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**Mar 25 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Jean H. Toal  
Acting Circuit Court Judge

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Appellate Case No. 2024-000341  
Circuit Court Case No. 2022-CP-40-02979

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Ted Everett Mitchell, individually and as Executor of the Estate of  
Patsy Ann Mitchell, .....

Plaintiffs

v.

3M Company; ABB Inc.; Advance Auto Parts, Inc.; Air & Liquid  
Systems Corporation; Alfa Laval, Inc.; Amentum Environment &  
Energy, Inc.; Ametek, Inc.; Anchor/Darling Valve Company;  
A.O.Smith Corporation; Armstrong International, Inc.; Asbestos  
Corporation Limited; Atlas Turner, Inc.; AWT Air Company, Inc.;  
Bahnsen, Inc.; Beatty Investments, Inc.; Bechtel Investments, Inc.;  
The Bonitz Company; BW/IP Inc.; Cameron International  
Corporation; Cape PLC; Carrier Corporation; Carver Pump  
Company; Champlain Cable Corporation; Cleaver-Brooks, Inc.;  
Clyde Union Inc.; Covil Corporation; Crane Co.; Crane Instrument  
& Sampling, Inc.; Daniel International Corporation; Davis  
Mechanical Contractors, Inc.; Detroit Stoker Company, LLC;  
Ellington Insulation Company, Inc.; Erico International  
Corporation; Fisher Controls International, LLC; Flowserve US  
Inc.; Fluor Constructors International; Fluor Constructors  
International, Inc.; Flour Daniel Services Corporation; Fluor  
Enterprises, Inc.; FMC Corporation; Ford Motor Company; Foster  
Wheeler Energy Corporation; Gardner Denver, Inc.; General  
Electric Company; General Parts, Inc.; Genuine Parts Company;  
The Goodyear Tire & Rubber Company; The Gorman-Rupp  
Company; Goulds Pumps, Incorporated; Graphic Packaging  
International, LLC; Great Barrier Insulation Co.; Grinnell LLC;  
Hercules LLC; Honeywell International, Inc.; IMO Industries Inc.;  
Industrial Holdings Corporation; International Paper Company; ITT  
LLC; J.&L. Insulation, Inc.; Metropolitan Life Insurance Company;  
Morse Tec LLC; Moyno, Inc.; NIBCO Inc.; Paramount Global;  
Pennsylvania Transformer Technology, Inc.; Presnell Insulation  
Co., Inc.; Redco Corporation; Rust Engineering & Construction,  
Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.;

Schneider Electric Systems USA, Inc.; Sequoia Ventures Inc.; Service Products, Inc.; The Sherwin-Williams Company; Southern Insulation, Inc.; Spirax Sarco, Inc.; SPX Corporation; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, .....	Defendants,
Asbestos Corporation Limited, by and through its duly appointed Receiver Peter D. Protopapas,.....	Third-Party Plaintiff/ Respondent,

v.

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America; The Continental Insurance Company; Federal Insurance Company; Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., .....	Third-Party Defendants,
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of which

Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., is the .....	Appellant.
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TRAVELERS’S RESPONSE REGARDING APPEALABILITY

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The orders on appeal are immediately appealable under South Carolina Code § 14-3-330(4), because they continue a state court receivership over an active foreign corporation, Asbestos Corporation Limited (“ACL”), despite Appellant Travelers Casualty and Surety Company’s (“Travelers”) motion to dissolve the receivership in its entirety, and because they allow the Receiver to continue functioning despite the pendency of an appeal challenging its very formation.

## **BACKGROUND**

### **A. John and Margaret Tibbs, Underlying Asbestos Tort Plaintiffs, File Suit Against ACL and Other Entities In South Carolina Circuit Court**

On April 5, 2023, John and Margaret Tibbs filed an asbestos tort complaint against ACL and many other defendants in South Carolina circuit court. (App. 1, Summons and Complaint (April 5, 2023).) ACL is an active Canadian corporation represented by its own counsel. It moved to dismiss plaintiffs' complaint for lack of personal jurisdiction. (App. 92, Motion to Dismiss and Dufour Affidavit (May 17, 2023).) The court denied ACL's motion to dismiss. (App. 108, Order Denying Motion to Dismiss (July 19, 2023).)

