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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

The Honorable Jean H. Toal
Acting Circuit Court Judge

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

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.;
Bahnson, Inc.; Beaty 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,

of which

Travelers Casualty and Surety Company f/k/a Aetna Life & Casualty Co., is the	Appellant.

APPENDIX REGARDING APPEALABILITY

<u>Document</u>	<u>Appendix Page</u>
Summons and Complaint from <i>Tibbs</i> (Apr. 5, 2023)	1
ACL Motion to Dismiss and accompanying materials from <i>Tibbs</i> (May 17, 2023)	92
Order Denying Motion to Dismiss from <i>Tibbs</i> (July 19, 2023).....	108
Plaintiffs’ Motion to Hold ACL in Contempt from <i>Tibbs</i> (July 26, 2023).....	110
Plaintiffs’ Motion for the Appointment of a Receiver from <i>Tibbs</i> (July 28, 2023).....	114
ACL’s Memoranda in Opposition to Motion for Contempt from <i>Tibbs</i> (Aug. 9 & 28, 2023)..	119
Order Holding ACL in Contempt from <i>Tibbs</i> (Sept. 8, 2023).....	143

Order on Plaintiffs’ Motion to Appoint a Receiver from <i>Tibbs</i> (Sept. 8, 2023).....	148
ACL’s Notice of Appeal from <i>Tibbs</i> (Sept. 13, 2023).....	157
Amended Complaint from <i>Mitchell</i> (May 17, 2023).....	161
Receiver’s Third-Party Complaint from <i>Mitchell</i> (Sept. 19, 2023).....	252
Travelers’ Motion to Dismiss and Dissolve the Receivership from <i>Mitchell</i> (Oct. 23, 2023) ..	278
Travelers’ Motion for Protective Order from <i>Mitchell</i> (Oct. 23, 2023).....	315
Receiver’s Opposition from <i>Mitchell</i> (Nov. 6, 2023)	325
Travelers’ Reply in Support of Dissolution from <i>Mitchell</i> (Jan. 15, 2024).....	352
Travelers’ Objections and Proposed Orders from <i>Mitchell</i> (Jan. 29, 2024).....	376
Orders on Appeal (Feb. 26, 2024)	384
Orders Modifying ACL Receivership in <i>Link</i> and <i>Donaghy</i> (Feb. 23, 2024)	410

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

V.

3M COMPANY

4520 CORP., INC.

A.O. SMITH CORPORATION

AIR & LIQUID SYSTEMS CORPORATION

AMENTUM ENVIRONMENT & ENERGY,
INC.

ANCHOR/DARLING VALVE COMPANY

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

ASCO, L.P.

ATLAS ASBESTOS CO

ATLAS TURNER, INC.

AWT AIR COMPANY, INC.

BAHNSON, INC.

BANNER INDUSTRIES INTERNATIONAL,
INC.

BEATY INVESTMENTS, INC.

BECHTEL CORPORATION

THE BONITZ COMPANY

C/A NO. 2023-CP-40-

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

BW/IP INC.	)
	)
CANVAS CT, LLC	)
	)
CAPE PLC	)
	)
CARBOLINE COMPANY	)
	)
CB&I LAURENS, INC.	)
	)
CLEAVER-BROOKS, INC.	)
	)
COPEES-VULCAN, INC.	)
	)
COVIL CORPORATION	)
	)
CRANE INSTRUMENTATION & SAMPLING, INC.	)
	)
CROSBY VALVE, LLC	)
	)
DANIEL INTERNATIONAL CORPORATION	)
	)
DAVIS MECHANICAL CONTRACTORS, INC.	)
	)
DEZURIK, INC.	)
	)
DUKE ENERGY CAROLINAS, LLC	)
	)
DUKE ENERGY CORPORATION	)
	)
ELLINGTON INSULATION COMPANY, INC.	)
	)
EMERSON ELECTRIC CO.	)
	)
FISHER CONTROLS INTERNATIONAL LLC	)
	)
FLAME REFRACTORIES, INC.	)
	)
FLOWSERVE CORPORATION	)
	)
FLOWSERVE US INC.	)
	)
FLUOR CONSTRUCTORS INTERNATIONAL	)

FLUOR CONSTRUCTORS
INTERNATIONAL, INC.

FLUOR DANIEL SERVICES CORPORATION

FLUOR ENTERPRISES, INC.

FMC CORPORATION

FOSTER WHEELER ENERGY
CORPORATION

GARDNER DENVER NASH, LLC

GENERAL BOILER CASING COMPANY,
INC.

GENERAL ELECTRIC COMPANY

GOULDS PUMPS, INCORPORATED

GOULDS PUMPS LLC

GREAT BARRIER INSULATION CO.

GRINNELL LLC

HAJOCA CORPORATION

HOWDEN NORTH AMERICA INC.

IMO INDUSTRIES INC.

ITT LLC

JOY GLOBAL UNDERGROUND MINING
LLC

K-MAC SERVICES INCORPORATED

METROPOLITAN LIFE INSURANCE
COMPANY

MINE SAFETY APPLIANCES COMPANY,
LLC

THE NASH ENGINEERING COMPANY	)
	)
PARAMOUNT GLOBAL	)
	)
PATTERSON PUMP COMPANY	)
	)
PIEDMONT INSULATION, INC.	)
	)
PRESNELL INSULATION CO., INC.	)
	)
REDCO CORPORATION	)
	)
RILEY POWER INC.	)
	)
SEQUOIA VENTURES INC.	)
	)
SPIRAX SARCO, INC.	)
	)
SPX CORPORATION	)
	)
STAFFORD INSULATION COMPANY	)
	)
STANDARD INSULATION COMPANY OF	)
N. C., INC.	)
	)
STARR DAVIS COMPANY, INC.	)
	)
STARR DAVIS COMPANY OF S.C., INC.	)
	)
STERLING FLUID SYSTEMS (USA) LLC	)
	)
UNION CARBIDE CORPORATION	)
	)
VALVES AND CONTROLS US, INC.	)
	)
VELAN VALVE CORP.	)
	)
VIKING PUMP, INC.	)
	)
VISTRA INTERMEDIATE COMPANY LLC	)
	)
THE WILLIAM POWELL COMPANY	)
	)
WIND UP, LTD.	)
	)
YUBA HEAT TRANSFER LLC	)
	)

ZURN INDUSTRIES, LLC)
)
Defendants.)
_____)

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiffs' counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 5, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and
MARGARET B. TIBBS

Plaintiffs,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY

4520 CORP., INC.
individually and as successor-in-interest to
BENJAMIN F. SHAW COMPANY

A.O. SMITH CORPORATION

AIR & LIQUID SYSTEMS CORPORATION
individually and as successor-in-interest to
BUFFALO PUMPS, INC.

AMENTUM ENVIRONMENT & ENERGY,
INC. f/k/a AECOM ENERGY &
CONSTRUCTION, INC., individually and as
successor-in-interest to YEARGIN
CONSTRUCTION COMPANY, INC.
successor to IMPAC, INC.

ANCHOR/DARLING VALVE COMPANY

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

ASCO, L.P.
f/k/a ASCO VALVE, INC.

ATLAS ASBESTOS CO

ATLAS TURNER, INC.
as successor to ATLAS ASBESTOS CO, a
foreign company

C/A NO. 2023-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket
Living Lung Cancer

COMPLAINT

(Jury Trial Demanded)

AWT AIR COMPANY, INC.	)
f/k/a RESEARCH-COTTRELL, INC.	)
	)
BAHNSON, INC.	)
	)
BANNER INDUSTRIES INTERNATIONAL, INC.	)
	)
BEATY INVESTMENTS, INC.	)
f/k/a GUY M. BEATY & CO.	)
	)
BECHTEL CORPORATION	)
	)
THE BONITZ COMPANY	)
f/k/a BONITZ INSULATION COMPANY	)
	)
BW/IP INC.	)
and its wholly-owned subsidiaries	)
	)
CANVAS CT, LLC	)
individually and as successor to MARLEY	)
COOLING TOWER COMPANY	)
	)
CAPE PLC	)
individually and as successor-in-interest to	)
CAPE INDUSTRIES LTD. f/k/a CAPE	)
ASBESTOS COMPANY LTD. and its	)
subsidiaries and global affiliates	)
	)
CARBOLINE COMPANY	)
	)
CB&I LAURENS, INC.	)
individually and as successor-in-interest to	)
CHICAGO BRIDGE & IRON COMPANY	)
	)
CLEAVER-BROOKS, INC.	)
f/k/a AQUA-CHEM, INC.	)
d/b/a CLEAVER-BROOKS DIVISION	)
	)
COPES-VULCAN, INC.	)
	)
COVIL CORPORATION	)
	)
CRANE INSTRUMENTATION & SAMPLING, INC.	)
f/k/a CIRCOR INSTRUMENTATION	)
TECHNOLOGIES, INC. f/k/a HOKE INC.	)

CROSBY VALVE, LLC

**DANIEL INTERNATIONAL
CORPORATION**

**DAVIS MECHANICAL CONTRACTORS,
INC.**

DEZURIK, INC.

DUKE ENERGY CAROLINAS, LLC
f/k/a DUKE ENERGY CORPORATION

DUKE ENERGY CORPORATION

**ELLINGTON INSULATION COMPANY,
INC.**

EMERSON ELECTRIC CO.
individually and as successor-in-interest to
COPELAND CORPORATION

**FISHER CONTROLS INTERNATIONAL
LLC**

FLAME REFRACTORIES, INC.

FLOWERVE CORPORATION
f/k/a THE DURIRON COMPANY INC.

FLOWERVE US INC.
individually and as successor-in-interest to
EDWARD VALVES, INC. and ROCKWELL
MANUFACTURING COMPANY

**FLUOR CONSTRUCTORS
INTERNATIONAL**
f/k/a FLUOR CORPORATION

**FLUOR CONSTRUCTORS
INTERNATIONAL, INC.**

**FLUOR DANIEL SERVICES
CORPORATION**

FLUOR ENTERPRISES, INC.

FMC CORPORATION

on behalf of its former Peerless Pump business

FOSTER WHEELER ENERGY CORPORATION**GARDNER DENVER NASH, LLC**

individually and as successor-in-interest to THE NASH ENGINEERING COMPANY

GENERAL BOILER CASING COMPANY, INC.**GENERAL ELECTRIC COMPANY****GOULDS PUMPS, INCORPORATED****GOULDS PUMPS LLC**

f/k/a GOULDS PUMPS INC.

GREAT BARRIER INSULATION CO.**GRINNELL LLC**

d/b/a GRINNELL CORPORATION

HAJOCA CORPORATION**HOWDEN NORTH AMERICA INC.**

f/k/a HOWDEN BUFFALO, INC., individually and as successor-in-interest to BUFFALO FORGE COMPANY and NEW PHILADELPHIA FAN CO.

IMO INDUSTRIES INC.**ITT LLC**

f/k/a ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW and KENNEDY VALVE COMPANY

JOY GLOBAL UNDERGROUND MINING LLC

f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY TECHNOLOGIES LLC

K-MAC SERVICES INCORPORATED

**METROPOLITAN LIFE INSURANCE
COMPANY**

a wholly owned subsidiary of METLIFE INC.

**MINE SAFETY APPLIANCES COMPANY,
LLC**

THE NASH ENGINEERING COMPANY

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 and as successor-in-interest to

BF STURTEVANT

PATTERSON PUMP COMPANY

PIEDMONT INSULATION, INC.

PRESNELL INSULATION CO., INC.

REDCO CORPORATION

f/k/a CRANE CO.

RILEY POWER INC.

f/k/a BABCOCK BORSIG POWER INC.,

f/k/a DB RILEY, INC., f/k/a RILEY STOKER

CORPORATION

SEQUOIA VENTURES INC.

f/k/a BECHTEL CORPORATION

SPIRAX SARCO, INC.

SPX CORPORATION

individually and as successor-in-interest to

KINNEY PUMPS

STAFFORD INSULATION COMPANY

STANDARD INSULATION COMPANY OF)
N. C., INC.)
))
STARR DAVIS COMPANY, INC.)
))
STARR DAVIS COMPANY OF S.C., INC.)
))
STERLING FLUID SYSTEMS (USA) LLC)
))
UNION CARBIDE CORPORATION)
))
VALVES AND CONTROLS US, INC.)
f/k/a WEIR VALVES & CONTROLS USA)
INC. d/b/a ATWOOD & MORRILL CO., INC.)
))
VELAN VALVE CORP.)
))
VIKING PUMP, INC.)
))
VISTRA INTERMEDIATE COMPANY)
LLC)
individually and as successor-in-interest to)
CRSS INC.)
))
THE WILLIAM POWELL COMPANY)
))
WIND UP, LTD.)
))
YUBA HEAT TRANSFER LLC)
))
ZURN INDUSTRIES, LLC)
individually and as successor-in-interest to)
ZURN INDUSTRIES, INC.)
))
Defendants.)
_____)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, JOHN A. TIBBS and MARGARET B. TIBBS (hereinafter "Plaintiffs"), sue the named Defendants for compensatory and punitive damages, by and through their attorneys, and come before this court and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff John A. Tibbs has been diagnosed with lung cancer.
2. This Court has personal jurisdiction over Defendants because Plaintiffs' claims arise from Defendants' conduct in:
 - (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
 - (b) Contracting to supply services or things in the State;
 - (c) Commission of a tortious act in whole or in part in this State;
 - (d) Having an interest in, using, or possessing real property in this State; and/or
 - (e) Entering into a contract to be performed in whole or in part by either party in this State.
3. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products and raw materials.
4. Each Defendant, or its predecessors in interest, that owned and/or controlled the work sites where Plaintiff John A. Tibbs experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment in his immediate vicinity are referred to herein as the "Premises Defendants." At all times relevant to this action:
 - (a) the Premises Defendants owned the property and approved the use of asbestos-containing materials on its premises.

- (b) the Premises Defendants invited the Plaintiff John A. Tibbs as a mechanic electrician, and/or his father as a superintendent of maintenance, on to Defendants' premises to perform construction work for Defendants' benefit. Plaintiff was an invitee who had express permission to enter Defendants' premises for the purpose of benefitting the owner (Defendant).
- (c) the Premises Defendants owed a duty of due care to discover risks and take safety precautions to warn of and eliminate unreasonable risks.
- (d) the Premises Defendants' failure to warn of or eliminate the unreasonable risks associated with working on or around asbestos-containing materials on Defendants' premises was a substantial factor contributing to cause Plaintiff John A. Tibbs's lung cancer.

5. Each Defendant, or its predecessors in interest, that provided labor, materials, goods, and/or services as architects, consultants, engineers, draftsmen, technicians, surveyors, or otherwise in connection with the design and/or repairs at the work sites where Plaintiff John A. Tibbs and/or his father experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment, are referred to herein as the "Design Defendants."

6. Plaintiffs' claims against the Product Defendants, as defined herein, arise out of Defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

7. Plaintiffs' claims against the Premises Defendants, as defined herein, arise out of Defendants' ownership and/or control of real property located in South Carolina and North Carolina, and the purchase and use of asbestos-containing products on their premises located in South Carolina and North Carolina, and/or contracting with the employer of Plaintiff John A. Tibbs and/or his father John H. Tibbs in South Carolina and North Carolina for Plaintiff and others to cross state lines to work on Defendant's premises.

8. Plaintiffs' claims against the Design Defendants, as defined herein, arise out of Defendants', and/or Defendants' employees', direct and/or indirect purchase and use of asbestos and/or asbestos-containing products, materials, or equipment at the various industrial sites located in South Carolina where Plaintiff John A. Tibbs experienced occupational exposure to lethal doses of asbestos as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment.

9. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff John A. Tibbs to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

10. In addition to being exposed through his own work, Plaintiff John A. Tibbs was exposed to asbestos through asbestos dust and fibers brought home on his father John H. Tibbs's work clothes, from asbestos dust in his vehicle and asbestos dust on his body including his hair, and from the dust being distributed and re-entrained in the family home. Plaintiff John A. Tibbs's exposure to asbestos dust and fibers occurred through his contact with his father John H. Tibbs's work clothing and person when greeting him and interacting with him on a daily basis at the end of each workday. Plaintiff John A. Tibbs's exposure to asbestos dust and fibers also occurred through spending time in his father's vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their family home.

11. Plaintiff John A. Tibbs's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial

factor in causing Plaintiff John A. Tibbs's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

12. Plaintiffs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

13. Plaintiff John A. Tibbs worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

14. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiffs' remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiffs' remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
3M COMPANY	MINNESOTA MINING AND MANUFACTURING COMPANY
4520 CORP., INC.	BENJAMIN F. SHAW COMPANY
AIR & LIQUID SYSTEMS CORPORATION	BUFFALO PUMPS, INC.

DEFENDANT	ALTERNATE ENTITY
AMENTUM ENVIRONMENT & ENERGY, INC.	AECOM ENERGY & CONSTRUCTION, INC., YEARGIN CONSTRUCTION COMPANY, INC., and IMPAC, INC.
ASCO, L.P.	ASCO VALVE, INC.
ATLAS TURNER, INC.	ATLAS ASBESTOS CO
AWT AIR COMPANY, INC.	RESEARCH-COTTRELL, INC.
BEATY INVESTMENTS, INC.	GUY M. BEATY & CO.
THE BONITZ COMPANY	BONITZ INSULATION COMPANY
BW/IP INC.	its wholly owned subsidiaries
CANVAS CT, LLC	MARLEY COOLING TOWER COMPANY
CAPE PLC	CAPE INDUSTRIES LTD., CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates
CB&I LAURENS, INC.	CHICAGO BRIDGE & IRON COMPANY
CLEAVER-BROOKS, INC.	AQUA-CHEM, INC. and CLEAVER-BROOKS DIVISION
CRANE INSTRUMENTATION & SAMPLING, INC.	CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. and HOKE INC.
DUKE ENERGY CAROLINAS, LLC	DUKE ENERGY CORPORATION
EMERSON ELECTRIC CO.	COPELAND CORPORATION
FLOWSERVE CORPORATION	THE DURIRON COMPANY INC.

DEFENDANT	ALTERNATE ENTITY
FLOWERVE US INC.	EDWARD VALVES, INC. and ROCKWELL MANUFACTURING COMPANY
FLUOR CONSTRUCTORS INTERNATIONAL	FLUOR CORPORATION
FMC CORPORATION	PEERLESS PUMP
GARDNER DENVER NASH, LLC	THE NASH ENGINEERING COMPANY
GOULDS PUMPS LLC	GOULDS PUMPS INC.
GRINNELL LLC	GRINNELL CORPORATION
HOWDEN NORTH AMERICA INC.	HOWDEN BUFFALO INC., BUFFALO FORGE COMPANY, and NEW PHILADELPHIA FAN CO.
ITT LLC	ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW and KENNEDY VALVE COMPANY
JOY GLOBAL UNDERGROUND MINING LLC	JOY TECHNOLOGIES, INC. and JOY TECHNOLOGIES LLC
METROPOLITAN LIFE INSURANCE COMPANY	METLIFE INC.
PARAMOUNT GLOBAL	VIACOMCBS INC., CBS CORPORATION, a Delaware corporation, VIACOM, INC., CBS CORPORATION, a Pennsylvania corporation, WESTINGHOUSE ELECTRIC CORPORATION, and BF STURTEVANT
REDCO CORPORATION	CRANE CO.
RILEY POWER INC.	BABCOCK BORSIG POWER INC., DB RILEY, INC., and RILEY STOKER CORPORATION

DEFENDANT	ALTERNATE ENTITY
SEQUOIA VENTURES INC.	BECHTEL CORPORATION
SPX CORPORATION	KINNEY PUMPS
VALVES AND CONTROLS US, INC.	WEIR VALVES & CONTROLS USA INC. and ATWOOD MORRILL CO., INC.
VISTRA INTERMEDIATE COMPANY LLC	CRSS INC.
WIND UP, LTD.	PIPE & BOILER INSULATION, INC. and CAROLINA INDUSTRIAL INSULATING CO.
ZURN INDUSTRIES, LLC	ZURN INDUSTRIES, INC.

15. Plaintiffs have been informed and believe, and thereon allege, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

16. Plaintiffs have been informed and believe, and thereon allege, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

17. As a direct and proximate result of the conduct as alleged within, Plaintiff John A. Tibbs suffered permanent injuries, including, but not limited to, lung cancer and other lung

damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

18. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff John A. Tibbs's medical treatment is ascertained.

19. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs incurred, and will continue to incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs pray leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

20. Plaintiffs hereby disclaim each and every claim or cause of action which does or may arise from or on any federal enclave. Plaintiffs are disclaiming each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiffs presence on or at any federal enclave. Plaintiffs further disclaim each and every claim or cause of action arising under the United States Constitution and under any Federal Law or Regulation. Finally, Plaintiffs disclaim each and every claim or cause of action which may be asserted under federal admiralty or maritime law. Courts across the Country have found that such disclaimers are proper and within the province of the Plaintiffs to disclaim. Any removal by any defendant on the basis of the disclaimed claims will result in a motion for sanctions and seeking attorneys' fees.

THE PARTIES

21. Plaintiffs John A. Tibbs and Margaret B. Tibbs are currently residents of the State of North Carolina. Plaintiff John A. Tibbs was exposed to asbestos during the course of his career at various job sites, primarily located in South Carolina and North Carolina. He was also exposed to asbestos fibers carried home on the clothing and person of his father while he also worked as a superintendent of maintenance at various jobsites while Plaintiff John A. Tibbs lived in the family home.

22. Defendant, **3M COMPANY** f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, 3M masks and other asbestos-containing products. 3M COMPANY is sued as a Product Defendant. Plaintiffs' claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **4520 CORP., INC.**, as successor-in-interest to BENJAMIN F. SHAW COMPANY, was and is a Delaware corporation with its principal place of business in Oregon. At all times material hereto, 4520 CORP., INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. 4520 CORP., INC. is sued as a

Product Defendant. 4520 CORP., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against 4520 CORP., INC. arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **A.O. SMITH CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, A.O. SMITH CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing boilers and heaters, including Burkey boilers, present at numerous jobsites in South Carolina and North Carolina. A.O. SMITH CORPORATION is sued as a Product Defendant. Plaintiffs' claims against A.O. SMITH CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **AIR & LIQUID SYSTEMS CORPORATION**, individually and as successor-in-interest to BUFFALO PUMPS, INC., was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps present at numerous jobsites in South Carolina and North Carolina. AIR & LIQUID SYSTEMS CORPORATION is sued as a Product Defendant. Plaintiffs' claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **AMENTUM ENVIRONMENT & ENERGY, INC.**, f/k/a AECOM ENERGY & CONSTRUCTION, INC., individually and as successor-in-interest to YEARGIN CONSTRUCTION COMPANY, INC. successor to IMPAC, INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, AMENTUM ENVIRONMENT & ENERGY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. AMENTUM ENVIRONMENT & ENERGY, INC. is sued as a Product Defendant. AMENTUM ENVIRONMENT & ENERGY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against AMENTUM ENVIRONMENT & ENERGY, INC. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **ANCHOR/DARLING VALVE COMPANY**, was and is a Pennsylvania corporation with its principal place of business in Texas. At all times material hereto, ANCHOR/DARLING VALVE COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Darling valves present at numerous jobsites in South Carolina and North Carolina. ANCHOR/DARLING VALVE COMPANY is sued as a Product Defendant. Plaintiffs' claims against ANCHOR/DARLING VALVE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **ARMSTRONG INTERNATIONAL, INC.**, was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto, ARMSTRONG INTERNATIONAL, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including but not limited to Armstrong steam traps and strainers present at numerous jobsites in South Carolina and North Carolina. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiffs' claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **ASBESTOS CORPORATION LIMITED**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ASBESTOS CORPORATIONN LIMITED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ASBESTOS CORPORATION LIMITED is sued as a Product Defendant. Plaintiffs' claims against ASBESTOS CORPORATION LIMITED arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **ASCO, L.P.**, f/k/a ASCO VALVE, INC., was and is a Delaware limited partnership with its principal place of business in New Jersey. At all times material hereto, ASCO, L.P. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing ASCO valves

present at numerous jobsites in South Carolina and North Carolina. ASCO, L.P. is sued as a Product Defendant. Plaintiffs' claims against ASCO, L.P. arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **ATLAS ASBESTOS CO**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS ASBESTOS CO mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ATLAS ASBESTOS CO is sued as a Product Defendant. Plaintiffs' claims against ATLAS ASBESTOS CO arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **ATLAS TURNER, INC.**, as successor to ATLAS ASBESTOS CO, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS TURNER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at jobsites in South Carolina and North Carolina. ATLAS TURNER, INC. is sued as a Product Defendant. Plaintiffs' claims against ATLAS TURNER, INC. arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **AWT AIR COMPANY, INC.**, f/k/a RESEARCH-COTTRELL, INC., was and is a New Jersey corporation with its principal place of business in New Jersey. At all times material hereto, AWT AIR COMPANY, INC. manufactured, processed, imported, converted,

compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing precipitators present at numerous jobsites in South Carolina and North Carolina. AWT AIR COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against AWT AIR COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **BAHNSON, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BAHNSON, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BAHNSON, INC. is sued as a Product Defendant. BAHNSON, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BAHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **BANNER INDUSTRIES INTERNATIONAL, INC.**, was and is a Delaware corporation with its principal place of business in Massachusetts. At all times material hereto, BANNER INDUSTRIES INTERNATIONAL, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina

and North Carolina. BANNER INDUSTRIES INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiffs' claims against BANNER INDUSTRIES INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **BEATY INVESTMENTS, INC.** f/k/a GUY M. BEATY & CO., was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BEATY INVESTMENTS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BEATY INVESTMENTS, INC. is sued as a Product Defendant. BEATY INVESTMENTS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Beaty Investments, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BEATY INVESTMENTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **BECHTEL CORPORATION**, was and is a Nevada corporation with its principal place of business in Virginia. At all times material hereto, BECHTEL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. BECHTEL CORPORATION is sued as a Product Defendant. BECHTEL

CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against BECHTEL CORPORATION arise out of this Defendant's business activities in the State of South Corporation.

38. Defendant, **THE BONITZ COMPANY** f/k/a **BONITZ INSULATION COMPANY**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, THE BONITZ COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. THE BONITZ COMPANY is sued as a Product Defendant. THE BONITZ COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of The Bonitz Company, exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against THE BONITZ COMPANY arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **BW/IP INC.** and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps and Borg Warner pumps and valves present at numerous jobsites in South Carolina and

North Carolina. BW/IP INC. is sued as a Product Defendant. Plaintiffs' claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **CANVAS CT, LLC**, individually and as successor to MARLEY COOLING TOWER COMPANY, was and is a Delaware limited liability company with its principal place of business in Kansas. At all times material hereto, CANVAS CT, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Marley cooling towers present at numerous jobsites in South Carolina and North Carolina. CANVAS CT, LLC is sued as a Product Defendant. Plaintiffs' claims against CANVAS CT, LLC arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **CAPE PLC**, individually and as successor-in-interest to CAPE INDUSTRIES LTD f/k/a CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates, was and is a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina. At all times material hereto, CAPE PLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. CAPE PLC is sued as a Product Defendant. Plaintiffs' claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **CARBOLINE COMPANY**, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, CARBOLINE COMPANY

manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing coatings present at numerous jobsites in South Carolina and North Carolina. CARBOLINE COMPANY is sued as a Product Defendant. Plaintiffs' claims against CARBOLINE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **CB&I LAURENS, INC.**, individually and as successor-in-interest to CHICAGO BRIDGE & IRON COMPANY, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, CB&I LAURENS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves present at numerous jobsites in South Carolina and North Carolina. CB&I LAURENS, INC. is sued as a Product Defendant. Plaintiffs' claims against CB&I LAURENS, INC. arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **CLEAVER-BROOKS, INC.** f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-BROOKS DIVISION, was and is a Delaware corporation with its principal place of business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers and distillers present at numerous jobsites in South Carolina and North Carolina. CLEAVER-BROOKS, INC. is sued as a Product Defendant. Plaintiffs' claims against CLEAVER-BROOKS, INC. arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **COPES-VULCAN, INC.**, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, COPES-VULCAN, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Vulcan blowers and valves present at numerous jobsites in South Carolina and North Carolina. COPES-VULCAN, INC. is sued as a Product Defendant. Plaintiffs' claims against COPES-VULCAN, INC. arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **CRANE INSTRUMENTATION & SAMPLING, INC.**, f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC., f/k/a HOKE INC., was and is a New York corporation with its principal place of business in South Carolina. At all times material

hereto, CRANE INSTRUMENTATION & SAMPLING, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hoke valves present at numerous jobsites in South Carolina and North Carolina. CRANE INSTRUMENTATION & SAMPLING, INC. is sued as a Product Defendant. Plaintiffs' claims against CRANE INSTRUMENTATION & SAMPLING, INC. arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **CROSBY VALVE, LLC**, was and is a Nevada limited liability company with its principal place of business in Missouri. At all times material hereto, CROSBY VALVE, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crosby valves present at numerous jobsites in South Carolina and North Carolina. CROSBY VALVE, LLC is sued as a Product Defendant. Plaintiffs' claims against CROSBY VALVE, LLC arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **DANIEL INTERNATIONAL CORPORATION**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. DANIEL INTERNATIONAL

CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **DAVIS MECHANICAL CONTRACTORS, INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, DAVIS MECHANICAL CONTRACTORS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. DAVIS MECHANICAL CONTRACTORS, INC. is sued as a Product Defendant. DAVIS MECHANICAL CONTRACTORS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Davis Mechanical Contractors, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against DAVIS MECHANICAL CONTRACTORS, INC. arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **DEZURIK, INC.**, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, DEZURIK, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Vulcan blowers and valves present at numerous jobsites in South Carolina and North Carolina. DEZURIK, INC. is sued as a Product

Defendant. Plaintiffs' claims against DEZURIK, INC. arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **DUKE ENERGY CAROLINAS, LLC** f/k/a DUKE ENERGY CORPORATION, was and is a North Carolina limited liability company with its principal place of business in North Carolina. At all times material hereto, DUKE ENERGY CAROLINAS, LLC owned and/or controlled premises at which Plaintiff John A. Tibbs and his father John H. Tibbs was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities in South Carolina and North Carolina, including but not limited to the Duke power plants listed in paragraph 111 of this Complaint. DUKE ENERGY CAROLINAS, LLC is sued as a Premises Defendant.

53. Defendant, **DUKE ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, DUKE ENERGY CORPORATION owned and/or controlled premises at which Plaintiff John A. Tibbs and his father John H. Tibbs was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities in South Carolina and North Carolina, including but not limited to the Duke power plants listed in paragraph 111 of this Complaint. DUKE ENERGY CORPORATION is sued as a Premises Defendant.

54. Defendant, **ELLINGTON INSULATION COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, ELLINGTON INSULATION COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at

numerous jobsites throughout the southeastern United States. ELLINGTON INSULATION COMPANY, INC. is sued as a Product Defendant. ELLINGTON INSULATION COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Ellington Insulation Company, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against ELLINGTON INSULATION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **EMERSON ELECTRIC CO.**, individually and as successor-in-interest to COPELAND CORPORATION, was and is a Missouri corporation with its principal place of business in Missouri. At all times material hereto, EMERSON ELECTRIC CO. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hancock valves present at numerous jobsites in South Carolina and North Carolina. EMERSON ELECTRIC CO. is sued as a Product Defendant. Plaintiffs' claims against EMERSON ELECTRIC CO. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **FISHER CONTROLS INTERNATIONAL LLC**, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, FISHER CONTROLS INTERNATIONAL LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fisher valves present at numerous jobsites in South Carolina and North Carolina. FISHER CONTROLS INTERNATIONAL LLC is sued as a

Product Defendant. Plaintiffs' claims against FISHER CONTROLS INTERNATIONAL LLC arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **FLAME REFRACTORIES, INC.**, was a North Carolina corporation with its principal place of business in Florida. At all times material hereto, FLAME REFRACTORIES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLAME REFRACTORIES, INC. is sued as a Product Defendant. FLAME REFRACTORIES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Flame Refractories, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLAME REFRACTORIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **FLOWERVE CORPORATION**, f/k/a THE DURIRON COMPANY INC., was and is a New York corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Duriron pumps present at numerous jobsites in South Carolina and North Carolina. FLOWERVE CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FLOWERVE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **FLOWERVE US INC.**, individually and as successor-in-interest to EDWARD VALVES, INC. and ROCKWELL MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE US INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves and Rockwell valves present at numerous jobsites in South Carolina and North Carolina. FLOWERVE US INC. is sued as a Product Defendant. Plaintiffs' claims against FLOWERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** f/k/a/ FLUOR CORPORATION, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR CONSTRUCTORS INTERNATIONAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLUOR CONSTRUCTORS INTERNATIONAL is sued as a Product Defendant. FLUOR CONSTRUCTORS INTERNATIONAL is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR CONSTRUCTORS INTERNATIONAL arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, **FLUOR DANIEL SERVICES CORPORATION** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. **FLUOR DANIEL SERVICES CORPORATION** is sued as a Product Defendant. **FLUOR DANIEL SERVICES CORPORATION** is also sued for the work it did at the various industrial sites in the southeastern

United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

63. Defendant, **FLUOR ENTERPRISES, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. FLUOR ENTERPRISES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **FMC CORPORATION** on behalf of its former Peerless Pump business, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps present at numerous jobsites in South Carolina and North Carolina. FMC CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and exhausters present at numerous jobsites in South Carolina and North Carolina. FOSTER WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiffs' claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **GARDNER DENVER NASH, LLC**, individually and as successor-in-interest to THE NASH ENGINEERING COMPANY, was and is a Delaware limited liability company with its principal place of business in Pennsylvania. At all times material hereto, GARDNER DENVER NASH, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nash pumps present at numerous jobsites in South Carolina and North Carolina. GARDNER DENVER NASH, LLC is sued as a Product Defendant. Plaintiffs' claims against GARDNER DENVER NASH, LLC arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **GENERAL BOILER CASING COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, GENERAL BOILER CASING COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but

not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. GENERAL BOILER CASING COMPANY, INC. is sued as a Product Defendant. GENERAL BOILER CASING COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of General Boiler Casing Company, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against GENERAL BOILER CASING COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **GENERAL ELECTRIC COMPANY**, was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric turbines present at numerous jobsites in South Carolina and North Carolina. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiffs' claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps present at numerous jobsites in South Carolina and North Carolina.

GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiffs' claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

70. Defendant, **GOULDS PUMPS LLC** f/k/a GOULDS PUMPS INC., was and is a Delaware limited liability company with its principal place of business in New York. At all times material hereto, GOULDS PUMPS LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps present at numerous jobsites in South Carolina and North Carolina. GOULDS PUMPS LLC is sued as a Product Defendant. Plaintiffs' claims against GOULDS PUMPS LLC arise out of this Defendant's business activities in the State of South Carolina.

71. Defendant, **GREAT BARRIER INSULATION CO.**, was an Alabama corporation with its principal place of business in Florida. At all times material hereto, GREAT BARRIER INSULATION CO. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. GREAT BARRIER INSULATION CO. is sued as a Product Defendant. GREAT BARRIER INSULATION CO. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Great Barrier Insulation Co., exposed tens of thousands of people, including the Plaintiff John A. Tibbs

to lethal doses of asbestos. Plaintiffs' claims against GREAT BARRIER INSULATION CO. arise out of this Defendant's business activities in the State of South Carolina.

72. Defendant, **GRINNELL, LLC** d/b/a GRINNELL CORPORATION, was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell valves used at numerous jobsites in South Carolina and North Carolina. GRINNELL, LLC is sued as a Product Defendant. Plaintiffs' claims against GRINNELL, LLC arise out of this Defendant's business activities in the State of South Carolina.

73. Defendant, **HAJOCA CORPORATION**, was and is a Maine corporation with its principal place of business in Pennsylvania. At all times material hereto, HAJOCA CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing transite pipe at numerous jobsites in South Carolina and North Carolina. HAJOCA CORPORATION is sued as a Product Defendant. Plaintiffs' claims against HAJOCA CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

74. Defendant, **HOWDEN NORTH AMERICA, INC.** f/k/a HOWDEN BUFFALO INC., individually and as successor-in-interest to BUFFALO FORGE COMPANY and NEW PHILADELPHIA FAN CO., was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, HOWDEN NORTH AMERICA, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing

products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo Forge fans and New Philadelphia fans present at numerous jobsites in South Carolina and North Carolina. HOWDEN NORTH AMERICA, INC. is sued as a Product Defendant. Plaintiffs' claims against HOWDEN NORTH AMERICA, INC. arise out of this Defendant's business activities in the State of South Carolina.

75. Defendant, **IMO INDUSTRIES INC.**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, IMO INDUSTRIES INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing DeLaval pumps used at numerous jobsites in South Carolina and North Carolina. IMO INDUSTRIES INC. is sued as a Product Defendant. Plaintiffs' claims against IMO INDUSTRIES INC. arise out of this Defendant's business activities in the State of South Carolina.

76. Defendant, **ITT LLC** f/k/a ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL & GOSSETT COMPANY, ITT MARLOW, and KENNEDY VALVE COMPANY, was and is an Indiana limited liability company with its principal place of business in Connecticut. At all times material hereto, ITT LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Kennedy valves present at numerous jobsites in South Carolina and North Carolina. ITT LLC is sued as a Product Defendant. Plaintiffs' claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

77. Defendant, **JOY GLOBAL UNDERGROUND MINING LLC**, f/k/a JOY TECHNOLOGIES, INC., f/k/a JOY TECHNOLOGIES LLC, was and is a Delaware limited liability company with its principal place of business in Pennsylvania. At all times material hereto, JOY GLOBAL UNDERGROUND MINING LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Joy compressors present at numerous jobsites in South Carolina and North Carolina. JOY GLOBAL UNDERGROUND MINING LLC is sued as a Product Defendant. Plaintiffs' claims against JOY GLOBAL UNDERGROUND MINING LLC arise out of this Defendant's business activities in the State of South Carolina.

78. Defendant, **K-MAC SERVICES, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, K-MAC SERVICES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. K-MAC SERVICES, INC. is sued as a Product Defendant. K-MAC SERVICES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of K-Mac Services, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against K-MAC SERVICES, INC. arise out of this Defendant's business activities in the State of South Carolina.

79. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a New York corporation with its principal place

of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

80. Defendant, **MINE SAFETY APPLIANCES COMPANY, LLC**, was and is a Pennsylvania limited liability company with its principal place of business in Pennsylvania. At all times material hereto, MINE SAFETY APPLIANCES COMPANY, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, MSA masks and respirators and other asbestos-containing products. MINE SAFETY APPLIANCES COMPANY, LLC is sued as a Product Defendant. Plaintiffs' claims against MINE SAFETY APPLIANCES COMPANY, LLC arise out of this Defendant's business activities in the State of South Carolina.

81. Defendant, **THE NASH ENGINEERING COMPANY**, was and is a Connecticut corporation with its principal place of business in Maine. At all times material hereto, THE NASH ENGINEERING COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nash pumps used at numerous jobsites in South Carolina and North Carolina. THE NASH ENGINEERING COMPANY is sued as a Product Defendant. Plaintiffs' claims against THE NASH ENGINEERING COMPANY arise out of this Defendant's business activities in the State of South Carolina.

82. Defendant, **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 and as successor-in-interest to BF STURTEVANT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PARAMOUNT GLOBAL manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Westinghouse turbines and BF Sturtevant forced-draft blowers present at numerous jobsites in South Carolina and North Carolina. PARAMOUNT GLOBAL is sued as a Product Defendant. Plaintiffs' claims against PARAMOUNT GLOBAL arise out of this Defendant's business activities in the State of South Carolina.

83. Defendant, **PATTERSON PUMP COMPANY**, was and is an Ohio corporation with its principal place of business in Georgia. At all times material hereto, PATTERSON PUMP COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Patterson pumps present at numerous jobsites in South Carolina and North Carolina. PATTERSON PUMP COMPANY is sued as a Product Defendant. Plaintiffs' claims against PATTERSON PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

84. Defendant, **PIEDMONT INSULATION, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, PIEDMONT INSULATION, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing,

insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. PIEDMONT INSULATION, INC. is sued as a Product Defendant. PIEDMONT INSULATION, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Piedmont Insulation, Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against PIEDMONT INSULATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

85. Defendant, **PRESNELL INSULATION CO., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, PRESNELL INSULATION CO., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. PRESNELL INSULATION CO., INC. is sued as a Product Defendant. PRESNELL INSULATION CO., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Presnell Insulation Co., Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against PRESNELL INSULATION CO., INC. arise out of this Defendant's business activities in the State of South Carolina.

86. Defendant, **REDCO CORPORATION** f/k/a CRANE CO., was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, REDCO CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-

containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane pumps and valves, Chempump pumps, Deming pumps, and Jenkins valves used at numerous jobsites in South Carolina and North Carolina. REDCO CORPORATION is sued as a Product Defendant. Plaintiffs' claims against REDCO CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

87. Defendant, **RILEY POWER INC.** f/k/a BABCOCK BORSIG POWER INC., f/k/a DB RILEY, INC., f/k/a RILEY STOKER CORPORATION, was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, RILEY POWER INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Riley Stoker boilers and associated asbestos materials present at numerous jobsites in South Carolina and North Carolina. RILEY POWER INC. is sued as a Product Defendant. Plaintiffs' claims against RILEY POWER INC. arise out of this Defendant's business activities in the State of South Carolina.

88. Defendant, **SEQUOIA VENTURES INC.** f/k/a BECHTEL CORPORATION, was and is a Delaware corporation with its principal place of business in Virginia. At all times material hereto, SEQUOIA VENTURES INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. SEQUOIA VENTURES INC. is sued as a Product Defendant. SEQUOIA VENTURES INC. is also sued for the work it did at the various

industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against SEQUOIA VENTURES INC. arise out of this Defendant's business activities in the State of South Carolina.

89. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing steam traps and valves present at numerous jobsites in South Carolina and North Carolina. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiffs' claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

90. Defendant, **SPX CORPORATION**, individually and as successor-in-interest to KINNEY PUMPS, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, SPX CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Kinney pumps present at numerous jobsites in South Carolina and North Carolina. SPX CORPORATION is sued as a Product Defendant. Plaintiffs' claims against SPX CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

91. Defendant, **STAFFORD INSULATION COMPANY**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, STAFFORD INSULATION COMPANY manufactured, processed, imported, converted,

compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STAFFORD INSULATION COMPANY is sued as a Product Defendant. STAFFORD INSULATION COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Stafford Insulation Company, exposed tens of thousands of people, including the Plaintiff John A. Tibbs to lethal doses of asbestos. Plaintiffs' claims against STAFFORD INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

92. Defendant, **STANDARD INSULATION COMPANY OF N. C., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STANDARD INSULATION COMPANY OF N. C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STANDARD INSULATION COMPANY OF N. C., INC. is sued as a Product Defendant. STANDARD INSULATION COMPANY OF N. C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Standard Insulation Company of N. C., Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STANDARD

INSULATION COMPANY OF N. C., INC. arise out of this Defendant's business activities in the State of South Carolina.

93. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

94. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work

it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C. Inc., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

95. Defendant, **STERLING FLUID SYSTEMS (USA) LLC**, was and is a Delaware limited liability company with its principal place of business in Indiana. At all times material hereto, STERLING FLUID SYSTEMS (USA) LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps present at numerous jobsites in South Carolina and North Carolina. STERLING FLUID SYSTEMS (USA) LLC is sued as a Product Defendant. Plaintiffs' claims against STERLING FLUID SYSTEMS (USA) LLC arise out of this Defendant's business activities in the State of South Carolina.

96. Defendant, **UNION CARBIDE CORPORATION**, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, UNION CARBIDE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Calidria raw asbestos fibers used in drywall compounds and Bakelite boards at numerous jobsites in South Carolina and North Carolina. UNION CARBIDE CORPORATION is sued as a Product Defendant. Plaintiffs' claims against UNION CARBIDE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

97. Defendant, **VALVES AND CONTROLS US, INC.**, f/k/a WEIR VALVES & CONTROLS USA INC. d/b/a ATWOOD & MORRILL CO., INC., was and is a Texas corporation with its principal place of business in Oregon. At all times material hereto, VALVES AND CONTROLS US, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves at numerous jobsites in South Carolina and North Carolina. VALVES AND CONTROLS US, INC. is sued as a Product Defendant. Plaintiffs' claims against VALVES AND CONTROLS US, INC. arise out of this Defendant's business activities in the State of South Carolina.

98. Defendant, **VELAN VALVE CORP.**, was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves at numerous jobsites in South Carolina and North Carolina. VELAN VALVE CORP. is sued as a Product Defendant. Plaintiffs' claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

99. Defendant, **VIKING PUMP, INC.**, was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps at numerous jobsites in South Carolina and North Carolina. VIKING PUMP, INC. is sued as a

Product Defendant. Plaintiffs' claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

100. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability corporation with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant and a Design Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiffs' claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

101. Defendant, **THE WILLIAM POWELL COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE WILLIAM POWELL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Powell valves at numerous jobsites in South Carolina and North Carolina. THE WILLIAM POWELL COMPANY is sued as a Product Defendant. Plaintiffs' claims against

THE WILLIAM POWELL COMPANY arise out of this Defendant's business activities in the State of South Carolina.

102. Defendant, **WIND UP, LTD.**, individually and as successor-in-interest to PIPE & BOILER INSULATION, INC. f/k/a CAROLINA INDUSTRIAL INSULATING CO., was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, WIND UP, LTD. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing materials, including but not limited to gaskets, packing, insulation and other asbestos materials on piping and equipment at numerous jobsites throughout the southeastern United States. WIND UP, LTD. is sued as a Product Defendant. WIND UP, LTD. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Wind Up, Ltd., exposed tens of thousands of people, including the Plaintiff John A. Tibbs, to lethal doses of asbestos. Plaintiff's claims against WIND UP, LTD. arise out of this Defendant's business activities in the State of South Carolina.

103. Defendant, **YUBA HEAT TRANSFER LLC**, was and is a Delaware limited liability company with its principal place of business in Oklahoma. At all times material hereto, YUBA HEAT TRANSFER LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Yuba water pre-heaters present at numerous jobsites in South Carolina and North Carolina. YUBA HEAT TRANSFER LLC is sued as a Product Defendant. Plaintiffs' claims against YUBA HEAT TRANSFER LLC arise out of this Defendant's business activities in the State of South Carolina.

104. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC., was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers present at numerous jobsites in South Carolina and North Carolina. ZURN INDUSTRIES, LLC is sued as a Product Defendant. Plaintiffs' claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

105. Plaintiff John A. Tibbs experienced further occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants DUKE ENERGY CAROLINAS, LLC and DUKE ENERGY CORPORATION (collectively, hereinafter the "Premises Defendants"). All other Defendants (except for METROPOLITAN LIFE INSURANCE COMPANY), or their applicable predecessors in interest, were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

BACKGROUND FACTS

106. Plaintiffs bring this action for monetary damages as a result of Plaintiff John A. Tibbs contracting an asbestos-related disease.

107. Plaintiff John A. Tibbs was diagnosed with lung cancer on or about December 15, 2022.

108. Plaintiff John A. Tibbs's lung cancer was caused by his exposure to asbestos during the course of his employment, as well as through the asbestos carried home on the clothing and person of his father during the years in which he lived in the family home.

109. During his work history, Plaintiff John A. Tibbs was exposed to Defendants' asbestos-containing products through his work as a mechanic electrician from approximately the late 1950s to the late 1970s, at various industrial jobsites located primarily in South Carolina and North Carolina. Plaintiff performed a variety of tasks throughout his worksites, which include but are not limited to, working on asbestos-containing pipe, block, cement, insulation, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as cutting, repairing, installing and removing asbestos-containing insulation, materials and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

110. During his work history, Plaintiff was further exposed through his work around other trades including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked near and closely to a variety of tradesmen working on asbestos-containing pipe, block, cement, insulation, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as tradesmen mixing, cutting, repairing, installing and removing asbestos-containing insulation, materials and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

111. Plaintiff John A. Tibbs was exposed to Defendants' asbestos-containing products through his work as a mechanic electrician for Duke Power Company from approximately the late 1950s to the late 1970s, at various locations, including but not limited to the following:

- Ninety-Nine Islands Hydroelectric Station – Blacksburg, SC
- Gaston Shoals Hydroelectric Station – Blacksburg, SC
- Portman Shoals Hydroelectric Station – Williamston, SC
- Rocky Creek Hydroelectric Station – Great Falls, SC
- Cedar Creek Hydroelectric Station – Great Falls, SC
- Boyd's Mill Hydroelectric Station – Poplar Springs, SC
- Oxford Hydroelectric Station – Conover, NC
- Rhodhiss Hydroelectric Station – Rhodhiss, NC
- Tumbling Shoals Hydroelectric Station/Dam – Lake Lure, NC
- Holiday's Bridge Hydroelectric Station – Belton, SC
- Riverbend Steam Station – Mount Holly, NC
- Cowans Ford Hydroelectric Station/Dam – Huntersville, NC
- Marshall Steam Station – Sherrills Ford, NC
- Dan River Steam Station – Eden, NC
- Oconee Nuclear Station – Seneca, SC
- Jocassee Hydroelectric Station/Dam – Salem, SC
- Keowee Hydroelectric Station – Seneca, SC
- Cliffside Steam Station – Mooresboro, NC
- Belews Creek Steam Station – Belews Creek, NC
- Allen Steam Station – Belmont, NC
- Buck Steam Station – Salisbury, NC
- Lee Steam Station – Williamston, SC

112. During the course of Plaintiff John A. Tibbs's employment at the location(s) mentioned above, during other occupational and non-occupational work projects and in other ways, Plaintiff was exposed to and inhaled, ingested, or otherwise absorbed asbestos dust and fibers emanating from certain products he was working around.

113. Plaintiff John A. Tibbs was further exposed as a result of his father John H. Tibbs's employment as a superintendent of maintenance for Duke Power Company from approximately the late 1930s to the early 1980s. Plaintiff's father was exposed to asbestos through his work throughout the various facilities, and was further exposed through his work around various other

trades, including but not necessarily limited to premises workers, maintenance workers, insulators, pipefitters, welders, boilermakers, electricians, and others who installed and removed asbestos-containing materials.

114. While employed as a superintendent of maintenance, Plaintiff's father John H. Tibbs wore his own clothes to work, was exposed to asbestos dust and fibers that he brought home on his work clothes, fell off in his vehicle and were on his body including his hair, that distributed and re-entrained in his vehicle and home which caused Plaintiff John A. Tibbs to be exposed to said asbestos dust in sufficient amounts as to cause him to develop lung cancer.

115. From approximately the early 1940s to the early 1960s, Plaintiff John A. Tibbs was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed and/or sold by Defendants for use at Plaintiff's father's jobsites which Plaintiff came in contact with off premises through contact with his father's work clothes, personal possessions, and vehicle. Plaintiff's exposure to asbestos dust and fibers occurred through his contact with his father's work clothing and person when greeting him at the end of the workday, through spending time in his father's vehicle in which asbestos dust and fibers had been deposited, and through sharing a home contaminated with asbestos fibers that were constantly being stirred up and re-entrained in the air that they breathed throughout their home.

116. Plaintiff John A. Tibbs's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff John A. Tibbs's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

117. Plaintiffs and Plaintiff John A. Tibbs's father John H. Tibbs were not aware at the time of exposure that asbestos and/or asbestos-containing products presented any risk of injury and/or disease.

118. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

119. As a direct and proximate result of the conduct as alleged within, Plaintiff John A. Tibbs suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

120. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff John A. Tibbs has incurred, and will continue to incur, liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiffs at this time. Plaintiffs request leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff John A. Tibbs's medical treatment is ascertained.

121. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs have incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiffs. Plaintiffs request leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiffs Complain of Defendants for a Cause of Action for Negligence Alleging as Follows:

122. Plaintiffs incorporate herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

123. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

124. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff John A. Tibbs and

others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

125. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff John A. Tibbs’s lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff John A. Tibbs and his father John H. Tibbs. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

126. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation,

construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff John A. Tibbs and his father John H. Tibbs, would use or be in proximity to and exposed to said asbestos fibers.

127. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing products’ defect but failed to adequately warn Plaintiff John A. Tibbs, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

128. Plaintiff John A. Tibbs, Plaintiff’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff’s and his father John H. Tibbs’s exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

129. Plaintiff John A. Tibbs suffers from lung cancer, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff John A. Tibbs and his father John H. Tibbs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

130. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Plaintiff John A. Tibbs’s injuries, and all damages thereby sustained by

Plaintiff John A. Tibbs. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

131. Furthermore, the conduct of Defendants and/or their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff John A. Tibbs and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff John A. Tibbs and others similarly situated.

132. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their “alternate entities” did so with conscious disregard for the safety of “exposed persons” who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

133. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could

cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

134. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff John A. Tibbs.

135. Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff John A. Tibbs, his father John H. Tibbs, or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

136. Defendants and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and

managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

137. The herein-described conduct of Defendants and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiffs, for the sake of example and by way of punishing said Defendants, seek punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiffs Complain of Defendants, and Allege as Follows:

138. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

139. Plaintiff John A. Tibbs suffers from lung cancer, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Plaintiff John A. Tibbs and his father John H. Tibbs were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

140. The Product Defendants’ conduct and defective products as described above were a direct cause of Plaintiff John A. Tibbs’s injuries, and the injuries and damages thereby sustained by Plaintiffs.

141. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff John A. Tibbs, his father John H. Tibbs, and the public without adequate warnings or proper use instructions, was

done in a conscious disregard and indifference to the safety and health of Plaintiff John A. Tibbs, his father John H. Tibbs, and others similarly situated.

142. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Plaintiff John A. Tibbs and his father John H. Tibbs, would use or be in proximity to and exposed to said asbestos fibers.

143. Plaintiff John A. Tibbs, Plaintiff’s family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff’s and his father John H. Tibbs’s exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

144. Defendants and/or their “alternate entities” knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

145. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the

product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff John A. Tibbs's lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

146. The defect existed in the said products at the time they left the possession of defendants and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including lung cancer, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff John A. Tibbs herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

147. Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff John A. Tibbs, his father John H. Tibbs, or other exposed persons. Said Defendants and/or their "alternate entities" further failed to

adequately warn of the risks to which Plaintiff John A. Tibbs, his father John H. Tibbs, and others similarly situated were exposed.

148. Defendants' defective products as described above were a direct cause of Plaintiff John A. Tibbs's injuries, and the damages thereby sustained.

149. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants and/or their "alternate entities," and each of them, did so with conscious disregard for the safety of Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, lung cancer, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

150. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing

products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

151. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff John A. Tibbs, his father John H. Tibbs, and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

152. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

153. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiffs, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

154. At all times herein mentioned, each of the named Defendants, and/or their “alternate entities,” was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiffs Bring this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

155. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

156. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff John A. Tibbs and/or his father John H. Tibbs worked and/or spent time as alleged above.

157. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed.

158. Employees handling and disturbing asbestos-containing products in Plaintiff John A. Tibbs's and his father John H. Tibbs's vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

159. Employees handling and disturbing asbestos-containing products in Plaintiff John A. Tibbs's, Plaintiff's family members and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

160. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

161. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff John A. Tibbs and his father John H. Tibbs, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff John A. Tibbs.

162. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

163. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their

employment, did in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons including Plaintiff John A. Tibbs.

164. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff John A. Tibbs and his father John H. Tibbs that they were being exposed to asbestos, failed to adequately warn Plaintiff John A. Tibbs and his father John H. Tibbs of the harm associated with his exposure to asbestos, and provide them with protection to prevent their inhalation of asbestos.

165. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff John A. Tibbs and his father John H. Tibbs.

166. Defendants' employees owed Plaintiff John A. Tibbs and his father John H. Tibbs a duty to exercise due care and diligence in their activities while they were lawfully on the premises so as not to cause them harm.

167. Defendants' employees breached this duty of care as described above.

168. At all times mentioned, Plaintiff John A. Tibbs and his father John H. Tibbs were unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

169. As a direct result of the Defendants' employees conduct, Plaintiff John A. Tibbs's and his father John H. Tibbs's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff John A. Tibbs and the damages and injuries as complained of herein by Plaintiffs.

170. The risks herein alleged and the resultant damages suffered by the Plaintiff John A. Tibbs were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

171. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Plaintiff John A. Tibbs.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premises Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiffs Complain of Defendants, and Allege as Follows:

172. Plaintiffs incorporate by reference, the preceding paragraphs as if fully set forth herein.

173. Prior to and during all relevant times, the Defendants and/or their "alternate entities" employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff John A. Tibbs and his father John H. Tibbs worked and/or spent time.

174. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

175. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff John A. Tibbs, and his father John H. Tibbs, and settled onto their clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff John A. Tibbs would be exposed to dangerous asbestos dust beyond the present.

176. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons, including Plaintiffs.

177. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

178. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff John A. Tibbs and his father John H. Tibbs were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the

fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

179. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

180. At all times herein mentioned, Plaintiff John A. Tibbs and his father John H. Tibbs were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

181. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

182. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff John A. Tibbs, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

183. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

184. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-

containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Defendants.

185. Defendants failed to warn their employees and bystanders thereto, including Plaintiff John A. Tibbs and his father John H. Tibbs, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

186. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff John A. Tibbs became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff John A. Tibbs to develop asbestos-related lung cancer, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Negligence Per Se)

As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiffs Complain of Defendants, and Allege as Follows:

187. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

188. The actions of Defendants also constituted negligence per se.

189. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff John A. Tibbs.

Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

190. The negligence per se of Defendants was a proximate cause of Plaintiff John A. Tibbs's injuries.

FOR A SIXTH CAUSE OF ACTION
(Negligence as to Design Defendants)

As a Sixth Distinct Cause of Action for Negligence, Plaintiffs Complain of Design Defendants and Allege as Follows:

191. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

192. The work performed by the Design Defendants was defective in all, but not limited to, the following particulars:

- (a) In failing and neglecting to properly inspect the building for defects in the construction, design, and defects in the asbestos-containing products, materials and/or equipment.
- (b) In failing and neglecting to properly train employees in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (c) In failing and neglecting to properly supervise employees, contractors, subcontractors, and/or suppliers in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (d) In failing and neglecting to employ careful contractors and/or employees.
- (e) In failing and neglecting to properly install asbestos-containing products, materials and/or equipment, including but not limited to asbestos.

- (f) In failing to properly install the asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (g) In failing to properly warn Plaintiff John A. Tibbs and his father John H. Tibbs of dangers and risks associated with the conditions of the material and work product which was being installed for use by Plaintiff, his father, and others in their vicinity.
- (h) By such other failures as will be proved at trial.

All of which is contrary to one or more of workmanlike practice; the plans, specifications, and other contract documents; manufacturers' recommendations and instructions; trade custom and usage; and applicable building codes.

193. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiff John A. Tibbs suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiffs to recover punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Design Services Against Design Defendants)

As a Seventh Distinct Cause of Action for Negligent Design Services, Plaintiffs Complain of Design Defendants and Allege as Follows:

194. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

195. Design Defendants owed Plaintiff John A. Tibbs and his father John H. Tibbs a duty to perform professional design services, including construction administration, in accordance with professional standards obtained in South Carolina for the delivery and performance of such services.

196. Design Defendants breached such professional standards in all, but not limited to, the following particulars:

- (a) In failing and neglecting to take reasonable care in the design of said building.
- (b) In failing and neglecting to properly design said building, to issue proper construction, to prevent continuous and substantial exposure to asbestos and/or asbestos-containing products.
- (c) In failing and neglecting to properly supervise the construction of said building.
- (d) In failing and neglecting to properly and reasonably design said building to eliminate exposure to asbestos and/or asbestos-containing products, including but not limited to asbestos-containing insulation.
- (e) In negligently specifying the use of inappropriate, improper and/or defective and deficient building systems, materials, and components, including but not limited to asbestos-containing insulation.
- (f) By such other failures as will be proved at trial.

197. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiff John A. Tibbs suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiffs to recover punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As an Eighth Distinct Cause of Action for Breach of Implied Warranties, Plaintiffs Complain of Defendants and Allege as Follows:

198. Plaintiffs incorporate herein by reference, as though fully set forth herein, each of the preceding paragraphs.

199. Each of the Defendants and/or their “alternate entities” impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

200. The implied warranty made by the Defendants and/or their “alternate entities” that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff John A. Tibbs and his father John H. Tibbs carried out their duties and was inhaled by Plaintiff John A. Tibbs.

201. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to Defendants’ asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products, and Plaintiff John A. Tibbs consequently developed lung cancer, causing Plaintiffs to suffer all damages attendant thereto.

FOR A NINTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Ninth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiffs Complain of Defendants, and Allege as Follows:

202. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

203. That during, before and after Plaintiff John A. Tibbs’s exposure to asbestos products manufactured by Defendants and/or their “alternate entities”, the Defendants and/or their “alternate entities” falsely represented facts, including the dangers of asbestos exposure to Plaintiff John A. Tibbs and his father John H. Tibbs in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff John A. Tibbs and his father John H. Tibbs. At the same time of these misrepresentations,

Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

204. The foregoing representations were material conditions precedent to Plaintiff John A. Tibbs's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities" each intended that Plaintiff John A. Tibbs act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff John A. Tibbs was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

205. As a direct and proximate result Plaintiff John A. Tibbs's and his father John H. Tibbs's reliance upon Defendants' false representations, Plaintiffs have suffered injury and damages as described herein.

FOR A TENTH CAUSE OF ACTION

(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

For a Tenth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendant Metropolitan Life Insurance Company, and Alleges as Follows:

206. Plaintiffs repeat and re-allege the portions of the above paragraphs where relevant.

207. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

208. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

209. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

210. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the settings from which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to and breathed asbestos dust which resulted in Plaintiff John A. Tibbs's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Plaintiff herein.

211. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff John A. Tibbs and his father John H. Tibbs were exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of

unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff John A. Tibbs's illness.

212. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

213. Plaintiff John A. Tibbs and his father John H Tibbs unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

214. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Plaintiff John A. Tibbs from asbestos exposure was increased, and (ii) Plaintiff suffered the injuries described herein.

215. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff John A. Tibbs and his father John H. Tibbs.

216. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff John A. Tibbs and his father John H. Tibbs were caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff and his father, their co-workers, their wives, their family, and the general public to be unaware of the true and full dangers of asbestos, depriving

Plaintiff John A. Tibbs and his father John H. Tibbs of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Plaintiff and his father the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

217. During the relevant time period the Plaintiff John A. Tibbs and his father John H. Tibbs were exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

218. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engaged in a conspiracy or concert of action to inflict injury on the Plaintiff John A. Tibbs, and his father John H. Tibbs, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Plaintiff in the course of or as a consequence of the conspiracy or concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos

exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.
- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff John A. Tibbs and his father John H. Tibbs.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to

human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.
- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, lung cancer, and other illnesses and diseases from Plaintiff who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, lung cancer, and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff of the dangers to which he was exposed when they knew of the dangers.
- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff John A. Tibbs and his father John H. Tibbs to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring

or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

219. Plaintiff John A. Tibbs and his father John H. Tibbs reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

220. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff John A. Tibbs and his father John H. Tibbs were deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought asbestos dust or fibers home on their clothes, hair, shoes, and contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff has been damaged.

FOR AN ELEVENTH CAUSE OF ACTION
(Loss of Consortium)

For an Eleventh Distinct Cause of Action for Loss of Consortium, Plaintiff Margaret B. Tibbs Complains of Defendants, and Alleges as Follows:

221. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

222. Plaintiffs John A. Tibbs and Margaret B. Tibbs were married on or about June 23, 1962 and at all times relevant to their action were husband and wife.

223. Prior to his injuries as alleged, Plaintiff John A. Tibbs was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff John A. Tibbs has been unable to perform his spousal duties and the work and service usually performed in the

care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Margaret B. Tibbs was deprived of the consortium of her spouse, including the performance of duties, all to Plaintiffs' damages, in an amount presently unknown to Plaintiffs but which will be proven at time of trial.

224. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff John A. Tibbs as set forth herein, Plaintiff's spouse and co-Plaintiff Margaret B. Tibbs suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of her spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiff prays judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their "alternate entities" in an amount to be proved at trial, as follows:

1. For Plaintiffs' actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company); and

9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

April 5, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	In Re:
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al,	)	
	)	
Defendants.	)	

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION
OF DEFENDANT ASBESTOS CORPORATION LIMITED

Defendant Asbestos Corporation Limited (“ACL”), on behalf of itself, by and through undersigned counsel, hereby moves to dismiss Plaintiffs’ Amended Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure on the ground that this Court lacks personal jurisdiction over it.

1. Plaintiffs’ Amended Complaint alleges that John A. Tibbs developed lung cancer as the result of exposure to, among other things, various asbestos-containing products or raw asbestos materials.¹

2. Plaintiffs' Amended Complaint lists ACL “as a Product Defendant” and alleges that ACL “mined... asbestos...present at numerous jobsites in South Carolina and North Carolina.”²

3. Plaintiffs further allege that their claims against Asbestos Corporation Limited arises out of Asbestos Corporation Limited’s “business activities” in the State of South Carolina.³

4. Plaintiffs have failed to make a *prima facie* showing that ACL is subject to either

¹ Pl.’s Am. Compl. at ¶¶ 1,3,11.

² Pl.’s Am. Compl. at ¶ 32.

³ Pl.’s Am. Compl. at ¶ 32.

general or specific personal jurisdiction in South Carolina. Whether a foreign defendant, such as ACL, is subject to this Court's personal jurisdiction is an individualized analysis that is dependent on the facts of each case. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). At the pretrial stage Plaintiffs bear the burden of establishing personal jurisdiction either by factual allegations in the complaint or in affidavits. *Id.* Where a defendant moves to dismiss for lack of jurisdiction, the court may look to affidavits and other evidence to determine whether jurisdiction exists. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Here, Plaintiff's generic and conclusory jurisdiction allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over ACL. *Id.* at 150-51, 723 S.E.2d at 839 ("The repeating of the statute is insufficient to support a finding of personal jurisdiction ... [a] prima facie showing of personal jurisdiction can be made through *factual* allegations in the complaint or through affidavits").

5. First, the Court does not have general personal jurisdiction over ACL because it does not have continuous and systematic contacts with South Carolina such that it is essentially "at home" in this state. *See Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007); *see also* S.C. Code Ann § 36-2-802. ACL is not a South Carolina corporation and does not have its principal place of business in South Carolina; therefore, it is not subject to general jurisdiction in South Carolina.⁴ *See e.g., Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction.'")

6. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over ACL. Specific personal jurisdiction is granted pursuant to South Carolina's long arm statute,

⁴ Plaintiffs correctly state that ACL "was and is a corporation organized and existing under the laws of the county of Canada, with its principal place of business in Canada." Pl.'s Am. Compl. at ¶ 32.

S.C. Code Ann § 36-2-803, which has been construed to extend to the outer limits of the due process clause. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Due process requires (1) that minimum contacts exist between ACL and South Carolina such that maintaining the suit does not offend “traditional notions of fair play and substantial justice” and (2) that the exercise of jurisdiction be reasonable and fair. *Id.* at 491-492, 611 S.E.2d at 508. When examining whether exercise of jurisdiction would be reasonable and fair, the Court must examine (1) the duration of ACL’s activities in South Carolina, (2) the character and circumstances of ACL’s acts, (3) the inconvenience resulting to ACL by either conferring or refusing jurisdiction, and (4) South Carolina’s interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

7. Plaintiffs have not shown, and cannot show, ACL has sufficient minimum contacts with South Carolina. “A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). *See also Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. 255, 263 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, at 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). ACL has not purposefully directed *any* activities at South Carolina that the cause of action arises out of or related to; therefore, there are not sufficient minimum contacts with South Carolina to render this Court’s exercise of personal jurisdiction permissible under the Due Process Clause. *See Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 (“Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.”)

8. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over ACL, Plaintiffs’ Amended Complaint must be dismissed with respect to ACL.

This Motion is based upon, and may be further supplemented with, applicable pleadings, discovery, affidavits, exhibits, deposition transcripts, controlling law, supporting memoranda of law, and such other and further material as the Court may deem appropriate. ACL's participating in discovery prior to a hearing on this Motion shall not be construed as a waiver by ACL of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

/s/Jonathan H. Dunlap

Jonathan H. Dunlap, SC Bar No. #73778
Van Winkle, Buck, Wall, Starnes & Davis, P.A.
11 N. Market Street
Asheville, North Carolina 28801
Telephone: (828) 258-2991
Facsimile: (828) 255-0255
Email: jdunlap@vwlawfirm.com
*Attorney for Defendant Asbestos Corporation
Limited*

Asheville, North Carolina
May 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	In Re:
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION OF DEFENDANT
ASBESTOS CORPORATION LIMITED

Defendant Asbestos Corporation Limited (“ACL”), on behalf of itself, by and through undersigned counsel, submits this memorandum and accompanying affidavit in support of its Motion to Dismiss Plaintiffs’ Amended Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

FACTS

Plaintiffs’ Amended Complaint alleges that Mr. Tibbs developed lung cancer.¹ Plaintiffs’ Amended Complaint lists ACL “as a Product Defendant” and alleges that ACL “mined... asbestos...present at numerous jobsites in South Carolina and North Carolina” and that “Plaintiffs’ claims against Asbestos Corporation Limited arise out of this defendant’s business activities in the State of South Carolina.”²

¹ Pl. Am. Compl. at ¶¶ 1,3.

² Pl.’s Am. Compl. at ¶ 32.

Plaintiffs do not assert that ACL is a South Carolina corporation or that its principal place of business was ever in South Carolina.³ Rather, Plaintiffs assert generally that this Court has personal jurisdiction over all Defendants because Plaintiffs' claims arise from Defendants' conduct in (a) transacting business in the State, ... (b) contracting to supply services or things in the State; (c) commission of a tortious act in whole or in part in this State; (d) having an interest in, using, or possessing real property in this State; and/or (e) entering into a contract to be performed in whole or in part by either party in this State.⁴ Further, Plaintiffs allege generally that "all" defendants "purposefully availed themselves of the privilege of doing business in this State" and engaged in "substantial and/or systematic business in South Carolina."⁵

Specifically, as to ACL, Plaintiffs list it as a "Product Defendant" and allege Mr. Tibbs was exposed to asbestos and/or asbestos-containing products, materials, or equipment "mined ... processed ... imported ... supplied ... and/or retailed" by ACL, including but not limited to raw asbestos fiber. Plaintiffs further allege that their claim against ACL arises out of ACL's "business activities" in the State of South Carolina.⁶

However, as attested to in the Affidavit of Richard Dufour ("Mr. Dufour"), attached hereto as Exhibit A. These jurisdictional allegations as to ACL are unsupported by fact. Mr. Dufour's Affidavit dated May 11, 2023 sets forth the following relevant facts or the issue of personal jurisdiction:

- Mr. Dufour is counsel to ACL. Exhibit A at ¶ 1.
- At all times since the date of its incorporation in 1925, ACL has been, and is, a corporation organized and existing under the laws of Canada, with its

³ See Pl.'s Am. Compl. at ¶ 32.

⁴ Pl.'s Am. Compl. at ¶ 2.

⁵ Pl.'s Am. Compl. at ¶¶ 6, 9.

⁶ Pl.'s Am. Compl. at ¶ 32.

principal place of business located in the Province of Quebec, Canada, Exhibit A at ¶ 2.

- ACL is not now and never has been a corporation organized under the laws of the State of South Carolina, and ACL has no subsidiary company that did business in the State of South Carolina. ACL is not presently nor has it ever been, registered with the State of South Carolina, to do business within the State of South Carolina. Exhibit A at ¶ 3.
- ACL has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Exhibit A at ¶ 4.
- ACL does not now maintain nor has it ever maintained, an office within the State of South Carolina. ACL does not now have, nor has it ever had employees or officers stationed in the State of South Carolina. Exhibit A at ¶ 5.
- ACL does not now have and has never had bank accounts in the State of South Carolina nor has it ever owned real or personal property located in the State of South Carolina. Exhibit A at ¶ 6.
- ACL has never maintained telephones or received mail in the State of South Carolina. Exhibit A at ¶ 7.
- ACL has never owned or rented any warehouse space or offices or storage facilities or any other mode of business in the State of South Carolina. Exhibit A at ¶ 8.
- ACL never instituted any lawsuit in the State of South Carolina for any reason. Exhibit A at ¶ 9.

- Prior to 1986, ACL engaged in the mining and milling of raw chrysotile asbestos fiber. ACL has only mined asbestos in Canada, and all sales of asbestos were made F.O.B., Thetford Mines, Quebec, Canada. ACL's obligations relating to such sales were wholly performed in Canada. Exhibit A at ¶ 10.

ARGUMENT

A. Legal Standard

“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “The party seeking to invoke personal jurisdiction over a non-resident defendant ... bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). At the pretrial stage, plaintiffs may meet their burden of proving personal jurisdiction over a nonresident defendant by a *prima facie* showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). However, a plaintiff must allege specific facts to establish the contacts necessary to invoke either general or specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433-36, 665 S.E.2d 660, 665-67 (affirming trial court’s dismissal based on lack of personal jurisdiction because plaintiff did not establish facts – either through the complaint or affidavits – to confer jurisdiction). Conclusory allegations will not suffice. *Id.* at 433-35, 665 S.E.2d at 665-66. Moreover, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Sullivan*, 397

S.C. at 150, 723 S.E.2d at 839 (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)).

“Personal jurisdiction is exercised as either ‘general jurisdiction’ or ‘specific jurisdiction.’” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum ...; general jurisdiction is determined under S.C. Code Ann. § 36-2-802....” *Id.* “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum ...; specific jurisdiction is determined under S.C. Code Ann. § 36-2-803....” *Id.* The exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. *Id.* Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Id.*

Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that it could reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without minimum contacts, the Court does not have the “power” to adjudicate the action. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508. Finally, the Court must also find that the exercise of jurisdiction is “reasonable” or “fair.” *Id.*

The Court must assess individually each defendant’s contacts with South Carolina. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (citing *Rush v. Savhuk*, 444 U.S. 320 (1980)). The focus of the Court’s analysis must center on the contacts generated by the defendant, not on the unilateral actions of some other entity. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-509 (citing

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) (holding “unilateral activity of another party or a third person is not an appropriate consideration”)). The foreseeability that is critical to due process analysis is not the mere likelihood that a product could find its way into the forum state. Rather, it is that the defendant’s own conduct and connections with the forum state are such that he should reasonably anticipate being haled into court there. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 509 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

Here, the Court has neither general nor specific jurisdiction over ACL and, therefore, Plaintiffs’ claims against ACL must be dismissed.

B. ACL is Not Subject to General Jurisdiction in South Carolina.

ACL is not a South Carolina corporation, its principal place of business was never in South Carolina, and it does not have such substantial contacts that it is “at home” in South Carolina; therefore, it is not subject to general personal jurisdiction in this state.

A court may assert general jurisdiction over foreign corporations when their affiliations with the forum state “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)); see also *Coggeshall*, 376 S.C. 12, 16, 655 S.E.2d 476, 478; S.C. Code Ann. § 36-2-802. Only in an “exceptional case” can a court exercise general jurisdiction in a forum that is not “the corporation’s place of incorporation [or] its principal place of business.” *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 413 (2017). An example of the “exceptional case” where general jurisdiction may be exercised over a corporation that is neither incorporated in nor has its principal place of business in a state is the United States Supreme Court’s holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437 (1952). In *Perkins* the defendant, a foreign mining company forced to flee the Philippines during World War II, operated

entirely from Ohio for several years. The company's president and principal stockholder relocated to Ohio and set up an office, where he maintained corporate files, carried on the company's correspondence, issued checks on behalf of the company, employed two corporate secretaries, maintained bank accounts, purchased company equipment, and held director's meetings for the duration of the company's exile. Under these circumstances, where Ohio became the business' *de facto* operating headquarters, the Court found general jurisdiction proper. None of these facts are present here.

ACL is not "at home" in South Carolina. It is undisputed that ACL is not a South Carolina corporation and its principal place of business has never been in South Carolina. It has no "enduring" relationship with South Carolina. *See Cockrell*, 363 S.C. at 495, 611 S.E.2d at 510. Furthermore, no "exceptional" circumstances, such as those present in *Perkins*, exist that would render ACL "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, ACL is not subject to general personal jurisdiction in this State.

