19 have filed responsive pleadings -- I'm sorry,
20 responses to our motion today. And they're not
21 tendering to them. And so the carrier is saying
22 we're not giving you anything because Atlas
23 hasn't tendered it to us. We want
24 Mr. Protopapas to be able to tender these
25 coverages to see what kind of coverage there is.

1 And I think, Judge, if there weren't any
2 coverage, these insurers wouldn't be here filing
3 all kind of stuff late at night.

4 So while the appeal goes on, surely they
5 can do that. We're not asking that
6 Mr. Protopapas distribute any of these assets.
7 We're asking that he hold them, that he marshal
8 them so that everyone is protected depending on
9 what happens with this appeal.

10 Atlas has shown clearly to this Court that
11 they do not care about court orders. And so,
12 Your Honor, we believe it's utterly necessary to
13 make sure. I think under the rules, even if
14 there was a stay in place, under Rule 205 and
15 241, we meet the criteria for a stay to be
16 lifted, even if there is one.

17 But after carefully reviewing Rule 62, it's
18 clear to me that receiverships are not appealed,
19 even not stayed during the appeal. And that
20 makes perfect sense because otherwise every
21 receivership order would be appealed, and the
22 defendant could do whatever they wanted with any
23 of the assets totally defeating the purpose of
24 the receivership here.

25 I'm happy to answer any questions, but that

1 would be our request. Just to make clear the
2 receiver can go forward with this investigation.

3 THE COURT: Ms. McVey, I noticed that in
4 your petition to lift stay, you attached two
5 letters to Mr. Protopapas, who has been
6 appointed as the receiver for Atlas Turner.

7 MS. MCVEY: Yes, ma'am.

8 THE COURT: And it's that order that's on
9 appeal now.

10 MS. MCVEY: All of the orders.

11 THE COURT: All of the orders that were
12 issued in connection with that are on appeal.
13 This is a letter from Mr. Rahman, a Keith
14 Rahman, account manager of direct claims
15 division, Resolute, a large insurance company, a
16 collection insurance company, dated July 24th,
17 '23.

18 He's -- Resolute is a third-party
19 administrator of certain claims on behalf of
20 certain underwriters at Lloyd's -- Lloyd's
21 underwriters. Claims received by an email from
22 Lindsay Valek, who is a paralegal for Rikard and
23 Protopapas.

24 The letter states, "Lloyd's Underwriters
25 have been advised by Atlas that Atlas is

1 controlling and defending its own interest in
2 the asbestos lawsuits and that you are not
3 objecting to Atlas' control of its own defense.
4 Atlas is not tendering the asbestos lawsuits to
5 the Lloyd's underwriters for defense and
6 indemnity. If you have any questions, contact
7 me."

8 Then on July the 21st, 2023, Resolute sends
9 a letter to Atlas Turner in Canada saying
10 "Resolute is a third-party administrator for
11 claims on behalf of Lloyd's Underwriters.
12 Lloyd's Underwriters are aware of an order
13 entered by Justice Jean Toal on June 20th, 2023,
14 receivership order in which the Welch lawsuit
15 stating -- in the Welch lawsuit stating that he
16 had appointed Peter Protopapas as receiver
17 solely over Atlas' insurance assets.

18 "Lloyd's has been advised by Atlas that
19 Atlas has continued to control its defense of
20 the asbestos lawsuits, even after entry of the
21 receivership order. Which Atlas believes is its
22 right even if the receivership order is allowed
23 to stand."

24 And Peter Protopapas is not objecting to
25 Atlas' control of its own defense.

1 All right. Those two letters from Resolute
2 indicate an ongoing and active relationship
3 between Atlas and its insurers and claims
4 managers for its insurers and certainly impacts
5 the representations that have been made to me
6 that neither ACL nor Atlas has any insurance or
7 any information about its insurance.

8 And this is a correspondence dated just
9 last month indicating active coverage which
10 Atlas, a corporation of ACL, is choosing to
11 manage itself and called the shots on the
12 defense itself.

13 MS. MCVEY: Yes, ma'am.

14 THE COURT: What impact does that have on
15 your argument?

16 MS. MCVEY: Your Honor, I think you should
17 here from Mr. Protopapas about whether or not he
18 agrees that Atlas can continue to --

19 THE COURT: Well, I would be surprised if
20 he agrees with that. That's what they're
21 representing.

22 MS. MCVEY: That's right.

23 THE COURT: Is they can do that because
24 he's consented to it.

25 MS. MCVEY: Right.

1 THE COURT: Or has not objected to.

2 MS. MCVEY: I don't know if he has or
3 hasn't.

4 THE COURT: We'll find out before it's all
5 over.

6 MS. MCVEY: What that means to me is
7 there's insurance here.

8 THE COURT: Exactly.

9 MS. MCVEY: There is insurance that Atlas
10 Turner is refusing tender. And we need to
11 understand why that is, what kind of coverage is
12 out there. It needs to be preserved. We know
13 they know how to liquidate insurance policies
14 because we've have shown you that they've done
15 it. And that's only what's been found in the
16 last month or so.

17 This is the purpose of a receivership
18 statue is to make sure, even during appeal, that
19 this is not stayed so that those assets don't
20 get wasted.

21 THE COURT: That's the biggest heartburn I
22 have about the thing. I am a circuit court
23 judge who stays rigorously within her guardrails
24 about what she can and cannot do in the face of
25 an appeal to the South Carolina Supreme Court or

1 the South Carolina Court of Appeals. They are
2 appealing the legitimacy of the receivership.

3 MS. MCVEY: Yes, ma'am. And I would
4 agree -- the contempt and other things are
5 properly up there. But what is not properly
6 under our own Rule 62, it specifically talks
7 about receiverships. And it makes perfect sense
8 why that is not stayed. Because there's a real
9 danger there.

10 I think you can put in some sort of order
11 about assets can't be disbursed, they can't be
12 whatever. But at least at that point, the
13 insurance carrier will be in, will know if
14 there's insurance or not insurance, and will
15 figure out what Atlas did.

16 If there really isn't any insurance and
17 there's \$2 billion that I have just shown you,
18 where is it? I think we're entitled to know
19 that and preserve the appeal.

20 Your Honor, so I think it is a critical
21 point respectfully to our appellate courts when
22 they go to read this, every case I've had on
23 appeal has taken between five and seven years to
24 fully resolve. And so it's going to be a minute
25 before we know.

1 THE COURT: Well, what you've done is to
2 style this thing as a request that I lift the
3 stay. I don't have any authority to lift a
4 stay. I have the authority to decide whether
5 there's a stay in place, but I don't have any
6 authority to lift a stay as I see it.

7 MS. MCVEY: Your Honor, you do. The rules
8 say -- and this is Rule 241(a) of our appellate
9 rules.

10 THE COURT: Right.

11 MS. MCVEY: "The automatic stay continues
12 in effect for the duration of the appeal unless
13 lifted by order of the lower court," that's you,
14 "the administrative tribunal, appellate court,
15 or judge, or justice of the appellate court.

16 "The supersedeas or lifting of the
17 automatic stay as well as any other affirmative
18 relief granted may be conditioned on such terms
19 as the tribunal, court, judge, or justice
20 entering the order deems appropriate."

21 So, Your Honor, I think you do have
22 authority to do that and they say it. Now, I'm
23 sure they can appeal that up to the next level.

24 THE COURT: Oh yeah.

25 MS. MCVEY: But you do have the authority

1 under our rules to do that. And I do think you
2 should do it. You're familiar with the dangers
3 of this liquidation as they're having now. And
4 it's a real concern.

5 So that's if there's a stay. I would argue
6 to you that Rule 62 says there is no stay on
7 this receivership stuff. It specifically says
8 that. And so I think there is not a stay, but
9 even if there were, we believe that you can lift
10 it under Rule 241(a).

11 THE COURT: All right.

12 MS. MCVEY: Thank you, Judge.

13 THE COURT: All right. Mr. Brown.

14 MR. BROWN: Thank you, Your Honor.

15 Your Honor, I very accurately hit on the
16 fact that the orders on appeal will go to the
17 very heart of powers of Mr. Protopapas as
18 receiver. That is one of the many orders that
19 has been timely appealed and is at the Court of
20 Appeals at this moment.

21 With regard to the argument that it is
22 not -- or I'll be honest, I got a little
23 confused because counsel for the plaintiffs
24 filed a memo that said that there as an
25 automatic stay. And they said it over and over

1 and over and over. And then there was a filing
2 by someone that referenced the receiver saying,
3 no, there is no automatic stay.

4 I did what Mr. --

5 THE COURT: I don't think you need to be
6 confused. Their argument today is Rule 62 or
7 there is an automatic stay of orders under
8 appeal. We know that's Hornbook law. If it is
9 appealable item.

10 Now, people in this court have all kind of
11 fun appealing things that aren't appealable
12 because of interlocutory orders. And some of
13 that is wrapped up in part of what was done in
14 the order about Welch were interlocutory matters
15 that aren't appealable.

16 But for appealable orders, if they are
17 appealable to stay, the appeal stays further
18 activity by the circuit court on the matters
19 that are stayed. What their argument is here is
20 that Rule 62 specifically exempts the running of
21 a receivership from the stay. And argues
22 there's a good reason for that because that
23 simply preserves the ability to preserve assets.
24 So that's what she argues.

25 You don't need to spend any time saying

1 they argued inconsistently. I think I
2 understand what their position is now.

3 MR. BROWN: Okay. Let's go to 62(a), which
4 talks about the automatic stay does not come
5 into play with regard in the action for a
6 receivership. This case was never talking about
7 Welch, Your Honor. There was never an action
8 for a receivership. It's an asbestos case where
9 a receivership became a discovery sanction
10 issued by this Court. There is to me --

11 THE COURT: It was a petition for the
12 appointment of a receiver. You can -- I
13 wouldn't spend a whole lot of time on that
14 argument. They made a petition to appoint a
15 receiver as part of what they thought was
16 necessary because of the conduct of the
17 defendant. They also asked for sanctions. The
18 thing is a multilayered thing that's just as the
19 other case was.

20 So it's a part that dealt with appointment
21 is -- deals with a petition to appoint a
22 receiver.

23 MR. BROWN: And, Your Honor, if I recall
24 the rulings right from Welch, and I could be
25 wrong, so please don't let -- was there a

1 petition for the appointment of a receiver, or
2 was that simply something that was mentioned by
3 the court as an additional sanction?

4 THE COURT: It was either a petition or a
5 motion. Something that was filed asking, A,
6 could a receiver be appointed, and, B, that it
7 be Mr. Protopapas.

8 MR. BROWN: And that was in relation to a
9 discovery sanction, and I believe --
10 understanding that you don't --

11 THE COURT: No, it was in relation to the
12 complete refusal to cooperate with the processes
13 of the court. Not just discovery. These people
14 don't want to answer. They didn't want to put a
15 lawyer in with -- the succession of lawyers that
16 you are now the third in line was after we had
17 already done a little bit of moving towards
18 sanctions because they wouldn't even appear.

19 MR. BROWN: Okay. Then, Your Honor, it
20 was -- if discovery is an incorrect word choice,
21 then it was a sanction against my client.

22 THE COURT: It was more than a sanction.
23 The sanction was in part other things. I
24 wouldn't spend any time on that argument because
25 it's not going to make any difference. If you

1 want to make it to the Supreme Court, that's
2 fine.

3 But this wasn't -- the appointment of a
4 receiver in order to marshal the assets and
5 protect the assets, particularly insurance
6 assets of Atlas. That's why the receiver was
7 appointed.

8 MR. BROWN: It's our belief based upon the
9 rules that there should be an automatic stay on
10 that until the Court decides that the receiver
11 have that authority to do so.

12 As Your Honor just pointed out, you said
13 you stay in your lane. And you've been in many
14 lanes in your life. And this is one where I
15 believe the issue needs to go to Columbia, let
16 them decide if Your Honor is on the book.

17 It's where I came up with the quotes that
18 are in our brief that say when there is an issue
19 about whether negatives, there's an automatic
20 stay, and maybe there's not, if it's not clear,
21 it should go to Columbia, not the circuit court.

22 THE COURT: Well, you know, I think you're
23 going to get a shot at that issue anyway because
24 you're going to appeal whatever I do here and
25 sooner or later the Supreme Court is going to

1 have to weigh in on it. But I've got another
2 real piece of heartburn about this matter, and
3 it has to do with the representation that you're
4 making on behalf of your clients that there's no
5 insurance and you have looked.

6 How in the world do you explain the letters
7 from Resolute to Mr. Protopapas not two days ago
8 or not a month ago where they say there is
9 coverage?

10 MR. BROWN: They do not.

11 THE COURT: Wait a minute. Let me ask my
12 question first. Those letters specifically say
13 by Resolute Corporation that they are the claims
14 manager for Lloyd's, certain underwriters at
15 Lloyd's, that your client, Atlas Turner, has
16 made the active decision that it will manage
17 whether to tender to Resolute these claims for
18 coverage. And that it will -- it is not
19 tendering them and even makes the representation
20 that Mr. Protopapas is not opposing that. I'm
21 going to ask him about that before it's all
22 over.

23 But the fundamental thing that gives me
24 extreme heartburn about that, those two letters
25 from the Resolute folks stand as utterly in

1 contradiction to your representation that they
2 asked you to make, that they don't have any
3 insurance and don't know there's any insurance.

4 As of July of this year, their own claims
5 manager was talking about claims that cover
6 them, that they had made the conscious decision
7 not to tender to Resolute.

8 MR. BROWN: Ever since claims have covered
9 them, Your Honor, I apologize, but if you read
10 those letters carefully, they don't say what
11 Your Honor is saying nor what Ms. McVey
12 presented to this Court. Either one of those
13 letters say there is coverage and so and so has
14 decided that they don't want it. It's just not
15 there.

16 THE COURT: All right, sir.

17 MR. BROWN: That's all, Your Honor. Thank
18 you very much.

19 THE COURT: Mr. Protopapas, I'd like some
20 information about this. Who's standing and
21 wants to get involved in this?

22 MR. CARROLL: Your Honor, Todd Carroll for
23 Travelers. I don't really want to get involved.

24 THE COURT: Well, then don't get involved.

25 MR. PROTOPAPAS: Thank you, Your Honor.

1 Two quick miscellaneous matters and then I have
2 a brief overview for the Court.

3 One on the concept of the 62 and the idea
4 of a receivership action, there's a Porter v.
5 Brown case, 146 SC 810 from 1929. And it says,
6 "It is well established rule that in order to
7 authorize the appointment of a receiver is
8 essential there be at the time of appointment a
9 suit pending in which relief other than the mere
10 appointment of a receiver is sought."

11 So the Welches have a personal injury case.
12 That's the action. I, as the receiver, then get
13 appointed. It's not that there's a separate
14 lawsuit to bring an action. That is not allowed
15 in our state according to Porter v. Brown.

16 The second miscellaneous, Your Honor, on
17 the July 24th, when I received those letters
18 from Resolute, I immediately responded and said
19 "I disagree and I will go to court to clarify."

20 And on the 25th of July, I filed a motion
21 to clarify receivership to assume control over
22 the defense of Atlas Turner's United States
23 asbestos litigation, as the next step, because I
24 was stunned by the response.

25 Your Honor, by way of overview, this Court

1 in the issue of whether the stay was going to
2 slow me down in identifying insurance assets, I
3 believe there is no stay that affects the
4 receivership. And I was appointed, Your Honor,
5 on June 21st of 2023, and was fortunate to hit
6 the mother lode of insurance information for
7 these companies from prior litigation in the
8 '90s where they answered discovery which has now
9 been presented to the Court.

10 I sent out subpoenas the very next day to
11 those identified companies. And some of them
12 have responded to my subpoena, which are the two
13 vital agreements that you have. And because the
14 Asbestos Corporation agreement releases Atlas
15 Turner's rights to that insurance, they produced
16 the Atlas Turner.

17 And I commend my friends at Royal, which is
18 Arrowood, which is Mr. Lay and Mr. Joyce, for
19 providing it.

20 And I commend my friend Mr. Kaley, who is
21 in the audience, who represents Maryland, for
22 being forthright in responding to my request for
23 information.

24 I have not gotten one piece of information
25 from Atlas Turner. I have not gotten nothing

1 but stonewalling. You can't show. I'm not
2 helping. We're not telling. We're not going to
3 tender to insurance. We're not going to assist
4 you. Nothing but stonewall.

5 And as a result of their stonewalling, I
6 don't rely upon Atlas Turner to help. However,
7 your order instructs people to assist me. And
8 they have refused to do so. So I brought
9 litigation against carriers immediately after my
10 appointment when it appeared that I wasn't going
11 to be getting a lot of cooperation.

12 I also brought a lawsuit against the lawyer
13 in Philadelphia for his file from Atlas Turner
14 because he refuses to be helpful in providing
15 information.

16 So from the very beginning, Your Honor, we
17 have been active in this litigation without any
18 assistance from Atlas Turner. And it is
19 unfortunate they will not tell their lawyer what
20 the status of their qualified settlement fund
21 is -- or they call trust -- what their trust
22 fund is. They won't tell their lawyer how much
23 money remains in it. They won't tell their
24 lawyer what's happening with the remaining
25 insurance policies.

1 And we've seen this in other situations but
2 it still surprises me that we have to prove the
3 negative. We have to prove that there -- that
4 we can't provide evidence of insurance,
5 therefore, we can't do anything. Well,
6 fortunately, our rules and our subpoenas and our
7 receivership law allow me to act without their
8 assistance in finding their insurance.

9 So upon my appointment of June 21st with
10 the court-advised people to assist me in finding
11 the insurance, advise me to take control of the
12 insurance assets and bring them to this court, I
13 move forward.

14 And, Your Honor, I consulted Rule 62, and I
15 consulted the appeal court rules, when the
16 appeal was taken on July 9 or 10th. And when I
17 consulted those rules, I looked, and I said
18 receivership action, what is it? A receivership
19 action is simply when the receiver has been
20 appointed to maintain the status quo. I am not
21 depleting insurance policies. I am not trying
22 to liquidate insurance policies. I'm trying to
23 find them and what do they mean.

24 If Atlas Turner would come to this court,
25 Your Honor, and tender the policies in court and

1 say this is what we have, this is our settlement
2 fund, this is what hasn't been liquidated, and
3 we are not going to liquidate for the pendency
4 of the appeal, they would have every right to
5 come here and say you should put a stay on
6 Mr. Protopapas' actions because we have status
7 quo. But they don't. They're not forthright
8 for information.

9 And by analogy, Your Honor, with the
10 receivership maintain the status quote. Their
11 remedy on the receivership order is they have
12 the right to an immediate appeal, and they have
13 taken that. But our rules also say that
14 immediate appeal, just like any judgment,
15 interlocutory or not, doesn't stay the activity
16 of the receiver to maintain the status quo. And
17 it could be a business that sells hot dogs and
18 they appeal the receiver order. Now they sale
19 the real estate. They sell everything. The
20 receiver has nothing to do. I become mooted by
21 the pendency of the appeal.

22 And our Rule 62 doesn't want it to happen.
23 It wants there to be transparency. It wants
24 there to be a light shined into this so that
25 everyone sees what is available and what is not.

1 Which is why I have thrown into the record
2 everything I have, late, voluminous,
3 unfortunately for this Court to have to pay
4 attention to, but I wanted you to see everything
5 I have found.

6 THE COURT: Here's the question,
7 Mr. Protopapas. If you're right that the Rule
8 62 doesn't stay the activity of the receiver in
9 protecting and marshaling assets during the
10 pendency of an appeal of its -- of my authority
11 or the rectitude of appointing a receiver, then
12 what happens if the Court agrees that the
13 receiver was improperly appointed?

14 MR. PROTOPAPAS: Your Honor, for that
15 thread, I am not wasting an asset. I'm not
16 spending an asset. I'm identifying the asset.
17 And furthermore, Your Honor, as our rules work
18 in conjunction in these strange situations, when
19 I looked at the 241 appellate court rule, and I
20 looked to the exceptions, one of the exceptions
21 mentioned is judgments directing the assignment
22 or delivery of documents or personal property as
23 provided in South Carolina Code 18-9-150.

24 So we have an exception to the stay
25 identified in Subsection (b)(2) about the

1 delivery of documents or personal property
2 pursuant to 18-9-150.

3 When I look at 18-9-150, I'm relieved to
4 see the word "receiver" in that statute. That
5 statute says this section of the code provides
6 that if the judgments appealed from directs the
7 assignment or delivery of documents or personal
8 property, the execution of the judgment shall
9 not be stayed by the appeal unless one of two
10 exceptions apply.

11 One of them being the things required to be
12 assigned or delivered be brought to this court
13 or placed into the custody of such officer or
14 receiver as the court shall appointment.

15 So we have these rules working together
16 where don't stay a receiver pending an appeal.
17 You can get out of this problem under our
18 exceptions if you tender to the receiver, here's
19 our information, or you tender to the court.
20 And then you can act supersedeas or otherwise
21 for the stay to be on top of them.

22 And if they have cooperated, and if they
23 had presented the information, I may not object
24 to them controlling the defense subject to being
25 tendered to the insurance companies. But if

1 they want to say don't settle this case or
2 settle that case, I would have stayed back and
3 cooperated within the best that I could.

4 But to say the plaintiff can't find
5 evidence of insurance, therefore, don't do
6 anything, the other half of the coin is they're
7 sitting on the evidence and they won't show it
8 to us. And I know they are sitting on it
9 because I have found it. I found two buybacks.

10 I found a list of \$2 billion of insurance.
11 I have grouped the carriers to the intended
12 lawsuits, which they say we don't have to honor.
13 And now we have plaintiffs.

14 Each of those settlement agreements, by the
15 way, Your Honor, mention litigation in the
16 United States of America is the purpose of the
17 buyback. The United States of America asbestos
18 personal injury claims, over 7,000 is listed in
19 the Atlas Turner buyback. That's why they're
20 setting up the fund for the United States of
21 America litigants who are bringing claims.

22 Is there money left? Is it the trust or
23 the qualified settlement fund that's paying
24 Mr. Brown? Where is the money? And where are
25 all the insurance policies?

1 So respectfully, I believe our ruling, 62,
2 combined with the exception -- the exception
3 noting that there's a receiver for the delivery
4 of documents, your order saying insurance
5 documents come into the custody of this court.
6 They have a mechanism to say stop, and they
7 haven't taken advantage of it.

8 Therefore, I don't believe I have to stay
9 and I get to proceed forward and uncover what
10 are really half truths to this Court. They are
11 half truths. And it's unfortunate they will not
12 give the full truth to Mr. Brown and say to this
13 Court, we have bought them all back. We have
14 wiped out the trust fund with 20,000 claims. In
15 2014, we made our last payment and here's
16 evidence of it. We are out of insurance, and we
17 are out of money.

18 If they had said that, the answer is there.
19 I can find it through litigation and subpoena
20 and cooperation from some carriers, and maybe
21 not as much cooperation from others. What
22 Resolute didn't tell me, and they have my
23 subpoenas, they didn't say we don't have any
24 insurance. We sold it back. Resolute said it
25 hasn't been tendered to us.

1 And unfortunately, their counsel is here
2 today, and their counsel can make a firm
3 representation to this Court, if their client is
4 truthful, that it has been bought back, or they
5 can say it exists. I would be curious the
6 answer to that question.

7 For those reasons, Your Honor, I do not
8 believe the stay impacts me. I have marched
9 forward. Until this Court tells me to stop, I
10 will continue to march forward.

11 THE COURT: Thank you, sir. All right.

12 Mr. Carroll, you stood.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: And what I want to understand
15 before you address the court is what your
16 connection is -- what your client Travelers'
17 connection is to the Welch versus Atlas Turner
18 case, 2022-CP-40-03834. And you can come up
19 here to do that, Mr. Carroll. You don't need to
20 stand back there.

21 MR. CARROLL: Very good. Thank you, Chief.
22 Todd Carroll on behalf of the Travelers
23 defendant.

24 So my client is a third-party defendant to
25 a third party complaint that Mr. Protopapas

1 filed on behalf of -- in his capacity as the
2 Atlas Turner receiver in this case.

3 THE COURT: Right. Something I knew, but I
4 just wanted to be sure you would recite it.

5 MR. CARROLL: Yes, ma'am.

6 THE COURT: There's a third-party plaintiff
7 in the Welch case. The number I just recited
8 into the record. And the third-party plaintiff
9 is Atlas Turner by and through its appointed
10 receiver, Peter Protopapas.

11 And that third-party plaintiff has brought
12 an action against Zurich, successor of the
13 Maryland; Federal Insurance; Continental; INA;
14 Aetna, now formerly known as Travelers; certain
15 underwriters at Lloyd's; certain London market
16 companies; Canadian General Insurance Company,
17 now or formerly known as Aviva Insurance of
18 Canada; and March and McLennan companies.

19 And in connection with that third-party
20 part of the Welch case, you, Todd Carroll, are
21 representing one of the named third-party
22 defendants, and that is the Aetna, now known as
23 Travelers Casualty Insurance Company, correct?

24 MR. CARROLL: Yes, ma'am. That's the long,
25 winding path to get me to this podium.

1 THE COURT: You may proceed.

2 MR. CARROLL: Your Honor, I'm only here --
3 my client has not yet filed a response to the
4 third-party complaint, but we saw the
5 plaintiffs -- the Welch plaintiffs' motion to
6 lift the automatic stay. Given our state's
7 jurisprudence or waiver and sitting on your
8 rights, we filed a very short joinder to
9 Mr. Brown's clients.

10 THE COURT: Let me say right there that the
11 Travelers' position with respect to its
12 opposition to motion to appoint a receiver is
13 contingent to the appointment of receiver is on
14 appeal now and nothing further can be done.

15 All of those positions are totally
16 protected and your appearance here is completely
17 legitimate in aid of the position that the
18 Traveler will probably take in some filings in
19 that regard.

20 MR. CARROLL: Yes, ma'am.

21 THE COURT: Nothing is waived. Nothing
22 will be waived.

23 MR. CARROLL: Very good. Thank you. That
24 was our concern. We did not want today's
25 hearing to come and go with us --

1 THE COURT: Your argument here may be
2 incomplete, and this does not foreclose any
3 further response the Travelers may want to make
4 about this matter, but you certainly are invited
5 to comment if you care to.

6 MR. CARROLL: Very good. Your Honor, I
7 will rest on my very short submission, but I do
8 want to respond to the arguments I heard for the
9 first time today just so, again, I don't get
10 saddled with a motion.

11 THE COURT: Sure.

12 MR. CARROLL: I think the Welch plaintiffs
13 were correct in their motion by not relying on
14 Rule 62, because I don't think Rule 62 has
15 anything to do with this issue.

16 62(a), which I've heard from the podium
17 this morning, 62(a) is only aimed at the 10-day
18 period immediately after a judgment has been
19 entered. It does not carry the stay, the note,
20 the nonstay, that issue is not addressed
21 elsewhere in Rule 62, except with regard to
22 orders of injunction.

23 That goes down through 62(d) -- excuse me,
24 62(c), (d), and (g) all talk about -- they all
25 basically adopt the Welch plaintiffs' argument

1 here today. They adopt that argument as it
2 relates to injunctions. They do not adopt that
3 argument as it relates to receiving.

4 And then if you need confirmation of it,
5 look no further than the official comment to the
6 rule. Rule 62(a) provides for an automatic stay
7 of execution for ten days in all but injunction
8 actions are those involving receiverships or
9 accounting.

10 So Rule 10 -- or pardon me, Rule 62(a) only
11 governs the first week and a half after an order
12 is entered. So that way you can't file a notice
13 of appeal the next day and go squander your
14 assets and say, oh, I'm sorry, Mr. Receiver, you
15 can't do anything.

16 But that rule doesn't reach into
17 receivership beyond that ten-day period. And
18 we've got confirmation of that by Rule 62(c),
19 Rule 62(d), Rule 62(g) because they don't
20 mention -- they talk about injunctions. They
21 don't talk about receivers.

22 Then you go to Rule 241(b) where it lists
23 the exceptions to the automatic stay. And
24 241(b)(8) is the subpart that picks up Rule 62,
25 and it's automatic stay. 241(b)(8) also limits

1 its reach to only injunctions. It does not
2 include receivership orders.

3 So I think the plaintiffs were right when
4 they asked the Court to lift the automatic stay.
5 I don't think that the Court can do it because
6 the Rule 205, as we put in our papers. But the
7 62(a) argument that we heard this morning, I
8 just don't think applies. Excuse me. I don't
9 think it applies in this situation.

10 And I know that Ms. McVey and I have
11 probably come at things from a different
12 ideological perspective. I would suggest that
13 rule is the right rule so that there's no risk
14 of the Court improperly seizing private property
15 and consigning up private property incorrectly
16 during the pendency of an appeal.

17 Now, if somebody wants to go to an
18 appellate court and ask an appellate court to
19 look at that while the matter is in the
20 appellate court's jurisdiction, perhaps they can
21 do that. But I think the -- I think there's
22 sound reason why the automatic stay does apply
23 to receivership orders, and that's to prevent
24 the improper tying-up of what is otherwise
25 private property.

1 But the rule says what the rule says, and
2 it doesn't apply to this situation.

3 THE COURT: Let me ask you this.

4 MR. CARROLL: Yes, ma'am.

5 THE COURT: Let's assume your argument is
6 the correct one. If this Court issued an
7 injunction enjoining any further disposition of
8 any of the insurance assets of Atlas Turner that
9 could be used to provide coverage here in
10 connection with -- further connection with its
11 having appointed a receiver and directs that in
12 connection with the enforcement of the
13 injunction that information about the existence
14 of that those assets, those insurance policies
15 immediately be provided to the Court, would that
16 kind of an order be stayed?

17 MR. CARROLL: Well, I don't think that kind
18 of order can be issued in this case in this
19 posture because the whole notion of the
20 lawfulness of Mr. Protopapas' appointment, that
21 the whole -- everything that gives him authority
22 is on appeal.

23 THE COURT: Well, what I'm asking is this:
24 If this Court simply in the Welch case issues an
25 injunction to Atlas -- Atlas is a party of these

1 proceedings, and it certainly is -- things
2 requiring it to do something are not things to
3 the stay because I've never dealt with that.

4 MR. CARROLL: Yes, ma'am.

5 THE COURT: But in connection with their
6 conduct so far in not cooperating, if this Court
7 issues some sort of injunctive order requiring
8 them to immediately disclose all of their
9 potential insurance coverage in the Welch case
10 and enjoining them from any further liquidation
11 or -- of this and enjoining them from taking any
12 action by way of failure to tender that would
13 render the coverage not available, that's a
14 straight-out old injunction in aid of enforcing
15 the orders of the court that they so far have
16 not been willing to cooperate with. What's
17 wrong with that? And how is that stayed by any
18 appeal that might be made?

19 MR. CARROLL: Well, I think that,
20 obviously, would be a different question. I
21 think you would have to have -- I mean, the
22 injunction analysis is, of course, a completely
23 different animal requiring all kind of
24 evidentiary proof that so far hasn't been --

25 THE COURT: Well, I don't know. We have a

1 pile of it in this court today.

