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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

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

Donna B. Welch, individually and as Personal Representative of the Estate of Melvin G. Welch, deceased, Respondent

v.

Advance Auto Parts, Inc., American Honda Motor Co., Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor to Atlas Asbestos Co, a foreign company, Bahnson, Inc., Covil Corporation; Daniel International Corporation, Davis Mechanical Contractors, Inc., Ellington Insulation Company, Inc., Fluor Constructors International f/k/a Fluor Corporation, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Parts, Inc. individually and as successor-in-interest to Carquest Corporation, Goodrich Corporation f/k/a The B. F. Goodrich Company, The Goodyear Tire & Rubber Company, Graybar Electric Company, Inc., Honeywell International, Inc. individually and as successor-in- interest to Allied Signal, Inc., as successor to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner Morse Tec LLC, and successor-by-merger to Borg-Warner Corporation, Occidental Chemical Corporation as successor to Durez Corporation, O'Reilly Automotive Stores, Inc., Paramount Global f/k/a ViacomCBS Inc., f/k/a CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor-by-merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation, Pneumo Abex LLC successor-in-interest to Abex Corporation, Redco Corporation f/k/a Crane Co., Reinz Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly owned subsidiary of Dco LLC, Rust Engineering & Construction, Inc., Rust International Inc., Southern Insulation, Inc., Spirax Sarco, Inc., Union Carbide Corporation, Westrock MWV, LLC individually and as successor-in-interest to Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

Of which Atlas Turner, Inc., is the Appellant.

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COUNTER-STATEMENT OF ISSUES

1. Did the trial court abuse its discretion by holding Atlas Turner in contempt and imposing sanctions due to its repeated and consistent refusal to comply with the trial court's orders?

2. Did the trial court abuse its discretion by appointing a receiver to investigate and pursue Atlas Turner's liability insurance interests in South Carolina?

STATEMENT OF FACTS

I. Mrs. Welch's claims arise from Atlas Turner's contacts with South Carolina.

This lawsuit alleges decedent Melvin Welch developed mesothelioma and subsequently died from exposures to asbestos-containing products and materials manufactured, sold, and/or distributed by Appellant Atlas Turner, Inc. and used by or near Mr. Welch in South Carolina. Mr. Welch, joined by his wife Appellee Donna Welch, filed suit in the Richland County Court of Common Pleas, South Carolina, in July of 2022, seeking recovery for their injuries.[1] (R. at 27-105). In response, Atlas Turner challenged the trial court's authority to exercise personal jurisdiction on the basis that it is a Canadian company (R. at 673-731).

For decades, Atlas Turner sold asbestos products throughout the United States. As Justice Toal, the presiding trial judge, recognized during a hearing in this matter,

> [Atlas Turner] had a long business history of selling asbestos products in this country that have found their way into every state of the union. This is not an inexperienced company at all. It's a very experienced company that depends heavily on the American market for the sale of their products.

(R. at 548:13-18). Atlas Turner's appeal does not contest these findings.

Atlas Turner's sales of asbestos products included sales to South Carolina. The record includes evidence showing Atlas Turner sold products to various companies operating in South Carolina, some of which were named as co-defendants in this case. Deposition testimony from an Atlas Turner representative[2] showed the company sold asbestos-containing products for use at South Carolina facilities as early as 1964. (R. at 1215:11-17; 1217:4-8).

[1] Mr. Welch died from mesothelioma on April 17, 2023. Mrs. Welch now maintains this lawsuit in both her personal capacity and as Personal Representative for the Estate of Melvin G. Welch. (R. 411).

[2] As set forth below, Atlas Turner refused to produce a corporate witness in this matter. As such, Mrs. Welch was forced to designate testimony obtained in other cases.

Mrs. Welch also tendered Atlas Turner's own 1968 customer list, showing that for years it sold asbestos insulation to Covil Corporation, located in Greenville, South Carolina.[3] (R. at 1146-1150) A subsequent customer list showed additional Atlas Turner shipments directly into South Carolina. (R. at 1149-1153). Finally, tendered documents show Atlas Turner sold asbestos insulation to co-Defendant Guy M. Beaty & Company while it was operating in South Carolina. (R. at 1452-1455)[4]

Despite selling asbestos products directly into the United States, Atlas Turner and affiliated Canadian asbestos companies[5] have challenged the jurisdiction of U.S. courts for decades. They have also refused to participate in discovery, claiming they are excused from such obligations by the Quebec Business Concerns Record Act ("QBCRA").

Atlas Turner's challenges and arguments have repeatedly failed in dozens, if not hundreds, of cases filed against it and affiliated companies in South Carolina and throughout the United States. For instance, in *Lyons v. Bell Asbestos Mines, Ltd.* 119 F.R.D. 384 (D.SC. 1998), the South Carolina District Court granted a motion to compel discovery against a related Canadian corporation attempting to hide behind the QBCRA. The defendant in that matter cited the QBCRA

[3] This evidence was independently gathered by Mrs. Welch's counsel from other sources and other cases. As set forth in further detail below, Atlas Turner refused to produce discovery in this matter.

[4] Atlas Turner's 1968-1969 Customer List shows "Newtherm" pipe covering frequently contained asbestos. (R. at 1150-1151).

[5] The interrelationship between Atlas Turner and other Canadian asbestos companies including Atlas Asbestos Co., Atlas Turner Inc., Bell Asbestos and Asbestos Corporation Ltd. has long been recognized by U.S. courts. *See*, *e.g.*, *Roberts v. Owens-Corning Fiberglass Corp.*, 101 F.Supp.2d 1067, 1082 (S.D.IN. 1999), recognizing and reciting the interrelationship of various Quebec asbestos companies. *See also*, *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 643-44 (simultaneous considering motions relating to Atlas Turner, Bell Asbestos, and Asbestos Corporation Ltd., and referencing them collectively as "Canadian Defendants"). *See also*, Defendant Atlas Turner, Inc.'s Motion for Protective Order and memorandum of Law in Support on Behalf of Itself and Defendant Atlas Asbestos Co., p. 1, FN 1, (R. at 732)("Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company"); exhibit A to Notice of Atlas Turner, Inc.'s Misleading Representations and Filing of Evidence of Potential Insurance Liquidation, "Memorandum of Agreement" showing Bell and Atlas were both named insureds under same insurance policy.(R. at 1826-1831) Also of note, in another pending South Carolina asbestos case, Asbestos Corporation Ltd. has filed an appeal in this Court relating to the same issues raised in this appeal. *See*, *Tibbs v. 3M Company*, Appellate Case No. 2023-001461.

in an effort to avoid producing discovery related to its motion to dismiss for lack of personal jurisdiction. This argument, which is the exact QBCRA argument Atlas Turner raises in this case, was rejected by the District Court.

Similarly, in *Lafferty v. Raymark*, 14 Phila. Co. Rptr. 111, 114, 1986 WL 501491 (Pa. Dist. Court 1986), the Pennsylvania District Court rejected another Quebec asbestos company's QBCRA argument, concluding the company "is asking for an even more unfair advantage. They want to *totally* bar discovery of *all* documents in Canada. Their position is untenable." (emphasis in original). Numerous other cases have reached the same result. *See, e.g.*, *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 645 (D.S.C. 1992) aff'd, 6 F.3d 177 (4th Cir. 1993) (Court "finds that Defendants have failed to make an adequate showing that the QBCRA is in fact applicable to Plaintiff's discovery requests in the instant case or would preclude any discovery as may be approved by this court."); *Buttitta v. Allied Signal, Inc.*, 2010 WL 1427273 (N.J.Sup. Ct. App. Div. Apr. 5, 2010) (finding QBCRA did not prevent disclosure of documents and upholding striking of defendant's answer).

Atlas Turner and its related companies have also been losing personal jurisdiction arguments across the country since at least 1985. *See, e.g.*, *McDaniel v. Armstrong World Industries*, 603 F.Supp. 1337 (D.D.C. 1985); *In re Connecticut Asbestos Litigation*, 677 F.Supp. 70 (D.Conn. 1986); *Carre v. ACandS, Inc.*, 1986 WL 537 (E.D.PA. 1986); *Roberts v. Owens-Corning Fiberglass Corp.*, 101 F.Supp.2d 1076 (S.D.IN. 1999); *Deptula v. Derr Flooring Co.*, 1990 WL 96635 (E.D.PA. 1990); *Buttitta v. Allied Signal, Inc.*, No. A-5263-07T1, 2010 WL 1427273, at *23 (N.J. Super. Ct. App. Div. Apr. 5, 2010) (citing *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for Southern District of Iowa,* 482 U.S. 522, 544, 107 S.Ct. 2542 (1987)).