C. ACL is Not Subject to Specific Personal Jurisdiction in South Carolina.

ACL has never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, does not meet the requirements of South Carolina's long-arm statute or have sufficient minimum contacts with the State for the exercise of jurisdiction to satisfy due process. Moreover, because ACL has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, it is impossible for Plaintiffs' claims to arise out of ACL's conduct within the State. Consequently, ACL is not subject to the exercise of specific personal jurisdiction in this case.

The determination of whether a court may exercise personal jurisdiction over a non-resident defendant has traditionally involved a two-step analysis; first, the court must determine if

the long-arm statute applies, and second, the court must determine whether the nonresident's contacts with this State are sufficient to satisfy due process requirements. *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664. "Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508 (citing *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004)); see also *Power Prods. & Servs. Co., Inc.*, 379 S.C. at 431, 665 S.E.2d at 664; *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008).

Due process requires that there exist sufficient minimum contacts with the forum state such that the exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice" and that the defendant can "reasonably anticipate being haled into court in the forum." E.g., *Cockrell*, 363 S.C. at 491-492, 611 S.E.2d at 508 (citing *Burger King Corp. v Rudzewicz*, 471 U.S. 462 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985)). The Court must further determine whether the exercise of jurisdiction is "reasonable" or "fair by considering (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.* at 492, 611 S.E.2d at 508.

Plaintiffs have not shown, and cannot show, that ACL has sufficient minimum contacts with South Carolina. "A minimum contacts analysis requires a court to find the defendant directed its activities to a resident of this State and that the cause of action arises out of or related to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

See also *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. 255, 262 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 353 (1958). ACL has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to; therefore, there are not sufficient minimum contacts with South Carolina to render this Court's exercise of personal jurisdiction permissible under the Due Process Clause. See *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478 ("Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.")

The Supreme Court of South Carolina has consistently held the focus of the minimum contacts analysis must be on each defendant's own actions, not the "unilateral actions of some other entity." *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508-09. ("The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there"); *S. Plastics Co.*, 310 S.C. at 261, 423 S.E.2d at 131 ("[T]he defendant's activities directed to a resident of this State must be its own and not the unilateral activities of some other entity.").

While ACL mined and milled raw chrysotile asbestos fiber it has never transacted business in South Carolina. Exhibit A at ¶ 2, 3 and 10. As attested in Mr. Dufour's affidavit, all asbestos fiber sold by ACL were made F.O.B. Thetford Mines, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 10. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

The proper inquiry must focus solely on whether ACL directed its activities to residents of South Carolina and whether the cause of action arose out of or relates to those activities. Absent

a specific connection between Plaintiffs' claims, ACL's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over ACL.

Because Plaintiffs have not, and cannot, show that ACL has minimum contacts with South Carolina necessary for the exercise of personal jurisdiction to meet the requirements of due process, their claims against ACL must be dismissed.

CONCLUSION

ACL is not subject to general jurisdiction because it cannot fairly be said to be "at home" in South Carolina at any time. ACL is not subject to specific jurisdiction because ACL has no minimum contacts with South Carolina that gave rise to Plaintiffs' claims. Plaintiffs have presented the Court with nothing but conclusory, speculative allegations with no supporting facts to support personal jurisdiction. Accordingly, Defendant Asbestos Corporation Limited is entitled to an order dismissing Plaintiffs' claims against it.

/s/Jonathan H. Dunlap

Jonathan H. Dunlap, SC Bar No. #73778
Van Winkle, Buck, Wall, Starnes & Davis, P.A.
11 N. Market Street
Asheville, North Carolina 28801
Telephone: (828) 258-2991
Facsimile: (828) 255-0255
Email: jdunlap@vwlawfirm.com
*Attorney for Defendant Asbestos Corporation
Limited*

Asheville, North Carolina
May 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	
MARGARET B. TIBBS,	)	CIVIL ACTION NO. 2023-CP-40-
	)	01759
Plaintiffs,	)	
	)	In Re:
vs.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
3M Company, et al.,	)	
	)	
Defendants.	)	

RICHARD DUFOUR AFFIDAVIT

DISTRICT OF FRONTENAC

PROVINCE OF QUEBEC

I, Richard Dufour, being first duly sworn, depose and states as follows:

1. I am Counsel for Asbestos Corporation Limited ("ACL"), and submit this Affidavit in support of ACL's Motion to Dismiss for Lack of Personal Jurisdiction. The facts set forth in this Affidavit are based upon my personal knowledge, information and belief.
2. At all times since the date of its incorporation in 1925, ACL has been, and is, a corporation organized and existing under the laws of Canada, with its principle place of business located in the Province of Quebec, Canada.
3. ACL is not now and never has been a corporation organized or existing under the laws of the State of South Carolina and has no subsidiary company which it does business in the State of South Carolina. ACL is not presently, nor has it ever been, registered as a foreign corporation doing business in the State of South Carolina.

4. ACL has never appointed or authorized any agent to accept process for it in the State of South Carolina.
5. ACL does not now maintain, nor has it ever maintained, an office within the State of South Carolina. ACL does not now have, nor has it ever had employees or officers stationed in the State of South Carolina.
6. ACL does not now have, and has never had, any bank accounts in the State of South Carolina, nor has it ever owned real property in the State of South Carolina.
7. ACL has never maintained telephones or received mail in the State of South Carolina.
8. ACL has never owned or rented any warehouse space or offices or storage facilities or any other mode of business in the State of South Carolina.
9. ACL never commenced any litigation in the State of South Carolina.
10. Prior to 1986, ACL engaged in the mining and milling of raw chrysotile asbestos fiber. ACL has only mined asbestos in Canada, and all sales of asbestos were made F.O.B., Thetford Mines, Quebec, Canada. ACL's obligations relating to such sales were wholly performed in Canada.

Further the Affiant sayeth not.


RICHARD DUFOUR

Subscribed and Sworn to me
by telephone at Thetford Mines,
on this 11 day of May, 2023.


Commissioner of Oaths
District of Frontenac



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO. 2023-CP-40-01759

JOHN A. TIBBS and)
MARGARET B. TIBBS)
))
Plaintiffs,)
v.)
))
ATLAS TURNER, INC., *et al.*,)
))
Defendants.)

ORDER DENYING ASBESTOS CORPORATION'S MOTION TO DISMISS

Asbestos Corporation Ltd (ACL)'s Motion to Dismiss for lack of personal jurisdiction was heard on July 10, 2022. ACL contends that this Court lacks specific jurisdiction. ACL has refused to participate in any jurisdictional discovery. Despite ACL's refusal, Plaintiffs submitted evidence of ACL's sales of its asbestos product directly into South Carolina. Therefore, ACL's Motion to Dismiss is DENIED. ACL is ordered to answer discovery and to produce a 30(b)(6) witness by July 24, 2023. Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-07-19 10:20:38 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
ASBESTOS COMPANY, LTD., <i>at al.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION TO HOLD ASBESTOS COMPANY, LTD. IN
CONTEMPT AND TO STRIKE ACL'S PLEADINGS**

Asbestos Company, Ltd. ("ACL") is a defendant in the above referenced matter. On July 10, 2023, this Court, in open court ordered ACL to fully answer discovery and appear for a deposition so that this matter could be prepared for trial. On July 19, 2023, this Court entered an Order stating: "Failure to answer the Court Ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt."

ACL failed to produce a witness as ordered by the Court. ACL has also refused to identify a witness or a date on which it will produce a witness. Moreover, ACL has wholly failed to produce any documents as requested by the 30(b)(6) notice properly served on it.

ACL has made clear it does not intend to participate in this matter and that this Court's orders on discovery will continue to be ignored. Plaintiffs request that this Court hold ACL in contempt of Court. Further, should this Court hold ACL in contempt, Plaintiff requests that the Court strike ACL's pleadings.

LAW AND ANALYSIS

A determination of contempt resides in the sound discretion of the trial judge. *Hook v. South Carolina Dept. of Health and Environmental Control*, 439 S.C. 52 (Ct. App. March 15, 2023). “Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed.” *Id.* The power of a court to punish for contempt “is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *Miller v. Miller*, 375 S.C. 443 (Ct. App. 2007).

“The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial.” *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). “Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice,” sanctions must be imposed. *Id.* Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* “If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated “[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* “Discovery

sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

ACL has failed to produce a witness. ACL has refused to produce any discovery documents responsive to the South Carolina standard discovery. ACL contends that it may send old corporate testimony that has little to no bearing on this case. Indeed, ACL, like its sister corporation Atlas Turner, has made clear it does not intend to comply with this Court’s orders. Given this intentional and willful refusal to participate in discovery, Plaintiffs request that the Court strike Atlas’ pleadings.

[Signature appears on the following page.]

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

tmcvey@kasselaw.com

John D. Kassel (SC Bar No. 3286)

jkassel@kassellaw.com

Jamie D. Rutkoski (SC Bar No. 103270)

jrutkoski@kassellaw.com

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

Other email:

emoultrie@kassellaw.com
emoultrie@kassellaw.com

And

Kevin W. Paul (*To Be Admitted PHV*)

Charles W. Branham, III (*To Be Admitted PHV*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, Texas 75202

T: 214-722-5990

F: 214-722-5991

tbranham@dobslegal.com

kpaul@dobslegal.com

spepin@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

July 26, 2023

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	In Re:
Plaintiffs,	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
ATLAS TURNER, INC., <i>at al.</i>,	)	PLAINTIFFS’MOTION FOR THE APPOINTMENT
	)	OF A RECEIVER
Defendants.	)	
	)	

On July 19, 2023, this Court entered an order denying Asbestos Company, Ltd.’s (“ACL”) motion to dismiss for lack of personal jurisdiction. The Court further ordered ACL to fully answer discovery and to produce a corporate representative for deposition. The Court stated: “Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt.”¹ As a result, Plaintiffs have moved for an Order holding ACL in contempt and to strike ACL’s pleadings as a result of their failure to participate in discovery in violation of the Court’s Orders. Should the Court strike ACL’s pleadings, Plaintiffs submit this motion to appoint a Receiver and would respectfully show the court as follows:

BACKGROUND

As this Court has already seen, ACL supplied asbestos to companies and contractors throughout the southeastern United States, including, without limitations, to companies and contractors in North and South Carolina. Plaintiffs served discovery on ACL in the form of interrogatories and deposition notices with document requests. Despite having specifically sold to

¹ See Order Denying Asbestos Corporation’s Motion to Dismiss Entered July 19, 2023. Exhibit 1

companies in South Carolina, ACL demurred and alleged that this court had no personal jurisdiction over it because it is a Canadian company.

After briefing and a hearing, this Court overruled ACL's objections and ordered it to produce a fully prepared witness and documents. ACL refused. ACL has been clear that it does not intend to comply with this Court's order to fully answer discovery or to produce a witness or otherwise participate in this litigation.

LAW AND ARGUMENT

If this Court determines that the appropriate sanction for ACL's contempt is the striking of ACL's answer, Plaintiffs next move this court for an order appointing a receiver over ACL. This motion is made pursuant to S.C. Code §§ 15-65-10(4) and (5).

ACL is a company organized and existing under the laws of Canada, with its principal place of business in Canada. At all times relevant, ACL was involved in all elements of the global asbestos industry, but in particular, mining many thousands of tons of raw asbestos fiber in Canada and then selling it to the most dominant manufacturers of asbestos-containing products in the United States—substantial quantities of which were used in South Carolina. ACL also concocted a scheme to avoid its legal responsibilities to persons injured from using those end products. Rather than defending its conduct in front of juries in the United States, ACL decided to simply contest personal jurisdiction and, where it loses that battle, they simply refuse to participate in cases in which they are a named defendant. Although ACL stiff-arms its creditors in the United States—namely, workers exposed to asbestos and asbestos containing products manufactured and/or sold by ACL—and absconded to Canada, certain of its insurance assets appear to remain. There is no evidence which suggests that ACL currently operates in any way to do anything other than to defend and indemnify lawsuits, thus, making ACL nothing more than an insurance company.

Plaintiffs believe, that like ACL's sister company, Atlas, ACL is refusing to tender the defense to its' insurance carriers.² This pattern of conduct of both ACL and Atlas is clearly intended to leave victim's of their conduct without any recourse against them. The appointment of a receiver to control ACL's defense in US asbestos litigation, tender ACL's claims to its' carriers and marshal ACL's insurance assets and satisfy claims is therefore the appropriate remedy.

LAW AND ARGUMENT

South Carolina Code § 15-65-10(4) states that:

A receiver may be appointed by a judge of the circuit court, either in or out of court:
... (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

It is undisputed that ACL has intentionally fled the United States to avoid its liabilities and obligations to its creditors and to the extent it ever properly qualified itself to do business in South Carolina has forfeited those rights. *See, e.g.,* Black's Law Dictionary (11th ed. 2019), *forfeiture* ("loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty") Thus, appointment of a receiver over ACL and its affiliates is appropriate under subsection (4).

South Carolina Code §15-65-10(5), moreover, states that:

A receiver may be appointed by a judge of the circuit court, either in or out of court:
... (5) In such other cases as are provided by law or may be in accordance with the existing practice

Section 15-65-10(5) reflects an "old practice" of equity and "important principle of law" to correct injustice, particularly "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

² See Motion to Clarify Receivership Order to Assume Control over the Defense of Atlas Turner's United States Asbestos Litigation filed in Welch v. Atlas Turner: Civil Action No: 2022-CP-40-03824 filed on July 25, 2023, attached as Exhibit 2.

collection of their debts.” *Va.-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909). Thus, if a business “disposes of large resources” but “leaves . . . debts unpaid”—while “set[ting] creditors at arm’s length by refusing . . . to take any interest in the satisfaction of their claims”—then there is a prima facie case of fraud warranting appointment of a receiver. *Id.* at 180 (citing *Miller v. Hughes*, 12 S.E. 419 (S.C. 1890)). It is respectfully submitted that the appointment of a receiver over ACL is appropriate under subsection (5) because ACL engaged in an intentional scheme to defraud its creditors by refusing to appear or accept service in the United States after being faced with substantial asbestos-related liabilities.

Section 15-65-20 requires four days’ notice of this application be provided to the party to the action whose property is sought to be put in the hands of the receiver. Plaintiffs, concurrently herewith, have provided copies of this motion to ACL’s counsel.

CONCLUSION

As set forth above, ACL refuses to comply with this Court’s orders. The sanction for that action should be the striking of ACLs’ answer. After ACL’ answer is stricken, this court should enter an order appointing a receiver as soon as practically possible. Plaintiffs respectfully suggest that Peter Protopapas be appointed the receiver over ACL.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

Other email: emoultrie@kassellaw.com

ATTORNEYS FOR PLAINTIFFS

July 28, 2023
Columbia, South Carolikna

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS AND MARGARET B. TIBBS ,	)	CASE NO. 2023-CP-40-01759
	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION FOR CONTEMPT, TO STRIKE
	)	ANSWER AND APPOINT A RECEIVER
3M COMPANY, ET AL.,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

The Defendant Asbestos Corporation Limited (“ACL”), subject to and without waiving its arguments and defenses including those related to a lack of personal jurisdiction, files this memorandum of law in opposition to Plaintiffs’ motions to hold it in contempt; to strike its pleadings and to appoint Peter Protopapas as a receiver pursuant to S.C. Code Ann. §§ 15-65-10(4) and (5).

ACL respectfully asserts its actions show no willful disobedience of the Court, but rather establish an attempt to comply with the Court’s ruling under the challenging circumstances presented. As such, it does not meet the standard for contempt, much less the willful and deliberate disobedience, which must be established to strike a party’s answer or responsive pleadings. Finally, contrary to Plaintiff’s assertion, if this Court determines that the appropriate sanction for ACL’s contempt is the striking of ACL’s answer, is not also appropriate for this Court to appoint a receiver. This is especially true when the proposed receiver is one suggested by Plaintiff’s counsel who serves in such role repeatedly and the entity over which he attempts to assert authority is an existing Canadian corporation with no assets in South Carolina and does not meet the requirements of S.C. Code Ann. §§ 15-65-10(4) or (5). A receiver must be

absolutely fair and impartial, for the receiver represents all parties interested but also is an officer of the court. *Penn. Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787 (1934). Plaintiffs' motions should be denied.

STATEMENT OF THE FACTS

ACL is an existing Canadian corporation, which is located in the Province of Quebec. Based on the facts, evidence, law and arguments set forth in ACL's motion to dismiss and supporting memorandum of law, with exhibits which are incorporated herein by reference, ACL asserts there is no personal jurisdiction over it in South Carolina. While the Court and Plaintiffs' counsel disagree, there is no provision in the law which mandates ACL to acknowledge personal jurisdiction when it believes it does not exist. Likewise, ACL has been consistent in its position that it cannot produce a Rule 30(b)(6), SCRCF witness, as all such witnesses known to ACL have unfortunately passed away.

ACL filed a motion to dismiss for lack of personal jurisdiction. Plaintiffs attempted to notice a Rule 30(b)(6), SCRCF witness in this case. They were informed there were no individuals alive and capable of responding to the issues proposed. On July 10, 2023, this Court conducted a hearing on ACL's motion to dismiss and denied it. The Court went on to state "ACL is ordered to answer discovery and to produce a 30(b)(6) witness by July 24, 2023. Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt." (July 19, 2023 Order p. 1).

ACL answered the court ordered discovery, which has been in place since Judge (now Justice) Hill presided over the asbestos court.¹ In addition, the undersigned counsel called Plaintiffs' counsel, Ms. McVey, in advance and advised her ACL has no living employee or

¹ Attached as Exhibit 1 is a copy of ACL's responses.

person who could satisfy this Court's requirements as to a Rule 30(b)(6), SCRCF witness. Counsel further informed her ACL would produce copies of depositions and transcripts from previous witnesses (which were obviously given before they passed away) in a good faith effort to show an attempt to comply with this Court's order. The only response received was "what am I supposed to do with them?"

The following transcripts were provided to Plaintiff:²

- A. William Callan: *Abercrombie v. Abex Corp., et al.*, Superior Court of the State of California, County of San Francisco, No. 941345, April 2, 1996, Tooker & Antz Court Reporters, 131 Steuart Street, Ste. 201, San Francisco, CA 94105, Brayton Purcell, 222 Rush Landing Rd, Novato, CA 94948; *Shaw v. Pittsburgh Corning Corp., et al.*, Superior Court of the State of Washington, County of King, No. 94-2-25707-2, September 14, 1995, Sharon Rindal & Assoc. Court Reporters, 10224 – 21st S.W., Ste. B, Seattle, Washington 98146; *Austin v. Johns-Manville, et al.*, U.S. District Court, New Jersey, No. 75-754, October 22, 1980 and November 24, 1980, Esquire Reporting Company, 41 East 42nd Street, New York, NY 10017; and *Bailey v. Johns-Manville, et al.*, Philadelphia Court of Common Pleas, May Term 1981, No. I675 (551), April 10 and 11, 1984, Lynn Mountain Court Reporters, James R. Kahn, Esq., Desjardins, Ducharme, et al., 635 Dorchester Blvd West, Montreal, Quebec, Canada.
- B. Marcel DeRouin: *Shaw v. Pittsburgh Coming Corp., et al.*, Superior Court of the State of Washington, County of King, No. 94-2-25707-2, September 14, 1995, Sharon Rindal & Assoc. Court Reporters, 10224 – 21st S.W., Ste. B, Seattle, Washington 98146.
- C. Ian Cadogan Campbell: *Austin v. Johns-Manville, et al.*, U.S. District Court, New Jersey, No. 75-754, September 7, 1976, Federal Court Reporters, Gelman & Gelman; *Ciccarelli v. Carey Canadian Mines, et al.*, U.S. District Court, Eastern District of Pennsylvania, No. 79-2122, September 27, 1979, Knipes-Cohen Association Reporters.
- D. George Alexander McCammon: *Hayes v. Johns-Manville, et al.*, U.S. District Court, Eastern Division of Missouri, No. 80-0706-C(B), April 7, 1982, Anna M. Lloyd, Court Reporter, Montreal, Canada; *In Re Johns-Manville Plantworker Cases*, New Jersey Superior Court, Middlesex County, No. L-37243-79, January 14, 1987, Anna M. Lloyd, Court Reporter, Montreal, Canada, Willentz, Goldman & Spitzer, 900 Route 9, P.O. Box 10, Woodbridge, N.J. 07095.
- E. Alex Sakiz: *Canadian Johns-Manville/Asbestos Corporation Limited Cases*, U.S. District Court, Northern District of Illinois, No. 77C3534, January 22, 1982, Anna Cordier, Court Reporter, Montreal, Canada.

² Copies are attached as Exhibit 2.

- F. Thomas Donald Johnson: *In Re Fibreboard Plantworker Asbestos Cases*, California Superior court, Alameda County, No. 537064-7, January 18, 19, 20, 1984, Vilaire & Associates, 4 est. Notre Dame, Bureau 603, Montreal, H2Y 1B8, Kazan, McClain, Edises, Simon & Abrams, 171 Twelfth Street, Third Floor, Oakland, CA 94607.
- G. Alain Dulude: *In Re Fibreboard Plantworker Asbestos Cases*, California Superior Court, Alameda County, No. 537064-7, January 26 and 27, 1984, Vilaire & Associates, 4 est. Notre Dame, Bureau 603, Montreal, H2Y 1B8.
- H. Jean-Marie Laliberte: *James & Elizabeth Scott v. 3M Company, et al.*, Superior Court of New Jersey, Middlesex County, Docket No.:L-7550-11 AS, March 2, 2015, Sonia Undseth, AD/T 590, KLJ Transcription Services, LLC, P.O. Box 8627, Saddle River, NJ 07663; March 3, 2015, Sandra Carbonaro, AC/T 259, KLJ Transcription Services, LLC, P.O. Box 8627, Saddle River, NJ 07663, William L. Kuzmin, Esq. Cohen, Placitella & Roth, 127 Maple Avenue, Red Bank, NJ 07701.

Two days later, counsel filed a motion to hold ACL in contempt and to strike ACL's pleadings. Two days after that motion was filed, Plaintiffs filed a Motion for the appointment of a Receiver. For the reasons set forth below, all of Plaintiffs' motions should be denied.

CONTEMPT IS NOT APPROPRIATE UNDER THE FACTS OF THIS CASE.

All courts have the inherent power to punish for contempt; however, contempt is an **extreme measure and the power to adjudge a party in contempt is not to be taken lightly.** *Hook v. South Carolina Dept. of Health and Environmental Control*, 439 S.C. 52, 74, 885 S.E.2d 442, 454 (Ct. App. 2023) (emphasis added). Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a question for the court's discretion, which should be determined under the specific facts of the case in issue. *Id.*

Once the movant makes a *prima facie* showing by pleading an order and demonstrating noncompliance, the burden shifts to the respondent to establish its defense and inability to comply. *Id.* at 75, 885 S.E.2d at 454. Contempt results from willful disobedience of a court order. *Id.* at 75, 885 S.E.2d at 455 (emphasis added). A willful act is one 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 a bad purpose either to disobey or disregard the laws. *Id.* at 76, 885 S.E.2d at 455.

In its Order Denying ACL's Motion to Dismiss for lack of personal jurisdiction, this court held "ACL is ordered to answer discovery and to produce a 30(b)(6) witness by July 24, 2023. Failure to answer the Court ordered discovery and to provide a corporate representative for depositions shall result in ACL being held in contempt." (July 19, 2023 Order p. 1). Inability to comply is a defense to contempt.

ACL has no current or former employees to testify to the topics listed in the Rule 30(b)(6), SCRCF Notice.³ It does not maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the Rule 30(b)(6), SCRCF Notice. To the extent that relevant records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec, as discussed below.

If a corporation genuinely cannot provide an appropriate designee because it does not have the information, cannot reasonably obtain it from other sources, and still lacks knowledge after reviewing all available information, then its obligations under the Rule cease. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 690 (S.D. Fla. 2012). A party cannot produce documents it does not possess, and a party cannot create documents that do not exist and is not obligated to create new documents. *See United States v. Remain at Home Senior Care, LLC*, Case No. 1:17-cv-01493-JMC, at *5-6 (D.S.C. Jan. 14, 2022).

This Court can order it. Plaintiff can want it. ACL can do all in its power to comply, to the extent the laws of its home jurisdiction allow, but as nearly every circuit judge has told counsel at one hearing or another, the other side cannot produce that which it does not have. It

³ Plaintiffs' Second Amended Notice of Rule 30(b)(6), SCRCF Deposition with topics is attached as Exhibit 3.

cannot produce witnesses who are no longer with us. These same rules and common sense apply, even in this court. ACL has shown a good faith attempt to comply with this Court's order. It should not be held in contempt.⁴

The Quebec Business Concerns Records Act (QBCRA) Prohibits ACL Under Threat of Criminal and/or Civil Contempt from Providing Business Records, or Information from Business Records, Located in Quebec.

ACL is a Quebec corporation whose office is located in the province. Under Section 2 of the QBCRA, a copy of which is attached as Exhibit 4:

Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial, or administrative authority outside Quebec, remove or cause to be removed, or send or cause to be sent, from any place in Quebec to a place outside Quebec, any document or résumé or digest of any document relating to any concern.

The term "document" is defined as "any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern." QBCRA, § 1(a). The term "concern" is defined as "any business concern in Quebec." QBCRA, § 1(b). The term "requirement" is defined as "any demand, direction, order, subpoena or summons." QBCRA § 1(c). The exception in Section 3 is limited to intra-company transfer in the normal course of business, the sale of securities, and as "authorized by any law of Quebec or of the Parliament of Canada, in accordance with their respective jurisdictions." QBCRA, § 3. Any person who infringes the provisions of Section 2 **shall** be guilty of contempt of court. QBCRA §

⁴ The court's July 19, 2023 order is less than clear whether contempt is automatic or dependent upon the examination of the attempts by ACL to comply with this court's order ("Failure to answer the Court ordered discovery and to produce a 30(b)(6) witness...shall result in ACL being held in contempt."). An automatic ruling of contempt without an examination of steps taken towards compliance would be inconsistent with South Carolina law. *Skywaves Corp. v. Branch Banking and Trust Co.*, 423 S.C. 432, 814 S.E.2d 643 (Ct. App. 2018). (In determining the appropriateness of a sanction, the court should not go beyond the necessities of the situation to foreclose a decision on the merits.)

5 (emphasis added). Quebec courts have made clear that other Quebec “concerns” like ACL are subject to criminal and/or civil penalties if they produce, in United States litigation, information or documents from their files in Quebec.⁵

ACL acknowledges that two decisions by the federal district court in South Carolina have ruled unfavorably as to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384 (D.S.C. 1988); and *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992). With due respect to the judges in each case, those cases failed to accurately assess the operation of the QBCRA upon Quebec entities like ACL and the potential exposure they faced for compliance. Moreover, while this Court seems limited by these opinions, neither is binding authority, nor controlling.

The South Carolina federal courts’ interpretations in *Lyons* and *Central Wesleyan* understate the liability of a company in ACL’s position under the QBCRA and the dilemma it faces when called upon to produce documents and a witness in a Rule 30(b)(6), SCRCF situation like the one at issue. Such decisions only show that ACL is stuck between the proverbial “rock and a hard place.” It is stuck between facing mandatory contempt of court in its domicile or suffering contempt and not only displeasing this Court if it does not produce a witness to Plaintiffs’ satisfaction, but having this Court strike its answer and attempt to appoint a receiver that in no manner complies with the laws of Quebec or South Carolina. While the goal is never to displease a court, ACL has no choice in this matter. It can face contempt of court in Quebec where it is located and does business as an ongoing concern or have this Court attempt to place it under a receivership by virtue of a statute that has no applicability in a state with no personal jurisdiction over it.

⁵ The transcripts produced to Plaintiffs came from sources in the United States and thus their production does not violate the QBCRA.

ACL takes its discovery obligations seriously, but asks this Court to recognize and consider that it cannot please both masters at the same time. Other courts have recognized this conundrum.

In *Jenness v. Turner and Newall Ltd.*, No. 83-61-L (D. N.H. Dec. 5, 1984), a copy of which is attached as Exhibit 5, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. ACL admitted that it had sold asbestos to the plaintiff's employer but could not "give the detailed answers that are required to be given to plaintiff's interrogatories without reference to [ACL's] business records located in Canada." *Id.* at p. 2. As a result, the plaintiff moved for sanctions against ACL when it did not comply with the court's discovery order. The U.S. District Court for the District of New Hampshire described ACL's predicament: ACL found itself "between the Scylla of the criminal sanctions of the [QBCRA] and the Charybdis of the civil sanctions of this Court." *Id.* at p. 2. Considering ACL's quandary, the *Jenness* court found that ACL had "made a good faith effort to comply with this Court's order to answer the interrogatories" and that ACL's "fear that answering the interrogatories or giving the depositions would violate the [QBCRA] to be well founded." *Id.* at p. 3. The court ordered ACL to answer the plaintiff's interrogatories from documents and information that existed outside Quebec, but ruled that ACL did not have to answer the interrogatories from documents and information contained within Quebec. *Id.* at pp. 3-4.

Similarly, in *Maryland v. Keene Corp.*, No. 1108600 (Md. Cir. Ct. July 10, 1986), a copy of which is attached as Exhibit 6, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 6, at pp. 1-2. The *Keene* court concluded that because the QBCRA's potential penalties were "an annoyance, embarrassment and undue burden" to ACL, the court was "not convinced that it [wa]s necessary for ACL to face" the

QBCRA's sanctions. *Id.* at p. 2. The court ordered that any of ACL's United States-based documents and information were discoverable but that "ACL's Canadian documents should enjoy the full protection which this Court can afford to them...." *Id.* at 3.

Further, in *Fears v. Cassair Mining, Corp.*, No. 91-98C(5) (E.D. Mo. Jan. 5, 1993), a copy of which is attached as Exhibit 7, the U. S. District Court for the Eastern District of Missouri did not find the analysis in *Lyons* persuasive because it did not deal with the Canadian courts' interpretation of the QBCRA or with the prior rulings of American courts. Rather, it adopted the *Jenness* and *Keene* courts' reasoning, concluding that "the approach taken by [those] courts is equitable and just in that it provides a broad opportunity for plaintiffs to achieve the discovery to which they are entitled without exposing [ACL] to criminal sanctions in Quebec." Exhibit 7, at p. 3. The *Fears* court allowed discovery into ACL's documents and information contained in the United States but upheld the QBCRA's prohibition on discovery into ACL's Quebec documents and information. *Id.*

Because ACL faces criminal and/or penalties if it violates the QBCRA or contempt and severe sanctions including default and a purported receivership, the Court should make a comity analysis using the factors set forth in *Societe Nationale Industrielle Aerospatiale v. United States District Court for Southern District of Iowa*, 482 U.S. 522, 107 S.Ct. 2542 (1987) (*Aerospatiale*) and Restatement (Third) of Foreign Relations Law of the United States, § 442 (1987) (Restatement).⁶ In *Aerospatiale*, the Supreme Court dealt with a French "Blocking

⁶ ACL acknowledges that the court in *Lyons* referenced *Aerospatiale* in relation to the QBCRA. *Id.*, 119 F.R.D. at 389 (D.S.C. 1988). Further, in *Lyons*, although Judge Anderson ruled unfavorably as to the QBCRA, he referenced *Aerospatiale* and noted that consideration "of foreign law problems in a discovery context is required in dealing with sanctions to be imposed for disobedience", thereby acknowledging that any punishment should not necessarily immediately go to the most severe sanction available but should take into account the conflicting legal obligations faced by the party. *Lyons*, 119 F.R.D. at 389.

Statute.” The Court directed that district courts could find their guide to a comity analysis using factors articulated in the *Restatement. Aerospatiale*, 482 U.S. at 544, footnote 28. These factors are (1) the importance to the...litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

A comity analysis using the factors set forth in *Aerospatiale* supports relief for ACL. The information requested is unrelated to the primary case, but centers more on an effort to establish insurance coverage for the purported receiver. As for the second factor – the degree of specificity – many of Plaintiffs’ requests are overly broad.⁷ Plaintiff cannot show and ACL has established to the extent any such documents exist, they would be in Quebec. Plaintiff has shown it attempted no alternatives legal means to try to obtain any information in issue. Finally, this information does not undermine important interests of South Carolina.

APPOINTMENT OF A RECEIVER IS INAPPROPRIATE FROM A LEGAL, JURISDICTIONAL AND STATUTORY BASIS.

Plaintiff moves ever so rapidly to assert, with no relevant or applicable case law, that this Court should attempt to place ACL under a receivership.⁸ ACL is a Canadian Corporation located in the Province of Quebec. As set forth in ACL’s prior Motion to Dismiss for Lack of Personal Jurisdiction and Memorandum of Law with Exhibits, this Court has no jurisdiction or authority to

⁷ See Plaintiffs’ Second Amended Notice of Rule 30(b)(6), SCRCF Deposition of ACL and Subpoena Duces Tecum, attached as Exhibit 3.

⁸ The motion is not clear as to whether this is purportedly an “insurance asset” receivership as on appeal in *Welch* or some other form of receivership. The relief sought does not comply with the statutory provisions cited.

place on ongoing Canadian corporation into a South Carolina based receivership. While Plaintiffs make allegations with absolutely no evidentiary basis, such as “ACL has intentionally fled the United States to avoid its liabilities’ or that it is “trying to defeat [its] creditors by an act or course of conduct which indicates moral fraud...”, and is ACL “refuses to accept service in in the United States after being faced with substantial asbestos-related liabilities.”

As stated earlier, Plaintiffs and this Court want ACL to give up or walk away from its personal jurisdictional arguments. It will not do so. Plaintiff has no judgment against ACL. Even if this court holds ACL in default, it does not follow as this Court stated in *Welch* that a default judgment is a ministerial act. *Beckham v. Durant*, 300 S.C. 329, 387 S.E.2d 701 (Ct. App. 1989). *In re Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997). (Party requesting judgment by default is not entitled to one as a matter of right even when the defendant is technically in default.”). As such, ACL does not meet the requirements of S.C. Code Ann. § 15-65-10(4). Likewise, there is no way the action of attempting to appoint a receiver could be deemed “in accordance with the existing practice.” S.C. Code Ann. § 15-65-10(5) is not satisfied. Finally, S.C. Code Ann. § 15-65-10 (4) limits itself to “property within this State of foreign corporations.” Plaintiff seeks this Court to declare a receivership that is not limited by the boundaries of this state, but also is not limited by the borders of this country. This Court and the South Carolina Legislature lack such authority. A receivership may not be put into place legally. Appointment of a receiver is a “harsh and drastic remedy, one to be granted only with great caution.” *Penn. Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787 (1934). Any order to do so would be null and void.

CONCLUSION

For the foregoing reasons, the Court should not hold ACL in contempt; should not strike its answer and should not attempt to place it in an illegal and void receivership.

[Signature page for Memorandum in Opposition to Motion for Contempt, to Strike Answer and Appoint a Receiver Case No. 2023-CP-40-01759]

CLEMENT RIVERS, LLP

By: s/Stephen L. Brown

Stephen L. Brown (SC Bar No. 66468)

James D. Gandy, III (SC Bar No. 11925)

Stephen A. Griffith (SC Bar No.: 103744)

P.O. Box 993, Charleston, SC 29402

Telephone: (843) 720-5488

Facsimile: (843) 579-1369

Email: sbrown@ycrlaw.com

tgandy@ycrlaw.com

sgriffith@ycrlaw.com

Attorneys for Asbestos Corporation Limited

Charleston, South Carolina

Dated: August 9, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS AND MARGARET B. TIBBS ,	)	CASE NO. 2023-CP-40-01759
	)	
	)	
PLAINTIFFS,	)	
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vs.	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION FOR CONTEMPT, TO STRIKE
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3M COMPANY, ET AL.,	)	
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The Defendant Asbestos Corporation Limited (“ACL”), subject to and without waiving its arguments and defenses including those related to a lack of personal jurisdiction, files this memorandum of law in opposition to Plaintiffs’ motions to hold it in contempt; to strike its pleadings and to appoint Peter Protopapas as a receiver pursuant to S.C. Code Ann. §§ 15-65-10(4) and (5).

ACL respectfully asserts its actions show no willful disobedience of the Court, but rather establish an attempt to comply with the Court’s ruling under the challenging circumstances presented. As such, it does not meet the standard for contempt, much less the willful and deliberate disobedience, which must be established to strike a party’s answer or responsive pleadings. Finally, contrary to Plaintiff’s assertion, if this Court determines that the appropriate sanction for ACL’s contempt is the striking of ACL’s answer, is not also appropriate for this Court to appoint a receiver. This is especially true when the proposed receiver is one suggested by Plaintiff’s counsel who serves in such role repeatedly and the entity over which he attempts to assert authority is an existing Canadian corporation with no assets in South Carolina and does not meet the requirements of S.C. Code Ann. §§ 15-65-10(4) or (5). A receiver must be

absolutely fair and impartial, for the receiver represents all parties interested but also is an officer of the court. *Penn. Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787 (1934). Plaintiffs' motions should be denied.

STATEMENT OF THE FACTS

ACL is an existing Canadian corporation, which is located in the Province of Quebec. Based on the facts, evidence, law and arguments set forth in ACL's motion to dismiss and supporting memorandum of law, with exhibits which are incorporated herein by reference, ACL asserts there is no personal jurisdiction over it in South Carolina. While the Court and Plaintiffs' counsel disagree, there is no provision in the law which mandates ACL to acknowledge personal jurisdiction when it believes it does not exist. Likewise, ACL has been consistent in its position that it cannot produce a Rule 30(b)(6), SCRCF witness, as all such witnesses known to ACL have unfortunately passed away.

ACL filed a motion to dismiss for lack of personal jurisdiction. Plaintiffs attempted to notice a Rule 30(b)(6), SCRCF witness in this case. They were informed there were no individuals alive and capable of responding to the issues proposed. On July 10, 2023, this Court conducted a hearing on ACL's motion to dismiss and denied it. The Court went on to state "ACL is ordered to answer discovery and to produce a 30(b)(6) witness by July 24, 2023. Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt." (July 19, 2023 Order p. 1).

ACL answered the court ordered discovery, which has been in place since Judge (now Justice) Hill presided over the asbestos court.¹ In addition, the undersigned counsel called Plaintiffs' counsel, Ms. McVey, in advance and advised her ACL has no living employee or

¹ Attached as Exhibit 1 is a copy of ACL's responses.

person who could satisfy this Court's requirements as to a Rule 30(b)(6), SCRCF witness. Counsel further informed her ACL would produce copies of depositions and transcripts from previous witnesses (which were obviously given before they passed away) in a good faith effort to show an attempt to comply with this Court's order. The only response received was "what am I supposed to do with them?"