2 MR. CARROLL: Your Honor, I will confess,
3 I've not seen that. Because of the way our
4 electronic filing system works --

5 THE COURT: Well, when you wait to the very
6 last minute when this thing has been scheduled
7 for a good long time, and Atlas Turner certainly
8 knows it, to suddenly the weekend before this
9 thing, file all that stuff, and that's because
10 you don't get notice to do it until then, I'm
11 not blaming you lawyers, but the client is not
12 going to be able to hide behind some mysterious,
13 sudden need to file piles of paper to me the day
14 before a hearing.

15 You are to be congratulated for responding
16 to their last-minute desperation request, but
17 I'm not going to be constrained by the fact it
18 all comes piling on my desk the evening before
19 this hearing takes place.

20 MR. CARROLL: Yes, ma'am. And I'm not
21 casting dispersions on my client at all. All
22 I'm saying is I don't know what kind of
23 evidentiary record you have. I know in our
24 state, we don't issue injunctions lightly and it
25 requires actual proof, sworn testimony, cross

1 examination, and all kinds of stuff that hasn't
2 happened in this case.

3 THE COURT: Well, it doesn't necessarily
4 require that all the time. The issues of
5 permanent injunction. The issues of temporary
6 injunction with a directive to supply
7 information does not require any of that.

8 MR. CARROLL: Yes, ma'am. I'm not trying
9 to quibble with you on the procedure for
10 injunction. You asked me if I did -- if you did
11 issue an injunction, what would the analysis be?
12 I haven't done it. I haven't read the rules. I
13 haven't read the case law that would talk about
14 that exact situation. All I know -- I'm
15 responding to this Rule 62(a) argument that I
16 heard in court for the first time.

17 THE COURT: Right. Why does Travelers care
18 about this?

19 MR. CARROLL: Because --

20 THE COURT: Why would -- all Travelers has
21 to do is say what it's got or hasn't got in
22 terms of coverage in this matter. Why does it
23 care otherwise about a receivership?

24 MR. CARROLL: We only care -- we only file
25 something because we've been named a third-party

1 defendant by the receiver. If the receiver
2 hadn't filed what we think is an improper
3 third-party complaint and named my client as a
4 defendant, I sure would not have failed that
5 joint --

6 THE COURT: You claim it's improper because
7 you have claimed the receiver is improperly
8 appointed.

9 MR. CARROLL: Well, I also think is
10 incorrect use of Rule 14. And we have other
11 defenses --

12 THE COURT: That so far has not been
13 brought to my attention.

14 MR. CARROLL: Right. We haven't made any
15 of our --

16 THE COURT: Right.

17 MR. CARROLL: -- Rule 12-style arguments.
18 But, again, we filed our joinders. We didn't
19 want somebody to say, well, you knew about the
20 third-party complaints so --

21 THE COURT: I don't understand why
22 Travelers would care about the appointment of a
23 receiver. It would give you a point of contact
24 where you can get this thing resolved.

25 MR. CARROLL: But we've been sued, and so

1 that's why we cared.

2 THE COURT: Sure you've been sued, but why
3 would you care about challenging the authority
4 of the receiver when all in the world he's
5 trying to do is find out whether you've got any
6 coverage in this matter? That's all he's trying
7 to do. He's not trying to take a dime out of
8 your pocket. He's trying to find out whether
9 you have coverage.

10 MR. CARROLL: Okay. Well, Your Honor, we
11 filed our joinder in this case because we were a
12 defendant. If we need to explain our other
13 concerns, we will in response to the third-party
14 complaint.

15 THE COURT: All right, sir.

16 MR. CARROLL: That's why we're here right
17 now.

18 THE COURT: Okay.

19 MR. CARROLL: The other thing when
20 Mr. Protopapas spoke, he referenced Rule 241(b).

21 THE COURT: Eight.

22 MR. CARROLL: No, ma'am. I raised (b)(8).
23 (b)(2). Judgments directing the assignment or
24 delivery of documents or personal property.

25 The plaintiffs didn't cite that. The first

1 time it came up was just now here at the podium.
2 My understanding of that statues is it talks
3 about an actual judgment that says, Defendant,
4 you do this. You give them this document. You
5 give them this property.

6 THE COURT: They've got that --

7 MR. CARROLL: No, ma'am.

8 THE COURT: They've got the orders of this
9 Court directing that certain things be done, and
10 the failure of Atlas to do those things then led
11 to the appointment of Protopapas who is trying
12 to comply with those orders.

13 MR. CARROLL: Yes, ma'am. But the order
14 for Mr. Protopapas that appointed him as a
15 receiver -- it gives him authority, but it
16 doesn't identify a specific defendant. It
17 doesn't identify my client by name and say
18 Travelers, you have to give over this property.

19 THE COURT: I understand your argument, but
20 he's directed to marshal and identify assets --
21 insurance assets. And that directly deals with
22 your situation.

23 MR. CARROLL: Yes, ma'am. But he sends
24 Rule 45 subpoenas with that.

25 THE COURT: So?

1 MR. CARROLL: Well, my point is if the
2 order actually -- if it was an order that
3 directed the assignment or delivered the
4 documents of personal property, like the rule
5 says, then Rule 45 subpoena would be
6 unnecessary. You can say here's an order that
7 tells you you've got to do this.

8 THE COURT: I ask my question --

9 MR. CARROLL: But he doesn't do that
10 because this Rule 241(b)(2) and South Carolina
11 Code 18-9-150 doesn't apply to this situation.

12 THE COURT: I understand your argument.

13 MR. CARROLL: That's my position or my
14 client's position. Thank you, Judge.

15 THE COURT: Thank you, sir.

16 MS. MCVEY: Judge --

17 THE COURT: Whoa.

18 MS. MCVEY: Sorry. I just wanted to ask if
19 you could ask him one question.

20 THE COURT: All right.

21 MS. MCVEY: Does Travelers have insurance?
22 Did Travelers insure Atlas Turner? Has it been
23 liquidated? How many policies?

24 That's why they're here. They are here
25 because they have insurance. I would like to

1 know the answers to those questions.

2 THE COURT: Well, I'm assuming they are
3 here because they have insurance. But he said
4 they're here because they were third-party sued.
5 That's the position -- wait a minute, Ms. McVey.

6 MS. MCVEY: Sorry.

7 THE COURT: He says they are here because
8 they were sued. He hasn't taken a position yet
9 about what kind of policies they have and
10 whether those policies have been liquidated.

11 I could cure that by an order to a
12 third-party defendant, and it would have nothing
13 to do with legitimacy or anything else. It
14 would have to do with coverage in this case.

15 MS. MCVEY: And the only reason I say that
16 is because it's been represented to you today
17 that there is no insurance, yet we have
18 insurance carriers show up --

19 THE COURT: That representation is
20 obviously not true. And Resolute's own letter
21 gives a lie to that. There is insurance here.
22 The question is what the scope and breadth and
23 whether it's been liquidated or not. And that's
24 not Mr. Brown's fault it's not the truth. It's
25 Atlas' fault for not telling the complete truth

1 to this Court. I understand that.

2 And it's not Mr. Carroll's fault. He's
3 simply representing his insurance client. But,
4 you know, I think the way to -- I'm not going to
5 put him -- to answer that question.

6 MR. CARROLL: I'll tell, Your Honor, I
7 don't know. I really don't know --

8 THE COURT: I will just tell you right now,
9 as your friend and judge in this case, I advise
10 you don't answer that question.

11 MR. CARROLL: Just to shut up.

12 THE COURT: That is -- the answer to that
13 question is something we're going to get the
14 right way. Okay.

15 MR. CARROLL: Do I need to hand you
16 something to retain you as my counsel?

17 THE COURT: No. It's worth what you pay
18 for.

19 Okay. Thank you. All right.

20 MR. RAWL: Your Honor, I represent
21 Continental Insurance Company.

22 THE COURT: I'm telling you one thing,
23 Mr. Rawl, I'm not going to go through listening
24 to every one of these insurance company
25 third-party plaintiffs deliver a full argument.

1 We're now at 11:30. You've got other filings in
2 this case and other regards. I'm not going to
3 sit here and -- you speak at my invitation. I
4 can rule on what's before me without listening
5 to anybody's arguments. I'm not going to listen
6 to any repetitive arguments in this regard.

7 MR. RAWL: Yes, ma'am.

8 THE COURT: As much as I love you and your
9 father.

10 MR. RAWL: Very briefly. On behalf of
11 Continental Insurance Company and certainly
12 writes of Lloyd's, who I represent. And my name
13 is Vic Rawl, R-A-W-L, with Gordon & Rees law
14 firm.

15 I'd just like to incorporate the arguments
16 that were made by Atlas today and incorporate
17 the arguments that were made by Travelers. The
18 only point I would like to point out is that the
19 order that was appointing the receiver is
20 predicated on the earlier orders made by the
21 Court striking the answer and issuing the
22 sanction. And those predicate orders are
23 referenced in the order appointing the receiver.

24 And I believe that under Rule 205, you
25 know, anything that is done with regard to the

1 further orders and the receiver would be beyond
2 the jurisdiction of this Court because they
3 affect the predicate orders.

4 THE COURT: I understand your argument. I
5 don't agree with you at all.

6 MR. RAWL: Thank you, ma'am.

7 THE COURT: Yes, sir.

8 All right. Ms. McVey.

9 MS. MCVEY: Your Honor, the only thing I
10 want to reiterate is if the order appointing
11 Mr. Protopapas, the receiver, is flipped on
12 appeal, the only harm is that Atlas would have
13 answered the discovery that they refused to
14 answer now. Where is your insurance? What does
15 it look like? It allows the receiver to gather
16 information and documents. That's the only
17 harm.

18 THE COURT: All right. What I've been
19 asked to do in these pleadings is to lift a stay
20 that is imposed by the Rules of Civil Procedure
21 and the Rules of Appellate Procedure with
22 respect to action in a lower court when a matter
23 is on appeal.

24 I am concerned that my ability to lift the
25 stay is itself constrained by the operation of

1 the rules themselves and what they have to say
2 about what is stayed and what is not stayed.
3 And I, therefore, am going to decline to lift
4 the stay.

5 However, what I am going to do in aid of
6 moving along the Welch case and the third-party
7 action, which was brought before the stay was
8 imposed and may or may not be stayed by anything
9 further with regard to the appointment of
10 receiver is that I am going to issue an order
11 requiring that Atlas identify all insurance it
12 has and all insurance policies it has which have
13 any applicability to this asbestos claim.

14 It is clear from Resolute's letters that
15 Atlas knows that there is coverage that Resolute
16 is acting as claims manager for and has
17 specifically instructed the two underwriters,
18 Lloyd's and -- well, as instructed upon Resolute
19 as the claims manager for Lloyd's that it is
20 controlling its own defense.

21 This letter does not say there's no
22 insurance. This letter does not say it's not
23 tendering this claim to -- that Atlas is not
24 tendering this claim to Lloyd's. That is
25 undisclosed in the letter. The letter simply

1 says that it is -- that it -- the manager for
2 the underwriter has been advised by the insured
3 that it is going to defend its own interests in
4 these lawsuits.

5 I am going to require that Atlas identify
6 all insurance that may pertain to this lawsuit.

7 I want Atlas to specifically respond to
8 filings of Mr. Protopapas that identify in his
9 August 20, 2023, filing that identify a
10 multitude of policies by American insurance
11 companies that cover matters from 1967 to 1982.

12 I want -- I am going to require that
13 Atlas Turner identify any other policies that
14 may have been issued by the third-party
15 defendants in the proceeding brought by the
16 receiver, as well as any other insurance that
17 pertains to coverage in this matter or potential
18 coverage in this matter.

19 And I am going to require that Atlas
20 disclose that within ten business days of today.

21 When is this case scheduled for trial?

22 MS. MCVEY: It is been continued because of
23 that.

24 THE COURT: Continued. Okay. Well, in ten
25 business days I'm going to require. And I want

1 the disclosures to be sent to the Plaintiff's
2 attorney and directly to this Court.

3 I do not concede that the stay orders
4 affect my ability to direct anything to Atlas in
5 this connection. It is a defendant in this
6 lawsuit and continues to be a defendant in this
7 lawsuit. And I am going to make that particular
8 order with respect to Atlas.

9 I would urge that Mr. -- I am not convinced
10 as to what these rules mean in terms of what is
11 stayed and what is not stayed by this order.
12 But the circumstances are very exigent and
13 there's information that Atlas has liquidated
14 some of these policies, information that
15 Mr. Protopapas has brought to the Court.

16 It raises a serious enough issue in my mind
17 about the honesty of Atlas to the Court as well
18 as the ability to preserve assets that may be
19 available to respond to the Welch lawsuit, that
20 I am going to ask that the parties convey to the
21 South Carolina Supreme Court in connection -- or
22 to the Court of Appeals in connection with any
23 filings that are made with regard to a stay, a
24 lifting of a stay, or anything that would affect
25 the ability to go forward with this

1 receivership.

2 I would ask that that be done as
3 immediately as possible, and I would strongly
4 urge the Court to take this matter up at its
5 earliest possible convenience in order to
6 preserve these assets for response to the very
7 serious complaint of the Welch family in
8 connection with these cases.

9 So that is what I'm going to do. I would
10 like for Ms. McVey and Mr. Protopapas to develop
11 an order that reflects what I have said here.
12 The order is in effect now and will be subject
13 to its confirmation.

14 When you have developed this order, send a
15 copy to Mr. Brown, a copy to Mr. Rawl and
16 Mr. Carroll, and any other representatives of
17 the third-party defendants in the Welch matter.

18 MS. MCVEY: Your Honor, just for clarity
19 during the pendency of the appeal, is it this
20 Court's order that Atlas Turner cannot liquidate
21 any of these insurance assets?

22 THE COURT: Absolutely. Absolutely. I
23 want all that covered in here. They're a party
24 to this proceeding, and I certainly have the
25 ability to by use of injunction, as well as by

1 use of direct orders, to preserve these assets
2 to the extent the Court has. That's the whole
3 reason for the appointment of the receiver.

4 I do not believe that the spirit of these
5 rules would prevent a court from preserving
6 these assets, but I am not going to weigh in
7 specifically on the applicability or
8 non-applicability of the stay. I'm simply going
9 to make some orders with respect to Atlas and
10 that's how the order needs to be constructed.

11 All right. That's Welch.

12 Now, what we've got remaining is still a
13 lot of stuff. I would like to take a recess
14 right now. Let's come back at 12:00.

15 The Court will be in recess.

16 - - -

17 (A recess transpired 11:36 a.m.)

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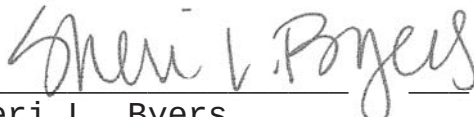
CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of August, 2023, at Lexington, Lexington County, South Carolina.



Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
October 30, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>MOTION TO DISMISS FOR LACK</u>
	)	<u>OF PERSONAL JURISDICTION OF</u>
vs.	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>
Defendants.	)	
	)	

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, hereby moves to dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it.¹

1. Plaintiffs’ Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to various asbestos-containing products or raw asbestos materials.²

2. Plaintiffs’ Complaint lists Atlas Turner “as a Product Defendant” and alleges Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined... processed... imported... supplied... and/or retailed...” by Atlas Turner, including but not limited to raw asbestos.³

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

² Pl.’s Compl. at ¶¶ 1, 3.

³ Pl.’s Compl. at ¶¶ 26, 27.

3. Plaintiffs have failed to make a *prima facie* showing that Atlas Turner is subject to either general or specific personal jurisdiction in South Carolina. Whether a foreign defendant, such as Atlas Turner, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Atlas Turner. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction... [a] *prima facie* showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Atlas Turner because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Atlas Turner is not a South Carolina corporation and does not have its principal place of business in South Carolina; therefore, it is not subject to general jurisdiction in South Carolina.⁴ *See e.g., Daimler AG v.*

⁴ Plaintiffs correctly state that Atlas Turner "was and is" a Canadian corporation with its principal place of business in Canada. Pl.'s Compl. at ¶ 27. *See also* ¶ 26.

Bauman, 571 U.S. 117, 137 (2014) (“With respect to a corporation, the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’”).

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Atlas Turner. Specific personal jurisdiction is granted pursuant to South Carolina’s long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Atlas Turner and South Carolina such that maintaining the suit does not offend “traditional notions of fair play and substantial justice” and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Atlas Turner’s activities in South Carolina, (2) the character and circumstances of Atlas Turner’s acts, (3) the inconvenience resulting to Atlas Turner by either conferring or refusing jurisdiction, and (4) South Carolina’s interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this Court’s exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376

S.C. at 16, 655 S.E.2d at 478 (“Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.”)

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Atlas Turner, Plaintiffs’ Complaint must be dismissed with respect to Atlas Turner.

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, supporting memoranda of law, and such other and further material as the Court may deem appropriate. Atlas Turner’s participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Atlas Turner of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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Columbia, South Carolina

September 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>MEMORANDUM IN SUPPORT OF</u>
Plaintiffs,	)	<u>MOTION TO DISMISS FOR LACK</u>
	)	<u>OF PERSONAL JURISDICTION OF</u>
vs.	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>
Defendants.	)	
	)	

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, submits this memorandum and accompanying affidavit in support of its Motion to Dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.¹

FACTS

Plaintiffs’ Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to various asbestos-containing products or raw materials in several states, including South Carolina.²

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.³ Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs’ claims arise from Defendants’

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

² Pl. Compl. at ¶¶ 1, 3.

³ See Pl. Compl. at ¶¶ 26, 27 .

conduct in (a) transacting business in the State, . . . (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) having an interest in, using, or possessing real property in this State; and/or (e) entering into a contract to be performed in whole or in part by either party in this State.⁴ Further, Plaintiffs allege generally that “all” defendants “purposefully availed themselves of the privilege of doing business in this State” and engaged in “substantial and/or systematic business in South Carolina.”⁵

Specifically as to Atlas Turner, Plaintiffs list it as a “Product Defendant” and allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined . . . processed . . . imported . . . supplied . . . and or retailed” by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege that their claim against Atlas Turner arises out of Atlas Turner’s “business activities” in the State of South Carolina.⁶

However, as attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), attached hereto as Exhibit A, these jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit A at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3.

⁴ Pl.’s Compl. at ¶ 2.

⁵ Pl.’s Compl. at ¶ 6, 9.

⁶ Pl.’s Compl. at ¶¶ 26, 27.

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit A at ¶ 4 .
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit A at ¶ 5.
- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit A at ¶ 6.

ARGUMENT

A. Legal Standard

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage,

plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege specific facts to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court’s dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

“Personal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction.’” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802....” *Id.* “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803....” *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some

act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is “reasonable” or “fair.” *Id.*

The Court must assess individually each defendant’s contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court’s analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding “unilateral activity of another party or a third person is not an appropriate consideration”)). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant’s own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Atlas Turner and, therefore, Plaintiffs’ claims against Atlas Turner must be dismissed.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner is not a South Carolina corporation, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is “at home” in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); see also *Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the “exceptional case” where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company’s president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company’s correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director’s meetings for the duration of the company’s exile. Under these circumstances, where Ohio became the business’ *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Atlas Turner is not “at home” in South Carolina. It is undisputed that Atlas Turner is not a South Carolina corporation and its principal place of business has never been in South Carolina. It

has no “enduring” relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no “exceptional” circumstances, such as those present in *Perkins*, exist that would render Atlas Turner “at home” in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina’s long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Atlas Turner has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs’ claims to arise out of Atlas Turner’s conduct within the State. Consequently, Atlas Turner is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident’s contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. “Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004));

See also *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not “offend traditional notions of fair play and substantial justice” and that the defendant can “reasonably anticipate being haled into court in the forum.” *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is “reasonable” or “fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). See also *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this

Court's exercise of personal jurisdiction permissible under the Due Process Clause. See *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit A at ¶ 5. As attested in Mr. Dufour's affidavit, all products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner directed its activities to residents of South Carolina and whether the cause of action arose out of or relates to those activities. Absent a specific connection between Plaintiffs' claims, Atlas Turner's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

Because Plaintiffs have not, and cannot, show that Atlas Turner has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Atlas Turner must be dismissed.

CONCLUSION

Atlas Turner is not subject to general jurisdiction because it cannot fairly be said to be “at home” in South Carolina at any time. Atlas Turner is not subject to specific jurisdiction because Atlas Turner has no minimum contacts with South Carolina that gave rise to Plaintiffs’ claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Atlas Turner is entitled to an order dismissing Plaintiffs’ claims against it.

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Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

September 9, 2022

EXHIBIT A

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

RICHARD DUFOUR AFFIDAVIT

DISTRICT OF FRONTENAC)
)
 PROVINCE OF QUEBEC)

1, Richard Dufour, being first duly sworn, depose and state:

1. I am over the age of eighteen and am competent to make this Affidavit.
2. I am counsel to Atlas Turner, Inc. ("Atlas Turner"). The facts set forth in this Affidavit are true to the best of my knowledge, information and belief.
3. Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. Atlas Turner did manufacture asbestos-containing products but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Montreal, Quebec, Canada.
4. Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently, nor has it ever been,

registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina.

5. Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and did not own any real property in the State of South Carolina. Atlas Turner has never transacted business in the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina.

6. Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers, or agents in the State of South Carolina.

FURTHER AFFIANT SAYETH NOT.


Richard Dufour

Subscribed and sworn to before me
this, the 7th day of September, 2022


COMMISSIONER OF OATHS FOR THE JUDICIAL DISTRICT
OF FRONTENAC, PROVINCE OF QUEBEC


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	<u>PLAINTIFFS' FIRST AMENDED</u>
vs.	)	<u>COMPLAINT FOR LACK OF</u>
	)	<u>PERSONAL JURISDICTION OF</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
Defendants.	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner"), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, hereby moves to dismiss Plaintiffs' First Amended Complaint (hereinafter "Complaint") pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it.¹

1. Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to various asbestos-containing products or raw asbestos materials.²

2. Plaintiffs' Complaint lists Atlas Turner "as a Product Defendant" and alleges Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment "mined... processed... imported... supplied... and/or retailed..." by Atlas Turner, including but not limited to raw asbestos.³

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

² Pl.'s Compl. at ¶¶ 1, 3.

³ Pl.'s Compl. at ¶¶ 26, 27.

3. Plaintiffs have failed to make a *prima facie* showing that Atlas Turner is subject to either general or specific personal jurisdiction in South Carolina. Whether a foreign defendant, such as Atlas Turner, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Atlas Turner. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction... [a] *prima facie* showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Atlas Turner because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Atlas Turner is not a South Carolina corporation and does not have its principal place of business in South Carolina; therefore, it is not subject to general jurisdiction in South Carolina.⁴ *See e.g., Daimler AG v.*

⁴ Plaintiffs correctly state that Atlas Turner "was and is" a Canadian corporation with its principal place of business in Canada. Pl.'s Compl. at ¶ 27. *See also* ¶ 26.

Bauman, 571 U.S. 117, 137 (2014) (“With respect to a corporation, the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’”).

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Atlas Turner. Specific personal jurisdiction is granted pursuant to South Carolina’s long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Atlas Turner and South Carolina such that maintaining the suit does not offend “traditional notions of fair play and substantial justice” and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Atlas Turner’s activities in South Carolina, (2) the character and circumstances of Atlas Turner’s acts, (3) the inconvenience resulting to Atlas Turner by either conferring or refusing jurisdiction, and (4) South Carolina’s interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this Court’s exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376

S.C. at 16, 655 S.E.2d at 478 (“Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.”)

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Atlas Turner, Plaintiffs’ Complaint must be dismissed with respect to Atlas Turner.

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, supporting memoranda of law, and such other and further material as the Court may deem appropriate. Atlas Turner’s participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Atlas Turner of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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Columbia, South Carolina

October 20, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>MEMORANDUM IN SUPPORT OF</u>
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	<u>PLAINTIFFS' FIRST AMENDED</u>
vs.	)	<u>COMPLAINT FOR LACK OF</u>
	)	<u>PERSONAL JURISDICTION OF</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
Defendants.	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner"), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, submits this memorandum and accompanying affidavit in support of its Motion to Dismiss Plaintiffs' First Amended Complaint (hereinafter "Complaint") pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.¹

FACTS

Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to various asbestos-containing products or raw materials in several states, including South Carolina.²

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.³ Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants'

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² Pl. Compl. at ¶¶ 1, 3.

³ See Pl. Compl. at ¶¶ 26, 27 .

conduct in (a) transacting business in the State, . . . (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) having an interest in, using, or possessing real property in this State; and/or (e) entering into a contract to be performed in whole or in part by either party in this State.⁴ Further, Plaintiffs allege generally that “all” defendants “purposefully availed themselves of the privilege of doing business in this State” and engaged in “substantial and/or systematic business in South Carolina.”⁵

Specifically as to Atlas Turner, Plaintiffs list it as a “Product Defendant” and allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined . . . processed . . . imported . . . supplied . . . and or retailed” by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege that their claim against Atlas Turner arises out of Atlas Turner’s “business activities” in the State of South Carolina.⁶

However, as attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), attached hereto as Exhibit A, these jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit A at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3.

⁴ Pl.’s Compl. at ¶ 2.

⁵ Pl.’s Compl. at ¶ 6, 9.

⁶ Pl.’s Compl. at ¶¶ 26, 27.

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit A at ¶ 4 .
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit A at ¶ 5.
- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit A at ¶ 6.

ARGUMENT

A. Legal Standard

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage,

plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege specific facts to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court’s dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

“Personal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction.’” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802....” *Id.* “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803....” *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some

act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is “reasonable” or “fair.” *Id.*

The Court must assess individually each defendant’s contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court’s analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding “unilateral activity of another party or a third person is not an appropriate consideration”)). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant’s own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Atlas Turner and, therefore, Plaintiffs’ claims against Atlas Turner must be dismissed.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner is not a South Carolina corporation, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is “at home” in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); see also *Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the “exceptional case” where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company’s president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company’s correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director’s meetings for the duration of the company’s exile. Under these circumstances, where Ohio became the business’ *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Atlas Turner is not “at home” in South Carolina. It is undisputed that Atlas Turner is not a South Carolina corporation and its principal place of business has never been in South Carolina. It

has no “enduring” relationship with South Carolina. See *Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no “exceptional” circumstances, such as those present in *Perkins*, exist that would render Atlas Turner “at home” in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina’s long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Atlas Turner has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs’ claims to arise out of Atlas Turner’s conduct within the State. Consequently, Atlas Turner is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident’s contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. “Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004));

See also *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not “offend traditional notions of fair play and substantial justice” and that the defendant can “reasonably anticipate being haled into court in the forum.” *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is “reasonable” or “fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). See also *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this

Court's exercise of personal jurisdiction permissible under the Due Process Clause. See *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit A at ¶ 5. As attested in Mr. Dufour's affidavit, all products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner directed its activities to residents of South Carolina and whether the cause of action arose out of or relates to those activities. Absent a specific connection between Plaintiffs' claims, Atlas Turner's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

Because Plaintiffs have not, and cannot, show that Atlas Turner has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Atlas Turner must be dismissed.

CONCLUSION

Atlas Turner is not subject to general jurisdiction because it cannot fairly be said to be “at home” in South Carolina at any time. Atlas Turner is not subject to specific jurisdiction because Atlas Turner has no minimum contacts with South Carolina that gave rise to Plaintiffs’ claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Atlas Turner is entitled to an order dismissing Plaintiffs’ claims against it.

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Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

October 20, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	<u>PLAINTIFFS' SECOND AMENDED</u>
vs.	)	<u>COMPLAINT FOR LACK OF</u>
	)	<u>PERSONAL JURISDICTION OF</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
Defendants.	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner"), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, hereby moves to dismiss Plaintiffs' Second Amended Complaint (hereinafter "Complaint") pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it.¹

1. Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw asbestos materials.²

2. Plaintiffs' Complaint lists Atlas Turner "as a Product Defendant" and alleges Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment "mined... processed... imported... supplied... and/or retailed..." by Atlas Turner, including but not limited to raw asbestos.³

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

² Pl.'s Compl. at ¶¶ 1, 1 (incorrectly numbered).

³ Pl.'s Compl. at ¶¶ 22 (incorrectly numbered), 23 (incorrectly numbered).

3. Plaintiffs have failed to make a *prima facie* showing that Atlas Turner is subject to either general or specific personal jurisdiction in South Carolina. Whether a foreign defendant, such as Atlas Turner, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Atlas Turner. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction... [a] *prima facie* showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Atlas Turner because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Atlas Turner is not a South Carolina corporation and does not have its principal place of business in South Carolina; therefore, it is not subject to general jurisdiction in South Carolina.⁴ *See e.g., Daimler AG v.*

⁴ Plaintiffs correctly state that Atlas Turner "was and is" a Canadian corporation with its principal place of business in Canada. Pl.'s. Compl. at ¶ 23 (incorrectly numbered). *See also* ¶ 22 (incorrectly numbered).

Bauman, 571 U.S. 117, 137 (2014) (“With respect to a corporation, the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’”).

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Atlas Turner. Specific personal jurisdiction is granted pursuant to South Carolina’s long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Atlas Turner and South Carolina such that maintaining the suit does not offend “traditional notions of fair play and substantial justice” and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Atlas Turner’s activities in South Carolina, (2) the character and circumstances of Atlas Turner’s acts, (3) the inconvenience resulting to Atlas Turner by either conferring or refusing jurisdiction, and (4) South Carolina’s interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this Court’s exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376

S.C. at 16, 655 S.E.2d at 478 (“Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.”)

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Atlas Turner, Plaintiffs’ Complaint must be dismissed with respect to Atlas Turner.

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, supporting memoranda of law, and such other and further material as the Court may deem appropriate. Atlas Turner’s participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Atlas Turner of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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Columbia, South Carolina

November 8, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>MEMORANDUM IN SUPPORT OF</u>
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	<u>PLAINTIFFS' SECOND AMENDED</u>
vs.	)	<u>COMPLAINT FOR LACK OF</u>
	)	<u>PERSONAL JURISDICTION OF</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS TURNER,</u>
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FACTS

Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw materials in several states, including South Carolina.²

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.³ Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants'

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conduct in (a) transacting business in the State, . . . (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) having an interest in, using, or possessing real property in this State; and/or (e) entering into a contract to be performed in whole or in part by either party in this State.⁴ Further, Plaintiffs allege generally that “all” defendants “purposefully availed themselves of the privilege of doing business in this State” and engaged in “substantial and/or systematic business in South Carolina.”⁵

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However, as attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), attached hereto as Exhibit A, these jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit A at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3.

⁴ Pl.’s Compl. at ¶ 2.

⁵ Pl.’s Compl. at ¶ 2 (incorrectly numbered), 5 (incorrectly numbered).

⁶ Pl.’s Compl. at ¶¶ 22 (incorrectly numbered), 23 (incorrectly numbered).

