

Jan 02 2024

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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

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

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

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

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

Defendants,

Of which Asbestos Corporation Limited is the

Appellant.

and

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

**REPLY OF THE RECEIVER FOR ASBESTOS CORPORATION LIMITED
IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD
AND FOR SANCTIONS FOR FRAUD ON THE COURT**

SMITH ROBINSON HOLLER DuBOSE
AND MORGAN, LLC

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ATTORNEYS FOR THE RECEIVER

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

INTRODUCTION

In opposing Respondents’ motion to appoint a receiver, Appellant Asbestos Corporation Limited (“ACL”) repeatedly represented to the circuit court at an August 21, 2023 hearing that it had no insurance to respond to South Carolina asbestos liabilities. In fact, the Receiver later learned, ACL has hundreds of millions of dollars in insurance that it uses to fund asbestos litigation throughout the United States. Within days of the hearing, the Receiver brought ACL’s misrepresentations to its attention in writing, and privately notified ACL’s counsel of the Receiver’s serious concerns that ACL was not being truthful to the court. ACL and its counsel ignored the Receiver’s notifications, and in the four months since the hearing, ACL never withdrew, corrected, clarified, or even acknowledged its misrepresentations to the circuit court. Rather, ACL’s exclusive focus has been on resisting, delaying and reversing the receivership order—and attacking the circuit court and the Receiver at every turn—claiming the circuit court “refuses to recognize that there are limits on its jurisdiction” and charging the “purported receiver” with attempting to “take over” ACL.

Remarkably, in its filings in this Court, ACL continues to prevaricate about the existence of its substantial insurance—referring only to its “so-called” and “potential” insurance assets. Only in response to the Receiver’s motion for sanctions has ACL come forward with explanations that its counsel “misspoke” and that its numerous prior representations that it has no insurance were a “simple mistake” and the result of confusion between ACL and its affiliate Atlas Turner, Inc. (“Atlas”). These belated explanations raised for the first time in ACL’s opposition are not

supported by the record—which contains only unequivocal, repeated statements that ACL has no insurance and a subsequent failure by ACL to correct such misstatements despite notice and many opportunities to do so.

This Court is faced with actions by ACL designed to prevent justice, conceal facts, delay courts, and drive up costs. *See In re Anonymous Member of the South Carolina Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001) (“[a]ctions ... designed to prevent justice, delay the process, or drive up costs are improper and warrant sanctions”).

Accordingly, the Receiver respectfully requests the Court grant its motion to supplement the record and impose sanctions on ACL for fraud on the court.

ARGUMENT

A. ACL’s Statements That It Had No Insurance Were Not a “Simple Mistake”

In its Opposition to the Receiver’s motion for sanctions, ACL does not dispute that its repeated representations to the circuit court that it had no insurance were incorrect. However, ACL asserts, these representations were a just a “simple mistake,” ACL’s counsel “misspoke” and should have been more “clear” and “careful.” *See* Opposition at 2, 7. ACL’s attempts to cast its misrepresentations as a “mistake” are unavailing and not supported by the record.

1. Counsel’s statements were plainly about ACL’s insurance.

ACL’s suggestion that its counsel confused ACL and its affiliate Atlas is not supported by the record. The hearing on Respondents’ motion to appoint a receiver for ACL was the first matter heard by the circuit court on August 21, 2023, and the separate hearing regarding Atlas occurred thereafter.¹ Counsel’s lengthy back-and-forth with the circuit court is replete with clear statements

¹ ACL emphasizes that the transcript from the morning session of the August 21 hearing contains “both the caption of the *Tibbs* case (ACL) and the *Welch* case (Atlas).” *See* Opposition, at 3 (and Exhibit B thereto). The transcript that ACL attached to its Opposition is an *unofficial* transcript,

that ACL's counsel and the circuit court understood that the existence of *ACL*'s insurance in the *Tibbs* case—not Atlas's insurance—was at issue:

MS. McVEY [Respondents' counsel]: Your Honor, we know that there is insurance for ACL. We know that they're depleting it. I don't understand why they're not tendering these cases to their insurance carrier, who have policies who would cover Mr. Tibbs and other South Carolinians. . . .

* * *

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

* * *

THE COURT: ACL is going to have records . . . they have got the ability to look at those same records and find out whether there's coverage for these matters that are alleged in the Tibbs case.

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

* * *

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

* * *

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

prepared by a court reporter retained by the parties. The official court reporter's transcripts for the ACL and Atlas hearings held on August 21 are separate. See Exhibits C and D attached hereto.

* * *

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

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

* * *

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

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

Exhibit C at 12, 24, 25-26, 27, 35, 44 (emphasis added).

Remarkably, ACL now states in its opposition that at the time of the hearing “[c]ounsel had no knowledge as to ACL’s status regarding insurance....” Opposition at 7. If ACL’s counsel indeed had no knowledge regarding the status of ACL’s insurance, the representations to the circuit court were unsupported and self-serving representations presented as a basis to convince the court that it should not appoint a receiver over “non-existent” insurance assets.

2. ACL had notice of its misrepresentations and never corrected them.

Moreover, even if counsel’s statements at the August 21 hearing could be construed in any way as confused, unclear or mistaken (which is not supported by the record), ACL received written

notice that it had misrepresented its purported lack of insurance to the circuit court within days of the August 21, 2023 hearing—and it took no steps to correct the record at any time thereafter.

On August 25, 2023, the Receiver (who was present at the hearing as the receiver for Atlas) filed a “Notice of Filing of Additional Information Regarding Asbestos Corporation Limited,” attaching a document that the Receiver had located indicating that ACL did in fact have insurance. The Receiver sent the following email providing a courtesy copy of its filing to the circuit court and copying counsel for ACL, providing ACL a clear opportunity to correct the record if it had indeed made a “simple mistake” as it now contends:

From: Peter Protopapas <pdp@rplegalgroup.com>
Sent: Friday, August 25, 2023 4:23 PM
To: Theile McVey; Toal, Jean; Diaz, Eva
Cc: Brown, Stephen L.; Carroll, Todd; Jon Robinson
Subject: RE: Welch v. Atlas Turner
Attachments: 2023.08.25 NOF Additional Information re Asbestos Corp Ltd - Main Doc.pdf;
2023.08.25 NOF Additional Information re Asbestos Corp Ltd - EXH B - Consolidated Financial Statements.pdf

Dear CJ Toal and Ms. Diaz

As you recall, I am the Receiver for Atlas Turner and was present for the August 21, 2023, hearing on Asbestos Corporation Ltd. As you recall, Asbestos Corporation Limited advised the Court that it did not have access to insurance.

I have obtained a copy of the Asbestos Corporation Limited’s Consolidated Financial Statements for December 31, 2022 and 2021 prepared by Price Waterhouse Cooper states in pertinent part:

“The Corporation manages liquidity risk by regularly monitoring its cash to maintain a sufficient level of liquidity so as to be able to meet its financial obligations in the foreseeable future, such obligations resulting mainly from the settlement of litigation cases relating to asbestos. Although these settlement-related expenses are mostly **reimbursed by its insurers.**”

At p. 2. Emphasis added.

“In management’s opinion, even if they [asbestos lawsuits] are partially **reimbursed by the insurers**, settlement-related expenses and defence fees for claims relating to asbestos litigation could have a material effect on the Corporation’s results of operations and financial position over the coming fiscal years.”

At p 25. Emphasis added.

The notice of filing with exhibit B, the Price Waterhouse Report are attached. I am copying counsel on this communication.

Sincerely

Peter Protopapas

Attached as Exhibit A hereto is a copy of the Receiver's August 25, 2023 email with attachments.

The Receiver then sent a second email—this one to ACL and Atlas's counsel—raising the concern that these clients have not been forthright with counsel, which in turn may have led counsel to provide inaccurate information to the circuit court:



Attached as Exhibit B hereto is a copy of the Receiver's second August 25, 2023 email.²

ACL did not respond to the Receiver's August 25 filing. Nor did it respond to the Receiver's courtesy email to the Court. Nor did ACL's counsel respond to the Receiver's second

² The Receiver was formally appointed as the receiver for ACL, on September 8, 2023.

email sent as a professional courtesy. In fact, in the four months since the August 21, ACL has never once corrected the record, claimed it had “misspoken,” or otherwise took the position that what its counsel said on August 21 was anything less than fully accurate.

Indeed, in its most recent filing before the Receiver filed its motion for sanctions for fraud on the court, ACL was still referring to its “so-called insurance assets.” *See* ACL’s Petition for Supersedeas, Nov. 22, 2023, at 18. Even in its Opposition to the present motion, ACL never affirmatively acknowledges that it does in fact have insurance for asbestos liabilities, and instead continues to refer only to its “potential insurance.” *See* Opposition at 7. Rather, ACL continues to act as if the existence of its hundreds of millions of dollars in insurance assets—now indisputably proven by ACL’s own documents and communications—are somehow irrelevant to its misrepresentations to the court.

B. That the Circuit Court Did Not Rule in ACL’s Favor Does Not Excuse Its Misrepresentations

In addition to claiming that its repeated, uncorrected misrepresentations regarding insurance were a “simple mistake,” ACL also argues that no fraud on the court occurred because the circuit court “did not indicate that its ruling was in any way impacted by any statements made by counsel concerning potential insurance.” Opposition, at 7. In other words, ACL contends that it can misrepresent key facts to a court without consequence—as long as it ultimately does not prevail in convincing the court to rule in its favor. It should go without saying that this is not the standard for candor to the courts of South Carolina. And in any event, ACL did not simply make misrepresentations during the hearing—it never corrected them to the circuit court after the hearing, and it has let those misstatements stand uncorrected in the record during the pendency of ACL’s appeal seeking to reverse the circuit court’s receivership order.

C. ACL's Opposition Confirms Why Appointment of a Receiver Is Necessary

In its Opposition, ACL contends that its representations that it has no insurance to the circuit court, and the Receiver's motion raising the same, are a "red herring" designed to distract this Court from the "merits" of this appeal—*i.e.*, ACL's arguments that the circuit court erred in appointing the receiver. But the existence and availability of ACL's insurance assets—and ACL's attempts to obfuscate the same—lie directly at the heart of the issues on appeal. The circuit court's decision to hold ACL in contempt, strike its answer and appoint a receiver flow directly from ACL's intentional tactics of refusing to participate in litigation and discovery in the circuit court with respect to its asbestos liabilities.

The appointment of a receiver with respect to insurance for such liabilities is a remedy intended by the circuit court to secure assets for the benefit of injured plaintiffs who have brought claims against ACL. As this Court has recently recognized, a history of concerning conduct with respect to an asbestos defendant's insurance assets is directly relevant to the appointment of a receiver and scope of the receiver's duties. *See Order Affirming Circuit Court*, November 22, 2023 Appellate Case No. 2020-001437, at 7 ("The record reveals years of concerning conduct on the part of [insurer] USF&G and others as they prepared for the onslaught of asbestos litigation to come. We accordingly find the Receiver had standing to seek—and properly sought—clarification of the special circuit court's Appointment Order.").

ACL's statements that it has no insurance, are not a "distraction"—but were statements intended to undercut the justification for having a receiver appointed to marshal such insurance assets. That ACL misled the court regarding the existence of its substantial insurance assets, and then failed to acknowledge and correct its misleading statements, is exactly the kind of conduct that a receiver can investigate and counteract.

CONCLUSION

For the reasons set forth herein and in his initial motion, the Receiver respectfully requests that this Court grant his motion to supplement the record, award the Receiver attorneys' fees incurred to date in the investigation of ACL's insurance coverage, and impose such other sanctions on ACL that it considers appropriate.³ In the alternative, the Receiver requests the Court remand this case to the circuit court for further proceedings to investigate and make findings regarding ACL's fraudulent representations.

January 2, 2024

Respectfully submitted,

/s/ Jonathan M. Robinson
SMITH ROBINSON HOLLER DuBOSE
AND MORGAN, LLC
G. Murrell Smith, Jr. (S.C. Bar # 66263)
Jonathan M. Robinson (S.C. Bar # 68285)
Shanon N. Peake (S.C. Bar # 102723)
2530 Devine Street, Third Floor
Columbia, South Carolina 29205
(803) 254-5445

Counsel for the Receiver

³ ACL argues no costs and sanctions are warranted because the Receiver "has done nothing more than the Circuit Court required [him] to do," and therefore "[n]o additional costs were incurred" by the Receiver. Opposition, at 4, n.6. Again, ALC seeks to avoid any responsibility or consequences associated with its misrepresentations to the court based on the flawed logic that the Receiver discovered the truth about responsive insurance policies despite the misrepresentations, i.e. "no harm no foul". If ACL had simply been forthcoming about its insurance—rather than misrepresenting that it had no insurance—the Receiver would not have had to pursue the discovery from third parties to determine that ACL had made false statements.

EXHIBIT A

Fuener, Paul

From: Peter Protopapas <pdp@rplegalgroup.com>
Sent: Friday, August 25, 2023 4:23 PM
To: Theile McVey; Toal, Jean; Diaz, Eva
Cc: Brown, Stephen L.; Carroll, Todd; Jon Robinson
Subject: RE: Welch v. Atlas Turner
Attachments: 2023.08.25 NOF Additional Information re Asbestos Corp Ltd - Main Doc.pdf;
2023.08.25 NOF Additional Information re Asbestos Corp Ltd - EXH B - Consolidated
Financial Statements.pdf

Dear CJ Toal and Ms. Diaz

As you recall, I am the Receiver for Atlas Turner and was present for the August 21, 2023, hearing on Asbestos Corporation Ltd. As you recall, Asbestos Corporation Limited advised the Court that it did not have access to insurance.

I have obtained a copy of the Asbestos Corporation Limited's Consolidated Financial Statements for December 31, 2022 and 2021 prepared by Price Waterhouse Cooper states in pertinent part:

"The Corporation manages liquidity risk by regularly monitoring its cash to maintain a sufficient level of liquidity so as to be able to meet its financial obligations in the foreseeable future, such obligations resulting mainly from the settlement of litigation cases relating to asbestos. Although these settlement-related expenses are mostly **reimbursed by its insurers.**"

At p. 2. Emphasis added.

"In management's opinion, even if they [asbestos lawsuits] are partially **reimbursed by the insurers**, settlement-related expenses and defence fees for claims relating to asbestos litigation could have a material effect on the Corporation's results of operations and financial position over the coming fiscal years."

At p 25. Emphasis added.

The notice of filing with exhibit B, the Price Waterhouse Report are attached. I am copying counsel on this communication.

Sincerely

Peter Protopapas

From: Theile McVey <tmcvey@kassellaw.com>

Sent: Friday, August 25, 2023 2:52 PM

To: Toal, Jean <JToal@sccourts.org>; Diaz, Eva <ediaz@sccourts.org>

Cc: Brown, Stephen L. <sbrown@ycrlaw.com>; Carroll, Todd <todd.carroll@wbd-us.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Peter Protopapas <pdp@rplegalgroup.com>

Subject: Welch v. Atlas Turner

Chief Justice Toal-

Earlier today I sent to you and Mr. Brown an email with the proposed orders you requested holding Asbestos Corporation Ltd. in contempt, striking its answer and, subsequently, appointing a receiver.

Separate, but related, after Mr. Brown left the Courtroom Monday you heard further arguments in the Payne & Keller matter that further discussed the implications of Rule 62. I have attached a copy of the transcript. At pages 52-54 you discuss why Mr. Carroll's argument earlier in the morning was inaccurate and further stated "[b]ut the more I look at (a) the more I am convinced that the arguments that were made [about Rule 62] were the correct ones." On page 62, you stated: "I am firmly convinced the more I read Rule 62, that it does not interfere with my ability to make a ruling as I'm being called and asked to make in this receivership matter."