The following transcripts were provided to Plaintiff:²

- A. William Callan: *Abercrombie v. Abex Corp., et al.*, Superior Court of the State of California, County of San Francisco, No. 941345, April 2, 1996, Tooker & Antz Court Reporters, 131 Steuart Street, Ste. 201, San Francisco, CA 94105, Brayton Purcell, 222 Rush Landing Rd, Novato, CA 94948; *Shaw v. Pittsburgh Corning Corp., et al.*, Superior Court of the State of Washington, County of King, No. 94-2-25707-2, September 14, 1995, Sharon Rindal & Assoc. Court Reporters, 10224 – 21st S.W., Ste. B, Seattle, Washington 98146; *Austin v. Johns-Manville, et al.*, U.S. District Court, New Jersey, No. 75-754, October 22, 1980 and November 24, 1980, Esquire Reporting Company, 41 East 42nd Street, New York, NY 10017; and *Bailey v. Johns-Manville, et al.*, Philadelphia Court of Common Pleas, May Term 1981, No. I675 (551), April 10 and 11, 1984, Lynn Mountain Court Reporters, James R. Kahn, Esq., Desjardins, Ducharme, et al., 635 Dorchester Blvd West, Montreal, Quebec, Canada.
- B. Marcel DeRouin: *Shaw v. Pittsburgh Coming Corp., et al.*, Superior Court of the State of Washington, County of King, No. 94-2-25707-2, September 14, 1995, Sharon Rindal & Assoc. Court Reporters, 10224 – 21st S.W., Ste. B, Seattle, Washington 98146.
- C. Ian Cadogan Campbell: *Austin v. Johns-Manville, et al.*, U.S. District Court, New Jersey, No. 75-754, September 7, 1976, Federal Court Reporters, Gelman & Gelman; *Ciccarelli v. Carey Canadian Mines, et al.*, U.S. District Court, Eastern District of Pennsylvania, No. 79-2122, September 27, 1979, Knipes-Cohen Association Reporters.
- D. George Alexander McCammon: *Hayes v. Johns-Manville, et al.*, U.S. District Court, Eastern Division of Missouri, No. 80-0706-C(B), April 7, 1982, Anna M. Lloyd, Court Reporter, Montreal, Canada; *In Re Johns-Manville Plantworker Cases*, New Jersey Superior Court, Middlesex County, No. L-37243-79, January 14, 1987, Anna M. Lloyd, Court Reporter, Montreal, Canada, Willentz, Goldman & Spitzer, 900 Route 9, P.O. Box 10, Woodbridge, N.J. 07095.
- E. Alex Sakiz: *Canadian Johns-Manville/Asbestos Corporation Limited Cases*, U.S. District Court, Northern District of Illinois, No. 77C3534, January 22, 1982, Anna Cordier, Court Reporter, Montreal, Canada.

² Copies are attached as Exhibit 2.

- F. Thomas Donald Johnson: *In Re Fibreboard Plantworker Asbestos Cases*, California Superior court, Alameda County, No. 537064-7, January 18, 19, 20, 1984, Vilaire & Associates, 4 est. Notre Dame, Bureau 603, Montreal, H2Y 1B8, Kazan, McClain, Edises, Simon & Abrams, 171 Twelfth Street, Third Floor, Oakland, CA 94607.
- G. Alain Dulude: *In Re Fibreboard Plantworker Asbestos Cases*, California Superior Court, Alameda County, No. 537064-7, January 26 and 27, 1984, Vilaire & Associates, 4 est. Notre Dame, Bureau 603, Montreal, H2Y 1B8.
- H. Jean-Marie Laliberte: *James & Elizabeth Scott v. 3M Company, et al.*, Superior Court of New Jersey, Middlesex County, Docket No.:L-7550-11 AS, March 2, 2015, Sonia Undseth, AD/T 590, KLJ Transcription Services, LLC, P.O. Box 8627, Saddle River, NJ 07663; March 3, 2015, Sandra Carbonaro, AC/T 259, KLJ Transcription Services, LLC, P.O. Box 8627, Saddle River, NJ 07663, William L. Kuzmin, Esq. Cohen, Placitella & Roth, 127 Maple Avenue, Red Bank, NJ 07701.

Two days later, counsel filed a motion to hold ACL in contempt and to strike ACL's pleadings. Two days after that motion was filed, Plaintiffs filed a Motion for the appointment of a Receiver. For the reasons set forth below, all of Plaintiffs' motions should be denied.

CONTEMPT IS NOT APPROPRIATE UNDER THE FACTS OF THIS CASE.

All courts have the inherent power to punish for contempt; however, contempt is an **extreme measure and the power to adjudge a party in contempt is not to be taken lightly.** *Hook v. South Carolina Dept. of Health and Environmental Control*, 439 S.C. 52, 74, 885 S.E.2d 442, 454 (Ct. App. 2023) (emphasis added). Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a question for the court's discretion, which should be determined under the specific facts of the case in issue. *Id.*

Once the movant makes a *prima facie* showing by pleading an order and demonstrating noncompliance, the burden shifts to the respondent to establish its defense and inability to comply. *Id.* at 75, 885 S.E.2d at 454. Contempt results from willful disobedience of a court order. *Id.* at 75, 885 S.E.2d at 455 (emphasis added). A willful act is one 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 a bad purpose either to disobey or disregard the laws. *Id.* at 76, 885 S.E.2d at 455.

In its Order Denying ACL's Motion to Dismiss for lack of personal jurisdiction, this court held "ACL is ordered to answer discovery and to produce a 30(b)(6) witness by July 24, 2023. Failure to answer the Court ordered discovery and to provide a corporate representative for depositions shall result in ACL being held in contempt." (July 19, 2023 Order p. 1). Inability to comply is a defense to contempt.

ACL has no current or former employees to testify to the topics listed in the Rule 30(b)(6), SCRCF Notice.³ It does not maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the Rule 30(b)(6), SCRCF Notice. To the extent that relevant records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec, as discussed below.

If a corporation genuinely cannot provide an appropriate designee because it does not have the information, cannot reasonably obtain it from other sources, and still lacks knowledge after reviewing all available information, then its obligations under the Rule cease. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 690 (S.D. Fla. 2012). A party cannot produce documents it does not possess, and a party cannot create documents that do not exist and is not obligated to create new documents. *See United States v. Remain at Home Senior Care, LLC*, Case No. 1:17-cv-01493-JMC, at *5-6 (D.S.C. Jan. 14, 2022).

This Court can order it. Plaintiff can want it. ACL can do all in its power to comply, to the extent the laws of its home jurisdiction allow, but as nearly every circuit judge has told counsel at one hearing or another, the other side cannot produce that which it does not have. It

³ Plaintiffs' Second Amended Notice of Rule 30(b)(6), SCRCF Deposition with topics is attached as Exhibit 3.

cannot produce witnesses who are no longer with us. These same rules and common sense apply, even in this court. ACL has shown a good faith attempt to comply with this Court's order. It should not be held in contempt.⁴

The Quebec Business Concerns Records Act (QBCRA) Prohibits ACL Under Threat of Criminal and/or Civil Contempt from Providing Business Records, or Information from Business Records, Located in Quebec.

ACL is a Quebec corporation whose office is located in the province. Under Section 2 of the QBCRA, a copy of which is attached as Exhibit 4:

Subject to section 3, no person shall, pursuant to or under any requirement issued by any legislative, judicial, or administrative authority outside Quebec, remove or cause to be removed, or send or cause to be sent, from any place in Quebec to a place outside Quebec, any document or résumé or digest of any document relating to any concern.

The term "document" is defined as "any account, balance sheet, statement of receipts and expenditure, profit and loss statement, statement of assets and liabilities, inventory, report and any other writing or material forming part of the records or archives of a business concern." QBCRA, § 1(a). The term "concern" is defined as "any business concern in Quebec." QBCRA, § 1(b). The term "requirement" is defined as "any demand, direction, order, subpoena or summons." QBCRA § 1(c). The exception in Section 3 is limited to intra-company transfer in the normal course of business, the sale of securities, and as "authorized by any law of Quebec or of the Parliament of Canada, in accordance with their respective jurisdictions." QBCRA, § 3. Any person who infringes the provisions of Section 2 **shall** be guilty of contempt of court. QBCRA §

⁴ The court's July 19, 2023 order is less than clear whether contempt is automatic or dependent upon the examination of the attempts by ACL to comply with this court's order ("Failure to answer the Court ordered discovery and to produce a 30(b)(6) witness...shall result in ACL being held in contempt."). An automatic ruling of contempt without an examination of steps taken towards compliance would be inconsistent with South Carolina law. *Skywaves Corp. v. Branch Banking and Trust Co.*, 423 S.C. 432, 814 S.E.2d 643 (Ct. App. 2018). (In determining the appropriateness of a sanction, the court should not go beyond the necessities of the situation to foreclose a decision on the merits.)

5 (emphasis added). Quebec courts have made clear that other Quebec “concerns” like ACL are subject to criminal and/or civil penalties if they produce, in United States litigation, information or documents from their files in Quebec.⁵

ACL acknowledges that two decisions by the federal district court in South Carolina have ruled unfavorably as to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384 (D.S.C. 1988); and *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992). With due respect to the judges in each case, those cases failed to accurately assess the operation of the QBCRA upon Quebec entities like ACL and the potential exposure they faced for compliance. Moreover, while this Court seems limited by these opinions, neither is binding authority, nor controlling.

The South Carolina federal courts’ interpretations in *Lyons* and *Central Wesleyan* understate the liability of a company in ACL’s position under the QBCRA and the dilemma it faces when called upon to produce documents and a witness in a Rule 30(b)(6), SCRCF situation like the one at issue. Such decisions only show that ACL is stuck between the proverbial “rock and a hard place.” It is stuck between facing mandatory contempt of court in its domicile or suffering contempt and not only displeasing this Court if it does not produce a witness to Plaintiffs’ satisfaction, but having this Court strike its answer and attempt to appoint a receiver that in no manner complies with the laws of Quebec or South Carolina. While the goal is never to displease a court, ACL has no choice in this matter. It can face contempt of court in Quebec where it is located and does business as an ongoing concern or have this Court attempt to place it under a receivership by virtue of a statute that has no applicability in a state with no personal jurisdiction over it.

⁵ The transcripts produced to Plaintiffs came from sources in the United States and thus their production does not violate the QBCRA.

ACL takes its discovery obligations seriously, but asks this Court to recognize and consider that it cannot please both masters at the same time. Other courts have recognized this conundrum.

In *Jenness v. Turner and Newall Ltd.*, No. 83-61-L (D. N.H. Dec. 5, 1984), a copy of which is attached as Exhibit 5, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. ACL admitted that it had sold asbestos to the plaintiff's employer but could not "give the detailed answers that are required to be given to plaintiff's interrogatories without reference to [ACL's] business records located in Canada." *Id.* at p. 2. As a result, the plaintiff moved for sanctions against ACL when it did not comply with the court's discovery order. The U.S. District Court for the District of New Hampshire described ACL's predicament: ACL found itself "between the Scylla of the criminal sanctions of the [QBCRA] and the Charybdis of the civil sanctions of this Court." *Id.* at p. 2. Considering ACL's quandary, the *Jenness* court found that ACL had "made a good faith effort to comply with this Court's order to answer the interrogatories" and that ACL's "fear that answering the interrogatories or giving the depositions would violate the [QBCRA] to be well founded." *Id.* at p. 3. The court ordered ACL to answer the plaintiff's interrogatories from documents and information that existed outside Quebec, but ruled that ACL did not have to answer the interrogatories from documents and information contained within Quebec. *Id.* at pp. 3-4.

Similarly, in *Maryland v. Keene Corp.*, No. 1108600 (Md. Cir. Ct. July 10, 1986), a copy of which is attached as Exhibit 6, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 6, at pp. 1-2. The *Keene* court concluded that because the QBCRA's potential penalties were "an annoyance, embarrassment and undue burden" to ACL, the court was "not convinced that it [wa]s necessary for ACL to face" the

QBCRA's sanctions. *Id.* at p. 2. The court ordered that any of ACL's United States-based documents and information were discoverable but that "ACL's Canadian documents should enjoy the full protection which this Court can afford to them...." *Id.* at 3.

Further, in *Fears v. Cassair Mining, Corp.*, No. 91-98C(5) (E.D. Mo. Jan. 5, 1993), a copy of which is attached as Exhibit 7, the U. S. District Court for the Eastern District of Missouri did not find the analysis in *Lyons* persuasive because it did not deal with the Canadian courts' interpretation of the QBCRA or with the prior rulings of American courts. Rather, it adopted the *Jenness* and *Keene* courts' reasoning, concluding that "the approach taken by [those] courts is equitable and just in that it provides a broad opportunity for plaintiffs to achieve the discovery to which they are entitled without exposing [ACL] to criminal sanctions in Quebec." Exhibit 7, at p. 3. The *Fears* court allowed discovery into ACL's documents and information contained in the United States but upheld the QBCRA's prohibition on discovery into ACL's Quebec documents and information. *Id.*

Because ACL faces criminal and/or penalties if it violates the QBCRA or contempt and severe sanctions including default and a purported receivership, the Court should make a comity analysis using the factors set forth in *Societe Nationale Industrielle Aerospatiale v. United States District Court for Southern District of Iowa*, 482 U.S. 522, 107 S.Ct. 2542 (1987) (*Aerospatiale*) and Restatement (Third) of Foreign Relations Law of the United States, § 442 (1987) (Restatement).⁶ In *Aerospatiale*, the Supreme Court dealt with a French "Blocking

⁶ ACL acknowledges that the court in *Lyons* referenced *Aerospatiale* in relation to the QBCRA. *Id.*, 119 F.R.D. at 389 (D.S.C. 1988). Further, in *Lyons*, although Judge Anderson ruled unfavorably as to the QBCRA, he referenced *Aerospatiale* and noted that consideration "of foreign law problems in a discovery context is required in dealing with sanctions to be imposed for disobedience", thereby acknowledging that any punishment should not necessarily immediately go to the most severe sanction available but should take into account the conflicting legal obligations faced by the party. *Lyons*, 119 F.R.D. at 389.

Statute.” The Court directed that district courts could find their guide to a comity analysis using factors articulated in the *Restatement. Aerospatiale*, 482 U.S. at 544, footnote 28. These factors are (1) the importance to the...litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

A comity analysis using the factors set forth in *Aerospatiale* supports relief for ACL. The information requested is unrelated to the primary case, but centers more on an effort to establish insurance coverage for the purported receiver. As for the second factor – the degree of specificity – many of Plaintiffs’ requests are overly broad.⁷ Plaintiff cannot show and ACL has established to the extent any such documents exist, they would be in Quebec. Plaintiff has shown it attempted no alternatives legal means to try to obtain any information in issue. Finally, this information does not undermine important interests of South Carolina.

APPOINTMENT OF A RECEIVER IS INAPPROPRIATE FROM A LEGAL, JURISDICTIONAL AND STATUTORY BASIS.

Plaintiff moves ever so rapidly to assert, with no relevant or applicable case law, that this Court should attempt to place ACL under a receivership.⁸ ACL is a Canadian Corporation located in the Province of Quebec. As set forth in ACL’s prior Motion to Dismiss for Lack of Personal Jurisdiction and Memorandum of Law with Exhibits, this Court has no jurisdiction or authority to

⁷ See Plaintiffs’ Second Amended Notice of Rule 30(b)(6), SCRCF Deposition of ACL and Subpoena Duces Tecum, attached as Exhibit 3.

⁸ The motion is not clear as to whether this is purportedly an “insurance asset” receivership as on appeal in *Welch* or some other form of receivership. The relief sought does not comply with the statutory provisions cited.

place on ongoing Canadian corporation into a South Carolina based receivership. While Plaintiffs make allegations with absolutely no evidentiary basis, such as “ACL has intentionally fled the United States to avoid its liabilities’ or that it is “trying to defeat [its] creditors by an act or course of conduct which indicates moral fraud...”, and is ACL “refuses to accept service in in the United States after being faced with substantial asbestos-related liabilities.”

As stated earlier, Plaintiffs and this Court want ACL to give up or walk away from its personal jurisdictional arguments. It will not do so. Plaintiff has no judgment against ACL. Even if this court holds ACL in default, it does not follow as this Court stated in *Welch* that a default judgment is a ministerial act. *Beckham v. Durant*, 300 S.C. 329, 387 S.E.2d 701 (Ct. App. 1989). *In re Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997). (Party requesting judgment by default is not entitled to one as a matter of right even when the defendant is technically in default.”). As such, ACL does not meet the requirements of S.C. Code Ann. § 15-65-10(4). Likewise, there is no way the action of attempting to appoint a receiver could be deemed “in accordance with the existing practice.” S.C. Code Ann. § 15-65-10(5) is not satisfied. Finally, S.C. Code Ann. § 15-65-10 (4) limits itself to “property within this State of foreign corporations.” Plaintiff seeks this Court to declare a receivership that is not limited by the boundaries of this state, but also is not limited by the borders of this country. This Court and the South Carolina Legislature lack such authority. A receivership may not be put into place legally. Appointment of a receiver is a “harsh and drastic remedy, one to be granted only with great caution.” *Penn. Mut. Life Ins. Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787 (1934). Any order to do so would be null and void.

CONCLUSION

For the foregoing reasons, the Court should not hold ACL in contempt; should not strike its answer and should not attempt to place it in an illegal and void receivership.

[Signature page for Memorandum in Opposition to Motion for Contempt, to Strike Answer and Appoint a Receiver Case No. 2023-CP-40-01759]

CLEMENT RIVERS, LLP

By: s/Stephen L. Brown

Stephen L. Brown (SC Bar No. 66468)

James D. Gandy, III (SC Bar No. 11925)

Stephen A. Griffith (SC Bar No.: 103744)

P.O. Box 993, Charleston, SC 29402

Telephone: (843) 720-5488

Facsimile: (843) 579-1369

Email: sbrown@ycrlaw.com

tgandy@ycrlaw.com

sgriffith@ycrlaw.com

Attorneys for Asbestos Corporation Limited

Charleston, South Carolina

Dated: August 9, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	<i>In Re:</i>
Plaintiff,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al.	)	
	)	
Defendants.	)	

ORDER HOLDING ATLAS ASBESTOS COMPANY, LTD. IN CONTEMPT

Asbestos Corporation, Ltd. (“ACL”) is a defendant in the above referenced matter. On July 10, 2023, this Court, in open court ordered ACL to fully answer discovery and appear for a deposition so that this matter could be prepared for trial. On July 19, 2023, this Court entered an Order stating: “Failure to answer the Court ordered discovery and to provide a corporate representative for deposition shall result in ACL being held in contempt.”

ACL failed to produce a witness as ordered by the Court. ACL has also refused to identify a witness or a date on which it will produce a witness. Moreover, ACL has failed to fully answer discovery and provide documents ordered to be produced by this Court.

ACL has made it clear that it does not intend to participate in this matter and that this Court’s orders on discovery will continue to be ignored. Plaintiffs moved to have this Court hold ACL in contempt and, as a sanction, to strike ACL’s answer.

LAW AND ANALYSIS

A determination of contempt resides in the sound discretion of the trial judge. *Hook v. South Carolina Dept. of Health and Environmental Control*, 439 S.C. 52 (Ct. App. March 15, 2023). “Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed.” *Id.* The power of a court to punish for contempt “is essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *Miller v. Miller*, 375 S.C. 443 (Ct. App. 2007).

“The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial.” *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). “Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice,” sanctions must be imposed. *Id.* Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* “If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated “[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* “Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those

who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Here there is no dispute that ACL has violated this Court’s orders. Moreover, ACL has indicated that it does not intend to comply with those orders in the future. In light of ACL’s position, this Court has no choice but to find ACL in contempt of court. ACL has failed to produce a witness. ACL has refused to participate in meaningful discovery. It has refused to produce documents. Given this intentional and willful refusal to participate in discovery, the Court hereby strikes ACL’s pleadings.

IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Sanctions

So Ordered

Jean H. Toal

Electronically signed on 2023-09-07 15:53:57 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	<i>In Re:</i>
Plaintiff,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al.	)	
	)	
Defendants.	)	

ORDER ON PLAINTIFFS' MOTION TO APPOINT A RECEIVER

This order follows the Court's order finding Asbestos Corporation Ltd. ("ACL") in contempt of court and striking ACL's pleadings. Before the Court is Plaintiffs' Motion to Appoint a Receiver over ACL's insurance assets.

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets¹ of ACL and to allow the Receiver to assume control of the defense of asbestos claims made against Asbestos Corporation, Ltd in the United States. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court's Receiver in locating and marshalling those assets. Further, Mr. Protopapas is tasked with tendering current and future claims from Plaintiffs suffering from

¹ This term is defined below.

asbestos disease brought against ACL to which those policies are responsive. Finally, Mr. Protopapas is tasked with the control of the defense of those claims for ACL.

PROCEEDURAL BACKGROUND

On July 19, 2023, this Court ordered ACL to fully answer discovery and to provide a corporate representative for deposition. The Court further held that failure to do so would result ACL being held in contempt. Subsequently, this Court held ACL in contempt and, as a sanction, struck the pleadings of ACL. The Court based its contempt order on ACL's flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery.

Now, having struck ACL's answer, ACL is in default.²

LAW AND ANALYSIS

A. Appointment of a Receiver is Appropriate and Warranted

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).³

² The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

³ A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the striking of ACL's answer.

Historically, receivers are appointed by courts sitting in equity in order 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) But where, as here, ACL’s answer has been struck, and thus only a ministerial action being left for ACL to be in judgment, a receiver to take possession of and, to the extent necessary, litigate ACL’s insurance assets as well as to assume control of the defense of asbestos claims made against ACL in the United States is exactly the type of historical circumstances, the Court’s of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

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.

Virginia Carolina Chemical v. Hunter, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of ACL’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL’s continued refusal to participate in this that warrants the appointment of a receiver. Thus, where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer “any insurance assets” including “any claims related to the actions or failure to act of ACL’s insurance carriers.” The Receiver would assume control of the defense of asbestos claims made against ACL in the United States. This 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.” *Id.* at 480 (emphasis added).

That the South Carolina receivership references “property within this state” is not a limitation on the Receiver’s authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court’s authority to vest a statutory receiver to assert an insolvent corporation’s rights of action. See *e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff’d* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded “full faith and credit”). That is the authority given to be given the receiver here.

That authority includes the insurance assets of ACL, including the right to assume control of the defense of asbestos claims made against ACL in the United States and tender claims to applicable insurance policies. Even assuming ACL’s interpretation of §15-65-10 is correct, to the extent they exist, ACL’s Insurance Assets ² would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

² For purpose of clarity, this Court defines “Insurance Assets” as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

S.C. Code Ann §38-61-10 states that

[a]ll 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 interpreting §38-61-10, the South Carolina Supreme Court held that “[i]t 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) (Toal, C.J). The result is that “South Carolina substantive law governs [the insuring assets of ACL]” *Id.* Thus, the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

ACL continues to ignore the jurisprudence of this state which directly addresses its due process argument. Just as here, *Sangamo* argued that §38-61-10 was “unconstitutional.” *Id.* at 131. The South Carolina Supreme Court there opined that

insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of the law of South Carolina when they respectively provided or received insurance on interests located in this state.

Id. ACL sold its products throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent, whatever insuring assets of ACL exist and related claims are subject to the substantive law of

South Carolina and nothing about that result is violative of due process.

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of ACL. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Asbestos Corporation, Ltd. 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. This order includes the right and obligation to administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of ACL against which the ACL may have claims.

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.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of ACL or any entity for whom ACL did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for ACL to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of ACL and its subsidiaries, successors, and assigns, is appropriate. Moreover, the Court authorizes Mr. Protopapas to assume the control of the defense of all litigation matters pending in the United States against ACL. Peter Protopapas is hereby appointed the receiver over ACL consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-09-07 15:53:18 page 9 of 9

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

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

Case No. 2023-CP-40-01759

John A. Tibbs and Margaret B. Tibbs,

Respondents,

v.

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

Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind
Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC,

Defendants,

Of which Asbestos Corporation Limited, is

Appellant.

NOTICE OF APPEAL

**** Counsel identified on next page ****
CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
James D. Gandy, III (SC Bar No. 11925)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
*Attorneys for Appellant Asbestos
Corporation Limited*

Other Counsel of Record:

Theile B. McVey
Jamie D. Rutkoski
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina, 29202-1476
(803) 256-4242

and

Aaron D. Chapman
David C. Humen
DEAN OMAR BRANHAM SHIRLEY, LLP
302 N. Market Street, Suite 300
Dallas, Texas 75202
(214) 722-5990

Attorneys for Respondent

Peter D. Protopapas
John K. Chandler
Brian M. Barnwell

RIKARD & PROTOPAPAS, LLC
2110 N. Beltline Blvd, Columbia, SC 29204
PO Box 5640, Columbia, SC 29250
(803) 978-6111

*Purported receiver for “insurance assets” of Asbestos Corporation Limited per Order being
appealed*

Defendant Asbestos Corporation Limited hereby appeals the following orders of the Honorable Jean Hoefer Toal, Circuit Court Judge, copies of which are attached hereto:

- **Order Holding Atlas Asbestos in Contempt and Striking Pleadings**, filed September 8, 2023;
- **Order on Plaintiffs' Motion to Appoint a Receiver**, filed September 8, 2023;

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on September 8, 2023.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Stephen L. Brown
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
James D. Gandy, III (SC Bar No. 11925)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

*Attorneys for Appellant Asbestos
Corporation Limited*

Charleston, South Carolina

September 13, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually) C/A NO. 2022-CP-40-02979
and as Executor of the Estate of)
PATSY ANN MITCHELL,)
)
Plaintiff,) In Re:
v.) Asbestos Personal Injury Litigation
) Coordinated Docket
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.)
)
BAHNSON, INC.)
)
BEATY INVESTMENTS, INC.)
)
BECHTEL CORPORATION)
)
THE BONITZ COMPANY)
)

AMENDED SUMMONS

BW/IP INC.	)
	)
CAMERON INTERNATIONAL	)
CORPORATION	)
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CAPE PLC	)
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CARRIER CORPORATION	)
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CARVER PUMP COMPANY	)
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CHAMPLAIN CABLE CORPORATION	)
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CLEAVER-BROOKS, INC.	)
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CLYDE UNION INC.	)
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COVIL CORPORATION	)
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CRANE CO.	)
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CRANE INSTRUMENTATION &	)
SAMPLING, INC.	)
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DANIEL INTERNATIONAL CORPORATION	)
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DAVIS MECHANICAL CONTRACTORS,	)
INC.	)
	)
DETROIT STOKER COMPANY, LLC	)
	)
ELLINGTON INSULATION COMPANY,	)
INC.	)
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ERICO INTERNATIONAL CORPORATION	)
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FISHER CONTROLS INTERNATIONAL,	)
LLC	)
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FLOWSERVE US INC.	)
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FLUOR CONSTRUCTORS	)
INTERNATIONAL	)
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FLUOR CONSTRUCTORS	)
INTERNATIONAL, INC.	)
	)

FLUOR DANIEL SERVICES CORPORATION)
)
FLUOR ENTERPRISES, INC.)
)
FMC CORPORATION)
)
FORD MOTOR COMPANY)
)
FOSTER WHEELER ENERGY)
CORPORATION)
)
GARDNER DENVER, INC.)
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GENERAL ELECTRIC COMPANY)
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GENERAL PARTS, INC.)
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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)
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HONEYWELL INTERNATIONAL, INC.)
)
IMO INDUSTRIES INC.)
)
INDUSTRIAL HOLDINGS CORPORATION)
)
INTERNATIONAL PAPER COMPANY)
)
ITT LLC)
)
J. & L. INSULATION, INC.)
)

METROPOLITAN LIFE INSURANCE	)
COMPANY	)
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MORSE TEC LLC	)
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MOYNO, INC.	)
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NIBCO INC.	)
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PARAMOUNT GLOBAL	)
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PENNSYLVANIA TRANSFORMER	)
TECHNOLOGY, INC.	)
	)
PRESNELL INSULATION CO., INC.	)
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REDCO CORPORATION	)
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RUST ENGINEERING & CONSTRUCTION,	)
INC.	)
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RUST INTERNATIONAL INC.	)
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SAINT-GOBAIN ABRASIVES, INC.	)
	)
SCHNEIDER ELECTRIC SYSTEMS USA,	)
INC.	)
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SEQUOIA VENTURES INC.	)
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SERVICE PRODUCTS, INC.	)
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THE SHERWIN-WILLIAMS COMPANY	)
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SOUTHERN INSULATION, INC.	)
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SPIRAX SARCO, INC.	)
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SPX CORPORATION	)
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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.)
_____)

AMENDED SUMMONS

TO DEFENDANTS ABOVE-NAMED:

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

YOU ARE HEREBY SUMMONED and required to answer the First Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the Plaintiff's counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Shawna Forbes-King (To be admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-599

sking@dobslegal.com

Other email: mcomanche@dobslegal.com

ATTORNEYS FOR PLAINTIFF

May 17, 2023

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually)
and as Executor of the Estate of)
PATSY ANN MITCHELL,)
Plaintiff,)
v.)
In Re:

C/A NO. 2022-CP-40-02979

Asbestos Personal Injury Litigation
Coordinated Docket

3M COMPANY)
f/k/a MINNESOTA MINING AND)
MANUFACTURING COMPANY)
Living Lung Cancer

ABB INC.

FIRST AMENDED COMPLAINT

ADVANCE AUTO PARTS, INC.

AIR & LIQUID SYSTEMS CORPORATION)
individually and as successor-in-interest to)
BUFFALO PUMPS, INC.)
(Jury Trial Demanded)

ALFA LAVAL INC.

AMENTUM ENVIRONMENT & ENERGY, INC.

f/k/a AECOM ENERGY & CONSTRUCTION, INC., individually, and as successor-in-interest to YEARGIN CONSTRUCTION COMPANY, INC.

AMETEK, INC.

individually and as successor-in-interest to HAVEG INDUSTRIES, INC. and as successor-in-interest to HERCULES, INC.

ANCHOR/DARLING VALVE COMPANY

A.O. SMITH CORPORATION

ARMSTRONG INTERNATIONAL, INC.

ASBESTOS CORPORATION LIMITED

ATLAS TURNER INC.)
individually and as successor-in-interest to)
ATLAS ASBESTOS CO., a foreign company)
))
AWT AIR COMPANY, INC.,)
f/k/a RESEARCH-COTTRELL, INC.)
))
BAHNSON, INC.)
))
BEATY INVESTMENTS, INC.)
f/k/a GUY M. BEATY & CO.)
))
BECHTEL CORPORATION)
))
THE BONITZ COMPANY)
f/k/a BONITZ INSULATION COMPANY)
))
BW/IP INC.)
and its wholly-owned subsidiaries)
))
CAMERON INTERNATIONAL)
CORPORATION)
individually and as successor-in-interest to)
NEWCO VALVES, LLC and O.I.C. VALVE)
CORPORATION)
))
CAPE PLC)
individually and as successor-in-interest to)
CAPE INDUSTRIES LTD. f/k/a CAPE)
ASBESTOS COMPANY LTD. and its)
subsidiaries and global affiliates)
))
CARRIER CORPORATION)
))
CARVER PUMP COMPANY)
))
CHAMPLAIN CABLE CORPORATION)
Individually and as successor-in-interest to)
HERCULES, INC. and HAVEG INDUSTRIES,)
INC.)
))
CLEAVER-BROOKS, INC.)
f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-)
BROOKS DIVISION)
))
CLYDE UNION INC.)
f/k/a UNION PUMP COMPANY)

COVIL CORPORATION

CRANE CO.

**CRANE INSTRUMENTATION &
SAMPLING, INC.**

f/k/a CIRCOR INSTRUMENTATION
TECHNOLOGIES, INC. f/k/a HOKE INC.

**DANIEL INTERNATIONAL
CORPORATION**

**DAVIS MECHANICAL CONTRACTORS,
INC.**

DETROIT STOKER COMPANY, LLC

**ELLINGTON INSULATION COMPANY,
INC.**

**ERICO INTERNATIONAL
CORPORATION**

f/k/a ERICO PRODUCTS, INC.

**FISHER CONTROLS INTERNATIONAL,
LLC**

FLOWSERVE US INC.

individually, and as successor-in-interest to
EDWARD VALVES, INC. and as successor-in-
interest to VOGT VALVE COMPANY

**FLUOR CONSTRUCTORS
INTERNATIONAL**

f/k/a FLUOR CORPORATION

**FLUOR CONSTRUCTORS
INTERNATIONAL, INC.**

**FLUOR DANIEL SERVICES
CORPORATION**

FLUOR ENTERPRISES, INC.

FMC CORPORATION

on behalf of its former Peerless Pump business

FORD MOTOR COMPANY

**FOSTER WHEELER ENERGY
CORPORATION**

GARDNER DENVER, INC.

GENERAL ELECTRIC COMPANY

GENERAL PARTS, INC.
individually and as successor-in-interest to
CARQUEST CORPORATION

GENUINE PARTS COMPANY
d/b/a NAPA

**THE GOODYEAR TIRE & RUBBER
COMPANY**

THE GORMAN-RUPP COMPANY

GOULDS PUMPS, INCORPORATED

**GRAPHIC PACKAGING
INTERNATIONAL, LLC**

GREAT BARRIER INSULATION CO.

GRINNELL LLC
d/b/a GRINNELL CORPORATION

HERCULES LLC
f/k/a HERCULES, INCORPORATED

HONEYWELL INTERNATIONAL, INC.
individually, and as successor-in-interest to
ALLIED SIGNAL, INC., as successor to
BENDIX CORPORATION

IMO INDUSTRIES INC.

**INDUSTRIAL HOLDINGS
CORPORATION**
f/k/a THE CARBORUNDUM COMPANY

INTERNATIONAL PAPER COMPANY

ITT LLC

f/k/a ITT CORPORATION, ITT INDUSTRIES
INC., ITT FLUID PRODUCTS CORP.,
HOFFMAN SPECIALTY MFG. CORP., BELL
and GOSSETT COMPANY, and ITT
MARLOW, and KENNEDY VALVE
COMPANY

J. & L. INSULATION, INC.**METROPOLITAN LIFE INSURANCE
COMPANY**

a wholly-owned subsidiary of METLIFE INC.

MORSE TEC LLC

f/k/a BORGWARNER MORSE TEC LLC, and
successor-by-merger to BORG-WARNER
CORPORATION

MOYNO, INC.**NIBCO 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 and also as successor-in-
interest to BF STURTEVANT

**PENNSYLVANIA TRANSFORMER
TECHNOLOGY, INC.**

individually and as successor-in-interest to
MCGRAW-EDISON COMPANY

PRESNELL INSULATION CO., INC.**REDCO CORPORATION**

f/k/a CRANE CO.

**RUST ENGINEERING &
CONSTRUCTION, INC.**

RUST INTERNATIONAL INC.	)
	)
SAINT-GOBAIN ABRASIVES, INC.	)
f/k/a NORTON COMPANY	)
	)
SCHNEIDER ELECTRIC SYSTEMS USA, INC.	)
f/k/a INVENSYS SYSTEMS, INC.	)
	)
SEQUOIA VENTURES INC.	)
f/k/a BECHTEL CORPORATION	)
	)
SERVICE PRODUCTS, INC.	)
	)
THE SHERWIN-WILLIAMS COMPANY	)
	)
SOUTHERN INSULATION, INC.	)
	)
SPIRAX SARCO, INC.	)
	)
SPX CORPORATION	)
individually and successor-in-interest to YUBA	)
HEAT TRANSFER LLC	)
	)
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.	)
f/k/a WEIR VALVES & CONTROLS USA	)
INC. d/b/a ATWOOD & MORRILL CO., INC.	)
	)
VELAN VALVE CORP.	)
	)
VIKING PUMP, INC.	)
	)
VISTRA INTERMEDIATE COMPANY LLC	)
individually and as successor-in-interest to	)
CRSS INC.	)
	)
THE WILLIAM POWELL COMPANY	)

WIND UP, LTD.

individually and as successor-in-interest to PIPE
& BOILER INSULATION, INC. f/k/a
CAROLINA INDUSTRIAL INSULATING CO.

YUBA HEAT TRANSFER LLC

ZURN INDUSTRIES, LLC

individually and as successor-in-interest to
ZURN INDUSTRIES, INC. and as successor-in-
interest to ERIE CITY BOILER WORKS

Defendants.

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff, TED EVERETTE MITCHELL, individually as Executor of the Estate of PATSY ANN MITCHELL (hereinafter "Plaintiff"), sues the named Defendants for compensatory and punitive damages, by and through his attorneys, and comes before this court and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff Ted Everett Mitchell has been diagnosed with lung cancer.

2. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as “Product Defendants.” At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products and raw materials.

4. Each Defendant, or its predecessors in interest, that owned and/or controlled the work sites where Plaintiff Ted Everett Mitchell experienced occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment in his immediate vicinity are referred to herein as the “Premises Defendants.” At all times relevant to this action:

- (a) the Premises Defendants owned the property and approved the use of asbestos-containing materials on its premises.
- (b) the Premises Defendants invited the Plaintiff Ted Everett Mitchell, as a worker, on to Defendant’s premises to perform work for Defendant’s benefit. Plaintiff was an invitee who had express permission to enter Defendant’s premises for the purpose of benefitting the owner (Defendant).
- (c) the Premises Defendants owed a duty of due care to discover risks and take safety precautions to warn of and eliminate unreasonable risks.
- (d) the Premises Defendants’ failure to warn of or eliminate the unreasonable risks associated with working on or around asbestos-containing materials on Defendants’ premises was a substantial factor contributing to cause Plaintiff Ted Everett Mitchell’s lung cancer.

5. Each Defendant, or its predecessors in interest, that provided labor, materials, goods, and/or services as architects, consultants, engineers, draftsmen, technicians, surveyors, or otherwise in connection with the design and/or repairs at the work sites where Plaintiff Ted Everett Mitchell experienced occupational exposure as a result of working with and around others

working with asbestos and/or asbestos-containing products, materials, or equipment, are referred to herein as the “Design Defendants.”

6. Plaintiff’s claims against the Product Defendants, as defined herein, arise out of Defendants’ purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

7. Plaintiff’s claims against the Premises Defendants, as defined herein, arise out of Defendants’ ownership and/or control of real property located in South Carolina, North Carolina, and/or Georgia and the purchase and use of asbestos-containing products on their premises located in South Carolina, North Carolina, and/or Georgia, and/or contracting with the employer of Plaintiff Ted Everett Mitchell in South Carolina, North Carolina, and/or Georgia for Plaintiff and others to cross state lines to work on Defendant’s premises.