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit A at ¶ 4 .
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit A at ¶ 5.
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ARGUMENT

A. Legal Standard

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage,

plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege specific facts to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court’s dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

“Personal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction.’” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802....” *Id.* “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803....” *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some

act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is “reasonable” or “fair.” *Id.*

The Court must assess individually each defendant’s contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court’s analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding “unilateral activity of another party or a third person is not an appropriate consideration”)). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant’s own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Atlas Turner and, therefore, Plaintiffs’ claims against Atlas Turner must be dismissed.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner is not a South Carolina corporation, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is “at home” in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); see also *Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the “exceptional case” where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company’s president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company’s correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director’s meetings for the duration of the company’s exile. Under these circumstances, where Ohio became the business’ *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Atlas Turner is not “at home” in South Carolina. It is undisputed that Atlas Turner is not a South Carolina corporation and its principal place of business has never been in South Carolina. It

has no “enduring” relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no “exceptional” circumstances, such as those present in *Perkins*, exist that would render Atlas Turner “at home” in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina’s long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Atlas Turner has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs’ claims to arise out of Atlas Turner’s conduct within the State. Consequently, Atlas Turner is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident’s contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. “Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004));

See also *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not “offend traditional notions of fair play and substantial justice” and that the defendant can “reasonably anticipate being haled into court in the forum.” *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is “reasonable” or “fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). See also *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this

Court's exercise of personal jurisdiction permissible under the Due Process Clause. See *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit A at ¶ 5. As attested in Mr. Dufour's affidavit, all products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner directed its activities to residents of South Carolina and whether the cause of action arose out of or relates to those activities. Absent a specific connection between Plaintiffs' claims, Atlas Turner's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

Because Plaintiffs have not, and cannot, show that Atlas Turner has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Atlas Turner must be dismissed.

CONCLUSION

Atlas Turner is not subject to general jurisdiction because it cannot fairly be said to be “at home” in South Carolina at any time. Atlas Turner is not subject to specific jurisdiction because Atlas Turner has no minimum contacts with South Carolina that gave rise to Plaintiffs’ claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Atlas Turner is entitled to an order dismissing Plaintiffs’ claims against it.

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Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

November 8, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	<u>PLAINTIFFS' THIRD AMENDED</u>
vs.	)	<u>COMPLAINT FOR LACK OF</u>
	)	<u>PERSONAL JURISDICTION OF</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
Defendants.	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner"), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, hereby moves to dismiss Plaintiffs' Third Amended Complaint (hereinafter "Complaint") pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it.¹

1. Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw asbestos materials.²

2. Plaintiffs' Complaint lists Atlas Turner "as a Product Defendant" and alleges Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment "mined... processed... imported... supplied... and/or retailed..." by Atlas Turner, including but not limited to raw asbestos.³

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

² Pl.'s Compl. at ¶¶ 1, 3.

³ Pl.'s Compl. at ¶¶ 26, 27.

3. Plaintiffs have failed to make a *prima facie* showing that Atlas Turner is subject to either general or specific personal jurisdiction in South Carolina. Whether a foreign defendant, such as Atlas Turner, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Atlas Turner. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction... [a] *prima facie* showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

4. First, the Court does not have general personal jurisdiction over Atlas Turner because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann. § 36-2-802. Atlas Turner is not a South Carolina corporation and does not have its principal place of business in South Carolina; therefore, it is not subject to general jurisdiction in South Carolina.⁴ *See e.g., Daimler AG v.*

⁴ Plaintiffs correctly state that Atlas Turner "was and is" a Canadian corporation with its principal place of business in Canada. Pl.'s Compl. at ¶ 27. *See also* ¶ 26.

Bauman, 571 U.S. 117, 137 (2014) (“With respect to a corporation, the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’”).

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Atlas Turner. Specific personal jurisdiction is granted pursuant to South Carolina’s long arm statute, S.C. Code Ann. § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between Atlas Turner and South Carolina such that maintaining the suit does not offend “traditional notions of fair play and substantial justice” and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-92, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of Atlas Turner’s activities in South Carolina, (2) the character and circumstances of Atlas Turner’s acts, (3) the inconvenience resulting to Atlas Turner by either conferring or refusing jurisdiction, and (4) South Carolina’s interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this Court’s exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376

S.C. at 16, 655 S.E.2d at 478 (“Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.”)

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Atlas Turner, Plaintiffs’ Complaint must be dismissed with respect to Atlas Turner.

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, supporting memoranda of law, and such other and further material as the Court may deem appropriate. Atlas Turner’s participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Atlas Turner of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

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November 17, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>MEMORANDUM IN SUPPORT OF</u>
Plaintiffs,	)	<u>MOTION TO DISMISS</u>
	)	<u>PLAINTIFFS' THIRD AMENDED</u>
vs.	)	<u>COMPLAINT FOR LACK OF</u>
	)	<u>PERSONAL JURISDICTION OF</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
Defendants.	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner"), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, submits this memorandum and accompanying affidavit in support of its Motion to Dismiss Plaintiffs' Third Amended Complaint (hereinafter "Complaint") pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.¹

FACTS

Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw materials in several states, including South Carolina.²

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.³ Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants'

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

² Pl. Compl. at ¶¶ 1, 3.

³ See Pl. Compl. at ¶¶ 26, 27.

conduct in (a) transacting business in the State, . . . (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) having an interest in, using, or possessing real property in this State; and/or (e) entering into a contract to be performed in whole or in part by either party in this State.⁴ Further, Plaintiffs allege generally that “all” defendants “purposefully availed themselves of the privilege of doing business in this State” and engaged in “substantial and/or systematic business in South Carolina.”⁵

Specifically as to Atlas Turner, Plaintiffs list it as a “Product Defendant” and allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined . . . processed . . . imported . . . supplied . . . and or retailed” by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege that their claim against Atlas Turner arises out of Atlas Turner’s “business activities” in the State of South Carolina.⁶

However, as attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), attached hereto as Exhibit A, these jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit A at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3.

⁴ Pl.’s Compl. at ¶ 2.

⁵ Pl.’s Compl. at ¶ 6, 9.

⁶ Pl.’s Compl. at ¶¶ 26, 27.

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit A at ¶ 4 .
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit A at ¶ 5.
- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit A at ¶ 6.

ARGUMENT

A. Legal Standard

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage,

plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege specific facts to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court’s dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

“Personal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction.’” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802....” *Id.* “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803....” *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some

act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is “reasonable” or “fair.” *Id.*

The Court must assess individually each defendant’s contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court’s analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding “unilateral activity of another party or a third person is not an appropriate consideration”)). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant’s own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Atlas Turner and, therefore, Plaintiffs’ claims against Atlas Turner must be dismissed.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner is not a South Carolina corporation, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is “at home” in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); see also *Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the “exceptional case” where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company’s president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company’s correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director’s meetings for the duration of the company’s exile. Under these circumstances, where Ohio became the business’ *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Atlas Turner is not “at home” in South Carolina. It is undisputed that Atlas Turner is not a South Carolina corporation and its principal place of business has never been in South Carolina. It

has no “enduring” relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no “exceptional” circumstances, such as those present in *Perkins*, exist that would render Atlas Turner “at home” in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina’s long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Atlas Turner has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs’ claims to arise out of Atlas Turner’s conduct within the State. Consequently, Atlas Turner is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident’s contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. “Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004));

See also *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not “offend traditional notions of fair play and substantial justice” and that the defendant can “reasonably anticipate being haled into court in the forum.” *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is “reasonable” or “fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). See also *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this

Court's exercise of personal jurisdiction permissible under the Due Process Clause. See *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508–09 ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit A at ¶ 5. As attested in Mr. Dufour's affidavit, all products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner directed its activities to residents of South Carolina and whether the cause of action arose out of or relates to those activities. Absent a specific connection between Plaintiffs' claims, Atlas Turner's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

Because Plaintiffs have not, and cannot, show that Atlas Turner has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Atlas Turner must be dismissed.

CONCLUSION

Atlas Turner is not subject to general jurisdiction because it cannot fairly be said to be “at home” in South Carolina at any time. Atlas Turner is not subject to specific jurisdiction because Atlas Turner has no minimum contacts with South Carolina that gave rise to Plaintiffs’ claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Atlas Turner is entitled to an order dismissing Plaintiffs’ claims against it.

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Columbia, South Carolina

November 17, 2022

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

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

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

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

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

BACKGROUND

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

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

² See Third Amd. Complaint at ¶ 91.

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

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

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

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

³ See Third Amd. Complaint at ¶ 93.

⁴ See Third Amd. Complaint at ¶ 98.

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

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

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

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

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

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

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

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

LEGAL STANDARD

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Topics

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

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

2. Requests for Production

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

January 3, 2023

EXHIBIT 5

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

RICHARD DUFOUR AFFIDAVIT

DISTRICT OF FRONTENAC)
)
 PROVINCE OF QUEBEC)

I, Richard Dufour, being first duly sworn, depose and state:

1. I am over the age of eighteen and am competent to make this Affidavit.
2. I am counsel to Atlas Turner, Inc. I know the truth of the following and could and would testify competently as follows:
3. Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.
4. Atlas Turner, Inc., is a corporation organized and existing under the laws of Canada, and is headquartered in the Province of Quebec.

5. Atlas Turner, Inc. has never held a Certificate of Authority to do business in South Carolina.
6. Atlas Turner, Inc. does not now, nor did it ever own, lease or otherwise use any real property in South Carolina.
7. Atlas Turner, Inc. never owned or operated any manufacturing facility in South Carolina.
8. Atlas Turner, Inc. never commenced any litigation in South Carolina.
9. Atlas Turner, Inc. never maintained any bank accounts in South Carolina.
10. Atlas Turner, Inc. ceased all operations of any kind in 1986.
11. Atlas Turner, Inc. has no current employees at all.
12. Atlas Turner, Inc. has no records of sales to any company in South Carolina prior to 1968.
13. Atlas Turner, Inc. never manufactured or sold asbestos containing friction products such as automobile brakes, clutches, or gaskets.
14. Atlas Turner, Inc. has no former employees competent to testify to the topics listed on the 30(b)(6) Notices of Deposition in this case, and for the most part Atlas Turner, Inc. does not even maintain or possess the records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices of deposition.
15. To the extent that relevant records do exist, their production would be prohibited by the Quebec Business Concerns Records Act as interpreted by the courts in Canada and the Province of Quebec.

SIGNATURE ON NEXT PAGE

FURTHER AFFIANT SAYETH NOT.


Richard Dufour

Subscribed and sworn to before me this,
the 28th day of December, 2022





My commission expires March 2, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC.'S MOTION FOR SUMMARY</u>
vs.	)	<u>JUDGMENT ON BEHALF OF</u>
	)	<u>ITSELF AND DEFENDANT ATLAS</u>
3M Company, et al.,	)	<u>ASBESTOS CO.</u>
	)	
Defendants.	)	
	)	

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner” or “Defendant”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through undersigned counsel, hereby moves for an Order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues of material fact, and summary judgment is appropriate as a matter of law.

Specifically, the Court lacks personal jurisdiction over Defendant.² In addition, alternatively, Plaintiffs cannot meet the threshold requirements of actionable exposure set forth in

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

² On November 17, 2022, Defendant Atlas Turner filed its Memorandum in Support of Motion to Dismiss Plaintiffs’ Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on behalf of Itself and Defendant Atlas Asbestos Co. Defendant Atlas Turner also filed an accompanying affidavit from Richard Dufour dated September 7, 2022, which had also been filed with each of the earlier timely filed Motions to Dismiss and Supporting Memoranda in response to the Original Complaint, as well as the First and Second Amended Complaints. On December 30, 2022, Defendant filed an Amended Memorandum, which included the previously filed Affidavit dated September 7, 2022 and also relevant excerpts from the deposition of Mr. Welch taken on October 7, 11, 12 and 14, 2022 and a second Affidavit from Richard Dufour dated December 28, 2022. Defendant incorporates its prior Motions to Dismiss, its Memoranda in Support with exhibits, and its Amended Memorandum with affidavits and relevant deposition excerpts herein in support of its current Motion for Summary Judgment. Further, in an email to

Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162-63 (4th Cir. 1986), *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), and similar cases, such that there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law. This motion is supported by the two affidavits from Mr. Dufour, deposition testimony of Mr. Welch, previously filed motions to dismiss and memoranda in support, the Amended Memorandum in support with exhibits, and the attached Memorandum in Support of Motion for Summary Judgment, and may be further supported or supplemented by additional affidavits, deposition testimony, applicable law, and arguments of counsel that may be made subsequent to the filing of this motion.

the Court and counsel of record dated January 5, 2023, counsel for Atlas Turner requested that the Court hear at the January 27, 2023 motions hearing or as soon as possible thereafter the following motions: (1) Motion to Dismiss Plaintiffs' Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc., on Behalf of Itself and Defendant Atlas Asbestos Co. (filed November 17, 2022), and the Amended Memorandum with exhibits (filed December 30, 2022) and (2) Defendant Atlas Turner, Inc.'s Motion for Protective Order and Memorandum in Support on Behalf of Itself and Defendant Atlas Asbestos Co. (filed January 3, 2023). See Exhibit 1 to the accompanying Memorandum of Law in Support of Motion for Summary Judgment. Due to a schedule conflict, Plaintiffs' counsel requested that the motions be heard on another date and requested two weeks to respond. *Id.* Counsel for Atlas Turner requested a week after Plaintiffs' responses in which to file replies. *Id.* By filing the present Motion, Defendant is not waiving its previously requested hearing or its previously filed Motions to Dismiss, Memoranda in Support with exhibits, its Amended Memorandum in Support with exhibits, or its Motion for Protective Order.

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Columbia, South Carolina

March 20, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>DEFENDANT ATLAS TURNER,</u>
Plaintiffs,	)	<u>INC.'S MEMORANDUM OF LAW</u>
	)	<u>IN SUPPORT OF ITS MOTION FOR</u>
vs.	)	<u>SUMMARY JUDGMENT ON</u>
	)	<u>BEHALF OF ITSELF AND</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>
Defendants.	)	
	)	
	)	

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner" or "Defendant"), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through undersigned counsel, submits this Memorandum of Law and accompanying exhibits in support of its Motion for Summary Judgment.

Defendant is entitled to judgment on all claims because: (1) the Court lacks personal jurisdiction over Defendant²; and (2) alternatively, Plaintiffs do not have evidence that Mr. Welch

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

² On November 17, 2022, Defendant Atlas Turner filed its Memorandum in Support of Motion to Dismiss Plaintiffs' Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on behalf of Itself and Defendant Atlas Asbestos Co. Defendant Atlas Turner also filed an accompanying affidavit from Richard Dufour dated September 7, 2022, which had also been filed with each of the earlier timely filed Motions to Dismiss and Supporting Memoranda in response to the Original Complaint, as well as the First and Second Amended Complaints. On December 30, 2022, Defendant filed an Amended Memorandum, which included the previously filed Affidavit dated September 7, 2022 and also relevant excerpts from the deposition of Mr. Welch taken on October 7, 11, 12 and 14, 2022 and a second Affidavit from Richard Dufour dated December 28, 2022. Defendant incorporates its prior Motions to Dismiss, its Memoranda in Support with exhibits, and its Amended Memorandum with affidavits and relevant deposition excerpts herein in support of its current Motion for Summary Judgment. Further, in an email to the Court and counsel of record dated January 5, 2023, counsel for Atlas Turner requested that the

was exposed to any product attributable to Atlas Turner, much less evidence of exposure to asbestos-containing products with the “frequency, regularity, and proximity” required by *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), to establish causation.

STATEMENT OF FACTS

Plaintiffs’ Third Amended Complaint (“TAC”) alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw materials in several states, including South Carolina.³

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.⁴ Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs’ claims arise from Defendants’ conduct in (a) transacting business in the State, . . . (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) having an interest in, using, or possessing real property in this State; and/or (e) entering into a contract to be performed in whole or in part by either party in this State.⁵ Further, Plaintiffs allege generally that

Court hear at the January 27, 2023 motions hearing or as soon as possible thereafter the following motions: (1) Motion to Dismiss Plaintiffs’ Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc., on Behalf of Itself and Defendant Atlas Asbestos Co. (filed November 17, 2022), and the Amended Memorandum with exhibits (filed December 30, 2022) and (2) Defendant Atlas Turner, Inc.’s Motion for Protective Order and Memorandum in Support on Behalf of Itself and Defendant Atlas Asbestos Co. (filed January 3, 2023). A copy of this email is attached as Exhibit 1. Due to a schedule conflict, Plaintiffs’ counsel requested that the motions be heard on another date and requested two weeks to respond. *See* Exhibit 1. Counsel for Atlas Turner requested a week after Plaintiffs’ responses in which to file replies. *See* Exhibit 1. By filing the present Motion, Defendant is not waiving its previously requested hearing or its previously filed Motions to Dismiss, Memoranda in Support with exhibits, its Amended Memorandum in Support with exhibits, or its Motion for Protective Order.

³TAC at ¶¶ 1,3.

⁴ *See* TAC at ¶¶ 26, 27.

⁵ TAC at ¶ 2.

“all” defendants “purposefully availed themselves of the privilege of doing business in this State” and engaged in “substantial and/or systematic business in South Carolina.”⁶

Specifically as to Atlas Turner, Plaintiffs list it as a “Product Defendant” and generically allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined . . . processed . . . imported . . . supplied . . . and or retailed” by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege, again generically, that their claim against Atlas Turner arises out of Atlas Turner’s “business activities” in the State of South Carolina.⁷

Plaintiffs claim that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company (“Daniel”) at the Monsanto Chemical Plant [aka Chemstrand], in Greenwood, SC “in the mid-late 1960s” and was exposed to, among other things, asbestos-containing insulation products.⁸ Plaintiffs also allege that Mr. Welch later worked as an “automobile mechanic at various job sites” in the “late 1970s to the mid-late 2000s” and was exposed to asbestos from “clutches, gaskets, and brakes.”⁹ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing “friction products” such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.¹⁰

Mr. Welch was deposed on October 7, 11, 12, and 14, 2022; and he testified about his alleged exposure to asbestos.¹¹ Excerpts from the “trial deposition” transcript dated October 7 are attached as Exhibit 2; excerpts from the “discovery deposition” transcript dated October 11 are

⁶ TAC at ¶ 6, 9.

⁷ TAC at ¶¶ 26, 27.

⁸ See TAC at ¶ 91.

⁹ See TAC at ¶ 93.

¹⁰ See TAC at ¶ 98.

¹¹ No one appeared on behalf of Atlas Turner at the deposition.

attached as Exhibit 3; excerpts from the “discovery deposition” transcript dated October 12 are attached as Exhibit 4.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. Exhibit 2, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” Exhibit 2, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. Exhibit 2, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. Exhibit 2, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. Exhibit 4, at pp. 74, 72-73.

More specifically, Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing new insulation on the pipes; and he was working under or below the insulators. Exhibit 3, at pp. 90, 92, 96, 98. Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. Exhibit 3, at p. 45.

After working for Daniel at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. Exhibit 2, at p. 19; Exhibit 3, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. Exhibit 2 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. Exhibit 2, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. Exhibit 2, at pp. 52-65.

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

As attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), dated September 7, 2022, attached hereto as Exhibit 5, Plaintiffs’ jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit 5 at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made

F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit 5 at ¶ 3.

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit 5 at ¶ 4.
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit 5 at ¶ 5.
- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit 5 at ¶ 6.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. *See* Affidavit of Richard Dufour, dated December 28, 2022, attached as Exhibit 6, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. *See* Exhibit 6 at ¶ 13. Thus, Mr. Welch's cause of action did not arise out of or relate to the defendant's "contacts" with South Carolina because Atlas

Turner had no contacts with the forum during the relevant time period at issue, which is 1965, 1966. Moreover, even assuming the Court has jurisdiction over Atlas Turner, there is no evidence that Mr. Welch was ever exposed to a product attributable to Atlas Turner, much less evidence of any asbestos-containing product attributable to Atlas Turner on a frequent, regular, or proximate basis.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 81, 502 S.E.2d 78, 85-86 (1998). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” Rule 56(c), SCRCPP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn [therefrom] must be viewed in the light most favorable to the non-moving party. *See Shaw v. City of Charleston*, 351 S.C. 32, 38, 567 S.E.2d 530, 534 (2002). The burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *See Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). An important distinction to make is that the moving party’s burden is not to disprove the claims, but to instead show that the plaintiff has no evidence to support his claims. *Id.*

In order to avoid summary judgment, a non-moving party must demonstrate a genuine existence of triable issue on all essential elements of his case. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A non-moving party must go beyond the pleadings, as “summary judgment should be granted when plain, palpable and undisputable facts exist on which reasonable minds

cannot differ.” *NationsBank v. Scott Farm*, 320 S.C. 299, 302-03, 465 S.E.2d 98, 100 (Ct. App. 1995).

In the present case, Plaintiffs have not produced sufficient evidence to establish personal jurisdiction or the elements necessary to pursue and prove the claims against Atlas Turner. Therefore, Atlas Turner is entitled to summary judgment.

ARGUMENT

I. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT.

A. Legal Standard

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege specific facts to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc.*, 379 S.C. at 433–36, 665 S.E.2d at 665–67 (affirming trial court’s dismissal based on lack of personal jurisdiction because plaintiff did not establish facts—either through the complaint or affidavits—to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433–35, 665 S.E.2d at 665–66. Moreover, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may

resort to affidavits or other evidence to determine jurisdiction.” *Sullivan*, 397 S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

“Personal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction.’” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum . . . ; general jurisdiction is determined under S.C. Code Ann. §36-2-802....” *Id.* “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum . . . ; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803....” *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363, S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is “reasonable” or “fair.” *Id.*

The Court must assess individually each defendant’s contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savchuk*, 444 U.S. 320 (1980)). The focus of the Court’s analysis must center on the contacts generated by the defendant, not on the

unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (holding “unilateral activity of another party or a third person is not an appropriate consideration”)). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant’s own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over Atlas Turner and, therefore, Atlas Turner is entitled to summary judgment on all of Plaintiffs’ claims.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner is not a South Carolina corporation, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is “at home” in South Carolina; therefore, it is not subject to general personal jurisdiction in this State.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (2011)); see also *Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. §36-2-802. Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). An example of the “exceptional case” where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. In *Perkins* the defendant, a

foreign mining company forced to flee the Philippines during World War II, operated entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

Atlas Turner is not "at home" in South Carolina. It is undisputed that Atlas Turner is not a South Carolina corporation and its principal place of business has never been in South Carolina. It has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render Atlas Turner "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, it does not meet the requirements of South Carolina's long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because Atlas Turner never conducted business or purposefully directed business activities towards South Carolina, especially during the relevant time period, Plaintiffs' claims did not arise out of Atlas Turner's alleged

conduct within the State. Consequently, Atlas Turner is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); *See also Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." *E.g.*, *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is "reasonable" or "fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by

conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction.” *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that Atlas Turner has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to, especially during the relevant time period; therefore, there are not sufficient minimum contacts with South Carolina to render this Court’s exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 (“Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.”)

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit 5 at ¶ 5. All products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit 5 at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

Further, and most importantly, Mr. Welch’s only alleged exposure to asbestos-containing insulation products occurred in 1965, 1966 while he was employed by Daniel at the Monsanto/Chemstrand Greenwood plant. Atlas Turner has no records of sales to any company

in South Carolina prior to 1968. Exhibit 6, at ¶ 12. In addition, Atlas Turner never manufactured or sold asbestos containing friction products such as automobile brakes, clutches, or gaskets. Exhibit 6 at ¶ 13. Thus, during the relevant time period – 1965, 1966 – Mr. Welch could not have been exposed to any alleged asbestos-containing products manufactured or sold by Atlas Turner. As such, his cause of action could not have arisen from any of Atlas Turner’s “contacts” with South Carolina because Atlas Turner did not have any “contacts” with the State during the relevant time period. Atlas Turner did not purposefully avail itself of the privilege of conducting activities within South Carolina during the relevant time period and, consequently, could not reasonably anticipate being haled into Court in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner directed its activities to residents of South Carolina and whether the cause of action arose out of or relates to those activities. Absent a specific connection between Plaintiffs’ claims, Atlas Turner’s alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

Because Plaintiffs have not, and cannot, show that Atlas Turner had minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against Atlas Turner must be dismissed.

II. PLAINTIFFS CANNOT SATISFY THE “FREQUENCY, REGULARITY, AND PROXIMITY” REQUIREMENT UNDER SOUTH CAROLINA LAW.

In order to recover against Atlas Turner, Plaintiffs must, among other things, present evidence that Mr. Welch was frequently, regularly, and proximately exposed to asbestos dust from an asbestos-containing product for which Atlas Turner is legally responsible. *See Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007); *see also Ryan v. Eli Lilly & Co.*, 514 F. Supp. 1004, 1006 (D.S.C. 1981) (*citing Gantt v. Columbia Coca-Cola Bottling Co.*, 193 S.C. 51, 7 S.E.2d 641 (1940)) (“It is elementary that in any action claiming injury from a product, the

plaintiff must show causal connection between the defendant manufacturer and . . . the specific instrumentality that allegedly caused the injury . . .”). In *Henderson*, the South Carolina Supreme Court established the following causal standard for a plaintiff to maintain an asbestos exposure claim:

In determining whether exposure is actionable, we adopt the “frequency, regularity, and proximity test” set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162 (4th Cir. 1986): “To support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a **specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.**”

Henderson, 373 S.C. at 185, 644 S.E.2d at 727 (emphasis added).

Plaintiffs have failed to meet the causal standard set forth in *Henderson* here. In the Third Amended Complaint, Plaintiffs generally alleged exposure to the defendants' asbestos-containing products, but the Complaint does not provide any specifics as to Mr. Welch's claimed asbestos exposure with respect to Atlas Turner products. See Third Amended Complaint at ¶¶ 26, 27. Plaintiffs have subsequently failed to provide evidence of any exposure resulting from an Atlas Turner product, much less the "regular" or "frequent" exposure from an Atlas Turner product as required by *Henderson*.

The testimony provided by Plaintiffs is insufficient to meet the causal standard set forth in *Henderson*. Mr. Welch never even mentioned Atlas Turner or any products associated with Atlas Turner in his deposition. Further, Atlas Turner introduced evidence that it has no records of sales to any company in South Carolina during the time period Mr. Welch claimed to be exposed to asbestos-containing insulation. Exhibit 6 at ¶ 12. Also, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. Exhibit 6 at ¶ 13. In short, Plaintiffs have not offered any exposure testimony with respect to Atlas Turner and have not otherwise offered any evidence to establish exposure from an Atlas Turner product. As a result,

under the standard set forth in *Henderson*, Atlas Turner cannot be legally responsible for Plaintiffs' alleged injuries, and this Court must grant summary judgment.

CONCLUSION

Defendant is entitled to summary judgment based on either of two grounds: (1) the Court lacks personal jurisdiction over Defendant, or (2) the Plaintiffs are unable to meet their burden to prove that Mr. Welch was exposed to asbestos from any product for which Defendant is alleged to be responsible. For these reasons, Defendant respectfully requests that the Court enter an Order granting its Motion for Summary Judgment, and that all claims be dismissed.

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March 20, 2023

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

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

Defendant Atlas Turner, Inc., sued incorrectly as successor to Atlas Asbestos Co., (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through its undersigned counsel, and pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, files this Motion and Memorandum seeking to be relieved from designating and producing a corporate representative for deposition, and from producing any information or documents, pursuant to the First Amended Notice of 30(b)(6) Deposition of Atlas Asbestos Co. served by Plaintiffs in this case.² First, nearly all the discovery Plaintiffs seek is merits discovery, and the Court should stay

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

² On July 25, 2022, Plaintiffs filed their original Complaint, and alleged Mr. Welch developed mesothelioma as the result of exposure to asbestos dust and fibers. See Complaint at ¶1. Atlas Turner, on behalf of itself and Defendant Atlas Asbestos Co., timely filed a Motion to Dismiss for Lack of Personal Jurisdiction with a Memorandum in Support and an affidavit from Richard Dufour dated September 7, 2022. Plaintiffs subsequently amended their Complaint several times, and most recently filed their Third Amended Complaint on November 3, 2022. In response, Atlas Turner timely filed Motions to Dismiss for Lack of Personal Jurisdiction and Memoranda in Support with the aforementioned affidavit of Mr. Dufour. On December 6, 2022, Plaintiffs served via email Plaintiffs’ Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena

discovery as to Atlas Turner until the Court rules on Defendant Atlas Turner's Motion to Dismiss for Lack of Personal Jurisdiction. Second, in the event the Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by Plaintiffs' Notice of 30(b)(6) Deposition because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notice. Third, in the event the Court does not grant Atlas Turner's

Duces Tecum and Plaintiffs' Notice of 30(b)(6) Deposition of Defendant Atlas Turner, Inc. and Subpoena Duces Tecum ("30(b)(6) Notices").

The 30(b)(6) Notices contained 74 topics and 23 document requests. Plaintiffs scheduled the depositions for February 2, 2023, and requested that the documents be produced no later than January 3, 2023, which was 28 days from the date the 30(b)(6) Notices were served. On December 30, 2022 Atlas Turner filed an Amended Memorandum in Support of the Motion to Dismiss. On January 3, 2023, Atlas Turner filed a Motion for Protective Order and Memorandum and Law in Support with affidavits and other exhibits on behalf of itself and Defendant Atlas Asbestos Co. Further, in an email to the Court and counsel of record dated January 5, 2023, counsel for Atlas Turner requested that the Court hear at the January 27, 2023 motions hearing or as soon as possible thereafter the following motions: (1) Motion to Dismiss Plaintiffs' Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on Behalf of Itself and Defendant Atlas Asbestos Co. (filed November 17, 2022), and the Amended Memorandum with exhibits (filed December 30, 2022) and (2) Defendant Atlas Turner, Inc.'s Motion for Protective Order and Memorandum in Support on Behalf of Itself and Defendant Atlas Asbestos Co. (filed January 3, 2023). A copy of this email is attached as Exhibit 1. Due to a schedule conflict, Plaintiffs' counsel requested that the motions be heard on another date and requested two weeks to respond. *See* Exhibit 1. Counsel for Atlas Turner responded and requested that the Court schedule a hearing at the Court's convenience on a date after January 27, 2023, and requested that Atlas Turner, on behalf of itself and Defendant Atlas Asbestos Co., be given a week after Plaintiffs' responses in which to file replies.

On February 1, 2023, counsel for Plaintiffs cancelled the depositions scheduled for February 2, 2023. On March 16, 2023, Plaintiffs served Plaintiffs' First Amended Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena Duces Tecum ("the 30(b)(6) Notice"). On March 20, 2023 Defendant Atlas Turner, Inc., on behalf of itself and Atlas Asbestos Co., filed a Motion for Summary Judgment and filed a Memorandum in Support with affidavits and other exhibits.

motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' Notice of 30(b)(6) Deposition, because of the Quebec Business Concerns Records Act (QBCRA), which subjects Atlas Turner to criminal penalties in Quebec if it produces information and documents sought by Plaintiffs in the Notice of 30(b)(6) Deposition. In support of this motion, Atlas Turner states as follows:

BACKGROUND

In the Third Amended Complaint, Plaintiffs allege that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company ("Daniel") at the Monsanto Chemical Plant [aka Chemstrand], in Greenwood, SC "in the mid-late 1960s" and was exposed to, among other things, asbestos-containing insulation products.³ Plaintiffs also allege that Mr. Welch later worked as an "automobile mechanic at various job sites" in the "late 1970s to the mid-late 2000s" and was exposed to asbestos from "clutches, gaskets, and brakes."⁴ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing "friction products" such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.⁵

On October 7, 11, 12, and 14, 2022, Mr. Welch was deposed and testified about his alleged asbestos exposure.⁶ Excerpts from the "trial" transcript dated October 7 are attached as Exhibit 2; excerpts from the "discovery" transcript dated October 11 are attached as Exhibit 3; excerpts from the "discovery" transcript dated October 12 are attached as Exhibit 4.