### **B. The Tibbs Plaintiffs Ask the Circuit Court to Strike ACL's Pleadings and to Appoint a Receiver Over ACL**

On July 26, 2023, the Tibbs plaintiffs filed a motion to hold ACL in contempt and to strike its pleadings, arguing ACL had failed to participate in discovery. (App. 110, Plaintiffs' Motion to Hold ACL in Contempt and to Strike ACL's Pleadings (July 26, 2023).)

On July 28, 2023, the Tibbs plaintiffs filed a motion asking the circuit court to appoint a South Carolina lawyer, Peter Protopapas, as ACL's receiver "as soon as practically possible" after striking ACL's pleadings. (App. 114, Plaintiffs' Motion for the Appointment of a Receiver (July 28, 2023).)

On August 2, 2023, ACL filed an answer to the Tibbs plaintiffs' amended complaint. On August 9, 2023, and August 28, 2023, ACL filed briefs in opposition to the Tibbs plaintiffs' motions to hold ACL in contempt, to strike its pleadings, and to appoint Mr. Protopapas as receiver. (App. 119, Memoranda in Opposition to Motion for Contempt, to Strike Answer and Appoint a Receiver (Aug. 9 & 28, 2023).)

**C. The Circuit Court Issues Orders Holding ACL in Contempt, Striking Its Pleadings, and Appointing Mr. Protopapas as ACL’s Receiver**

On September 8, 2023, at 8:43 a.m., the circuit court issued an order holding ACL in contempt and striking its pleadings for its “refusal to participate in meaningful discovery.” (App. 143, Order Holding ACL in Contempt (Sept. 8, 2023).)

One minute later, on September 8, 2023, at 8:44 a.m., the court issued an “Order on Plaintiffs’ Motion to Appoint a Receiver,” finding ACL in default (because the court had just struck ACL’s answer) and appointing Mr. Protopapas as ACL’s Receiver. (App. 148, Order on Plaintiffs’ Motion to Appoint a Receiver (Sept. 8, 2023).)

In this order, the court purported to give the Receiver “the power and authority [to] fully administer all insurance assets of [ACL] and any subsidiaries, accept service on behalf of ACL, engage counsel on behalf of ACL, to assume control of the defense of asbestos claims made against ACL in the United States, and take any and all steps necessary to protect the interests of ACL whatever they may be.” (*Id.* at 6.) The order gave the Receiver various other “rights, powers and authority” over ACL as well:

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the ACL; redirect the delivery of any such mail addressed to the ACL or any business of the ACL, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to ACL relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of ACL; 4) hire any person necessary to accomplish any right or power under this Order; 5) to assume control of the defense of asbestos claims made against ACL in the United States; and 6) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of ACL

may be situated, and to review and obtain copies of all documents related to insurance assets of ACL.

(*Id.* at 6-7.)

**D. ACL Appeals the Circuit Court’s Order Appointing Mr. Protopapas as ACL’s Receiver, As Well as the Predicate Orders Holding ACL in Contempt and Striking Its Pleadings**

On September 13, 2023, ACL filed a Notice of Appeal with this Court as to the appointment order and attendant orders. (App. 157, Notice of Appeal (Sept. 13, 2023).) Briefing is underway. *See John A. Tibbs v. Asbestos Corporation Limited*, Appellate Case No. 2023-001461.

**E. The Receiver Sues Travelers, Purportedly on ACL’s Behalf**

On May 17, 2023, Ted Everette Mitchell, individually and as executor of the estate of Patsy Ann Mitchell, filed an Amended Complaint against dozens of asbestos tort defendants, including ACL. (App. 161, Amended Complaint (May 17, 2023).) Mr. Mitchell alleges that he developed lung cancer as a result of his exposure to asbestos.

On September 19, 2023, the Receiver filed a Third-Party Complaint against Travelers and various other alleged insurers of ACL, improperly impleading them in Mr. Mitchell’s underlying asbestos tort case. (App. 252, Summons and Third-Party Complaint (Sept. 19, 2023).)