8. Plaintiff’s claims against the Design Defendants, as defined herein, arise out of Defendants’, and/or Defendants’ employees’, direct and/or indirect purchase and use of asbestos and/or asbestos-containing products, materials, or equipment at the various industrial sites located in South Carolina where Plaintiff Ted Everett Mitchell experienced occupational exposure to lethal doses of asbestos as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment.

9. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and whose substantial and/or systematic business in South Carolina exposed Plaintiff Ted Everett Mitchell to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

10. Plaintiff Ted Everette Mitchell's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Ted Everette Mitchell's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

11. Plaintiff was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

12. Plaintiff Ted Everette Mitchell worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

13. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an "alternate entity" as hereinafter defined. Defendants are liable for the acts of their "alternate entity" and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiff's remedy against each such "alternate entity"; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"; such "alternate entities" have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff's remedy against each such "alternate entity"; each such Defendant has the ability to assume the risk-spreading role of each such "alternate entity;" and that each such defendant enjoys the goodwill originally attached to each "alternate entity."

DEFENDANT	ALTERNATE ENTITY
3M COMPANY	MINNESOTA MINING AND MANUFACTURING COMPANY
AIR & LIQUID SYSTEMS CORPORATION	BUFFALO PUMPS, INC.
AMENTUM ENVIRONMENT & ENERGY, INC.	AECOM ENERGY & CONSTRUCTION, INC. and YEARGIN CONSTRUCTION COMPANY, INC.
AMETEK, INC.	HAVEG INDUSTRIES, INC. and HERCULES, INC.
ATLAS TURNER INC.	ATLAS ASBESTOS CO.
AWT AIR COMPANY, INC.	f/k/a RESEARCH-COTTRELL, INC.
BEATY INVESTMENTS, INC.	GUY M. BEATY & CO.
THE BONITZ COMPANY	BONITZ INSULATION COMPANY
BW/IP INC.	its wholly-owned subsidiaries
CAMERON INTERNATIONAL CORPORATION	NEWCO VALVES, LLC and O.I.C VALVE CORPORATION
CAPE PLC	CAPE INDUSTRIES LTD. and CAPE ASBESTOS COMPANY LTD.
CHAMPLAIN CABLE CORPORATION	HERCULES, INC. and HAVEG INDUSTRIES, INC.
CLEAVER-BROOKS, INC.	AQUA-CHEM, INC. and CLEAVER-BROOKS DIVISION
CLYDE UNION INC.	UNION PUMP COMPANY

DEFENDANT	ALTERNATE ENTITY
CRANE INSTRUMENTATION & SAMPLING, INC.	CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. and HOKE INC.
ERICO INTERNATIONAL CORPORATION.	ERICO PRODUCTS, INC.
FLOWSERVE US INC.	EDWARD VALVES, INC. and VOGT VALVE COMPANY
FLUOR CONSTRUCTORS INTERNATIONAL	FLUOR CORPORATION
FMC CORPORATION	on behalf of its former Peerless Pump business
GENERAL PARTS, INC.	CARQUEST CORPORATION
GENUINE PARTS COMPANY	NAPA
GRINNELL LLC	GRINNELL CORPORATION
HERCULES LLC	HERCULES, INCORPORATED
HONEYWELL INTERNATIONAL, INC.	ALLIED SIGNAL, INC. and BENDIX CORPORATION
INDUSTRIAL HOLDINGS CORPORATION	THE CARBORUNDUM COMPANY
ITT LLC	ITT CORPORATION, ITT INDUSTRIES, INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL and GOSSETT COMPANY, ITT MARLOW, and KENNEDY VALVE COMPANY
METROPOLITAN LIFE INSURANCE COMPANY	METLIFE INC.
MORSE TEC LLC	BORGWARNER MORSE TEC LLC and BORG-WARNER CORPORATION

DEFENDANT	ALTERNATE ENTITY
PARAMOUNT GLOBAL	VIACOMCBS INC., CBS CORPORATION, a Delaware corporation, VIACOM, INC., CBS CORPORATION, a Pennsylvania corporation, WESTINGHOUSE ELECTRIC CORPORATION, and BF STURTEVANT
PENNSYLVANIA TRANSFORMER TECHNOLOGY, INC.	MCGRAW-EDISON COMPANY
REDCO CORPORATION	CRANE CO.
SAINT-GOBAIN ABRASIVES, INC.	NORTON COMPANY
SCHNEIDER ELECTRIC SYSTEMS USA, INC.	INVENSYS SYSTEMS, INC.
SEQUOIA VENTURES INC.	BECHTEL CORPORATION
SPX CORPORATION	YUBA HEAT TRANSFER LLC
VALVES AND CONTROLS US, INC.	WEIR VALVES & CONTROLS USA INC. and ATWOOD & MORRILL CO., INC.
VISTRA INTERMEDIATE COMPANY LLC	CRSS INC.
WIND UP, LTD.	PIPE & BOILER INSULATION, INC and CAROLINA INDUSTRIAL INSULATING CO.
ZURN INDUSTRIES, LLC	ZURN INDUSTRIES, INC. and ERIE CITY BOILER WORKS

14. Plaintiff has been informed and believes, and thereon alleges, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other

state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

15. Plaintiff has been informed and believes, and thereon alleges, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

16. As a direct and proximate result of the conduct as alleged within, Plaintiff Ted Everette Mitchell suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

17. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Ted Everette Mitchell incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Ted Everette Mitchell's medical treatment is ascertained.

18. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Ted Everette Mitchell incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

19. Plaintiff hereby disclaims each and every claim or cause of action which does or may arise from any United States armed forces service, or on any federal enclave. This disclaimer

is not related solely to actions taken by or at the direction of a federal officer, but is, rather broader. Plaintiff is not making any claims and is not alleging any causes of action against any entity for any asbestos exposure of any kind which occurred as a result of Plaintiff Ted Everette Mitchell's United States armed forces service. Moreover, Plaintiff is further disclaiming each and every claim or cause of action arising from any exposure to asbestos as a result of the Plaintiff's presence on or at any federal enclave. Plaintiff further disclaims each and every claim or cause of action arising under the United States Constitution and under any Federal Law or Regulation. Finally, Plaintiff disclaims each and every claim or cause of action which may be asserted under federal admiralty or maritime law. Courts across the Country have found that such disclaimers are proper and within the province of the Plaintiff to disclaim. Any removal by any defendant on the basis of the disclaimed claims will result in a motion for sanctions and seeking attorneys' fees.

THE PARTIES

20. Plaintiff Ted Everette Mitchell and Patsy Ann Mitchell are currently residents of the State of Georgia. Plaintiff Ted Everette Mitchell was exposed to asbestos during the course of his career at various job sites, including but not limited to, locations in South Carolina, North Carolina, and Georgia.

21. Defendant, **3M COMPANY**, f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, was and is a Delaware corporation with its principal place of business in Minnesota. At all times material hereto, 3M COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, or products fraudulently marketed to prevent asbestos exposure including, but not limited to, 3M masks and 3M asbestos-containing products. 3M COMPANY is sued as a Product

Defendant. Plaintiff's claims against 3M COMPANY arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **ABB INC.**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, ABB INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Bailey valves. ABB INC. is sued as a Product Defendant. Plaintiff's claims against ABB INC. arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **ADVANCE AUTO PARTS, INC.**, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, ADVANCE AUTO PARTS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing friction products. ADVANCE AUTO PARTS, INC. is sued as a Product Defendant. Plaintiff's claims against ADVANCE AUTO PARTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **AIR & LIQUID SYSTEMS CORPORATION**, individually and as successor-in-interest to BUFFALO PUMPS, INC., was and is a Pennsylvania corporation with its principal place of business in Pennsylvania. At all times material hereto, AIR & LIQUID SYSTEMS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buffalo pumps. AIR & LIQUID SYSTEMS CORPORATION is sued as a

Product Defendant. Plaintiff's claims against AIR & LIQUID SYSTEMS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **ALFA LAVAL INC.**, was and is a New Jersey corporation with its principal place of business in Virginia. At all times material hereto, ALFA LAVAL INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sharples oil purifiers. ALFA LAVAL INC. is sued as a Product Defendant. Plaintiff's claims against ALFA LAVAL INC. arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **AMENTUM ENVIRONMENT & ENERGY, INC.**, f/k/a AECOM ENERGY & CONSTRUCTION, INC., individually and as successor-in-interest to YEARGIN CONSTRUCTION COMPANY, INC., was and is an Ohio corporation with its principal place of business in Maryland. At all times material hereto, AMENTUM ENVIRONMENT & ENERGY, INC., mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. AMENTUM ENVIRONMENT & ENERGY, INC. is sued as a Product Defendant. AMENTUM ENVIRONMENT & ENERGY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against AMENTUM ENVIRONMENT & ENERGY, INC. arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **AMETEK, INC.**, individually and as successor-in-interest to HAVEG INDUSTRIES, INC. and as successor-in-interest to HERCULES, INC., was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, AMETEK, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Chemtite pipe and Haveg pipe. AMETEK, INC. is sued as a Product Defendant. Plaintiff's claims against AMETEK, INC. arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **ANCHOR/DARLING VALVE COMPANY**, was and is a Pennsylvania corporation with its principal place of business in Texas. At all times material hereto, ANCHOR/DARLING VALVE COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Darling valves. ANCHOR/DARLING VALVE COMPANY is sued as a Product Defendant. Plaintiff's claims against ANCHOR/DARLING VALVE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

29. Defendant, **A.O. SMITH CORPORATION**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, A.O. SMITH CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing heaters and boilers, including but not limited to Burkey boilers. A.O. SMITH CORPORATION is

sued as a Product Defendant. Plaintiff's claims against A.O. SMITH CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

30. Defendant, **ARMSTRONG INTERNATIONAL, INC.**, was and is a Michigan corporation with its principal place of business in Michigan. At all times material hereto, ARMSTRONG INTERNATIONAL, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Armstrong steam traps and strainers. ARMSTRONG INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiff's claims against ARMSTRONG INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

31. Defendant, **ASBESTOS CORPORATION LIMITED**, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ASBESTOS CORPORATIONN LIMITED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. ASBESTOS CORPORATION LIMITED is sued as a Product Defendant. Plaintiffs' claims against ASBESTOS CORPORATION LIMITED arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **ATLAS TURNER, INC.**, as successor to ATLAS ASBESTOS CO, was and is a corporation organized and existing under the laws of the country of Canada, with its principal place of business in Canada. At all times material hereto, ATLAS TURNER, INC. mined,

manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at jobsites in South Carolina and North Carolina. ATLAS TURNER, INC. is sued as a Product Defendant. Plaintiffs' claims against ATLAS TURNER, INC. arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **AWT AIR COMPANY, INC.** f/k/a RESEARCH-COTTRELL, INC., was and is a New Jersey corporation with its principal place of business in Massachusetts. At all times material hereto, AWT AIR COMPANY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Buell precipitators. AWT AIR COMPANY, INC. is sued as a Product Defendant. Plaintiff's claims against AWT AIR COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **BAHNSON, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BAHNSON, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. BAHNSON, INC. is sued as a Product Defendant. BAHNSON, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses

of asbestos. Plaintiff's claims against BAHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **BEATY INVESTMENTS, INC.**, f/k/a GUY M. BEATY & CO., was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, BEATY INVESTMENTS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. BEATY INVESTMENTS, INC. is sued as a Product Defendant. BEATY INVESTMENTS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Beaty Investments, Inc., exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against BEATY INVESTMENTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

36. Defendant, **BECHTEL CORPORATION**, was and is a Nevada corporation with its principal place of business in Virginia. At all times material hereto, BECHTEL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. BECHTEL CORPORATION is sued as a Product Defendant. BECHTEL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted

Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against BECHTEL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

37. Defendant, **THE BONITZ COMPANY**, f/k/a BONITZ INSULATION COMPANY, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, THE BONITZ COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. THE BONITZ COMPANY is sued as a Product Defendant. THE BONITZ COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of The Bonitz Company, exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against THE BONITZ COMPANY arise out of this Defendant's business activities in the State of South Carolina.

38. Defendant, **BW/IP INC.**, and its wholly-owned subsidiaries, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, BW/IP INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Byron Jackson pumps and Borg Warner pumps and valves. BW/IP INC. is sued as a Product Defendant. Plaintiff's claims against BW/IP INC. arise out of this Defendant's business activities in the State of South Carolina.

39. Defendant, **CAMERON INTERNATIONAL CORPORATION**, individually and as successor-in-interest to NEWCO VALVES, LLC and O.I.C. VALVE CORPORATION, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, CAMERON INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cooper Bessemer air compressors and diesel engines. CAMERON INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against CAMERON INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **CAPE PLC**, individually and as successor-in-interest to CAPE INDUSTRIES LTD f/k/a CAPE ASBESTOS COMPANY LTD., and its subsidiaries and global affiliates, was and is a private liability company organized and existing under the laws of the United Kingdom of Great Britain and Northern Ireland with its court appointed Receiver maintaining its principal place of business in South Carolina. At all times material hereto, CAPE PLC manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina. CAPE PLC is sued as a Product Defendant. Plaintiffs' claims against CAPE PLC arise out of this Defendant's business activities in the State of South Carolina.

41. Defendant, **CARRIER CORPORATION**, was and is a Delaware corporation with its principal place of business in Florida. At all times material hereto, CARRIER CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carrier air compressors and HVAC products. CARRIER CORPORATION is sued as a Product Defendant. Plaintiff's claims against CARRIER CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

42. Defendant, **CARVER PUMP COMPANY**, was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, CARVER PUMP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Carver pumps. CARVER PUMP COMPANY is sued as a Product Defendant. Plaintiff's claims against CARVER PUMP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

43. Defendant, **CHAMPLAIN CABLE CORPORATION**, individually and as successor-in-interest to HERCULES, INC. and HAVEG INDUSTRIES, INC., was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, CHAMPLAIN CABLE CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Haveg pipe. CHAMPLAIN CABLE CORPORATION is sued as a Product Defendant. Plaintiff's claims against CHAMPLAIN CABLE CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

44. Defendant, **CLEAVER-BROOKS, INC.**, f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-BROOKS DIVISION, was and is a Delaware corporation with its principal place of

business in Georgia. At all times material hereto, CLEAVER-BROOKS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers and distillers. CLEAVER-BROOKS, INC. is sued as a Product Defendant. Plaintiff's claims against CLEAVER-BROOKS, INC. arise out of this Defendant's business activities in the State of South Carolina.

45. Defendant, **CLYDE UNION INC.**, f/k/a UNION PUMP COMPANY, was and is a Michigan corporation with its principal place of business in North Carolina. At all times material hereto, CLYDE UNION INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Union pumps. CLYDE UNION INC. is sued as a Product Defendant. Plaintiff's claims against CLYDE UNION INC. arise out of this Defendant's business activities in the State of South Carolina.

46. Defendant, **COVIL CORPORATION**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, COVIL CORPORATION manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. COVIL CORPORATION is sued as a Product Defendant. COVIL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Covil Corporation, exposed tens of thousands

of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

47. Defendant, **CRANE CO.**, was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, CRANE CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves, feed tanks, and pumps, Chempump pumps and valves, Cochrane pumps and feed tanks, Deming pumps, and Stockham valves. CRANE CO. is sued as a Product Defendant. Plaintiff's claims against CRANE CO. arise out of this Defendant's business activities in the State of South Carolina.

48. Defendant, **CRANE INSTRUMENTATION & SAMPLING, INC.** f/k/a CIRCOR INSTRUMENTATION TECHNOLOGIES, INC. f/k/a HOKE INC., was and is a New York corporation with its principal place of business in South Carolina. At all times material hereto, CRANE INSTRUMENTATION & SAMPLING, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Hoke valves. CRANE INSTRUMENTATION & SAMPLING, INC. is sued as a Product Defendant. Plaintiff's claims against CRANE INSTRUMENTATION & SAMPLING, INC. arise out of this Defendant's business activities in the State of South Carolina.

49. Defendant, **DANIEL INTERNATIONAL CORPORATION**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, DANIEL INTERNATIONAL CORPORATION mined, manufactured, processed,

imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. DANIEL INTERNATIONAL CORPORATION is sued as a Product Defendant. DANIEL INTERNATIONAL CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against DANIEL INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

50. Defendant, **DAVIS MECHANICAL CONTRACTORS, INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, DAVIS MECHANICAL CONTRACTORS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. DAVIS MECHANICAL CONTRACTORS, INC. is sued as a Product Defendant. DAVIS MECHANICAL CONTRACTORS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Davis Mechanical Contractors, Inc., exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against DAVIS MECHANICAL CONTRACTORS, INC. arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **DETROIT STOKER COMPANY, LLC**, was and is a Michigan limited liability company with its principal place of business in Michigan. At all times material hereto, DETROIT STOKER COMPANY, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing boilers and digesters. DETROIT STOKER COMPANY, LLC is sued as a Product Defendant. Plaintiff's claims against DETROIT STOKER COMPANY, LLC arise out of this Defendant's business activities in the State of South Carolina.

52. Defendant, **ELLINGTON INSULATION COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, ELLINGTON INSULATION COMPANY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. ELLINGTON INSULATION COMPANY, INC. is sued as a Product Defendant. ELLINGTON INSULATION COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against ELLINGTON INSULATION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **ERICO INTERNATIONAL CORPORATION** f/k/a ERICO PRODUCTS, INC., was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, ERICO INTERNATIONAL CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or

retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing products used in the Cadweld splicing process. ERICO INTERNATIONAL CORPORATION is sued as a Product Defendant. Plaintiff's claims against ERICO INTERNATIONAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **FISHER CONTROLS INTERNATIONAL, LLC**, was and is a Delaware limited liability company with its principal place of business in Missouri. At all times material hereto, FISHER CONTROLS INTERNATIONAL, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Fisher valves. FISHER CONTROLS INTERNATIONAL, LLC is sued as a Product Defendant. Plaintiff's claims against FISHER CONTROLS INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **FLOWERVE US INC.**, individually and as successor-in-interest to EDWARD VALVES, INC. and as successor-in-interest to VOGT VALVE COMPANY, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLOWERVE US INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Edward valves and Vogt valves. FLOWERVE US INC. is sued as a Product Defendant. Plaintiff's claims against FLOWERVE US INC. arise out of this Defendant's business activities in the State of South Carolina.

56. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL** f/k/a/ **FLUOR CORPORATION**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against **FLUOR CONSTRUCTORS INTERNATIONAL** arise out of this Defendant's business activities in the State of South Carolina.

57. Defendant, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is sued as a Product Defendant. **FLUOR CONSTRUCTORS INTERNATIONAL, INC.** is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against

FLUOR CONSTRUCTORS INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **FLUOR DANIEL SERVICES CORPORATION**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, FLUOR DANIEL SERVICES CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. FLUOR DANIEL SERVICES CORPORATION is sued as a Product Defendant. FLUOR DANIEL SERVICES CORPORATION is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against FLUOR DANIEL SERVICES CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **FLUOR ENTERPRISES, INC.**, was and is a California corporation with its principal place of business in Texas. At all times material hereto, FLUOR ENTERPRISES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. FLUOR ENTERPRISES, INC. is sued as a Product Defendant. FLUOR ENTERPRISES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted

Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against FLUOR ENTERPRISES, INC. arise out of this Defendant's business activities in the State of South Carolina.

60. Defendant, **FMC CORPORATION**, on behalf of its former Peerless Pump business, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, FMC CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. FMC CORPORATION is sued as a Product Defendant. Plaintiff's claims against FMC CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

61. Defendant, **FORD MOTOR COMPANY**, was and is a Delaware corporation with its principal place of business in Michigan. At all times material hereto, FORD MOTOR COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing automotive friction products. FORD MOTOR COMPANY is sued as a Product Defendant. Plaintiff's claims against FORD MOTOR COMPANY arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **FOSTER WHEELER ENERGY CORPORATION**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, FOSTER WHEELER ENERGY CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foster Wheeler boilers and pump turbine condensers. FOSTER

WHEELER ENERGY CORPORATION is sued as a Product Defendant. Plaintiff's claims against FOSTER WHEELER ENERGY CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

63. Defendant, **GARDNER DENVER, INC.**, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, GARDNER DENVER, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Gardner Denver pumps. GARDNER DENVER, INC. is sued as a Product Defendant. Plaintiff's claims against GARDNER DENVER, INC. arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **GENERAL ELECTRIC COMPANY**, was and is a New York corporation with its principal place of business in Massachusetts. At all times material hereto, GENERAL ELECTRIC COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing General Electric electrical panels, wires, turbines, motors, and generators. GENERAL ELECTRIC COMPANY is sued as a Product Defendant. Plaintiff's claims against GENERAL ELECTRIC COMPANY arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **GENERAL PARTS, INC.**, individually and as successor-in-interest to CARQUEST CORPORATION, was and is a North Carolina corporation with its principal place of business in Virginia. At all times material hereto, GENERAL PARTS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or

retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing friction products. GENERAL PARTS, INC. is sued as a Product Defendant. Plaintiff's claims against GENERAL PARTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

66. Defendant, **GENUINE PARTS COMPANY**, d/b/a NAPA, was and is a Georgia corporation with its principal place of business in Georgia. At all times material hereto, GENUINE PARTS COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing friction products. GENUINE PARTS COMPANY is sued as a Product Defendant. Plaintiff's claims against GENUINE PARTS COMPANY arise out of this Defendant's business activities in the State of South Carolina.

67. Defendant, **THE GOODYEAR TIRE & RUBBER COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GOODYEAR TIRE & RUBBER COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Durabla gaskets. THE GOODYEAR TIRE & RUBBER COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GOODYEAR TIRE & RUBBER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **THE GORMAN-RUPP COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE GORMAN-RUPP COMPANY mined, manufactured, processed, imported, converted, compounded, supplied,

installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing air ejectors, distilling plants, and pumps. THE GORMAN-RUPP COMPANY is sued as a Product Defendant. Plaintiff's claims against THE GORMAN-RUPP COMPANY arise out of this Defendant's business activities in the State of South Carolina.

69. Defendant, **GOULDS PUMPS, INCORPORATED**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, GOULDS PUMPS, INCORPORATED mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Goulds pumps. GOULDS PUMPS, INCORPORATED is sued as a Product Defendant. Plaintiff's claims against GOULDS PUMPS, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

70. Defendant, **GRAPHIC PACKAGING INTERNATIONAL, LLC**, was and is a Delaware limited liability company with its principal place of business in Georgia. At all times material hereto, GRAPHIC PACKAGING INTERNATIONAL, LLC owned and/or controlled premises at which Plaintiff Ted Everette Mitchell was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Augusta Mill in Augusta, Georgia. GRAPHIC PACKAGING INTERNATIONAL, LLC is sued as a Premises Defendant. Plaintiff's claims against GRAPHIC PACKAGING INTERNATIONAL, LLC arise out of this Defendant's business activities in the State of South Carolina.

71. Defendant, **GREAT BARRIER INSULATION CO.**, was a Florida corporation with its principal place of business in Alabama. At all times material hereto, GREAT BARRIER

INSULATION CO. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. GREAT BARRIER INSULATION CO. is sued as a Product Defendant. GREAT BARRIER INSULATION CO. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against GREAT BARRIER INSULATION CO. arise out of this Defendant's business activities in the State of South Carolina.

72. Defendant, **GRINNELL LLC**, d/b/a GRINNELL CORPORATION, was and is a Delaware limited liability company with its principal place of business in Florida. At all times material hereto, GRINNELL LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Grinnell valves. GRINNELL LLC is sued as a Product Defendant. Plaintiff's claims against GRINNELL LLC arise out of this Defendant's business activities in the State of South Carolina.

73. Defendant, **HERCULES LLC**, f/k/a HERCULES, INCORPORATED, was and is a Delaware limited liability company with its principal place of business in Delaware. At all times material hereto, HERCULES LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Haveg pipe. HERCULES LLC is sued as a Product Defendant. Plaintiff's

claims against HERCULES LLC arise out of this Defendant's business activities in the State of South Carolina.

74. Defendant, **HONEYWELL INTERNATIONAL INC.**, individually and as successor-in-interest to ALLIED SIGNAL, INC., as successor to BENDIX CORPORATION, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, HONEYWELL INTERNATIONAL INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Bendix brakes. HONEYWELL INTERNATIONAL INC. is sued as a Product Defendant. Plaintiff's claims against HONEYWELL INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina.

75. Defendant, **IMO INDUSTRIES INC.**, was and is a Delaware corporation with its principal place of business in New Jersey. At all times material hereto, IMO INDUSTRIES INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing DeLaval pumps and turbines. IMO INDUSTRIES INC. is sued as a Product Defendant. Plaintiff's claims against IMO INDUSTRIES INC. arise out of this Defendant's business activities in the State of South Carolina.

76. Defendant, **INDUSTRIAL HOLDINGS CORPORATION**, f/k/a THE CARBORUNDUM COMPANY, was and is a New York corporation with its principal place of business in New York. At all times material hereto, INDUSTRIAL HOLDINGS CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Black Magic Diamond carborundum. INDUSTRIAL HOLDINGS CORPORATION is sued as a Product Defendant. Plaintiff's claims against INDUSTRIAL HOLDINGS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

77. Defendant, **INTERNATIONAL PAPER COMPANY**, was and is a New York corporation with its principal place of business in Tennessee. At all times material hereto, INTERNATIONAL PAPER COMPANY owned and/or controlled premises at which Plaintiff Ted Everett Mitchell was exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Augusta Mill in Augusta, Georgia. INTERNATIONAL PAPER COMPANY is sued as a Premises Defendant. Plaintiff's claims against INTERNATIONAL PAPER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

78. Defendant, **ITT LLC**, f/k/a ITT CORPORATION, ITT INDUSTRIES INC., ITT FLUID PRODUCTS CORP., HOFFMAN SPECIALTY MFG. CORP., BELL and GOSSETT COMPANY, ITT MARLOW, and KENNEDY VALVE COMPANY, was and is an Indiana limited liability company with its principal place of business in New York. At all times material hereto, ITT LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Bell and Gossett pumps and Kennedy valves. ITT LLC is sued as a Product Defendant. Plaintiff's claims against ITT LLC arise out of this Defendant's business activities in the State of South Carolina.

79. Defendant, **J. & L. INSULATION, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, J. & L. INSULATION, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. J. & L. INSULATION, INC. is sued as a Product Defendant. J. & L. INSULATION, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of J. & L. Insulation, Inc., exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell to lethal doses of asbestos. Plaintiff's claims against J. & L. INSULATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

80. Defendant, **METROPOLITAN LIFE INSURANCE COMPANY**, a wholly-owned subsidiary of METLIFE INC., was and is a New York corporation with its principal place of business in New York. METROPOLITAN LIFE INSURANCE COMPANY has done and does business in the State of South Carolina. METROPOLITAN LIFE INSURANCE COMPANY is named as a conspiracy defendant.

81. Defendant, **MORSE TEC LLC**, f/k/a BORGWARNER MORSE TEC LLC, and successor-by-merger to BORG-WARNER CORPORATION, was and is a Delaware limited liability company with its principal place of business in Michigan. At all times material hereto, MORSE TEC LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing clutches, including but not limited to Borg-Warner clutches. MORSE TEC LLC is sued as a Product

Defendant. Plaintiff's claims against MORSE TEC LLC arise out of this Defendant's business activities in the State of South Carolina.

82. Defendant, **MOYNO, INC.**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, MOYNO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing pumps. MOYNO, INC. is sued as a Product Defendant. Plaintiff's claims against MOYNO, INC. arise out of this Defendant's business activities in the State of South Carolina.

83. Defendant, **NIBCO INC.**, was and is an Indiana corporation with its principal place of business in Indiana. At all times material hereto, NIBCO INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Nibco valves, gaskets, and packing. NIBCO INC. is sued as a Product Defendant. Plaintiff's claims against NIBCO INC. arise out of this Defendant's business activities in the State of South Carolina.

84. Defendant, **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 and also as successor-in-interest to BF STURTEVANT, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PARAMOUNT GLOBAL mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-

containing Westinghouse blowers and turbines and BF Sturtevant forced-draft blowers and turbines. PARAMOUNT GLOBAL is sued as a Product Defendant. Plaintiff's claims against PARAMOUNT GLOBAL arise out of this Defendant's business activities in the State of South Carolina.

85. Defendant, **PENNSYLVANIA TRANSFORMER TECHNOLOGY, INC.**, individually and as successor-in-interest to MCGRAW-EDISON COMPANY, was and is a Delaware corporation with its principal place of business in Pennsylvania. At all times material hereto, PENNSYLVANIA TRANSFORMER TECHNOLOGY, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing McGraw-Edison transformers. PENNSYLVANIA TRANSFORMER TECHNOLOGY, INC. is sued as a Product Defendant. Plaintiff's claims against PENNSYLVANIA TRANSFORMER TECHNOLOGY, INC. arise out of this Defendant's business activities in the State of South Carolina.

86. Defendant, **PRESNELL INSULATION CO., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, PRESNELL INSULATION CO., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. PRESNELL INSULATION CO., INC. is sued as a Product Defendant. PRESNELL INSULATION CO., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Presnell Insulation Co., Inc., exposed tens of thousands of people, including Ted Mitchell to lethal

doses of asbestos. Plaintiff's claims against PRESNELL INSULATION CO., INC. arise out of this Defendant's business activities in the State of South Carolina.

87. Defendant, **REDCO CORPORATION**, f/k/a CRANE CO., was and is a Delaware corporation with its principal place of business in Connecticut. At all times material hereto, REDCO CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Crane valves, feed tanks, and pumps, Chempump pumps and valves, Cochrane pumps and feed tanks, Deming pumps, and Stockham valves. REDCO CORPORATION is sued as a Product Defendant. Plaintiff's claims against REDCO CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

88. Defendant, **RUST ENGINEERING & CONSTRUCTION, INC.**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, RUST ENGINEERING & CONSTRUCTION, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. RUST ENGINEERING & CONSTRUCTION, INC. is sued as a Product Defendant. RUST ENGINEERING & CONSTRUCTION, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everett Mitchell, to lethal doses of asbestos. Plaintiff's claims against RUST ENGINEERING & CONSTRUCTION, INC. arise out of this Defendant's business activities in the State of South Carolina.

89. Defendant, **RUST INTERNATIONAL INC.**, was and is a Delaware corporation with its principal place of business in Texas. At all times material hereto, RUST INTERNATIONAL INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. RUST INTERNATIONAL INC. is sued as a Product Defendant. RUST INTERNATIONAL INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against RUST INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina.

90. Defendant, **SAINT-GOBAIN ABRASIVES, INC.**, f/k/a NORTON COMPANY, was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, SAINT-GOBAIN ABRASIVES, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Norton grinding wheels. SAINT-GOBAIN ABRASIVES, INC. is sued as a Product Defendant. Plaintiff's claims against SAINT-GOBAIN ABRASIVES, INC. arise out of this Defendant's business activities in the State of South Carolina.

91. Defendant, **SCHNEIDER ELECTRIC SYSTEMS USA, INC.**, f/k/a INVENSYS SYSTEMS, INC., was and is a Massachusetts corporation with its principal place of business in Massachusetts. At all times material hereto, SCHNEIDER ELECTRIC SYSTEMS USA, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced,

repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Foxboro valves and Fulton Syphon valves. SCHNEIDER ELECTRIC SYSTEMS USA, INC. is sued as a Product Defendant. Plaintiff's claims against SCHNEIDER ELECTRIC SYSTEMS USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

92. Defendant, **SEQUOIA VENTURES INC.**, f/k/a BECHTEL CORPORATION, was and is a Delaware corporation with its principal place of business in Virginia. At all times material hereto, SEQUOIA VENTURES INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. SEQUOIA VENTURES INC. is sued as a Product Defendant. SEQUOIA VENTURES INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against SEQUOIA VENTURES INC. arise out of this Defendant's business activities in the State of South Carolina.

93. Defendant, **SERVICE PRODUCTS, INC.**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, SERVICE PRODUCTS, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. SERVICE PRODUCTS, INC. is sued as a Product Defendant.

SERVICE PRODUCTS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff Ted Everett Mitchell, to lethal doses of asbestos. Plaintiff's claims against SERVICE PRODUCTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

94. Defendant, **THE SHERWIN-WILLIAMS COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE SHERWIN-WILLIAMS COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing paint and coatings. THE SHERWIN-WILLIAMS COMPANY is sued as a Product Defendant. Plaintiff's claims against THE SHERWIN-WILLIAMS COMPANY arise out of this Defendant's business activities in the State of South Carolina.

95. Defendant, **SOUTHERN INSULATION INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, SOUTHERN INSULATION INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. SOUTHERN INSULATION INC. is sued as a Product Defendant. SOUTHERN INSULATION INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Southern Insulation Inc., exposed tens of thousands of people, including the Plaintiff Ted Everett Mitchell, to lethal doses of asbestos. Plaintiff's claims against SOUTHERN INSULATION INC. arise out of this Defendant's business activities in the State of South Carolina.

96. Defendant, **SPIRAX SARCO, INC.**, was and is a Delaware corporation with its principal place of business in South Carolina. At all times material hereto, SPIRAX SARCO, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Sarco steam traps and valves. SPIRAX SARCO, INC. is sued as a Product Defendant. Plaintiff's claims against SPIRAX SARCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

97. Defendant, **SPX CORPORATION**, individually and as successor-in-interest to YUBA HEAT TRANSFER LLC, was and is a Delaware corporation with its principal place of business in North Carolina. At all times material hereto, SPX CORPORATION mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Yuba water pre-heaters. SPX CORPORATION is sued as a Product Defendant. Plaintiff's claims against SPX CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

98. Defendant, **STANDARD INSULATION COMPANY OF N. C., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STANDARD INSULATION COMPANY OF N. C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STANDARD INSULATION COMPANY OF N. C., INC. is sued as a Product Defendant. STANDARD

INSULATION COMPANY OF N. C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Standard Insulation Company of N. C., Inc., exposed tens of thousands of people, including Plaintiff Ted Everette Mitchell to lethal doses of asbestos. Plaintiff's claims against STANDARD INSULATION COMPANY OF N. C., INC. arise out of this Defendant's business activities in the State of South Carolina.

99. Defendant, **STARR DAVIS COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. STARR DAVIS COMPANY, INC. is sued as a Product Defendant. STARR DAVIS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company Inc., exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

100. Defendant, **STARR DAVIS COMPANY OF S.C., INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STARR DAVIS COMPANY OF S.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites

throughout the southeastern United States. STARR DAVIS COMPANY OF S.C., INC. is sued as a Product Defendant. STARR DAVIS COMPANY OF S.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Starr Davis Company of S.C., Inc., exposed tens of thousands of people, including the Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against STARR DAVIS COMPANY OF S.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

101. Defendant, **STERLING FLUID SYSTEMS (USA) LLC**, was and is a Delaware limited liability company with its principal place of business in Indiana. At all times material hereto, **STERLING FLUID SYSTEMS (USA) LLC** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Peerless pumps. **STERLING FLUID SYSTEMS (USA) LLC** is sued as a Product Defendant. Plaintiff's claims against **STERLING FLUID SYSTEMS (USA) LLC** arise out of this Defendant's business activities in the State of South Carolina.

102. Defendant, **VALVES AND CONTROLS US, INC.**, f/k/a **WEIR VALVES & CONTROLS USA INC.**, d/b/a **ATWOOD & MORRILL CO., INC.**, was and is a Texas corporation with its principal place of business in Oregon. At all times material hereto, **VALVES AND CONTROLS US, INC.** mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Atwood & Morrill valves. **VALVES AND CONTROLS US, INC.** is sued as a Product Defendant. Plaintiff's claims against **VALVES AND CONTROLS US, INC.** arise out of this Defendant's business activities in the State of South Carolina.

103. Defendant, **VELAN VALVE CORP.**, was and is a Delaware corporation with its principal place of business in Vermont. At all times material hereto, VELAN VALVE CORP. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Velan valves and steam traps. VELAN VALVE CORP. is sued as a Product Defendant. Plaintiff's claims against VELAN VALVE CORP. arise out of this Defendant's business activities in the State of South Carolina.

104. Defendant, **VIKING PUMP, INC.**, was and is a Delaware corporation with its principal place of business in Iowa. At all times material hereto, VIKING PUMP, INC. mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Viking pumps. VIKING PUMP, INC. is sued as a Product Defendant. Plaintiff's claims against VIKING PUMP, INC. arise out of this Defendant's business activities in the State of South Carolina.

105. Defendant, **VISTRA INTERMEDIATE COMPANY LLC**, individually and as successor-in-interest to CRSS INC., was and is a Delaware limited liability company with its principal place of business in Texas. At all times material hereto, VISTRA INTERMEDIATE COMPANY LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the design of facilities that included the use of asbestos-containing materials, and the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. VISTRA INTERMEDIATE COMPANY LLC is sued as a Product Defendant and

a Design Defendant. VISTRA INTERMEDIATE COMPANY LLC is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Plaintiff, Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against VISTRA INTERMEDIATE COMPANY LLC arise out of this Defendant's business activities in the State of South Carolina.

106. Defendant, **THE WILLIAM POWELL COMPANY**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, THE WILLIAM POWELL COMPANY mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Powell valves. THE WILLIAM POWELL COMPANY is sued as a Product Defendant. Plaintiff's claims against THE WILLIAM POWELL COMPANY arise out of this Defendant's business activities in the State of South Carolina.

107. Defendant, **WIND UP, LTD.**, individually and as successor-in-interest to PIPE & BOILER INSULATION, INC., f/k/a CAROLINA INDUSTRIAL INSULATING CO., was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, WIND UP, LTD. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation at numerous jobsites throughout the southeastern United States. WIND UP, LTD. is sued as a Product Defendant. WIND UP, LTD. is also sued for the work it did at the various industrial sites in the southeastern United States which, during the actual operations of Wind Up, Ltd., exposed tens of thousands of people, including the

Plaintiff Ted Everette Mitchell, to lethal doses of asbestos. Plaintiff's claims against WIND UP, LTD. arise out of this Defendant's business activities in the State of South Carolina.

108. Defendant, **YUBA HEAT TRANSFER LLC**, was and is a Delaware limited liability company with its principal place of business in Oklahoma. At all times material hereto, YUBA HEAT TRANSFER LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Yuba water pre-heaters. YUBA HEAT TRANSFER LLC is sued as a Product Defendant. Plaintiff's claims against YUBA HEAT TRANSFER LLC arise out of this Defendant's business activities in the State of South Carolina.