³ See Third Amd. Complaint at ¶ 91.

⁴ See Third Amd. Complaint at ¶ 93.

⁵ See Third Amd. Complaint at ¶ 98.

⁶ No one appeared on behalf of Atlas Turner at the deposition.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. *See* Exhibit 2, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” *See* Exhibit 2, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. *See* Exhibit 2, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. *See* Exhibit 2, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. *See* Exhibit 4, at pp. 74, 72-73. More specifically, Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing new insulation on the pipes; and he was working under or below the insulators. *See* Exhibit 3, at pp. 90, 92, 96, 98. Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. *See* Exhibit 3, at p. 45. After working for Daniel at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. *See* Exhibit 2, at p. 19; *see* Exhibit 3, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. *See* Exhibit 2 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. *See* Exhibit 2, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. *See* Exhibit 2, at pp. 52-65.

In summary, Mr. Welch testified that he allegedly worked around asbestos-containing pipe insulation products while employed by Daniel at the Monsanto/Chemstrand Greenwood plant from approximately 1965 to 1966 and that he went into the Air Force from 1967 to 1970.⁷ Thereafter, he alleges he worked as a brake mechanic with asbestos-containing brake material from approximately 1977 until he retired around 2000, and alleges that he worked with asbestos-containing automotive brakes, gaskets, and clutches from approximately 1958 through the 2000s.

Defendant Atlas Turner was and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. *See* Affidavit of Richard Dufour dated September 7, 2022, which is attached as Exhibit 6, at ¶ 3. Further, although Atlas Turner did manufacture asbestos-containing products, all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Montreal, Quebec, Canada. *See* Exhibit 6, at ¶ 3.

⁷ Mr. Welch's Social Security Itemized Statement of Earnings was received by defense counsel on March 29, 2023; it and the transmittal email are attached as Exhibit 5. There are some discrepancies between the dates of Mr. Welch's employment as testified by Mr. Welch compared to the Social Security document. Specifically, as to the dates of Mr. Welch's employment by Daniel, the records state that his employment by Daniel was from the last quarter of 1966 through the second quarter of 1967, not from 1965 to 1966. *See* Exhibit 5 at page 1. The discrepancy makes no difference to the position of Atlas Turner because Mr. Welch's dates of employment with Daniel ended before 1968.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. *See* affidavit of Richard Dufour dated December 28, 2022, attached as Exhibit 7, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. *See* Exhibit 7, at ¶ 13. Thus, Mr. Welch’s cause of action did not arise out of or relate to the defendant’s “contacts” with the forum because Atlas Turner had no contacts with the forum during the relevant time period. *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S. E. 2d 128, 131 (1992); *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1780 (2017).

As explained in footnote 2, on March 16, 2023, Plaintiffs served via email Plaintiffs’ First Amended Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena Duces Tecum (“30(b)(6) Notice”). A copy of the 30(b)(6) Notice is attached as Exhibit 8. The 30(b)(6) Notice contains 75 topics and 25 document requests. Plaintiffs scheduled the deposition for April 17, 2023, and requested that documents be produced no later than April 3, 2023, which is 15 days from the date the 30(b)(6) Notice was served. As set forth in Exhibits A and B of the 30(b)(6) Notice, Plaintiffs seek testimony and documents nearly all of which are related to merits discovery that are wholly unrelated to the question of the Court’s personal jurisdiction over Atlas Turner.

LEGAL STANDARD

Pursuant to Rule 26(c), SCRCP, “[u]pon motion by a party... and for good cause shown, the court in which the action is pending... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including... (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions...; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters....” When the discovery process threatens to become

abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E. 2d 852, 854 (1994).

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

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

Because Atlas Turner’s due process rights will be violated if it is required to participate in general discovery prior to this Court’s deciding whether it has personal jurisdiction over Atlas Turner, this Court should preclude Plaintiffs from requiring Atlas Turner to produce a corporate representative and produce information and documents in response to Plaintiffs’ 30(b)(6) Notice until it determines whether it has personal jurisdiction over Atlas Turner. Further, in the event the Court does not grant Atlas Turner’s motion to dismiss, then this Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by the 30(b)(6) Notice because of the absence of any current or former employees or individuals with personal knowledge and the inability to educate a witness due to the lack of most relevant records and because of the QBCRA.

ARGUMENT

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

Good cause for a protective order exists when a party will suffer particularized harm if the challenged discovery takes place. *Hamm*, 312 S.C. at 241, 439 S.E. 2d at 854. First, as explained in Atlas Turner’s Motion to Dismiss and Amended Memorandum in Support, there is no general jurisdiction over Atlas Turner. As for specific jurisdiction, Atlas Turner lacks contacts with South Carolina sufficient for this Court to exercise specific personal jurisdiction over it. Atlas Turner did not manufacture or sell asbestos-containing friction products such as automotive brakes, clutches, or gaskets. Thus, the only relevant jobsite is the Monsanto/Chemstrand Greenwood plant where Mr. Welch was employed by Daniel, and the relevant time period, based on the Social Security Itemized Statement of Earnings, is from the last quarter of 1966 through the second quarter of 1967; and Atlas Turner has no records of sales to any company in South Carolina prior to 1968. Therefore, Atlas Turner could not anticipate being haled into this Court and there are no contacts with South Carolina out of which Mr. Welch’s suit can arise. Consequently, requiring Atlas Turner to participate in general discovery in this matter violates Atlas Turner’s due process rights and constitutes a particularized harm to Atlas Turner. Moreover, Plaintiffs are not even entitled to jurisdictional discovery because they cannot demonstrate enough facts to support a *prima facie* showing of personal jurisdiction. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151-153, 723 S.E. 2d 835, 839-841 (2012). Based on bare allegations in the face of specific denials, the Court should not permit even limited discovery if it will be a fishing expedition. *Id.* at 151, 723 S.E. 2d at 840.

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

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

As noted in Mr. Dufour's affidavit dated December 28, 2022, Atlas Turner ceased all operations in 1986; it has no current employees; it has no former employees competent to testify to the topics listed in the 30(b)(6) Notice, and for the most part does not even maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notice; and to the extent that relevant records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec. See Exhibit 7 at ¶¶ 10, 11, 14, 15.

If a corporation genuinely cannot provide an appropriate designee because it does not have the information, cannot reasonably obtain it from other sources, and still lacks knowledge after reviewing all available information, then its obligations under the Rule cease. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 690 (S.D. Fla. 2012). Further, a party cannot produce documents it does not possess, and a party cannot create documents that do not exist. See *United*

States v. Remain at Home Senior Care, LLC, Case No. 1:17-cv-01493-JMC, at *5-6 (D.S.C. Jan. 14, 2022).

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

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

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

Atlas Turner is a Quebec corporation whose office is located in the province. Under Section 2 of the QBCRA, a copy of which is attached as Exhibit 9:

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

The term "document" is defined as "any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern." QBCRA, § 1(a). The term "concern" is defined as "any business concern in Quebec." QBCRA, § 1(b). The term "requirement" is defined as "any demand, direction, order, subpoena or summons." QBCRA § 1(c). The exception in Section 3 is limited to intra-company transfer in the normal course of business, the sale of securities, and as "authorized by any law of Quebec or of the Parliament of Canada, in accordance with their respective jurisdictions." QBCRA, § 3. Any person who infringes the provisions of Section 2 **shall** be guilty of contempt of court. QBCRA § 5 (emphasis added).

Quebec courts have made clear that other Quebec “concerns” would be subject to criminal penalties if they produced in U.S. litigation information or documents from their files in Quebec, and these opinions apply to Atlas Turner. In *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal, February 24, 1984), a copy of which is attached as Exhibit 10, the Court of Appeal ruled that, if a witness was required to consult business records or archives of the employer, a Quebec “business concern,” in order to provide his testimony, such testimony would fall under the prohibition set out in Section 2 of the QBCRA. *See* Exhibit 10 at p. 11. Further, Judge Beauregard stated that “the filing ... of the documents ... joined to an examination of an agent of [Asbestos Corporation Limited] (“ACL”) whose testimony on these documents will be taken down by a stenographer who will translate his notes for the purposes of the foreign tribunal is equivalent, ... to the transmission out of Quebec of a ‘résumé or summary’ of the files of [ACL].” *Id.* at p. 11. Also, Judge Tyndale’s opinion, which follows the opinion of Judge Beauregard, states the QBCRA “[o]bviously ... forbids production of the documents Moreover, inspection by an attorney acting for Respondent would be useless unless he took notes, and this would lead to the export of a résumé or digest. *Id.* at pp. 1-2.

In *Pelnar v. Ins. Co. of North America* (Court of Appeal, Montreal, June 25, 1985) a copy of which is attached as Exhibit 11, the court held that the prohibition set out in Section 2 of the QBCRA is not only aimed towards business concerns, their officers or employees, but equally towards any persons who may have, or have had, in their possession documents or résumés thereof. *See* Exhibit 11 at pp. 5-6. Further, Quebec courts have ruled that the application of the QBCRA did not require a preliminary request from the Attorney General. *See Lac D’Amiante Du Quebec Limited v. Procureur General De La Province De Quebec* (Court of Appeal, R.D.J., 287, 1989), a copy of which is attached as Exhibit 12, at p. 289. In addition, in *Renault v. Bell Asbestos*

Mines, Ltd. (Court of Appeal, Montreal, August 13, 1980), a copy of which is attached as Exhibit 13, the court ruled that the word “document” related to much more than just accounting documents and that the QBCRA must be interpreted liberally and broadly. See Exhibit 13 at pp. 4-5.

Court opinions outside of Quebec that ignore the QBCRA do not magically transmute Atlas Turner’s predicament.⁸ Such decisions only show that Atlas Turner is beholden to two masters – stuck between facing criminal penalties in its domicile or displeasing this Court if it does not produce discovery to Plaintiffs’ satisfaction. Atlas Turner takes its discovery obligations seriously but also asks this Court to recognize and consider that Atlas Turner cannot please both masters at the same time. Application of fairness to the situation should enable Plaintiffs to obtain as much discovery as possible while not subjecting Atlas Turner to criminal penalties in its domicile. Several of this Court’s sister courts have reached this precise result.

For example, in *Jenness v. Turner and Newall Ltd.*, No. 83-61-L (D. N.H. Dec. 5, 1984), a copy of which is attached as Exhibit 14, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. Exhibit 14, at p. 1. ACL admitted that it had sold asbestos to the plaintiff’s employer but could not “give the detailed answers that are required

⁸ Atlas Turner is aware of two decisions in South Carolina in which the Courts have ruled unfavorably as to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384 (D.S.C. 1988); and *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992). These cases are not binding on the Court. In addition, in *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal February 24, 1984), the Quebec Court of Appeal decided that if a witness is required to consult records or archives, such testimony would fall under the prohibition of the Section 2 of the QBCRA. See Exhibit 10. Further, in *Lac D’Amiante Du Quebec Limited*, the Court held that the application of the QBCRA did not require a preliminary request from the Attorney General. See Exhibit 12, at p. 289. Therefore, the South Carolina federal courts’ interpretations in *Lyons* and *Central Wesleyan* are erroneous and should not be based on their own interpretations of the law after the highest court in Quebec already ruled on the issue.

to be given to plaintiff's interrogatories without reference to [ACL's] business records located in Canada." *Id.* at p. 2. As a result, the plaintiff moved for sanctions against ACL when it did not comply with the court's discovery order. The U.S. District Court for the District of New Hampshire described ACL's predicament: ACL found itself "between the Scylla of the criminal sanctions of the [QBCRA] and the Charybdis of the civil sanctions of this Court." *Id.* at p. 2. Considering ACL's quandary, the *Jenness* court found that ACL had "made a good faith effort to comply with this Court's order to answer the interrogatories" and that ACL's "fear that answering the interrogatories or giving the depositions would violate the [QBCRA] to be well founded." *Id.* at p. 3. The court ordered ACL to answer the plaintiff's interrogatories from documents and information that existed outside Quebec but that ACL did not have to answer the interrogatories from documents and information contained within Quebec. *Id.* at pp. 3-4.

Similarly in *Maryland v. Keene Corp.*, No. 1108600 (Md. Cir. Ct. July 10, 1986), a copy of which is attached as Exhibit 15, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 15, at pp. 1-2. The *Keene* court concluded that because the QBCRA's potential penalties were "an annoyance, embarrassment and undue burden" to ACL, the court was "not convinced that it [wa]s necessary for ACL to face" the QBCRA's sanctions. *Id.* at p. 2. The court ordered that any of ACL's United States-based documents and information were discoverable but that "ACL's Canadian documents should enjoy the full protection which this Court can afford to them...." *Id.* at 3.

Further, in *Fears v. Cassair Mining, Corp.*, No. 91-98C(5) (E.D. Mo. Jan. 5, 1993), a copy of which is attached as Exhibit 16, the U. S. District Court for the Eastern District of Missouri did not find the analysis in *Lyons* persuasive because it did not deal with the Canadian courts' interpretation of the QBCRA or with the prior rulings of American courts. Rather, it adopted the

Jenness and *Keene* courts’ reasoning, concluding that “the approach taken by [those] courts is equitable and just in that it provides a broad opportunity for plaintiffs to achieve the discovery to which they are entitled without exposing [ACL] to criminal sanctions in Quebec.” Exhibit 16, at p. 3. The *Fears* court allowed discovery into ACL’s documents and information contained in the United States but upheld the QBCRA’s prohibition on discovery into ACL’s Quebec documents and information. *Id.*

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

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

1. Topics

Virtually all of these Topics seek information relating to Atlas Turner’s activities from many years ago, and Atlas Turner either has no relevant documents or is prevented from providing information from any existing documents because of the QBCRA. In fact, the company has been closed since 1986. See Exhibit 7 at ¶ 10. Also, Atlas is unaware of any individual with personal knowledge of these Topics from whom it can obtain this information; and, to the extent that relevant records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec. See Exhibit 7 at ¶¶ 14 and 15. Atlas is prohibited by the QBCRA from providing any information gleaned from its company records and other documents located in Quebec, or even acknowledging the existence of the information and documents, and therefore cannot respond under threat of criminal prosecution. Thus, notwithstanding any other objections to particular topics, Atlas is between the proverbial “rock

and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties.

2. Requests for Production

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

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

Atlas Turner is not a typical asbestos defendant. Because it faces criminal penalties if it violates the QBCRA, it should be treated with deference. Consequently, this Court should make a comity analysis using the factors set forth in *Societe Nationale Industrielle Aerospatiale v. United States District Court for Southern District of Iowa*, 482 U.S. 522, 107 S.Ct. 2542 (1987) (*Aerospatiale*) and Restatement (Third) of Foreign Relations Law of the United States, § 442 (1987) (Restatement).⁹ In *Aerospatiale*, the Supreme Court dealt with a French “Blocking

⁹ Atlas Turner is aware of at least one decision in South Carolina in which the court referenced *Aerospatiale* in relation to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384

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

A comity analysis using the factors set forth in *Aerospatiale* supports deferential consideration for Atlas Turner. As for the second factor – the degree of specificity – many of plaintiffs’ requests are overly broad. For example, Topic 66 asks: beginning in the year that Defendant first manufactured, marketed, produced...sold...any asbestos-containing products and continuing through the present day, the identity [sic] each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person’s current or last known address and whether the person is currently alive or dead, if known. Also Topic 70 is “All information relating to the Defendant’s knowledge of asbestos.” As for the third factor – the origination of the information – this factor weighs heavily in favor of Atlas Turner since the information sought did not originate in the United States. As for the fourth factor – the availability of alternative means for securing the information – this factor weighs in favor of Atlas Turner as will be discussed below.

(D.S.C. 1988). In addition, the court in *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992) ruled unfavorably as to the QBCRA. See footnote 8 in this Memorandum. These two cases are not binding on this Court. This Court should adopt the reasoning set forth in *Fears, Jenness and Keene*.

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

Plaintiffs have a number of alternative U.S. sources for many of the documents and much of the information contained therein which they seek here. Atlas Turner has no business records or other responsive documents in the United States in its possession, custody, or control. However, plaintiffs' counsel, who are sophisticated and a premier asbestos plaintiffs' law firm, undoubtedly have access to purported Atlas documents collected by other asbestos plaintiff's counsel around the country in various lawsuits ("Repositories"). Plaintiffs' counsel could also obtain various depositions that were taken many years ago. Further, plaintiffs can obtain, or have obtained in the past, information from co-defendants' document productions, including co-defendants Daniel International and Pharmacia (Monsanto). If plaintiffs' counsel have any relevant documents, Atlas Turner requests that they produce these documents. Plaintiffs should be able to obtain information they seek without exposing Atlas Turner to potential criminal penalties. Discovery should be the retrieval of available information from the least burdensome source.¹⁰

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

After the party seeking the protective order demonstrates good cause by showing a particularized harm from the discovery, the party seeking the discovery must come forward and show that the information sought is "both necessary and relevant" to the case. *Hamm*, 312 S.C. 238, 242, 439 S.E.2d 854. Because the Court lacks personal jurisdiction over Atlas Turner, Plaintiffs can make no such showing. As Atlas Turner shows in its Motion to Dismiss and Amended Memorandum in Support, as well as in its Motion for Summary Judgment and

¹⁰ Atlas Turner reserves the right to serve additional objections to the 30(b)(6) Notice should the Court order that a deposition may go forward.

supporting Memorandum with exhibits, this action should be dismissed pursuant to South Carolina law and the Due Process Clause of the United States Constitution. Further, Plaintiffs have alternative sources for information and documents they seek from Atlas Turner. Plaintiffs have not demonstrated a basis for jurisdictional discovery, much less a need for merits discovery in this action, and cannot show that the discovery they seek through the 30(b)(6) Notice is necessary and relevant to the case, nor that it is narrowly tailored to the allegations in the Third Amended Complaint.

CONCLUSION

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

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

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

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April 3, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MELVIN G. WELCH and DONNA B. WELCH,	)	C.A. NO. 2022-CP-40-03834
	)	
Plaintiffs,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
3M COMPANY et al.	)	
	)	
Defendants.	)	
	)	
	)	

PLAINTIFFS' OPPOSITION TO DEFENDANT ATLAS TURNER, INC. AND ATLAS ASBESTOS CO.'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS

Plaintiff Melvin G. Welch and Donna B. Welch hereby oppose the motion for summary judgment filed by defendant Atlas Turner, Inc., as successor to Atlas Asbestos Co., and would respectfully show that the motion should be denied.

INTRODUCTION

Plaintiff Melvin G. Welch suffers from malignant mesothelioma caused, at least in part, by exposure to asbestos while working at the Monsanto chemical plant in Greenwood, South Carolina starting in the mid-1960s. Before that, Welch's father also worked as a welder at the same plant and brought home asbestos dust on his clothing that Welch was exposed to. Defendant Atlas Turner, Inc. is the successor to Atlas Asbestos Co., which was a Canadian company that supplied asbestos insulation products—Newtherm and Limpet—to two major insulation contractors that provided services and product at the Monsanto plant. Atlas moves for summary judgment on various grounds, arguing: (1) lack of personal jurisdiction; and, (2) lack of evidence that Welch was exposed to any its asbestos insulation products.

Neither of Atlas's arguments have merit. Atlas long ago waived its contention that this Court lacks personal jurisdiction. There is also substantial evidence establishing that Welch had significant occupational exposure to asbestos insulation products—particularly “Newtherm” asbestos pipe covering—supplied by Atlas while working at the Monsanto plant. Such evidence is more than sufficient to raise triable issues with regard to Welch's exposure to Atlas's asbestos insulation materials. Atlas has also so far refused to provide the Welches with any current deposition discovery, thus justifying either a denial or continuance of Atlas's motion under Rule 56(f) until such discovery is completed. The Welches request this Court to deny Atlas's motion for summary judgment or, alternatively, continue it until the Welches have had a full and fair opportunity to conduct the necessary discovery.

STATEMENT OF FACTS¹

A. Welch's Exposure to Asbestos While Working at the Monsanto Plant

Melvin Welch completed the 10th grade in 1965 and went to work for Daniel Construction Company at the Chemstrand, or Monsanto, plant in Greenwood, South Carolina. **Ex. 1**, Depo. of Welch, 10/7/22 a.m. session, at pp. 18-19; **Ex. 2**, Depo. of Welch, 10/7/22, p.m. session, at p. 15. He worked there through 1966 as an instrument installation specialist helper. **Ex. 1** at p. 26. The work involved building instrument panels for the plant, which was involved in construction at the time to double its size. *Id.* at p. 27. As Welch described it, “we would put the gauge in and run—sometimes we'd have to run a piece of copper tubing, maybe a quarter-inch copper tubing, maybe an inch, or maybe 20 inches, and maybe put a little bend in it, and that was it.” *Id.* at p. 27. Welch further testified, however, that he worked “every day” around various other trades, including

¹ All exhibit references are to the Master Exhibits for the responses in this case.

electricians, pipefitters, insulators, welders, and boilermakers; “[j]ust anything that involved in building a plant.” *Id.* at p. 28.

Welch explained that insulator contractors at the plant “were insulating all the pipes running overhead in the plant that carry liquids and fluids and whatever. It was from a half-inch pipe up to probably a 40-inch pipe.” *Id.* at p. 29. Welch explained, on cross-examination, that there were “miles of pipe being insulated at the Monsanto plant when [he] worked there.” **Ex. 2**, p. 16. He was present when the insulators installed and cut insulation:

- “Q. Were you present when the insulators were cutting insulation?
- A. Yes.
- Q. And you were near them when this was taking place?
- A. Yes, they were overhead.
- Q. Okay. What did the insulators use to cut the insulation?
- A. They had some jaggedy looking handsaws.
- Q. And what did the air look like around you when the insulators cut the insulation?
- A. It was dusty, snowy-looking.
- Q. Okay. And did you breathe that dust?
- A. Yes.” **Ex. 1**, at pp. 29-30.

The insulation was white in color and came in approximately three-foot sections shaped like a tube. **Ex 3**, Depo. of Welch, 10/14/22 p.m. session, at p. 15. Welch explained that he worked within 10 feet of the insulators on a regular basis throughout the time he was at the plant. *Ibid.* Welch testified that he was also nearby when the insulators “cleaned up” in his work environment using a dust pan and broom, a process that also created dust that he inhaled on a “regular basis.” **Ex. 2**, p. 19; **Ex. 3**, p. 17.

By the time Welch went to work at the Monsanto plant, his father had already worked there for years as a pipefitter/welder and was also routinely present for the same dusty insulation work. **Ex. 2**, p. 23. His father always wore his work clothes and did not change them before arriving

home. **Ex. 3**, p. 22. When they worked together, they would also ride home together in the car every day. *Ibid.*

Welch's employer at Monsanto (Daniel Construction) never provided him with any information with regard to the risk of exposure to asbestos from his father or others in the workplace. **Ex. 3**, p. 23. Welch testified that he was never given any respiratory protection when he worked at the plant, was not aware that Daniel Construction ever held any safety meetings, and never saw any signs that the plant warning about asbestos hazards. **Ex. 2**, at p. 30.

B. Atlas Supplied Asbestos Insulation Used At the Monsanto Plant.

"Newtherm" was the brand or type of asbestos pipe covering that Atlas sold. Atlas's sales materials establish that Newtherm insulation was, as Welch described, sold in three foot lengths, contained "hydrous calcium silicate and asbestos fibers," and could be cut by a saw. **Ex. 19**, Atlas catalog, p. 2. Atlas shipped its Newtherm insulation materials all over the United States, including to South Carolina. *Ibid.*

Defendants Guy M. Beaty Co. and Covil Corporation were two major insulation contractors in South Carolina who provided services at the Monsanto plant. An Atlas invoice from 1967 shows that Atlas sold Newtherm pipe covering insulation to Beatty. **Ex. 17**, Atlas Invoice, 2/23/67. Atlas's corporate representative, Andrew Richardson, also confirmed that Beaty purchased Newtherm insulation materials from Atlas. **Ex. 18**, Depo. of Richardson, 5/11/87, pp. 91-92.

Although Atlas claims that it has no records prior to 1968, it specifically lists both Beaty and Covil as "customers in the Southeast United States to whom Atlas sold asbestos insulation." **Ex. 13**, Customer list 1968; **Ex. 14**, Customer list 1968-1969. These customer lists identify "Newtherm" pipe covering insulation supplied by Atlas to both Beaty and Covil. *Ibid.* There is

also evidence that Atlas insulation mortar mix was used by Daniel Construction at the Monsanto plant. **Ex. 15**, Carolina Castor Invoice. Records from Covil further establish that it purchased “Newtherm” pipe covering materials from Beaty. **Ex. 16**, Covil purchase order.

Atlas also sold an sprayed asbestos insulation product known as “Limpet.” **Ex. 20**, Limpet picture. Documentary evidence establishes that sprayed insulation was also used at the Monsanto plant. **Ex. 21**, Bahnson work order; **Ex. 22**, Bahnson equipment list.

C. Welch Developed and Died of Mesothelioma Caused By His Exposures To Asbestos.

In a report dated January 18, 2023, plaintiffs’ medical expert, Dr. Brent C. Staggs, M.D., confirmed Welch’s diagnosis of malignant mesothelioma. **Ex. 4**, Staggs Report, p. 1. Dr. Staggs reviewed various medical records, including Welch’s clinical history, radiologic records, pathology reports, and pathology slides. *Id.* at pp. 2-4. Based on his review of those materials, and to a reasonable degree of medical certainty, Dr. Staggs opined that Welch suffers from malignant mesothelioma of the pleura. *Id.* at p. 4. Dr. Staggs further noted that Welch’s work history “identifies a significant history of asbestos exposure” and that Welch developed mesothelioma “after an appropriate latency period following his first known exposures to asbestos. *Ibid.* Dr. Staggs concluded that “[m]esothelioma is caused by the totality of asbestos exposures, often called cumulative dose, that an individual is exposed to over his or her lifetime,” and “[i]t is my opinion to a reasonable degree of medical certainty that Mr. Welch has a malignant mesothelioma that was caused by these identified and substantial exposures to asbestos.” *Id.* at p. 5.

Another medical expert, Dr. Arthur L. Frank, M.D., Ph.D., opined that, “Mr. Welch “was exposed to asbestos through is work for Daniel[] Construction at the Chemstrand facility in

Greenwood, South Carolina, from 1965 or 1966 into 1967.” **Ex. 5**, Frank Report, p. 1. Dr. Frank further noted that “it is my opinion, held with a reasonable degree of medical certainty, that Mr. Welch developed a malignant pleural mesothelioma as a result of his exposures to asbestos. The cumulative exposure he had to asbestos, from any and all products, containing any and all fiber types, in any and all settings, including those noted above, would have contributed. All of his exposures would have been at levels above backgrounds, would have been medically significant, and therefore medically causative of his mesothelioma.” *Id.* at p. 2.

ARGUMENT and AUTHORITIES

A. Atlas’s Motion Should Be Denied or Continued Under Rule 56(f).

As a threshold matter, Atlas’s motion is premature because the Welches have not had a full and fair opportunity to develop their case against Atlas or to conduct the discovery necessary to fully respond to this motion for summary judgment. Without discovery and depositions from Atlas, the Welches cannot fully and most effectively oppose this motion. **Ex. 23**, Branham Affidavit. Atlas’s motion should therefore be denied under Rule 56(f), SCRCP.

Rule 56(f) provides that “[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.” Rule 56(f), SCRCP. Here, Atlas has so far refused to produce a corporate representative for deposition on any topics.

It is well-established that summary judgment is a “drastic remedy” that should be cautiously invoked so no party will be improperly deprived of a trial of the disputed factual issues. *Baughman v. AT&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991); *Cunningham v.*

Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003). Because summary judgment is a drastic remedy, non-movants should have a full and fair opportunity to conduct discovery before the court grants a motion for summary judgment. *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543; *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). This means that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery, and a trial court's decision to the contrary constitutes reversible error. These cases demonstrate that South Carolina trial courts should routinely reject motions for summary judgment as improper when the non-movant has had no opportunity to participate in discovery.

In *Baughman*, the court reversed a grant of partial summary judgment as premature prior to the completion of discovery. 306 S.C. at 112, 410 S.E.2d at 543. The trial court had granted defendant's motion for partial summary judgment because plaintiff's expert failed to establish the requisite standard of care. *Id.* at 111, 410 S.E.2d at 543. However, plaintiff argued that further discovery was necessary prior to granting partial summary judgment to defendants on the issue of liability. *Id.* at 112, 410 S.E.2d at 543. The Supreme Court agreed, holding that the discovery was needed to properly develop the record on this issue prior to a grant of partial summary judgment. Hence, the Supreme Court reversed the grant of partial summary judgment based on the fact that plaintiff had not been afforded the full and fair opportunity to conduct discovery on the issue. *Id.*

This Court should deny or continue Atlas's motion as the Welches have been unfairly denied a full and fair opportunity to conduct discovery regarding Atlas's sale and/or supply of asbestos insulation to contractors in South Carolina—including defendants Guy M. Beatty Co. and Covil Corporation—that provided services at the Monsanto plant. Atlas has also refused to make its corporate representative available for deposition. The Welches anticipate that such information

sought from Atlas with regard to its supply of asbestos insulation materials used at the Monsanto plant is relevant and probative to their case. Should this Court have any concerns about the sufficiency of the current record to create a fact issue for the jury, it is only fair to delay ruling until discovery has been completed against the Atlas defendants.

B. Atlas Forfeited Its Meritless Objections To Personal Jurisdiction.

The law is well-settled that any alleged lack of personal jurisdiction may be waived or forfeited. *Ex parte Cannon*, 385 S.C. 643, 654, 685 S.E.2d 814, 820 (Ct. App. 2009). Under Rule 12(h)(1), a defense is waived if “it is neither made by motion under this rule or included in a responsive pleading or an amendment.” In interpreting this rule, our Supreme Court more recently confirmed that objections based on personal jurisdiction may be waived if a party continues to participate in litigation after challenging personal jurisdiction in their initial responsive pleading to the court. *Maybank v. BB&T Corp.*, 416 S.C. 541, 565-66, 787 S.E.2d 498, 510-11 (2016), *reh’g denied* (July 13, 2016).

In *Maybank*, the defendant raised, albeit untimely, the defense of lack of personal jurisdiction in its answer. *Id.* at 566, 787 S.E.2d at 511. The defendant did not wait for the trial court to rule whether it could properly exercise personal jurisdiction and instead continued to litigate the case. *Ibid.* After actively litigating for more than a year, the defendant then reasserted the defense only a month before trial. *Ibid.* The Supreme Court found that the defendant “gambled that it could argue personal jurisdiction on the eve of trial after actively participating in litigation,” and that under those circumstances it was within the trial court’s discretion to find that its personal jurisdiction defense had been waived. *Id.*

Here, Atlas concedes that this Court has not yet heard its motion to dismiss for lack of personal jurisdiction. Atlas has, in the meantime, continued to litigate the case. As in *Maybank*,

Atlas gambled that it could participate here (and even move for summary judgment) without getting a ruling on its personal jurisdiction defense. If Atlas believed the Court lacked jurisdiction, it should have sought an immediate ruling. As it stands, Atlas let time pass while actively participating in the case.