**F. Travelers Moves to Dissolve the ACL Receivership**

On October 23, 2023, Travelers filed a “Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited and to Dissolve the Receivership.” (App. 278, Travelers’ Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited and to Dissolve the Receivership (Oct. 23, 2023).) Travelers also filed a corresponding motion for protection from discovery. (App. 315, Travelers’ Motion for Protective Order (Oct. 23, 2023).)

Travelers argued, among other things, that pursuant to Rule 205, SCACR, ACL’s pending appeal divests the circuit court of jurisdiction over all matters affected by the appeal, which necessarily includes issues relating to the validity of the ACL Receivership. Travelers explained that the Receiver cannot pursue claims, purportedly on ACL’s behalf, while the validity of the Receiver’s appointment is on appeal and thus within this Court’s exclusive jurisdiction. Travelers argued in the alternative that the circuit court should vacate its appointment order and dissolve the ACL Receivership in its entirety, because, among other reasons, ACL is an active foreign corporation without any assets or property in South Carolina over which a South Carolina state court and, by extension, its Receiver, have any power or authority to act.

The Receiver filed an “omnibus” response in opposition on November 6, 2023. (App. 325, Opposition (Nov. 6, 2023).) Travelers filed a reply in support of its motion on January 16, 2024. (App. 352, Reply (Jan. 16, 2024).) The Receiver submitted a proposed order on January 24, 2024, and on January 29, 2024, Travelers submitted a letter objecting to the Receiver’s proposed order, along with a competing proposed order (App. 376, Travelers’ Objections and Proposed Order). The circuit court held a hearing on February 2, 2024, during which the court indicated it would deny Travelers’ motion and continue the ACL Receivership. The Receiver submitted a revised proposed order, to which Travelers objected by letter dated February 16, 2024.

**G. The Circuit Court Issues Orders Denying Travelers’ Motion to Dissolve the Receivership and, Instead, Continuing the Receivership**

On February 26, 2024, the circuit court issued an order substantially identical to the Receiver’s proposed order, denying Travelers’ motion to dissolve the Receivership. (App. 384, Order Denying Motion to Dissolve (Feb. 26, 2024).) The court issued an additional order on February 26, 2024, denying motions for protective orders filed by Travelers and other third-party defendants. (App. 403, Order Denying Motions for Protection From Discovery (Feb. 26, 2024).).

In so doing, the circuit court continued the ACL Receivership over Travelers' motion seeking to dissolve the Receivership and to vacate and terminate the Receiver's appointment. This appeal followed and is properly before the Court.<sup>1</sup>

### DISCUSSION

In South Carolina, any order—even an “interlocutory order”—“granting, continuing, modifying, or refusing the appointment of a receiver” is immediately appealable. S.C. Code Ann. § 14-3-330(4). And this immediate, regular appellate oversight makes perfect sense, as appointing a receiver is a “drastic remedy” that should only be done “with reluctance and caution” because it involves the judicial seizure of private property and placing it in the hands of someone else to manage—all while the receiver erodes those same limited resources by claiming a fee from them. *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989). The orders on appeal readily meet Section 330(4)'s terms, as they indisputably “continue” a receivership over a motion to dissolve it. Moreover, they allow the receivership to continue functioning despite the fact that ACL itself has appealed the order appointing the Receiver in the first place, which runs squarely contrary to the “exclusive jurisdiction” that Rule 205, SCACR, places in the appellate court over all matters on appeal.

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<sup>1</sup> Notably, in separate but related asbestos tort litigation pending in South Carolina circuit court, the same circuit court judge that appointed Mr. Protopapas as ACL's Receiver issued an order on February 23, 2024, finding, among other things, (1) that the Receiver “shall be viewed as the named insured and the representative for . . . ACL . . . in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets,” (2) that “[i]f a disagreement arises between [ACL's chosen counsel] and the Receiver on matters related to the defense of asbestos matters or the management of insurance assets, the Receiver's directives shall prevail,” and (3) directing ACL's chosen counsel to “comply with the Receiver's directives in these situations.” (App. 410, Order dated Feb. 23, 2024 in *Link v. 4520 Corp, Inc.*, No. 2022-CP-40-005543, and *Donaghy v. 4520 Corp., Inc.*, No. 2023-CP-40-03108.) ACL appealed that order to this Court on March 4, 2024, and the appeal remains pending.