109. Defendant, **ZURN INDUSTRIES, LLC**, individually and as successor-in-interest to ZURN INDUSTRIES, INC. and as successor-in-interest to ERIE CITY IRON WORKS, was and is a Delaware limited liability company with its principal place of business in Wisconsin. At all times material hereto, ZURN INDUSTRIES, LLC mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Zurn boilers and strainers and Erie City boilers. ZURN INDUSTRIES, LLC is sued as a Product Defendant. Plaintiff's claims against ZURN INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

110. Plaintiff Ted Everette Mitchell experienced further occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity at his work site, the premises of Defendants GRAPHIC PACKAGING INTERNATIONAL, LLC and INTERNATIONAL PAPER COMPANY (collectively, hereinafter the "Premises Defendants"). All other Defendants, or their applicable predecessors in interest, (except for METROPOLITAN

LIFE INSURANCE COMPANY) were engaged in the manufacture, sale, distribution and/or installation of asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action. At all times relevant to this action, the Defendants and the predecessors of the Defendants, for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, distribution, and/or installation of asbestos-containing products and raw materials for use in South Carolina and other states at times relevant to this action.

BACKGROUND FACTS

111. Plaintiff Ted Everette Mitchell brings this action for monetary damages as a result of contracting an asbestos-related disease.

112. Plaintiff Ted Everette Mitchell was diagnosed with lung cancer on or about August 27, 2021.

113. Plaintiff Ted Everette Mitchell's lung cancer was caused by his exposure to asbestos during the course of his employment.

114. During his work history, Plaintiff was exposed to Defendants' asbestos-containing products through his work as a laborer, welder's helper, welder, and inspector from approximately the mid 1950s to the mid 1990s at various industrial jobsites located primarily in South Carolina, North Carolina, and Georgia. Plaintiff performed a variety of tasks throughout the facilities where he worked, including but not limited to welding and inspecting various equipment and machinery, including but not limited to valves, pumps, boilers and other industrial machinery. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

115. During his work history, Plaintiff was further exposed through his work around other trades including welders, carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Plaintiff worked near and closely to a variety of tradesmen working on asbestos-

containing pipe insulation, generators, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as tradesmen mixing, cutting and installing asbestos-containing insulation and other products. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

116. Plaintiff was exposed to Defendants' asbestos-containing products through his work as a machine operator for Owens-Corning Fiberglass Corporation from approximately the mid 1950s to the late 1960s at various industrial locations, including but not limited to the Owens Corning Fiberglass plant in Anderson, South Carolina.

117. Plaintiff was exposed to Defendants' asbestos-containing products through his work as a welder's helper, welder, and inspector for Duke Energy Corporation from approximately the early 1970s to the mid 1990s at various industrial locations primarily in South Carolina and North Carolina, including but not limited to the following:

- Jocassee – Salem, SC
- Oconee Nuclear Plant – Seneca, SC
- Cherokee Nuclear Plant – Gaffney, SC
- McGuire Nuclear Plant – Huntersville, NC
- Catawba Nuclear Plant – York, SC

118. Plaintiff was exposed to Defendants' asbestos-containing products through his work as a welder and grinder for ITT Grinnell Industrial Piping Inc. in approximately the mid 1970s at various industrial locations, including but not limited to Georgia Power & Light's Plant Bowen in Cartersville, Georgia.

119. Plaintiff was exposed to Defendants' asbestos-containing products through his work in welding and grinding for Herman Brittingham Construction in approximately the late 1970s at various industrial locations, including but not limited to the Augusta Mill in Augusta, Georgia.

120. Plaintiff was further exposed to Defendants' asbestos-containing friction products during various times throughout his life while performing maintenance and changing the brakes on his personal vehicles in South Carolina and Georgia from approximately the late 1950s through the mid 1990s. These activities exposed Plaintiff to asbestos and asbestos dust.

121. During the course of Plaintiff Ted Everette Mitchell's employment at the locations mentioned above, during other occupational and non-occupational work projects, and in other ways, Plaintiff was exposed to and inhaled, ingested, or otherwise absorbed asbestos fibers emanating from certain products he was working around.

122. Plaintiff Ted Everette Mitchell's cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Plaintiff Ted Everette Mitchell's lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

123. Plaintiff Ted Everette Mitchell was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

124. Plaintiff is informed and believes, and thereon alleges, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

125. As a direct and proximate result of the conduct as alleged within, Plaintiff Ted Everette Mitchell suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

126. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Ted Everette Mitchell incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff Ted Everette Mitchell's medical treatment is ascertained.

127. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff requests leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff Complains of Defendants for a Cause of Action for Negligence Alleging as Follows:

128. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

129. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain

product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

130. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Plaintiff Ted Everette Mitchell and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

131. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products from causing Plaintiff Ted Everette Mitchell’s lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff Ted Everette Mitchell’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or

marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Plaintiff Ted Everette Mitchell Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

132. Defendants, and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Plaintiff Ted Everette Mitchell, would use or be in proximity to and exposed to said asbestos fibers.

133. At all times relevant, Defendants, and/or their “alternate entities” were aware of their asbestos and asbestos-containing products’ defect but failed to adequately warn Plaintiff Ted Everette Mitchell, Plaintiff’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

134. Plaintiff Ted Everette Mitchell, Plaintiff's family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Plaintiff's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

135. Plaintiff Ted Everette Mitchell suffers from lung cancer, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Ted Everette Mitchell was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

136. Defendants' conduct and defective products as described in this cause of action were a direct cause of Plaintiff Ted Everette Mitchell's injuries, and all damages thereby sustained by Plaintiff Ted Everette Mitchell. Plaintiff therefore seeks all compensatory damages in order to make him whole, according to proof.

137. Furthermore, the conduct of Defendants, and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff Ted Everette Mitchell and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff Ted Everette Mitchell and others similarly situated.

138. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants, and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact

with asbestos and asbestos-containing products, in that Defendants, and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, lung cancer, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants, and/or their “alternate entities.”

139. Defendants, and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

140. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing

products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Plaintiff Ted Everette Mitchell.

141. Plaintiff Ted Everette Mitchell and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff Ted Everette Mitchell or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff and others similarly situated were exposed.

142. Defendants, and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

143. The herein-described conduct of Defendants, and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and alleges as follows:

144. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

145. Plaintiff Ted Everette Mitchell suffered from lung cancer, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Plaintiff Ted Everette Mitchell was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

146. The Products Defendants' conduct and defective products as described above were a direct cause of Plaintiff Ted Everette Mitchell's injuries, and the injuries and damages thereby sustained by Plaintiff.

147. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff Ted Everette Mitchell and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff Ted Everette Mitchell and others similarly situated.

148. Defendants, and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne

asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

149. Plaintiff Ted Everette Mitchell, Plaintiff’s family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Plaintiff Ted Everette Mitchell’s exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

150. Defendants, and/or their “alternate entities” knew and intended that the above-referenced products, asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

151. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Plaintiff Ted Everette Mitchell’s lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff Ted Everette Mitchell’s lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants, and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants, and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur, far

outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

152. The defect existed in the said products at the time they left the possession of defendants, and/or their “alternate entities,” and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including lung cancer, asbestosis, other lung damage, and cancer to “exposed persons,” including Plaintiff Ted Everette Mitchell herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

153. Plaintiff Ted Everette Mitchell and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Plaintiff or other exposed persons. Said Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Plaintiff Ted Everette Mitchell and others similarly situated were exposed.

154. Defendants’ defective products as described above were a direct cause of Plaintiff Ted Everette Mitchell’s injuries, and the damages thereby sustained.

155. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, and/or their “alternate entities,” and each of them, did so with

conscious disregard for the safety of Plaintiff Ted Everette Mitchell and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants, and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, lung cancer, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

156. Defendants, and/or their “alternate entities” were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants, and/or their “alternate entities” further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

157. The above-referenced conduct of Defendants, and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their “alternate

entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Plaintiff Ted Everette Mitchell and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

158. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

159. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all Defendants.

160. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Product and Premises Defendants Based upon Respondeat Superior and Alleges as Follows:

161. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

162. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff worked and/or spent time as alleged above.

163. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Plaintiff Ted Everett Mitchell was exposed.

164. Employees handling and disturbing asbestos-containing products in Plaintiff Ted Everett Mitchell’s vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

165. Employees handling and disturbing asbestos-containing products in Plaintiff Ted Everett Mitchell’s, Plaintiff’s family members and others’ vicinity received monetary

compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

166. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

167. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff Ted Everette Mitchell, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Plaintiff Ted Everette Mitchell.

168. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

169. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons including Plaintiff Ted Everette Mitchell.

170. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Plaintiff that he was being exposed to asbestos, failed to adequately warn Plaintiff Ted Everette Mitchell of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

171. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff Ted Everette Mitchell.

172. Defendants' employees owed Plaintiff Ted Everette Mitchell a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause him harm.

173. Defendants' employees breached this duty of care as described above.

174. At all times mentioned, Plaintiff Ted Everette Mitchell was unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

175. As a direct result of the Defendants' employees conduct, Plaintiff Ted Everette Mitchell's exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Plaintiff Ted Everette Mitchell and the damages and injuries as complained of herein by Plaintiff.

176. The risks herein alleged and the resultant damages suffered by the Plaintiff Ted Everette Mitchell were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

177. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions

committed by their employees in the course and scope of their work that caused harm to Plaintiff Ted Everette Mitchell.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premises Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Premises Defendants, and Alleges as Follows:

178. Plaintiff incorporates by reference, the preceding paragraphs as if fully set forth herein.

179. Prior to and during all relevant times, the Defendants and/or their “alternate entities” employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Plaintiff Ted Everette Mitchell worked and/or spent time.

180. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

181. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Plaintiff Ted Everette Mitchell and settled onto his clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff Ted Everette Mitchell would be exposed to dangerous asbestos dust beyond the present.

182. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-

described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including lung cancer, lung cancer and other lung damage, to exposed persons, including Plaintiff.

183. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff Ted Everette Mitchell, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

184. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Plaintiff Ted Everette Mitchell, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

185. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto including Plaintiff Ted Everette Mitchell were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

186. At all times herein mentioned, Plaintiff Ted Everette Mitchell was unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

187. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

188. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Plaintiff Ted Everette Mitchell, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

189. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

190. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Defendants.

191. Defendants failed to warn its employees and bystanders thereto, including Plaintiff Ted Everette Mitchell, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

192. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for

foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Plaintiff Ted Everett Mitchell became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff Ted Everett Mitchell to develop asbestos-related disease lung cancer, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Negligence Per Se)

As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiff Complains of Defendants, and Alleges as Follows:

193. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

194. The actions of Defendants also constituted negligence per se.

195. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Plaintiff Ted Everett Mitchell. Plaintiff is not making any claims under federal law; instead, Plaintiff is simply using the violation of federal standards as proof of liability on his state-law theories. Further, the reference to Federal regulations does not create a federal question. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

196. The negligence per se of Defendants was a proximate cause of Plaintiff Ted Everett Mitchell's injuries.

FOR A SIXTH CAUSE OF ACTION
(Negligence as to Design Defendants)

As a Sixth Distinct Cause of Action for Negligence, Plaintiff Complains of Design Defendants and Alleges as Follows:

197. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

198. The work performed by the Design Defendants was defective in all, but not limited to, the following particulars:

- (a) In failing and neglecting to properly inspect the building for defects in the construction, design, and defects in the asbestos-containing products, materials and/or equipment.
- (b) In failing and neglecting to properly train employees in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (c) In failing and neglecting to properly supervise employees, contractors, subcontractors, and/or suppliers in the proper installation of asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (d) In failing and neglecting to employ careful contractors and/or employees.
- (e) In failing and neglecting to properly install asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (f) In failing to properly install the asbestos-containing products, materials and/or equipment, including but not limited to asbestos.
- (g) In failing to properly warn Plaintiff Ted Everette Mitchell of dangers and risks associated with the conditions of the material and work product which was being installed for use by Plaintiff Ted Everette Mitchell and others in his vicinity.
- (h) By such other failures as will be proved at trial.

All of which is contrary to one or more of workmanlike practice; the plans, specifications, and other contract documents; manufacturers' recommendations and instructions; trade custom and usage; and applicable building codes.

199. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiff Ted Everette Mitchell suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiff to recover punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Design Services Against Design Defendants)

As a Seventh Distinct Cause of Action for Negligent Design Services, Plaintiff Complains of Design Defendants and Alleges as Follows:

200. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

201. Design Defendants owed Plaintiff Ted Everette Mitchell a duty to perform professional design services, including construction administration, in accordance with professional standards obtained in South Carolina for the delivery and performance of such services.

202. Design Defendants breached such professional standards in all, but not limited to, the following particulars:

- (a) In failing and neglecting to take reasonable care in the design of said building.
- (b) In failing and neglecting to properly design said building, to issue proper construction, to prevent continuous and substantial exposure to asbestos and/or asbestos-containing products.
- (c) In failing and neglecting to properly supervise the construction of said building.

- (d) In failing and neglecting to properly and reasonably design said building to eliminate exposure to asbestos and/or asbestos-containing products, including but not limited to asbestos-containing insulation.
- (e) In negligently specifying the use of inappropriate, improper and/or defective and deficient building systems, materials, and components, including but not limited to asbestos-containing insulation.
- (f) By such other failures as will be proved at trial.

203. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiff Ted Everette Mitchell suffered and incurred actual damages, as described hereinabove, and are entitled to recover such damages from the Design Defendants in such an amount as the trier of fact may find. The actions and omissions to act of the Design Defendants were willful, wanton, reckless and grossly negligent, so as to entitle the Plaintiff to recover punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As an Eighth Distinct Cause Of Action for Breach of Implied Warranties, Complains of Defendants and Alleges as Follows:

204. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

205. Each of the Defendants and/or their “alternate entities” impliedly warranted that their products, asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

206. The implied warranty made by the Defendants and/or their “alternate entities” that the products, asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Plaintiff Ted Everette Mitchell carried out his duties and was inhaled by Plaintiff Ted Everette Mitchell.

207. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Plaintiff Ted Everette Mitchell was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently developed lung cancer, causing Plaintiff to suffer all damages attendant thereto.

FOR A NINTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Ninth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Alleges as Follows:

208. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

209. That during, before and after Plaintiff Ted Everette Mitchell's exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Plaintiff Ted Everette Mitchell in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff Ted Everette Mitchell. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

210. The foregoing representations were material conditions precedent to Plaintiff Ted Everette Mitchell's continued exposure to asbestos-containing products. Defendants and/or their "alternate entities" each intended that Plaintiff Ted Everette Mitchell. act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff Ted Everette Mitchell was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

211. As a direct and proximate result Plaintiff Ted Everette Mitchell's reliance upon Defendants' false representations, Plaintiff has suffered injury and damages as described herein.

FOR A TENTH CAUSE OF ACTION
(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

For a Tenth Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendant Metropolitan Life Insurance Company, and Alleges as Follows:

212. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

213. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

214. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

215. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of

profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

216. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Plaintiff breathed asbestos dust which resulted in Plaintiff's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Plaintiff herein.

217. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff's illness.

218. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

219. Plaintiff unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

220. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Plaintiff from asbestos exposure was increased, and (ii) Plaintiff suffered the injuries described herein.

221. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff.

222. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff was caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff Ted Everette Mitchell's wife, his co-workers, his family, and the general public to be unaware of the true and full dangers of asbestos, depriving Plaintiff of the opportunity to decide for himself whether he wanted to take the risk of being exposed to asbestos, denied Plaintiff the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

223. During the relevant time period the Plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

224. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action

to inflict injury on the Plaintiff, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Plaintiff Ted Everette Mitchell or his wife in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

- (a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.
- (b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.
- (c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

- (d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.
- (e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff.
- (f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.
- (g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.
- (h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.
- (i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, lung cancer, and other illnesses and

diseases from Plaintiff who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, lung cancer and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff of the dangers to which he was exposed when they knew of the dangers.

- (j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

225. Plaintiff Ted Everette Mitchell reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

226. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff Ted Everette Mitchell has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted

asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff has been damaged.

FOR AN ELEVENTH CAUSE OF ACTION
(Loss of Consortium)

For an Eleventh Distinct Cause of Action for Loss of Consortium, Plaintiff Ted Everett Mitchell, as Executor of the Estate of Patsy Ann Mitchell Complains of Defendants, and Alleges as Follows:

227. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

228. Plaintiff Ted Everett Mitchell and Decedent Patsy Ann Mitchell were married on August 25, 2001 and at all times relevant to this action were husband and wife.

229. Prior to his injuries as alleged, Plaintiff Ted Everett Mitchell was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Ted Everett Mitchell has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Decedent Patsy Ann Mitchell was deprived of the consortium of her spouse, including the performance of duties, all to Plaintiff's damages, in an amount presently unknown to Plaintiff but which will be proven at time of trial.

230. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff Ted Everett Mitchell as set forth herein, Plaintiff's spouse and Decedent Patsy Ann Mitchell suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of her spouse, and suffered severe mental and emotional distress and general nervousness. Plaintiff prays judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their “alternate entities” in an amount to be proved at trial, as follows:

1. For Plaintiff’s actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For punitive damages according to proof;
5. For Plaintiff’s cost of suit herein;
6. For damages for breach of implied warranty according to proof;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for conspiracy, concert of action (as to Defendant Metropolitan Life Insurance Company);
9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

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A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

/s/ Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

KASSEL MCVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

T: 803-256-4242

F: 803-256-1952

tmcvey@kassellaw.com

jrutkoski@kassellaw.com

Other email: emoultrie@kassellaw.com

and

Shawna Forbes-King (To be admitted *Pro Hac Vice*)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-599

sking@dobslegal.com

Other email: mcomanche@dobslegal.com

ATTORNEYS FOR PLAINTIFF

May 17, 2023

Columbia, South Carolina.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

Plaintiffs,

SUMMONS

v.

3M COMPANY, et al.,

Defendants.

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

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; and
TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a The Aetna Casualty and
Surety Company,

Third Party Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the Third-Party Complaint upon the subscribers at 2110 N. Beltline Blvd., Columbia, South Carolina 29204, within thirty (30) days after service hereof, exclusive of the day of such service, and if you

fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Third-Party Complaint.

Dated: September 19, 2023

Respectfully submitted,

/s/ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)

Rikard & Protopapas, LLC

2110 N. Beltline Blvd.

Columbia, SC 29204

Telephone: (803) 978-6111

Facsimile: (803) 978-6112

bb@rplegalgroup.com

***Attorney for the Receiver for
Asbestos Corporation Limited***

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

Plaintiffs,

THIRD-PARTY COMPLAINT

v.

3M COMPANY, et al.,

Defendants.

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

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; and
TRAVELERS CASUALTY AND SURETY
COMPANY f/k/a The Aetna Casualty and
Surety Company,

Third Party Defendants.

COMES NOW, ASBESTOS CORPORATION LIMITED (“ACL”), by and through its
duly appointed Receiver, Peter D. Protopapas (the “Receiver”), complaining of the Third-Party
Defendants Century Indemnity Company, as successor to CCI Insurance Company, as successor
to Insurance Company of North America; The Continental Insurance Company; Federal Insurance
Company; and Travelers Casualty and Surety Company f/k/a Aetna Casualty and Surety

Company; (collectively, the “Third-Party Defendants”), who through undersigned counsel respectfully show unto the Honorable Court as follows:

PARTIES

1. ACL, appearing by and through its duly appointed Receiver, who maintains his principal place of business in Richland County, South Carolina, brings this Third-Party Complaint. By order dated September 8, 2023, this Court appointed the Receiver to undertake actions to administer all insurance assets of ACL. See Ex. A., Order on Plaintiffs’ Motion to Appoint a Receiver over ACL’s insurance assets.

2. The Receiver is informed and believes that Third-Party Defendant **Century Indemnity Company**, as successor to CCI Insurance Company, as successor to Insurance Company of North America (“**Century**”), is a corporation organized under the laws of the Commonwealth of Pennsylvania and with its principal place of business in the Commonwealth of Pennsylvania.

3. The Receiver is informed and believes that Third-Party Defendant **The Continental Insurance Company** (“**Continental**”) is a corporation organized under the laws of the State of Illinois, with its principal place of business in the Commonwealth of Pennsylvania.

4. The Receiver is informed and believes that Third-Party Defendant **Federal Insurance Company** (“**Federal**”) is a corporation organized under the laws of the State of Indiana, with its principal place of business in the State of New Jersey.

5. The Receiver is informed and believes that Third-Party Defendant **Travelers Casualty and Surety Company** f/k/a The Aetna Casualty and Surety Company (“**Travelers**”) is a corporation organized under the laws of the State of Connecticut and with its principal place of business in the State of Connecticut.

JURISDICTION

6. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers. This Court appointed Peter D. Protopapas as Receiver of Third-Party Plaintiff.

VENUE

7. Venue is proper in this Court as it is the Receiver Court with cases pending and anticipated new filings in this Court. Further, on March 3, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Honorable Jean H. Toal was appointed to have jurisdiction in all circuits in this State to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestos litigation filed within the state court system. Thus, the Honorable Jean H. Toal will have jurisdiction.

FACTUAL BACKGROUND

8. ACL's historical operations included the sale of asbestos-containing products and raw asbestos materials. Those products allegedly exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations"). The alleged bodily injury resulting from the Asbestos Allegations has resulted in suits against ACL ("ACL Asbestos Suits"), including the instant suit filed by Ted Everette Mitchell, individually and as Executor of the Estate of Patsy Ann Mitchell.

A. The Century Policies

9. Century issued at least the following policies to ACL that are responsive to this lawsuit (the "Century Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
CGL 5971	July 1, 1978 – July 1, 1979
ISL 1086	July 1, 1978 – July 1, 1979
CGL 5971	July 1, 1979 – July 1, 1980
ISL 1086	July 1, 1979 – July 1, 1980
CGL 5971	July 1, 1980 – July 1, 1981
ISL 1262	July 1, 1980 – July 1, 1981
CGL 5971	July 1, 1981 – February 12, 1982
ISL 1262	July 1, 1981 – February 12, 1982

10. The Receiver for ACL continues to require all pertinent parties to conduct a diligent search for additional policies issued by Century or any of its predecessors (including but not limited to Insurance Company of North America), successors, subsidiaries, or affiliates. Should additional policies be located, this Third-Party Complaint will be amended to include such additional Century Policies.

11. Century has failed fully to acknowledge or accept its insuring obligations under the Century Policies. An actual and justiciable dispute exists between these parties.

12. Copies of the foregoing insurance policies, or secondary evidence thereof, have been or will be provided to the Third-Party Defendants, but are not being attached hereto.

13. The Receiver also contends that Third-Party Defendants are aware of the liability policies issued to ACL, have or should have copies of all liability policies issued to ACL that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.

14. The Receiver has satisfied, shall be deemed to have satisfied, or has been or shall be relieved from satisfying, by operation of law or by virtue of Third-Party Defendants' conduct,

all terms and conditions of Third-Party Defendants' insurance policies, including without limitation payment of premiums, satisfaction or relief from satisfying all deductibles, self-insured retentions, and underlying limits of the policies issued by Third-Party Defendants and are entitled to the full benefit of their insurance.

B. The Continental Policies

15. Continental issued at least the following policy to ACL that is responsive to this lawsuit (the "Continental Policy"):

<u>Policy Number</u>	<u>Policy Periods</u>
3-147150	October 1, 1971 – December 6, 1971

16. The Receiver for ACL continues to require all pertinent parties to conduct a diligent search for additional policies issued by Continental or any of its predecessors, successors, subsidiaries, or affiliates. Should additional policies be located, this Third-Party Complaint will be amended to include such additional Continental Policies.

17. Continental has failed fully to acknowledge or accept its insuring obligations under the Continental Policies. An actual and justiciable dispute exists between these parties.

18. Copies of the foregoing insurance policy, or secondary evidence thereof, has been or will be provided to the Third-Party Defendants, but is not being attached hereto.

19. The Receiver also contends that the Third-Party Defendants are aware of the liability policies issued to ACL, have or should have copies of all liability policies issued to ACL that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.

20. The Receiver has satisfied, shall be deemed to have satisfied, or has been or shall be relieved from satisfying, by operation of law or by virtue of Third-Party Defendants' conduct, all terms and conditions of Third-Party Defendants' insurance policies, including without

limitation payment of premiums, satisfaction or relief from satisfying all deductibles, self-insured retentions, and underlying limits of the policies issued by Third-Party Defendants and are entitled to the full benefit of their insurance.

C. The Federal Policies

21. Federal issued at least the following policies to ACL that are responsive to this lawsuit (the “Federal Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
CGL-4400523	December 6, 1971 – July 1, 1972
CGL-4400523	July 1, 1972 – July 1, 1973
CGL-4400523	July 1, 1973 – July 1, 1974
CGL-4400523	July 1, 1974 – July 31, 1975

22. The Receiver for ACL continues to require all pertinent parties to conduct a diligent search for additional policies issued by Federal or any of its predecessors, successors, subsidiaries, or affiliates. Should additional policies be located, this Third-Party Complaint will be amended to include such additional Federal Policies.

23. Federal has failed fully to acknowledge or accept its insuring obligations under the Federal Policies. An actual and justiciable dispute exists between these parties.

24. Copies of the foregoing insurance policies, or secondary evidence thereof, have been or will be provided to the Third-Party Defendants, but are not being attached hereto.

25. The Receiver also contends that Third-Party Defendants are aware of the liability policies issued to ACL, have or should have copies of all liability policies issued to ACL that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.

26. The Receiver has satisfied, shall be deemed to have satisfied, or has been or shall be relieved from satisfying, by operation of law or by virtue of Third-Party Defendants' conduct, all terms and conditions of Third-Party Defendants' insurance policies, including without limitation payment of premiums, satisfaction or relief from satisfying all deductibles, self-insured retentions, and underlying limits of the policies issued by Third-Party Defendants and are entitled to the full benefit of their insurance.

D. The Travelers Policies

27. Travelers issued at least the following policies to ACL that are responsive to this lawsuit (the "Travelers Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
51-985LG26921SCA	July 31, 1975 – April 1, 1976
51-985LG26920SCA	April 1, 1976 – July 1, 1976
51-985LG30513SCA	July 1, 1976 – July 1, 1977
51-985LG31719SCA	July 1, 1977 – July 1, 1978

28. The Receiver for ACL continues to require all pertinent parties to conduct a diligent search for additional policies issued by Travelers or any of its predecessors (including but not limited to Aetna Casualty and Surety Company), successors, subsidiaries, or affiliates. Should additional policies be located, this Third-Party Complaint will be amended to include such additional Travelers Policies.

29. Travelers has failed fully to acknowledge or accept its insuring obligations under the Travelers Policies. An actual and justiciable dispute exists between these parties.

30. Copies of the foregoing insurance policies, or secondary evidence thereof, has been or will be provided to the Third-Party Defendants, but are not being attached hereto.

31. The Receiver also contends that Third-Party Defendants are aware of the liability policies issued to ACL, have or should have copies of all liability policies issued to ACL that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.

32. The Receiver has satisfied, shall be deemed to have satisfied, or has been or shall be relieved from satisfying, by operation of law or by virtue of Third-Party Defendants' conduct, all terms and conditions of Third-Party Defendants' insurance policies, including without limitation payment of premiums, satisfaction or relief from satisfying all deductibles, self-insured retentions, and underlying limits of the policies issued by Third-Party Defendants and are entitled to the full benefit of their insurance.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

33. The Receiver incorporates by reference paragraphs 1 through 32 as though fully set forth herein.

34. Pursuant to *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989), a receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver. Peter D. Protopapas is the Receiver for ACL's insurance assets.

35. The Receiver is informed and believes ACL purchased insurance policies from Century, Continental, Federal and Travelers. These policies are the property of ACL to be administered by the Receiver.

36. ACL seeks a judicial declaration that all policies, evidence of policies, and documents relating to their placement, purchase, and underwriting, including but not limited to such documents in the possession of Century, Continental, Federal and Travelers, are deemed to

be the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties.

SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT

37. The Receiver incorporates by reference paragraphs 1 through 32 as though fully set forth herein.

38. The Receiver seeks a declaration and order that the Third-Party Defendants issued primary and/or excess general liability coverage to ACL, subject to per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend or reimburse defense costs.

39. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that the Third-Party Defendants issued to ACL (the “ACL Insurance Policies”), as follows:

- a. The ACL Insurance Policies cover all ACL Asbestos Suits that allege bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;
- b. Each ACL Asbestos Suit “triggers” the ACL Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
- c. ACL may select the policy or policy years to which to assign or allocate in full each ACL Asbestos Suit-related loss;
- d. In the case of any claimed ambiguity in any ACL Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the ACL Insurance Policies;

- e. Defense costs for the ACL Asbestos Suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability in any of the ACL Insurance Policies;
- f. If any allegation or cause of action in an ACL Asbestos Suit is potentially covered under the ACL Insurance Policies, then the insurer must fully defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- g. Each ACL Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of the ACL Asbestos Suits;
- h. Each ACL Insurance Policy must indemnify covered ACL Asbestos Suits, in full, up to its “per occurrence” limit, regardless of whether a continuing injury spans multiple policy periods;
- i. The ACL Asbestos Suits that allege exposure to asbestos during ACL’s work are subject only to the “per occurrence” limits of the ACL Insurance Policies;
- j. Any aggregate limit on coverage in any of the ACL Insurance Policies is a limitation on coverage, and therefore each insurer has the burden to prove, based on the evidence, that an ACL Asbestos Suit is subject to the aggregate limit in the ACL Insurance Policies, if any; and
- k. Each insurer has the burden to prove, based on the evidence, that any particular ACL Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the ACL Insurance Policies

in order for the insurer to disclaim coverage for an ACL Asbestos Suit against ACL otherwise alleging injury during any ACL Insurance Policy period.

40. Actual and justiciable controversies therefore exist between ACL and the Third-Party Defendants concerning their obligations under the ACL Insurance Policies.

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT

41. The Receiver incorporates paragraphs 1 through 32 in full by this reference.

42. Peter D. Protopapas is the duly appointed Receiver of ACL, giving him the power and authority fully to 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.

43. Since appointment, the Receiver has expended substantial time and incurred expenses to identify potential assets and responsive policies. The Receiver will continue to expend substantial time and incur expenses in connection with ACL's Asbestos Suits in fulfillment of his responsibilities as Receiver, including time and expenses to assume control of the defense of asbestos claims made against ACL.

44. An actual and justiciable controversy exists between the Receiver and the Third-Party Defendants, including their obligation to pay for the Receiver's activities in connection with the defense of the ACL Asbestos Suits.

45. A judicial declaration is necessary and appropriate at this time, under the circumstances alleged above, so that the Receiver may ascertain these rights against Third-Party Defendants.

46. Pursuant to S.C. Code Ann. § 15-65-100, a receiver shall be allowed such commissions as may be fixed by the Court appointing the receiver.

47. Pursuant to the Supreme Court of South Carolina's ruling in *Ex Parte Simons*, 289 S.C. 1, 344 S.E.2d 151 (1986), a receiver's fee is based on the value of the receiver's services and at the appointing Court's discretion.

48. The Receiver respectfully requests this Court to declare that the Third-Party Defendants must fairly compensate the Receiver for the substantial time, effort, and expenses expended in connection with the defense of asbestos suits potentially covered under the Third-Party Defendants' policies and to further declare that this obligation is unlimited.

PRAYER

49. WHEREFORE, Third-Party Plaintiff, by and through its duly appointed Receiver, demands judgment against Third-Party Defendants as follows:

- a. For the Receiver's compensation in connection with the defense of asbestos suits against ACL in an amount set by this Court;
- b. For an order requiring that the Third-Party Defendants provide to the Receiver complete and authentic copies of any general liability and excess liability insurance policies they issued to ACL, together with all other documents and things relating to these policies, including (but not limited to) certificates of insurance, underwriting manuals and documents, and claim files for the Receiver's unrestricted use in carrying out his duties;
- c. For an order requiring Third-Party Defendants Century, Continental, Federal and Travelers to defend ACL in full—under policies containing a duty to defend—against all asbestos suits alleging bodily injury during the

Third-Party Defendants' policy periods unless and until either Third-Party Defendants Century, Continental, Federal and Travelers can show unequivocally, based on the evidence adduced in the litigation, that an exclusion in their respective policies otherwise bars coverage for a suit;

- d. As described in detail above, the Receiver seeks a further declaration as to the interpretation and meaning of ACL's insurance policies:
- i. The ACL Insurance Policies cover all ACL Asbestos Suits that allege any bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of its policy periods;
 - ii. Each ACL Asbestos Suit "triggers" the ACL Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
 - iii. ACL may select the policy or policy years to which to assign or allocate in full each ACL Asbestos Suit-related loss;
 - iv. In the case of a claimed ambiguity in any ACL Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the ACL Insurance Policies, and Third-Party Defendants bear the burden of proof as to any such ambiguity;
 - v. Defense costs for the ACL Asbestos Suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the ACL Insurance Policies;

- vi. If any allegation in an ACL Asbestos Suit is potentially covered under the ACL Insurance Policies, then the responsive insurer must defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- vii. Each ACL Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of the ACL Asbestos Suits;
- viii. Each ACL Insurance Policy must indemnify covered ACL Asbestos Suits, in full, up to its “per occurrence” limits, regardless of whether a continuing injury spans multiple policy periods;
- ix. The ACL Asbestos Suits that allege exposure to asbestos during ACL’s work are subject only to the “per occurrence” limits of the ACL Insurance Policies;
- x. Any aggregate limit on coverage in any of the ACL Insurance Policies is a limitation on coverage, and the insurers therefore have the burden to prove, based on the evidence, that an ACL Asbestos Suit is subject to the aggregate limit in the ACL Insurance Policies, if any; and
- xi. Each insurer has the burden to prove, based on the evidence, that any particular ACL Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the ACL Insurance Policies, in order for the insurer to disclaim coverage for

an ACL Asbestos Suit against ACL otherwise alleging injury during any ACL Insurance Policy period; and

- e. For such other and further relief as the Court may deem just and proper, including prejudgment and postjudgment interest as provided by South Carolina law, for attorney's fees, and fees for the costs of this action.

Dated: September 19, 2023

Respectfully submitted,

/s/ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
Telephone: (803) 978-6111
Facsimile: (803) 978-6112
bb@rplegalgroup.com

***Attorney for the Receiver for
Asbestos Corporation Limited***

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JOHN A. TIBBS and	)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS	)	
	)	<i>In Re:</i>
Plaintiff,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
3M COMPANY, et al.	)	
	)	
Defendants.	)	

ORDER ON PLAINTIFFS’ MOTION TO APPOINT A RECEIVER

This order follows the Court’s order finding Asbestos Corporation Ltd. (“ACL”) in contempt of court and striking ACL’ pleadings. Before the Court is Plaintiffs’ Motion to Appoint a Receiver over ACL’s insurance assets.

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets¹ of ACL and to allow the Receiver to assume control of the defense of asbestos claims made against Asbestos Corporation, Ltd in the United States. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court’s Receiver in locating and marshalling those assets. Further, Mr. Protopapas is tasked with tendering current and future claims from Plaintiffs suffering from

¹ This term is defined below.

asbestos disease brought against ACL to which those policies are responsive. Finally, Mr. Protopapas is tasked with the control of the defense of those claims for ACL.

PROCEEDURAL BACKGROUND

On July 19, 2023, this Court ordered ACL to fully answer discovery and to provide a corporate representative for deposition. The Court further held that failure to do so would result ACL being held in contempt. Subsequently, this Court held ACL in contempt and, as a sanction, struck the pleadings of ACL. The Court based its contempt order on ACL's flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery.

Now, having struck ACL's answer, ACL is in default.²

LAW AND ANALYSIS

A. Appointment of a Receiver is Appropriate and Warranted

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).³

² The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

³ A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the striking of ACL's answer.

Historically, receivers are appointed by courts sitting in equity in order 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) But where, as here, ACL’s answer has been struck, and thus only a ministerial action being left for ACL to be in judgment, a receiver to take possession of and, to the extent necessary, litigate ACL’s insurance assets as well as to assume control of the defense of asbestos claims made against ACL in the United States is exactly the type of historical circumstances, the Court’s of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

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.

Virginia Carolina Chemical v. Hunter, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of ACL’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL’s continued refusal to participate in this that warrants the appointment of a receiver. Thus, where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer “any insurance assets” including “any claims related to the actions or failure to act of ACL’s insurance carriers.” The Receiver would assume control of the defense of asbestos claims made against ACL in the United States. This 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.” *Id.* at 480 (emphasis added).

That the South Carolina receivership references “property within this state” is not a limitation on the Receiver’s authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court’s authority to vest a statutory receiver to assert an insolvent corporation’s rights of action. *See e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff’d* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded “full faith and credit”). That is the authority given to be given the receiver here.

That authority includes the insurance assets of ACL, including the right to assume control of the defense of asbestos claims made against ACL in the United States and tender claims to applicable insurance policies. Even assuming ACL’s interpretation of §15-65-10 is correct, to the extent they exist, ACL’s Insurance Assets ² would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

² For purpose of clarity, this Court defines “Insurance Assets” as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

S.C. Code Ann §38-61-10 states that

[a]ll 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 interpreting §38-61-10, the South Carolina Supreme Court held that “[i]t 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) (Toal, C.J). The result is that “South Carolina substantive law governs [the insuring assets of ACL]” *Id.* Thus, the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

ACL continues to ignore the jurisprudence of this state which directly addresses its due process argument. Just as here, *Sangamo* argued that §38-61-10 was “unconstitutional.” *Id.* at 131. The South Carolina Supreme Court there opined that

insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of the law of South Carolina when they respectively provided or received insurance on interests located in this state.

Id. ACL sold its products throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent, whatever insuring assets of ACL exist and related claims are subject to the substantive law of

South Carolina and nothing about that result is violative of due process.

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of ACL. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Asbestos Corporation, Ltd. 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. This order includes the right and obligation to administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of ACL against which the ACL may have claims.

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.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of ACL or any entity for whom ACL did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for ACL to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of ACL and its subsidiaries, successors, and assigns, is appropriate. Moreover, the Court authorizes Mr. Protopapas to assume the control of the defense of all litigation matters pending in the United States against ACL. Peter Protopapas is hereby appointed the receiver over ACL consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-09-07 15:53:18 page 9 of 9

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually and
as Executor of the Estate of PATSY ANN
MITCHELL,

2022-CP-40-02979

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M Company, et al.,

Defendants.