In interpreting Rule 12(h)(1), the Supreme Court noted that the rule was substantially similar to the Federal Rules of Civil Procedure and that it looks for guidance in federal case law when construing similar South Carolina rules. *Maybank*, 416 S.C. 541, 565, 787 S.E.2d 498, 510. In construing Federal Rule of Procedure 12(b), federal courts have consistently held that an objection to personal jurisdiction is waived through active participation in the case. “Most defenses, including the defense of lack of personal jurisdiction, may be waived as a result of the course of conduct pursued by a party during litigation.” *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 2009). “In the absence of a motion to dismiss, a party’s continued participation in litigation is inconsistent with an assertion of lack of personal jurisdiction.” *Hunger U.S. Special Hydraulics Cylinders Corp. v. Hardie-Tynes Mfg. Co.*, 203 F.3d 835 (10th Cir. 2000) (upholding denial of motion to dismiss for lack of personal jurisdiction due to defendant’s failure to raise the issue until the end of the case).

Indeed, delaying resolution of the threshold issue of personal jurisdiction manifests an intent to submit to the court’s jurisdiction. *See Cont’l Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993) (holding that defendant forfeited its personal jurisdiction defense by participating in discovery and motion practice); *see also Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 60–62 (2d Cir. 1999) (finding that the defendant forfeited his personal jurisdiction defense where it “participated in pretrial proceedings but never moved to dismiss for lack of personal jurisdiction despite several clear opportunities to do so”); *Subway Int’l B.V. v. Bletas*, No. 3:10-CV-01714

PCD, 2011 WL 3511467, at *3 (D. Conn. Aug. 11, 2011), *aff'd*, 512 F. App'x 82 (2d Cir. 2013) (the defendant's participation in a settlement conference resulted in waiver of its personal jurisdiction defense); *In re Complaint of Rationis Enterprises, Inc. of Panama*, 210 F. Supp. 2d 421, 426 (S.D.N.Y. 2002) (waiver found when personal jurisdiction raised in answer but defendant participated in discovery and waited a year to bring a motion to dismiss).

Branson v. American International Industries, No. 1:15CV73, 2016 WL 3190222 (M.D.N.C. June 7, 2016), is particularly instructive. *Branson* was an asbestos case in which two talc defendants raised lack of personal jurisdiction in their answer, but then, as here, actively participated in the litigation. *Id.* at *2. The defendants filed their answers (albeit late) and included lack of personal jurisdiction “[a]s one of a legion of boilerplate defenses [] without factual support.” *Id.* at *6. The defendants then participated in the federal Rule 26(f) conference and agreed upon a discovery plan in the case and helped choose a mediator under the Court's alternative dispute resolution procedures. *Id.* at *2, *6. Almost six months after they had answered, they finally filed motions to dismiss for lack of personal jurisdiction in January 2016. *Id.* The court found the motions untimely. *Id.* at *3, *5-6. The jurisdictional motions were too late because less than half the discovery period remained and that the defendants had bypassed multiple opportunities to ask for resolution of their jurisdictional defense. *Id.* at *7.

Forfeiture of the personal jurisdiction defense was similarly found in an asbestos case in Rhode Island. *See Bazor v. Abex Corp.*, No. PC-10-3965, 2016 WL 2594665, at *5-6 (R.I. Super. Ct. May 2, 2016). There, the defendant raised lack of personal jurisdiction in its answer but failed to seek dismissal for more than two years, and after it had already participated in discovery. *Id.* The lengthy delay in seeking dismissal, combined with the defendant's participation in depositions and status conferences, convinced the court that the defendant had forfeited its personal

jurisdiction defense. *Id.* at *6. *See also Pullar v. Cappelli*, 148 A.3d 551 (R.I. 2016) (holding that a defendant forfeits the defense of lack of personal jurisdiction when the defendant, through delay or conduct, gives a plaintiff reasonable expectation that it will defend the suit on the merits or causes the court to go to some effort that would be wasted if personal jurisdiction is later found lacking).

Here, Atlas attempts to do exactly what the case law prohibits. It sat on its jurisdictional allegations throughout the entire case, and only on the eve of trial has it asked the Court to decide the merits of the defense. As in *Maybank* and numerous other federal court cases, Atlas forfeited its jurisdictional defense by its substantial delay in seeking a ruling and by engaging in conduct inconsistent with the defense.

C. Atlas Failed to Meet Its Burden On Summary Judgment To Show No Genuine Issues of Material Fact As To Welch’s Exposure to Asbestos Products It Supplied for Use at the Monsanto Plant.

Again, “[s]ummary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues.” *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Under SCRCP 56, summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Cafe Assocs. Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). As a threshold matter, the moving party has the burden to establish the absence of a genuine issue of material fact. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).

In determining whether such a genuine question of fact exists, the court must view the evidence, and all inferences reasonably drawn from it, in the light most favorable to the nonmoving

party. *Faile v. S. C. Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 443 S.E.2d 392 (1994). Summary judgment should be denied unless reasonable minds cannot differ on plain, palpable, and indisputable facts. *See Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

Here, Atlas failed to meet its initial burden to show the absence of genuine issues of material fact. In order for a claim of workplace asbestos exposure to be actionable, the plaintiff need only establish sufficient proximate cause between the injury and exposure to asbestos from a particular product. *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185 (2007). Atlas offers no evidence suggesting that it did not supply any of the asbestos insulation materials used by contractors at the Monsanto plant. Atlas does not dispute Welch's testimony with regard to his exposure to such materials or the role such exposure had in causing his mesothelioma. In essence, Atlas provides nothing to demonstrate that Welch was not exposed to any of the asbestos materials that it supplied. Atlas also provides no evidence suggesting that it ever provided any warning, let alone an adequate one, regarding the dangers associated with asbestos insulation materials or dust-creating installation methodologies. Atlas thus fails to show any lack of genuine issues of material fact with regard to the Welches' claims.

Moreover, the Welches' evidence further demonstrates the existence of such genuine fact issues. Welch's deposition testimony establishes that he frequently (on a daily basis) worked below asbestos insulation workers (and the attendant dust) at the Monsanto plant. Extensive documentary evidence from Atlas, as well as Beatty and Covil, establish that Atlas's "Newtherm" brand pipe covering was used at the plant. Welch's occupational exposure to dust from the

installation, removal, and or manipulation of asbestos-containing Newtherm insulation material more than satisfies the “frequency, regularity and proximity” factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). And when a plaintiff is exposed to asbestos from multiple sources, causation may be shown with evidence that exposure to a particular product was a substantial factor in the development of the plaintiff’s disease. *Jolly v. General Elec. Co.*, 435 S.C. 607, 625, 869 S.E.2d 819, 829 (Ct. App. 2021). “[T]he substantial factor test relaxes the ‘but-for’ requirement of traditional tort cases” *Id.* at 626. “To support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.” *Id.* quoting *Lohrmann*, 782 F.2d at 1162.

The exposure standard is met here. There is evidence that Welch was regularly around dust generated by Newtherm asbestos materials that Atlas supplied during the relevant time period. There is no dispute that cutting, installing, and otherwise manipulating asbestos insulation created dust that Welch inhaled. Such frequent, regular, and proximate exposure is more than sufficient to support a jury’s finding exposure to asbestos products supplied by Atlas contributed to causing Welch’s mesothelioma. Combined with Atlas’s failure to provide any evidence that it warned workers like Welch and/or his father about the hazards of such dust, and Dr. Staggs’s and Dr. Frank’s causation opinions, plaintiffs’ evidence is more than sufficient to raise multiple genuine issues of material fact that preclude summary judgment.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request this Court to deny Atlas’s motion for summary judgment.

Respectfully submitted,

/s/ Aaron D. Chapman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this 12th day of April 2023.

/s/ Aaron D. Chapman

EXHIBIT 1

In the Matter Of:
Melvin G. Welch, et al.
VS
3M Company, et al.

Melvin Welch
October 07, 2022



Melvin Welch
October 07, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2020-CP-40-03834

CERTIFIED COPY

Melvin G. Welch and
Donna B. Welch,

Plaintiffs,

vs.

3M Company f/k/a Minnesota
Mining and Manufacturing
Company, et al,

Defendants.

VIDEOTAPED REMOTE DEPOSITION OF MELVIN WELCH

DATE TAKEN: October 7, 2022

TIME BEGAN: 10:16 a.m.

TIME ENDED: 2:15 p.m.

LOCATION: 110 McGowan Avenue
Abbeville, South Carolina 29620

REPORTED BY: Traci L. Barr

VIDEOTAPED BY: Alan Metts



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(It is hereby stipulated and agreed by
and among counsel for the respective parties
that this deposition is being taken in
accordance with the South Carolina Rules of
Civil Procedure, and that the deponent does
not waive reading and signing of this
deposition.)

- - -

THE VIDEOGRAPHER: Good morning. We are on the record.

The date today is October 7, 2022, and the time
is approximately 10:16 a.m. This is the
video-recorded deposition of Melvin G. Welch
being taken in the matter of Melvin G. Welch and
Donna B. Welch, plaintiffs, versus 3M Company,
defendant. This deposition is being held at 110
McGowan Avenue, Abbeville, South Carolina, and is
being taken by counsel for the plaintiff. My
name is Alan Metts, a legal videographer,
representing GPS, LLC. The court reporter is
Traci Barr, representing GPS, LLC. All counsel
will be reflected on the stenographic record.
Will the court reporter now please swear in the
witness?

MELVIN G. WELCH, after having been first
duly sworn, was examined and testified as



1 follows:

2 EXAMINATION

3 BY MS. SIMON:

4 Q. Good morning, Melvin. How are you?

5 A. I'm doing pretty well this morning. Thank you
6 for asking.

7 Q. Good. I'm just going to get a couple of
8 housekeeping matters on the record real quick
9 before we get going here.

10 A. Okay.

11 MS. SIMON: This deposition is going to be taken
12 pursuant to the South Carolina Rules of Civil
13 Procedure, and one objection will be good for
14 all.

15 And, Yancey, I believe I cleared up the issues on
16 my end. We're good with the video and discovery.
17 So that being said, do defendants have anything
18 they need to get on the record?

19 DEFENSE ATTORNEY: Sure, Dana. Typically, we'll put
20 sort of a global objection. Defendants are
21 appearing, cooperating, understanding that Mr.
22 Welch is ill. We're not appearing -- our
23 appearance doesn't -- we're not intending to
24 waive any defenses, including personal
25 jurisdiction, subject matter, that sort of thing.

1 That's really all I have. If anybody else wants
2 to chime in, feel free.

3 DEFENSE ATTORNEY: One objection is good for all?

4 MS. SIMON: Yes. I said that, so yeah.

5 MR. REID: Thank you. Sorry.

6 MS. SIMON: No, no problem.

7 EXAMINATION

8 BY MS. SIMON:

9 Q. Alrighty, Melvin, we'll get started.

10 Would you introduce yourself to the members of
11 the jury?

12 A. My name is Melvin G. Welch. I live in Abbeville,
13 South Carolina.

14 Q. Alrighty. And where are you today?

15 A. I am at 116 McGowan Avenue in Abbeville, South
16 Carolina.

17 Q. All right. Are you nervous?

18 A. Not really.

19 Q. Okay. I'm impressed. All right. Well, I'm
20 going to start off with an easy question anyway.

21 A. All right.

22 Q. Where were you born?

23 A. All right.

24 Q. Where were you born, Melvin?

25 A. I was born in Woodbury, New Jersey.

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1 Q. Alrighty.

2 MS. SIMON: And if we could put Exhibit 1 up on the
3 screen, please.

4 Do we have somebody handling exhibits? Oh, there
5 we go.

6 EXAMINATION RESUMED

7 BY MS. SIMON:

8 Q. Can you see that, Melvin?

9 A. I sure can.

10 MS. SIMON: All right. That will be marked as Exhibit
11 1.

12 (Exhibit Number 1 marked for
13 identification.)

14 EXAMINATION RESUMED

15 BY MS. SIMON:

16 Q. And who is that handsome couple?

17 A. It's my wife and myself.

18 Q. And what is your wife's name?

19 A. Her name is Donna.

20 Q. And have you and Donna been together most of your
21 life?

22 A. At least that long.

23 Q. Okay.

24 MS. SIMON: And we can go ahead and take the exhibit
25 down. Thank you.



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EXAMINATION RESUMED

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BY MS. SIMON:

Q. And, Melvin, do you and Donna have any children together?

A. We do. We have a daughter.

Q. Okay. And what is your daughter's name?

A. Her name is Crystal Lee Welch.

Q. Alrighty. And I do want to talk more to you about your family and life, but let's start by getting an understanding why we're doing this today. Okay?

A. All right.

Q. Do you know why you're giving a deposition today?

A. Because I was diagnosed with mesothelioma.

Q. And do you remember when you were diagnosed with mesothelioma?

A. I believe it was June.

Q. And what's your understanding of what causes mesothelioma?

A. What I've been told and I understand is it's caused by asbestos dust.

Q. Okay. Have you thought about when and where in your life you were exposed to asbestos?

A. Yes.

Q. Where do you think you were exposed to asbestos?



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1 A. At Chemstrand in Greenwood, South Carolina, and
2 at several different garages that I worked in as
3 a brake mechanic.

4 Q. Okay. So let's first talk about your employment
5 history throughout your life.

6 Did you graduate high school?

7 A. No.

8 Q. Okay. What grade did you go through?

9 A. I went through the 10th grade.

10 Q. Okay. And when did you complete the 10th grade?

11 A. In 1965.

12 MS. SIMON: Oops. I don't know if anybody else is
13 having -- okay.

14 EXAMINATION RESUMED

15 BY MS. SIMON:

16 Q. Do you mind repeating that again, Melvin? It
17 froze for a little bit.

18 A. 1965.

19 Q. Okay. Where did you work after completing the
20 10th grade?

21 A. I went to work for Daniels Construction Company.

22 Q. And do you recall when that was?

23 A. 1965, 1966.

24 Q. Okay. And is the Chemstrand plant in Greenwood,
25 South Carolina, is that the same as the Monsanto



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1 plant?

2 A. Yes.

3 Q. Okay. What did you do for Daniel Construction
4 out at the Chemstrand plant?

5 A. For Daniel Construction, I was hired as an
6 instrument installation and calibration
7 specialist helper.

8 Q. Okay.

9 A. Yeah, big long title.

10 Q. That's a mouthful. Okay.

11 And after working for Daniel Construction, where
12 did you work after that?

13 A. I went to work for Uncle Sam. I went in the air
14 force.

15 Q. Okay. What did you do for Uncle Sam?

16 A. I went in the air force. I was an aerospace
17 ground equipment repairman, is what I was trained
18 to be.

19 Q. Okay. After being discharged from the air force,
20 where did you work?

21 A. After I went -- got out of the air force, I went
22 to work for a small little gas station for a very
23 short time. Then I went to work for Torrington
24 Specialties Company.

25 Q. Okay. What did you do at the small gas station?



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1 A. I pumped gas and sold cigarettes.

2 Q. Okay.

3 A. For 19 cents a gallon.

4 Q. Alrighty. And then you mentioned Torrington.
5 Where was that located?

6 A. Torrington is in Honea Path, South Carolina.

7 Q. And do you remember about how long you worked for
8 Torrington or when you worked there?

9 A. Not exactly when, but I worked there
10 approximately seven years.

11 Q. Okay. So would it be fair to say you got out of
12 the air force in about 1970?

13 A. Yes.

14 Q. Okay. So -- and please correct me if I'm wrong,
15 but would it be fair to say you worked at
16 Torrington from approximately 1970 to 1977?

17 A. Yes.

18 Q. Okay. What did you do at Torrington?

19 A. Torrington, I operated a machine that made a
20 small little shaft that your speedometer needle
21 sets on inside of the speedometer in the car.

22 Q. Okay. I'm sorry.

23 And when you worked at Torrington, do you recall
24 any construction or repair work taking place?

25 A. No.



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1 Q. Can you tell me whether you worked with or around
2 asbestos-containing materials at Torrington?

3 A. No.

4 Q. No, you didn't, or no, you can't tell me?

5 A. As far as I can remember, I didn't.

6 Q. Okay. And where did you work after Torrington?

7 A. I went to work for Kmart --

8 Q. And --

9 A. -- in Greenwood, South Carolina.

10 Q. My apologies. I'm sorry. I keep talking over
11 you.

12 A. That's okay. I'm sorry.

13 Q. And so would you have started at Kmart in
14 approximately 1977?

15 A. Yes.

16 Q. And about how long did you work there?

17 A. I worked there a little over five years.

18 Q. Okay. So until about 1982?

19 A. Yes.

20 Q. Okay. What did you do at Kmart?

21 A. Kmart, I was a mechanic, and they had a training
22 system which trained each mechanic. They sent us
23 to Atlanta for schools, and I became
24 ASE-certified in brakes and front ends. That was
25 my major job.



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- 1 Q. Alrighty. And we'll talk more about that later
2 on.
- 3 A. Okay.
- 4 Q. Where did you work after Kmart?
- 5 A. Kmart. I went to M&M Tire.
- 6 Q. So would you have started there in about 1982?
- 7 A. Approximately.
- 8 Q. And how long did you work at M&M Tire?
- 9 A. Four years.
- 10 Q. And what did you do there?
- 11 A. I was the mechanic.
- 12 Q. Okay. So if you were there four years, that
13 would have been until about 1986?
- 14 A. Yes.
- 15 Q. Okay. And after M&M Tire, do you remember where
16 you worked?
- 17 A. I went to work for Western Auto.
- 18 Q. Okay. And did you work for Western Auto more
19 than one time?
- 20 A. Yes.
- 21 Q. Okay. Approximately how long did you work at
22 Western Auto the first time?
- 23 A. Approximately seven years.
- 24 Q. Okay.
- 25 A. Seven or eight.



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- 1 Q. So would it be --
- 2 A. Yeah. I'm sorry.
- 3 Q. Go on.
- 4 A. I'm sorry.
- 5 Q. No, no. Were you finished your answer?
- 6 A. Yes. I was going to say seven or eight years.
- 7 Yeah.
- 8 Q. Okay. So would it be fair to say the first time
- 9 you were at Western Auto, it would have been
- 10 between, say, 1986 to 1994?
- 11 A. Yes.
- 12 Q. Okay. And how long did you work at Western Auto
- 13 the second time?
- 14 A. Approximately seven years.
- 15 Q. Okay. And what did you do at Western Auto?
- 16 A. I was the shop foreman.
- 17 Q. Okay. After Western Auto -- after you worked at
- 18 Western Auto the first time, where did you work?
- 19 A. I opened my own shop.
- 20 Q. And what was it called?
- 21 A. Double Diamond Autoplex.
- 22 Q. Alrighty. And after your -- and then you went
- 23 back to Western Auto after that --
- 24 A. Yes.
- 25 Q. -- is that right?



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- 1 A. Yes.
- 2 Q. And how long did you work at Double Diamond?
- 3 A. Approximately 22 months.
- 4 Q. Okay. And so that would take us up to about 1994
- 5 to 1996. Does that sound right?
- 6 A. Yes.
- 7 Q. Okay. And then after working at Western Auto the
- 8 second time, where did you work?
- 9 Did you go work at Firestone?
- 10 A. Yes.
- 11 Q. Okay.
- 12 A. Yes. Uh-huh.
- 13 Q. And what did you do at Firestone?
- 14 A. I did brakes and front-end alignments.
- 15 Q. Do you remember about how long you worked at
- 16 Firestone?
- 17 A. I believe it was four years.
- 18 Q. All right. And where, after Firestone, did you
- 19 work?
- 20 A. I believe I went to Kelly's Texaco.
- 21 Q. Okay. Before going to Kelly's Texaco, can you
- 22 tell me whether or not you worked at Abbeville
- 23 Auto Repair?
- 24 A. Yes. I opened it up for a brief time.
- 25 Q. Okay. About how long were you at Abbeville Auto



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- 1 Repair?
- 2 A. Maybe two years.
- 3 Q. Okay. And what did you do there?
- 4 A. I was the mechanic.
- 5 Q. Okay. And then did you go to Kelly's Texaco
- 6 after that?
- 7 A. Yes.
- 8 Q. Okay. And about how long did you work at Kelly's
- 9 Texaco?
- 10 A. Approximately two years.
- 11 Q. And what did you do at Kelly's Texaco?
- 12 A. I did front-end alignments. I did brakes. I did
- 13 exhausts. I did oil changes. I did tires. I
- 14 think that's about it.
- 15 Q. And where did you work after Kelly's Texaco?
- 16 A. After Kelly's, I believe I went to C. Thompson
- 17 Automotive.
- 18 Q. And what did you do there?
- 19 A. I was hired to do front-end alignments and
- 20 brakes.
- 21 Q. Okay. About how long were you at C. Thompson
- 22 Automotive?
- 23 A. Approximately two years.
- 24 Q. Okay. And are you currently retired?
- 25 A. Yes.



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1 Q. All right. Why did you retire?

2 A. I had to retire because the tires on the cars
3 that I was having to do alignments on, in order
4 to do an alignment, you have to push and pull
5 tires back and forth to get a reading on them,
6 and my shoulders went out, and my knees went out,
7 and I couldn't hardly go. So I went in and told
8 my boss, I said, "I'm going to let the young
9 folks have it. I can't do it anymore."

10 Q. Fair enough. All right.

11 You mentioned you worked for Daniel Construction
12 from about 1965 to '66?

13 A. Yes.

14 Q. All right. And you worked for them at the
15 Chemstrand plant in Greenwood, South Carolina, as
16 an instrument installation specialist helper?

17 A. Yes.

18 Q. Okay. What does an instrument installation
19 specialist helper do?

20 A. You would have to wait on to built the instrument
21 panels for the plant, and they would be probably
22 12-, 14-foot high and 10-foot across and maybe
23 four-foot deep, and it would be a big panel you
24 put instruments in to read different things that
25 they had inside the plant. And we would take

1 gauges, which was approximately three inches in
2 diameter. It would already have a precut hole in
3 the panel. We'd stick the gauge in. We'd put
4 two little nuts on the back of it to hold it in.
5 We'd run sometimes a piece of quarter-inch copper
6 tubing --

7 MS. SIMON: Melvin, I'm sorry to interrupt you.
8 We're getting some background noise. Is
9 everybody muted?

10 EXAMINATION RESUMED

11 BY MS. SIMON:

12 Q. Okay. I'm so sorry to interrupt you. Go on.

13 A. That's okay.

14 But we would put the gauge in and run --
15 sometimes we'd have to run a piece of copper
16 tubing, maybe a quarter-inch copper tubing, maybe
17 an inch, or maybe 20 inches, and maybe put a
18 little bend in it, and that was it. We were
19 finished.

20 Q. Okay. What was going on at the Chemstrand plant
21 when you were there?

22 A. They were building it twice as big as it was.

23 Q. Okay. So were you around --

24 MS. SIMON: Okay. Counsel, can you please mute?

25 There are some folks making background noise.

1 EXAMINATION RESUMED

2 BY MS. SIMON:

3 Q. All right. So, Melvin, were you around repair
4 work or new construction while at Chemstrand?

5 A. New construction.

6 Q. And did you work around other trades?

7 A. Yes.

8 Q. What are -- what are --

9 MS. SIMON: I'm sorry.

10 THE DEPONENT: Uh-oh.

11 MS. SIMON: Let me close my door.

12 THE DEPONENT: Uh-oh. Your boss woke up.

13 EXAMINATION CONTINUED

14 BY MS. SIMON:

15 Q. Sorry about that.

16 A. That's okay.

17 Q. All right. What are some of the other trades you
18 worked around at Chemstrand?

19 A. We had electricians and pipe fitters and
20 insulators and welders and -- what else --
21 boilermakers. Just anything that involved in
22 building a plant. We had -- the trades were
23 there.

24 Q. And how often were you around these other trades?

25 A. Every day.

1 Q. And when I asked you about working around other

2 trades, how far or close were you to them?

3 A. You could be within half a foot to 40 foot.

4 Q. And you mentioned working around insulators.

5 What were they doing?

6 A. They were insulating all the pipes that were
7 running overhead in the plant that carry liquids
8 and fluids and whatever. It was from a half-inch
9 pipe up to probably a 40-inch pipe.

10 Q. Okay. And were the insulators employees of
11 Chemstrand or were they contractors?

12 A. They was contractors.

13 Q. Do you recall any of the contractors' names?

14 A. No.

15 Q. Okay. Were you present when the insulators were
16 cutting insulation?

17 A. Yes.

18 Q. And you were near them when this was taking
19 place?

20 A. Yes. They were overhead.

21 Q. Okay. What did the insulators use to cut the
22 insulation?

23 A. They had some jaggedy looking handsaws.

24 Q. And what did the air look like around you when
25 the insulators cut the insulation?

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- 1 A. It was dusty, snowing-looking.
- 2 Q. Okay. And did you breathe that dust?
- 3 A. Yes.
- 4 Q. Were insulators cutting insulation around you
- 5 throughout your time at Chemstrand?
- 6 A. Yes.
- 7 Q. Okay. Were you ever provided any type of
- 8 respiratory protection when you worked for Daniel
- 9 Construction?
- 10 A. No.
- 11 Q. Okay. Did Daniel Construction ever hold any
- 12 safety meetings that you attended?
- 13 A. Not that I was aware of.
- 14 Q. Did you ever see any signs at the Chemstrand
- 15 plant warning about asbestos hazards?
- 16 A. No.
- 17 Q. Okay. I want to switch gears and talk to you
- 18 about your work as a mechanic.
- 19 A. Okay.
- 20 Q. You mentioned that you started working as a
- 21 mechanic at Kmart in about 1977; is that right?
- 22 A. Yes.
- 23 Q. Okay. And you were there until around 1982?
- 24 A. Yes.
- 25 Q. All right. As a mechanic at Kmart, what were



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1 your primary job duties?

2 A. Oil changes, exhausts, brakes, front ends, tires.

3 That was about it.

4 Q. Okay.

5 A. Yeah.

6 Q. And you're a certified brake mechanic, correct?

7 A. Yes.

8 Q. When did you get your certification?

9 A. Approximately two months after I went to work for

10 Kmart.

11 Q. Okay. How many bays did Kmart have in its

12 garage?

13 A. Five.

14 Q. And was brake work performed on a regular basis

15 at Kmart?

16 A. Yes.

17 Q. Tell me about the kind of brake work being done

18 at Kmart during the time you were there.

19 A. We had combination four-wheel drum brakes, and

20 they were just coming out with the disc/drum

21 combination.

22 Q. And when you changed brakes in a drum brake, what

23 is it that had to be changed?

24 A. You have to change the shoes.

25 Q. Okay. How did you go about changing drum brakes?

1 A. Well, first, you jack the car up, and you take
2 the tires off. You would remove the drums.
3 You'd have to smack them, most of the time, with
4 a hammer to break them loose, which would cause
5 tons of dust. You would remove the drums, and
6 half the time, you'd just dump them in the floor.
7 Take the air and blow off the rest of the dust so
8 you could see the springs and shoes and the
9 little clamps and stuff, and you would remove the
10 shoes, and go in and get your new shoes from your
11 parts man, and come outside and scruff them up a
12 little bit because you'd have to -- you want them
13 to make a good contact when you put them on, and
14 they're usually too slick. So you'd scruff them,
15 and then you would blow those off, and put
16 everything back together, turn the drums and make
17 them round, and adjust the brakes, and put the
18 tires back on, and road test it.

19 Q. All right. How many brake shoes would be in a
20 drum?

21 A. Two.

22 Q. Okay. And so you mentioned you would take the
23 drum off?

24 A. Yes.

25 Q. And then you'd clean the dust out?

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1 A. Yes. You'd dump the dust out of the drum because
2 it would be full, and then you'd blow the brake
3 shoes and the backing plates and all off, get the
4 dust off of those, so you could take them apart.

5 Q. And what did you use to blow the dust off with?

6 A. Well, most of the time, you'd just grab the air
7 hose and blow it with the air.

8 Q. Okay. And was that a daily occurrence out at
9 Kmart?

10 A. Sure.

11 Q. And when you blew this dust out with an air hose,
12 what did the air look like in front of you?

13 DEFENSE ATTORNEY: Object to the form.

14 THE DEPONENT: It was a dusty cloud.

15 EXAMINATION RESUMED

16 BY MS. SIMON:

17 Q. And did you breathe that dust?

18 A. Yes.

19 DEFENSE ATTORNEY: Same objection.

20 EXAMINATION RESUMED

21 BY MS. SIMON:

22 Q. You also mentioned roughing up the new brake pads
23 prior to installing them.

24 What do you mean by roughing them up?

25 A. Well, you'd take the sandpaper and just sand them



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1 until you got them -- got the glaze knocked off
2 of them, and scruff them up a little bit, and it
3 would make it where it would have a better
4 contact when you put the shoes and the drums back
5 together.

6 Q. And what did the air look like in front of you
7 when you sanded the new brake shoes?

8 DEFENSE ATTORNEY: Object to the form.

9 THE DEPONENT: When you blew them off, they would be
10 dusty, too.

11 EXAMINATION RESUMED

12 BY MS. SIMON:

13 Q. And did you breathe that dust?

14 A. Yes.

15 DEFENSE ATTORNEY: Same objection.

16 EXAMINATION RESUMED

17 BY MS. SIMON:

18 Q. You mentioned disc brakes as well.

19 Can you briefly describe for the jury the process
20 of changing disc brakes for me?

21 A. All right. To do the disc brakes, which was
22 mainly on the front back then, you would jack the
23 car up and take the tires off. You would -- when
24 you take the tire off, you would see the caliper,
25 which is the thing that holds the brake pads, and

- 1 it does -- it supplies the pressure to the rotor,
2 which makes the car stop, and you would take it
3 loose. It would have either pins bolts in it.
4 And then you'd blow all that junk out of the way,
5 all the dust and stuff, and then take it apart,
6 take the pads out, and take the rotors off and
7 have them turned, and then put the rotors back
8 on, and go in and get your brake pads at the
9 parts counter, and come back and put them --
10 scruff them up some, because they was the same
11 thing as the back shoes, and you would scruff
12 them up a little bit and make them where they'd
13 have good contact and or they wouldn't do a lot.
14 You would blow them off, put everything back
15 together, put the pins back in, and you didn't
16 have to adjust those. You put the tire on, and
17 you could go down the road and see how it worked.
- 18 Q. And when you changed brakes on a vehicle with
19 disc brakes, what is it that you were having to
20 change out?
- 21 A. You have to change out the pads.
- 22 Q. All right. And for a car with disc brakes, how
23 many brake pads per disc?
- 24 A. Two.
- 25 Q. And you mentioned that you scruffed up the new

1 brake pads prior to installing them?