II. The trial court acted within its discretion when Atlas Turner refused to cooperate in discovery or otherwise comply with the court's orders.

Given Atlas Turner's resistance to the court's jurisdiction, the Welches promptly tendered jurisdictional discovery about Atlas Turner's presence in South Carolina and its sale of products into the state. (R. at 1416-1451). The Welches amended their discovery and deposition request at least three times, including arranging for the deposition to be conducted remotely. Atlas Turner did not respond to any of the Welches' discovery requests.

Instead, Atlas Turner sought protective orders, requesting the trial court relieve it from any obligation to participate in the discovery phase, asserting a lack of personal jurisdiction and the QBCRA eliminated its obligation to participate in discovery. (R. at 732-749, 773-791). On March 20, 2023, Atlas Turner filed a motion for summary judgment, claiming it is not subject to personal jurisdiction in South Carolina. (R. at 754-772). On July 3, 2023, Atlas Turner requested summary dismissal of the Welches' claims based on an alleged lack of personal jurisdiction and, after months of contending that Canadian law prevented it from participating in discovery, that the Welches had insufficient evidence to demonstrate that Melvin Welch was exposed to asbestos or asbestos-containing products attributable to Atlas Turner. (R. at 1785-1786).

On April 19, 2023, the trial court heard argument on Atlas Turner's motions for protective order, motion to dismiss, and motion for summary judgment. The trial court denied the motions, stating:

> I will direct that the 30(b)(6) witness be prepared sufficient to respond, all right, to time periods prior to the records that they have been able to, by other means, gather, and that . . . Atlas Turner, successor to Atlas Asbestos Company, also, be compelled to produce records for the periods of time that [ ] they have been requested in discovery for information prior to 1968.

(R. at 520:19-521:2.) Despite this directive from the trial court, Atlas Turner's counsel made it very clear that Atlas Turner would never produce a witness or its records, asserting its "client will not have witness available tomorrow **or ever**." (emphasis added) (R at 521:8-9).

The trial court warned Atlas Turner that "[t]he consequence of not coming will certainly mean that further action will be taken with respect to . . . their status in any judgment entered against them." (R. at 523:11-14). Holding true to its threat of non-compliance, Atlas Turner did not produce a representative for deposition or produce relevant documents as directed by the trial court. Atlas Turner did, however, file an Answer to the Welches' Complaint on April 24, 2023. (R. at 358-410). Even in light of the trial court's adverse ruling on the matter, Atlas Turner held steadfast to its position that the trial court lacked personal jurisdiction over it. (R. 359-361, 363-364, 372-377, 397).

On May 4, 2023, the trial court held a status conference where it heard argument regarding Atlas Turner and "its cooperation with the procedure and its presence in this case." (R. at 543:4-9). At this hearing, Atlas Turner, via its counsel, informed the trial court that Atlas Turner felt "strongly about their jurisdictional motion" and that Atlas Turner is "a corporation in Quebec, Canada" that has to "balance the law in Canada in Quebec and the American discovery rules[.]" (R. at 546:24-547:3). Taking the parties' arguments into consideration and, after noting that the case was scheduled to start trial in August of 2023, the trial court stated:

> They have had a long business history of selling asbestos products in this country that have found their way into every state of the union. This is not an inexperienced company at all. It's a very experienced company that depends heavily on the American market for the sale of their products.
>
> I can't conceive that they have been permitted in every state of the union that had very similar jurisdictional rules to the rules of South Carolina to simply say we're not going to cooperate with your court process because we're a Quebec corporation. That simply is not an adequate excuse for their failure to cooperate.

> They haven't filed anything other than their jurisdictional motion, but the discovery issues have been ongoing. They have been noticed for a good long time that the deposition of their corporate representative needed to be taken.
>
> They can't just not respond to that and say hey because I've got a motion pending about jurisdiction, I'm not going to cooperate with discovery. That's not how our system works, and they have not cooperated in any way with discovery.
>
> So now we come up to a point where we move in the process of our deadlines pretrial for trying these types of complicated cases to a point where their corporate rep, they have refused to tender their corporate representative for a deposition. That can't -- I can't allow that to happen.
>
> This is a pending case. It hasn't been dismissed as to them. Their jurisdictional matter has been determined, and they must cooperate. It's just that simple.

(R. at 548:13-549:18). The trial court also informed Atlas Turner of the consequences of defying its orders:

> Well, right now what they've asked me to do is to hold you all in contempt because I ordered the taking of the corporate [representative's] deposition the Monday after we had that hearing and they did not comply with that.
>
> In fact, I was sent word that they were not going to comply with that; that they were not going to tender a corporate [representative], not then or at any other time that was suggested because Ms. McVey suggested in open court it could be Monday or it could be at some other time that was mutually agreeable.
>
> As what I understand she is saying today is that you all are not authorized – it's not your fault, but you were not authorized by the client to agree to any date because they take the position they are not subject to the jurisdiction of this court, but they are subject to the jurisdiction of this court. I've made that determination.
>
> So now we're dealing first with what to do with their failure and their affirmative refusal to tender the corporate representative, and I'm asked today to find that that conduct is in contempt of my order, which it certainly is, and Ms. McVey says upon the finding of contempt, she will then file a motion for sanctions which is yet to be filed. But she was giving you a preview for what she would intend to put in a motion for sanctions, and that would include such things as summary judgment. That would also include such things as striking the answer. That would also include such things as appointing a state receiver.

(R. at 550:14-551:16). Ultimately, the trial court found "Atlas Turner, Inc., Defendant in the Welch vs. 3M and many others lawsuit is in contempt of my order upon the hearing of this matter of Atlas

Turner to provide its corporate representative for deposition." (R. at 557:6-10); *see also*, *Order Holding Atlas Turner, Inc. in Contempt*, 5/11/23. (R. at 1-3). The trial court rejected Atlas Turner's jurisdictional argument:

> What I understand the position to be of defendant is that they do not have to respond to South Carolina courts with respect to this matter because we have no jurisdiction over them.
>
> The averments of the complaint are that Atlas Turner placed into the stream of commerce asbestos insulation and that asbestos insulation was used in South Carolina and that the plaintiffs' clients were injured by that product.
>
> On that basis, I denied the motion for protection and the motion to dismiss filed by Atlas and required that their corporate representative be subject to a deposition.
>
> I take from what Mr. Traylor has indicated in his presentation on behalf of Atlas that Atlas takes the position that they are not required to respond to any orders of this court because of their status as a Quebec corporation.
>
> To the extent that the Lyons case, a 1988 District Court Judge Joe Anderson which involved a Quebec corporation, to the extent that defendant cites that case, that case specifically stands for the proposition that notwithstanding the Quebec Records Act, defendants in lawsuits upon -- in South Carolina, be they a Quebec corporation, are required to respond to discovery and records request from South Carolina courts.

(R. at 557:11-558:9).

Mrs. Welch filed a motion for sanctions in the form of striking Atlas Turner's answer and, subsequently, for the appointment of a receiver on May 11, 2023. (R. at 1476-1480). She requested the trial court levy sanctions against Atlas Turner for its failure to comply with the trial court's orders and directives in the form of striking Atlas Turner's answer. She then requested that if the answer was struck, a receiver should be appointed to protect Atlas Turner's insurance assets and satisfy claims against it. (R. 1476-1480). In response, Atlas Turner argued, again, that the trial court lacked personal jurisdiction and that the sanction of striking its answer was "unduly harsh and goes beyond that which is necessary." (R. at 1763).

Atlas Turner also argued that appointing a receiver over it was improper because, as Atlas Turner is a Canadian company, South Carolina's receivership statute does not authorize a South Carolina court to create a receivership over a foreign company that does not have assets located in South Carolina. (R. 1763-1774).

On June 21, 2023, the trial court entered two orders. The first struck Atlas Turner's answer. (R. at 7-10). The trial court detailed Atlas Turner's repeated defiance of its orders and the Court's efforts to avoid holding Atlas Turner in contempt and imposing sanctions. Specifically, the trial court noted that the "Court attempted to ascertain Atlas' positions on these matters and whether Atlas would participate in discovery or otherwise comply with this Court's orders." (R. at 8). Atlas Turner confirmed that it would not produce a witness for deposition or participate in any discovery. (R. at 8).

In a separate order, the trial court determined a receiver was necessary to marshal and protect Atlas Turner's insurance assets. (hereinafter "Receiver Order")(R. at 11-18). In the Receiver Order, the court recognized Atlas Turner was in contempt for its failure to comply with the Orders and that its answer had been struck as a sanction for that failure. (R. at 12). The Receiver Order explained that receiverships were not just for insolvent entities and could be instituted when a debtor:

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

(*citing*, *Virginia Carolina Chemical v. Hunter*, 84 S.C. 214 (1909)(R. at 13). The trial court found that it was "the moral fraud of Atlas' personal jurisdiction claims . . . and [Atlas Turner's] continued refusal to participate in this that warrants the appointment of a receiver." (R. at 13).

