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SC Court of Appeals

Exhibit B

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

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.)

18 * * * * *

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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

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