You further addressed Rule 62 at pages 62-64, determining that you were not precluded from continuing to act in the Payne & Keller matter while the matter was on appeal. You specifically noted at page 64: "...I don't regard this stay as inhibiting the receiver one bit in continuing to pursue the existence of these policies and coverage provided for them for actions that are pending here in South Carolina. Which is what the receiver was empowered to do and what the receiver is doing."

Finally, in addition to Rule 62, we would also point to the Court South Carolina Code sections 14-3-450 and 14-3-330. Section 14-3-330 provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) *An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver* (emphasis added)

Section 14-3-450: Effect on proceedings below of appeals regarding injunctions or receivers provides:

In case of an appeal under *item (4) of Section 14-3-330* the proceedings in other respects in the court below *shall not be stayed during the pendency of such appeal* unless otherwise ordered by the court below. (emphasis added)

Given those views of the Court regarding SCRCP 62 at the hearing, South Carolina code Sections 14-3-330 and 14-3-450, Plaintiffs in the Childers matter would ask to withdraw their motion to lift stay given that there is not a stay in place as to the receivership.

However, given that Mr. Brown was not in the courtroom for the continued argument on this matter, I wanted to bring it to his attention so that he can address it as he sees fit. I am copying Mr. Brown, Mr. Carroll, Mr. Robinson and Mr. Protopapas on my communication with the Court. Please let me know if you have any questions or concerns. Thanks, Theile

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS AND MARGARET B.
TIBBS,

Plaintiffs,

v.

3M COMPANY, *et al.*,

Defendants.

In the Coordinated Asbestos Docket

CASE NO. 2023-CP-40-01759

**NOTICE OF FILING OF ADDITIONAL
INFORMATION REGARDING
ASBESTOS CORPORATION LIMITED
BY THE RECEIVER FOR ATLAS
TURNER**

At the hearing before this Court on August 21, 2023, counsel for Atlas Turner, Inc. and Asbestos Corporation Limited, Stephen Brown, represented to the Court that his client did not have insurance:

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

See Exhibit A, Transcript of August 21, 2023 Hearing, at 30:3-7.¹ Pressed by the Court regarding a historical chart listing millions in insurance assets that the Receiver had located and submitted to the Court,² Mr. Brown responded:

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

* * *

¹ The transcript attached hereto at Exhibit A is the certified transcript prepared and signed by South Carolina registered professional court reporter Sheri L. Byers, who was privately retained by the parties. The transcript of the official court reporter at the hearing has not yet been issued.

² Receiver's Notice of Filing dated August 20, 2023.

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

Id. at 53:6-9, 22-25.

Following the hearing, the Receiver located a report prepared by independent auditor PricewaterhouseCoopers, LLP, regarding the Consolidated Financial Statements of Asbestos Corporation Limited, which conflicts with Mr. Brown's representations regarding his client's available insurance regarding United States asbestos liabilities:

Liquidity risk is the risk arising from the Corporation's inability to meet its financial obligations as they fall due. The Corporation manages liquidity risk by regularly monitoring its cash to maintain a sufficient level of liquidity so as to be able to meet its financial obligations in the foreseeable future, **such obligations resulting mainly from the settlement of litigation cases relating to asbestos. Although these settlement-related expenses are mostly reimbursed by its insurers**, the Corporation uses trust funds for the payment of expenses incurred in litigation management as claims are filed. It also uses the portion of investments that is not restricted to the settlement of costs related to litigation for the payment of expenses incurred in maintaining its commercial status.

As at December 31, 2022, an amount of [CAD]\$3,965[,000] in amounts receivable from insurers ([CAD]\$2,372[,000] as at December 31, 2021) is allocated to the payment of accounts payable and accrued liabilities arising from litigation cases relating to asbestos.

* * *

Persons claiming exposure to asbestos fibre or to asbestos-containing products have filed numerous actions in the United States for bodily injury against various suppliers of asbestos fibre and manufacturers of asbestos-containing products, including the Corporation, which operated asbestos mines.

The Corporation cannot reasonably estimate the extent of the lawsuits related to this litigation matter due to the absence of allegations in connection with damages claimed in these proceedings, and to the inability to assess the creditworthiness of co-defendants and their insurers, to estimate the number of potential claims and to predict the development of liability theories applicable

to such proceedings. **In management's opinion, even if they are partially reimbursed by the insurers, settlement-related expenses and defence fees for claims relating to asbestos litigation could have a material effect on the Corporation's results of operations and financial position over the coming fiscal years.**

However, according to the opinion of legal advisers consulted, even if a default judgment were rendered against the Corporation in the United States, such judgment could not be enforced against the subsidiaries prior to its verification or recognition by a competent court in the province of Quebec; this court could refuse such recognition due to certain statutory provisions of the Civil Code of Quebec.

See Exhibit B, Report on Consolidated Financial Statements, at 23, 25 (emphasis added).

Respectfully submitted,

s/ Peter D. Protopapas
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803.978.6111

August 25, 2023

Asbestos Corporation Limited

Consolidated Financial Statements
December 31, 2022 and 2021
(in thousands of Canadian dollars)



Independent auditor's report

To the Shareholders of Asbestos Corporation Limited

Our opinion

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of Asbestos Corporation Limited and its subsidiaries (collectively, the Corporation) as at December 31, 2022 and 2021 and its financial performance and its cash flows for the years then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS).

What we have audited

The Corporation's consolidated financial statements comprise:

- the consolidated statements of financial position as at December 31, 2022 and 2021;
- the consolidated statements of income and comprehensive income for the years then ended;
- the consolidated statements of changes in shareholders' equity for the years then ended;
- the consolidated statements of cash flows for the years then ended; and
- the notes to the consolidated financial statements, which include significant accounting policies and other explanatory information.

Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the consolidated financial statements* section of our report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Independence

We are independent of the Corporation in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada. We have fulfilled our other ethical responsibilities in accordance with these requirements.

PricewaterhouseCoopers LLP
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T: +1 418 522 7001, F: +1 418 522 5663

"PwC" refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership.



Material uncertainty related to going concern

We draw attention to note 2 of the consolidated financial statements, which describes events or conditions indicating the existence a material uncertainty that may cast significant doubt on the Corporation's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

Key audit matters

Key audit matters are those matters that, in our professional judgment, were of most significance in the audit of the consolidated financial statements for the year ended December 31, 2022. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters. In addition to the matter described in the *Material uncertainty related to going concern* section, we have determined the matters described below to be the key audit matters to be communicated in our report.

Key audit matter	How our audit addressed the key audit matter
Assessment of litigation-related liabilities <i>See note 4, Summary of significant accounting policies, note 5, Use of judgments and estimates and note 19, Contingencies to the consolidated financial statements.</i> The Corporation is facing numerous claims arising from its past asbestos-related activities. The provisions for litigation are from individuals claiming exposure to asbestos fibre or to asbestos-containing products. In the United States, numerous actions for bodily injury have been filed against certain subsidiaries of the Corporation that either operated asbestos mines or manufactured asbestos-containing products. The amount of litigation-related liabilities was \$26 million at December 31, 2022.	Our approach to addressing the matter included the following procedures, among others: • Tested how management has estimated litigation-related liabilities, including the following: - Updated the understanding of the Corporation's process for assessing the amount of litigation-related liabilities. - Tested the underlying data on the new lawsuits and claims, settlements and withdrawals that occurred during the year.



Key audit matter	How our audit addressed the key audit matter
Provisions for litigation are recognized as litigation-related liabilities when the Corporation has a present legal or constructive obligation as a result of past events, when it is likely that an outflow of resources will be required to settle the obligation and when the amount can be reliably estimated. The application of these criteria requires judgments to be made in light of the facts and circumstances of each situation. In order to determine the amount necessary for provisions, the Corporation makes assumptions and estimates mainly with regard to expected costs, including professional and compensation fees, and the anticipated cost schedule. The estimation of this provision is based on internal analyses and consultations with independent experts and legal advisers. In addition, provisions have been measured based on the fund balance intended specifically for the settlement of claims arising from asbestos lawsuits. We considered this to be a key audit matter because of (i) the materiality of the litigation-related liabilities, (ii) the amount of judgment exercised by management in estimating the expected costs, including professional and compensation fees, and the anticipated cost schedule, and (iii) the fact that the audit work involved the use of legal advisers with expertise, specialized knowledge, and experience related to the asbestos-related litigation.	- Evaluated whether the assumptions used to calculate the litigation-related liabilities are reasonable, with such liabilities including the expected costs, as well as professional and compensation fees and the expected timing of the costs, taking into account changes in facts and circumstances during the year in relation to developments in the litigation, including recent rulings, and considering the resolution of past uncertainties associated with comparable litigation. - Relied on the Corporation's external legal advisers to obtain recent information on developments in the litigation to evaluate whether the estimate of litigation liabilities is reasonable. • Evaluated the completeness of the litigation-related liabilities by considering the litigation management fees, which include the costs related to lawsuits concerning asbestos and other issues. • Assessed the related disclosures in the consolidated financial statements.

Other information

Management is responsible for the other information. The other information comprises the Management's Discussion and Analysis and the information, other than the consolidated financial statements and our auditor's report thereon, included in the annual report.

Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.



In connection with our audit of the consolidated financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the consolidated financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of management and those charged with governance for the consolidated financial statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Corporation's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Corporation or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Corporation's financial reporting process.

Auditor's responsibilities for the audit of the consolidated financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.



- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Corporation's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Corporation's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Corporation to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Corporation to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the consolidated financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.



The engagement partner on the audit resulting in this independent auditor's report is François Berthiaume.

PricewaterhouseCoopers LLP¹

Québec, Quebec
April 20, 2023

¹ CPA auditor, public accountancy permit No. A125971

Asbestos Corporation Limited

Consolidated Statements of Financial Position

As at December 31, 2022 and 2021

(in thousands of Canadian dollars)

	2022 \$	2021 \$
Assets		
Current assets		
Cash	169	369
Restricted cash (note 4)	1,328	688
Accounts receivable (note 6)	4,690	3,641
Income taxes recoverable	888	885
Prepaid expenses	111	94
Current portion of investments (note 7)	1,600	1,685
Assets held for sale (note 8)	809	809
	<u>9,595</u>	<u>8,171</u>
Non-current assets		
Investments (note 7)	22,155	24,416
Note receivable from a company under common control, non-interest bearing and with no terms of repayment	552	516
Security deposits	9	9
Property, plant and equipment (note 8)	356	330
	<u>23,072</u>	<u>25,271</u>
Total assets	<u>32,667</u>	<u>33,442</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities (note 9)	1,856	1,885
Income tax payable	38	6
Current portion of litigation-related liabilities (note 10)	3,329	1,852
	<u>5,223</u>	<u>3,743</u>
Non-current liabilities		
Litigation-related liabilities (note 10)	22,671	23,804
Notes payable to related companies (note 11)	24,553	25,337
Post-employment benefit liabilities (note 12)	404	471
	<u>47,628</u>	<u>49,612</u>
Total liabilities	<u>52,851</u>	<u>53,355</u>
Shareholders' equity		
Capital stock (note 14)	33,312	33,312
Deficit	(53,496)	(53,225)
Total shareholders' equity	<u>(20,184)</u>	<u>(19,913)</u>
Total liabilities and shareholders' equity	<u>32,667</u>	<u>33,442</u>
Going concern (note 2)		
Contingencies (note 19)		

Approved by the Board of Directors

Director

The accompanying notes are an integral part of these consolidated financial statements.

Asbestos Corporation Limited**Consolidated Statements of Income and Comprehensive Income****For the years ended December 31, 2022 and 2021**

(in thousands of Canadian dollars, except share and per share data)

	2022 \$	2021 \$
Revenue		
Revenue from mining properties (note 16(a))	1,561	2,075
Investment income (loss) (note 16(b))	(282)	3,047
Parent company's management fees	66	66
Other	20	115
	<u>1,365</u>	<u>5,303</u>
Operating expenses		
Mining properties' ownership and management expenses (note 16(c))	1,083	986
Administrative expenses (note 16(d))	825	763
Litigation management fees (recovery)	(244)	2,884
Interest on notes payable to the parent company (note 11)	-	605
	<u>1,664</u>	<u>5,238</u>
Income (loss) before income taxes	(299)	65
Income tax expense (note 13)	38	6
	<u>38</u>	<u>6</u>
Net income (loss) for the year	(337)	59
Item that will not be reclassified subsequently to net income (loss)		
Post-employment benefit actuarial gains (note 12)	66	46
	<u>66</u>	<u>46</u>
Comprehensive income (loss) for the year	<u>(271)</u>	<u>105</u>
Basic and diluted net income (loss) per share (note 14)	<u>(0.12)</u>	<u>0.02</u>

The accompanying notes are an integral part of these consolidated financial statements.

Asbestos Corporation Limited

Consolidated Statements of Changes in Shareholders' Equity

For the years ended December 31, 2022 and 2021

(in thousands of Canadian dollars)

	Capital stock \$	Deficit \$	Total shareholders' equity \$
Balance as at January 1, 2021	33,312	(53,330)	(20,018)
Net income for the year	-	59	59
Post-employment benefit actuarial gains (note 12)	-	46	46
Comprehensive income for the year	-	105	105
Balance as at December 31, 2021	33,312	(53,225)	(19,913)
Net loss for the year	-	(337)	(337)
Post-employment benefit actuarial gains (note 12)	-	66	66
Comprehensive loss for the year	-	(271)	(271)
Balance as at December 31, 2022	33,312	(53,496)	(20,184)

The accompanying notes are an integral part of these consolidated financial statements.

Asbestos Corporation Limited**Consolidated Statements of Cash Flows****For the years ended December 31, 2022 and 2021**

(in thousands of Canadian dollars)

	2022 \$	2021 \$
Cash flows from		
Operating activities		
Net income (loss) for the year	(337)	59
Adjustments for		
Post-employment benefits	(1)	(13)
Depreciation of property, plant and equipment	20	14
Gains on sale of investments	(1,216)	(575)
Net change in fair value of investments	2,167	(1,895)
Net change in litigation-related liabilities	344	3,257
Capitalized interest on the note payable to the parent company	-	605
	<u>977</u>	<u>1,452</u>
Changes in items of working capital		
Accounts receivable	(1,049)	(2,361)
Income tax recoverable	(3)	(66)
Prepaid expenses	(17)	(21)
Accounts payable and accrued liabilities	(29)	730
Income tax payable	32	6
	<u>(1,066)</u>	<u>(1,712)</u>
Net cash used in operating activities	<u>(89)</u>	<u>(260)</u>
Investing activities		
Net change in restricted cash	(640)	767
Purchase of investments	(4,840)	(3,844)
Proceeds from sale of investments	6,235	4,557
Purchase of property, plant and equipment	(46)	(879)
Net change in the note receivable from a company under common control	(36)	(48)
	<u>673</u>	<u>553</u>
Net cash generated by investing activities		
Financing activities		
Net change in notes payable to related companies	(784)	69
Private loan	-	350
Repayment of private loan	-	(350)
	<u>(784)</u>	<u>69</u>
Net cash generated by (used in) financing activities		
Net change in cash during the year	<u>(200)</u>	<u>362</u>
Cash – Beginning of year	<u>369</u>	<u>7</u>
Cash – End of year	<u>169</u>	<u>369</u>
Supplementary information		
Interest received	178	241
Dividends received	412	328

The accompanying notes are an integral part of these consolidated financial statements.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

1 General information

Asbestos Corporation Limited (the Corporation) is governed by the Canada Business Corporations Act and is domiciled in Canada. The address of its head office is 840 Ouellet Boulevard, Thetford Mines, Quebec G6G 7A5. Its main mission consists in maintaining its mining assets and maximizing their value. The Corporation is also involved in the management of various litigation cases relating to asbestos, which arose from operations in the past. The parent company of the Corporation is Mazarin Inc.