Atlas Turner subsequently filed Motions to Reconsider the orders striking its Answer and the institution of a Receivership. (R. 1775-1784). These motions were denied on June 28, 2023. (R. 19-24).

Atlas Turner now appeals the orders striking its answer and appointing a receiver. Although not appealing the issue, Atlas Turner continues to refuse to acknowledge South Carolina's jurisdiction over it, and asserts South Carolina courts are a "Judicial Hellhole."[6]

[6] *See,* Initial Brief of Appellant, p. 3, FN 4.

STANDARDS OF REVIEW

I. Standard of Review as to Contempt

"A finding of contempt rests within the sound discretion of the trial court." *DiMarco v. DiMarco*, 393 S.C. 604, 607, 713 S.E.2d 631, 633 (2011). Specifically, "[e]ven though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a matter for the court's discretion." *Hook v. S.C. Dep't of Health & Envtl. Control,* 439 S.C. 52, 74, 885 S.E.2d 442, 454 (Ct. App. 2023). "On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion." *Brandt v. Gooding,* 368 S.C. 618, 627, 630 S.E.2d 259, 263 (2006). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Historic Charleston Holdings, LLC v. Mallon,* 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009).

II. Standard of Review as to Appointment of a Receiver

"[T]he appointment of a receiver is within the discretion of the circuit judge." *Midlands Utility, Inc. v. South Carolina Dep't of Health*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989). A trial court's decision whether to appoint a receiver is reviewed for abuse of discretion. *Richland County v. South Carolina Dep't of Revenue*, 422 S.C. 292, 312, 811 S.E.2d 758, 769 (2018).

ARGUMENT

I. The trial court properly held Atlas Turner in contempt.

The trial court properly held Atlas Turner in contempt after it defied the trial court's order to participate in discovery. Civil contempt occurs when a party willfully disobeys a clear and definite court order. *See Phillips v. Phillips*, 288 S.C. 185, 188, 341 S.E.2d 132, 133 (1986); *see also Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973) (to support contempt finding, language of court order "must be clear and certain rather than implied"). Once the party seeking a contempt finding makes prima facie showing by pleading the order and demonstrating noncompliance, "the burden shift to the respondent to establish his defense and inability to comply." *Noojin v. Noojin*, 417 S.C. 300, 307, 789 S.E.2d 769, 772 (Ct. App. 2016) (quoting *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001)).

The trial court did not abuse its discretion in holding Atlas in contempt. On April 19, 2023, after hearing arguments on various motions from Atlas Turner, the trial court unequivocally directed Atlas Turner to prepare and produce a corporate designee for deposition. (R. 520:19-521:2). Simultaneously, the trial court ordered Atlas Turner to produce documents that Mrs. Welch had requested during discovery. (R. 520:19-521:2). Atlas Turner did not comply with either of the trial court's directives. Mrs. Welch made the necessary *prima facie* showing supporting their request that Atlas Turner be held in contempt.

When the burden shifted to Atlas Turner to "establish [its] defense and inability to comply," Atlas Turner failed. It relied instead on arguments that the trial court had already denied, such as the QBCRA, which, as the trial court and numerous courts across the country have found, does not prohibit and/or prevent the trial court from exercising personal jurisdiction over Atlas Turner and

does not prohibit and/or prevent Atlas Turner from participating in discovery.[7] *See, e.g., Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384, 387-88 (D.S.C.1988); *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628 (1992); *American Industrial Contracting, Inc. v. John-Manville Corp., 326 F. Supp. 879 (W.D. Pa. 1971; Buttitta v. Allied Signal, Inc*., No. A-5263-07T1, 2010 WL 1427273, at *23 (N.J. Super. Ct. App. Div. Apr. 5, 2010).

The Supreme Courts of both the United States and Canada have rejected Atlas Turner's position. The United States Supreme Court has held that blocking statutes "do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." *Societe Nationale Industrielle Aerospatiale et al. v. U.S. District Court for the Southern District of Iowa*, 482 U.S. 522, 544, 107 S.Ct. 2542 (1987).

Moreover, in 1993, the Supreme Court of Canada held that the QBCRA cannot be used by a Quebec-based corporation to deny litigants in other forums proper discovery. *Hunt v. T&N, Plc*, (1993) 4 S.C.R. 289.

> While a province is not debarred from enacting any legislation that may have some effect on litigation in other provinces, it must respect minimum standards of order and fairness. The statute at issue here does not meet those standards. The whole purpose of a blocking statute is not to keep documents in the province, but to impede successful litigation in other jurisdictions by refusing recognition and compliance with orders issued there. While this is no doubt part of sovereign right, it certainly runs counter to comity.

Id. at 292. To the extent this ruling did not entirely abrogate the QBCRA, it at a minimum foreclosed Atlas Turner's reliance upon the statute in cases such as this.

[7] Even if it might otherwise apply, the QBCRA does not limit the Welches' right to depose Atlas Turner's corporate representative. The language of the statute references only specific documents which should not be removed from Quebec, it says nothing about deposing a corporation's representatives during litigation.

Atlas Turner also contended that it had no employees with personal knowledge to designate as a corporate representative. This argument was also without merit. South Carolina has adopted, for the most part, the Federal Rules of Civil Procedure. South Carolina's Rules of Civil Procedure as to discovery are, therefore, virtually identical to the Federal Rules, as were the former Circuit Court Rules. The South Carolina Supreme Court has held that the trial court should look to the federal decisions for the interpretation of our Rules of Civil Procedure. *See Gardiner v. Newsome Chevrolet-Buick, Inc.,* 340 S.C. 328, 404 S.E.2d 200 (S.C. 1991) (citing Lightsey & J. Flanagan, *South Carolina Civil Procedure,* (2d ed. 1985)); *Hodge v. Myers,* 255 S.C. 542, 180 S.E.2d 203, 206 (1971) (holding that "litigants and attorneys should be allowed liberal discovery" and that the requested discovery "would help the parties in their quest of the whole truth"); *Dunbar v. Vandermore,* 295 S.C. 493, 369 S.E.2d 150 (Ct. App. 1988) (federal case law should be persuasive in interpreting the rules).

South Carolina Rule of Civil Procedure 30(b)(6) provides that when a party that is an organization or corporation receives a notice of deposition, the corporation:

> shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. [. . .] The persons so designated shall testify as to matters known or reasonably available to the organization.

Rule 30(b)(6), SCRCP provides that a party may notice the deposition of a corporation and describe with reasonable particularity the matters on which examination is requested. In that event the corporation shall designate one or more persons and for each person designated, the matters on which he or she will testify. The rule does not provide an alternative to designating a representative on properly noticed areas of inquiry. This Court has addressed the broad scope of discovery in stating, "In South Carolina, the scope of discovery is very broad and an objection on relevance

grounds is likely to limit only the most excessive discovery request." *Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997).

Similarly, according to Federal Rule of Civil Procedure 30(b)(6), which is substantially similar to SCRCP 30(b)(6), when a party has created a 30(b)(6) notice and identified the matters of examination with reasonable particularity, the responding party must produce one or more designated witnesses. Fed. R. Civ. P. 30(b)(6). Those witnesses must be fully prepared to testify regarding the matters of examination. Fed. R. Civ. P. 30 Advisory Committee's Note, Sub. (b)(6) (1970 Amendment); *United States v. Taylor,* 166 F.R.D. 356, 361, aff'd 166 F.R.D. 356, 367 (M.D.N.C. 1996); *Prokosch v. Catalina Lighting, Inc.,* 193 F.R.D. 633, 638 (D. Minn. 2000). Contrary to Atlas Turner's position, the party responding to a 30(b)(6) deposition notice has "absolutely no right...to refuse to designate a witness." *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1148 (10th Cir. 2007). Failure to produce a witness who is both prepared and has authority to speak on behalf of the organization is tantamount to failure to appear at the deposition. *T & W Funding Co., XII v. Pennant Rent-A-Car Midwest, Inc*., 210 F.R.D. 730, 735 (D. Kan. 2002). The responding party must prepare its witnesses to provide the organization's knowledge and positions, not only about facts, but also about the organization's subjective beliefs, opinions, interpretation of documents, and interpretation of events. *Lapenna v. Upjohn Co.,* 110 F.R.D. 15, 20 (E.D. Pa. 1986); see also, *Alexander v. F.B.I,* 186 F.R.D. 148 (D.D.C. 1999*)*; *Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Resources Authority*, 93 F.R.D. 62, 66-67 (D.P.R. 1981); Donald E. Frechette, "Beware of Fed. R. Civ. P 30(b)(6) Deposition," *For the Defense* 38 (2000); *Wilson Land Corp. v. Smith Barney, Inc.*, 2001 WL 1745241 (E.D.N.C.); *United States v. Taylor*, 166 F.R.D. 356, 360 (M.D.N.C. 1996) aff'd, 166

F.R.D. 367 (M.D.N.C. 1996); *Calzaturficio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co.*, 201 F.R.D. 33, 37 (D. Mass 2001).