2 A. Yes.

3 Q. Okay. What did the air look like in front of you
4 when you did this?

5 DEFENSE ATTORNEY: Object to the form.

6 THE DEPONENT: It would be dusty and cloudy.

7 EXAMINATION RESUMED

8 BY MS. SIMON:

9 Q. And did you breathe that dust?

10 A. Yes.

11 Q. Who was responsible for cleaning up after you
12 performed the brake job at Kmart?

13 A. Me.

14 Q. Okay. And what did you -- how did you go about
15 cleaning up?

16 A. Well, you'd take -- if you dumped your stuff in
17 the floor, you'd take your broom and dustpan and
18 sweep part of that up that you could, and then
19 whatever you couldn't get up with that, you would
20 take the air hose and blow it out, just blow it
21 outside.

22 Q. And what conditions, if any, were created when
23 you cleaned up?

24 A. Black --

25 DEFENSE ATTORNEY: Object to the form.



1 THE DEPONENT: Black smoke, black cloud, dusty.

2 EXAMINATION RESUMED

3 BY MS. SIMON:

4 Q. It was dusty. And did you breathe that dust?

5 A. Yes.

6 Q. Did you work with other mechanics at Kmart, or
7 were you the only one?

8 A. I worked with five or six other mechanics.

9 Q. Okay. And how close were you to the other
10 mechanics when they were performing repairs on
11 vehicles?

12 A. We'd be helping each other, or we could be two or
13 three bays away.

14 Q. Okay. So were the other mechanics also changing
15 brakes on vehicles?

16 A. Yes.

17 Q. Were you around when they used the air hose to
18 blow out the backing plates?

19 A. Yes.

20 Q. Were you close enough to breathe that dust?

21 A. Yes.

22 Q. What brand of replacement brakes do you recall
23 working with at Kmart?

24 A. I remember we used Raybestos. We used Rayloc,
25 Bendix, I think Wagner maybe.

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1 Q. And what makes of vehicles did you change brakes
2 on while you were working at Kmart?

3 A. Anything that come in the door.

4 Q. Okay. So would you have changed brakes on Fords?

5 A. Sure.

6 DEFENSE ATTORNEY: Objection.

7 EXAMINATION RESUMED

8 BY MS. SIMON:

9 Q. Will you say your answer again, Melvin?

10 A. Yes.

11 DEFENSE ATTORNEY: Same objection.

12 EXAMINATION RESUMED

13 BY MS. SIMON:

14 Q. Hondas?

15 A. Yes.

16 DEFENSE ATTORNEY: Objection.

17 EXAMINATION RESUMED

18 BY MS. SIMON:

19 Q. GMs?

20 A. Yes.

21 Q. Did you ever wear any respiratory protection when
22 you changed brakes at Kmart?

23 A. No.

24 Q. Okay. You then went to M&M Tire, I believe in
25 1982. Is that right?



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1 A. Sounds right.

2 Q. Okay. And you worked there until approximately
3 1986?

4 A. Yes.

5 Q. And as a mechanic at M&M Tire, what were your
6 primary job duties?

7 A. I did oil changes, tires, brakes, front-end
8 alignments, shocks, exhausts. That was about
9 all.

10 Q. And how many bays did M&M Tire have?

11 A. One.

12 Q. Okay. So were you the only mechanic there?

13 A. I was it.

14 Q. Okay. How often did you perform brake work at
15 M&M Tire?

16 A. Probably four times a week.

17 Q. And tell me about the kind of brake work being
18 done at M&M Tire.

19 A. We did four-wheel drum and disc/drum combination.

20 Q. Okay. And when you changed drum brakes at M&M
21 Tire, did you go through the same process as when
22 you changed drum brakes at Kmart?

23 A. Yes.

24 Q. And when you changed disc brakes at M&M Tire, did
25 you go through the same process as when you



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1 changed disc brakes at Kmart?

2 A. Yes.

3 Q. Okay. You still cleaned the dust out with an air
4 hose?

5 A. Yes.

6 Q. And was that a regular occurrence?

7 A. Yes.

8 Q. What did the air look like when you blew the dust
9 out?

10 DEFENSE ATTORNEY: Object to the form.

11 THE DEPONENT: It was just a dusty cloud.

12 EXAMINATION RESUMED

13 BY MS. SIMON:

14 Q. And did you breathe that dust?

15 A. Yes.

16 Q. Did you still sand the new brake shoes or brake
17 pads prior to installation?

18 A. Yes.

19 Q. And what did the air look like in front of you
20 when you sanded the brake pads and brake shoes?

21 A. It would be cloudy.

22 DEFENSE ATTORNEY: Object to the form.

23 EXAMINATION RESUMED

24 BY MS. SIMON:

25 Q. I'm sorry. What was your answer, Melvin?



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1 A. I said it would be cloudy, dusty.

2 Q. And did you breathe that dust?

3 A. Yes.

4 Q. And did you clean up after performing brake jobs?

5 A. Yes.

6 Q. Same way you cleaned up after performing brake
7 jobs at Kmart?

8 DEFENSE ATTORNEY: Object to the form; leading.

9 THE DEPONENT: Yes.

10 MS. SIMON: I'm sorry. What was the objection?

11 DEFENSE ATTORNEY: Leading, form.

12 EXAMINATION RESUMED

13 BY MS. SIMON:

14 Q. You can answer, Melvin.

15 A. Yes.

16 Q. And what did the air look like in front of you
17 when you cleaned up?

18 A. Dusty.

19 Q. Did you breathe that dust?

20 A. Yes.

21 Q. What brand replacement brakes do you recall
22 working with at M&M Tire?

23 A. We worked with Raybestos and Rayloc and Bendix
24 and Carquest because it was a new store and we
25 were getting some parts from them.

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1 Q. Okay. And what make vehicles did you change
2 brakes on while working at M&M Tire?

3 A. Everything.

4 Q. All right. And this includes Fords --

5 A. Ford, Pontiac, Chevrolet, Buick.

6 DEFENSE ATTORNEY: Objection.

7 EXAMINATION RESUMED

8 BY MS. SIMON:

9 Q. Did you ever wear any respiratory protection when
10 you changed brakes at M&M Tire?

11 A. No.

12 Q. Okay. You mentioned that you started working as
13 a mechanic at Western Auto the first time around
14 in 1986; is that right?

15 A. Sounds right.

16 Q. Okay. And you were there until around 1994 the
17 first time?

18 A. Yes.

19 Q. And then you worked at Western Auto the second
20 time, if my math is correct, from approximately
21 1996 to 2003?

22 A. That sounds about right.

23 Q. Okay. As a mechanic at Western Auto, what were
24 your primary job duties?

25 A. At Western Auto. The second time?



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1 Q. Well, let's break it about.

2 The first time, what were your primary job duties
3 at Western Auto?

4 A. The first time, I was the shop foreman. The
5 second time, I was just a mechanic.

6 Q. Okay. As shop foreman, did you also do mechanic
7 work?

8 A. Oh, yes.

9 Q. Okay.

10 A. I had to do all of it.

11 Q. Would it be fair to say that your job duties were
12 the same for both times you worked at Western
13 Auto?

14 A. Yes.

15 Q. Okay.

16 DEFENSE ATTORNEY: Object to the form.

17 EXAMINATION RESUMED

18 BY MS. SIMON:

19 Q. How many bays did Western Auto have?

20 A. Five.

21 Q. And was brake work performed on a daily basis at
22 Western Auto?

23 A. Yes.

24 DEFENSE ATTORNEY: Object to the form.

25 EXAMINATION RESUMED

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1 BY MS. SIMON:

2 Q. And what kind of brake work was being done at
3 Western Auto?

4 A. We did four-wheel drum and disc/drum.

5 Q. When you changed drum brakes at Western Auto, did
6 you go through the same process as when you
7 changed drum brakes at Kmart?

8 A. Yes.

9 Q. And when you changed disc brakes at Western Auto,
10 did you go through the same process as when you
11 changed disc brakes at Kmart?

12 A. Yes.

13 Q. Okay. You still cleaned dust out with an air
14 hose?

15 A. Yes.

16 DEFENSE ATTORNEY: Object to the form.

17 EXAMINATION RESUMED

18 BY MS. SIMON:

19 Q. And was that a daily occurrence?

20 A. Yes.

21 DEFENSE ATTORNEY: Object to the form.

22 EXAMINATION RESUMED

23 BY MS. SIMON:

24 Q. And what did the air look like when you blew dust
25 out?



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1 A. Cloudy.

2 DEFENSE ATTORNEY: Object to the form.

3 THE DEPONENT: Dusty.

4 EXAMINATION RESUMED

5 BY MS. SIMON:

6 Q. And did you breathe that dust?

7 A. Yes.

8 Q. Did you still sand the new brake shoes or brake
9 pads prior to installation?

10 A. Yes.

11 DEFENSE ATTORNEY: Object to the form.

12 EXAMINATION RESUMED

13 BY MS. SIMON:

14 Q. I missed your answer, Melvin.

15 A. Yes.

16 Q. Okay. And what did the air look like in front of
17 you when you sanded the brake pads and brake
18 shoes?

19 A. It was dusty.

20 DEFENSE ATTORNEY: Object to the form.

21 EXAMINATION RESUMED

22 BY MS. SIMON:

23 Q. Do you mind repeating your answer?

24 A. Dusty.

25 Q. And did you breathe that dust?

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1 A. Yes.

2 Q. And did you clean up after performing brake jobs?

3 A. Yes.

4 Q. Same way you cleaned up after performing brake
5 jobs at Kmart?

6 A. Yes.

7 Q. And what did the air look like in front of you
8 when you cleaned up?

9 DEFENSE ATTORNEY: Object to the form.

10 THE DEPONENT: Dusty.

11 EXAMINATION RESUMED

12 BY MS. SIMON:

13 Q. Do you mind repeating your answer, Melvin?

14 A. Dusty.

15 Q. Okay. And did you breathe that dust?

16 A. Yes.

17 Q. Did you work with other mechanics at Western
18 Auto, or were you the only one?

19 A. There was about four or five there, too.

20 Q. Okay. And how close were you to them when they
21 were repairing vehicles?

22 A. Probably within 6 inches to 10 feet.

23 Q. Okay. And were they also changing brakes on
24 vehicles?

25 A. Yes.



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1 Q. And were you around when they used an air hose to
2 blow out dust?

3 DEFENSE ATTORNEY: Object to the form.

4 THE DEPONENT: Yes.

5 EXAMINATION RESUMED

6 BY MS. SIMON:

7 Q. And were you close enough to breathe that dust?

8 A. Yes.

9 Q. What brand replacement brakes do you recall
10 working with at Western Auto?

11 A. Used -- Western Auto used Bendix, Raybestos,
12 Rayloc. I can't remember the other little two
13 stores that we got parts from. They were just
14 kind of little stores that we'd have to get parts
15 from sometimes.

16 Q. Okay.

17 A. I can't remember their names right now.

18 Q. That's okay. If it comes to you later, just let
19 us know.

20 A. Okay.

21 Q. And would that be the same for both times you
22 worked at Western Auto, in terms of the brand
23 brakes --

24 A. Yes.

25 Q. -- you worked with?

1 A. Yes.

2 Q. And what make vehicles did you change brakes on
3 while working at Western Auto?

4 A. Everything.

5 Q. And did you wear any respiratory protection when
6 you worked at Western Auto?

7 A. No.

8 Q. And then you mentioned you started working as the
9 owner and mechanic at Double Diamond Autoplex?

10 A. Yes.

11 Q. And that was around 1994?

12 A. Yes.

13 Q. And you worked there, you said, for about 22
14 months?

15 A. Yes.

16 Q. Okay. As a mechanic at Double Diamond, what were
17 your primary job duties?

18 DEFENSE ATTORNEY: Object to the form.

19 THE DEPONENT: Anything I could do. I was trying to
20 make a living.

21 EXAMINATION RESUMED

22 BY MS. SIMON:

23 Q. Did you change brakes?

24 A. Yes, changed brakes, oil, tires, exhausts,
25 shocks. Just everything.

1 MS. SIMON: I'm sorry. We're getting some --

2 somebody's not muted.

3 THE DEPONENT: I hear that.

4 MS. SIMON: Can you please mute, Counsel?

5 EXAMINATION RESUMED

6 BY MS. SIMON:

7 Q. I'm sorry, Melvin.

8 A. That's okay.

9 Q. And how many bays did Double Diamond have?

10 A. One.

11 Q. And how often was brake work performed at Double
12 Diamond, say, in a given week?

13 A. Maybe three times.

14 Q. And what kind of brake work was being done at
15 Double Diamond?

16 A. Mostly disc brake.

17 Q. And when you changed the disc brakes at Double
18 Diamond, did you go through the same process as
19 when you changed disc brakes at Kmart?

20 A. Yes.

21 Q. You still cleaned dust out with an air hose?

22 A. Yes.

23 Q. And what did the air look like when you blew the
24 dust out?

25 A. Cloudy.

1 DEFENSE ATTORNEY: Object to the form.

2 EXAMINATION RESUMED

3 BY MS. SIMON:

4 Q. And did you breathe that dust?

5 A. Yes.

6 Q. Did you still sand the new brake pads prior to
7 installing them?

8 DEFENSE ATTORNEY: Object to the form.

9 THE DEPONENT: Yes.

10 EXAMINATION RESUMED

11 BY MS. SIMON:

12 Q. Your answer was -- would you repeat your answer,
13 Melvin?

14 A. Yes.

15 Q. Okay. And what did the air look like in front of
16 you when you sanded the new brake pads?

17 DEFENSE ATTORNEY: Object to the form.

18 THE DEPONENT: It would be dusty.

19 EXAMINATION RESUMED

20 BY MS. SIMON:

21 Q. And did you breathe that dust?

22 A. Yes.

23 Q. And did you clean up after performing a brake
24 job?

25 A. Yes.



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1 Q. Same way you cleaned up after performing a brake
2 job at Kmart?

3 A. Yes.

4 Q. What would the air look like in front of you when
5 you cleaned up?

6 A. Dusty.

7 Q. Did you breathe that dust?

8 A. Yes.

9 Q. Okay. And I think you may have said this
10 already, but you were the only mechanic there?

11 A. Yes. That was it.

12 Q. Okay. What brand replacement brakes do you
13 recall working with at Double Diamond Autoplex?

14 A. Double Diamond, only ones I remember would be
15 from -- yeah, Advance, because that's the only
16 parts store I had by me in Abbeville.

17 Q. Okay. But what brand of brakes do you remember
18 working with?

19 A. I know there were some Raybestos brakes and some
20 Bendix, and that's about all I remember that came
21 from over there.

22 Q. And what make vehicles did you change brakes on
23 while working at Double Diamond?

24 A. Anything I could. I was --

25 MS. SIMON: Can you mute, Counsel, please?



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EXAMINATION RESUMED

1
2 BY MS. SIMON:

3 Q. Did you ever wear any type of respiratory
4 protection when you worked at Double Diamond?

5 A. No.

6 Q. Okay. Have you ever performed repair work on
7 your own vehicles and those of family and
8 friends?

9 A. Sure.

10 Q. Okay. When did you start doing that?

11 A. When I was around 10 years old.

12 Q. Okay. And when were you born? What's your date
13 of birth?

14 A. 7/26/48.

15 Q. Okay. So you would have started doing that
16 around 1958?

17 A. Yes.

18 Q. Did you continue to perform repair work on your
19 vehicles and those of family and friends through
20 the 2000s?

21 A. Yes.

22 Q. And when you performed repairs on your personal
23 vehicles and those of family and friends, did
24 this include changing the brakes?

25 A. Yes.



1 Q. What about removing and replacing gaskets?

2 A. Yes.

3 Q. What about changing clutches?

4 A. Yes.

5 Q. All right. And when you changed brakes, gaskets,
6 and clutches on your vehicles or those of family
7 and friends, did you do it outdoors, indoors, or
8 both?

9 A. Outside.

10 Q. And did you wear any type of respiratory
11 protection?

12 A. No.

13 Q. Okay. On the vehicles where you changed brakes,
14 were they disc brakes, drum brakes, or both?

15 A. When I started out, they were all drums. I still
16 do it every once in a while, and they could be
17 disc. Might even be four-wheel disc now.

18 Q. Okay. So you worked on disc brakes and drum
19 brakes?

20 A. Yes.

21 Q. Did you go about changing the drum brakes on your
22 vehicle and those of family and friends the same
23 way you did when you changed out drum brakes at
24 Kmart?

25 A. Yes.

1 Q. When you performed brake jobs on your vehicles
2 and those of family and friends with drum brakes,
3 how did you clean out the backing plate?

4 A. Just blow it off with air.

5 Q. And what did the air look like in front of you
6 when you did that?

7 A. Dusty.

8 DEFENSE ATTORNEY: Object to the form.

9 EXAMINATION RESUMED

10 BY MS. SIMON:

11 Q. Do you mind repeating your answer, Melvin?

12 A. It was dusty.

13 Q. And did you breathe that dust?

14 A. Yes.

15 Q. Did you do anything to the new brake shoes prior
16 to installing them?

17 A. I'd scuff them up and rough them up a little bit
18 so they would have contact better.

19 Q. Okay. And what did you use to rough them up?

20 A. Most of time, used heavy-grit sandpaper.

21 Q. And when you sanded the brake shoes, what did the
22 air look like in front of you?

23 DEFENSE ATTORNEY: Object to the form.

24 THE DEPONENT: Dusty.

25 EXAMINATION RESUMED

1 BY MS. SIMON:

2 Q. All right. Do you mind repeating that, Melvin?
3 And if you can, just remember to wait a little
4 bit after my question in case there is an
5 objection. Okay?

6 A. Okay. Dusty.

7 Q. And did you with breathe that dust?

8 A. Yes.

9 Q. When you performed disc brake jobs on your
10 vehicles and those of family and friends, did you
11 do so the same way you did when you worked at
12 Kmart?

13 A. Yes.

14 Q. And when you performed brake jobs on your
15 vehicles and those of family and friends with
16 disc brakes, did you have to clean out dust
17 before installing the new brake pads?

18 A. Yes.

19 Q. And how did you go about doing that?

20 A. With air.

21 Q. And what did the air look like in front of you
22 when you cleaned out the dust?

23 DEFENSE ATTORNEY: Object to the form.

24 THE DEPONENT: Dusty.

25 EXAMINATION RESUMED

1 BY MS. SIMON:

2 Q. And did you breathe that dust?

3 A. Yes.

4 Q. Did you do anything to the new brake pads prior
5 to installing them?

6 A. Most of the time, you'd have to rough them up
7 some, so a lot of the later stuff, newer stuff,
8 you'd scruff them up so they wouldn't squeal.

9 Q. Okay. And when you scruffed up the brake pads,
10 what did the air look like in front of you?

11 DEFENSE ATTORNEY: Object to the form.

12 THE DEPONENT: Dusty.

13 EXAMINATION RESUMED

14 BY MS. SIMON:

15 Q. And did you breathe that dust?

16 A. Yes.

17 Q. Okay. Prior to the year 2000 --

18 A. Okay.

19 Q. -- what brand brakes did you purchase when you
20 performed brake jobs on your personal vehicles
21 and those of family and friends?

22 A. Raybestos, and Bendix, and Rayloc, Wagner.
23 That's about all I can remember at the time.

24 Q. And prior to the year 2000, where did you
25 purchase brakes from for your vehicles and those

1 of family and friends?

2 A. I would go to Kmart. I'd go to Carolina Tool, go
3 to Carquest, Advance. That's about the only
4 people that were around back then. It's a little
5 town.

6 Q. Are Bendix, Rayloc, Raybestos, and Wagner the
7 brands of brakes that you recall using regularly
8 on your personal vehicles and those of family and
9 friends prior to the year 2000?

10 A. Yes.

11 DEFENSE ATTORNEY: Object to form.

12 EXAMINATION RESUMED

13 BY MS. SIMON:

14 Q. And when you started doing brake jobs around
15 1958, did you have any idea that asbestos could
16 be harmful?

17 A. No.

18 Q. Okay. You also did gasket work on your personal
19 vehicles and those of family and friends; is that
20 right?

21 A. Yes.

22 Q. And where did you purchase replacement gaskets
23 from prior to the year 2000?

24 A. Probably Advance, Advance Auto Parts.

25 Q. And which gaskets did you change on your vehicles

1 and those of family and friends prior to the year
2 2000?

3 A. I changed intake gaskets and exhaust gaskets,
4 sometimes fuel pumps.

5 Q. And how did you go about removing the old
6 gaskets?

7 A. You had to get you a good scraper and scrape them
8 off.

9 Q. And what brand gaskets do you recall using?

10 A. I used Mr. Gasket and Victor, and -- that's about
11 all of them I remember right off.

12 Q. Okay.

13 A. I just used those.

14 Q. And you also did clutch work on your vehicles?

15 A. Yes.

16 Q. Where did you purchase replacement clutches from?

17 A. I would have to get those from Carolina Tool or
18 Carquest.

19 Q. And how did you go about changing the clutch on
20 one of your vehicles?

21 A. To change the clutch, you have to jack the car
22 up, pull the drive shaft out, take the
23 transmission out, fight to get the bellhousing
24 out. When you get it out, you get asbestos dust
25 and stuff all over you because that's where it

1 goes, it loads up inside the bellhousing because
2 the clutch wears and makes dust, and you take it
3 -- the bellhousing off and dump that out of the
4 way. You take the pressure plate loose and the
5 clutch disc and take the fly wheel off to get it
6 resurfaced, and then you go get your new parts.

7 Q. And I apologize if you mentioned this already,
8 but how did you go about removing the dust during
9 a clutch change?

10 A. Oh, you had to have a lot of air because it was
11 very thick in there. It would usually be
12 probably a half-inch thick inside the
13 bellhousing.

14 Q. Okay. And what did the air look like in front of
15 you when you blew the dust out during a clutch
16 change?

17 A. Black dust.

18 Q. And did you breathe that dust?

19 A. Yes.

20 Q. What brand clutches do you recall installing
21 prior to the year 2000?

22 A. Kelsey Hayes and Zoom.

23 Q. I'm sorry. What was the second one you
24 mentioned?

25 A. Zoom, Z-O-O-M.

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1 Q. Okay.

2 A. Yeah.

3 Q. Do you recall using any BorgWarner clutches?

4 A. Yes, I used some of those.

5 DEFENSE ATTORNEY: Object to the form.

6 MS. SIMON: All right. Can we go ahead and put Exhibit
7 2 up on the screen, please?

8 EXAMINATION RESUMED

9 BY MS. SIMON:

10 Q. Alrighty. Melvin, can you see that okay?

11 A. I can.

12 MS. SIMON: And we'll mark this as Exhibit 2.

13 (Exhibit Number 2 marked for
14 identification.)

15 EXAMINATION RESUMED

16 BY MS. SIMON:

17 Q. What is this a list of?

18 A. That's just a list of some of the cars that I've
19 worked on.

20 Q. Okay. And did you prepare this list from your
21 memory?

22 A. Yes.

23 Q. Do you recall about when you put it together?

24 A. It's been a few months back.

25 Q. Are there other vehicles of yours or family or



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1 friends that you've performed brake, gasket, or
2 clutch work on that are not on this list?

3 A. Probably --

4 DEFENSE ATTORNEY: Object to the form.

5 THE DEPONENT: Probably 200.

6 EXAMINATION RESUMED

7 BY MS. SIMON:

8 Q. Probably 200 are not on there?

9 A. Yes.

10 Q. Okay. So that list is just a list of the
11 vehicles that you specifically remember as you
12 sit here today?

13 A. Yes.

14 Q. Okay. How do you know you worked with Bendix
15 brakes?

16 A. It was stamped on the box.

17 Q. And on any of the boxes of Bendix brakes, do you
18 ever recall seeing any kind of warning or
19 cautions about asbestos causing cancer?

20 A. No.

21 Q. And how do you know you worked with Rayloc
22 brakes?

23 A. It was on the box.

24 Q. And on any of the boxes of Rayloc brakes, do you
25 ever recall seeing any kind of warning or

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1 cautions about asbestos being hazardous to your
2 health or that it causes cancer?

3 A. No.

4 Q. How do you know you worked with Victor gaskets?

5 A. Victor gaskets came in a little cardboard box.
6 Either that, or they were in a sealed package.

7 Q. Okay. And on any of the boxes or the packages of
8 Victor gaskets, do you ever recall seeing any
9 kind of warning or cautions --

10 A. No.

11 Q. -- about asbestos being hazardous to your health
12 or that it causes cancer?

13 A. No.

14 DEFENSE ATTORNEY: Object to the form.

15 EXAMINATION RESUMED

16 BY MS. SIMON:

17 Q. And how do you know you worked with Mr. Gasket
18 gaskets?

19 A. It was on the package.

20 Q. I'm sorry. That cut out a little bit.

21 A. It was on the package.

22 Q. Okay. And on any of the packages of the Mr.
23 Gasket gaskets, do you ever recall seeing any
24 kind of warning or cautions about asbestos being
25 hazardous to your health or that it causes



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1 cancer?

2 A. No.

3 DEFENSE ATTORNEY: Object to the form.

4 EXAMINATION RESUMED

5 BY MS. SIMON:

6 Q. You mentioned using some brakes that were
7 purchased at Carquest; is that right?

8 A. Yes.

9 Q. Do you recall ever seeing any kind of warnings
10 about asbestos hazards or asbestos causing cancer
11 on the boxes of brakes that you used from
12 Carquest?

13 A. No.

14 Q. What about Advance Auto?

15 A. No.

16 Q. Okay. You mentioned you worked with Kelsey Hayes
17 clutches.

18 How do you know you worked with Kelsey Hayes
19 clutches?

20 A. They were on the box.

21 Q. And on any of the boxes of Kelsey Hayes clutches,
22 do you ever recall seeing any kind of warning or
23 cautions about asbestos being hazardous to your
24 health or causing cancer?

25 A. No.

1 MS. SIMON: Okay. And we can go ahead and take Exhibit
2 2 down, please.

3 EXAMINATION CONTINUED

4 BY MS. SIMON:

5 Q. All right. You also mentioned working with Zoom
6 clutches.

7 How do you know you worked with Zoom clutches?

8 A. They were all over the box.

9 DEFENSE ATTORNEY: Object to the form.

10 EXAMINATION RESUMED

11 BY MS. SIMON:

12 Q. And on any of the boxes of Zoom clutches, do you
13 ever recall seeing any kind of warning or caution
14 about asbestos being hazardous to your health or
15 that it causes cancer?

16 A. No.

17 Q. And same question for BorgWarner. How do you
18 know you worked with BorgWarner clutches?

19 DEFENSE ATTORNEY: Object to the form.

20 THE DEPONENT: On the box. It was on the box.

21 EXAMINATION RESUMED

22 BY MS. SIMON:

23 Q. And on any of the boxes of BorgWarner clutches,
24 do you ever remember seeing any kind of warning
25 or cautions about asbestos being hazardous to

1 your health or that it causes cancer?

2 A. No.

3 DEFENSE ATTORNEY: Object to the form.

4 EXAMINATION RESUMED

5 BY MS. SIMON:

6 Q. And what was your answer, Melvin?

7 A. No.

8 Q. Okay. Melvin, did you ever smoke cigarettes?

9 A. I surely did.

10 Q. When did you start smoking cigarettes?

11 A. When I was three years old.

12 Q. Okay. When you first started smoking, did you
13 see any warning about health hazards from smoking
14 on the cigarette cartons?

15 A. I don't know. I couldn't read.

16 Q. Okay. When you could finally read, did you see
17 any warnings on the cigarette cartons about
18 smoking being hazardous?

19 A. Yes, later on.

20 Q. Okay. And were you able to finally quit smoking?

21 A. Approximately 35 years ago.

22 Q. Okay. Have any of your doctors told you that
23 your cigarette smoking caused your mesothelioma?

24 A. No.

25 Q. Okay. I'm going to ask you few questions about

1 your family.

2 A. Okay.

3 Q. What was your mother's name?

4 A. My mother's name is Jane Melvin Lovegrove.

5 Q. And what did she do for a living?

6 A. She was a nurse.

7 Q. And what was your father's name?

8 A. His name is Willis G. Welch.

9 Q. And what did he do for a living when you were
10 growing up?

11 A. He raised beef cows, dairy cows. He finally got
12 into doing a little welding here and there for
13 different farmers. He finally got good at it,
14 and he started working for different construction
15 companies. Plus, he was running his own farm at
16 the same time. A lot of times, he would be gone
17 for a good little bit doing welding, and he was
18 working at -- down at Daniels when I got the job
19 with them at Chemstrand.

20 Q. And has your wife Donna ever worked outside of
21 the home?

22 A. Yes.

23 Q. And what jobs do you recall Donna having?

24 A. Donna worked at a lot of different shirt plants.
25 She worked at several different little discount

1 stores. She finally got to go to college, got a
2 degree, got her master's, and became the head of
3 mental health at Abbeville.

4 Q. And --

5 MS. SIMON: Oops, my screen just got small. Hold on.

6 THE DEPONENT: You got fuzzy.

7 MS. SIMON: Yeah.

8 Is there somebody on that can tell me -- so my
9 screen got super small. It's just up in the
10 corner now -- how to get bigger?

11 THE DEPONENT: I still got the whole picture. I did.

12 MS. SIMON: Okay. Well, I won't worry about it, then.

13 THE DEPONENT: There you are.

14 DEFENSE ATTORNEY: You can click --

15 MS. SIMON: I'm sorry?

16 DEFENSE ATTORNEY: You have, like, a green arrow or
17 something you can put your mouse over, and you
18 can click, and it should expand it.

19 MS. SIMON: Yeah, it's not doing it.

20 THE DEPONENT: There you are.

21 MS. SIMON: Well, it's okay. As long as Melvin can see
22 me, that's fine.

23 EXAMINATION CONTINUED

24 BY MS. SIMON:

25 Q. Okay. You were talking about Donna's jobs.

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1 At any of the locations where Donna worked, do
2 you know if any construction was taking place?

3 A. No.

4 Q. No, there wasn't, or, no, you don't know?

5 A. No, I don't know, but as far as I remember, no,
6 there was no construction.

7 Q. Okay. Is there anyone you've lived with in your
8 life that you have reason to believe exposed you
9 to asbestos?

10 A. No.

11 Q. All right. I want to switch gears and talk some
12 about your health.

13 A. Oh, boy.

14 Q. Prior to being diagnosed with mesothelioma, what
15 was your general state of health?

16 A. I would say it was fair.

17 Q. And how old are you today, Melvin?

18 A. 74.

19 Q. All right. And you mentioned you and Donna have
20 been together most of your life.

21 When did you and Donna marry?

22 A. 1972, turkey day.

23 Q. Turkey day? Alrighty.

24 A. Turkey day. I thought it would be a good date to
25 remember, and then I found out turkey day is not



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1 turkey day every year.

2 MS. SIMON: Okay. Somebody is making some noise on --
3 if they could mute, please.

4 EXAMINATION CONTINUED

5 BY MS. SIMON:

6 Q. Alrighty. How did you and Donna meet, Melvin?

7 A. Her cousin introduced us.

8 Q. And you're going to be celebrating a special
9 anniversary, then, this next month; is that
10 right?

11 A. That's it. Yes, ma'am. 50 years.

12 MS. SIMON: Alrighty. Can we go ahead and put Exhibit
13 3 up, please?

14 THE DEPONENT: Oing.

15 MS. SIMON: And we'll mark this as Exhibit 3.

16 (Exhibit Number 3 marked for
17 identification.)