These consolidated financial statements are management's responsibility and were approved by the Board of Directors on April 20, 2023.

2 Going concern

The Corporation is facing numerous litigation cases resulting from its previous asbestos-related operations, as described in note 19, and settlement thereof could entail the use of the Corporation's liquid assets.

Furthermore, the Corporation is exposed to certain liquidity risks due to operating costs and to the non-recurring nature of some of its revenues, thus casting significant doubt on the validity of the going concern assumption. In fact, the Corporation presently settles its operating costs through revenues derived mostly from mining assets, more specifically, warehouse leasing, and related royalties.

Management continues to study the various possibilities of raising its revenues derived from mining assets in order to increase the Corporation's cash flows, namely through the setting-up of partnerships to develop its assets and the upgrading of tailings. However, there is no assurance that management will be successful in these actions. All these factors indicate a material uncertainty that may cast significant doubt on the ability of the Corporation and its subsidiaries to continue as a going concern.

Although the parent company renounced the repayment of notes payable (note 11) for the next 12 months, no assurance can be given that the Corporation will have sufficient funds to repay these debts after said period.

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS) applicable to a going concern. If the going concern assumption is not appropriate, significant adjustments may need to be made to the carrying amounts and classification of assets, liabilities and expenses in these consolidated financial statements.

3 Basis of preparation

The Corporation prepares its consolidated financial statements in accordance with IFRS, as issued by the International Accounting Standards Board (IASB).

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

4 Summary of significant accounting policies

Basis of measurement

These consolidated financial statements have been prepared under the historical cost convention, except for investments classified at fair value through profit or loss.

Consolidation

The consolidated financial statements of Asbestos Corporation Limited include the accounts of the Corporation as well as those of all entities over which it has control or when it is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee. Intercompany transactions and balances have been eliminated.

Subsidiaries

Subsidiaries are the entities (including special purpose entities) over which the Corporation has control, where control is defined as the power to govern the financial and operating policies of such entities. The effect of potential voting rights that the Corporation is currently in a position to exercise is considered when assessing whether control exists. Subsidiaries are fully consolidated from the date on which control is obtained by the Corporation and are deconsolidated from the date that control ceases.

3R Mineral Inc. is a wholly owned subsidiary of the Corporation and the Corporation's main subsidiary.

Foreign currency translation

a) Functional and presentation currency

Items included in the financial statements of each consolidated entity of the Corporation are measured using the currency of the primary economic environment in which the entity operates (the functional currency). The consolidated financial statements are presented in Canadian dollars, which is the functional currency of the Corporation and its subsidiaries.

b) Transactions and balances

Foreign currency transactions are translated into the Corporation's functional currency using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of foreign currency transactions and from the translation at year-end exchange rates of monetary assets and liabilities denominated in currencies other than the Corporation's functional currency are recognized in net income (loss).

Cash

Cash consists of all balances with banks.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Restricted cash

Restricted cash consists of all balances with banks and short-term highly liquid investments with original maturities of three months or less at the acquisition date and for which use is restricted to the settlement of expenses arising from asbestos lawsuits.

Financial instruments

Financial assets and financial liabilities are recognized when the Corporation becomes a party to the contractual provisions of the instrument. Assets and liabilities are initially recognized at fair value and are subsequently measured based on their classification. Financial assets are derecognized when the rights to receive cash flows have expired or have been transferred and when the Corporation has transferred substantially all the risks and rewards of ownership of the transferred asset. The Corporation's financial assets and financial liabilities comprise cash, restricted cash, accounts receivable, investments, note receivable from a company under common control, security deposits, accounts payable and accrued liabilities and notes payable to related companies.

Financial assets and financial liabilities are offset and the net amount reported in the consolidated statements of financial position when there is a legally enforceable right to offset the recognized amounts and there is an intention to settle on a net basis, or realize the asset and settle the liability simultaneously.

The classification of financial assets and financial liabilities depends on the intention with which they were acquired and their characteristics.

Financial instruments and amortized cost

Financial instruments at amortized cost are accounted for at amortized cost using the effective interest rate method. They are discounted to present value where the effect of discounting is material. Cash, restricted cash, accounts receivable, note receivable from a company under common control, security deposits, accounts payable and accrued liabilities and notes payable to related companies are classified as amortized cost. These financial assets and financial liabilities are accounted for at amortized cost using the effective interest rate method.

Financial instruments at fair value through profit or loss

Financial assets and financial liabilities are classified into various categories based on their characteristics and the Corporation's intention upon their acquisition. Insurance recoveries received from insurers in the form of investments and certain strategic investments in entities operating in the same industry as the Corporation are classified at fair value through profit or loss. Those financial instruments are part of a portfolio that is managed in accordance with a documented investment management strategy and whose performance is evaluated on a fair value basis. In addition, information about the portfolio is provided internally on that basis to the Corporation's key management personnel.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Determination of fair value

The fair value of a financial instrument is the amount of consideration that would be agreed on in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act. The fair value of a financial instrument on initial recognition is the transaction price, which is the fair value of the consideration given or received. Subsequent to initial recognition, the fair values of financial instruments that are quoted in active markets are based on bid prices for financial assets held and ask prices for financial liabilities. When independent prices are not available, fair values are determined by using valuation techniques that refer to observable market data.

Revenue

Revenue is measured at the fair value of the consideration received or receivable, after eliminating intra-group transactions. The Corporation's estimates are based on past experience, taking into consideration the specifics of a given transaction, among other things.

Revenue arising from the use of the Corporation's other assets is recognized when the following criteria are met:

- The parties to the contract have approved the contract and are committed to perform their respective obligations;
- The entity can identify each party's rights regarding the goods or services to be transferred;
- The entity can identify the payment terms for the goods or services to be transferred;
- The contract has a commercial substance; and
- It is probable that the entity will collect the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer. In evaluating whether collectability of an amount of consideration is probable, an entity shall consider only the customer's ability and intention to pay that amount of consideration when it is due. The amount of consideration to which the entity will be entitled may be less than the price stated in the contract if the consideration is variable because the entity may offer the customer a price concession.

Apart from the general principles described above, the Corporation applies the following specific revenue recognition policies:

- Interest is recognized using the effective interest method;
- Dividends are recognized when the right to receive payment is established;
- Lease income from operating leases is recognized on a straight-line basis over the lease term; and
- Royalties are derived from three sources: the exploitation of a granite quarry, the restoration of a mine site optimizing materials containing asbestos, and the revegetation of the site. They are recognized when the risks of ownership have been transferred, which is generally on delivery of goods.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and accumulated impairment. Property, plant and equipment are depreciated using the straight-line method over the following useful lives:

	Life
Truck scale	20 years
Equipment	3 years

Litigation-related liabilities

Litigation-related liabilities result from lawsuits and claims of persons alleging bodily injury attributable to their exposure to asbestos fibre, as described in note 19.

Provisions for litigation are recognized when the Corporation has a present legal or constructive obligation as a result of past events, when it is likely that an outflow of resources will be required to settle the obligation, and when the amount can be reliably estimated. Amounts recognized as provisions represent management's best estimate of the expenditure required to settle the obligations at the end of the reporting period and are discounted to present value where the effect is material.

According to the opinion of legal advisers consulted, if a default judgment were to be rendered against the Corporation in the United States, such judgment could not be enforced against the Corporation prior to its verification or recognition by a competent court in the province of Quebec; therefore, no provision has been established for those lawsuits. A provision is recognized when the estimated amount is based on an analysis of each claim and of the amounts that will probably be available to settle those claims. Subsequently, when an agreement is entered into with the counterparty, the provision is cancelled, and the amount of the agreement is recorded in accounts payable and accrued liabilities.

Otherwise, provisions have been measured based on the fund balance intended specifically for the settlement of claims arising from asbestos lawsuits. The fund balance amounted to \$22,375 as at December 31, 2022 (\$23,743 as at December 31, 2021) (note 7).

If all or part of the amount required to settle a provision is expected to be reimbursed by a third party, the reimbursement is recognized in accounts receivable when, and only when, it is virtually certain that, should the Corporation settle the obligation, the reimbursement will be received. The reimbursement will be treated as a separate asset. The expense related to a provision is presented in net income (loss), net of the amount recognized for the reimbursement.

Litigation settlements are included in operating expenses under litigation management fees and consist of costs related to lawsuits concerning asbestos and other issues, net of claim payments received from a third party.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Income taxes

Income tax expense comprises current and deferred tax. Income tax is recognized in net income (loss) unless it relates to items recognized directly in other comprehensive income or in shareholders' deficiency. In this case, the tax is also recognized directly in other comprehensive income or in shareholders' deficiency, respectively.

Current tax is the tax payable on the taxable profit for the year, using the tax rates enacted or substantively enacted at the end of the reporting period and any adjustment to tax payable in respect of previous periods.

In general, deferred tax is recognized on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. Deferred tax is calculated on an undiscounted basis using tax rates and laws that have been enacted or substantively enacted by the end of the reporting period and are expected to apply when the tax asset is realized or the tax liability is settled. Deferred tax assets are recognized to the extent that it is probable that the assets can be recovered.

Deferred tax assets and liabilities are recognized for temporary differences arising on investments in subsidiaries, except when the Corporation can control the timing of the reversal of the temporary difference and it is probable that such temporary difference will not reverse in the foreseeable future.

Deferred tax assets and liabilities are classified in non-current assets and liabilities.

Employee benefits

The Corporation recognizes its obligations under employee benefit plans and the related costs, net of plan assets. In this regard, the Corporation has adopted the following policies:

- The cost of pension and post-retirement benefits earned by employees is actuarially determined using the projected benefit method prorated on service and management's most probable assumptions regarding salary escalation, the retirement age of employees and expected health-care costs, among other things;
- Plan assets are measured at fair value;
- Actuarial gains and losses are recognized immediately in comprehensive income (loss) as they arise and are accumulated in deficit; and
- The financing cost is calculated by applying the discount rate used to measure post-employment benefit obligations to the funded status of the plan.

Asset retirement obligations

Provisions for environmental restoration costs are accounted for when the Corporation has a present legal or constructive obligation as a result of past events, when it is likely that an outflow of resources will be required to settle the obligation and when the amount can be reliably estimated.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Provisions are measured based on management's best estimate of the expenditure required to settle the obligations at the consolidated statement of financial position date, and are discounted to present value where the effect is material. The increase in the provision due to the passage of time is recognized as financial expenses. Changes in assumptions or estimates are reflected in the period during which they occur.

Provisions for environmental restoration costs represent legal or constructive obligations associated with the possible closure of the Corporation's property, plant and equipment. These obligations include restoration costs as well as expenses relating to the follow-up of activities and tangible asset retirement. The discount rate used is based on a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability, excluding the risks for which future cash flow estimates have already been adjusted.

The Corporation's asset retirement obligations come from the restoration of its mining sites. This restoration is required by the provincial legislation when mining sites are permanently closed.

Impairment of non-current assets

Property, plant and equipment are tested for impairment when events or changes in circumstances indicate that the carrying amount may not be recoverable. For the purpose of measuring recoverable amounts, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash-generating units or CGUs). The recoverable amount is the higher of an asset's fair value less costs of disposal and value in use (being the present value of the expected future cash flows of the relevant asset or CGU, as determined by management).

The Corporation evaluates impairment losses for potential reversals when events or circumstances warrant such consideration.

Net income (loss) per share

Basic net income (loss) per share is determined by dividing net income (loss) for the year attributable to the equity owners of the Corporation by the weighted average number of common shares outstanding at year-end. The Corporation did not issue any potentially dilutive instrument.

Segment reporting

Operating segments are reported in a manner consistent with the internal reporting provided to the chief operating decision-maker. The chief operating decision-maker, who is responsible for allocating resources to and assessing the performance of the operating segments, has been identified as the chief executive officer of the Corporation.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Recent accounting standards

To be adopted in 2023 or later

Amendments to liability classification

On January 23, 2020, the IASB issued amendments to IAS 1, *Presentation of Financial Statements* (the amendments), to clarify the requirements for classifying liabilities as current or non-current. More specifically:

- The amendments specify that the conditions which exist at the end of the reporting period are those which will be used to determine if a right to defer settlement of a liability exists;
- Management's expectations about events after the consolidated statement of financial position date, for example on whether a covenant will be breached, or whether early settlement will take place, are not relevant; and
- The amendments clarify the situations that are considered settlement of a liability.

The amendments are applicable to annual periods beginning on or after January 1, 2023.

5 Use of judgments and estimates

The preparation of consolidated financial statements requires management to make estimates and judgments that affect the amounts recorded as assets, liabilities, and the reported amounts of revenues and expenses during the year. Actual results could differ from those estimates and judgments. The items whose actual results could differ significantly from those estimates are described below.

Estimates are based on historical experience, where applicable, and on various other assumptions believed to be reasonable under the circumstances. Actual results could differ from those estimates.

Employee future benefits

The Corporation offers a defined benefit plan to some of its employees and former employees. It also offers life insurance to some of its former employees. The cost of pension benefits and other retirement benefits earned by participants is actuarially determined using the projected benefit method prorated on service. This method is based on management's most probable assumptions regarding the rate of compensation increase and the retirement age of participants. The rate of return of plan assets is calculated by applying the discount rate used to measure post-employment benefit obligations. The rate of compensation increase is determined by taking into account the current salary structure as well as expected salary increases. The key assumptions are indicated in note 12. All assumptions are reviewed at the end of each reporting period. The use of different assumptions could result in different carrying amounts for accrued benefit assets and thus affect the defined benefit liabilities.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Provisions for lawsuits, claims and litigation cases

A provision is recognized when there is a present legal or constructive obligation as a result of past events, when it is likely that an outflow of resources will be required to settle the obligation, and when the amount can be reliably estimated. Application of these criteria requires the exercise of significant judgment based on the facts and circumstances specific to each situation. In order to determine the amount necessary for provisions, the Corporation makes assumptions and estimates mainly with regard to expected costs, including professional and compensation fees, and the anticipated cost schedule. The estimation of this provision is based on internal analyses and consultations with independent experts and legal advisers. Actual amounts could differ from those estimates.

Income taxes

Deferred tax assets and liabilities result from temporary differences between the tax bases of assets and liabilities and the carrying amounts indicated in the consolidated financial statements. Deferred tax assets also reflect the benefits relating to unused tax losses that can be carried forward to reduce income taxes in future years. This method requires the exercise of judgment regarding the likelihood that the Corporation's deferred tax assets will be recovered from the estimated future taxable profit, and consequently, that they can be recognized in the consolidated financial statements of the Corporation. This method also requires the use of estimates in determining the expected timing of the realization of tax assets and the settlement of tax liabilities, and the enacted or substantively enacted tax rates that will then be applicable.

The Corporation is periodically subject to tax return audits by tax authorities, which can involve questions regarding its tax positions. Settlement of any challenge resulting from these audits can result in no change, a complete disallowance, or some partial adjustment reached through negotiations or litigation. The tax benefit from an uncertain tax position is only recognized if it is more likely than not that the tax position will be sustained based on its technical merits. The estimated liabilities related to these matters are adjusted in the period in which the uncertain tax position is effectively settled, the statute of limitations for examination expires or when additional information becomes available. Although the Corporation believes that the judgments and estimates made are reasonable, actual results could differ and resulting adjustments could materially affect the effective income tax rate and the income tax provision.