Atlas Turner could not evade its discovery obligations, thereby undermining South Carolina's Rule 30(b)(6), by asserting that no witnesses are available who personally have direct knowledge concerning the areas of inquiry. *United States v. Taylor,* 166 F.R.D. 356, 362 (M.D.N.C. 1996), aff'd, 166 F.R.D. 367 (M.D.N.C. 1996); *Prokosch v. Catalina Lighting, Inc.,* 193 F.R.D. 633, 638 (D. Minn. 2000); *Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 663 (D. Colo. 2000). In fact, the witness does not need to have *any* personal knowledge of the matter in issue. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 691 (S.D. Fla. 2012); *Federal Civil Rules Handbook*, 2012 Ed. at 838. The Rule makes plain that a party cannot subvert the beneficial purposes of the Rule by simply incanting that no witness is available who personally has direct knowledge concerning all areas of inquiry. *Prokosch v. Catalina Lighting, Inc.,* 193 F.R.D. 633, 638 (D. Minn. 2000).

In *QBE*, an insurance company was sued for subrogation and a Florida District Court was forced to confront what consequence should flow from a plaintiff insurance company's failure to designate a witness to bind the corporation under Fed. R. Civ. P. 30(b)(6). In *QBE*, the insurance company produced a witness with insufficient or no knowledge of 47 noticed topics and then promised to produce a supplemental witness but was unsuccessful in so doing. *See id*. at 680-81. After sanctioning the insurer by precluding testimony on topics for which it was unprepared, the court considered the insurer's obligations where it had a lack of familiarity "with many of the underlying facts" known to its insured. *Id*. at 681. While the result--i.e., preclusion of testimony--was the same, it was not a sanction, but "a natural consequence of QBE's inability to obtain knowledge from its insured on the relevant subjects listed in the 30(b)(6) notice." *Id*. The court

explained it was "patently unfair" to permit the insurer to avoid a corporate deposition on these topics "yet allow it to take a position at trial on those very same issues by introducing testimony which [the requesting party] was unable to learn about during a pre-trial 30(b)(6) deposition." *Id*.

Particularly apt to this dispute, the *QBE* Court explained that "[t]he mere fact that an organization no longer employs a person with knowledge on the specified topics does not relieve the organization of the duty to prepare and produce an appropriate designee." *Id*. at 689 (citing *Fowler v. State Farm Mut. Auto. Ins. Co.*, No. 07-00071 SPK--KSC, 2008 WL 4907865, at *4 (D. Haw. 2008), *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D 534, 540 (D. Nev. 2008), *Taylor*, 166 F.R.D. at 362, and *Ecclesiastes 9:10--11--12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1147 (10th Cir. 2007)). When the corporation lacks an employee with knowledge, it is not without recourse, but must prepare a designee "by having them review available materials, such as fact witness deposition testimony, exhibits to depositions, documents produced in discovery, materials in former employees' files and, if necessary, interviews of former employees or others with knowledge." *Id*. The corporation's obligation to testify about facts within its collective knowledge includes testimony "about the corporation's *position, beliefs* and *opinions*." *Id*. (emphasis added); *see also, Union Pump Company v. Centrifugal Technology, Inc.*, 404 Fed. Appx. 899, 903–904 (5th Cir. 2010).

With knowledge of these cases in mind, the trial court overruled Atlas Turner's objection to the Welches' Rule 30(b)(6) notice.

Given that neither the QBCRA nor Atlas Turner's lack of employees with personal knowledge prevented Atlas Turner from participating in discovery, its failure to comply with the trial court's orders was intentional and willful. In the context of civil contempt, an act is willful if it is "done voluntarily and intentionally with the specific intent to do something the law forbids,

or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." *Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82–83, 370 S.E.2d 872, 874 (1988) (citation omitted). Atlas Turner intentionally failed to produce a corporate representative for deposition and intentionally failed to produce documents responsive to the Welches' discovery requests. Parties to litigation, especially after having their objections overruled, cannot choose to simply ignore their legal obligations without consequence.

The trial court acted within its discretion in holding Atlas Turner in contempt. The decision to do so was not based on an error of law or a factual conclusion which lacked evidentiary support. The trial court's ruling holding Atlas Turner in contempt for failure to comply with its directives should be affirmed.

II. Striking Atlas Turner's pleadings was the proper sanctions for Atlas Turner's willful defiance of the trial court's orders.

Faced with Atlas Turner's willful defiance of its order to participate in discovery, the trial court levied sanctions against Atlas Turner in the form of striking Atlas Turner's pleadings pursuant to South Carolina Rule of Civil Procedure 37(b)(2)(C) and *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999). Rule 37(b)(2)(C) is clear that "[i]f a party . . . fails to obey an order to provide or permit discovery, . . . the court in which the action is pending may make such orders in regard to the failure" including "[a]n order striking out pleadings or parts thereof[.]" S.C.R.C.P. 37(b)(2)(C).

Atlas Turner does not deny that it did not comply with the court's orders. In fact, counsel for Atlas Turner made it clear for the trial court that Atlas Turner did not **ever** intend to comply with the trial court's orders. (R. at 521:8-9). Consequently, the trial court struck Atlas Turner's pleadings.

The trial court's action was warranted by the extreme nature of Atlas Turner's continued defiance of the court's authority. Where the trial court orders a sanction that results in default or dismissal, such as the striking of a party's pleadings, "the end result is harsh medicine that should not be administered lightly." *Griffin,* 334 S.C. at 198, 511 S.E.2d at 718; *see also Karppi v. Greenville Terrazzo Co.,* 327 S.C. 538, 547, 489 S.E.2d 679, 684 (Ct. App. 1997) ("A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party."). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. *Griffin,* 334 S.C. at 198, 511 S.E.2d at 719; *Karppi,* 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Karppi,* 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Griffin,* 334 S.C. at 198–99, 511 S.E.2d at 719; *see also Karppi,* 327 S.C. at 543, 489 S.E.2d at 682 ("Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants.").

While striking Atlas Turner's pleadings is a harsh sanction, it was the proper sanction given Atlas Turner's misconduct. The sanction was reasonable and was the result of willful disobedience. Although the Welches filed suit naming Atlas Turner in July of 2022, Atlas Turner **never** participated in this case. It **never** answered South Carolina's master discovery. It **never** retained and/or tendered experts. Atlas Turner never complied with its discovery obligations by repeatedly contending that the trial court lacked personal jurisdiction over it and that it could not participate

in discovery because of a blocking statute. Even after the trial court dismissed Atlas Turner's objections to participating in this case, Atlas Turner continued to delay. It flagrantly ignored the trial court's directives, turning a deaf ear to the explicit warnings given by the trial court for doing so, and continued to disregard its obligations to participate in this case.

Atlas Turner supplied two reasons as to why it could not comply with the trial court's order. Neither of those reasons had merit and, as the trial court determined, neither was a sufficient reason for Atlas Turner to refuse to participate in discovery. First, Atlas Turner argued that it had no one to designate as a corporate witness. However, the party responding to a 30(b)(6) deposition notice has "absolutely no right...to refuse to designate a witness." *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1148 (10th Cir. 2007). Despite having this objection to the Welches' discovery requests overruled, Atlas Turner still refused to comply. Second, as mentioned above, Atlas Turner objected to its participation in discovery arguing that the QBCRA prevented it from responding to the Welches' discovery requests, including sitting for its own deposition. The trial court, after reviewing cases from across the country, held, just as other courts have, that the QBCRA did not prevent Atlas Turner from participating in this litigation.