18 EXAMINATION RESUMED

19 BY MS. SIMON:

20 Q. Melvin, who's in this picture here?

21 A. All right. Top left is -- that's Carson. The
22 one in the middle, on the top, is my daughter
23 Crystal. The one on the right side is Elizabeth,
24 my other granddaughter. The little boy sitting
25 on my lap is my grandson. That's Brian. And

1 then we ain't going to talk about me sitting in
2 the chair. And Donna's sitting in the other
3 chair.

4 MS. SIMON: Alrighty. We can go ahead and take that
5 down.

6 EXAMINATION RESUMED

7 BY MS. SIMON:

8 Q. And so how many grandkids do you have in total,
9 Melvin?

10 A. We got three.

11 Q. Alrighty. And what activities do you enjoy
12 doing?

13 A. I used to go drag racing, but that's kind of went
14 by the wayside after I started chemo and stuff.

15 Q. Okay. Do you attend church regularly?

16 A. Often as we can get there.

17 Q. And where do you attend church?

18 A. We go to Crossroads Fellowship Church in Honea
19 Path, South Carolina.

20 Q. Okay.

21 A. We're some of the -- we're founding members of
22 it, so --

23 Q. And I want to talk to you a bit about how
24 mesothelioma has affected your life.

25 Donna suffers from some debilitating back issues;

1 is that right?

2 A. Yes.

3 Q. And do they prevent her from moving around much?

4 A. Yes.

5 Q. Who has typically been responsible for taking
6 care of things around the house?

7 A. Me.

8 Q. And are you able to help with that since your
9 mesothelioma diagnosis?

10 A. I help, but not near as much.

11 Q. Okay. What kind of symptoms were you
12 experiencing prior to your mesothelioma
13 diagnosis?

14 A. Well, I got to where I couldn't breathe. I just
15 felt like I was only getting like a half a
16 breath.

17 Q. Okay. And then you mentioned earlier that you
18 were diagnosed in June?

19 A. Yes.

20 Q. When you were diagnosed, did you talk about
21 treatment options with your doctors?

22 A. It took a while before we got to that. It was,
23 like, another month.

24 Q. Okay. Did you eventually talk about treatment --

25 A. Yes.



1 Q. -- options with your doctors?

2 A. Yes.

3 Q. Okay. And did the doctors come up with a
4 treatment plan for you?

5 A. They did.

6 Q. And what was that?

7 A. Chemotherapy.

8 Q. And how many treatments of chemotherapy have you
9 had so far?

10 A. Two.

11 Q. And how did you feel after those?

12 A. Horrible. The first one, I thought I was going
13 to die from. I felt like I was 30 years old the
14 first two days, and then, all of a sudden, that
15 stuff started happening, and I got to feeling
16 terrible, and I couldn't do anything, and bumps
17 and lumps and boils and festering up all over and
18 itching, and we won't go into the rest of the
19 stuff.

20 About the time I got straightened out, I went
21 down and took the second one, and I said, well,
22 it's not going to be as bad. And it lasted good
23 for a day, and then I've been suffering with it
24 ever since. I've had boils and stuff all over my
25 body and everything and itching and blisters and

1 just everything. Hasn't nothing hardly worked
2 right. I got to where I couldn't eat for two
3 weeks because I had blisters and all and stuff in
4 my mouth. I couldn't talk. I couldn't drink. I
5 got over it. It lasted four or five days.
6 I went to see my doctors yesterday and talked to
7 her and talked to her and told her, I said, there
8 won't be any more chemotherapy because the
9 effects of it are not worth what it costs to get
10 it -- you know, they might give you an extra day,
11 but for what you got to go through, to me, it's
12 not worth an extra day. So we talked to her
13 yesterday, and she's supposed to get back to us
14 next week with a different diagnosis and possibly
15 a different way to do something. If not, you
16 know, I've got so much time left. I don't know.
17 I'm not worried about it. I'm not going to say I
18 don't care because I like to be here, but, you
19 know, I mean, if the Lord decides it's time for
20 me to go, he's the one that made me, so he's the
21 one that can take me home.
22 Q. Okay. Well, hopefully, you won't be going
23 anywhere anytime soon.
24 A. That's what I'm hoping, but, you know --
25 Q. Alrighty. And, Melvin, have you had any fluid

1 drained from your lungs?

2 A. Yes.

3 Q. Do you remember how many times that's happened so
4 far?

5 A. I remember the first two pretty vivid because the
6 first one was 64 ounces, and then four days
7 later, they took off 32 ounces, and after that, I
8 kind of went a little whacky. I don't know what
9 happened. My mind doesn't have any recollection.
10 And I went crazy for about a month and lost 60
11 pounds. And I don't know how many more times
12 they drew the fluid off. I knew they drew it off
13 more than that. And then we had home healthcare
14 that did it about three times because they put a
15 port in, and then the port got where it didn't
16 work, so they took the port back out, and since
17 then, I don't believe I've had any fluid drained.
18 I don't know.

19 MS. SIMON: Okay. Can we go ahead and put up Exhibit
20 4, please?

21 We'll mark this photo as Exhibit 4.

22 (Exhibit Number 4 marked for
23 identification.)

24 EXAMINATION RESUMED

25 BY MS. SIMON:



1 Q. And we couldn't let your deposition go forward
2 without mentioning the four-legged lady in the
3 bed with you.

4 A. Yes, ma'am.

5 Q. Who's that?

6 A. That's my baby there. That's Gilda.

7 Q. Gilda.

8 A. Gilda.

9 Q. And do you remember when that picture was taken?

10 A. I believe it was right after they diagnosed me
11 with what I had.

12 Q. And is that the mesothelioma?

13 A. Yes.

14 Q. Okay.

15 A. And Donna snuck her in there, and she hadn't seen
16 me in a few days. She doesn't let me get but
17 about two or three foot away, and that's it, so
18 that was a great thrill right there.

19 MS. SIMON: Alrighty. We can take that pic down.

20 EXAMINATION RESUMED

21 BY MS. SIMON:

22 Q. All right. Melvin, we were supposed to start
23 your deposition last week. Remember that?

24 A. Yes.

25 Q. And you wound up in the hospital, right?

1 A. Yes.

2 Q. Okay. And it turned out your hemoglobin levels
3 were very low; is that correct?

4 A. Yes. It was a six.

5 Q. Okay. And you had three blood transfusions
6 because of that?

7 A. Yes.

8 Q. Okay. Has anything like that ever happened to
9 you prior to your mesothelioma diagnosis?

10 A. I don't believe so.

11 Q. Okay. How is Donna handling all of this?

12 A. She's a trooper, is all I can say. She's
13 handling it a whole lot better than I can most of
14 the time, and -- but she knows everything, and
15 she gets in there and asks all the questions and
16 gets all the answers, and she wants to know
17 what's going on, and she'll get on a doctor's
18 behind in a minute if she don't think he's right,
19 and --

20 Q. Okay.

21 A. But she's doing well. I'm very proud of her. I
22 don't know whether I could take it all like that
23 myself.

24 Q. Are you-all able to talk about your diagnosis
25 together?

1 A. Sure. We talk about everything together. That's
2 how you make it to 50 years.

3 Q. And can you tell us a bit about what you've been
4 experiencing emotionally since you were diagnosed
5 with mesothelioma?

6 A. Well, most of the days, I feel like crap, so, you
7 know, I don't have a whole lot of positive parts
8 about it. It's not one of the best things you
9 can ever have. It's not something you can play
10 with or something you can say, oh, well, they're
11 going to come up with a little pill and I'm going
12 to be all right next week. I mean, it's a death
13 sentence. You just don't know when. So that's
14 what I say, I don't worry about what doctors say.
15 My creator has got me in his hands, and I listen
16 to him. He tells me what to do.

17 Q. And with how long you and Donna have been
18 married, do you have any idea how she's going to
19 handle losing you?

20 A. It's going to be bad. Her and all the grandkids,
21 it's going to be bad. I know it is, but there is
22 nothing that I can really do I about it. I'm
23 going to try to get everything kind of situated,
24 and, hopefully, everything will be paid off, and
25 she'll have a little money in the bank, and, you

1 know, that way, her and the kids can go out and
2 eat some and do stuff like that, but that's just
3 the way it goes.

4 Q. All right, Melvin.

5 A. You just wonder, but you -- but if you wonder
6 hard, you'll drive yourself crazy, so there is no
7 need to wonder hard. You just say, well, that's
8 how it is, we'll see how it's going to be.

9 MS. SIMON: All right. Melvin, those are all the
10 questions I have for you right now.

11 THE DEPONENT: Okay.

12 MS. SIMON: Why don't we go ahead and go off the
13 record. Does everybody want, like, a 10-minute
14 break?

15 MR. ROBERTS: This is Ted Roberts. Sure.

16 MS. SIMON: Okay. I'm also going to log off and log
17 back in to see if I can get this back to a normal
18 viewing screen, so if y'all don't see me in 10
19 minutes --

20 THE DEPONENT: You're normal to me right there, so I
21 hope you do.

22 THE VIDEOGRAPHER: Excuse me one second. We're off the
23 record at 11:33, and this is the end of media
24 unit number 1.

25 (Recess taken.)

1 THE VIDEOGRAPHER: We are back on the record. The time
2 is 2:14 p.m. If it's okay, I'll go ahead and
3 just suspend it.

4 This first deposition has been suspended today
5 also. We're going off the record. This is the
6 deposition of Mr. Melvin Welch on October 7,
7 2022, and the time is 2:15 p.m.

8 (Deposition recessed at 2:15 p.m.)

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CERTIFICATE

I, the undersigned, Traci L. Barr, RPR,
Notary Public in and for the State of South
Carolina, do hereby certify that the deposition
of MELVIN G. WELCH was taken on the 7th day of
October, 2022, that the within deponent was sworn
to tell the truth, and that the foregoing is an
accurate transcription of the testimony taken
under oath; that all exhibits entered herein are
attached hereto (if requested by counsel) and
made a part of this deposition.

I further certify that I am neither counsel
nor solicitor to any of the parties in said suit,
nor interested in the event of the cause.

In witness whereof, I have hereunto set my
hand and seal this 8th day of October, 2022.

Traci L. Barr

Traci L. Barr, RPR

Notary Public for South Carolina

My Commission Expires: 4/24/29

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Under penalties of perjury, I declare that I have read my deposition held on October 7, 2022, and that it is true and correct subject to any changes in form or substance entered here.

MELVIN G. WELCH _____ Date _____



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EXHIBIT 2

In the Matter Of:
Melvin G. Welch, et al.
VS
3M Company, et al.

Melvin Welch
October 07, 2022

Melvin Welch
October 07, 2022

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO. 2020-CP-40-03834

Melvin G. Welch and
Donna B. Welch,

Plaintiffs,

vs.

3M Company f/k/a Minnesota
Mining and Manufacturing
Company, et al,

Defendants.

VIDEOTAPED REMOTE DEPOSITION OF MELVIN WELCH

DATE TAKEN: October 7, 2022

TIME BEGAN: 11:34 a.m.

TIME ENDED: 2:14 p.m.

LOCATION: 110 McGowan Avenue
 Abbeville, South Carolina 29620

REPORTED BY: Traci L. Barr

VIDEOTAPED BY: Alan Metts

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Melvin Welch
October 07, 2022

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Melvin Welch
October 07, 2022

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October 07, 2022

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Melvin Welch
October 07, 2022

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Melvin Welch
October 07, 2022

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October 07, 2022

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Melvin Welch
October 07, 2022

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EXHIBITS

(No exhibits introduced.)

(It is hereby stipulated and agreedby
and among counsel for the respective parties
that this deposition is being taken in
accordance with the South Carolina Rules of
Civil Procedure, and that the deponent does
not waive reading and signing of this
deposition.)

- - -

THE VIDEOGRAPHER: Good morning. We're going on the
record at 11:55 a.m. on October 7, 2022. This is
the video-recorded deposition of Melvin G. Welch
being taken in the matter of Melvin G. Welch and
Donna B. Welch, plaintiffs, versus the 3M
Company, defendant. This deposition is being
held at 110 McGowan Avenue, Abbeville, South
Carolina. My name is Alan Metts, the
videographer. The court reporter is Traci Barr.
All counsel will be reflected on the stenographic
record.
Will the court reporter now please swear in the
witness?

MELVIN G. WELCH, after having been first
duly sworn, was examined and testified as
follows:

EXAMINATION

Melvin Welch
October 07, 2022

Page 14

1 BY MR. ROBERTS:

2 Q. Good morning, Mr. Welch.

3 A. Good morning.

4 Q. As I mentioned, my name is Tim Roberts. I'm
5 going to be asking you questions for a little bit
6 here, and then some of the other defendants in
7 the case may have a few questions for you after
8 I'm done.

9 Let me start by giving you a couple of
10 instructions.

11 A. Okay.

12 Q. If you don't understand any of the questions that
13 I ask you this morning --

14 A. Yes.

15 Q. -- please let me know because if you answer, I'm
16 going to assume you understood what I was asking.
17 Can you do that for me?

18 A. I sure will.

19 Q. All right. And are you taking any medications
20 today that will affect your memory or ability to
21 recall events in the past?

22 A. No, I'm not.

23 THE DEPONENT: Am I?

24 No.

25 EXAMINATION RESUMED

Melvin Welch
October 07, 2022

Page 15

1 BY MR. ROBERTS:

2 Q. Okay. I want to take you to Chemstrand or

3 Monsanto. They're the same place, correct?

4 A. Yes. Yes, they were.

5 Q. Did you finish your 10th-grade year in school, or
6 did you drop out before you completed 10th grade?

7 A. My dad told me I had to go 12 years. I finished
8 the 10th grade twice, and I said, that's it, I've
9 been 12 years, and I'm out.

10 Q. So would it be fair to say you started working
11 for Daniel at Monsanto in the summer of 1965?

12 A. Yes.

13 Q. All right. And you continued on that job for
14 approximately a calendar year?

15 A. Yes.

16 Q. And that would take you to the summer of 1966 or
17 thereabouts?

18 A. Yes.

19 Q. All right. 40-hour-a-week job?

20 A. More or less.

21 Q. All right. And did you take any vacation time in
22 that first year?

23 A. No.

24 Q. All right. So you worked 40 hours a week
25 continuously for the year at Monsanto. Fair?

Melvin Welch
October 07, 2022

Page 16

1 A. Yes.

2 Q. All right. That plant, as I understood your
3 testimony, was being newly constructed?

4 A. Yes, sir.

5 MS. SIMON: Objection; form.

6 THE DEPONENT: Yes.

7 EXAMINATION RESUMED

8 BY MR. ROBERTS:

9 Q. Okay. I want to talk to you about your testimony
10 regarding the insulators that you worked around.
11 Can you focus on that for me?

12 A. Yes.

13 Q. Okay. Were there miles of pipes being insulated
14 at the Monsanto plant when you worked there?

15 A. Oh, yes.

16 MS. SIMON: Objection; form.

17 EXAMINATION RESUMED

18 BY MR. ROBERTS:

19 Q. And did the insulation that the insulators used
20 come in three-foot sections that kind of looked
21 like tubes?

22 A. I don't know whether it was three-foot or not.

23 Q. I'm sorry. My screen froze.

24 A. I said I don't know whether they were three-foot
25 or not.

Melvin Welch
October 07, 2022

Page 17

1 Q. Okay. But they were white in color --

2 A. Yes.

3 Q. -- is that fair?

4 A. Yes.

5 Q. All right. And they came in cardboard cartons?

6 A. I believe so.

7 Q. Insulators took them out of the cartons and

8 applied them to the pipes where you were working?

9 A. Yes.

10 Q. And at times, to fit the insulation to the pipes,

11 they had to cut them with what you described was

12 a saw?

13 A. Yes.

14 Q. And that occurred on a regular basis while you

15 were working at the Monsanto plant. True?

16 A. Yes.

17 Q. And that created dust in your work environment on

18 a daily basis. Fair?

19 A. Yes.

20 Q. And you breathed that dust?

21 A. Yes.

22 Q. Now, when the -- aside from pipe insulation, did

23 the insulators also insulate with a material that

24 looked like a square block at times?

25 A. I don't recall, no.

Melvin Welch
October 07, 2022

Page 18

1 Q. Coming back to the pipe insulation, if you could

2 focus on that for me.

3 A. Yes.

4 Q. Do you know the manufacturer or brand name of the

5 pipe insulation that was being used around it?

6 A. No.

7 Q. After the insulators finished their work in a run

8 of pipe, did they clean up?

9 A. Sometimes.

10 Q. Okay. And other times, did other people clean up

11 after the insulators as well?

12 A. Yes.

13 Q. I apologize.

14 A. Yes.

15 MR. ROBERTS: Is he freezing on you, Dana?

16 MS. SIMON: I couldn't tell if he froze or not.

17 Melvin, can you wave or something? Oh, okay.

18 MR. ROBERTS: Okay.

19 EXAMINATION RESUMED

20 BY MR. ROBERTS:

21 Q. Let me rephrase and start over again.

22 When the insulators cleaned up after themselves

23 --

24 A. Yes.

25 Q. -- did they use a dustpan and broom?

Melvin Welch
October 07, 2022

Page 19

1 A. I believe so.

2 Q. Did they use compressed air?

3 A. Very possible.

4 Q. Did the cleanup being done by the insulators at
5 Monsanto while you worked there create dust in
6 your work environment?

7 A. Yes.

8 Q. Did that happen on a regular basis?

9 A. Yes.

10 Q. Did you breathe that dust on a regular basis?

11 A. Yes.

12 Q. You gave us a distance. Sometimes you were
13 working closely to the insulators and sometimes
14 you were a little farther away --

15 A. Yes.

16 Q. -- as I recall?

17 Okay. On average, were you working within 10
18 feet of them on a regular basis?

19 MS. SIMON: Objection; form.

20 THE DEPONENT: Yes.

21 EXAMINATION RESUMED

22 BY MR. ROBERTS:

23 Q. Okay. And that's true throughout the year that
24 you worked there, correct?

25 A. Yes.

Melvin Welch
October 07, 2022

Page 20

1 Q. The dust that the insulators created by sawing
2 the pipe insulation while they were working
3 around you, that dust was visible in the air to
4 you, correct?

5 A. Oh, yes.

6 Q. You could see it?

7 MS. SIMON: Objection; form.

8 THE DEPONENT: Yes, it was big chunks.

9 EXAMINATION RESUMED

10 BY MR. ROBERTS:

11 Q. And the dust after the insulators created after
12 they were cleaning up after their insulation
13 work, was that visible to you also?

14 A. Yes.

15 MS. SIMON: Objection; form.

16 EXAMINATION RESUMED

17 BY MR. ROBERTS:

18 Q. You could see it in the air --

19 A. Yes.

20 Q. -- correct?

21 A. Yes.

22 Q. Who got you the job at Monsanto?

23 A. My dad.

24 Q. Okay. Did he work there at the same time as you
25 did?

Melvin Welch
October 07, 2022

Page 21

1 A. Yes.

2 Q. Did you -- when you worked at Monsanto from 1965
3 to '66, were you living at your dad's home?

4 A. Yes.

5 DEFENSE ATTORNEY: Object to the form.

6 EXAMINATION RESUMED

7 BY MR. ROBERTS:

8 Q. Where is -- what was your dad's address, if you
9 can recall? Where were you living at the time?

10 A. In Honea Path, South Carolina.

11 Q. Did you and your dad ride to work together every
12 day?

13 A. Yes.

14 Q. Same car for the calendar year?

15 A. Yes.

16 Q. And when you and your dad went to work, did you
17 wear any kind of uniform or coveralls or anything
18 like that?

19 A. Blue jeans and a tee shirt.

20 Q. Okay. During the year that you worked at
21 Monsanto -- by the way, did you say your dad was
22 a welder during this time, as I recall?

23 A. Yes.

24 Q. Did you work in the same general vicinity as your
25 dad while you were at Monsanto?

1 A. No.

2 Q. Okay. Tell me about that.

3 DEFENSE ATTORNEY: Object to the form.

4 THE DEPONENT: He was more or --

5 MS. SIMON: What do you want him to tell you about?

6 EXAMINATION RESUMED

7 BY MR. ROBERTS:

8 Q. Where did -- did your dad work at another

9 location at the plant while you were there?

10 A. Yes.

11 Q. Okay. During the time period that you were at

12 Monsanto, did you ever see your father work

13 around the insulators that were previously talked

14 about?

15 DEFENSE ATTORNEY: Object to the form.

16 MS. SIMON: Same objection.

17 THE DEPONENT: Am I supposed to answer or not? Oh.

18 Yes, I saw him walk around.

19 EXAMINATION RESUMED

20 BY MR. ROBERTS:

21 Q. Okay. Did that happen regularly while you were

22 there?

23 DEFENSE ATTORNEY: Object to the form.

24 THE DEPONENT: Everybody was everywhere at the same

25 time. I mean, you weren't just glued in one

Melvin Welch
October 07, 2022

Page 23

1 spot, but he worked in a tent, pipe
2 fitter/welder, and I was working all throughout
3 the plant putting gauges in.

4 EXAMINATION RESUMED

5 BY MS. SIMON:

6 Q. Was your father exposed to the insulation work
7 that you previously described?

8 MS. SIMON: Objection; form.

9 DEFENSE ATTORNEY: Object to the form.

10 THE DEPONENT: Yes.

11 EXAMINATION RESUMED

12 BY MR. ROBERTS:

13 Q. Let me move on from Monsanto for a moment.

14 The other locations that you worked -- strike
15 that.

16 What are your dates in the U.S. Air Force? When
17 did you go in, and when did you come out?

18 A. I went in in '67 and got out in '70 -- let me
19 see. '67, '68, '69, '70. Yeah, I got out at the
20 end of '70, yeah.

21 Q. End of '70?

22 A. Yeah.

23 Q. Okay. Let me just come back in our timeline.

24 You were kind enough to tell me that you worked
25 at Monsanto for about a year, 1965 to '66?

Melvin Welch
October 07, 2022

Page 24

1 A. Yeah.

2 Q. You went in the army -- forgive me.

3 You went in the air force in '67.

4 What did you do between the time you left

5 Monsanto and went into the air force?

6 A. I didn't do anything. I worked at Monsanto. The

7 air force called me and said, this coming weekend

8 you will be on a bus going to basic training, so

9 I said, okay, and they lied because they didn't

10 get me that weekend. It was, like, a month

11 later.

12 Q. You told us about one of the jobs that you had

13 from '70 to '77. If I had it right, Torrington

14 Specialists?

15 A. It's Torrington, yes, sir.

16 Q. Where is that located?

17 MS. SIMON: Objection; form.

18 THE DEPONENT: It's in Honea Path.

19 EXAMINATION RESUMED

20 BY MR. ROBERTS:

21 Q. Okay. And you told us you were a machine

22 operator --

23 A. Yes, sir.

24 Q. -- at that job, right?

25 A. Yes.

Melvin Welch
October 07, 2022

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1 Q. When you were at that job for seven years, did
2 any insulation work take place of the type that
3 you saw at Monsanto?

4 A. No, not that I know of.

5 Q. Other than your work at Monsanto, did you work at
6 any other location where you saw the same type of
7 insulation work take place throughout your
8 career?

9 A. No.

10 MS. SIMON: Objection; form.

11 THE DEPONENT: No.

12 EXAMINATION RESUMED

13 BY MR. ROBERTS:

14 Q. Let me ask you some questions about your medical
15 condition.

16 A. Okay.

17 Q. I'm going to jump around, if you'll forgive me,
18 but I'll let you know where I'm going, I promise.

19 A. That's all right.

20 Q. All right. You have Type 2 diabetes?

21 A. Yes, sir.

22 Q. Okay. You've had it for some time?

23 A. Yes, sir.

24 Q. Your adult life?

25 A. Well, no, not that long. I've probably had it, I

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1 would say, at least 25 years.

2 Q. Do you take insulin for your diabetes?

3 A. Yes, sir.

4 Q. Has that been true for the last 25 years?

5 A. Well, they started me off on metformin, but that

6 only lasted a short time, but most of it, yes,

7 I've been on insulin.

8 Q. All right. And you've had some complications

9 arising from your diabetes, as I understand it.

10 True?

11 A. Yes.

12 Q. You've had some toes amputated?

13 A. Yes, sir.

14 Q. Anything else? Any other amputations?

15 A. No. That's all they've got so far.

16 Q. Okay. Who treats you or who is the doctor

17 looking after you for your diabetes?

18 A. If you hadn't asked me his name, I could have

19 told you because I just saw him yesterday. It's

20 a VA doctor in Augusta.

21 Q. And where is the VA hospital that you're seen at?

22 A. In Augusta, Augusta, Georgia.

23 Q. All right. And How did he tell you your diabetes

24 was doing yesterday?

25 A. Well, they tried to put me on this new little

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1 thing that you stick on the back of your arm and
2 you take the little gauge and it tells you, and
3 being I haven't been leaving the house, I haven't
4 been taking it and putting it in my pocket. So,
5 therefore, when I went down there yesterday, I
6 didn't have that little meter with me, so he
7 couldn't tell me how my sugar was doing, but the
8 last two months, it's been averaging between 220
9 and 300.

10 Q. All right. Following your amputations, did you
11 have to use anything to help you get around, like
12 a cane?

13 A. No.

14 Q. You also -- it's my understanding you also have
15 longstanding kidney disease?

16 MS. SIMON: Objection; form.

17 EXAMINATION RESUMED

18 BY MR. ROBERTS:

19 Q. Are you having a problem with your kidneys?

20 A. A small amount.

21 Q. Have you ever been on dialysis?

22 A. No.

23 Q. Has any doctor ever recommended you go on
24 dialysis?

25 A. No.

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1 Q. All right. I understand you have a problem

2 called neuropathy?

3 A. Yes.

4 Q. Okay. And what part of your body is affected by

5 that?

6 A. The neuropathy has caused in my hands and my

7 feet.

8 Q. And have you had that for more than 20 years?

9 A. Yes.

10 Q. Okay. And how does it affect your ability to do

11 things with your hands and feet?

12 A. Recently, it's gotten a lot worse in my hands,

13 and they stay constantly cold.

14 Q. Okay. Did these medical conditions that we just

15 discussed lead you to apply for Social Security

16 Disability benefits in 2009?

17 A. Yes.

18 Q. Why?

19 MS. SIMON: Objection; form.

20 THE DEPONENT: It's just what --

21 EXAMINATION RESUMED

22 BY MR. ROBERTS:

23 Q. Let me change it up a little bit.

24 Is that when you stopped working?

25 A. I believe it is. I'm not real good with years.

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1 Q. Okay. Did you -- were you successful in getting
2 Social Security Disability benefits in 2009?

3 A. Yes.

4 Q. Okay. Did you file an application with medical
5 documentation of your conditions?

6 A. I believe so.

7 Q. Would that be something you would be willing to
8 share with us if we asked for it?

9 MS. SIMON: Objection. You've got authorizations to
10 obtain records.

11 THE DEPONENT: Yes. I mean, it's no secret.

12 EXAMINATION RESUMED

13 BY MR. ROBERTS:

14 Q. Yeah.

15 And did those medical conditions, in addition to
16 your problems you told us about a little while
17 ago with your shoulder, lead to your retirement?

18 A. Yes, it did.

19 MS. SIMON: Objection; form.

20 EXAMINATION RESUMED

21 BY MR. ROBERTS:

22 Q. You were about age 61 around that time?

23 A. I don't remember.

24 Q. All right. How have the conditions we just
25 walked through affected your ability to do things

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1 that you enjoy?

2 A. Well, it's getting where I can't do anything. I
3 mean, I've been a mechanic my whole life just
4 about, and I still like to tinker, but now, I
5 can't get enough air, it seems like, and when I
6 go down there and tell them, I say, I can't
7 breathe, and they say, you've got a hundred
8 percent oxygen.

9 Q. Let me give you a little time frame here.
10 Back in 2009 when you were applying for Social
11 Security because of those conditions, how were
12 they affecting your ability to do things you
13 enjoyed back then?

14 A. I had to cut back a good bit.

15 Q. What did you have to cut back on?

16 A. I had to cut back on working on my cars and
17 playing and just racing, love to race, and I cut
18 it out finally. I can't do any of it.

19 Q. Back around 2009, when you were applying for
20 Social Security for these conditions, how did
21 these conditions affect your marriage?

22 A. How could they affect my marriage?

23 Q. How did they affect the things that you and your
24 wife enjoyed doing together in your marriage?

25 A. Well, it cut it back.

1 Q. What things did it cut back?

2 A. It cut back a lot of things because it cut back
3 on the money, but then she started having
4 problems and I started having problems, and we
5 just got where we started staying at home a lot
6 because we didn't --

7 MS. SIMON: Melvin, just try to answer the question
8 that you're asked. Okay?

9 THE DEPONENT: Okay. Okay.

10 MS. SIMON: Ted will ask you if he wants more
11 information.

12 THE DEPONENT: All right.

13 EXAMINATION RESUMED

14 BY MR. ROBERTS:

15 Q. So would it be fair to say that since 2009, your
16 neuropathy, your diabetes, and those conditions
17 that led to you applying for Social Security in
18 2009, as well as your shoulders, limited the
19 things that not only you enjoyed doing in your
20 upcoming retirement years, but also the things
21 you enjoyed doing with your wife?

22 A. Yes.

23 Q. Your wife's back -- you mentioned, on direct
24 examination, your wife has a back problem that's
25 pretty severe, as I understand it?

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1 A. Yes.

2 Q. Okay. How long has she had that?

3 Mr. --

4 A. Probably 25 years.

5 MS. SIMON: Hey, Melvin, you can't ask other people for
6 information.

7 THE DEPONENT: I know. I know.

8 MS. SIMON: Okay. But we just want to know based on
9 your recollection. Okay?

10 THE DEPONENT: Okay.

11 MS. SIMON: If you don't know an answer, that's fine.

12 THE DEPONENT: Okay.

13 EXAMINATION RESUMED

14 BY MR. ROBERTS:

15 Q. Has your wife's back condition limited the things
16 that you two enjoyed doing together in your
17 marriage?

18 A. Yes.

19 Q. How so?

20 A. She has problems getting around a lot. She can't
21 walk real far. She has problems after she gets
22 out to try to walk somewhere. We can't go
23 sightseeing like we used to. We can't go out and
24 do a lot of things that we used to enjoy, go out
25 and walk around at different places, sightseeing

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1 and stuff. Neither one of us are able to do
2 that. We just -- we can ride by and look at it
3 in a car, but that's it.

4 Q. With respect to your wife's back condition and
5 the limitations that you just described on the
6 things that you enjoyed doing together, has that
7 been the case for at least the last 10 years?

8 A. Yes.

9 Q. You've seen a number of doctors over the course
10 of your adult lifetime. True?

11 A. Yes.

12 MS. SIMON: Objection; form.

13 EXAMINATION RESUMED

14 BY MR. ROBERTS:

15 Q. No doctor has ever diagnosed you with a condition
16 called asbestosis, correct?

17 A. No.

18 MS. SIMON: Objection; form.

19 EXAMINATION RESUMED

20 BY MR. ROBERTS:

21 Q. I apologize. We're talking about the same thing,
22 but it's going to come out wrong on the record.

23 Has a doctor ever diagnosed you with a condition
24 called asbestosis?

25 MS. SIMON: Objection; form.

1 THE DEPONENT: Not that it's been diagnosed as that,

2 not that I know of, no.