6 Accounts receivable

	2022 \$	2021 \$
Trade receivables	623	1,123
Amounts receivable from the government	102	146
Amounts receivable from insurers (notes 10, 18 and 19)	3,965	2,372
	<u>4,690</u>	<u>3,641</u>

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

7 Investments

	2022	
	Cost	Fair value *
	\$	\$
Treasury bills	2,822	2,577
Government bonds	7,207	6,751
Shares	6,274	8,454
Mutual funds	6,062	5,973
	22,365	23,755
Less: Current portion		1,600
Non-current portion		22,155
	2021	
	Cost	Fair value *
	\$	\$
Treasury bills	3,158	2,896
Government bonds	4,923	4,473
Shares	7,879	11,707
Mutual funds	6,584	7,025
	22,544	26,101
Less: Current portion		1,685
Non-current portion		24,416

* As at December 31, 2022, the use of an amount of \$22,375, being US\$16,521 (\$23,743, being US\$18,728 as at December 31, 2021) is exclusively restricted to the settlement of expenses arising from asbestos lawsuits, as described in note 19. Moreover, an amount of \$1,363 (\$2,333 as at December 31, 2021) shall be used only for the settlement of expenses arising from asbestos lawsuits, as described in note 19, and for maintaining the commercial existence of the Corporation, companies under common control and the parent company.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

8 Property, plant and equipment

	Land \$ *	Building \$ *	Truck scale \$	Equipment \$ **	Total \$ ***
Year ended December 31, 2021					
Opening net carrying amount	105	-	56	113	274
Additions	219	659	-	1	879
Depreciation for the year	-	-	(4)	(10)	(14)
Balance as at December 31, 2021	324	659	52	104	1,139
As at December 31, 2021					
Cost	324	659	96	157	1,236
Accumulated depreciation	-	-	(44)	(53)	(97)
Net carrying amount	324	659	52	104	1,139
Year ended December 31, 2022					
Opening net carrying amount	324	659	52	104	1,139
Additions	-	-	-	46	46
Depreciation for the year	-	-	(5)	(15)	(20)
Balance as at December 31, 2022	324	659	47	135	1,165
As at December 31, 2022					
Cost	324	659	96	203	1,282
Accumulated depreciation	-	-	(49)	(68)	(117)
Net carrying amount	324	659	47	135	1,165

* A purchase option and a long-term lease option were granted to KSM Inc. on buildings and land owned by the Corporation with a net carrying amount of \$809. They expire on March 9, 2024. No depreciation was recognized on these assets during the fiscal year. These assets are held for sale, given the agreement in principle with KSM Inc. for the long-term lease of these assets. They are therefore presented as such in the consolidated statements of financial position.

** Equipment includes rolling stock, mining equipment and office equipment. The mining equipment was not yet in use as at December 31, 2022 and 2021, as installation was still in progress. Therefore, no depreciation of this asset was recognized during the years then ended.

*** The net carrying amount of property, plant and equipment presented in the consolidated statements of financial position consists of property, plant and equipment in an amount of \$356 (\$330 as at December 31, 2021) and assets held for sale in an amount of \$809 (\$809 as at December 31, 2021).

Asbestos Corporation Limited
Notes to Consolidated Financial Statements
December 31, 2022 and 2021

(in thousands of Canadian dollars)

9 Accounts payable and accrued liabilities

	2022 \$	2021 \$
Fees and compensation related to litigation payable	1,445	936
Trade payables and accrued expenses	411	949
	<u>1,856</u>	<u>1,885</u>

10 Litigation-related liabilities

	\$
Balance as at January 1, 2021	22,399
Additional provisions	3,776
Utilized during the year	<u>(519)</u>
Balance as at December 31, 2021	<u>25,656</u>
Current portion	1,852
Non-current portion	<u>23,804</u>
Balance as at December 31, 2021	<u>25,656</u>
Balance as at January 1, 2022	25,656
Additional provisions	3,741
Utilized during the year	<u>(3,397)</u>
Balance as at December 31, 2022	<u>26,000</u>
Current portion	3,329
Non-current portion	<u>22,671</u>
Balance as at December 31, 2022	<u>26,000</u>

Management believes that there is some uncertainty about the timing of the disbursements associated with litigation-related liabilities.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

11 Notes payable to related companies

	2022 \$	2021 \$
Parent company		
Notes payable, annual interest conditional and limited to income before income taxes for a given year, but shall not in any case exceed the prime rate of a Canadian chartered bank, terms of repayment based on cash flows generated by the Corporation ^{(a), (b)}	24,210	24,994
Companies under common control		
Demand Notes, non-interest bearing and with no terms of repayment ^(b)	343	343
	<u>24,553</u>	<u>25,337</u>

(a) Notes payable to the parent company are secured by a first ranking hypothec on the Corporation's real estate, a floating hypothec and a conventional hypothec without delivery on all the Corporation's present and future movable and immovable, property, plant and equipment, tangible and intangible.

(b) The companies renounced the repayment of those Notes for the next 12 months.

12 Post-employment benefits

The Corporation offers a defined benefit plan that guarantees the payment of post-retirement benefits to some of its employees and former employees. This defined benefit plan was closed to new members on December 29, 2003.

The Corporation also offers life insurance to some of its former employees.

Asbestos Corporation Limited
Notes to Consolidated Financial Statements
December 31, 2022 and 2021

(in thousands of Canadian dollars)

The following tables summarize the information relating to the plans offered by the Corporation:

	2022		2021	
	Pension benefit plan \$	Other benefit plans \$	Pension benefit plan \$	Other benefit plans \$
Accrued benefit obligations				
Balance – Beginning of year	1,188	471	1,267	530
Current service cost	10	-	9	-
Interest expense on accrued benefit obligations	33	10	29	7
Participants' contributions	1	-	2	-
Actuarial losses (gains) resulting from:				
Experience adjustments	(6)	(23)	(5)	(33)
Changes in financial assumptions	(235)	(33)	(69)	(12)
Changes in demographic assumptions	(50)	-	-	-
Benefits paid	(45)	(21)	(45)	(21)
Balance – End of year	896	404	1,188	471
Plan assets				
Market value – Beginning of year	1,519	-	1,390	-
Interest income on plan assets	43	-	32	-
Actuarial gains (losses)	(213)	-	132	-
Employer contributions	-	21	8	21
Participants' contributions	1	-	2	-
Benefits paid	(45)	(21)	(45)	(21)
Market value – End of year	1,305	-	1,519	-
Excess of obligations over assets (assets over obligations)	(409)	404	(331)	471
Impact of the asset ceiling	409	-	331	-
Post-employment benefit liabilities	-	404	-	471

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

The net expense recognized for the Corporation's plans is included in administrative expenses and in litigation management fees in the consolidated statements of net income and comprehensive income and is detailed as follows:

	2022			2021		
	Pension benefit plan \$	Other benefit plans \$	Total \$	Pension benefit plan \$	Other benefit plans \$	Total \$
Current service cost	10	-	10	9	-	9
Interest expense on accrued benefit obligation	33	10	43	29	7	36
Interest income on plan assets	(43)	-	(43)	(32)	-	(32)
Interest on impact of the asset ceiling	9	-	9	3	-	3
	9	10	19	9	7	16

The amounts recognized in other comprehensive income (loss) are as follows:

	2022			2021		
	Pension benefit plan \$	Other benefit plans \$	Total \$	Pension benefit plan \$	Other benefit plans \$	Total \$
Actuarial gains (losses)	78	56	134	206	44	250
Impact of the asset ceiling	(68)	-	(68)	(204)	-	(204)
	10	56	66	2	44	46

The weighted average of the significant actuarial assumptions adopted by the Corporation in measuring its post-retirement benefit obligation is as follows:

	2022		2021	
	Pension benefit plan %	Other benefit plans %	Pension benefit plan %	Other benefit plans %
Discount rate applied at the end of the year to measure accrued benefit obligation	5.05	5.10	2.85	2.10
Discount rate applied at the end of the prior year to measure the expense for the year	2.85	2.10	2.36	1.30
Rate of compensation increase	3.00	N/A	3.00	N/A

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

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(in thousands of Canadian dollars)

The effect of a 1.0% change in the discount rate for the pension benefit plan and the other benefit plans is as follows:

	2022 \$	2021 \$
Effect of an increase		
Change in the value of employee accrued benefit obligation	(81)	(137)
Effect of a decrease		
Change in the value of employee accrued benefit obligation	96	162

Actuarial valuations

The Corporation measures its benefit plans as at December 31 of each year. The most recent valuation was as at December 31, 2021 and the next one will be performed as at December 31, 2024.

The following table presents the breakdown of pension plan assets:

Asset categories	2022 %	2021 %
Canadian and foreign equity fund	54.2	62.5
Cash	3.7	3.0
Canadian bond fund	36.4	32.8
Other	5.7	1.7
	<u>100.0</u>	<u>100.0</u>

Asbestos Corporation Limited
Notes to Consolidated Financial Statements
December 31, 2022 and 2021

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13 Income taxes

The income tax expense differs from the amount that would have been calculated using the combined Canadian federal and provincial statutory income tax rate of 26.50% (26.50% in 2021) as follows:

	2022 \$	2021 \$
Income (loss) before income taxes	(299)	65
Combined Canadian statutory tax rate	26.50 %	26.50 %
Income tax expense (recovery) calculated using the statutory tax rate	(79)	17
Change in tax losses and other deductions for which no deferred tax assets are recognized	110	493
Non-deductible expenses (non-taxable income)	8	(488)
Current and deferred tax adjustments related to prior years	(1)	(7)
Use of unused tax benefits	-	(9)
	38	6

Significant components of the Corporation's deferred tax assets and liabilities are as follows:

	2022 \$	2021 \$
Deferred tax assets		
Investments in subsidiaries and other investments	3,718	4,021
Deferred tax liabilities		
Litigation-related liabilities	(3,703)	(3,995)
Other	(15)	(26)
Deferred tax (net)	-	-

The following table presents the changes in deferred tax assets and liabilities during the year, without taking into consideration the offsetting of balances within the same tax jurisdiction:

	Litigation- related liabilities \$
Deferred tax assets	
As at January 1, 2021	3833
Recovery tax expense	188
As at December 31, 2021	4,021
Income of income tax expense	(303)
As at December 31, 2022	3,718

Asbestos Corporation Limited
Notes to Consolidated Financial Statements
December 31, 2022 and 2021

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	Investment \$	Others \$
Deferred tax liabilities		
As at January 1, 2021	(3,809)	(24)
Income of income tax expense	(186)	(2)
As at December 31, 2021	(3,995)	(26)
Recovery tax expense	292	11
As at December 31, 2022	<u>(3,703)</u>	<u>(15)</u>

Unrecognized deferred tax assets

Deferred tax assets have been recognized to the extent that it is probable that the tax benefit relating to deferred taxable profits will be realized. Deferred tax assets have not been recognized in respect of the following items:

	2022 \$	2021 \$
Tax losses carried forward	1,006	943
Property, plant and equipment and development expenses	3,152	3,215
Accrued benefit liability	107	125
Litigation-related liabilities	2,901	2,793
Investments	8	5
Other	22	5
	<u>7,196</u>	<u>7,086</u>

Tax losses carried forward

As at December 31, 2022, the Corporation has accumulated, for income tax purposes, non-capital losses totalling approximately \$3,694 (\$3,273 as at December 31, 2021) at the federal level and no amount (nil in 2021) at the provincial level. These losses can be carried forward against future years' taxable income and will expire in the following years:

	Federal \$	Provincial \$
2032	629	-
2034	1,314	-
2035	1,019	-
2037	732	-
	<u>3,694</u>	<u>-</u>

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

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14 Shareholders' equity

Capital stock

Authorized

Unlimited number of shares, without par value, of the following classes:

Common shares

Preferred shares, rights, privileges and restrictions to be determined by the Board of Directors before their issuance

Issued and fully paid

2,837,002 Common shares as at December 31, 2022 and 2021 valued at \$33,312.

The parent company has established a share option plan whereby certain key employees, officers, directors and service suppliers may be granted share options for common shares of the parent company. Some of these share options were granted to employees and directors of the Corporation.

	2022	2021
Weighted average number of common shares outstanding	2,837,002	2,837,002

15 Capital disclosures

The Corporation's objectives when managing capital are to:

- Maintain a capital structure that allows the Corporation to favour the financing of its strategy for maintaining its mining assets and maximizing their value using cash flows from operating activities;
- Use the investments for the payment of expenses incurred in litigation management; and
- Use the portion of investments that is not restricted to the settlement of costs related to litigation for the payment of expenses incurred in maintaining its commercial status.

The Corporation's objectives, policies and procedures have not changed since the previous year. The Corporation defines its capital as its capital stock and its notes payable to related companies.

The Corporation's financial strategy is designed and formulated to maintain a flexible capital structure consistent with the objectives stated above and in order to respond to changes in economic conditions and the risk characteristics of underlying assets. In view of the Corporation's nature of activities, the Board of Directors has not set any performance measurement criteria for capital management and relies on management's expertise to maintain its future economic development. The Corporation is not subject to any external requirements concerning its capital structure, except for appropriations.

Asbestos Corporation Limited
Notes to Consolidated Financial Statements
December 31, 2022 and 2021

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16 Additional disclosures on the consolidated statements of income

a) Revenue from mining properties

	2022	2021
	\$	\$
Building rental	668	544
Sale of land	159	460
Royalties	428	591
Other revenues from mining properties	306	480
	1,561	2,075

b) Investment income (loss)

	2022	2021
	\$	\$
Interest revenue	193	248
Dividends	476	329
Gain on sale of investments	1,216	575
Net change in fair value of investments	(2,167)	1,895
	(282)	3,047

c) Mining properties' ownership and management expenses

	2022	2021
	\$	\$
Salaries, wages and employee benefits	95	90
Depreciation of property, plant and equipment	17	12
Property taxes	217	209
Maintenance and repairs	357	284
Mining site monitoring	140	143
Other	257	248
	1,083	986

d) Administrative expenses

	2022	2021
	\$	\$
Salaries, wages and employee benefits	397	386
Depreciation of property, plant and equipment	3	2
Professional fees	315	295
Other	110	80
	825	763

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

17 Related party transactions

Compensation of key management personnel

Key management personnel include the Corporation's directors and members of the Corporation's management. Compensation awarded to key management personnel includes:

	2022 \$	2021 \$
Salaries, wages and employee benefits	307	289

Other related party transactions

During the year, the Corporation carried out the following transactions with related parties:

	2022 \$	2021 \$
Company under common control Litigation management fees	40	40
Parent company Management fees	66	66

These transactions were carried out in the normal course of operations and were measured at the exchange amount.

18 Financial instruments

Fair value

The carrying amount of cash, restricted cash, accounts receivable, security deposits, as well as accounts payable and accrued liabilities approximates their fair value due to their short-term maturity or current market rates. Investments are accounted for at fair value using bid prices.

The fair value of the note receivable from a company under common control and notes payable to related companies is not determinable due to the specific conditions negotiated between the related parties.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

The following tables show the classification of the Corporation's financial instruments in a hierarchy that is based on the significance of the inputs used in making the measurements. The levels in the hierarchy are:

- Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities;
- Level 2: Inputs other than quoted prices included within level 1 that are observable for the asset or liability, either directly (that is, as prices) or indirectly (that is, derived from prices); and
- Level 3: Inputs for the asset or liability that are not based on observable market data (that is, unobservable inputs).

	2022		
	Level 1	Level 2	Level 3
	\$	\$	\$
Assets at fair value through profit or loss			Total
			\$
Treasury bills	2,577	-	-
Government bonds	6,751	-	-
Shares	8,452	-	2
Mutual funds	4,610	1,363	-
	22,390	1,363	2
			23,755
	2021		
	Level 1	Level 2	Level 3
	\$	\$	\$
Assets at fair value through profit or loss			Total
			\$
Treasury bills	2,896	-	-
Government bonds	4,473	-	-
Shares	11,705	-	2
Mutual funds	4,692	2,333	-
	23,766	2,333	2
			26,101

For the years ended December 31, 2022 and 2021, no transfers were made between the levels of the fair value hierarchy.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

Credit risk

Financial instruments which potentially subject the Corporation to credit risk consist principally of cash, restricted cash, accounts receivable, note receivable from a company under common control and security deposits.