The trial court was explicit in explaining the consequence that Atlas Turner would suffer if it did not comply with the court's order by stating that "further action [would] be taken with respect to" Atlas Turner, including denying summary judgment, "striking the answer", and "appointing a state receiver." Atlas Turner received the exact consequence promised by the trial court. In doing so, the trial court considered the requisite factors such as "the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Griffin, supra*. When the trial court held Atlas Turner in contempt, the court acknowledged that, despite Atlas Turner's arguments to the contrary, Atlas Turner's failure to comply and participate in this case was willful

and intentional. The court mentioned, when striking Atlas Turner's answer, that Atlas Turner has not participated in discovery in any respect despite being only a few months away from trial. The prejudice suffered by Mrs. Welch because of Atlas Turner's conduct is undeniable. Atlas Turner's repeated unwillingness to engage in any meaningful way in this matter meant that the Welches could not gather the information needed to thoroughly support their allegations. Atlas Turner failed to articulate the prejudice it would suffer by participating in discovery outside of alleged criminal and/or civil penalties it might face in Canada.[8] Atlas Turner does not deny that Mrs. Welch was prejudiced by its conduct because it cannot, in good faith, do so.

In its brief, Atlas Turner argues that striking its pleadings, in addition to holding the entity in contempt, was unreasonable because Atlas Turner defied only one order. To be clear, neither Rule 37 nor binding precedent require repeated disobedience of a court's orders before a party can be held in contempt or before sanctions can be levied against a party. Rule 37, by its plain language, gives the court discretion to impose sanctions after a single incidence of disobedience. The cases cited at Atlas Turner serve only to illuminate the trial court's discretion regarding when and if to impose sanctions.

In *Griffin*, *supra*., the trial court held the defendant in contempt after its second failure to comply with a consent order. 334 S.C. at 196-197. The trial court in *Griffin*, much like the trial court here, warned the defendant of the consequences for failing to comply, which included "among other sanctions, the striking of [its] answer." *Id.* at 197 (alteration in original). The defendant continued to dodge its discovery obligations by filing for protective orders and filing a motion to dismiss. *Id.* Despite the denial of its motions, the defendant still refused to comply with

[8] Atlas Turner did not identify any of the alleged potential criminal or civil penalties that it faced if it participated in this litigation. Nor did it cite to a single instance where a Canadian entity was found to have violated the QBCRA by participating in American litigation or the penalties exacted against that entity.

orders from the trial court and its obligations to participate in discovery. *Id.* at 197. The trial court ultimately determined the defendant had engaged in a "pattern of non-compliance" and, as a sanction, struck the defendant's answer. *Id.* at 198.

On appeal, the South Carolina Court of Appeals affirmed the trial court's sanction—striking the defendant's pleadings—as appropriate given the defendant's "multiple, egregious discovery abuses" that blocked the opposing party's attempts to conduct meaningful discovery. *Id.* at 198-200. Like *Griffin,* the Welches' case has been pending for over a year and the Welches have not been able to take the 30(b)(6) deposition of Atlas Turner and had not received meaningful answers to interrogatories or requests to produce.

Similarly, in *McNair v. Fairfield County*, 379 S.C. 462 (2008), the South Carolina Court of Appeals affirmed the trial court's sanctions after the defendant failed to provide adequate responses to the plaintiff's discovery requests despite being ordered by the trial court to do so. The trial court in *McNair* ordered the defendant to provide complete responses to the plaintiff's interrogatories. *Id.* at 464. The defendant failed to do so. *Id.* The defendant argued that it could not comply with the trial court's order "because of a funding deadline imposed by the Federal Aviation Administration (the FAA)". *Id.* The defendants requested additional time to negotiate with the FAA, which the trial court granted. *Id.* When granting the requested additional time, the trial court "warned it was inclined to strike the answer," but gave the defendant "forty-five days to reach some kind of accord." *Id.* at 465. Despite being given the additional time that it requested, the defendant failed to reach any resolution with either the FAA or the plaintiff. *Id.* The trial court, because of the defendant's failure to comply, issued an order striking the defendant's answer. *Id.*

On appeal, the Court of Appeals noted that the trial court had warned the defendant that it was inclined to strike the defendant's answer, in addition to other explicit findings, such as the

delay causing prejudice to the plaintiff's right to have his claim heard, and that the defendant's failure to "make any attempt to comply with the court order" being a blatant violation of SCRCP 37(b)(2). *Id.* at 467. The Court of Appeals held that the trial court did not abuse its discretion in striking the defendant's answer. *Id.*

Missing from *Griffin* and *McNair* is the notion that the trial court must wait for repeated failures to comply with its orders before either holding a party in contempt or imposing sanctions. Here, there was no reason to wait. Unlike the defendant in *Griffin* and much like the defendant in *McNair*, Atlas Turner never made any attempt to comply with the directives of the trial court to submit to discovery. In fact, counsel for Atlas Turner informed the trial court that Atlas Turner never intended to comply despite having its objections repeatedly overruled. (R. at 521:8-9). Further, like the *McNair* court, the trial court here acknowledged the prejudice to the Welches' right to have their claims heard.

While the penalty for Atlas Turner's flagrant disregard of the trial court's orders is harsh, striking Atlas Turner's answer without waiting for Atlas Turner to **never** comply was reasonable and proper. What else was the trial court to do? Interestingly, Atlas Turner, along with never complying with the trial court's orders or the South Carolina Rules of Civil Procedure, never offered the trial court an alternative sanction which would have better suited this situation, especially given that the trial court had already denied its request for summary judgment. Atlas Turner, with full knowledge of the consequences awaiting it if it did not prepare and produce a corporate representative for deposition and/or produce documents requested by the Welches during the discovery period in this case, chose its punishment. The trial court acted within its discretion in giving Atlas Turner the very punishment it promised. The trial court's finding on this issue should be affirmed.

III. The trial court did not abuse its discretion in appointing a receiver.

Atlas Turner's appeal raises two arguments to support its claim that the trial court abused its discretion in appointing a receiver, (1) the circuit court lacks jurisdiction over property outside South Carolina, and (2) Section 15-65-10 is inapplicable. The trial court considered and correctly rejected both arguments. Mrs. Welch respectfully requests this Court do the same.

A. Atlas Turner has insurance interests in South Carolina.

The crux of Atlas Turner's arguments on appeal is that it does not have any property in South Carolina that is subject to the control of a receiver. It makes this assertion despite refusing to produce any witness, interrogatory answers, or documents on this issue in discovery, even after being ordered to do so. As the trial court recognized, Atlas Turner attempts to use its discovery misconduct as a sword to prevent a receivership. (R. at 12, FN3). This is unacceptable under South Carolina law.

Atlas Turner's lack of proof is conspicuous. The record in fact contradicts Atlas Turner's unsupported argument, as it has liability insurance applicable to claims made in this State. As Judge Toal noted in her order appointing a receiver,

> [the trial court's] view of the scope of a receiver's authority is not unique. The United States Supreme Court recognized in *Porter v. Sabin*, 149 U.S. 473 (1893) that "[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver, **including all its rights of action**, except so far as already lawfully disposed of under orders of that court, [and remains in its custody, to be administered and distributed by it."

(emphasis in original)(R. at 13-14).

South Carolina Code §38-61-10 states,

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

In 1992, the Supreme Court addressed this statute in an opinion authored by Justice Toal herself. The Court held, "it is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, *or interests insured are located*." *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (emphasis added).

The South Carolina District Court similarly considered §38-61-10 in *Hartsock v. American Auto. Inc. Co.*, 788 F.Supp.2d 447 (D.S.C. 2011). Following *Sangamo*, it determined that its first inquiry must be "where the subject of the insurance contract is located." *Id.* at 451. Although the insurance policy was issued in North Carolina and covered some North Carolina property, the court nonetheless found South Carolina substantive law applied to the dispute under §38-61-10. "Plaintiff's interest and property located outside of this state are not at issue here. In this action, Plaintiff seeks coverage solely on a vehicle registered and located in South Carolina. *Id.* at 452. Quoting *Sangamo*, the district court went on to find §38-61-10 constitutional because "insuring property, lives and interests in South Carolina constitutes a significant contact with this state." *Id.* at 452, *citing Sangamo*, 414 S.E.2d at 131.

In *Okatie Hotel Group, LLC v. Amerisure Ins. Co.*, No. 2:04-2212-23, 2006 WL 91577 (D.S.C. January 13, 2006), the South Carolina District Court explicitly considered whether §38-61-10 applied to liability insurance policies. In that case, the Defendant argued "the policy at issue is a liability policy, not a property policy. Thus, the statute does not apply by its own terms." *Id.* at *4. The South Carolina District Court rejected this argument, finding "the plain language of §38-61-10 contemplates a broad application of South Carolina law to insurance contracts with any significant connection to South Carolina, and the court is bound by the plain meaning of the statute's language." *Id.*

The *Okatie* court went on to note "*Sangamo* explicitly embraced a broad reading of §38-61-10's applicability." *Id.* The court summed up its decision to apply §38-61-10 to a product liability insurance policy by holding, "[f]inally, and perhaps most importantly, neither the South Carolina Supreme Court in *Sangamo* nor the statute emphasize the location of property or lives upon inception of the insurance contract. Rather, both emphasize only the general location of property, lives, and interests within the state and that 'it is immaterial where the contract was entered into.'" *Id.*, *citing Sangamo*, 414 S.E.2d at 130. *See also*, *Helsin-Kim v. CIGNA Group Ins.*, 377 F.Supp.2d 527, 531-32 (D.S.C. 2005) (rejecting Defendant's attempt to distinguish *Sangamo* and finding "§38-61-10 contemplates a broad application of South Carolina law to insurance contracts with any significant connection to South Carolina.").