3 EXAMINATION RESUMED

4 BY MR. ROBERTS:

5 Q. And no doctor has ever diagnosed you with a

6 condition called pleural plaques. True?

7 A. No.

8 Q. Is what I just said true?

9 A. Yes.

10 Q. Okay. And no doctor has ever diagnosed you with

11 a condition called pleural thickening. True?

12 A. True.

13 Q. Where -- with respect to your current medical

14 condition, where has your primary treatment taken

15 place?

16 A. Augusta VA in Augusta, Georgia.

17 Q. Are you satisfied with the doctors who are

18 treating and caring for you?

19 A. Yes.

20 Q. Do you believe you're getting good quality

21 medical care there at the VA?

22 A. I do.

23 Q. Are you currently able to drive?

24 A. Yes, some days.

25 Q. You still can perform your basic activities of

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1 daily life, shower, change, things of that

2 nature?

3 A. Yeah.

4 MS. SIMON: Objection; form.

5 Melvin, you can answer.

6 THE DEPONENT: I forgot what the question is.

7 MR. ROBERTS: Sure.

8 EXAMINATION RESUMED

9 BY MR. ROBERTS:

10 Q. Sure.

11 Are you still able to do the basic activities of

12 daily living in terms of showering, changing,

13 feeding yourself, things of that nature?

14 MS. SIMON: Objection; form.

15 THE DEPONENT: Yes.

16 EXAMINATION RESUMED

17 BY MR. ROBERTS:

18 Q. You were asked some questions about smoking

19 cigarettes on direct examination by Ms. Simon. I

20 just want to follow up on that for a minute.

21 You told us you had quit about 35 years ago?

22 A. Yes.

23 Q. Did you quit cold turkey?

24 A. Probably after the fifth time, yeah.

25 Q. You made up your mind and put your mind to it and

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1 got it done?

2 A. I had to. I just couldn't --

3 Q. What I'm driving at here, Mr. Welch, is, you
4 know, you didn't go -- you didn't have to take
5 any, like, medications or seek any kind of
6 medical treatment to help you quit. You just
7 made up your mind and did it on your own?

8 A. Yes.

9 MS. SIMON: Objection; form.

10 THE DEPONENT: Yes.

11 EXAMINATION RESUMED

12 BY MR. ROBERTS:

13 Q. And you told us that you did see the warning
14 labels on the packages of cigarettes that you
15 were smoking, correct?

16 MS. SIMON: Objection; form.

17 THE DEPONENT: Years later.

18 EXAMINATION RESUMED

19 BY MR. ROBERTS:

20 Q. Right.

21 The warning labels on the packages of cigarette
22 smoking -- cigarettes that you were smoking
23 appeared in the late '60s and have been there
24 ever since until you quit. True?

25 MS. SIMON: Objection; form.

1 THE DEPONENT: Yes.

2 EXAMINATION RESUMED

3 BY MR. ROBERTS:

4 Q. And despite those warnings on packages of
5 cigarettes that you smoked, you chose to continue
6 smoking. True?

7 A. Yes.

8 MS. SIMON: Objection; form.

9 EXAMINATION RESUMED

10 BY MR. ROBERTS:

11 Q. Let's move on to some of your employment.

12 A. Okay.

13 Q. Kmart, I heard you, on direct examination, say
14 they sent you to Atlanta for training?

15 A. Yes.

16 Q. Where in Atlanta?

17 A. They had a store in Atlanta that was -- that they
18 set up the basement of it, and that's where they
19 had their training facility put in the large
20 store.

21 MS. SIMON: Ted. Can I have just have one minute to
22 open the door?

23 MR. ROBERTS: Yeah, of course, of course.

24 MS. SIMON: Thank you.

25 MR. ROBERTS: And, Mr. Welch, while we're at it, if you

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1 need a break at any point today, you just let me

2 know. Okay?

3 THE DEPONENT: I'm fine. I'm fine.

4 MS. SIMON: Sorry. Thank you.

5 EXAMINATION RESUMED

6 BY MR. ROBERTS:

7 Q. You were sent to Atlanta for two weeks for

8 training.

9 What kind of training, specific training, did

10 they give you at Kmart in Atlanta?

11 A. Well, I went to battery and electrical. I went

12 to exhausts. I went to front-end alignments I

13 went to brakes. There was one other one. I

14 can't remember what it was, but they sent us to

15 five different schools.

16 Q. And then you said you got a certification as a

17 result of completing that --

18 A. Yes.

19 Q. -- if I heard you correctly?

20 A. Yes.

21 Q. I didn't catch who certified you.

22 Who certified you for completing that class?

23 A. Kmart did, I guess. It was ASE-certified.

24 Q. That's what I didn't hear. Can you just say the

25 initials slowly?

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1 A. ASE.

2 Q. ASE. Okay.

3 A. Yeah, ASE-certified.

4 Q. All right. In that school, did Kmart provide you
5 with any training regarding OSHA, the
6 Occupational Safety and Health Administration?

7 A. I don't remember. I don't think so.

8 Q. Did they give you any training on workplace
9 safety?

10 A. I don't think so.

11 Q. Did they give you any training regarding asbestos
12 in the workplace?

13 A. No.

14 Q. Did anyone at Kmart ever provide you with any
15 training regarding the 1976 OSHA regulations
16 pertaining to use of asbestos in the workplace?

17 A. No.

18 Q. During the time that you worked at Kmart, which I
19 understand to be 1977 to '82, did Kmart ever
20 monitor the dust in the air inside the workplace
21 where you were working for the presence or
22 absence of asbestos in the air?

23 MS. SIMON: Objection; form.

24 THE DEPONENT: I never saw it.

25 EXAMINATION RESUMED

1 BY MR. ROBERTS:

2 Q. Okay. Did Kmart ever ask you or require you to
3 isolate your work when using asbestos material?

4 A. No.

5 Q. Did Kmart ever require you to enclose your work
6 area to prevent others from being exposed to the
7 materials that you were using?

8 A. No.

9 Q. Did Kmart ever provide you or ask you to use
10 exhaust ventilation when you were working with
11 asbestos materials?

12 A. No.

13 Q. Were any dust collectors in the work area where
14 you worked at Kmart?

15 A. No.

16 Q. Were you ever taught, instructed, or otherwise
17 required to wet down asbestos materials that may
18 have been used at Kmart while you were working
19 there to prevent and minimize dust in the
20 atmosphere?

21 A. I don't believe so.

22 Q. All right. Did Kmart ever provide you with any
23 personal protective equipment, such as
24 respirators?

25 A. No.

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1 Q. Did they provide you with any coveralls?

2 A. No.

3 Q. Did they provide you with a laundry service?

4 A. Yes.

5 Q. Okay. How did that work?

6 MS. SIMON: Objection; form.

7 THE DEPONENT: It worked good. You brought your dirty

8 clothes in on a certain day, and they were picked

9 up, and your clean clothes were brought back to

10 you.

11 EXAMINATION RESUMED

12 BY MR. ROBERTS:

13 Q. Okay. Did Kmart ever give you annual medical

14 examinations?

15 A. No.

16 Q. Did Kmart ever notify you that you had been

17 exposed to asbestos in the workplace?

18 A. No.

19 Q. Did you hear my question, Mr. Welch?

20 I apologize. The camera --

21 A. Yes. You didn't get my answer?

22 Q. No, we didn't.

23 A. Oh, I'm sorry.

24 Q. I didn't. That's okay.

25 A. Okay. No.

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1 Q. What was your answer?

2 A. No, they didn't, as far as I know.

3 Q. Okay. Did Kmart ever post signs in your work
4 area regarding warnings relating to asbestos and
5 breathing asbestos dust?

6 A. No.

7 Q. Let me ask you -- I want to make sure I heard
8 this correctly on your direct examination, and
9 again, I'm dipping around, but I want to direct
10 you to --

11 A. Okay.

12 Q. -- I believe it was your shop. Double Diamond, I
13 think the name of it was?

14 A. Yes, sir.

15 Q. Did you own that?

16 A. Yes, sir.

17 Q. Okay. And you opened that in -- hang on. I
18 don't want to make you repeat stuff you already
19 said.

20 A. Well, you don't got --

21 Q. You opened that in 1994.

22 A. Okay.

23 Q. And part of the work you did there was -- you did
24 a little bit of everything as I heard you,
25 correct?

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1 A. I tried to. I tried to make a go of it.

2 Q. Okay. Before -- and did you sell -- for

3 customers who came in, did you sell spare parts

4 if they asked for them?

5 A. Well, no. I didn't have a parts inventory.

6 Q. If someone came in and said, hey, do you have an

7 extra pair of, you know, brake pads, would you

8 sell that to them?

9 MS. SIMON: Objection; form.

10 THE DEPONENT: I usually didn't have an extra pair.

11 EXAMINATION RESUMED

12 BY MR. ROBERTS:

13 Q. Okay. I got it.

14 But, nevertheless, you did brake work at your own

15 shop. True?

16 A. Yes.

17 Q. Okay. Before you opened your own shop and before

18 you were installing brakes on customers' cars,

19 did you ever go out and review the medical and

20 scientific literature concerning asbestos?

21 A. No.

22 Q. Did you ever issue any warnings to any of your

23 customers whose brakes you installed in the cars?

24 A. No customers were allowed in the service area.

25 Q. Okay. How about the mechanics who eventually

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1 changed the brakes that you put in? Did you ever
2 provide any warning labels, caution labels, or
3 instructions about the brakes that you installed
4 for the benefit of other mechanics who may be
5 removing them downstream?

6 A. No.

7 MS. SIMON: Objection; form.

8 THE DEPONENT: No, I did not.

9 EXAMINATION RESUMED

10 BY MR. ROBERTS:

11 Q. Okay. And you said you stayed open 22 months.

12 Why did you close?

13 A. Went broke.

14 Q. All right. Let's come back to Kmart. I'm going
15 to work through the stores that you worked at and
16 told us about a little bit.

17 Was Kmart -- you were employed 1977 to '82.
18 40-hours-a-week job?

19 A. Yes.

20 Q. How many weeks vacation a year did you get?

21 A. Two.

22 Q. Okay. You told us that you did oil changes,
23 brakes, front-end alignments, tires.

24 What else did you do?

25 A. Is exhausts on there?

1 MS. SIMON: Objection; form.

2 THE DEPONENT: Did a lot of that.

3 MS. SIMON: I'm sorry. I missed that answer. I was
4 objecting.

5 THE DEPONENT: Did exhausts.

6 EXAMINATION RESUMED

7 BY MR. ROBERTS:

8 Q. I asked you what else you did. You meant -- I
9 heard you say exhausts --

10 A. Yeah.

11 Q. -- and then I didn't hear the next -- what the
12 next activity or what else you did after that.

13 A. Okay. What you got on the list?

14 Q. I got -- so far, I got oil changes, brakes,
15 front-end alignments, tires, exhausts.

16 What else?

17 A. Exhausts, shocks, tune-ups. That's probably
18 about it.

19 Q. Okay. What percentage of your time did you spend
20 doing oil changes, your working time?

21 A. 30 percent.

22 Q. All right. How about front-end alignments?

23 A. Probably 30 percent.

24 Q. Okay. How about exhaust work?

25 A. 15.

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1 Q. All right. So we're up to 65 percent of your
2 time now.

3 How about shocks, shock work?

4 A. Five.

5 Q. And how much of your working time did you spend
6 on tune-ups?

7 A. I didn't get them very often either. Probably 5
8 on that.

9 Q. All right. And the balance of your time would be
10 brake repair work?

11 MS. SIMON: Objection; form.

12 THE DEPONENT: Probably so.

13 EXAMINATION RESUMED

14 BY MR. ROBERTS:

15 Q. Okay.

16 MS. SIMON: I missed the answer. I'm sorry.

17 MR. ROBERTS: Let me re-ask the question so we have
18 this clean.

19 EXAMINATION RESUMED

20 BY MR. ROBERTS:

21 Q. We just went through the percentages of time you
22 did various tasks.

23 My question was, the balance of the time that --
24 percentage of time would be for brake work,
25 correct, since that's the only other task --

1 A. Yeah.

2 MS. SIMON: Objection; form.

3 Melvin, are you doing okay?

4 THE DEPONENT: Yeah, I'm fine.

5 MS. SIMON: Okay.

6 EXAMINATION RESUMED

7 BY MR. ROBERTS:

8 Q. You were kind enough to explain, on your direct
9 examination with Ms. Simon, how you would change
10 a brake lining, together with a shoe and a drum
11 brake --

12 A. Yes.

13 Q. -- and a brake pad.

14 For that -- for that process, if you can get that
15 back in your head, for drum brakes with shoes and
16 linings on them --

17 A. Yeah.

18 Q. -- can you tell me how much time that would take,
19 from beginning to end, to change one -- change --
20 service a car for new brakes?

21 A. Talking about per axle or --

22 Q. I apologize. You're breaking up.

23 A. Are you talking about per wheel or per axle?

24 Q. Let's do it per wheel.

25 A. On just the drums?

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1 Q. Yeah.

2 A. Thirty minutes.

3 Q. Okay. And then if we do pads, if we're doing a
4 disc brake scenario with front-end work, let's do
5 it by wheel. Like, how many minutes would it
6 take you, based on what you described for Ms.
7 Simon, to change out those disc pads?

8 A. It would take probably close to 30 because you
9 have to change the drum or you have to turn the
10 rotor. That's what takes most of your time.

11 Q. What takes most of your time? I apologize.

12 A. Excuse me?

13 Q. What takes most of your time in that process?

14 A. Most of your time is taken up by turning the
15 rotors and the drums.

16 Q. Okay. So you gave us about 30 minutes for each
17 type of brake job, disc brakes versus brake
18 drums?

19 A. Yeah.

20 Q. What -- how much time is spent turning those --
21 of that 30 minutes is turning drums?

22 MS. SIMON: Objection; form.

23 THE DEPONENT: It's done while you're doing the brake
24 -- performing your brake job. The drum or the
25 rotor is turning on the brake lathe, so it

1 doesn't really take up your time.

2 EXAMINATION RESUMED

3 BY MR. ROBERTS:

4 Q. I got it. Okay. Okay.

5 I want you to -- where is Kmart, the Kmart that
6 you worked at, located, address?

7 A. It was in Greenwood, South Carolina.

8 Q. Okay. Was it the only one in Greenwood, South
9 Carolina?

10 A. Yes.

11 Q. And it's no longer open, as I understand it?

12 A. No.

13 Q. Am I correct it's not open anymore?

14 A. No, it's not open anymore.

15 Q. Who were the mechanics -- what are the names of
16 the mechanics that you worked with at Kmart?

17 A. You're talking about somebody that don't have a
18 memory. I believe one of them was Bill Franks.

19 God. Tommy Tooley [phonetic], Philip Freeman.

20 Q. What is Mr. Freeman's first name?

21 A. Philip.

22 Q. Philip?

23 A. Yeah. I think all these people are deceased, I
24 believe.

25 Q. Did they all live in the Greenwood area, though?

1 A. Yes.

2 Q. Anybody else you can recall from your workdays at
3 Kmart?

4 A. No. Been too many years.

5 Q. How about your foreman or boss?

6 A. Well, Bill Franks was the boss.

7 MRS WELCH: Oh, I'm sorry.

8 THE DEPONENT: Oh, excuse me. I need to --

9 MS. SIMON: Do we need to --

10 THE DEPONENT: I need to go to a potty break right
11 quick.

12 MR. ROBERTS: Let's take 10.

13 THE VIDEOGRAPHER: We are off the record at 12:35.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on the record at 1:49

16 p.m.

17 EXAMINATION RESUMED

18 BY MR. ROBERTS:

19 Q. Mr. Welch --

20 A. Yeah.

21 Q. -- just to let you know where I'm going, I'm
22 going to try to finish this as quickly as
23 possible. I've got to talk to you about Kmart
24 and finish that up a little bit.

25 A. Okay.

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1 Q. We're going to talk about M&M Tire --

2 A. All right.

3 Q. -- Western Auto --

4 A. All right.

5 Q. -- and then your personal vehicles, so I've, kind
6 of, four topics I've got to cover with you --

7 A. All right.

8 Q. -- and finish up, and then I'm going to turn you
9 over to some of the other lawyers here. Okay?

10 A. Uh-oh. Alrighty. You want to get to the ball
11 game, huh?

12 Q. Kmart, you said there were five bay doors at
13 Kmart?

14 A. Yes.

15 Q. Five bays?

16 A. Yeah.

17 Q. Were there doors with each bay a car could enter?

18 A. Yeah. Oh, yeah.

19 Q. What were the size of the doors?

20 A. They were probably, what, 16 feet wide maybe,
21 probably 24 high. I mean, they were plenty big
22 enough to get something in, to get a car in.

23 Q. You cut out after -- you cut out on the height.

24 How tall were they?

25 A. They were about, I would say, 22, 23 feet high.

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1 Q. Okay. And during the workday, did you folks
2 generally leave those doors open as you worked on
3 the vehicles?

4 A. Summertime.

5 Q. And summertime goes from when to when in South
6 Carolina?

7 A. March, April -- about April to September.

8 Q. Okay. You told us about you had -- if I
9 understood you correctly, you had about five
10 other mechanics that worked there?

11 A. No. About five or six.

12 Q. Okay. How many per shift, though?

13 A. Same ones.

14 Q. Okay. Who -- well, strike that.

15 We talked a little bit about your brake work.

16 A. Yeah.

17 Q. Can you tell me how many brake linings or pad
18 changes you did per week while you were working
19 at Kmart, you personally?

20 MS. SIMON: Objection; form.

21 MR. ROBERTS: Well, let me break it out. I'll break it
22 out to help out here.

23 EXAMINATION RESUMED

24 BY MR. ROBERTS:

25 Q. How many brake linings did you change per week?

1 MS. SIMON: Objection; form.

2 THE DEPONENT: Are you talking about prepare or --

3 EXAMINATION RESUMED

4 BY MR. ROBERTS:

5 Q. Yeah, prepare.

6 A. Prepare. Okay. That would -- I would say around
7 anywhere from 50 to 60.

8 Q. Okay. And four pair per car?

9 A. Yes.

10 Q. And were there times when you had vehicles that
11 didn't need all four done?

12 A. Yes.

13 Q. You described all the different kinds of jobs
14 that you had or services you did while working at
15 Kmart, in other words, alignments, exhausts, et
16 cetera.

17 Did the other mechanics that worked alongside of
18 you have -- do the same tasks, as well, as you
19 describe?

20 A. There was only two alignment people there, me and
21 another person.

22 Q. Okay. Aside from alignments, did the other
23 mechanics have the same tasks as you did that you
24 described earlier in this deposition at Kmart?

25 A. Yes.

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1 Q. Okay. And would -- you gave me the percentage of
2 time you spent on each of those tasks.

3 Would it be similar for the other mechanics who
4 did that work, excluding you and the other guy,
5 you had the alignment-only jobs?

6 A. Yes.

7 MS. SIMON: Objection; form.

8 EXAMINATION RESUMED

9 BY MR. ROBERTS:

10 Q. You told us about the brands of brakes you used,
11 but before we get to them, I want to know, who
12 was responsible for ordering brakes at Kmart?

13 And when I say, "brakes," I'm referring to
14 linings and pads.

15 A. The person that ran the parts counter.

16 Q. Forgive me. The what counter?

17 A. The person that ran the parts counter.

18 Q. Who ran the parts counter at Kmart when you
19 worked there?

20 A. Well, the manager wound up doing about 90 percent
21 of the ordering. I think there was supposed to
22 have been an assistant manager that was supposed
23 to have been doing it, but they tried to trade it
24 around a lot.

25 Q. What was the name of the manager that did 90

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1 percent of the ordering?

2 A. Bill Franks.

3 Q. Okay. Did you personally ever do any of the
4 ordering?

5 A. No.

6 Q. Okay. Were most of the brakes that you -- were
7 most of the brake linings and pads that you used
8 and installed during your time at Kmart
9 Raybestos-manufactured brake linings and pads?

10 MS. SIMON: Objection; form.

11 THE DEPONENT: I wouldn't say most.

12 EXAMINATION RESUMED

13 BY MR. ROBERTS:

14 Q. What percentage would you say?

15 MS. SIMON: Objection; form.

16 THE DEPONENT: Probably -- probably 30 to 40 percent.

17 EXAMINATION RESUMED

18 BY MR. ROBERTS:

19 Q. Would that be true for the other coworkers who
20 did brake work as well at Kmart?

21 MS. SIMON: Objection; form.

22 THE DEPONENT: I'm not -- I'm not positive what they
23 used. I would imagine so.

24 EXAMINATION RESUMED

25 BY MR. ROBERTS:

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1 Q. What percent of the brakes that you used, linings
2 and/or pads, were from Wagner while you worked at
3 Kmart?

4 MS. SIMON: Objection; form.

5 THE DEPONENT: Probably 5 percent.

6 EXAMINATION RESUMED

7 BY MR. ROBERTS:

8 Q. Let me ask you this. One of the -- strike that.

9 What percent of the brake linings that -- strike
10 that.

11 Let me go through each of these brands.

12 For Raybestos, did you install linings and pads

13 --

14 A. Yes.

15 Q. -- manufactured by Raybestos?

16 A. Yes.

17 Q. For Wagner, did you install linings and pads

18 manufactured by Wagner?

19 A. Not positive about the pads.

20 Q. Okay. So your recall, at least here today, is

21 linings?

22 A. Yes.

23 Q. Same question for Bendix.

24 A. Pads and -- and shoes.

25 Q. Same question for Rayloc.

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1 A. Yes, both of those.

2 Q. What percent of Rayloc were pads versus linings?

3 MS. SIMON: Objection; form.

4 THE DEPONENT: I don't know.

5 MS. SIMON: Only if you know, Melvin.

6 THE DEPONENT: I couldn't tell you positive now. I

7 don't --

8 EXAMINATION RESUMED

9 BY MR. ROBERTS:

10 Q. What percent of the brakes that you installed

11 during the time you were at Kmart were Bendix

12 brand?

13 A. I would say --

14 MS. SIMON: Objection; form.

15 THE DEPONENT: -- probably 30.

16 EXAMINATION RESUMED

17 BY MR. ROBERTS:

18 Q. With respect to Rayloc --

19 A. Yeah.

20 Q. -- were the linings that you used -- well, strike

21 that.

22 You installed new shoes with linings affixed to

23 them, correct?

24 A. Yeah.

25 Q. They came from Rayloc, right?

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1 A. Yeah.

2 Q. Were they new linings and shoes, brand new?

3 A. Yes.

4 MS. SIMON: Objection; form.

5 EXAMINATION RESUMED

6 BY MR. ROBERTS:

7 Q. Did they come in a box?

8 A. Yes.

9 Q. What did the box look -- can you describe the box
10 for me, please?

11 A. I don't remember.

12 Q. Other than the name Rayloc, did the box say
13 anything else?

14 A. I would imagine so. They used to have a lot of
15 advertising on them.

16 Q. Can you tell me anything else that was written on
17 the box with the name Rayloc on it?

18 A. No.

19 Q. And is this true for both boxes of linings and
20 pads?

21 A. Yes.

22 Q. With respect to the Rayloc brake shoes that had
23 linings on them --

24 A. Yes.

25 Q. -- do you know anything about what company

1 manufactured the actual lining itself?

2 MS. SIMON: Objection; form.

3 THE DEPONENT: We got those from Carolina Tool, which
4 is a parts distributor in Greenwood.

5 EXAMINATION RESUMED

6 BY MR. ROBERTS:

7 Q. That's the supplier of the material?

8 A. Yes, Carolina Tool.

9 Q. While you were at Kmart or when you were working
10 for somebody else?

11 A. While I was working for Kmart and working for
12 somebody else.

13 Q. Okay. So Carolina Tools was the supplier of the
14 Rayloc brake shoes and linings?

15 A. Yes.

16 Q. Is that true for Rayloc pads as well?

17 A. Yes.

18 Q. Where is Carolina Tools located?

19 A. It's in Greenwood.

20 Q. Is it still there today?

21 A. Yes.

22 Q. And is that true for all the places you've worked
23 where you mentioned Rayloc brake shoes, the
24 linings, or disc pads, that they were purchased
25 or supplied by Carolina Tools?

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1 A. Ones -- the ones that we got from them were

2 Rayloc.

3 Q. Right.

4 So for Kmart, M&M, and you mentioned Western

5 Auto, did all of the Rayloc brake linings affixed

6 to shoes, along with the Rayloc brake pads that

7 you mentioned in your prior testimony, all come

8 from Carolina Tools --

9 A. As far as I know --

10 Q. -- as the distributor?

11 A. As far as I know, they did, yes.

12 Q. Okay. You're not aware of any other distributor

13 of Rayloc brand, either brake shoes with linings

14 or disc brake pads, true?

15 A. True.

16 MS. SIMON: Objection; form.

17 EXAMINATION RESUMED

18 BY MR. ROBERTS:

19 Q. Is that true, Mr. --

20 A. True, yes.

21 Q. -- Welch?

22 Okay. Have you now told me all the ways you

23 believe you were exposed to asbestos during

24 automotive work at Kmart between 1977 and '82?

25 A. All the ways?

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1 Q. Uh-huh. Is there any way we haven't discussed?

2 A. I don't know. There is a lot of days I come out
3 there and I was darker than my uniform was. I
4 eat a lot of dust. You know, when you get up in
5 there and you're working on a rear brake job and
6 you have a problem, you get in there with your
7 hands and a rag and you try to get all this crud
8 out of the way so you can get into the brake
9 shoes, and you wind up taking the rag and wiping,
10 and then you wipe your face and you wipe your
11 hands, and you've got it all over the front of
12 your shirt. You know, that's -- you know you've
13 been playing in the asbestos.

14 Q. Got it.

15 A. Then you take and blow all the stuff off.

16 Q. We talked about your brake work --

17 A. Yes.

18 Q. -- with brake shoes, linings, and pads?

19 A. Yes.

20 Q. Do you believe you were exposed to asbestos by
21 any other way while you worked at Kmart?

22 A. No.

23 Q. And just coming back to Double Diamond, the shop
24 you owned, by the way --

25 A. Yes.

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1 Q. -- switching gears now, when you did a brake job
2 for a customer, you charged them for labor and
3 parts, correct?

4 A. Yes.

5 Q. And so you would have a mark-up on the new brakes
6 that you installed for a customer's vehicle,
7 correct?

8 A. A small one, yeah.

9 Q. When -- when did you first learn that breathing
10 asbestos dust could be harmful to your health?

11 A. It was probably around '85 or something,
12 somewhere around in there.

13 Q. How did you learn that?

14 A. Some people was talking, you know, and then I saw
15 a commercial, and I said, well, dang, what
16 happened here, when did all this stuff get like
17 this.

18 Q. Okay. So you heard some people talking about it.

19 You saw a commercial.

20 Did you learn about it any other ways back in
21 1985?

22 A. No. I still didn't pay a lot of attention to it.

23 Q. Okay. But between the commercials that you saw
24 and the people talking, did you learn that
25 breathing asbestos dust could cause cancer?

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1 A. Yes.

2 Q. And between the commercials that you saw -- were
3 these lawyer commercials, lawyer advertising?

4 A. I don't think it was. I think it was some kind
5 of just mechanics or somebody was talking like
6 that that was on there.

7 Q. So between the people talking and the commercials
8 that you saw back in 1985, did you learn that
9 breathing asbestos dust can essentially kill you?

10 A. Yeah.

11 MS. SIMON: Objection; form.

12 MR. ROBERTS: I'm sorry. Did he answer?

13 THE DEPONENT: Yes.

14 MS. SIMON: Yes, you answered?

15 THE DEPONENT: Yes.

16 EXAMINATION RESUMED

17 BY MR. ROBERTS:

18 Q. What's your answer?

19 A. Yes.

20 Q. Okay. Do you recall the specific commercials
21 that you saw? What can you tell me about --
22 strike that.

23 What can you tell me about the commercials that
24 you saw?

25 Were these TV or radio commercials? Let's start

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1 there.

2 A. It was TV commercials.

3 Q. Do you recall who was the advertiser or who put
4 on the commercial or where -- you know, where it
5 originated from?

6 A. No.

7 Q. Was this one commercial or multiple commercials
8 around this time?

9 A. Maybe three or four. You don't never listen to
10 commercials when you're young.

11 Q. I understand.

12 The people talking about asbestos, who were the
13 people that you spoke to regarding health hazards
14 associated with asbestos back in '85?

15 A. It was just --

16 MS. SIMON: Objection; form.

17 EXAMINATION RESUMED

18 BY MR. ROBERTS:

19 Q. I'm sorry, Mr. Welch. If you answered, it cut
20 out.

21 MS. SIMON: I'm having some trouble with it cutting in
22 and out more. Is there a way for there to be a
23 refresh or something from the Welchs' house or --

24 THE DEPONENT: I don't know. We need to check and see,
25 I guess.

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1 MS. SIMON: Okay. Can we take, like, a five-minute
2 break?

3 THE DEPONENT: Okay.

4 MR. ROBERTS: Sure.

5 MS. SIMON: Thank you.

6 THE VIDEOGRAPHER: We are going off the record at 2:06
7 p.m., and this is the end of media unit number 1.

8 (Recess taken.)

9 THE VIDEOGRAPHER: We are back on the record, and we're
10 still on media unit number 1. The time is 2:13
11 p.m.

12 MS. SIMON: This is Dana Simon, on behalf of the
13 plaintiffs. Mr. Welch is not feeling well, so
14 we'll be suspending the deposition for today. We
15 will continue at 10 a.m. eastern time on Tuesday.
16 And just for purposes of the record, the video
17 record, while being closed out for today, is
18 technically open still for purposes of the
19 deposition.

20 MR. ROBERTS: Thank you, Dana.

21 MS. SIMON: Sure.

22 MR. ROBERTS: Madam Reporter or Videographer, do you
23 need anything else from us before we depart?

24 THE VIDEOGRAPHER: One moment, please.

25 This deposition has been suspended for today.

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1 The time is 2:14 p.m. The deposition of Melvin
2 Welch taken on October 7, 2022. We're now going
3 off the record.

4 (Deposition recessed at 2:14 p.m.)

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CERTIFICATE

I, the undersigned, Traci L. Barr, RPR,
Notary Public in and for the State of South
Carolina, do hereby certify that the deposition
of MELVIN G. WELCH was taken on the 7th day of
October, 2022, that the within deponent was sworn
to tell the truth, and that the foregoing is an
accurate transcription of the testimony taken
under oath; that all exhibits entered herein are
attached hereto (if requested by counsel) and
made a part of this deposition.

I further certify that I am neither counsel
nor solicitor to any of the parties in said suit,
nor interested in the event of the cause.

In witness whereof, I have hereunto set my
hand and seal this 8th day of October, 2022.

Traci L. Barr, RPR

Notary Public for South Carolina

My Commission Expires: 4/24/29

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1 ERRATA SHEET
 2 Melvin Welch, et al v. 3M Company, et al
 3 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES BELOW

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21 Under penalties of perjury, I declare that I have read
 22 my deposition held on October 7, 2022, and that it is
 23 true and correct subject to any changes in form or
 24 substance entered here.

24

25 MELVIN G. WELCH _____ Date _____

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