The Corporation's cash and restricted cash are held with or issued by recognized financial institutions. Therefore, the Corporation considers the risk of non-performance on these instruments to be remote.

Generally, the Corporation does not require collateral security from customers for trade accounts receivable; however, credit is extended following an evaluation of creditworthiness. In addition, the Corporation performs ongoing credit reviews of all its customers and other third parties and establishes an allowance when accounts are determined to be uncollectible. As at December 31, 2022 and 2021, no provision for bad debts had been recorded on the Corporation's consolidated statements of financial position. For the years ended December 31, 2022 and 2021, no bad debt expense was recognized in the Corporation's net income (loss).

The aging of delinquent trade receivables over 90 days was nil as at December 31, 2022 and 2021.

Concerning investments, credit risk mostly results from the bond issuers' potential inability to meet their commitments. The Corporation minimizes such risk by investing mainly in securities with high credit ratings and by entrusting its portfolio management to recognized investment advisers. In addition, an investment policy has been initiated by management, including investment diversification, and an investment committee is responsible for reporting periodically to the Board of Directors.

Liquidity risk

Liquidity risk is the risk arising from the Corporation's inability to meet its financial obligations as they fall due. The Corporation manages liquidity risk by regularly monitoring its cash to maintain a sufficient level of liquidity so as to be able to meet its financial obligations in the foreseeable future, such obligations resulting mainly from the settlement of litigation cases relating to asbestos. Although these settlement-related expenses are mostly reimbursed by its insurers, the Corporation uses trust funds for the payment of expenses incurred in litigation management as claims are filed. It also uses the portion of investments that is not restricted to the settlement of costs related to litigation for the payment of expenses incurred in maintaining its commercial status.

As at December 31, 2022, an amount of \$3,965 in amounts receivable from insurers (\$2,372 as at December 31, 2021) is allocated to the payment of accounts payable and accrued liabilities arising from litigation cases relating to asbestos.

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

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Foreign exchange risk

The Corporation is exposed to foreign exchange risk by its cash, restricted cash, accounts receivable and investments, which are partly denominated in US dollars. This risk is hedged by accounts payable and accrued liabilities and by a portion of its liabilities relating to litigation denominated in such foreign currency. The Corporation considers the exchange rate fluctuations to have no significant impact on its results. Consequently, no sensitivity analysis has been provided in this respect. The balances in US dollars are as follows:

	2022 US\$	2021 US\$
Cash	1	1
Restricted cash	140	136
Accounts receivable	2,011	1,871
Accounts payable and accrued liabilities	(943)	(637)
Litigation-related liabilities	(780)	(810)
Net balance	429	561

In 2022 and 2021, investments in foreign currency were not included in the sensitivity analysis because any fluctuations will be hedged by a change in litigation-related liabilities in the same amount.

Interest rate risk

As at December 31, 2022 and 2021, the Corporation's exposure to interest rate risk was as follows:

Cash	Variable interest rate
Restricted cash	Variable interest rate
Accounts receivable	Non-interest bearing
Note receivable from a company under common control	Non-interest bearing
Security deposits	From 0% to 0.55%
Accounts payable and accrued liabilities	Non-interest bearing
Notes payable to related companies	As described in note 11

For the years ended December 31, 2022 and 2021, a hypothetical increase or decrease in interest rates would not have had a significant impact on the Corporation's net income (loss) or comprehensive income (loss) and shareholders' equity.

Market risk

Market risk is the risk that the fair value of a financial instrument will fluctuate because of changes in market prices.

Any variation in the fair value of investments is recognized in net income (loss). A $\pm 10\%$ variation in market prices as at December 31, 2022 would have had an approximate pre-tax impact of $\pm \$131$ ($\pm \$223$ as at December 31, 2021) on the Corporation's net income (loss).

Asbestos Corporation Limited

Notes to Consolidated Financial Statements

December 31, 2022 and 2021

(in thousands of Canadian dollars)

19 Contingencies

Asbestos lawsuits

Persons claiming exposure to asbestos fibre or to asbestos-containing products have filed numerous actions in the United States for bodily injury against various suppliers of asbestos fibre and manufacturers of asbestos-containing products, including the Corporation, which operated asbestos mines.

The Corporation cannot reasonably estimate the extent of the lawsuits related to this litigation matter due to the absence of allegations in connection with damages claimed in these proceedings, and to the inability to assess the creditworthiness of co-defendants and their insurers, to estimate the number of potential claims and to predict the development of liability theories applicable to such proceedings. In management's opinion, even if they are partially reimbursed by the insurers, settlement-related expenses and defence fees for claims relating to asbestos litigation could have a material effect on the Corporation's results of operations and financial position over the coming fiscal years.

However, according to the opinion of legal advisers consulted, even if a default judgment were rendered against the Corporation in the United States, such judgment could not be enforced against the subsidiaries prior to its verification or recognition by a competent court in the province of Quebec; this court could refuse such recognition due to certain statutory provisions of the Civil Code of Quebec.

20 Segment information

The Corporation has only one operating segment.

All revenues received from the Corporation's customers are generated in Canada, and the Corporation's property, plant and equipment are all located in Canada.

EXHIBIT B

Fuener, Paul

From: Peter Protopapas <pdp@rplegalgroup.com>
Sent: Friday, August 25, 2023 4:37 PM
To: Brown, Stephen L.
Cc: sgriffith@ycrlaw.com; tgandy@ycrlaw.com
Subject: FW: Welch v. Atlas Turner
Attachments: 2023.08.25 NOF Additional Information re Asbestos Corp Ltd - Main Doc.pdf;
2023.08.25 NOF Additional Information re Asbestos Corp Ltd - EXH B - Consolidated
Financial Statements.pdf

Dear Mr. Brown

Though you and I have not litigated together, I have held your law firm in high regard for many years. I write out of concern that your clients have not been forthright with you and, in turn, you are not able to provide accurate information to the Court.

I sympathize that two other law firms have been relieved from representing these clients and that you were retained in June. However, I respectfully request clarification and cooperation regarding the settlement trust, the investment funds, the liquidation of the insurance program and the status of the insurance policies for Atlas.

Failing transparency and cooperation, I will proceed accordingly. I ask that you and your firm accept this email as my request that you preserve all documents and information concerning or relating to Atlas.

Sincerely

Peter Protopapas

From: Peter Protopapas
Sent: Friday, August 25, 2023 4:23 PM
To: Theile McVey <tmcvey@kassellaw.com>; Toal, Jean <JToal@sccourts.org>; Diaz, Eva <ediaz@sccourts.org>
Cc: Brown, Stephen L. <sbrown@ycrlaw.com>; Carroll, Todd <todd.carroll@wbd-us.com>; Jon Robinson <jon@smithrobinsonlaw.com>
Subject: RE: Welch v. Atlas Turner

Dear CJ Toal and Ms. Diaz

As you recall, I am the Receiver for Atlas Turner and was present for the August 21, 2023, hearing on Asbestos Corporation Ltd. As you recall, Asbestos Corporation Limited advised the Court that it did not have access to insurance.

I have obtained a copy of the Asbestos Corporation Limited's Consolidated Financial Statements for December 31, 2022 and 2021 prepared by Price Waterhouse Cooper states in pertinent part:

"The Corporation manages liquidity risk by regularly monitoring its cash to maintain a sufficient level of liquidity so as to be able to meet its financial obligations in the foreseeable future, such obligations resulting mainly from the settlement of litigation cases relating to asbestos. Although these settlement-related expenses are mostly **reimbursed by its insurers.**"

At p. 2. Emphasis added.

"In management's opinion, even if they [asbestos lawsuits] are partially **reimbursed by the insurers**, settlement-related expenses and defence fees for claims relating to asbestos litigation could have a material effect on the Corporation's results of operations and financial position over the coming fiscal years."

At p 25. Emphasis added.

The notice of filing with exhibit B, the Price Waterhouse Report are attached. I am copying counsel on this communication.

Sincerely

Peter Protopapas

From: Theile McVey <tmcvey@kassellaw.com>

Sent: Friday, August 25, 2023 2:52 PM

To: Toal, Jean <JToal@sccourts.org>; Diaz, Eva <ediaz@sccourts.org>

Cc: Brown, Stephen L. <sbrown@ycrlaw.com>; Carroll, Todd <todd.carroll@wbd-us.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Peter Protopapas <pdp@rplegalgroup.com>

Subject: Welch v. Atlas Turner

Chief Justice Toal-

Earlier today I sent to you and Mr. Brown an email with the proposed orders you requested holding Asbestos Corporation Ltd. in contempt, striking its answer and, subsequently, appointing a receiver.

Separate, but related, after Mr. Brown left the Courtroom Monday you heard further arguments in the Payne & Keller matter that further discussed the implications of Rule 62. I have attached a copy of the transcript. At pages 52-54 you discuss why Mr. Carroll's argument earlier in the morning was inaccurate and further stated "[b]ut the more I look at (a) the more I am convinced that the arguments that were made [about Rule 62] were the correct ones." On page 62, you stated: "I am firmly convinced the more I read Rule 62, that it does not interfere with my ability to make a ruling as I'm being called and asked to make in this receivership matter."

You further addressed Rule 62 at pages 62-64, determining that you were not precluded from continuing to act in the Payne & Keller matter while the matter was on appeal. You specifically noted at page 64: "...I don't regard this stay as inhibiting the receiver one bit in continuing to pursue the existence of these policies and coverage provided for them for actions that are pending here in South Carolina. Which is what the receiver was empowered to do and what the receiver is doing."

Finally, in addition to Rule 62, we would also point to the Court South Carolina Code sections 14-3-450 and 14-3-330. Section 14-3-330 provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) *An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver* (emphasis added)

Section 14-3-450: Effect on proceedings below of appeals regarding injunctions or receivers provides:

In case of an appeal under *item (4) of Section 14-3-330* the proceedings in other respects in the court below *shall not be stayed during the pendency of such appeal* unless otherwise ordered by the court below. (emphasis added)

Given those views of the Court regarding SCRPC 62 at the hearing, South Carolina code Sections 14-3-330 and 14-3-450, Plaintiffs in the Childers matter would ask to withdraw their motion to lift stay given that there is not a stay in place as to the receivership.

However, given that Mr. Brown was not in the courtroom for the continued argument on this matter, I wanted to bring it to his attention so that he can address it as he sees fit. I am copying Mr. Brown, Mr. Carroll, Mr. Robinson and Mr. Protopapas on my communication with the Court. Please let me know if you have any questions or concerns. Thanks, Theile

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EXHIBIT C

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

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

9 August 21, 2023

10 B E F O R E:

11 The Honorable Justice Jean H. Toal, Presiding Judge

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

13 Thiele McVey, Esq.
Attorney for Plaintiffs

14 Stephen Brown, Esq.
Attorney for ACL

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

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I N D E X

DESCRIPTION	PAGE
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E X H I B I T S

(None.)

P R O C E E D I N G S

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

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

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

Ms. McVey?

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

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

MS. McVEY: That's right.

I think Eva is stuck.

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

1 it.

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

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

15 Ms. McVey, you may proceed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MS. McVEY: Yes, ma'am.

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

1 MS. McVEY: That's right.

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

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

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

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

17 MS. McVEY: Okay.

18 THE COURT: I'm familiar with those.

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

1 documents, period.

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

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

13 MS. McVEY: That's right.

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

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

1 be held -- not be sanctioned for that.

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

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

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

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

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

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

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

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

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

24 MS. McVEY: Yes, ma'am.

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

1 something Mr. Brown is aware of.

2 Mr. Brown; right?

3 MR. BROWN: Yes, ma'am.

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

13 MS. McVEY: Judge, I --

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

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

20 THE COURT: Right.

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

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

3 Your Honor -- I'm sorry.

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

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

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

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

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

1 surprised if there were not others.

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

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

7 MS. McVEY: That's right.

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

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

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

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

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

24 THE COURT: Right.

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

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

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

9 THE COURT: Right.

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

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

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

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

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

9 MS. McVEY: That's right.

10 THE COURT: Isn't that correct?

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

13 THE COURT: Right.

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

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

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

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

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

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

14 THE COURT: Right.

15 MS. McVEY: -- used.

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

20 THE COURT: Very good.

21 Mr. Brown.

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

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

1 little easier.

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

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

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

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

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

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

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

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

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

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

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

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

1 THE COURT: Yes, sir.

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

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

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

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

10 THE COURT: It has an ongoing independent business?

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

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

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

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

1 MR. BROWN: In 1989 --

2 THE COURT: Right.

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

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

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

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

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

22 THE COURT: Well, I --

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

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

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

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

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

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

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

1 matters with regard to claims against them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: They have got their records.

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

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

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

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

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

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

12 MR. BROWN: Attorneys.

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

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

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

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

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

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

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

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

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

8 THE COURT: All right. I understand.

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

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

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

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

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

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

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

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

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

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

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

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

1 case?

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

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

10 MR. BROWN: I apologize.

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

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

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

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

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

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

7 THE COURT: Made its way what?

8 MR. BROWN: Lawfully into America.

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

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

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

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

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

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

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

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

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

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

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

20 MR. BROWN: Yes, ma'am.

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

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

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

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

11 MR. BROWN: Yes, ma'am.

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

14 MR. BROWN: Yes, ma'am.

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

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

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

1 THE COURT: Yes.

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

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

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

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

20 MR. BROWN: I understand.

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

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

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

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

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

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

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

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

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

25 THE COURT: Sangamo.

1 MR. BROWN: Sangamo. I apologize.

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

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

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

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

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

24 THE COURT: I think I understand your position.

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

1 THE COURT: Yes, sir.

2 Ms. McVey, in reply?

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

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

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

14 Now, I don't know what --

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

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

3 MS. McVEY: And Your Honor --

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

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

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

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

15 THE COURT: Right.

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

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

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

23 THE COURT: Or Asbestos Corporation Limited.

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

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

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

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

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

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

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

25 Mr. Tibbs has a claim against Asbestos Corporation.

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

9 THE COURT: Thank you, ma'am.

10 Anything further?

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

13 THE COURT: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 [Overlapping conversation.]

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

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

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

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

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

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

11 THE COURT: I understand.

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

15 THE COURT: I understand. I understand.

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

19 THE COURT: Well, okay.

20 All right. Anything further?

21 MS. McVEY: No, Your Honor.

22 RULING

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

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

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

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

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

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

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

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

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

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

25 All right. That's Tibbs.

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

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

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

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

14 MR. BROWN: Thank you so much.

15 THE COURT: All right.

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

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

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

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

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

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

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

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

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

10 All right. That's that.

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

2 State of South Carolina)

3 County of Richland)

4
5 RE: John Tibbs vs. 3M Company, et al.6
7 I, Bobbi J. Fisher, Registered Professional
8 Reporter (RPR) and Official Court Reporter III for the
9 State of South Carolina, do hereby certify that the
10 foregoing is a true, accurate and complete Transcript of
11 Record of the proceedings had and evidence introduced in
12 the hearing of the captioned case in the Court of Common
13 Pleas for Richland County, South Carolina, on the 21st of
14 August, 2023.15
16 Submitted: August 28, 202317
18 ____/s/ Bobbi Fisher____

19 Bobbi J. Fisher, RPR

20 Official Court Reporter III

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EXHIBIT D

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

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

14 August 21, 2023

15 B E F O R E:

16 The Honorable Justice Jean H. Toal, Presiding Judge

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

18 Thiele McVey, Esq.
19 Attorney for Plaintiffs

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

22 Todd Carroll, Esq.
23 Attorney for Travelers

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

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I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

P R O C E E D I N G S

(The following proceedings started at 10:33 a.m.):

MS. McVEY: Thiele McVey for the Welch family.