The United States Supreme Court has recognized, "[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver, including all its rights of action, except so far as already lawfully disposed of under orders of that court, [and] remains in its custody, to be administered and distributed by it." *Porter v. Sabin,* 149 U.S. 473, 480 (1893). Thus, as stated in the trial court's order, "the appointment of a receiver over those [insurance] assets is appropriate." (R. at 15).

Atlas Turner attempts to argue that §38-61-10 does not apply because *Sangamo* stated, "[w]here this statute applies it governs as South Carolina's rule of conflicts." Although unclear, it appears Atlas Turner's argument is that §38-61-10 *only* applies as a rule of conflicts. But neither *Sangamo* nor the plain language of the statute sets forth such a limitation. *Sangamo* considered §38-61-10 in the conflict of laws context because that was what was at issue in that case. But it did nothing to limit the statute to only such considerations. In fact, *Sangamo* explicitly recognized, "We find that insuring property, live and interests in South Carolina constitutes a significant contact

with this state. South Carolina has a substantial interest in who bears the ultimate liability for operations conducted in this state which result in injury to South Carolina property and citizens." *Sangamo*, 307 S.C. at 149. As the original author of *Sangamo*, Justice Toal correctly applied its holding to the facts of this case, and Atlas Turner's efforts to limit *Sangamo* or the reach of this statute are without merit.

It is well-established that insurance interests are "property." *See, e.g., In re Krafft-Murphy Company, Inc.*, 82 A.3d 696, 703 (Del. 2013) ("contingent contractual rights,, such as unexhausted liability insurance policies, are 'property' . . .."); *see also*, *Kolb v. Cook*, 284 S.C. 598, 327 S.E.2d 379 (1985)(recognizing liability coverage as an undistributed asset of an estate). The Receiver Order appoints a receiver only for "the Insurance Assets of Atlas." Such assets included "any claims related to the actions or failure to act of Atlas Turner's insurance carriers." The Receiver Order instructed "the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas." (R. at 16-17).

Any product liability insurance held by Atlas Turner would be for the purpose of insuring claims against it arising out of harm caused by Atlas Turner's products. This "interest" exists in every jurisdiction where Atlas Turner sold products, including South Carolina. The trial court acted reasonably and within its jurisdiction by appointing a receiver to investigate the existence of such assets. And to the extent such assets exist, it was well within the trial court's power to appoint a receiver to exercise control over them for the protection of Atlas Turner's creditors and claimants in South Carolina.[9]

[9] Under South Carolina law, "the term 'creditor' has been held sufficiently comprehensive to include those holding claims arising out of tort.'" *Moultis v. Degen*, 279 S.C. 1, 6, 301 S.E.2d 554, 557 (1983). As such, Mrs. Welch is a creditor of Atlas.

B. The trial court followed "existing practice" pursuant to S.C. Code Ann. 15-65-10(5).

South Carolina code §15-65-10 governs the appointment of receivers in South Carolina. It states,

> A receiver may be appointed by a judge of the circuit court, either in or out of court:
>
> (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
>
> (2) After judgment, to carry the judgment into effect;
>
> (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;
>
> (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
>
> (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

The trial court primarily relied upon subsection (5) in deciding to support a receiver. (R. at 11-18). Historically, receivers are appointed by courts sitting in equity to ensure a fair result. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939). Indeed, "[t]he right to have a receiver appointed is an ancient one . . .." *Pelzer v. Hughes*, 27 S.C. 408 (1887). As the trial court noted in its order, "where, as here, Atlas' [answer] has been struck, and thus only a ministerial action being left for Atlas to be in judgment, a receiver to take possession of and, to the extent necessary, litigate Atlas' insurance assets is exactly the type of historical circumstances the Courts of this state have found appropriate." (R. at 13). As set forth in *Virginia Carolina Chemical*, 84 S.C. 214 (1909), *citing Miller v. Hughes*, 33 S.C. 541, 12 S.E. 419 (1890),

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

The *Virginia-Caroline Chemical* court went on to note that the South Carolina Supreme Court had followed and approved of *Miller v. Hughes* on multiple occasions, *citing*, *Meinhard v. Youngblood,* 37 S.C. 231, 15 S.E. 950, 16 S.E. 771 (1892); *Sires v. Sires*, 43 S.C. 266, 21 S.E. 115 (1895), and *Bank v. Dowling*, 45 S.C. 677, 23 S.E. 982 (1896).

In this case, a receiver was and is necessary to achieve an equitable and fair result. Atlas Turner has already shown its contempt for South Carolina courts by refusing to participate in discovery, and by representing that it will never produce a witness who can testify about its assets. Further, given its ongoing position that it is not subject to personal jurisdiction in South Carolina, there is no indication whatsoever that it will comply with its discovery obligations if this Court affirms the trial court's orders on that issue.

Atlas Turner's ongoing refusal to accept the jurisdiction of any United States court, including South Carolina's trial court in this case, is precisely the type of "moral fraud" the receivership statute is meant to address. Having asserted that it will never comply with discovery requests, the only option left to the trial court was to appoint a receiver to investigate the existence of Atlas Turner's liability insurance assets which could be used to satisfy a South Carolina judgment against Atlas. The trial court's decision to appoint a receiver was not only reasonable, it was necessary.

C. Atlas Turner's insurance proceeds were in danger of being lost or materially injured or impaired pursuant to S.C. Code Ann. 15-65-10(1).

Although it primarily relied upon subsection 5, the trial court recognized other subsections also supported appointing a receiver.

> A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the unopposed striking of Atlas' answer. Atlas further argues that there is no evidence of its insolvency, yet it refuses to comply with this Court's orders to discovery that and many other issues. The court does not believe it is appropriate for Atlas to use this refusal as a sword. Regardless, other elements of the receivership statute are satisfied and thus, this argument is unavailing.

(R. at 12, fn. 3).

Subsection 15-65-10(1) also supported the need for a receiver in this matter. This subsection provides that a receiver may be appointed before judgment when a party establishes an apparent right to property which is the subject of the action, and which is in danger of being lost or materially injured or impaired. The record shows Atlas Turner engaged in a scheme to adopt a strategic "posture" of minimal engagement in this and other lawsuits, with its insurers (acting either in concert with Atlas Turner or independently) withdrawing their defense of Atlas Turner, resulting in the entry of default judgments against Atlas Turner in asbestos litigation across the United States. (R. at 1854-1860).

Specifically, documents obtained by the receiver show that Atlas Turner had multiple policies worth millions of dollars of insurance coverage in the 1960s and 1970s. (R. at 1780, 1801-1804). However, as early as 1985 Atlas Turner engaged in a scheme to purposefully withdraw its defenses and allowed a trial court to enter default judgment against it in twenty-two asbestos personal injury claims, with the expectation that plaintiffs would be unable to collect on default judgments entered against Atlas Turner. (R. at 1855-1858). According to Atlas Turner's Alain Dulude in a letter to Ohio local counsel,

> Over the last two years, the posture of Bell Asbestos Mines, Limited and Atlas Turner Inc in the U.S. asbestos litigation has changed considerably. For economic and other considerations, with which you are already acquainted, Bell and Atlas have taken a minimal defense posture and have proceeded to default judgments in several cases. After reviewing the overall situation, and in contemplation of additional decisions regarding the position of Bell and Atlas in the U.S. asbestos

> litigation, I must advise you at this time that all matters involving Bell Asbestos Mines Limited and/or Atlas Turner Inc are to be transferred immediately to Thomas P. Meaney, Jr., Esq.

(R. at 1862).

This strategy has continued for decades and continues to be utilized by Atlas Turner in this case. In fact, after the receiver initiated this third-party action against Atlas Turner's insurers, individuals purporting to act on Atlas Turner's behalf advised its insurers that Atlas Turner was not tendering the asbestos claims pending before this Court and that no defense or indemnity should be provided by Atlas Turner's insurers.