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver, Peter
D. Protopapas,

Third-Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, et al.,

Third-Party Defendants.

**THIRD-PARTY DEFENDANT TRAVELERS CASUALTY AND SURETY COMPANY'S
NOTICE OF MOTION AND MOTION TO STAY OR DISMISS THE THIRD-PARTY
CLAIMS OF THE PURPORTED RECEIVER FOR ASBESTOS CORPORATION
LIMITED AND TO DISSOLVE THE RECEIVERSHIP**

Third-Party Defendant Travelers Casualty and Surety Company f/k/a The Aetna Casualty
and Surety Company ("Travelers"), by and through undersigned counsel, hereby moves: (1) for

an order that this third-party case is stayed and that this Court lacks jurisdiction over it pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules (“SCACR”); or (2) in the alternative, for an order pursuant to Rules 12 and 14 of the South Carolina Rules of Civil Procedure (“SCRCP”), S.C. Code Ann. § 15-65-10, and the other authorities discussed herein (i) dismissing all claims asserted against Travelers in the Third-Party Complaint of Defendant/Third-Party Plaintiff “Asbestos Corporation Limited, By and Through Its Duly Appointed Receiver Peter D. Protopapas” (“ACL” or the “Receiver”) and (ii) vacating the Order appointing Peter Protopapas as the Receiver of ACL’s “insurance assets” and dissolving the ACL Receivership in its entirety.

INTRODUCTION

ACL is an active Canadian corporation. It does not have any assets or property in South Carolina, and it has never conducted any business activities in South Carolina. This Court nonetheless appointed a South Carolina lawyer, Mr. Protopapas, as the Receiver of ACL’s “insurance assets.” It did so primarily as a discovery sanction. The Court found that ACL had failed to participate adequately in discovery in a South Carolina tort case as to which there is no personal jurisdiction over ACL, so the Court held ACL in contempt, struck its pleadings, defaulted it, and appointed Mr. Protopapas as its “insurance assets” Receiver. ACL has appealed the order appointing Mr. Protopapas (the “Appointment Order”) as well as the predicate order holding ACL in contempt and striking its pleadings. The appeal remains pending before the South Carolina Court of Appeals. Despite the pending appeal, ACL’s contested Receiver, ostensibly acting on ACL’s behalf, filed a third-party coverage complaint against Travelers and ACL’s other alleged insurers. ACL’s appeal acts to automatically stay the Appointment Order, including the Receiver’s purported authority to file a third-party coverage action on ACL’s

behalf, and it divests this Court of jurisdiction over matters affected by the appeal. If, however, the Court finds that the Appointment Order is not stayed, and that it has jurisdiction to rule on matters affected by the pending appeal, including the validity of the Receivership, the Court must dismiss the Receiver's third-party claims against Travelers, vacate the Appointment Order, and dissolve the ACL Receivership in its entirety. The grounds for Travelers' motion are summarized below.

First, because the validity of the Receivership is on appeal, Rules 205 and 241, SCACR, preclude the Receiver from pursuing and this Court acting on the Receiver's Third-Party Complaint. *See* Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."); Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal"). Under Rule 241, SCACR, ACL's appeal of the Appointment Order acts to automatically stay the Receiver's appointment—the sole basis for his purported authority to bring his third-party claims against Travelers in this case. The Receiver cannot pursue claims on ACL's behalf while the validity of his appointment is on appeal. Further, regardless of the existence of a stay, this Court is divested of jurisdiction to act on matters affected by the appeal under Rule 205, SCACR, including the threshold issue of whether the Receivership was proper in the first place.

Second, if the Court does not agree that the Third-Party Complaint is stayed, and the Court believes it has jurisdiction to rule on matters that are affected by ACL's pending appeal, the Court should vacate its Appointment Order and dissolve the ACL Receivership in its entirety. This Court does not have the power to appoint a Receiver over an active foreign corporation such

as ACL, which has no property in South Carolina. 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. ACL is and always has been a Canadian corporation. It has no assets or property in South Carolina over which this Court, and by extension the Receiver, has any power to act. Insurance policies allegedly issued to ACL, a Canadian company, by insurance companies domiciled outside of South Carolina, are not assets or property located in South Carolina. The Appointment Order was thus improper and must be revoked. For the same reasons, the Receiver is without authority or standing to pursue any claims on ACL's behalf.

Third, the Court lacks personal jurisdiction over Travelers. Travelers is not incorporated in South Carolina, does not have its principal place of business in South Carolina, and is not otherwise "essentially at home" in South Carolina. The Court thus does not have general personal jurisdiction over Travelers. The Court also cannot exercise specific personal jurisdiction over Travelers, because the Receiver's third-party claims do not arise out of or relate to any contacts between Travelers and South Carolina.

Fourth, there is no justiciable case or controversy between the Receiver and Travelers. The Receiver's Third-Party Complaint includes three declaratory judgment claims against Travelers. In those claims, the Receiver seeks (i) a declaration that Travelers has to produce ACL's alleged liability insurance policy documents to the Receiver, (ii) declarations of the parties' rights and obligations under those alleged policies, and (iii) a declaration that Travelers must compensate the Receiver in connection with the defense of asbestos suits. These claims are purely hypothetical, speculative, and abstract. There is no concrete dispute for this Court to resolve as to Travelers.

Fifth, the Receiver's third-party claims are improper under Rule 14(a), SCRCP, because they are not "derivative" of ACL's alleged tort liability to the underlying plaintiff, Mr. Mitchell. A defendant/third-party plaintiff must have a substantive claim against the third-party defendant that is founded upon derivative liability, *i.e.*, the outcome of the principal claim must impact the third-party defendant's liability. Here, the Receiver's claims against Travelers are not at all "derivative"; rather, they seek relief directly against Travelers, independent of Mr. Mitchell's asbestos tort claims.

Accordingly, Travelers respectfully requests that this Court either (i) issue an order confirming that the Appointment Order is stayed and that this Court is currently divested of jurisdiction over matters relating to the validity of the ACL Receivership or, in the alternative, (ii) issue an order dismissing the ACL Receiver's third-party claims against Travelers with prejudice, vacating the Appointment Order, and dissolving the ACL Receivership in its entirety.

BACKGROUND

This Court appointed Mr. Protopapas as the Receiver of ACL's "insurance assets" in the *Tibbs* asbestos tort case. *See* Ex. A (Order on Plaintiffs' Motion to Appoint a Receiver, dated Sept. 8, 2023, in *Tibbs v. 3M Company*, No. 2023-CP-40-01759 (S.C. Ct. Common Pleas)). The Court did so at the request of the underlying asbestos tort plaintiffs, even though ACL is an active foreign corporation that was actively defending itself in the case. Specifically:

- On May 17, 2023, ACL filed a motion to dismiss the *Tibbs* plaintiffs' Amended Complaint for lack for personal jurisdiction. *See* Ex. B.
- On July 19, 2023, the Court denied ACL's motion to dismiss. *See* Ex. C.
- 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. *See* Ex. D.

- On July 28, 2023, the Tibbs plaintiffs filed a motion asking the Court to appoint Mr. Protopapas as ACL's receiver "as soon as practically possible" after striking ACL's pleadings. *See* Ex. E.
- On August 2, 2023, ACL filed an answer to the Tibbs plaintiffs' Amended Complaint. Ex. F.
- On August 9, 2023, ACL filed an opposition to the Tibbs plaintiffs' motions to hold ACL in contempt, to strike its pleadings, and to appoint Mr. Protopapas as receiver. Ex. G. Among other things, ACL explained that it provided certain written and document discovery in response to Plaintiff's discovery requests, but that it could not provide a Rule 30(b)(6), SCRCP, witness because there are no individuals alive who are capable of responding to the examination topics. ACL also explained that, as a Canadian corporation whose office is located in Quebec, it could not provide certain discovery to Plaintiff without risking criminal or civil penalties under the Quebec Business Concerns Record Act.
- On September 8, 2023, at 8:43 a.m., the Court issued an Order holding ACL in contempt and striking its pleadings for its "refusal to participate in meaningful discovery." Ex. H.
- On September 8, 2023, at 8:44 a.m., the Court issued its Appointment Order. The Court found ACL in default (because the Court had struck its answer) and appointed Mr. Protopapas as the Receiver of ACL's "insurance assets." Ex. A.

On September 13, 2023, ACL filed a Notice of Appeal with the South Carolina Court of Appeals as to this Court's Appointment Order as well as the Order holding ACL in contempt and striking its pleadings. Ex. I. The appeal remains pending.

Turning to the instant case, on May 17, 2023, Plaintiff 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. Mr. Mitchell alleges that he developed lung cancer as a result of his exposure to asbestos. Am. Compl. ¶¶ 1-11. As to ACL, he alleges that it "mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos

fibers present at numerous jobsites in South Carolina and North Carolina.” Am. Compl. ¶ 31. He seeks damages against ACL and the other defendants for their alleged tortious conduct.

On June 19, 2023, ACL filed a motion to dismiss Mr. Mitchell’s Amended Complaint for lack of personal jurisdiction. *See generally* ACL’s June 19, 2023 Memorandum In Support of Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction; *see also* Richard Dufour Affidavit dated June 16, 2023 (filed June 19, 2023) (“Dufour Affidavit”). ACL argued that Mr. Mitchell failed to make a prima facie showing that ACL is subject to either general or specific personal jurisdiction in South Carolina. ACL’s motion to dismiss and the accompanying Dufour Affidavit explain that ACL is a Canadian corporation that has never conducted any business activities in South Carolina. ACL’s motion to dismiss remains pending.

On September 19, 2023—approximately a week after ACL appealed the Appointment Order—the Receiver, purportedly on ACL’s behalf, filed his Third-Party Complaint in this case against Travelers and other alleged ACL insurers. *See* Third-Party Compl. dated Sept. 19, 2023. The Receiver’s Third-Party Complaint includes three declaratory judgment claims against Travelers and the other Third-Party Defendants. In Count I, the Receiver seeks a declaration that ACL’s insurance policy documents are “the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties.” Third Party Compl. ¶ 36. In Count II, the Receiver seeks a declaration that Travelers and ACL’s other alleged insurers “issued primary and/or excess general liability coverage to ACL, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend or reimburse defense costs.” As part of Count II, the Receiver also seeks a host of coverage-related declarations “as to the interpretation and meaning of the insurance policies” allegedly issued to

ACL. *Id.* ¶¶ 38-39. In Count III, the Receiver seeks a declaration that Travelers and the other insurers “must fairly compensate the Receiver for the substantial time, effort, and expenses expended in connection with the defense of asbestos suits potentially covered under the Third-Party Defendants’ policies and to further declare that this obligation is unlimited.” *Id.* ¶ 48. The Third-Party Complaint makes no mention of the fact that the validity of the Receivership is on appeal.

ARGUMENT

I. Given ACL’s Pending Appeal, the Appointment Order is Stayed and This Court Lacks Jurisdiction Over Matters Affected by the Appeal

Under Rules 205 and 241(a), SCACR, the service of a notice of appeal (i) divests the trial court of jurisdiction over matters affected by the appeal and (ii) automatically stay the matters decided in the orders on appeal. *See* Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal”); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532 (S.C. 2016) (Toal, J., concurring) (“Pursuant to Rule 205, the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal” (citing Rule 205, SCACR)); *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 137 (S.C. 2013) (“Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court.”); *Tillman v. Oakes*, 398 S.C. 245, 255 & n. 3 (S.C. Ct. App. 2012) (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”) Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that “[t]he

appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”); Rule 241(a), SCACR (“the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. . . .”). Thus, ACL’s appeal automatically stays the relief granted in the Appointment Order, including the authority of the Receiver to pursue his third-party claims in this case on ACL’s behalf, and it divests this Court of jurisdiction over matters affected by the appeal, including the validity of the Receivership.

Indeed, the Receiver’s right to sue is wholly dependent on, and derivative of, his authority as Receiver—the foundational issue now on appeal. *See Nat’l Cash Register Co. v. Burns*, 217 S.C. 310, 313, 60 S.E.2d 615, 617 (1950) (“A primary concept of the law of receivers is that a receiver stands in the shoes of the debtor . . .”); *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 218, 118 S.E. 303, 304 (1923) (“[I]t is clear that the appointment by the Court can vest in the Receiver no greater interest than the insolvent possessed.”). The Receiver lacks standing to administer or liquidate ACL’s alleged insurance policies or to otherwise pursue his third-party claims on ACL’s behalf while the appeal is pending. *See Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 467, 790 S.E.2d 763, 779 (2016) (“Standing to sue is a fundamental requirement in instituting an action.”); *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (discussing the “stringent standing test”); *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994) (“No justiciable controversy is presented unless the plaintiff has standing to maintain the action,” and thus “[o]nce it is determined a plaintiff has no standing to prosecute, the court must dismiss the action.”).

In short, Receiver cannot pursue his third-party claims while the validity of his appointment is on appeal; and, even if he could, under Rule 205, SCACR, this Court is deprived of jurisdiction over matters affected by the appeal, including the legality of the Receivership.

II. This Court Does Not Have the Power to Appoint a Receiver Over a Foreign Corporation Like ACL, Which Has No Assets or Property in South Carolina

If the Receiver's third-party action is not stayed (it is), and the Court finds it somehow has not been divested of jurisdiction over matters affected by the appeal (it has), the Court should vacate its Appointment Order, dissolve the Receivership, and dismiss the Receiver's third-party claims against Travelers with prejudice.

A. Because ACL Is a Foreign Corporation with No Property in South Carolina, the Appointment Order Was Improper and Should Be Vacated

"That a receiver has no extraterritorial authority is too well settled to require the citation of authority." *Frink v. National Mut. Fire Ins. Co.*, 74 S.E. 33, 36 (S.C. 1912). South Carolina law is clear: a South Carolina court has no power or jurisdiction to appoint a receiver over a foreign corporation that has no assets in the State. *See Boynton v. Consol. Indem. & Ins. Co.*, 185 S.E. 731, 737 (S.C. 1936) (reversing appointment of receiver because there was a "total failure of any proof" that the foreign company "has property in this state"); *Pollock v. Carolina Interstate Bldg. & Loan Ass'n*, 25 S.E. 977, 980 (S.C. 1896) ("The power of a receiver only extends to the boundaries of the territorial jurisdiction of the court appointing him." (quotation omitted)).

This authority is consistent with United States Supreme Court precedent recognizing that a receiver appointed by a state court has jurisdiction only over assets within that state. *See Booth v. Clark*, 58 U.S. 322, 332 (1854) (holding with respect to a New York appointed receiver, "[i]ndeed, whatever may be the receiver's rights under a creditor's bill, to the possession of the

property of the debtor in the State of New York, or the permissions which may be given to him to sue for such property, we understand the decisions of that State as confining his action to the State of New York.”); *Hale v. Allinson*, 188 U.S. 56, 68 (1903) (“We do not think anything has been said or decided in this court which destroys or limits the controlling authority of” *Booth*); *Great Western Mining & Mfg. Co. v. Harris*, 198 U.S. 561 (1905) (a “receiver’s right to sue in a foreign jurisdiction is not recognized upon principles of comity, and the court of his appointment can clothe him with no power to exercise his official duties beyond its jurisdiction.”).

Many other cases are in accord. *See, e.g., McGraw v. Mott*, 179 F. 646, 654 (4th Cir. 1910) (“the receiver appointed by the court in one state has no power to take charge of, sell, or dispose of property in another state, or to institute suits in the courts of such other state, except by way of comity”; “[t]hat a receiver is an officer of the court appointing him, and can exercise no power or maintain any legal status except within the territorial limits of the court, is settled.”); *Coltrane v. Templeton*, 106 F. 370, 375 (4th Cir. 1901) (“The receiver appointed in the Maryland district has no extraterritorial existence.”); *Fowler v. Osgood*, 141 F. 20, 24 (8th Cir. 1905) (“the only method for reaching the property or assets of an insolvent corporation in a jurisdiction foreign to that where the receiver in chancery is appointed is by resort to an ancillary receivership where the property or asset sought to be recovered has its situs or where the debtor resides.”); 17A FLETCHER CYC. CORP. § 8554, *Jurisdiction and power to appoint receivers—General receivers* (“But where the corporation has no property in the state, there would be nothing for the receiver to take under control, and the appointment would be an idle act that the courts cannot be called upon to perform.”) (collecting cases); *id.* § 8555, *Receivers to take charge of local assets* (“While denying the power to appoint a general receiver, the authorities agree that equity has jurisdiction to prevent the dissipation and misapplication of assets of the

foreign corporation within the state, and if necessary, to appoint a receiver of the assets”) (collecting cases); 75 C.J.S. RECEIVERS § 475 (“In accordance with the general rule as to extraterritorial rights, neither the court nor the receiver appointed by it has authority over property beyond the boundaries of its territorial jurisdiction.”).

In their motion to appoint a receiver over ACL, the Tibbs plaintiffs relied on S.C. Code §§ 15-65-10(4) and (5). *See* Ex. E at 2-4. The Appointment Order likewise appears to have relied on both provisions, though the Court only specifically cited S.C. Code § 15-65-10(5). *See* Ex. A at 2-4 (discussing and quoting both statutory provisions). Neither provision allows for the appointment of the Receiver here.

1. S.C. Code § 15-65-10(4) Does Not Apply Because ACL Is a Solvent Canadian Corporation With No In-State Property

Under S.C. Code § 15-65-10(4), a “receiver may be appointed by a judge of the circuit court . . . [w]hen 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.” This provision is inapplicable and cannot be used to justify the appointment of a Receiver over ACL for at least two reasons: (1) ACL has not been “dissolved,” it is not “insolvent or in imminent danger of insolvency,” and it has not “forfeited its corporate rights”; and (2) ACL is a foreign corporation that does not have any “property within this State,” *i.e.*, South Carolina.

Far from satisfying the requirements of S.C. Code § 15-65-10(4), which allows for the appointment of a receiver over a corporation that “has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights,” ACL is an active Canadian corporation. *See, e.g.*, Dufour Aff. ¶ 2. There is no evidence that it has been dissolved, that it is

insolvent or in imminent danger of insolvency, or that it has forfeited its corporate rights.

Thus, S.C. Code § 15-65-10(4) does not apply.

Because ACL is a foreign corporation, the Court's authority to appoint a Receiver over ACL is limited to its "property within this State," if any. *See* S.C. Code § 15-65-10(4). But ACL has no "property within this State." There is no evidence of any ACL property anywhere in South Carolina. To the contrary, the record evidence shows that ACL has never had any property in South Carolina. *See, e.g.*, ACL's Memorandum of Law in Support of Its Motion to Dismiss dated June 19, 2023, at 2-4 (citing Dufour Affidavit). There is thus no property in South Carolina over which this Court, and by extension the Receiver, may act.

The Court's Appointment Order suggests that the statutory reference to "property within this State" is somehow "not a limitation on the Receiver's authority in this case." Ex. A at 4. In the Court's view, "the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state's borders and asserting jurisdiction over such property located in another jurisdiction," and "[t]hese same principles of comity support a state court's authority to vest a statutory receiver to assert an insolvent corporation's rights of action." *Id.* The Court's reasoning does not support its conclusion. On its face, South Carolina's receivership statute limits this Court's authority to appoint a receiver over a foreign corporation to situations where the corporation has "property within this State." S.C. Code § 15-65-10(4). Principles of comity only underscore the impropriety of extraterritorial, foreign receiverships. *See supra* at 10-12 (collecting cases).

To support its expansive reading of South Carolina's receivership statute, the Court misstates the United States Supreme Court's holding in *Porter v. Sabin*, 149 U.S. 473 (1893):

This 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.”

Ex. A at 3-4 (purporting to quote *Porter*, 149 U.S. at 480) (emphasis provided by this Court).

But that is not what *Porter* held. This Court’s bracketed addition of two words—“[is]” and “[and]”—materially changes *Porter*’s holding. Rather than hold that “the whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver,” the Supreme Court actually held that a receivership court only has jurisdiction over property that is “within the jurisdiction of the court which appointed the receiver[.]” *See Porter*, 149 U.S. at 479 (“The whole property of the corporation 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, remains in its custody, to be administered and distributed by it.” (emphasis added)). *Porter* does not support this Court’s conclusion that a South Carolina state court judge has the power to appoint a receiver over foreign property. In fact it says just the opposite and is entirely consistent with all of the other authorities discussed above. That a South Carolina state court has no jurisdiction over foreign property is not subject to legitimate debate. It is black-letter law.

ACL’s alleged insurance policies are not South Carolina property. The situs of intangible property such as a contractual obligation under an insurance policy is the domicile of the debtor/obligor (Travelers or the other alleged insurers), whose domicile is its state of incorporation or principal place of business—neither of which is South Carolina. *See, e.g., H.J. Baker & Bro. v. Doe*, 70 S.E. 431, 433 (S.C. 1911) (“The general rule of law is well settled that for the purposes of founding administration, all simple contract debts are assets at the domicile of

the debtor.’” (quotation omitted)); *Af-Cap Inc. v. Republic of Congo*, 383 F.3d 361, 371-72 (5th Cir. 2004) (“[C]ourts consistently hold that the situs of a debt obligation is the situs of the debtor [T]his rule’s general operation has been recognized by the Supreme Court.” (citations omitted)); *Long v. Baldt*, 464 F. Supp. 269, 273 n. 3 (D.S.C. 1979) (“the situs of the debt lies with the debtor”). Travelers is incorporated and has its principal place of business in Connecticut, not South Carolina. *See* Third-Party Compl. ¶ 5; *see also* Ex. J, Affidavit of Ann B. Mulcahy ¶ 3. Likewise, none of the other Third-Party Defendants are alleged to be domiciled in South Carolina. *See* Am. Third-Party Compl. ¶¶ 2-4. Insurance policies allegedly issued to ACL in Canada by non-South Carolina insurance companies are not South Carolina property.

In *Howard v. Allen*, the South Carolina Supreme Court held that liability insurance policies are not property subject to attachment in this State. *See Howard v. Allen*, 254 S.C. 455, 459, 176 S.E.2d 127, 128 (S.C. 1970) (“We are not convinced that the contractual obligations of defendant’s insurer are a debt subject to attachment under the law of this state and a review and analysis of decisions from other states would, we think, serve no useful purpose.”). This holding makes perfect sense, as the “insurer owes the insured nothing until the liability of the insured and the amount thereof has been determined.” *Id.*

Because ACL is a foreign corporation that does not have any in-state property, the Appointment Order was improper and must be vacated.

2. S.C. Code Ann. § 15-65-10(5) Does Not Authorize the Receiver’s Appointment

S.C. Code Ann. § 15-65-10(5) provides that a South Carolina court may appoint a receiver “[i]n 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 appointment of the Receiver here was not consistent with law or “existing practice.” Indeed, far from it.

As already explained, this Court has no power or jurisdiction to appoint a receiver over a foreign corporation that does not have any property in this State. The United States Constitution, United States Supreme Court precedent, and South Carolina Supreme Court precedent forbid it. *See supra* at 10-12; *see also, e.g., Doctors Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Trust Fund*, 371 S.C. 5, 9 (S.C. 2006) (Toal, C.J.) (“the principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another.”); U.S. Const. art. IV, § 1 (“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”); S.C. Code Ann. § 33-15-105(c) (“This title does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.”); U.S. Const. art. I, § 8 (reserving to Congress the authority “to regulate Commerce . . . among the several States”).

The circumstances of this case also did not warrant the appointment of a Receiver over an active foreign corporation. ACL appeared in this case and the *Tibbs* case and was actively defending itself. ACL contested the Court’s personal jurisdiction and explained why it could not provide all of the discovery sought, yet the Court proceeded to hold ACL in contempt, strike its pleadings, default it, and appoint a Receiver over it—all at the urging of asbestos tort plaintiffs. The appointment of a Receiver in these circumstances is entirely inconsistent with South Carolina law and practice.

South Carolina law is clear that “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Midlands Util., Inc. v. S.C. Dep’t of Health & Env’t Control*, 301 S.C. 224, 228 (S.C. 1989) (citation omitted). “[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe

that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313 (S.C. 2018). “This court, not only has often said that an adjudication of a receivership is a harsh and drastic remedy, one to be granted only with great caution . . . but it has also, time after time, indicated that the receiver appointed should be untrammelled in his relations, entirely indifferent between the parties, and absolutely fair and impartial, for the receiver not only represents all the parties interested in the estate, but he is an officer of the court.” *Penn. Mut. Life Ins. Co. v. Cudd*, 172 S.E. 787, 788-89 (S.C. 1934); *see also, e.g., Booth*, 58 U.S. at 331 (“A receiver is an indifferent person between parties He is appointed in behalf of all parties”); *Va.-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 224, 66 S.E. 177, 180 (1909) (concluding that a receiver who is not “entirely impartial,” but who instead serves as an “agent[] of the plaintiff, actively pressing its claims against the defendant,” cannot continue service as a receiver); 65 Am. Jur. 2d Receivers § 9 (2023) (“The appointment of a receiver is an extraordinary remedy, considered harsh, dangerous, severe, and drastic, only to be made cautiously, reluctantly, and with circumspection in cases of clear necessity to protect the plaintiff’s property interests and rights. In general, a receiver should only be appointed in extreme cases, and clear and urgent cases when necessary for the protection of the parties and on a clear showing of a danger of irreparable loss or a danger of material injury.” (footnotes and citations omitted)). Nothing about the Court’s Appointment Order here is consistent with existing practice.

Contrary to the Court’s assertion that ACL engaged in some sort of “moral fraud” that justified the appointment of a Receiver, *see* Ex. A at 3, ACL was well within its rights to contest personal jurisdiction. Actively defending oneself in a lawsuit is not fraud. Discovery obstacles

posed by the existence of mandatory foreign statutes are not fraud. The Court cites *Virginia Carolina Chemical v. Hunter*, 84 S.C. 214 (1909), for the proposition that “where, as here, a debtor, solvent or otherwise, ‘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.” Ex. A at 3. The Court then held that “where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.” *Id.* *Virginia Carolina Chemical* is inapposite. To begin, ACL is not a debtor; the asbestos tort plaintiffs have no judgment against ACL and may never receive one. Further, there is no evidence that ACL engaged in a “conscious intent to defeat, delay or hinder creditors in the collection of debts.” Nor is there any evidence that ACL defrauded anyone, much less acted “illegal[ly].” ACL did not outright refuse to engage in any discovery or ignore complaints against it; rather, it appeared and defended itself and provided discovery responses within the parameters of what it believed it was able to give without running afoul of the Quebec Business Concerns Records Act. *See* ACL’s Opposition to Motion for Contempt, to Strike and Appoint a Receiver, filed Aug. 9, 2023, at 2-4 (discussing discovery ACL provided to plaintiffs); *id.* at 6-10 (arguing the Act prohibits ACL under threat of criminal or civil contempt from providing records located in Quebec).

In short, the appointment of the Receiver was not consistent with law or existing practice, and so the appointment was not appropriate under S.C. Code Ann. § 15-65-10(5).

B. South Carolina’s Insurance Choice of Law Statute, S.C. Code § 38-61-10, Does Not Apply

As an apparent fallback position, the Court’s Appointment Order says that “[e]ven assuming ACL’s interpretation of §15-65-10 is correct, to the extent they exist, ACL’s Insurance Assets would be intended to protect the lives, interests and property within South Carolina,” and so, under S.C. Code § 38-61-10, “the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.” Ex. A at 4-5. Not true. S.C. Code § 38-61-10 does not apply here.

S.C. Code § 38-61-10 is a choice of law statute. It provides that “[a]ll 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.” It does not override South Carolina’s receivership statute or the prohibition on extraterritorial receiverships over foreign property.

Any reliance on *Sangamo Weston, Inc. v. National Surety Corporation*, 307 S.C. 143 (S.C. 1992), *see* Ex. A at 5, is misplaced. *Sangamo*, like the choice of law statute itself, addressed choice of law questions. It did not hold that insurance policies issued to nonresident defendants are property within South Carolina. Unlike the instant case, the policy at issue in *Sangamo* involved a company that manufactured products in South Carolina, and the suit arose out of those South Carolina manufacturing operations. *See id.* at 146. The *Sangamo* Court made clear that “Sangamo’s interest and property located outside of this state are not at issue here.” *Id.* at 148. By contrast, all of ACL’s property is located outside of this State—this case only involves out-of-state property.

To the extent the Court believes ACL's insurance policies insure lives, property, or interests in South Carolina merely because they may provide liability coverage to ACL for injuries that occurred in South Carolina, that too would be insufficient to trigger the choice of law statute. For example, in *Unisun Insurance Company v. Hertz Rental Corporation*, 312 S.C. 549, 436 S.E.2d 182 (Ct. App. 1993), the Court of Appeals held that an automobile liability policy and its uninsured motorist coverage was not subject to South Carolina's insurance choice of law statute even though the automobile collision happened in South Carolina. The contract was negotiated in New York for a car rented from a location in New York. That the claimant drove the vehicle to South Carolina where the accident occurred was insufficient. *Id.* at 552, 436 S.E.2d at 184. Many other South Carolina courts have reached the same result.¹

There is simply no basis for this Court to appoint a receiver over ACL. The Appointment Order should be vacated, and the Receiver's third-party claims should be dismissed.²

III. The Court Lacks Personal Jurisdiction Over Travelers

Under Rule 12(b)(2), SCRCF, a court must grant a motion to dismiss where the plaintiff fails to allege plausible facts supporting the exercise of personal jurisdiction over the non-

¹ See, e.g., *Gordon v. Colonial Ins. Co. of Calif.*, 342 S.C. 152, 536 S.E.2d 376 (Ct. App. 2001) (holding South Carolina insurance choice of law statute did not apply to policy issued in Virginia to Virginia resident even though collision occurred in South Carolina); *Russell v. McGrath*, 135 F. Supp. 3d 427 (D.S.C. 2015) (holding South Carolina insurance choice of law statute did not apply to policy issued in Florida for car registered in Florida with a Connecticut license plate even though claimant was a college student in South Carolina renting an apartment in South Carolina); *Yeager v. Allstate Ins. Co.*, 2010 WL 680429 (D.S.C. Feb. 23, 2010) (holding South Carolina insurance choice of law statute did not apply to policy issued to Georgia resident with Georgia license and registration even though accident occurred in South Carolina while driving for work in South Carolina and claimant lived part-time in South Carolina with her boyfriend).

² Travelers incorporates by reference the arguments ACL made in opposing and objecting to the Court's appointment of a Receiver over ACL.

resident defendant. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 665 S.E.2d 660, 664 (S.C. Ct. App. 2008). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Id.* (citation omitted). “When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Id.* (citation omitted). “Personal jurisdiction over a nonresident defendant is a question to be resolved upon the facts of each particular case.” *Id.* (citation omitted). Because South Carolina’s long-arm statute has been interpreted to apply coextensively with the limits of due process, the sole question eventually “becomes whether the exercise of personal jurisdiction in this case would violate the strictures of due process.” *Id.* (citation omitted); *see also, e.g., S. Plastics Co. v. S. Com. Bank*, 423 S.E.2d 128, 130 (S.C. 1992) (“the question becomes whether the exercise of personal jurisdiction over the [nonresident defendant] comports with due process.”).

“Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Hidria, USA, Inc. v. Delo*, 783 S.E.2d 839, 843 (S.C. Ct. App. 2016) (quotation omitted). There are two prongs to the due process analysis: “(1) the ‘power’ prong, under which minimum contacts grant a court the ‘power’ to adjudicate the action; and (2) the ‘fairness’ prong, which requires the exercise of jurisdiction to be ‘reasonable’ or ‘fair.’” *Id.* (citation omitted). The plaintiff bears the burden of satisfying both; if either prong fails, the exercise of personal jurisdiction over the nonresident defendant does not comport with the requirements of due process. *See id.* (citations omitted). Here, there is no basis for the Court to exercise either general or specific jurisdiction over Travelers.

A. The Court Does Not Have General Jurisdiction Over Travelers

“General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum[.]” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 655 S.E.2d 476, 478 (S.C. 2007) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n. 15, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985)). A nonresident corporation must have substantial contacts with the forum state to support a court’s exercise of general jurisdiction when the nonresident’s contacts do not directly relate to the plaintiff’s cause of action. *See Cockrell v. Hillerich & Bradsby Co.*, 611 S.E.2d 505, 508 (S.C. 2005) (citations omitted).

Subject to the constraints imposed by federal due process, general jurisdiction is determined under S.C. Code Ann. § 36-2-802, which states: “A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.” For general jurisdiction to attach, the foreign corporation’s activities or affiliations within the forum state must be “so continuous and systematic as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 119 (2014) (citation and internal quotation marks omitted); *see also Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat’l Ass’n.*, 3:15-cv-01300-JMC, 2016 WL 6781057, at *5 (D.S.C. Nov. 16, 2016) (“general jurisdiction requires affiliations so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State, *i.e.*, comparable to a domestic enterprise in that State” (citation and internal quotation marks omitted)). “[O]nly a limited set of affiliations with a forum” can satisfy the “essentially at home” requirement. *Daimler*, 571 U.S. at 137. Thus, in order to haul a nonresident corporation into court to answer for claims that have nothing to do with the

corporation's activities in or contacts with the forum state, the corporation must have substantial contacts with the forum state. *See Gibson v. Confie Ins. Grp. Holdings, Inc.*, 2:16-CV-02872-DCN, 2017 WL 2936219, at *5 (D.S.C. July 10, 2017) ("The threshold level of contacts with the forum state required for the exercise of general jurisdiction is significantly higher than for specific jurisdiction and must be fairly extensive." (citation omitted)).

A corporation typically will only be found "at home" in its state of incorporation and the state in which it has its principal place of business. *See Sutton v. Motor Wheel Corp., LLC*, No. 3:17-01161-MGL, 2018 WL 2197535, at *3 (D.S.C. May 14, 2018) (citation omitted); *see also Daimler*, 571 U.S. at 137 ("the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction.'" (citations omitted)). Only "in an exceptional case" may "a corporation's operations in a forum other than its formal place of incorporation or principal place of business [] be so substantial and of such a nature as to render the corporation at home in that State." *Daimler*, 571 U.S. at 139 n. 19. This exception is very limited, and plaintiffs face a heavy burden in proving it applies. *See Daimler*, 571 U.S. at 138 (rejecting as "unacceptably grasping" the proposition that a party can be subject to general jurisdiction in every state in which it "engages in a substantial, continuous, and systematic course of business").³

³ *See also, e.g., Companion Prop. & Cas. Ins. Co.*, 2016 WL 6781057, at *7 (noting a party asserting general jurisdiction under *Daimler*'s "exceptional case" exception "faces a heavy burden," and rejecting argument that foreign corporation was at home in South Carolina (citations omitted)); *Maseng v. Lenox Corp.*, 483 F. Supp. 3d 360, 368-69 (D.S.C. 2020) ("Lenox's contacts with South Carolina are limited to one retail store in Myrtle Beach, South Carolina and the marketing, distribution, and sale of its own products in various retail stores in South Carolina. The Myrtle Beach retail store is one of the 20 retail stores that Lenox operates in 12 states. . . . Thus, while this contact is certainly systematic and continuous, it is not substantial enough to render Lenox 'at home' in South Carolina."); *Sunny Days Entm't, LLC v. Traxxas, L.P.*, 376 F. Supp. 3d 654, 660-61 (D.S.C. 2019) (nonresident company that sold toys to South Carolina customers through brick and mortar stores and online not subject to general jurisdiction

Here, there is no basis for the assertion of general jurisdiction over Travelers. Travelers is incorporated in and has its principal place of business in Connecticut. *See* Third-Party Compl. ¶ 5; *see also* Ex. J, Mulcahy Affidavit at ¶ 3. The only way this Court can have general personal jurisdiction over Travelers is if the Receiver can meet his heavy burden of showing that Travelers' contacts with South Carolina are so continuous and systematic as to render it essentially at home in South Carolina. The Receiver cannot possibly meet his burden here.

The Receiver does not even allege that Travelers is subject to general jurisdiction in South Carolina, let alone explain how it could be. That is reason alone to reject any argument that Travelers is at home in South Carolina. But even if the Court were to look past this pleading deficiency, Travelers' limited activities in South Carolina are plainly insufficient to render it at home in South Carolina. As set forth in the accompanying Affidavit of Ann B. Mulcahy:

- Travelers is a corporation with its principal place of business and state of incorporation outside of South Carolina (*see* Ex. J at ¶¶ 3, 7);
- Travelers' business operations are managed principally from its Connecticut offices (*see id.* at ¶ 4);
- None of Travelers' senior officers or directors are located in South Carolina (*see id.* at ¶ 5);
- Travelers does not have employees in South Carolina (*see id.* at ¶ 7);
- Travelers does not own or rent office space in South Carolina (*see id.* at ¶ 7);
- Travelers does not have any loan applications with South Carolina banks or financial institutions (*see id.* at ¶ 7); and
- Travelers does not hold meetings of directors in South Carolina (*see id.* at ¶ 7).

in South Carolina); *Fidrych v. Marriott Int'l, Inc.*, No. 2:17-2195-BHH, 2018 WL 9811052, at *6 (D.S.C. Aug. 3, 2018) (nonresident corporation with 90 hotels and certificate of authority to transact business in South Carolina not subject to general jurisdiction in South Carolina).

Simply put, Travelers is not “at home” in South Carolina, and the Receiver does not assert otherwise. Travelers’ limited contacts with South Carolina relate solely to its insuring relationship with certain South Carolina businesses and residents. And ACL, a Canadian corporation, is not one such business. Accordingly, because Travelers is not incorporated in South Carolina, does not have its principal place of business in South Carolina, and otherwise lacks the type of contacts needed to render it essentially at home in South Carolina, general jurisdiction does not exist.

B. The Court Lacks Specific Jurisdiction Over Travelers

Specific jurisdiction exists where the plaintiff’s claims arise out of or relate to the defendant’s substantial contacts with the forum state. *See Coggeshall*, 655 S.E.2d at 478 (“Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum” (citation omitted)); *Maseng*, 483 F. Supp. 3d at 365 (“A defendant has minimum contacts with a jurisdiction sufficient to subject it to specific jurisdiction in the forum state if ‘the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.’” (quotation omitted)). Because South Carolina’s long-arm statute has been interpreted to be coextensive with the limits of due process, the dispositive question for purposes of specific jurisdiction is whether the exercise of jurisdiction would comport with due process. *See Coggeshall*, 655 S.E.2d at 478; *S. Plastics Co.*, 423 S.E.2d at 131.