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

By way of background only, you have just gone over this with ACL, but you recall that Atlas Turner filed a motion to dismiss for lack of personal jurisdiction, refused to comply with discovery, refused to produce a witness. We moved to hold them in contempt, you held them in contempt and struck their answer, and then ordered Mr. Protopapas to come in and find insurance assets for Atlas Turner. And when you did that, Atlas Turner appealed each of those orders: the contempt order, the sanction order, and the receiver order. And, of course, they have every right to do that and that is what they are doing.

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

And so the receiver points to -- and I read it again last night -- Rule 62, and that talks about the stay of

1 proceedings to enforce a judgment. And it's 62(a). It
2 talks about automatic stays and the exceptions, which
3 includes injunctions, receiverships, and accountings.

4 And it says, "Except as stated herein, no execution
5 shall issue upon a judgment nor shall proceedings be taken
6 for its enforcement until the expiration of ten days after
7 its entry. Unless otherwise ordered by the Court, an
8 interlocutory or final judgment in an action for an
9 injunction or in receivership action or a judgment or
10 order directing accounting shall not be stayed."

11 So, Your Honor, while we are stayed, I think, as to
12 the other orders that you issued, we do not believe that
13 Mr. Protopapas is stayed as to attempting to discover and
14 marshal those assets.

15 Why is it so important in this case? Well, for a
16 couple of reasons. During this appellate process, which
17 takes a long time in South Carolina; they're just
18 overworked up there, I think, and so the appellate --
19 appeals process takes a long time.

20 What we don't want them to do is what we know they
21 have done in the past, which is liquidate these insurance
22 policies and put them in some sort of QSF. Now, I handed
23 you the one involving Atlas Asbestos Corporation, but the
24 receiver filed another one as to Atlas Turner. And I'm
25 going to hand this up to you, Judge. And this looks like,

1 again, an agreement with Atlas Turner to --

2 THE COURT: I have been handed a document that says
3 Welch against 3M. This is 2022 -- excuse me --
4 2020-CP-40-03834. This document is a notice of Atlas
5 Turner, Inc.'s misleading representations in filing of
6 evidence of potential insurance litigation. This is dated
7 August the 18th, 2023, by Mr. Protopapas as a receiver for
8 Atlas Turner. And it's an agreement between a certain
9 asbestos mine in Canada, the Royal Insurance Company of
10 Canada, and Atlas Turner, Inc. And it deals with policies
11 of insurance of Royal enforced from 1964 to 1969, and it
12 liquidates those policies for the payment into a trust of
13 2,500 -- \$2,500,000 Canadian for liabilities in connection
14 with the operations for Atlas as a division of this mine,
15 and it sets up a payment schedule, and it was signed on
16 the 18th of December, 1986.

17 MS. McVEY: That's right. So Atlas says in their
18 brief about why the receiver shouldn't continue to do his
19 duties, they say -- and I'm quoting -- "According to the
20 plaintiff, this necessity, the request to lift stay, is
21 borne of a potential that exists due to the believed
22 liquidity of Atlas's insurance assets; that Atlas might
23 divest itself of the very assets intended to be protected
24 by the appointment of a receiver."

25 And they say, "No evidence of these speculative

1 theories has been offered into evidence by the plaintiff."

2 Now, note that they don't say there isn't any
3 evidence or that Atlas doesn't have it, just that
4 Plaintiffs haven't provided any.

5 Well, now we have. This is a real concern about
6 them depleting their assets. And it's interesting to hear
7 Mr. Brown say there is no insurance responsive to these
8 claims when, clearly, there is a whole bunch of insurance
9 that's out there. And I don't -- did they deplete
10 \$2 billion worth of insurance? Where is the money? Where
11 are these qualified settlement funds that have been set
12 up?

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

18 We have submitted letters to you that Mr. Protopapas
19 filed where Atlas is refusing to tender these cases to
20 these insurance companies, some of whom are here today
21 that have filed responsive pleadings -- or, I'm sorry --
22 responses to our motion today.

23 And they're not tendering to them. And so the
24 carrier is saying, "We're not giving you anything because
25 Atlas hasn't tendered it to us." We want Mr. Protopapas

1 to be able to tender these coverages to see what kind of
2 coverage there is. And I think, Judge, if there weren't
3 any coverage, these insurers wouldn't be here filing all
4 kinds of stuff late at night.

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

10 Atlas has shown clearly to this Court that they do
11 not care about court orders. And so, Your Honor, we
12 believe it's utterly necessary to make sure.

13 I think, under the rules, even if there was a stay
14 in place, under Rule 205 and 241, we meet the criteria for
15 a stay to be lifted, even if there is one, but after
16 carefully reviewing Rule 62, it's clear to me that
17 receiverships are not appealed even -- I mean, not stayed
18 during the appeal.

19 And that makes perfect sense because, otherwise,
20 every receivership order would be appealed, and the
21 defendant could do whatever they wanted with any of the
22 assets, totally defeating the purpose of the receivership
23 here.

24 And I'm happy to answer any questions, but that
25 would be our request, just to make sure that the receiver

1 can go forward with his investigation.

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

6 MS. McVEY: Yes, ma'am.

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

9 MS. McVEY: All of the orders, yes.

10 THE COURT: All of the orders that were issued in
11 connection with that are all on appeal. This is a letter
12 from Mr. Keith Rahman, account manager, Direct Claims
13 Division of Resolute, a large insurance company or
14 collection insurance company, dated July the 24th, '23.
15 He's -- Resolute is a third-party administrator for
16 certain claims on behalf of Certain Underwriters at
17 Lloyd's, Lloyd's Underwriters. Claim was received by an
18 email from Lindsay Valek, as paralegal for Rikard &
19 Protopapas.

20 The letter states, "Lloyds's Underwriters have been
21 advised by Atlas that Atlas is controlling and defending
22 its own interest in the Asbestos Lawsuits and that you are
23 not objecting to Atlas's control of its own defense.
24 Atlas is not tendering the Asbestos Lawsuits to [the]
25 Lloyd's Underwriters for defense and indemnity." If you

1 have any questions, contact me.

2 Then, on July the 21st, 2023, Resolute sends a
3 letter to Atlas Turner in Canada saying Resolute is a
4 third-party administrator for claims on behalf of Lloyd's
5 Underwriters. Lloyd's Underwriters are aware of an
6 order entered by Justice Jean Toal on June 20th, 2023, a
7 receivership order in which the Welch lawsuit stating --
8 in the Welch lawsuit, stating that it had appointed Peter
9 Protopapas as a receiver solely over Atlas's insurance
10 assets. Lloyd's has been advised by Atlas that Atlas has
11 continued to control its defense of the asbestos lawsuits,
12 even after entry of the receivership order, which Atlas
13 believes is its right even if the receivership order is
14 allowed to stand, and Peter Protopapas is not objecting to
15 Atlas's control of its own defense.

16 Those two letters from Resolute indicate an ongoing
17 and active relationship between Atlas and its insurers and
18 claims managers for its insurers and certainly impacts the
19 representations that have been made to me that neither ACL
20 nor Atlas has any insurance or any information about its
21 insurance. And this is a correspondence dated just last
22 month indicating active coverage, which Atlas, the live
23 corporation of ACL, is choosing to manage itself and call
24 the shots on the defense itself.

25 MS. McVEY: Yes, ma'am.

1 THE COURT: What impact does that have on your
2 argument?

3 MS. McVEY: Your Honor, I think you should hear from
4 Mr. Protopapas about whether or not he agrees that Atlas
5 can continue to --

6 THE COURT: Well, I would be surprised if he agrees
7 with that, but that's what they are representing --

8 MS. McVEY: That's right.

9 THE COURT: -- is that they can do that because he's
10 consented to it --

11 MS. McVEY: Right.

12 THE COURT: -- or has not objected to it.

13 MS. McVEY: I don't know if he has or he hasn't.

14 THE COURT: Well, we'll find that out, before it's
15 all over.

16 MS. McVEY: But what that means to me is there's
17 insurance here.

18 THE COURT: Exactly.

19 MS. McVEY: There is insurance that Atlas Turner is
20 refusing to tender. And we need to understand why that
21 is, what kind of coverage is out there. It needs to be
22 preserved. We know they know how to liquidate insurance
23 policies because we have shown you that they have done it,
24 and that's only what has been found in the last month or
25 so.

1 This is the purpose of a receivership statute, is to
2 make sure, even during appeal, that this is not stayed so
3 that the assets don't get wasted.

4 THE COURT: Well, that's the biggest heartburn I
5 have got about the thing. I am a circuit court judge who
6 stays rigorously within her guardrails about what she can
7 and cannot do in the face of an appeal with the South
8 Carolina Supreme Court or the South Carolina Court of
9 Appeals. They are appealing the legitimacy of the
10 receivership.

11 MS. McVEY: Yes, ma'am. And I would agree -- look,
12 the contempt and other things are properly up there, but
13 what is not properly -- under our own Rule 62, it
14 specifically talks about receiverships, and it makes
15 perfect sense why that is not stayed, because there's a
16 real danger there.

17 Now, I think you can put in some sort of order about
18 assets can't be disbursed, they can't be whatever, but at
19 least, at that point, the insurance carriers will be in,
20 will know if there's insurance or not insurance, and will
21 figure out what Atlas did.

22 If there really isn't any insurance and there's
23 \$2 billion that I have just shown you, where is it? I
24 think we're entitled to know that and preserve the appeal.

25 Your Honor, so I think it is a critical point.

1 Respectfully, to our appellate courts when they go
2 to read this, every case I have had on appeal is taking
3 between five to seven years to fully resolve, and so it's
4 going to be a minute before we know.

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

10 MS. McVEY: Your Honor, you do. The rules say --
11 and this is Rule 241(a) of our appellate rules --

12 THE COURT: Right.

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

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

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

25 THE COURT: Oh, yeah.

1 MS. McVEY: But you do have the authority under our
2 rules to do that, and I do think you should do it. You're
3 familiar with the dangers of this liquidation as they're
4 having now, and it's a real -- it's a real concern.

5 So that's if there's a stay. I would argue to you
6 that Rule 62 says there isn't a stay on this receivership
7 stuff. It specifically says that. And so I think there
8 is not a stay, but even if there were, we believe that you
9 can lift it under Rule 241(a).

10 THE COURT: All right.

11 MS. McVEY: Thank you, Judge.

12 THE COURT: All right. Mr. Brown?

13 MR. BROWN: Thank you, Your Honor.

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

19 With regard to the argument that it is not -- I'll
20 be honest, I got a little confused because counsel for the
21 plaintiffs filed a memo that said that there was an
22 automatic stay and they said over and over and over and
23 over. And then there was a filing by someone that
24 referenced the receiver saying, "No, there is no automatic
25 stay."

1 THE COURT: I don't think you need to be confused.
2 Their argument today is that Rule 62 -- or that there is
3 an automatic stay of orders under appeal -- we know that's
4 hornbook law -- if it is an appealable item.

5 Now, people in this court have all kind of fun in
6 appealing things that aren't appealable because of
7 interlocutory orders and some of that is wrapped up in
8 part of what was done in the order about Welch
9 or interlocutory matters that aren't appealable.

10 But for appealable orders, if they are appealable,
11 the stay -- the appeal stays further activity by the
12 circuit court on the matters that are stayed. What their
13 argument is here is that Rule 62 specifically exempts the
14 running of the receivership from the stay and argues
15 there's a good reason for that, because that simply
16 preserves the ability to preserve assets. So that's what
17 she argues. You don't need to spend any time saying they
18 argued inconsistently. I think I understand what their
19 position is now.

20 MR. BROWN: Okay. Then let's go to 62(a), which
21 talks about the automatic stay does not come into play
22 with regard in an action for a receivership. This case
23 was never -- and talking about Welch, Your Honor -- was
24 never an action for a receivership. It's an asbestos case
25 where a receivership came in discovery sanction issued by

1 this Court. There is a --

2 THE COURT: There was a petition for the appointment
3 of receiver. You can -- I don't want to spend a whole lot
4 of time on that argument. They made a petition to appoint
5 a receiver as part of what they thought was necessary
6 because of the conduct of the defendant. They also asked
7 for sanctions. The thing is a multilayered thing just as
8 the other case was.

9 So the part that dealt with appointment is -- deals
10 with a petition to appoint a receiver.

11 MR. BROWN: And, Your Honor, if I recall the rulings
12 right from Welch, I don't -- and I could be wrong so
13 please don't let -- I don't know, was there a petition for
14 the appointment of a receiver, or was that simply
15 something that was mentioned by the Court as an additional
16 sanction against --

17 THE COURT: There was either a petition or a motion.
18 There was something that was filed asking, A, that a
19 receiver be appointed and B, that it be Mr. Protopapas.

20 MR. BROWN: And that was in relation to a discovery
21 sanction, and I believe --

22 THE COURT: Well, no, it was in relation to the
23 complete refusal to cooperate with the processes of the
24 Court, not just discovery. These people don't want to
25 answer. They didn't want to put a lawyer up to begin

1 with. The succession of lawyers that you're now the third
2 in line was after we have already done a little bit of
3 moving towards sanctions because they wouldn't even
4 appear.

5 MR. BROWN: Then, Your Honor, it was -- if discovery
6 arising were a choice, but it was a sanction against my
7 client --

8 THE COURT: It was more than a sanction. The
9 sanction was, in part, other things -- I wouldn't spend
10 any time on that argument because it's not going to make
11 any difference to me. If you want to make it to the
12 Supreme Court, that's fine. But this was -- the
13 appointment of a receiver in order to marshal the assets
14 and protect the assets, particularly insurance assets of
15 Atlas, that's why the receiver was appointed.

16 MR. BROWN: And it is our belief, based upon the
17 rules, that there should be an automatic stay on that
18 until the Court decides that the receiver has that
19 authority to do so.

20 As Your Honor just pointed out, you said you'd stay
21 in your lane, and you have been in many lanes in your
22 life, and this is one where I believe the issue needs to
23 go to Columbia, let them decide. Your Honor's own book is
24 where I came up with the quotes that are in our brief that
25 say, when there is an issue about whether -- maybe there's

1 an automatic stay and maybe there's not; if it's not
2 clear, it should go to Columbia, not the circuit court.

3 THE COURT: Well, you know, I think you're going to
4 get a shot at that issue anyway because you're going to
5 appeal whatever I do here, and sooner or later, the
6 Supreme Court is going to have to weigh in on it.

7 I have got another real piece of heartburn about
8 this matter and it has do with the representation that you
9 are making on behalf of your clients that there's no
10 insurance and you have looked. How in the world do you
11 explain the letters from Resolute to Mr. Protopapas not
12 two days ago or not a month ago where they say there is
13 coverage?

14 MR. BROWN: They do not.

15 THE COURT: There's the -- no, wait a minute. Let
16 me ask my question first.

17 Those letters specifically say, by Resolute
18 Corporation, that they are the claims manager for Lloyd's
19 -- Certain Underwriters at Lloyd's; that your client,
20 Atlas Turner, has made the active decision that it will
21 manage whether to tender to Resolute these claims for
22 coverage; and that it will -- it is not tendering them,
23 and even makes the representation that Mr. Protopapas is
24 not opposing that. I'm going to ask him about that before
25 it's all over.

1 But the fundamental thing that gives me extreme
2 heartburn about that, those two letters from the Resolute
3 folks stand as utterly in contradiction to your
4 representation that they asked you to make, that they
5 don't have any insurance and don't know there's any
6 insurance.

7 As of July of this year, their own claims manager
8 was talking about claims to cover them that they had made
9 the conscious decision to tender to Resolute.

10 MR. BROWN: Never says claims that cover them, Your
11 Honor. I apologize, but if you read those letters
12 carefully --

13 THE COURT: That I -- I'm --

14 MR. BROWN: -- they don't say what Your Honor is
15 saying nor what Ms. McVey presented to this Court.
16 Neither one of those letters say there is coverage and
17 so-and-so has decided that they don't want it. It's just
18 not there.