On July 24, 2023, the Receiver received two letters from Resolute Management, Inc. (one on behalf of Continental and one on behalf Certain London Market Insurers), stating each has been "advised by Atlas that Atlas is controlling and defending its own interests, and [that the Receiver is] not objecting to Atlas's control of its own defense." Further, the letters asserted that "Atlas is not tendering the Asbestos Lawsuits [to Continental or Certain London Market Insurers] for defense and indemnity," and therefore, "given that Atlas is not tendering the Asbestos Lawsuits, there is no defense or indemnity being requested." (R. 1858).

This information makes it clear that Atlas Turner and its insurers have acted in concert to "lose or materially injure" Atlas Turner's insurance interests not only in this case, but in most or every case in the United States for almost 40 years. Absent the appointment of a receiver, this information might never have come to light, especially given Atlas Turner's refusal to participate in discovery. For this additional reason, the appointment and continued service of a receiver was not only appropriate, but necessary, and the trial court acted well within its discretion under Subsection 15-65-10(1).

D. Atlas Turner's conduct showed a fraudulent attempt to defeat or hinder Mrs. Welch, justifying a receiver pursuant to S.C. Code Ann. 15065-10(1).

After the receiver was appointed, further evidence came to light showing Atlas Turner made misleading representations to the Court regarding the liquidity of its assets. These misleading statements further justified the appointment and continued service of a receiver under S.C. Code Ann. 15-65-10(1). In its briefing to the trial court, Atlas Turner made the following representations,

> According to Plaintiff, this necessity [request to lift stay] is born of the potential that exists, due to the believed liquidity of Atlas' insurance assets, that Atlas might divest itself of the very assets intended to be protected by the appointment of a receiver . . . No evidence of any of these speculative theories has been offered into evidence by Plaintiff.

(R. at 1818-1819). These representations deliberately hid that Atlas Turner has already liquidated at least some of its insurance assets. Documents showed Atlas Turner was party to an agreement that purports to release insurance policies issued by Royal Insurance Company, and may have also released rights in connection with policies issued by Maryland Casualty Company. (R. at 1823-1851).

Thus, at the time it represented to the trial court that there was "no evidence" of Atlas Turner liquidating its insurance assets, Atlas Turner had already liquidated two separate insurance policies.

Between Atlas Turner's QBCRA defense, which has been debunked in numerous courts across the country for decades, its refusal to respond to discovery, and its misleading representations to the trial court that there was "no evidence" its insurance assets could be liquidated, there is ample evidence that Atlas Turner has fraudulently schemed to hinder Mrs. Welch's ability to collect a judgment against it.

E. S.C. Code Ann. 15-65-10(4) also supports the appointment of a receiver.

Finally, S.C. Code Ann. 15-65-10(4) also supports the appointment of a receiver. Under this provision, a receiver may be appointed when a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations.

Atlas Turner challenges this provision by once again asserting there is "no evidence" of insolvency. Yet as the trial court noted in its order, the only reason there is "no evidence" is because Atlas Turner refused to respond to discovery on this issue. Atlas Turner attempts to use its willful disobedience as a sword, arguing "no evidence of insolvency" while at the same time refusing to produce evidence concerning its assets in violation of court orders.

It is exactly because of this refusal that a receiver is necessary. The trial court acted within its discretion in appointing a receiver to, among other things, "investigate the existence of al insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas." (R. at 17). For this final reason, Atlas Turner's appeal is without merit, and the trial court's order appointing a receiver over its insurance assets should be affirmed.

IV. Atlas Turner's Initial Brief Violates South Carolina's Professional Standards.

Atlas Turner's appeal brief not only has the temerity to continue flouting South Carolina's personal jurisdiction over it (without actually appealing the trial court's order to the contrary), but also doubles down on its contempt by asserting South Carolina is a "Judicial Hellhole." Footnote 4 of its brief cites to "Judicial Hellholes," a website created by the American Tort Reform Foundation and designed for the sole purpose of disparaging the judicial system. Atlas Turner's citation to this industry and insurance fabricated propaganda is inappropriate and a violation of South Carolina's rules and professional standards for multiple reasons. Such reasons include,

1. citing to materials outside the record,

2. falsely accusing South Carolina courts of "hostility to defendants in asbestos cases,"

3. making untrue and unsupported assertions that South Carolina courts have forced other defendants into a position in which they had "no choice but to settle for inflated value. . ." and,

4. suggesting South Carolina is a "judicial hellhole" in violation of the "Lawyer's Oath" and the South Carolina Rules of Professional Conduct.

As an initial matter, Atlas Turner cites to a website that was not designated as evidence to the trial court, and which is not in the record of appeal. Under South Carolina's appellate rules, arguments must be supported "with reference to the record on appeal," App. R. 208(E). "The Record shall not . . . include matter which was not presented to the lower court or tribunal." App. R. 210(c). South Carolina appellate courts "are confined to the record in deciding issues on appeal." *Timms v. Timms*, 286 S.C. 291, 333 S.E.2d 74 (1985). As such, Atlas Turner's efforts to submit new "evidence" to this Court in the form of the Judicial Hellholes website is inappropriate.

Further, Atlas Turner makes the unsupported, untrue, and unproveable claims that South Carolina courts show "hostility to defendants in asbestos cases,"[10] and have left other asbestos defendants "no choice but to settle for inflated value . . .." Once again, these assertions are unsupported by any evidence in the record.[11]

Finally, Atlas Turner's characterization of South Carolina as a "judicial hellhole," is a violation of South Carolina's attorney rules for civility. South Carolina lawyers "must act in a dignified and professional manner, with proper respect for the parties, witnesses, opposing counsel,

[10] The Judicial Hellholes 2023 entry for South Carolina complains at length about sanctions imposed on Cleaver Brooks in another asbestos matter. To the extent this Court gives such arguments any consideration, it should take judicial notice that, 1) the South Carolina Court of Appeals upheld those sanctions, *Howe v. Air & Liquid Systems Corp.*, 2021 WL 5626487 (S.C. Ct. App. 2021), *rehearing denied,* and 2) Cleaver Brooks voluntarily dismissed its appeal while it was pending before the Supreme Court. *See* June 22, 2023, Supreme Court Order dismissing appeal, Appellate Case No. 2022-000368.

[11] Given that settlement agreements typically include confidentiality provisions, it is unclear how Atlas Turner could have any information about settlements with other parties absent a breach of confidentiality by settling defendants.

and for the Court. When a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system, and, as well, disserves his client." *In re Goude,* 296 S.C. 510, 512, 374 S.E.2d 495, 497 (1988).

Rule 402(h)(3) SCACR establishes the requirements for the admission to practice law in South Carolina and contains the "Lawyer's Oath." This oath includes the clause, "I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them."

Atlas Turner's appellate briefing violates this oath. "It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice." S.C. R. Prof. Conduct. 8.4(d). The South Carolina Supreme Court has taken a dim view of attorneys disparaging South Carolina's legal system, noting attorneys are subject to discipline for "engaging in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute. . .." *In re Anonymous Member of the South Carolina Bar*, 392 S.C. 328, 334, 709 S.E.2d 633, 636 (2011).

> The interests protected by the civility oath are the administration of justice and integrity of the lawyer-client relationship. The State has an interest in ensuring a system of regulation. . . Such conduct not only compromises the integrity of the judicial process, it also undermines a lawyer's ability to objectively represent his or her client.
>
> We caution the bar that henceforth, this type of conduct could result in a public sanction."

Id., 392 S.C. at 337-38, 709 S.E.2d at 638.

Atlas Turner's initial refusal to recognize South Carolina courts' authority over it provided sufficient basis for the trial court to sanction it. Atlas Turner now doubles down, not only refusing to recognize South Carolina's jurisdiction, but citing a website whose sole purpose is to disparage the judicial system, explicitly including South Carolina courts. Atlas Turner's assertions are

unsupported, untrue, inappropriate, a violation of the rules of professionalism, and should not be considered or condoned by this Court.

V. Atlas Turner's attempt to "reserve" its personal jurisdiction defense is ineffective.

Although only addressed in conclusory fashion in its brief, Atlas Turner's objection to the trial court's exercise of personal jurisdiction over it served as the catalyst for each of the rulings that Atlas Turner now appeals. The determination of whether a court may exercise personal jurisdiction over a nonresident defendant involves a two-step analysis. *Hammond v. Butler, Means, Evins & Brown,* 300 S.C. 458, 462, 388 S.E.2d 796, 798 (1990). The nonresident defendant's conduct must meet the requirements of South Carolina's long-arm statute and the exercise of jurisdiction must comport with the requirements of the Due Process Clause. *Id.*; *Moosally v. W.W. Norton Co. Inc.*, 358 S.C. 320, 328, 594 S.E.2d 878, 882 (S.C. Ct. App. 2004). The South Carolina long-arm "affords broad power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause." *Moosally*, 358 S.C. at 329, 594 S.E.2d at 883. The trial court found that the court could properly exercise specific jurisdiction over Atlas Turner.

