

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL DAVID LINK AND SANDRA STRICKLAND LINK,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Plaintiffs,

CIVIL ACTION NO: 2022-CP-40-005543

Vs.

ORDER

4520 CORP, INC, et al.,

Defendants.

HEATHER DONAGHY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SHIRLEY SMILEY POTTER, DECEASED,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Plaintiffs,

CIVIL ACTION NO: 2023-CP-40-03108

Vs.

ORDER

4520 CORP, INC, et al.,

Defendants.

This matter came before the Court by way of (1) a Motion by the Receiver to Enforce Order against Clement Rivers, LLP, (2) the Receiver for Asbestos Corporation Ltd.’s Notice of Filing of Termination of Representation, and (3) the Receiver’s request to continue trial of these matters from the February 12, 2024, trial setting. These issues arise from a series of conflicts between Peter D. Protopapas, the Receiver for the insurance assets of two companies—Asbestos Corporation Ltd. (“ACL”) and Atlas Turner, Inc. (“Atlas”)—and prior and current counsel for those entities.

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SC Court of Appeals

BACKGROUND

On June 21, 2023, this Court appointed Peter Protopapas as Receiver for the insurance assets of Atlas. *See* Order on Plaintiff’s Motion to Appoint a Receiver, *Welch v. 3M Co.*, Case No. 2022-CP-40-03834 (Richland County, S.C. Ct. Common Pleas filed June 21, 2023). Atlas appealed that Order.

On September 8, 2023, this Court appointed Mr. Protopapas to serve as the Receiver for the insurance assets of Asbestos Corporation Ltd. (“ACL”). *See* Order on Plaintiff’s Motion to Appoint a Receiver, *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759 (Richland Co., S.C. Ct. Common Pleas filed Sept. 8, 2023). In that order, this Court gave the Receiver “the power and authority to fully administer all insurance assets of Asbestos Corporation, Ltd.” and “assume the control of the defense of asbestos claims made against ACL,” *Id.* at p. 6. ACL appealed that Order.

By way of brief background, both Atlas and ACL have consistently refused to participate in litigation before this Court. Both assert jurisdictional defenses, but when those defenses have been overruled, both companies refuse to answer discovery, present witnesses, or engage in the litigation process. This refusal has caused this Court to strike the answers of these companies. In light of these companies’ decisions to place themselves into defaults in this manner, this Court appointed a receiver in each instance in an effort to identify insurers with coverage responsive to the South Carolina asbestos claims faced by these companies in this Court.

The Receiver identified potential historic insurers for ACL and Atlas and initiated third-party litigation against the insurers in: *Asbestos Corporation Limited v. Century Indemnity Company, the Continental Insurance Company, Federal Insurance Company and Travelers Casualty and Surety Company*, Case no. 2022-CP-40-02979 (pending in Richland County) and

Atlas Turner Inc. v. Federal Insurance Company, Continental Insurance Company, Insurance Company of North America, Aetna Life & Casualty Co, and Certain underwriters at Lloyds, London and Certain London Market Companies, and Canadian General Insurance Company, Case No. 2022-CP-40-03484 (pending in Richland County). These insurers appeared before this Court on February 2, 2024, for a motions' hearing in these cases.¹

Both Atlas and ACL have retained the Clement Rivers, LLP law firm as (1) their defense counsel for the asbestos matter pending before this Court, and (2) their appellate counsel for the appeals referenced above. Mr. Stephen L. Brown is the lead lawyer assigned for these representations.² Mr. Brown has been hired directly by these companies, and he has not been appointed by any insurers of either company. In matters before this Court, Atlas and ACL have instructed Mr. Brown not to comply with the Receiver's directives, despite the fact that this Court has charged Mr. Protopapas with the responsibility for serving as the representative of ACL and Atlas as described above. Mr. Brown, to date, has declined to follow the Receiver's directives.

Twice since this Court appointed the Receiver for ACL, the Receiver has notified Clement Rivers, LLP, that its representation of ACL was terminated. Clement Rivers has continued to represent ACL and Atlas in the interim.

On January 26, the Receiver filed a motion with this Court to enforce his right to terminate Mr. Brown and Clement Rivers from their representation of ACL. *See* Notice of Motion and Motion to Enforce a Court Order Against Clement Rivers, LLP, *Link v. 3M Co.*, Case No. 2022-

¹ The Court has previously ordered that no liquidation of any insurance policy is permitted without the express consent of the Court during the pendency of these receiverships.

² The Receiver's motions before this Court do not seek to impact counsel's role in pursuing the two pending appeals, and they will not. In the absence of the issues described herein, Mr. Brown of Clement Rivers, LLP is of course free to handle those appeals as directed by his clients, Atlas and ACL.