19 THE COURT: All right, sir.

20 MR. BROWN: That's all, Your Honor. Thank you very
21 much.

22 THE COURT: All right. Mr. Protopapas, I'd like
23 some information about this. Who's saying that wants to
24 get involved in this thing?

25 MR. CARROLL: Your Honor, Todd Carroll for

1 Travelers. I don't really want to get involved but --

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

3 [Courtroom laughter.]

4 MR. CARROLL: Yes, ma'am.

5 MR. PROTOPAPAS: Thank you, Your Honor. I have two
6 quick miscellaneous matters, and then I have a brief
7 overview for the Court.

8 One. On the concept of 62 and the idea of a
9 receivership action, there's a Quarter v. Brown case, 146
10 S.C. 810 from 1929 and it says, "It is well-established
11 rule that, in order to authorize the appointment of a
12 receiver, it is essential there be, at the time of
13 appointment, a suit pending in which relief, other than
14 the mere appointment of a receiver, is sought."

15 So the Welches have a personal injury case. That's
16 the action. I, as the receiver, then get appointed. It's
17 not that there's a separate lawsuit to bring an action.
18 That is not allowed in our state, according to Quarter v.
19 Brown.

20 The second miscellaneous, Your Honor, on the
21 July 24th, when I received those letters from Resolute, I
22 immediately responded and said, "I disagree and I will go
23 to court to clarify."

24 And on the 25th of July, I filed a motion to clarify
25 receivership to assume control of the defense of Atlas

1 Turner's United States asbestos litigation. I did it the
2 next day because I was stunned by the response.

3 Your Honor, by way of overview, this Court and the
4 issue of whether the stay was going to slow me down in
5 identifying insurance assets, I believe there is no stay
6 that affects the receivership.

7 And I was appointed, Your Honor, on June 21st of
8 2023, and was fortunate to hit the mother lode of
9 insurance information for these companies from prior
10 litigation in the '90s where they answered discovery,
11 which has now been presented to the Court.

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

18 And I commend my friends at Royal, which is
19 Arrowwood, which is Mr. Lay and Mr. Joyce, for providing
20 it, and I commend my friend, Mr. Calesh (ph), who is in
21 the audience who represents Maryland, for being forthright
22 in responding to my request for information.

23 I have not gotten one piece of information from
24 Atlas Turner. I have got nothing but stonewalling, "You
25 can't show, I'm not helping, we're not telling, we're not

1 going to tender to insurance, we're not going to assist
2 you." Nothing but stonewalling.

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

9 I also brought a lawsuit against the lawyer in
10 Philadelphia for his files on Atlas Turner because he
11 refuses to be helpful in providing information.

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

20 And we have seen this in other situations and it
21 still surprises me that we have to prove the negative. We
22 have to prove that we can't provide evidence of insurance,
23 therefore, we can't do anything. Well, fortunately, our
24 rules and our subpoenas and our receivership law allow me
25 to act without their assistance in finding information.

1 So upon my appointment of June 21st where the
2 Court advised people to assist me in finding the
3 insurance, advised me to take control of the insurance
4 assets and bring them to this Court, I moved forward.

5 And, Your Honor, I consulted Rule 62 and I consulted
6 the appellate court rules when the appeal was taken on
7 July 9th or 10th. And when I consulted those rules, I
8 looked, and I said, "Receivership action, what is it?" A
9 receivership action is simply when the receiver has been
10 appointed to maintain the status quo.

11 I am not depleting insurance policies today. I am
12 not trying to liquidate insurance policies. I'm just
13 trying to find them and what do they mean.

14 If Atlas Turner would come to this Court, Your
15 Honor, and tender the policies and of course say, "This is
16 what we have, this is our settlement fund, this is what
17 hasn't been liquidated, and we are not going to liquidate
18 them during the pendency of the appeal," they would have
19 every right to come here and say, "You should put a stay
20 on Mr. Protopapas's action because we have status quo."
21 But they don't. They're not forthright in their
22 information.

23 And by analogy, Your Honor, with the receivership
24 maintaining the status quo, their remedy under
25 receivership orders, they have the right to immediate

1 appeal at times, and they have taken that. But our rules
2 also say that immediate appeal, just like any judgment,
3 interlocutory or not, doesn't stay the activity of the
4 receiver to maintain the status quo.

5 And it could be a business that sells hot dogs and
6 they appeal the receivership order and now they sell their
7 real estate. They sell everything and the receiver has
8 nothing to do. I become mooted by the pendency of the
9 appeal. And our Rule 62 doesn't want that to happen. It
10 wants there to be transparency. It wants there to be a
11 light shined into this so that everyone sees what is
12 available and what's not, which is why I have thrown into
13 the record everything I have late, voluminous,
14 unfortunately for this Court to have to pay attention to,
15 but I wanted you to see everything I have found.

16 THE COURT: Here's the question, Mr. Protopapas: If
17 you're right that Rule 62 doesn't stay activity of the
18 receiver in protecting and marshalling assets during the
19 pendency of an appeal of its authority -- of my authority
20 or the rectitude of appointing a receiver, then what
21 happens if the Court agrees that the receiver was
22 improperly appointed?

23 MR. PROTOPASAS: Your Honor, for that thread, I am
24 not wasting an asset. I'm not spending an asset. I'm
25 identifying the asset.

1 And furthermore, Your Honor, our rule -- as our
2 rules work in conjunction in these strange situations,
3 when I looked at the 241 appellate court rule and I looked
4 to the exceptions, one of the exceptions mentioned is
5 judgments directing the assigned or delivery of documents
6 or personal property as provided in South Carolina Code
7 18-9-150.

8 So we have an exception to the stay identified in
9 subsection (b)(2) about the delivery of documents or
10 personal property pursuant to 18-9-150. And when I look
11 at 18-9-150, I'm relieved to see the word "receiver" in
12 that statute. That statute says this section of the code
13 provides that if the judgment appealed from directs the
14 assignment or delivery of documents or personal property,
15 the execution of the judgment shall not be stayed by the
16 appeal unless one of two exceptions apply; one of them
17 being the things required to be assigned or delivered be
18 brought to this Court or placed into the custody of such
19 officer or receiver as the Court shall appoint.

20 So we have these rules working together where "don't
21 stay a receiver pending an appeal." You can get out of
22 this problem, under our exceptions, if you tender to the
23 receiver "Here's our information" or you tender it to the
24 Court, and then you can ask, through supersedeas or
25 otherwise, for the stay to be untoppled (ph).

1 And if they had cooperated and if they had presented
2 the information, I may not object to them controlling the
3 defense, subject to being tendered to the insurance
4 companies, of course. But if they want to say, "Don't
5 settle this case" or "Settle that case," I would have
6 stayed back and cooperated with them the best that I
7 could.

8 But to say the plaintiff can't find evidence of
9 insurance, therefore, don't do anything, the other half of
10 the coin is they're sitting on the evidence, and they
11 won't show it to us. And I know they're sitting on it,
12 because I have found it. I have found two buybacks. I
13 have found a list of \$2 billion of insurance. I have
14 written to carriers and tendered the lawsuits, which they
15 say we don't have to honor, and now we have plaintiffs.

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

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

1 policies?

2 So, respectfully, I believe our Rule 62 combined
3 with the exception -- the exception noting that there's a
4 receiver for the delivery of documents, your order saying
5 insurance documents come into the custody of this Court,
6 they have a mechanism to say stop, and they haven't taken
7 advantage of it. Therefore, I don't believe I'm stayed,
8 and I get to proceed forward and uncover what are really
9 half-truths to this Court. They're half-truths.

10 And it's unfortunate they will not give the full
11 truth to Mr. Brown and say to this Court, "We have bought
12 it all back. We have wiped out the trust fund with 20,000
13 claims, and in 2014, we made our last payment, and here's
14 evidence of it. We are out of insurance, and we are out
15 of money." If they had said that -- the answer is there,
16 but I will find -- I mean, I could find it through
17 litigation and subpoena and cooperation from some carriers
18 and maybe not as much cooperation from others.

19 What Resolute didn't tell me -- and they have my
20 subpoenas -- they didn't say, "We don't have any
21 insurance. We sold it back to them." Resolute said, "It
22 hasn't been tendered to us."

23 And, fortunately, their counsel is here today.
24 Their counsel can make a firm representation to this Court
25 if their client has told them that it has been bought

1 back, or they could say it exists. I'd be curious for the
2 answer to that question.

3 But for those reasons, Your Honor, I do not believe
4 the stay impacts me. I have marched forward. Until this
5 Court tells me to stop, I will continue to march forward.

6 THE COURT: Thank you, sir.

7 All right. Now, Mr. Carroll, you stood.

8 MR. CARROLL: Yes, ma'am.

9 THE COURT: And what I want to understand, before
10 you address the Court, is what your connection is -- what
11 your client, Travelers, connection is to the Welch vs.
12 Atlas Turner case, 2022-CP-40-03834.

13 MR. CARROLL: Yes, ma'am.

14 THE COURT: And you can come up here to do that,
15 Mr. Carroll.

16 MR. CARROLL: Very good.

17 THE COURT: You don't need to stand back there.

18 Come forward. Please recite your name and who you
19 represent and answer that question.

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

22 So my client is a third-party defendant to a
23 third-party complaint that Mr. Protopapas filed on behalf
24 of -- or in his capacity as the Atlas Turner receiver in
25 this case.

1 THE COURT: Right. Something I knew but I just want
2 to be sure you would recite it.

3 MR. CARROLL: Yes, ma'am.

4 THE COURT: As a third-party plaintiff in the Welch
5 case, the number I just recited into the record. And the
6 third-party plaintiff is Atlas Turner by and through its
7 appointed receiver, Peter Protopapas. And that
8 third-party plaintiff has brought an action against
9 Zurich, successor of the Maryland; Federal Insurance;
10 Continental; IMA; Aetna, now formally known as Travelers;
11 Certain Underwriters at Lloyd's; Certain London Market
12 Companies; Canadian General Insurance Company, now -- or
13 formally known as Viva Insurance of Canada; and Marsh and
14 McLendon (ph) Companies.

15 And in connection with that third-party part of the
16 Welch case, you, Todd Carroll, are representing one of the
17 named third-party defendants, and that is the Aetna, now
18 known as Travelers Casualty and Surety Company; correct?

19 MR. CARROLL: Yes, ma'am.

20 THE COURT: Okay. Now, you may --

21 MR. CARROLL: That's the long, winding path to get
22 me to this podium.

23 THE COURT: You may proceed.

24 MR. CARROLL: Yes, ma'am. And, Your Honor, I'm only
25 -- my client has not yet filed a response to the

1 third-party complaint, but we saw the plaintiff's -- the
2 Welch plaintiff's motion to lift the automatic stay.
3 Given our state's jurisprudence on waiver and sitting on
4 your rights, we filed a very short joinder to
5 Mr. Brown's client's opposition --

6 THE COURT: And let me say right there that
7 Travelers' position with respect to its opposition to the
8 motion to appoint a receiver, its contention that the
9 appointment of receiver is on appeal now, and nothing
10 further can be done, all those positions are totally
11 protected, and your appearance here is completely
12 legitimate in aid of the position that Travelers will
13 probably take in some filings in that regard.

14 MR. CARROLL: Yes, ma'am. We just --

15 THE COURT: Nothing is waived and nothing will be
16 waived.

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

20 THE COURT: Sure. And your argument here may be
21 incomplete, and this does not foreclose any further
22 response that Travelers may want to make about this
23 matter, but you are certainly are invited to comment if
24 you care to.

25 MR. CARROLL: Very good. Well, I will -- Your

1 Honor, I'll rest on my very short submission, but I do
2 want to respond to the arguments I heard for the first
3 time today just so, again, I don't get saddled with a
4 notion of waiver.

5 THE COURT: Sure.

6 MR. CARROLL: So I think the Welch plaintiffs were
7 correct in their motion by not relying on Rule 62 because
8 I don't think Rule 62 has anything to do with this issue.

9 62(a), which I have heard from the podium this
10 morning, the 62(a) is only aimed at the ten-day period
11 immediately after a judgment has been entered. It does
12 not carry the stay, the note, the non-stay. That issue is
13 not addressed elsewhere in Rule 62 except with regard to
14 orders of injunction. That goes down through 62(d) --
15 excuse me -- 62(c), (d) and (g) all talk about -- they all
16 basically adopt the Welch plaintiff's argument here today.
17 They adopt that argument as it relates to injunctions.
18 They do not adopt that argument as it relates to
19 receivers.

20 And then, if you need confirmation of that, you look
21 no further than the official comment to the rule, which
22 says, "Rule 62(a) provides for an automatic stay of
23 execution for ten days in all but injunction actions or
24 those involving receiverships or accounting."

25 So Rule 10 -- pardon me -- Rule 62(a), it only

1 governs the first week and a half after an order is
2 entered. So, that way, you can't file a notice of appeal
3 the next day and then go squander your assets, and so,
4 "Oh, I'm sorry, Mr. Receiver, you can't do anything."

5 But that rule doesn't reach into receiverships
6 beyond that ten-day period, and we have got confirmation
7 of that by Rule 62(c), Rule 62(d), and Rule 62(g) because
8 they don't mention -- they talk about injunctions, but
9 they don't talk about receivers.

10 And then, if you go to Rule 241(b) where it lists
11 the exceptions to the automatic stay -- and 241(b)(8) is
12 the subpart that picks up Rule 62 in its automatic stay.
13 241(b)(8) also limits its reach to only injunctions. It
14 does not include receivership orders.

15 So I think the plaintiffs were right when they asked
16 the Court to lift the automatic stay. I don't think that
17 the Court can do it because of Rule 205, as we have put in
18 our papers. But 62(a) argument that we heard this
19 morning, I just don't think applies. Excuse me. I don't
20 think it applies to this situation.

21 And I know that Ms. McVey and I probably come at
22 things from a different ideological perspective. I would
23 suggest that that rule is the right rule so that there's
24 no risk of a court improperly seizing private property and
25 tying up private property incorrectly during the pendency

1 of an appeal.

2 Now, if somebody wants to go to an appellate court
3 and ask an appellate court to look at that, while the
4 matter is in the appellate court's jurisdiction, perhaps
5 they can do that. But I think the -- I think there is
6 sound reason why the automatic stay does apply to
7 receivership orders and that's to prevent the improper
8 tying up of what is otherwise private property.

9 But that's -- the rule says what the rule says, and
10 it doesn't apply to this situation.

11 THE COURT: Let me ask you this.

12 MR. CARROLL: Yes, ma'am.

13 THE COURT: Let's assume your argument is the
14 correct one. If this Court issued an injunction enjoining
15 any further disposition of any of the insurance assets of
16 Atlas Turner that could be used to provide coverage here
17 in connection with -- in further connection with it having
18 appointed a receiver --

19 MR. CARROLL: Yes, ma'am.

20 THE COURT: -- and directs that, in connection with
21 the enforcement of the injunction, that information about
22 the existence of those assets -- those insurance policies
23 immediately be provided to the Court, would that kind of
24 an order be stayed?

25 MR. CARROLL: Well, I don't think that kind of order

1 can be issued in this case in this posture because the
2 whole notion of the lawfulness of Mr. Protopapas's
3 appointment. The whole -- everything that gives him
4 authority is on appeal.

5 THE COURT: Well, what I'm asking is this: If this
6 Court simply, in the Welch case, issues an injunction to
7 Atlas -- Atlas is part of these proceedings, and it
8 certainly -- things requiring it to do something or not
9 things to the stay, because I have never dealt with that.