Specific jurisdiction may be exercised when the defendant purposefully directs his activities at residents of the forum and the litigation results from alleged injuries that "'arise out of or relate to'" those activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *Helicopteros Nacionales de Columbia S.A. v. Hall*, 466 U.S. 408, 414 (1984)). The requirement that a defendant purposely direct conduct at the forum state ensures that the defendant's connection with the forum state is sufficient to cause the defendant to "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

In this Circuit, sales of asbestos products in the forum state have been found sufficient to confer personal jurisdiction over the defendant manufacturer. *See, e.g.*, *Lineberger v. CBS Corp.*, No. 1:16CV390, 2017 WL 3883712, at *1 (W.D.N.C. Aug. 14, 2017), *report and recommendation adopted*, No. 1:16-CV-00390-MR-DLH, 2017 WL 3879092 (W.D.N.C. Sept. 5, 2017) (allegations that the defendant sold asbestos products in North Carolina and the plaintiff was exposed to those products while working in North Carolina were sufficient to state a prima facie case of specific personal jurisdiction).

Recently, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, ---U.S.---, 141 S. Ct. 1017 (2021), the Supreme Court held that a plaintiff need not show a strict causal connection between his claims and the defendant's forum-state product sales as long as there is a relationship between the defendant, the forum, and the litigation. *Ford Motor Co.* involved two separate cases against Ford brought by plaintiffs who were injured in their home states in car accidents involving Ford vehicles. 141 S. Ct. at 1022. In both cases, the plaintiffs had purchased used Ford cars that were manufactured outside the forum and originally sold outside the forum. *Id.* at 1022-23.[12] The Supreme Court succinctly summarized the facts: "The accident happened in the State where suit was brought. The victim was one of the State's residents. And Ford did substantial business in the State—among other things, advertising, selling, and servicing the model of vehicle the suit claims is defective." *Id.* at 1022.

Ford resisted personal jurisdiction on the grounds that in each case the car had not been originally sold in the forum state. *Id.* at 1023. It argued that there must be a causal link between its

[12] A Montana resident was killed in Montana when the tread separated on the tire of her Ford Explorer and her vehicle spun out and rolled into a ditch. *Id.* at 1023. Her family brought suit against Ford in Montana. A Minnesota resident was a passenger in his friend's Ford Crown Victoria and suffered serious brain injuries in an accident in rural Minnesota when the air bag failed to deploy. *Id.* He brought suit against Ford in Minnesota.

activity in the forum state and the suit, which would only exist "if the company had designed, manufactured, or—most likely—sold in the State the particular vehicle involved in the accident." *Id.* The plaintiffs could not make that showing. Not only were the cars designed and manufactured out of state, but they had also originally been sold in other states and brought into the forum states as used vehicles. *Id.*

Nevertheless, the high courts of Montana and Minnesota rebuffed Ford's motions to dismiss for lack of personal jurisdiction. *Id.* They both found that because Ford had purposefully sought to serve the market in their states, selling the exact models of cars involved in the accidents, Ford's relationship with the plaintiffs' respective claims was sufficient to confer jurisdiction. *Id.* at 1023-24.

The United States Supreme Court agreed. It held that "[w]hen a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Id.* at 1022. Even though the exact vehicles involved in the accidents were not sold in the forum states, "the connection between the plaintiffs' claims and Ford's activities in those States—or otherwise said, the 'relationship among the defendant, the forum[s], and the litigation'—is close enough to support specific jurisdiction." *Id.* at 1032 (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)). There was no dispute that Ford conducts substantial business activity in Montana and Minnesota and actively serves the car market in those states. *Id.* at 1026. "Ford agrees that it has 'purposefully avail[ed] itself of the privilege of conducting activities' in both places." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). The Court also found that the plaintiffs' suits had the requisite connection to Ford's business activities in the forum States, rejecting Ford's contention that there must be a direct causal link between its business activities and the suit. *Id.* It did not matter that

the specific vehicles involved in the accidents were not sold in the forum States given that there was an undeniable relationship between Ford's activity in serving the car market in those states, even selling the same models involved in the accidents, and the plaintiffs' lawsuits. *Id.*

Because "Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States . . . there is a strong 'relationship among the defendant, the forum, and the litigation'—the 'essential foundation' of specific jurisdiction." *Id.* at 1028 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

The Supreme Court noted that its holding is in keeping with a long line of precedent that has recognized specific personal jurisdiction in precisely such factual circumstances. *Id.* at 1027-28. Most notably, in *World-Wide Volkswagen* the Court held that Oklahoma did not have jurisdiction over a New York car dealer that sold the car causing injury in Oklahoma, but that it *did* have jurisdiction over the car's manufacturer (Audi) and the car's nationwide importer (Volkswagen). *Id.* at 1027 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). "Or said another way, if Audi and Volkswagen's business deliberately extended into Oklahoma (among other States), then Oklahoma's courts could hold the companies accountable for a car's catching fire there—even though the vehicle had been designed and made overseas and sold in New York." *Id.* This holding has been cited by the Court numerous times, including in *Daimler AG v. Bauman*, 571 U.S. 117, 127 n.5 (2014), where the Court "used the Audi/Volkswagen scenario as a paradigm case of specific jurisdiction." *Id.* at 1027-28.

The trial court determined that the exercise of personal jurisdiction over Atlas Turner was proper under *Ford Motor Co.* and longstanding specific jurisdiction principles. As were the plaintiffs in *Ford Motor Co.*, Melvin Welch was a resident of the forum state—here, South

Carolina. He was injured in South Carolina when exposed to asbestos-containing products and materials supplied by the Atlas entities at industrial facilities in South Carolina. And the Atlas entities conducted sales of asbestos-containing products and materials to the very industrial locations where Melvin Welch worked. Mrs. Welch's claims against Atlas Turner arose from Atlas Turner's substantial sales activity in South Carolina. As mentioned above, Mrs. Welch presented the trial court with evidence that Atlas Turner sold asbestos-containing products to various companies operating in South Carolina and shipped asbestos-containing products directly into South Carolina. Given this evidence, the trial court properly denied Atlas Turner's personal jurisdiction challenge.

Atlas Turner made no effort to seek reconsideration of that ruling or appeal that ruling to this Court. However, even in its brief to this Court, Atlas Turner continues to "reserve" this meritless (and already denied) defense. Atlas Turner's attempt at reserving its objection to the trial court's exercise of personal jurisdiction over it, especially when Atlas Turner has failed to properly preserve and raise the issue on appeal, is improper. As noted by this Court, "an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993). Atlas Turner has abandoned its jurisdictional challenge as it offers no argument or authority to support its position that it can properly continue to maintain a defense that has been rejected and has not included its jurisdictional challenge as an issue on appeal.

Additionally, Atlas Turner has waived its challenge to the trial court's exercise of personal jurisdiction over it because it sought affirmative relief from the trial court regarding the merits of this case. As noted above, Atlas Turner requested summary dismissal of the Welches' claims

against it based on an alleged absence of evidence demonstrating that Melvin Welch was exposed to asbestos or asbestos-containing products attributable to Atlas Turner. This Court has recognized that the defense of lack of jurisdiction can be waived by seeking affirmative relief which includes arguing the merits of the case as it is inconsistent with its position that the trial court lacks the authority to adjudicate the Welches claims against Atlas Turner. See *Wellin v. Wellin*, 427 S.C. 15, 24-25, 828 S.E.2d 767, 772 (Ct. App. 2019); *Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 823 (Ct. App. 2009). It is disingenuous, and confusing, then for Atlas Turner to continue to "reserve" an unmeritorious and waived defense. Atlas Turner has failed to even attempt to explain how or when it would appeal the denial of its jurisdictional challenge, especially given that the denial of said challenge goes hand in hand with the issues raised in its current appeal.

Because Atlas Turner has waived and/or abandoned its challenge to the trial court's exercise of jurisdiction over it and has failed to raise that issue in the instant appeal, this Court need not give any consideration to Atlas Turner's attempt to "reserve" its defense of a lack of personal jurisdiction, except, if necessary, to declare that defense waived and/or abandoned.

CONCLUSION

The trial court did not abuse its discretion in holding Atlas Turner in contempt, striking its Answer, or in appointing a receiver over its insurance assets. For these reasons, Appellee Donna Welch respectfully requests this Court affirm the trial court's orders striking Atlas Turner's Answer and appointing a receiver for Atlas Turner's insurance assets.

Respectfully submitted, January 16, 2024

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