CP-40-05543 (Richland Co., S.C. Ct. Common Pleas filed Jan. 26, 2024). On February 6, ACL filed memoranda in opposition in *Link* and *Donaghy v. 4520 Corp., Inc.*, Case No. 2023-CP-40-03108 (Richland Co., S.C. Ct. Common Pleas).

On February 7, 2024, this Court held pretrial hearings in several asbestos matters, including *Link* and *Donaghy*, where it became necessary to determine the status of Clement Rivers' representation of ACL and Atlas and the Receiver's ability to control those representations. The Court subsequently held a video status conference in these two asbestos cases on February 8, 2024, regarding ACL and Atlas. Mr. Peter Protopapas appeared as the Receiver, Mr. Stephen Brown appeared for Atlas and ACL, and Ms. Theile McVey and Mr. Charles W. Branham, III appeared for the asbestos plaintiffs. Mr. Vic Rawl, counsel for Certain London Market Insurers with respect to Atlas, was also in attendance.

ACL argues that this Court cannot act on the question of Mr. Brown and Clement Rivers' representation of ACL because of its appeal of the receivership order in the *Tibbs* case. According to ACL, this Court is divested of any ability to direct actions related to the receivership under our state's appellate court rules. *See* Rule 205, SCACR.

The Court disagrees. As this Court and the Court of Appeals have found in similar litigation, because of our state's treatment of receiverships in its laws and rules, the Receiver may continue his duties while the appeal is pending. *See* Order, *Childers v. Davis Mechanical Contractors, Inc.*, Appellate Case No. 2023-000727 (S.C. Ct. App. Sept. 8, 2023) (finding that a receivership order was "not stayed during pendency of [an] appeal" and "the receivership action and the receiver's ability to carry out his duties are not stayed"). Many of the same arguments about Rule 205 were raised to the Court of Appeals in its consideration of this issue to no avail.

See Order, *Childers vs. Davis Mechanical Contractors, Inc.*, Appellate Case No. 2023-00727 (S.C. Ct. App Nov. 21, 2023).

This Court remains concerned that Atlas and ACL are taking improper steps to deplete their insurance assets or otherwise make them unavailable to respond to the asbestos cases filed by South Carolinians in this Court, as they were originally intended and designed to do.

Accordingly, this Court ORDERS as follows:

1. The Receiver's Notice of Termination of Clement Rivers, LLP is DENIED.
2. Neither Atlas nor ACL shall take any actions to deplete the insurance assets or otherwise make them unavailable to the cases pending in this Court.
3. Both prior and current counsel for Atlas and ACL are directed to cooperate with the Receiver for Atlas and ACL, including producing their complete files to the Receiver upon his request. From the perspective of these law firms, the Receiver for Atlas and ACL shall be viewed as the client for both Atlas and ACL in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets.
4. ACL, Atlas, and its counsel shall not interfere with the Receiver's tenders of cases to insurance carriers or with any insurers' provision of defense and indemnity. Furthermore, ACL, Atlas, and its counsel shall not hinder insurance carriers from cooperating with the Receiver.
5. The insurers for Atlas and ACL are expected to cooperate with the Receiver for Atlas and ACL. The Receiver for Atlas and ACL shall be viewed as the named insured and the representative for both Atlas and ACL in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets.

6. If a disagreement arises between Mr. Brown and the Receiver on matters related to the defense of asbestos matters or the management of insurance assets, the Receiver's directives shall prevail. Mr. Brown is hereby ORDERED to comply with the Receiver's directives in these situations.
7. The *Link* and *Donaghy* asbestos matters are hereby CONTINUED until April 15, 2024.
8. The Court hereby ORDERS that in-person mediation take place in *Link* and *Donaghy* asbestos matters in South Carolina within the next 14 days. Atlas and ACL are hereby ORDERED to attend. The Receiver shall advise Atlas and ACL's respective insurers of the requirements of Rule 6 of the South Carolina Rules of Alternative Dispute Resolution and its mandate attendance that "a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim" on behalf of any insured party against whom a claim is made shall attend. SCRADR 6(b)(4).
9. The *Link* and *Donaghy* asbestos plaintiffs are ORDERED to provide settlement demands to Atlas and ACL within three days of the date of this Order.
10. The asbestos plaintiffs' oral motion to consolidate the *Link* and *Donaghy* asbestos matters for trial is DENIED at this time.

AND IT IS SO ORDERED

[JUDGE'S E-SIGNATURE FOLLOWS]



Richland Common Pleas

Case Caption: Heather Donaghy , plaintiff, et al vs 4520 Corp Inc , defendant, et al

Case Number: 2023CP4003108

Type: Order/Other

So Ordered

Jean H. Toal

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