10 MR. CARROLL: Yes, ma'am.

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

23 MR. CARROLL: Well, I think that, obviously, would
24 be a different question. I think that you'd have to have
25 a whole -- I mean, the injunction analysis, of course, is

1 a completely different animal, requiring all kinds of
2 evidentiary proof that, so far, hasn't been --

3 THE COURT: Well, I don't know. We have got a pile
4 of it in this court today.

5 MR. CARROLL: Well, I -- and, Your Honor, I will
6 confess: I have not seen that. Because of the way our
7 electronic filing system works, my --

8 THE COURT: Well, when you wait until the very last
9 minute, when this thing's been scheduled for a good, long
10 time and when Atlas Turner certainly knows it, to settling
11 the weekend before this thing, to file all that stuff, and
12 that's because you don't get notice to do it until then --
13 I'm not blaming you lawyers but I'm -- the client is not
14 going to be able to hide behind some mysterious and sudden
15 need to file piles of paper to me the day before a
16 hearing. You are to be congratulated for responding to
17 their last-minute desperation request, but I'm not going
18 to be constrained by the fact that it all comes piling on
19 my desk the evening before this hearing takes place.

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

1 happened in this case.

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

7 MR. CARROLL: Yes, ma'am. Look, I'm not trying to
8 quibble with you on the procedure for an injunction. You
9 asked me if I did -- if you did issue an injunction, what
10 would the analysis be. I haven't done it yet. I haven't
11 read the rules. I haven't read the case law that would
12 talk about that exact situation.

13 All I know -- I'm responding to this Rule 62(a)
14 argument that I heard in court for the first time.

15 THE COURT: Right. Why does Travelers care about
16 this?

17 MR. CARROLL: Well, because --

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

22 MR. CARROLL: We only care -- we only filed
23 something because we have been named the third-party
24 defendant by the receiver. If the receiver hadn't filed
25 what we think is an improper third-party complaint and

1 named my client as a defendant, I sure would not have
2 filed that joint --

3 THE COURT: You claim it's improper because you
4 claim the receiver is improperly appointed.

5 MR. CARROLL: Well, I also think that this is an
6 incorrect use of Rule 14. And we have other defenses that
7 we haven't --

8 THE COURT: Well, that, so far, has not been brought
9 to my attention.

10 MR. CARROLL: Right. We haven't made -- we haven't
11 made any of our Rule 12-style arguments, but again, we
12 filed our joinder because we didn't want somebody to say,
13 "Well, you knew about the third-party complaints and you
14 were kind of aware of this."

15 THE COURT: I mean, I don't understand why Travelers
16 would care about the appointment of a receiver, give you a
17 point of contact where you can get this thing resolved.

18 MR. CARROLL: Well, we have been sued, and so that's
19 why we care.

20 THE COURT: Well, sure, you have been sued, but why
21 would you care about challenging the authority of a
22 receiver when all in the world he's trying to do is find
23 out whether you've got any coverage in this matter?
24 That's all he's trying to do. He's not trying to take a
25 dime out of your pocket. He's trying to find out whether

1 you got coverage.

2 MR. CARROLL: Okay. Well, Your Honor, we filed our
3 joinder in this case because we are a defendant. If we
4 need to explain our other concerns, we will in response to
5 the third-party complaint.

6 THE COURT: All right, sir.

7 MR. CARROLL: But that's why we're here right now.

8 The other thing, when Mr. Protopapas spoke, he
9 referenced Rule 241(b) --

10 THE COURT: 8.

11 MR. CARROLL: No, ma'am. I raised (b)(8).

12 -- (b)(2), judgments directing the assignment or
13 delivery of documents or personal property.

14 The plaintiffs didn't cite that. The first time it
15 came up was just now here at the podium. My understanding
16 of that statute is that it talks about an actual judgment
17 that says, "Defendant, you do this. You give them this
18 document. You give them this property."

19 THE COURT: They have got that.

20 MR. CARROLL: No, ma'am.

21 THE COURT: They've got the orders of this Court
22 directing that certain things be done, and the failure of
23 Atlas to do those things then led to the appointment of
24 Protopapas, who is trying to comply with those orders.

25 MR. CARROLL: Yes, ma'am. But the order for

1 Mr. Protopapas that appoint him as a receiver doesn't --
2 it gives him authority, but it doesn't identify a specific
3 defendant. It doesn't identify my client by name and say,
4 "Travelers, you've got to give over this property."

5 THE COURT: Well, I understand your argument, but
6 he's directed to marshal and identify assets -- insurance
7 assets, and that directly deals with your situation.

8 MR. CARROLL: Yes, ma'am. But he also -- he sends
9 Rule 45 subpoenas with that.

10 THE COURT: So?

11 MR. CARROLL: Well, my point is, if the order
12 actually -- if it was an order that directed the
13 assignment or delivery of documents or personal property
14 like the rule says, then a Rule 45 subpoena would be
15 unnecessary. He would just say, "Here's an order --

16 THE COURT: There was a reason why I --

17 MR. CARROLL: -- "Here's an order that tells you
18 you've got to do this." But he doesn't do that because
19 this Rule 241(b)(2) and South Carolina Code 18-9-150
20 doesn't apply to this situation.

21 THE COURT: I understand your argument.

22 MR. CARROLL: That's my position -- or my client's
23 position.

24 THE COURT: All right.

25 MR. CARROLL: Thank you, Judge.

1 THE COURT: Thank you, sir.

2 MS. McVEY: Your Honor, just before Mr. Carroll --

3 THE COURT: Wait, woah, woah, woah, woah.

4 MS. McVEY: Sorry. I just wanted to ask if you'd
5 ask him one question.

6 THE COURT: All right.

7 MS. McVEY: Does Travelers have insurance -- did
8 Travelers insure Atlas Turner? Has it been liquidated?
9 How many policies? That's why they're here. They're here
10 because they have insurance, so I would like to know the
11 answer to those questions.

12 THE COURT: Well, I'm assuming they're here because
13 they have insurance, but he says they're here because they
14 were third-party sued.

15 MR. CARROLL: Yes, ma'am. And --

16 THE COURT: So that's the position he --
17 Wait a minute, Ms. McVey.

18 MS. McVEY: Yes, I didn't --

19 THE COURT: He says they're here because they were
20 sued. He hasn't taken a position yet about what kind of
21 policies they have and whether those policies have been
22 liquidated. I could cure that by an order to a
23 third-party defendant and would have nothing to do with
24 the legitimacy or anything else. It would have to do with
25 coverage in this case.

1 MS. McVEY: And the only reason I say that is
2 because it's been represented to you today that there is
3 no insurance, yet we have insurance carriers --

4 THE COURT: Well, that representation is, obviously,
5 not true. And Resolute's own letter gives light to that.
6 There is insurance here. The question is what the scope
7 and breadth and whether it's been liquidated or not. And
8 that's not Mr. Brown's fault that it's not true. It's
9 Atlas's fault for not telling the complete truth to this
10 Court. So I understand that.

11 And it's not Mr. Carroll's fault; he's simply
12 representing his insurance client.

13 But, you know, I think the way to -- I'm not going
14 to put him to answer those questions right --

15 MR. CARROLL: Well, I'll just tell Your Honor: I
16 don't know. I really don't know. I saw -- I saw --

17 THE COURT: Well, I would just tell you right now,
18 as your friend and the judge in this case, I'd advise you
19 don't answer that question.

20 MR. CARROLL: Just to shut up. Yes, ma'am.

21 [Courtroom laughter.]

22 THE COURT: That is the -- the answer to that
23 question is something we're going to get the right way.
24 Okay?

25 MR. CARROLL: Do I need to hand you something to

1 retain you as my counsel?

2 [Courtroom laughter.]

3 THE COURT: It's worth what you pay for.

4 MR. CARROLL: Very good. Thank you, Judge.

5 THE COURT: Here's -- Ms. McVey?

6 MR. RAWL: Your Honor, I represent Continental
7 Insurance Company and Lloyd's Certain Underwriters.

8 THE COURT: I'm telling you one thing, Mr. Rawl:
9 I'm not going to go through listening to every one of
10 these insurance company third-arty plaintiffs deliver a
11 full argument. We're now at 11:30.

12 MR. RAWL: I have no intention of --

13 THE COURT: You have got other filings in this case
14 in other regards, and I'm not going to sit here -- you
15 speak at my invitation. I can rule on what's before me
16 without listening to anybody's arguments.

17 MR. RAWL: Yes, ma'am.

18 THE COURT: And I'm not going to listen to any
19 repetitive arguments in this regard --

20 MR. RAWL: No, ma'am.

21 THE COURT: -- as much as I love you and your
22 father.

23 MR. RAWL: Thank you, ma'am.

24 Very briefly, on behalf of Continental Insurance
25 Company and Certain Underwriters of Lloyd's, who I

1 represent -- and my name is Vic Rawl, R-a-w-l, with the
2 Gordon & Rees law firm.

3 I'd just like to incorporate the arguments that were
4 made by Atlas today and incorporate the arguments that
5 were made by Travelers. And the only point that I'd like
6 to point out is that the order that was appointing the
7 receiver is predicated on the earlier orders made by the
8 Court striking the answer and issuing the sanction, and
9 those predicate orders are referenced in the order
10 appointing the receiver.

11 And I believe that, under Rule 205, you know,
12 anything that is done with regard to the further orders
13 with the receiver would be beyond the jurisdiction of this
14 court because they affect the predicate orders.

15 THE COURT: I understand your argument, but I don't
16 agree with it at all.

17 MR. RAWL: Thank you, ma'am.

18 THE COURT: Yes, sir.

19 All right. Ms. McVey?

20 MS. McVEY: Your Honor, just -- the only thing I
21 want to reiterate is, if the order appointing
22 Mr. Protopasas, the receiver, is flipped on appeal, the
23 only harm is that Atlas would have answered the discovery
24 that they refuse to answer now: Where is your insurance?
25 What does it look like?

1 It allows the receiver to gather information and
2 documents. That's the only harm.

3 RULING

4 THE COURT: All right. What I have been asked to do
5 in these pleadings is to lift a stay that is imposed by
6 the Rules of Civil Procedure and the Rules of Appellate
7 Procedure with respect to action in a lower court when a
8 matter is on appeal.

9 I am concerned that my ability to the lift is stay
10 is itself constrained by the operation of the rules
11 themselves and what they have to say about what is stayed
12 and what is not stayed. And I, therefore, am going to
13 decline to lift the stay. However, what I am going to do,
14 in aid of moving along the Welch case and the third-party
15 action, which was brought before the stay was imposed and
16 may or may not be stayed by anything further with regard
17 to the appointment of the receiver, is that I am going to
18 issue an order requiring that Atlas identify all insurance
19 it has and all insurance policies it has which have any
20 applicability to this asbestos claim.

21 It is clear from Resolute's letters that Atlas knows
22 that there is coverage that Resolute is acting as claims
23 manager for and has specifically instructed two
24 underwriters, Lloyd's and -- well, has instructed
25 Resolute, as the claims manager for Lloyd's, that it is

1 controlling its own defense.

2 This letter does not say there's no insurance. This
3 letter does not say it is not tendering this claim to --
4 that Atlas is not tendering this claim to Lloyd's. That
5 is undisclosed in the letter. The letter simply says that
6 it is -- that it -- the manager for the underwriter has
7 been advised by the insured that it is going to defend its
8 own interest in these lawsuits.

9 I am going to require that Atlas identify all
10 insurance that may pertain to this lawsuit. I want Atlas
11 to specifically respond to filings of Mr. Protopapas that
12 identify in his April 20th -- August 20th, 2023, filing
13 that identify a multitude of policies by American
14 insurance companies that cover matters from 1967 to 1982.

15 I want -- I am going to require that Atlas Turner
16 identify any other policies that may have been issued by
17 the third-party defendants in proceeding brought by the
18 receiver as well as any other insurance that pertains to
19 coverage in this matter or potential coverage in this
20 matter. And I am going to require that Atlas disclose
21 that within ten business days of today.

22 When is this case scheduled for trial?

23 MS. McVEY: It's been continued because of that --

24 THE COURT: Continued. Okay. Well, within ten
25 business days, I am going to require -- and I want the

1 disclosures to be sent to Plaintiff's attorney and
2 directly to this Court.

3 If -- I do not concede that the stay orders affect
4 my ability to direct anything to Atlas in this connection.
5 It is a defendant in this lawsuit and continues to be a
6 defendant in this lawsuit, and I am going to make that
7 particular order with respect to Atlas.

8 I would urge that Mr. -- I am not convinced as to
9 what these rules mean in terms of what is stayed and what
10 is not stayed by this order, but the circumstances are
11 very exigent, and there's information that Atlas has
12 liquidated some of these policies, information that
13 Mr. Protopapas has brought to the Court. It raises a
14 serious-enough issue in my mind about the honesty of Atlas
15 to the Court as well as the ability to preserve assets
16 that may be available to respond to the Welch lawsuit that
17 I am going to ask that the parties convey to the South
18 Carolina Supreme Court in connection -- or to the Court of
19 Appeals in connection with any filings that are made with
20 regard to a stay, a lifting of a stay, or anything that
21 would affect the ability to go forward with this
22 receivership. I would ask that that be done as
23 immediately as possible. And I would strongly urge the
24 Court to take this matter up at its earliest possible
25 convenience in order to preserve these assets for response

1 to the very serious complaint of the Welch family in
2 connection with these cases.

3 So that is what I am going to do. I would like for
4 Ms. McVey and Mr. Protopapas to develop an order that
5 reflects what I have said here. The order is in effect
6 now and will be subject to its confirmation.

7 When you have developed this order, send a copy to
8 Mr. Brown and a copy to Mr. Rawl and Mr. Carroll and any
9 other representatives of the third-party defendants in the
10 Welch matter.

11 MS. McVEY: And, Your Honor, just for clarity,
12 during the pendency of the appeal, is it this Court's
13 order that Atlas Turner cannot liquidate any of these
14 insurance assets?

15 THE COURT: Absolutely. Absolutely. I want all
16 that covered in here. I mean, they're a party to this
17 proceeding, and I certainly have the ability to, by use of
18 injunction as well as by use of direct orders, to preserve
19 these assets to the extent the Court has. That's the
20 whole reason for the appointment of the receiver.

21 I do not believe that the spirit of these rules
22 would prevent a Court from preserving these assets, but I
23 am not going to waive specifically on the applicability or
24 non-applicability of the stay. I am simply going to make
25 some orders with respect to Atlas, and that is how the

1 order needs to be constructed.

2 All right? That's Welch. Now, what we have got
3 remaining is still a lot of stuff. I would like to take a
4 recess right now. Let's come back at 12:00.

5 Court will be in recess.

6 (This hearing concluded at 11:36 a.m.)

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CERTIFICATE OF COURT REPORTER

State of South Carolina)

County of Richland)

RE: Melvin G. Welch v. 3M Company

I, Bobbi J. Fisher, Registered Professional Reporter (RPR) and Official Court Reporter III for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Court of Common Pleas for Richland County, South Carolina, on the 21st of August, 2023.

Submitted: August 28, 2023

____/s/ Bobbi Fisher_____

Bobbi J. Fisher, RPR

Official Court Reporter III

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Richland County
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

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

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

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

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

Of which, Asbestos Corporation Limited is the Appellant,

and

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

PROOF OF SERVICE

I certify that a true copy of the Receiver for Asbestos Corporation Limited's Reply in Support of Motion to Supplement the Record and For Sanctions for Fraud on the Court in this case has been served on the following, this 2nd day of January, 2024, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

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January 2, 2024

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Cc: [Jon Robinson](#); [Shanon Peake](#); [Murrell Smith](#)
Subject: Tibbs v. Asbestos Corporation Limited, et al., Case No. 2023-001461
Date: Tuesday, January 2, 2024 4:34:00 PM
Attachments: [Reply in Support Rcvr Motion to Supp Record and Sanctions, 2.pdf](#)
[Exhibits A-D, 1.pdf](#)

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

Thank you,
Dot



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