At the circuit court, Travelers expressly moved to dissolve and discontinue the ACL Receivership and to terminate Mr. Protopapas’s appointment as ACL’s Receiver. (App. 278, Travelers’ Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited and to Dissolve the Receivership (Oct. 23, 2023); App. 315, Travelers’ Motion for Protective Order (Oct. 23, 2023).) Travelers moved to terminate the Receivership immediately, in its entirety, because it cannot exist as a matter of law. A South Carolina state court simply does not have the power to appoint a receiver over a foreign corporation like ACL, which has no assets or property in South Carolina. Indeed, the power of a receiver is no greater than that of the court that appointed him, and it extends only to the boundaries of the territorial jurisdiction of the appointing court, here, South Carolina. Because ACL is a Canadian corporation without any assets or property in South Carolina, the appointment order is unlawful and must be undone, and the Receivership must be dissolved. The circuit court denied Travelers’ motion and allowed the receivership to continue. This ruling brings the orders squarely within the scope of Section 14-3-330(4).

The appealability analysis is guided by “the effect of” the circuit court’s order. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539–40, 773 S.E.2d 144, 146–47 (2015); *see also Williams v. Northwestern Sec. Life Ins. Co.*, 307 S.C. 462, 464–65, 415 S.E.2d 809, 810 (1992) (holding that an order denying a motion to dismiss was immediately appealable under South Carolina Code § 14-3-330(4) because it had the effect of disregarding an injunction required by North Carolina law, and reversing the trial court’s refusal to give Full Faith and Credit to foreign law, just as the circuit court has done here).

Courts in South Carolina have historically given the statute the broad reading it deserves. As one example, even though the statute does not expressly state that courts have appellate

jurisdiction over an order dissolving a receivership, our Supreme Court has reviewed interlocutory orders dissolving a receivership. *See Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957). The statute uses identical wording for injunctions, and our Supreme Court has likewise reviewed cases dissolving injunctions. *See Lyles v. Williams*, 96 S.C. 290, 80 S.E. 470 (1913); *Bryant v. Epps*, 217 S.C. 361, 60 S.E.2d 685 (1950); *Coward v. Jones*, 167 S.C. 118, 166 S.E. 96 (1932).

Indeed, in the context of another receivership case, Payne & Keller, this Court recently held, on two separate occasions, that Travelers’ appeal of an order denying a motion to dissolve a receivership “shall proceed.” *See Lenora Childers v. Davis Mechanical Contractors, Inc.*, Appellate Case No. 2023-000727, Order dated Aug. 9, 2023 (“After careful consideration of the parties’ memoranda on appealability, this appeal shall proceed. However, nothing in this order prevents the parties from raising the issues of appealability and standing in their briefs. . . .”); *see also* Order dated Sept. 8, 2023 (“we clarify that Appellants’ appeal of the circuit court’s March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. . . .”). And in another order, this Court noted that Travelers had “properly appealed” the circuit court’s order denying Travelers’ motion to dissolve the Payne & Keller receivership: “The order that was properly appealed to this court is the circuit court’s March 31, 2023 order denying Appellants’ motion to dissolve the receivership and motion to dismiss. . . .” Order dated Nov. 21, 2023.

The same is true here. The circuit court’s orders on appeal continue an unlawful Receivership over Travelers’ motion to dissolve it. There is no colorable argument to the contrary. Because the orders have “the effect of” “continuing” the Receivership, they are immediately appealable under South Carolina Code § 14-3-330(4).

**CONCLUSION**

The orders on appeal fall squarely within the scope of appealable orders under Section 14-3-330(4), because they continue a receivership over a motion to dissolve it. Therefore, the orders are immediately appealable, and this Court “shall have” jurisdiction and “shall review” the orders.

Respectfully submitted,

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March 25, 2024

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PROOF OF SERVICE

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I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant Travelers Casualty and Surety Company do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Travelers's Response Regarding Appealability and Appendix

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March 25, 2024