As noted above, to comport with due process in the specific jurisdiction context, the Receiver must allege plausible facts sufficient to satisfy both the “power” prong and the “fairness” prong. *See Hidria, USA, Inc.*, 783 S.E.2d at 843. “The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not

have the ‘power’ to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair.” *Power Prods. & Servs. Co.*, 665 S.E. 2d at 665 (citation omitted). ““If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.”” *Id.* (quotation omitted). The Receiver does not come close to alleging specific jurisdiction facts sufficient to satisfy his burden as to either the “power” or the “fairness” prong.

1. The Power Prong Is Not Met

“A minimum contacts analysis requires a court to find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co.*, 423 S.E.2d at 131 (citation omitted). Here, Travelers did not purposefully avail itself of the privileges of conducting business activities in South Carolina in connection with the instant claims, given that there are no factual allegations or evidence that Travelers did anything in South Carolina that could serve as the basis for the Receiver’s third-party claims against Travelers.

In his Third-Party Complaint, the Receiver alleges baldly that “[t]his Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court’s plenary powers,” and that “[t]his Court appointed Peter D. Protopapas as Receiver of Third-Party Plaintiff.” Third-Party Compl. ¶ 6. There are no jurisdictional allegations specific to Travelers. This is reason alone to find that specific personal jurisdiction is lacking. *See Sullivan v. Hawker Beechcraft Corp.*, 723 S.E.2d 835, 839 (S.C. Ct. App. 2012) (the mere “repeating of the [long-arm] statute is insufficient to support a finding of personal jurisdiction”).

Beyond this pleading deficiency, the Receiver cannot demonstrate the minimum, claim-specific contacts between Travelers and South Carolina necessary to meet the constitutional

requirements of due process. The Receiver's third-party claims against Travelers do not arise from or relate to Travelers' contacts with South Carolina. The Receiver seeks insurance coverage rulings that have nothing to do with Travelers' limited contacts with South Carolina. The Receiver has not alleged, and cannot allege, that Travelers directed any ACL-related activities at residents of South Carolina, or that the Receiver's third-party claims against Travelers in this case arise out of any such in-state activities. Indeed, as discussed above, ACL is not and has never been a South Carolina company, and Travelers and the other insurance companies that allegedly issued policies to ACL are domiciled outside of South Carolina. *See, e.g., H.J. Baker & Bro.*, 70 S.E. at 433 ("The general rule of law is well settled that for the purposes of founding administration, all simple contract debts are assets at the domicile of the debtor.") (quotation omitted); *Af-Cap Inc.*, 383 F.3d at 371-72 ("[C]ourts consistently hold that the situs of a debt obligation is the situs of the debtor [T]his rule's general operation has been recognized by the Supreme Court." (citations omitted)); *Long*, 464 F. Supp. at 273 n. 3 ("the situs of the debt lies with the debtor"). Further, Travelers, a Connecticut insurance company, is not alleged to have ever manufactured, distributed, or sold any ACL-related asbestos or asbestos-containing products in South Carolina or elsewhere.

The Receiver cannot argue that Travelers should have somehow foreseen that ACL, a Canadian corporation with no operations in South Carolina, would be subject to asbestos tort lawsuits in South Carolina. But regardless, such foreseeability alone is insufficient to establish personal jurisdiction. *See Cockrell*, 611 S.E.2d at 509 ("The foreseeability that is critical to due process analysis" is that "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." (citation omitted)). The Receiver cannot avoid the absence of jurisdiction over Travelers by attempting to impute the

South Carolina contacts of individual asbestos claimants (or others) to Travelers. The relevant contacts for jurisdictional purposes “must center on the contacts generated by the defendant and not on the unilateral actions of some other entity[.]” *Id.* at 508 (citation omitted); *see also Moosally v. W.W. Norton & Co., Inc.*, 594 S.E.2d 878, 885 (S.C. Ct. App. 2004) (“Because the due process requirements must be met as to each defendant, we must assess individually each defendant’s contacts with South Carolina.” (citations omitted)); *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (“the relationship must arise out of contacts that the ‘defendant *himself*’ creates with the forum State” (citation omitted) (emphasis in original)). Indeed, the United States Supreme Court has made clear that the “unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (citations omitted).⁴ Thus, the contacts asbestos claimants or others may have had with South Carolina are irrelevant to the question whether Travelers has sufficient minimum contacts with South Carolina to give rise to specific personal jurisdiction over Travelers.

In short, because the Receiver fails to allege facts sufficient to demonstrate that Travelers conducted activities in South Carolina that serve as the basis for his third-party claims against

⁴ *See also, e.g., Wallace v. Yamaha Motors Corp.*, No. 9:19- cv-0730-DCN, 2019 WL 6170419, at *3 (D.S.C. Nov. 20, 2019) (finding personal jurisdiction could not be exercised over a nonresident motorcycle manufacturer for product liability claims stemming from a vehicular accident because “conduct of plaintiffs or third parties that creates a connection between the defendant and the forum state will be disregarded”); *Sutton v. Motor Wheel Corp.*, 2018 WL 2197535, at *5 (finding personal jurisdiction did not exist over the defendant, a tire manufacturer, based on the contacts of a distributor of defendant’s tires that was authorized to transact business in South Carolina).

Travelers in this case, the exercise of personal jurisdiction over Travelers would violate due process under the power prong of the due process analysis.

2. The Fairness Prong Also Is Not Met

It would also be unreasonable and unfair for the Court to exercise personal jurisdiction over Travelers in this case. Under the fairness prong of the due process analysis, a court should consider: “(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction.” *Power Prods. & Servs. Co., Inc.*, 655 S.E.2d at 665 (citation omitted). Each of these considerations weighs in favor of declining to exercise jurisdiction over Travelers in this case.

With respect to the first two factors, Travelers’ activities in South Carolina are not only limited, they are entirely unrelated to the facts and circumstances of the Receiver’s third-party claims against Travelers. As explained, Travelers is incorporated in Connecticut, its principal place of business is in Connecticut, none of its senior officers or directors are located in South Carolina, it does not have employees in South Carolina, and it does not own or rent office space in South Carolina. *See* Ex. J, Mulcahy Affidavit ¶¶ 3, 5, 7. In addition, ACL was never a South Carolina company, and Travelers is not alleged to have done anything in or directed to South Carolina that forms the basis for the Receiver’s third-party claims against Travelers in this case. Indeed, the Receiver’s claims are premised on liability insurance policies that were allegedly issued to a Canadian corporation with no operations or property in South Carolina.

With respect to the third factor, no party would be inconvenienced if this Court were to find that it does not have jurisdiction over Travelers. The underlying tort case and the third-party

coverage case can proceed unaffected without Travelers. If anything, the parties, particularly Plaintiff, would be inconvenienced if the Receiver is allowed to implead Travelers, as it would expand unnecessarily the scope of the case and delay its ultimate resolution, thereby prejudicing Plaintiff and wasting party and judicial resources.

Finally, South Carolina's interest in exercising jurisdiction over Travelers here is virtually nonexistent. "[W]hile South Carolina has an interest in providing redress for its citizens, that interest is diminished when no business was transacted in this State and any contract formed was not to be performed in this State." *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 402 S.E.2d 177, 181 (S.C. 1991). ACL is a Canadian corporation with no property in South Carolina, and Travelers is a foreign corporation whose in-state activities are entirely unrelated to Plaintiff's claims.

Thus, even if the Receiver could establish the minimum contacts necessary to meet the constitutional requirements of due process under the power prong (it cannot), the Court should not exercise jurisdiction over Travelers under the fairness prong because it would be neither reasonable nor fair.

IV. The Receiver's Third-Party Claims Are Non-Justiciable

Even if the Court were to find that it can exercise personal jurisdiction over Travelers, the Receiver's third-party claims should nonetheless be dismissed for failure to state a claim because they do not present an actual, justiciable controversy. "At the outset of any action for a declaratory judgment it must be determined whether the pleadings state a cause of action." *West v. West*, 263 S.C. 146, 148-49 (1974) (citations omitted). "The existence of an actual controversy is necessary in order to invoke the jurisdiction of the court for a declaratory judgment." *Id.* "A justiciable controversy is described as a concrete and substantial controversy

and not merely a dispute of a contingent, hypothetical, or abstract character.” *Id.* The Receiver’s three declaratory judgment claims against Travelers are purely hypothetical and abstract; there is no legitimate case or controversy, and the Receiver’s claims should be dismissed under Rule 12(b)(6).

A. Count I Should Be Dismissed

In his first cause of action, the Receiver asks this Court to declare that any insurance policies Travelers issued to ACL “are the property of ACL to be administered by the Receiver” and that any such policy documents “shall be delivered immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties.” Third-Party Compl. ¶¶ 35-36. The Receiver fails to allege a single fact to show that there is a justiciable controversy on this issue. He does not even allege that he requested the policy documents from Travelers and that Travelers refused to provide them. In any event, Travelers has already offered to produce to the Receiver the ACL policies referenced in paragraph 27 of the Receiver’s Third-Party Complaint. In this situation, it is indisputable that there is no ripe controversy, which requires, among other things, that “there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party.” *Power*, 255 S.C. at 153-54; *see also, e.g., West*, 263 S.C. at 150 (“Although we adhere to the policy of liberally construing the declaratory judgment statute, this does not mean that this Court will entertain suits which, after adjudication, settle no legal rights of the parties. To do so would be to render advisory opinions, and thus, would be beyond the intended purpose and scope of a declaratory judgment.”).

B. Count II Should Be Dismissed

In his second cause of action, the Receiver seeks a declaration that Travelers “issued primary and/or excess general liability coverage to ACL,” as well as declarations as to the “interpretation and meaning” of those policies, including that Travelers has an “unlimited supplemental duty to defend or reimburse defense costs.” *See* Third-Party Compl. ¶¶ 38-39. There is no live case or controversy on this issue.

The relief the Receiver seeks is hypothetical and speculative; in effect, he is asking this Court to issue advisory opinions. He fails to allege facts demonstrating a specific, concrete matter for juridical resolution. Rather, he asserts generically that Travelers has a duty to defend or reimburse defense costs with respect to the “ACL Asbestos Suits,” after which he seeks various coverage declarations as to those lawsuits. *See* Third-Party Compl. ¶¶ 8, 39. Yet he never identifies the lawsuits at issue, other than “the instant suit filed by Ted Everette Mitchell, individually and as Executor of the Estate of Patsy Ann Mitchell.” *Id.* ¶ 8. The Receiver fails to identify any particular pending asbestos action as to which these issues have allegedly arisen and as to which an actual controversy currently exists vis-à-vis Travelers. Without identification of specific actions and the specific facts in each action, the Third-Party Complaint does not present a concrete matter for judicial resolution. Instead, it improperly seeks abstract, hypothetical, and contingent declarations.

Indeed, the duty to defend cannot be determined without identification of the specific lawsuits at issue. It is the most basic of principles that, “the duty of a liability insurance company to defend a claim brought against its insured [is] determined by the allegations of the third party’s complaint.” *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 15 (Ct. App. 1994), *aff’d*, 321 S.C. 310 (1996). Similarly, issues relating to any duty to indemnify

cannot be adjudicated in a vacuum. *See Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595 (2013). The Receiver has not identified the particular lawsuits as to which he seeks relief, let alone the allegations of the complaints therein, and thus this Court cannot issue the declarations the Receiver seeks in Count II.

C. Count III Should Be Dismissed

Finally, in his third cause of action, the Receiver seeks a declaration that Travelers “must fairly compensate the Receiver for the substantial time, effort, and expenses expended in connection with the defense of asbestos suits potentially covered under [Travelers’] policies and to further declare that this obligation is unlimited.” Third-Party Compl. ¶ 48. Although the Receiver alleges that “[a]n actual and justiciable controversy exists between the Receiver and the Third-Party Defendants,” *see id.* ¶ 44, this vague and conclusory allegation is not supported by a single factual allegation. The Receiver does not even allege that he has asked Travelers to compensate him or that Travelers has refused any such request.

Again, this claim amounts to nothing more than an impermissible request for an advisory opinion. *See Booth v. Grissom*, 265 S.C. 190, 192 (1975) (“It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.”). This Court cannot and should not declare, without any grounding in any supposed legal duty, that Travelers has to pay the Receiver for “unlimited” expenses he has supposedly incurred, or may incur in the future, in connection with any number of cases that have been or may be brought against ACL at any time. Further, because the Appointment Order was improper to begin with and must be revoked, the Receiver is not entitled to compensation for work he has supposedly done on behalf of ACL.

V. The Third-Party Claims Are Improper Under SCRCP 14 Because They Do Not Seek To Establish, and Are Not Based On, Liability Derivative of Plaintiff's Tort Claims

Rule 14 provides that a defendant “as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him.” Rule 14(a), SCRCP (emphasis added). Under this Rule, “the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability” and “[t]he outcome of the principal claim must impact the third-party defendant's liability[.]” *First Gen. Servs. of Charleston, Inc. v. Miller*, 445 S.E.2d 446, 447 (S.C. 1994) (citation omitted). “Consequently, a non-party is subject to impleader [under SCRCP 14] only if there is a basis to assert he is liable to the named defendant(s) for all or part of the plaintiff's claim.” *Smith v. Tiffany*, 799 S.E.2d 479, 486 (S.C. 2017); *see also Gathings v. Robertson Brokerage Co., Inc.*, 367 S.E.2d 423, 426 (S.C. Ct. App. 1988) (“Rule 14 may be used only when the substantive law permits the defendant to shift some or all of his liability [on the principal claim] to the impleaded party.” (quotation omitted)).

“The third party claim must be derivative of the plaintiff's claim because [d]erivative liability is central to the operation of Rule 14.” *CNH Indus. Cap. Am. LLC v. Able Cont., Inc.*, No. 9:16-cv-2520-RMG, 2017 WL 512453, at *1 (D.S.C. Feb. 7, 2017) (citation and internal quotation marks omitted).⁵ “It is not sufficient that the third-party claim is a related claim; the claim must be derivatively based on the original plaintiff's claim.” *Id.* (quotation omitted). “Rule 14(a) does not allow the defendant to assert a separate and independent claim even

⁵ Rule 14 of the Federal Rules of Civil Procedure is substantially the same as Rule 14 of the SCRCP. “In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.” *Maybank v. BB&T Corp.*, 787 S.E.2d 498, 510 (S.C. 2016) (citation omitted).

though the claim arises out of the same general set of facts as the main claim.” *Id.* (quotation and other citation omitted). “In other words, impleader ‘must involve an attempt to pass on to the third party all or part of the liability asserted against the defendant.... An impleader claim may not be used to assert any and all rights to recovery arising from the same transaction or occurrence as the underlying action.” *Id.* (quotation omitted). Thus, “[a] third-party claim may be asserted . . . *only when the third party’s liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defending party.*” *Id.* (citation omitted) (emphasis in original). “[A] third-party claim is ‘viable only where a proposed third party plaintiff says, in effect, ‘If I am liable to [the original] plaintiff, then my liability is only technical or secondary or partial, and the third party defendant is derivatively liable and must reimburse me for all or part ... of anything I must pay [the original] plaintiff.’” *For Life Prods., LLC v. Universal Cos., Inc.*, No. 1:20CV00016, 2021 WL 1169532, at *4 (W.D. Va. Mar. 29, 2021) (quotation omitted).

Here, the Receiver’s claims against Travelers are not derivative of or dependent on Plaintiff’s tort claims against ACL. The Receiver does not and cannot allege that Travelers, an insurer, is derivatively liable if ACL is found responsible for Plaintiff’s alleged asbestos exposure. Nor does the Receiver allege that Travelers has any obligation to Plaintiff.

Indeed, rather than seeking to establish derivative liability, the Receiver’s claims seek relief directly from and against Travelers. The claims are not specific to Plaintiff and are not based on derivative liability at all; as a result, they are not actionable under SCRCP 14. *See Miller*, 445 S.E.2d at 447 (explaining that, because third-party claims are dependent on derivative liability, “no right exists to implead a third-party defendant who is *directly* liable to the [third-party] plaintiff.” (citation omitted) (emphasis in original)).

To reiterate, Plaintiff's underlying case is a tort lawsuit related to alleged asbestos exposure. It has nothing to do with insurance policy obligations. Travelers' alleged insuring relationship with ACL is not claimed to have caused Plaintiff's injuries—nor could it—and Plaintiff has yet to establish that ACL has any liability to Plaintiff.

“It is hardly necessary to cite cases or authorities to the effect that in a tort action, suit must first be brought against the insured or party claimed to be liable, and that an insurance carrier cannot be joined in such a suit, or suit brought individually against such a company; and in fact, it is universally forbidden that any evidence or reference be made to the fact that the defendant is protected by insurance.” *Ford v. Glens Falls Indem. Co. of Glens Falls, N.Y.*, 80 F. Supp. 347, 348 (E.D.S.C. 1948). Indeed, recognizing the distinct set of facts and issues relevant to tort claims as opposed to contract claims, courts in South Carolina have long held that liability issues and insurance coverage issues should be litigated separately. *See Am. Fidelity Fire Ins. Co. v. Hood*, 37 F.R.D. 17, 24 (E.D.S.C. 1965) (dismissing tort cross-claims asserted in declaratory judgment action on insurance coverage because such claims did not arise from same transaction or occurrence as declaratory judgment claims); *Ex Parte Builders Mutual Ins. Co.*, 847 S.E.2d 87, 110-111 (S.C. 2020) (affirming trial court's decision to deny insurers' motions to intervene in underlying tort action, and recognizing that a separate declaratory judgment action is the proper forum to resolve insurance coverage issues). The Receiver cannot implead Travelers in a direct asbestos tort case, especially before ACL's liability has been determined.

In short, the Receiver's third-party claims against Travelers improperly ask this Court for contract-related judicial declarations unrelated to Plaintiff's asbestos tort action and not premised on derivative liability. Travelers, therefore, cannot be impleaded, and the third-party claims against Travelers must be dismissed.

CONCLUSION

For all the foregoing reasons and others appearing in the record, Travelers respectfully requests that this Court either stay this action pending resolution of ACL's appeal or dismiss the Receiver's third-party claims against Travelers with prejudice and dissolve the ACL Receivership.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

STEPTOE & JOHNSON LLP

Harry Lee (*pro hac vice*
application forthcoming)
hlee@steptoe.com
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for Third-Party Defendant Travelers
Casualty and Surety Company, formerly
known as The Aetna Casualty and Surety
Company

October 23, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually and
as Executor of the Estate of PATSY ANN
MITCHELL,

2022-CP-40-02979

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M Company, et al.,

Defendants.

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver, Peter
D. Protopapas,

Third-Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, et al.,

Third-Party Defendants.

**THIRD-PARTY DEFENDANT TRAVELERS CASUALTY AND SURETY COMPANY'S
NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER**

Third-Party Defendant Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company ("Travelers"), by and through undersigned counsel, hereby moves for a protective order with respect to discovery requests and a corporate deposition notice served on Travelers by Defendant/Third-Party Plaintiff "Asbestos Corporation Limited, By and Through

Its Duly Appointed Receiver Peter D. Protopapas” (“ACL” or the “Receiver”), as well as any further discovery. Travelers respectfully requests that this Court issue an order staying all discovery as to Travelers in connection with the third-party complaint filed by ACL’s purported Receiver until after ACL’s pending appeal in this case is resolved, or this Court has resolved Travelers’ accompanying Motion to (i) Stay or Dismiss the Third-Party Claims of the Purported Receiver for ACL and (ii) To Dissolve the Receivership (“Motion to Stay, Dismiss, or Dissolve”).

PRELIMINARY STATEMENT

This Court appointed Mr. Protopapas as the Receiver of ACL’s “insurance assets” in the *Tibbs* asbestos tort case (the “Appointment Order”). *See* Ex. A (Order on Plaintiffs’ Motion to Appoint a Receiver, dated Sept. 8, 2023, in *Tibbs v. 3M Company*, No. 2023-CP-40-01759 (S.C. Ct. Common Pleas)). The Court did so at the request of the *Tibbs* plaintiffs even though ACL is a solvent, foreign corporation without any ties to South Carolina, and despite the fact that ACL was actively defending itself in the *Tibbs* case. The procedural lead-up to the Appointment Order was as follows:

- On May 17, 2023, ACL filed a motion to dismiss the *Tibbs* plaintiffs’ Amended Complaint for lack for personal jurisdiction. *See* Ex. B.
- On July 19, 2023, the Court denied ACL’s motion to dismiss. *See* Ex. C.
- 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. *See* Ex. D.
- On July 28, 2023, the *Tibbs* plaintiffs filed a motion asking the Court to appoint Mr. Protopapas as ACL’s receiver “as soon as practically possible” after striking ACL’s pleadings. *See* Ex. E.
- On August 2, 2023, ACL filed an answer to the *Tibbs* plaintiffs’ Amended Complaint. Ex. F.

- On August 9, 2023, ACL filed an opposition to the *Tibbs* plaintiffs' motions to hold ACL in contempt, to strike its pleadings, and to appoint Mr. Protopapas as receiver. Ex. G. Among other things, ACL explained that it provided certain written and document discovery in response to the plaintiffs' discovery requests, but that it could not provide a Rule 30(b)(6), SCRCP, witness because there are no individuals alive who are capable of responding to the examination topics. ACL also explained that, as a Canadian corporation whose office is located in Quebec, it could not provide certain discovery without risking criminal or civil penalties under the Quebec Business Concerns Record Act.
- On September 8, 2023, at 8:43 a.m., the Court issued an Order holding ACL in contempt and striking its pleadings in *Tibbs* for its "refusal to participate in meaningful discovery." Ex. H.
- On September 8, 2023, at 8:44 a.m., the Court issued its Appointment Order. The Court found ACL in default in *Tibbs* (because the Court had struck its answer) and appointed Mr. Protopapas as the Receiver of ACL's "insurance assets." Ex. A.

On September 13, 2023, ACL filed a Notice of Appeal with the South Carolina Court of Appeals as to the Court's Appointment Order as well as the Order holding ACL in contempt and striking its pleadings. Ex. I. ACL's appeal challenges the propriety of the ACL Receivership. It seeks to vacate the Appointment Order and to dissolve the Receivership in its entirety. The appeal remains pending.

Turning to the instant case, on May 17, 2023, Plaintiff 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. Mr. Mitchell alleges that he developed lung cancer as a result of his exposure to asbestos. Am. Compl. ¶¶ 1-11. As to ACL, he alleges that it "mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, raw asbestos fibers present at numerous jobsites in South Carolina and North Carolina." Am. Compl. ¶ 31. He seeks damages against ACL and the other defendants for their alleged tortious conduct.

On June 19, 2023, ACL filed a motion to dismiss Mr. Mitchell’s Amended Complaint for lack of personal jurisdiction. *See generally* ACL’s June 19, 2023 Memorandum In Support of Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction; *see also* Richard Dufour Affidavit dated June 16, 2023 (filed June 19, 2023) (“Dufour Affidavit”). ACL argued that Mr. Mitchell failed to make a *prima facie* showing that ACL is subject to either general or specific personal jurisdiction in South Carolina. ACL’s motion to dismiss and the accompanying Dufour Affidavit explain that ACL is an active Canadian corporation that has never conducted any business activities in South Carolina. ACL’s motion to dismiss remains pending.

On September 19, 2023—approximately one week after ACL appealed the Appointment Order in *Tibbs*—the Receiver, purportedly acting on ACL’s behalf, filed his Third-Party Complaint in this case against Travelers and other alleged ACL insurers. *See* Third-Party Compl. dated Sept. 19, 2023. The Receiver’s Third-Party Complaint includes three declaratory judgment claims against Travelers and the other Third-Party Defendants. In Count I, the Receiver seeks a declaration that ACL’s insurance policy documents are “the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties.” *Id.* ¶ 36. In Count II, the Receiver seeks a declaration that Travelers and ACL’s other alleged insurers “issued primary and/or excess general liability coverage to ACL, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend or reimburse defense costs.” *Id.* ¶¶ 38-39. As part of Count II, the Receiver also seeks various coverage-related declarations “as to the interpretation and meaning of the insurance policies” allegedly issued to ACL. *Id.* In Count III, the Receiver seeks a declaration that Travelers and the other insurers “must fairly compensate the Receiver for the substantial time,

effort, and expenses expended in connection with the defense of asbestos suits potentially covered under the Third-Party Defendants' policies and to further declare that this obligation is unlimited." *Id.* ¶ 48. The Third-Party Complaint makes no mention of the fact that the validity of the Receivership is on appeal—ACL's appeal challenges the purported Receiver's authority to do anything on ACL's behalf.

Along with his Third-Party Complaint, the Receiver served Travelers with extensive discovery requests, including 13 interrogatories and 105 requests for production of documents. *See* Ex. J. In addition, on October 11, 2023, the Receiver served a Rule 30(b)(6), SCRCR, deposition notice on Travelers, unilaterally noticing Travelers' deposition for November 9, 2023. *See* Ex. K. The deposition notice includes 22 broad topics of examination. *See id.*

On October 23, 2023, Travelers filed its Motion to Stay or Dismiss the Third-Party Complaint, as well as to Dissolve the ACL Receivership (*i.e.*, the Motion to Stay, Dismiss, or Dissolve), which Travelers incorporates in full by reference herein. As explained in that Motion, under Rule 241, SCACR, ACL's appeal acts to automatically stay the Appointment Order, including the Receiver's purported authority to pursue his third-party claims and to seek discovery on ACL's behalf. *See* Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."). In addition, under Rule 205, SCACR, the appeal divests the trial court of jurisdiction over matters affected by the appeal. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal"). The Receiver cannot seek discovery, purportedly on ACL's behalf, while the validity

of his appointment is on appeal; and, even if he could, this Court is deprived of jurisdiction over matters affected by the appeal, including the legality of the Receivership.

Travelers' Motion to Stay, Dismiss, or Dissolve further explains that, if the Receiver's authority to act as ACL's Receiver has somehow not been stayed, and the Court finds it somehow has not been divested of jurisdiction over matters affected by ACL's pending appeal, the Court should vacate its Appointment Order, dissolve the Receivership, and dismiss the Receiver's third-party claims against Travelers with prejudice. Thus, even if the Court were to find that the Receiver is not precluded from seeking discovery in light of ACL's pending appeal, the Court should still issue an order staying discovery pending resolution of Travelers' Motion to Stay, Dismiss, or Dissolve, because the issues raised in that Motion are case-dispositive. Discovery cannot go forward because the Receivership is unlawful and must be dissolved, the Court does not have personal jurisdiction over Travelers, and the Receiver has failed to state a cognizable claim for relief against Travelers.

LEGAL STANDARD

Rule 26(c) provides that "[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including" an order "that the discovery not be had" Rule 26(c), SCRCP. The timely filing and service of a motion for protective order relieves the party upon which discovery is served from any obligation to respond to the challenged discovery until the motion has been resolved. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991).

ARGUMENT

The Receiver has served extensive discovery requests on Travelers, including 105 document requests, 13 interrogatories, and a deposition notice with 22 topics of examination. *See* Exs. J, K. The discovery requests are improper. They are premature, overly broad, unduly burdensome, and seek irrelevant information. More critically, though, discovery cannot go forward at this time because ACL has appealed the Appointment Order, which acts to automatically stay the relief reflected in that Order, including the Receiver's appointment and supposed authority to act as ACL's Receiver and seek discovery on ACL's behalf. And regardless of the presence of a stay, the purported Receiver for ACL should not be allowed to seek discovery pending resolution of ACL's appeal and Travelers' Motion challenging the validity of the Receivership.

As previewed above, under Rule 241, SCACR, ACL's appeal acts to automatically stay the Appointment Order, including the Receiver's purported authority to pursue his third-party claims and to seek discovery on ACL's behalf. *See* Rule 241(a), SCACR ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision."). Indeed, the Appointment Order is the sole basis for the Receiver's supposed authority to act as ACL's Receiver. The "matters decided in" that Order and the "relief ordered" are automatically stayed. That includes all of the "Powers of the Receiver" set forth in the Appointment Order, including the Receiver's supposed authority to "engage counsel on behalf of ACL," "to administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities," and to take actions "related to the discovery of and recovery of insurance assets,"

among other things. Ex. A (Appointment Order at 6). Thus, the Receiver's supposed authority to take discovery is stayed under Rule 241, SCACR, pending resolution of ACL's appeal.

In addition, under Rule 205, SCACR, the appeal divests this Court of jurisdiction over matters affected by the appeal. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal"); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532 (S.C. 2016) (Toal, J., concurring) ("Pursuant to Rule 205, the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal"); *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 137 (S.C. 2013) ("Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court."); *Tillman v. Oakes*, 398 S.C. 245, 255 & n. 3 (S.C. Ct. App. 2012) (reiterating that "[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal," and explaining that this rule "deprives the lower court of the power to address a particular issue, or 'matter,' during the pendency of the appeal"); Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that "[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal"). This Court thus does not have jurisdiction to rule on matters affected by the appeal, including the validity of the Receivership.

Finally, even if the Court were to find that discovery is not automatically stayed under Rule 241, SCACR, the Court should still issue an order staying discovery pending resolution of Travelers' Motion to Stay, Dismiss, or Dissolve. Indeed, before allowing any discovery, the Court should first resolve the potentially case-dispositive issues raised in Travelers' Motion, including the validity of the Receivership, whether this Court has jurisdiction over Travelers, and

whether the Receiver has stated a cognizable claim for relief against Travelers. *See, e.g., Boudreaux Grp., Inc. v. Clark Nexsen, Owen, Barbieri, Gibson, P.C.*, No. 8:18-cv-1498-TMC, 2018 WL 9785308, at *6 (D.S.C. Nov. 20, 2018) (staying discovery pending a ruling on a potentially-dispositive motion to dismiss); *Eleazu v. Dir. US Army Network Enter. Ctr., Natick*, No. 3:20-2576-JMC-SVH, 2020 WL 6875538, at *7 (D.S.C. Nov. 23, 2020) (staying discovery pending resolution of motion to dismiss); *Chaudhry v. Mobil Oil Corp.*, 186 F.3d 502, 505 (4th Cir. 1999) (affirming stay of discovery pending resolution of motion to dismiss); *Briggs v. T&D Plumbing & Hearing Co., Inc.*, No. WDQ-10-2714, 2011 WL 2970845, at *3 (D. Md. July 19, 2011) (granting motion for protective order staying discovery until resolution of motion to dismiss).¹

CONCLUSION

Accordingly, for the foregoing reasons and others appearing in the record, Travelers respectfully requests that the Court grant this motion and enter an order staying all discovery as to Travelers in connection with instant third-party case initiated by the purported Receiver for ACL and/or finding that Travelers need not respond to any discovery from the Receiver (including written discovery, document discovery, or deposition notices) until after ACL's appeal is resolved or the Court has ruled on Travelers' Motion to Stay, Dismiss, or Dissolve, if at all.²

¹ "In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (citation omitted).

² Undersigned counsel certifies that consultation to attempt to resolve this matter would serve no useful purpose.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

STEPTOE & JOHNSON LLP

Harry Lee (*pro hac vice*
application forthcoming)
hlee@steptoe.com
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for Third-Party Defendant Travelers
Casualty and Surety Company, formerly
known as The Aetna Casualty and Surety
Company

October 23, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

**RECEIVER'S OMNIBUS RESPONSE TO
INSURERS' MOTIONS FOR STAY,
MOTIONS TO DISMISS, MOTIONS TO
STRIKE, MOTIONS FOR MORE
DEFINITE STATEMENT, AND MOTION
TO DISSOLVE RECEIVERSHIP**

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, *et*
al.,

Third Party Defendants.

Third-Party Plaintiff Asbestos Corporation Limited (“ACL”), by and through its duly-appointed Receiver, Peter D. Protopapas (the “Receiver”), submits this Omnibus Response to various Motions for Stay, Motions to Dismiss, Motions to Strike, Motions for More Definite Statement, and Motion to Dissolve Receivership (collectively, the “Motions”) filed by certain Third-Party Defendants—namely: (1) The Continental Insurance Company (“Continental”); (2) Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, together with Federal Insurance Company (collectively, “Chubb”);

and (3) Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers”) (collectively, the “Insurers”).¹

INTRODUCTION

The Insurers’ Motions raise a series of boilerplate arguments they have repeatedly asserted in other receivership actions seeking to frustrate and delay the Receiver’s ability to carry out his court-appointed duties. The Court has rejected these arguments in other actions, but the Insurers insist on raising them once again.

As an initial matter, the Insurers contend that this receivership action is stayed, and that this Court does not have jurisdiction, as a result of ACL’s pending appeal of the order appointing the Receiver. Remarkably, the Insurers raise the same arguments again, notwithstanding that the Court of Appeals just heard and rejected them less than two months ago in the Payne & Keller receivership. *See* Ex. A, Order, Appellate Case No. 2023-000727 (S.C. App., Sept. 8, 2023). There, Payne & Keller’s insurers—including two of the insurers involved in this action—made the same arguments that the Insurers make here, asking the Court of Appeals for a ruling that a receivership action could not proceed during an appeal that challenges the appointment of the receiver, pursuant to Rule 241(a) and/or Rule 205, SCACR. In its September 8, 2023 order, the Court of Appeals rejected the Payne & Keller insurers’ arguments and confirmed that a receivership action like this one may proceed notwithstanding such an appeal, pursuant to Rule 62(a), SCRCP, and South Carolina Code § 14-3-450. Accordingly, under these same authorities,

¹ On October 23, 2023, Continental filed a motion to dismiss, stay, and/or strike the third-party complaint, or, in the alternative, to sever the third-party complaint, or in the further alternative, for a more definite statement. On the same day, Chubb filed a motion to enforce Rule 205, SCACR, or, in the alternative, to dismiss and/or strike the third-party complaint. Also on the same day, 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 and a motion for protective order.

as confirmed by the Court of Appeals, this receivership action is not stayed, and should go forward in all respects, notwithstanding ACL's appeal. The Insurers' decision to continue to raise stay and jurisdictional arguments that have been rejected in the Court of Appeals should not be countenanced.

The Insurers' remaining Motions—motions to dismiss, sever and/or for more definite statements—follow the same pattern: The Insurers raise substantially the same arguments that these Insurers and others have raised—and lost—in response to third-party complaints filed in other receiverships. This Court has previously considered and denied all of these arguments. *See, e.g.*, Ex. B, June 20, 2022 Hr'g Tr. at 4–6, 69–70 (denying similar motions in Pipe & Boiler receivership); Ex. C, July 14, 2022 Text Order (denying eight substantially similar motions in Payne & Keller and Pipe & Boiler receivership); and Ex. D, March 31, 2023 Order (denying substantially similar motion filed by Travelers in the Payne & Keller receivership).

For the reasons set forth herein and as found by the Court in prior rulings, the Receiver respectfully requests that the Court deny these Insurers' Motions in all respects.

SUMMARY CHART OF INSURERS' MOTIONS

The Insurers have filed three separate Motions, to which the Receiver collectively responds herein. For ease of reference, the Receiver provides the following chart that identifies the arguments raised in each of the three Motions, and the subsections of this brief where the Receiver responds.

Arguments Raised by the Insurers	Argument Section with Receiver's Response Herein	Insurers' Motions		
		Continental	Chubb	Travelers
Motion for Stay Rules 205 and 241(a), SCACR	A	✓	✓	✓

Motion to Dismiss for Failure to State Claim Rule 12(b)(6), SCRCP	B	✓	✓	✓
Motion to Strike Rule 14(a), SCRCP	C	✓	✓	✓
Motion for More Definite Statement Rule 12(e), SCRCP	D	✓	✓	
Motion to Dismiss for Lack of Subject Matter Jurisdiction a/k/a No Standing) Rule 12(b)(1), SCRCP - and - Motion to Dissolve Receivership	E		✓	✓
Motion to Dismiss for Failure to Join Party Rule 12(b)(7), SCRCP	F		✓	
Motion to Dismiss for Lack of Personal Jurisdiction Rule 12(b)(2), SCRCP	G			✓

BACKGROUND

ACL’s historical operations include the sale of asbestos-containing products and raw asbestos material. *See* September 19, 2023 Third-Party Complaint (the “Complaint”) at ¶ 8. Those operations allegedly exposed persons to asbestos who thereby suffered bodily injury (the “Asbestos Allegations”). *Id.* The alleged bodily injury resulting from the Asbestos Allegations has resulted in suits against ACL (the “Asbestos Suits”). *Id.*

On September 8, 2023, this Court ordered that “Peter Protopapas . . . is appointed Receiver in this case with the power and authority [to] fully administer all insurance assets of Asbestos Corporation, Ltd. 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.” *See* Ex. E, Receivership Order at 6. The Court instructed, among other things, that the Receiver “investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL.” *Id.* at 7.

ACL purchased insurance policies, including policies issued by the Insurers, which should now provide defense costs and liability coverage for the Asbestos Suits. In this action, the Receiver seeks declaratory relief regarding the Insurers’ coverage obligations. *See* Compl. at ¶¶ 33–48. Specifically, the Receiver seeks declaratory relief requiring the production of policies and related documents from all the Third-Party Defendants. *Id.* at ¶ 36 (First Cause of Action). The Receiver also seeks a declaration regarding the meaning and application of the policies issued by the Insurers to the Asbestos Suits. *Id.* at ¶ 39 (Second Cause of Action). Finally, the Receiver seeks a declaration that the Insurers must compensate the Receiver for his time and efforts spent in connection with the defense of ACL’s asbestos cases. *Id.* at ¶ 48 (Third Cause of Action).

ARGUMENT

A. The Court of Appeals Has Held that a South Carolina Receivership Action Is Not Stayed and May Proceed in the Circuit Court During a Pending Appeal.

When the Insurers filed their Motions on October 23, 2023, they were well aware that their arguments regarding a stay and alleged lack of jurisdiction in this Court had already been refuted by the Court of Appeals in the Payne & Keller receivership. And yet, they decided to raise the very same arguments once again and ask this Court for an order that this receivership action is stayed and cannot proceed until ACL’s appeal is resolved.

The Insurers’ attempt to prevent the Receiver from moving forward with his court-appointed duties based on arguments rejected by the Court of Appeals should be rejected again by this Court. Rather, the Court should apply receivership law as confirmed by the Court of Appeals

and rule that there is no automatic stay of this receivership action under Rule 241(a) and that Rule 205 does not apply to prevent this receivership action from proceeding during ACL's appeal. The Court should also deny the Insurers' alternative request to enter a discretionary stay.

1. Appeal of a receivership action does not create an "automatic stay" under Rule 241(a) or otherwise.

In the Payne & Keller receivership, the Court of Appeals in its September 8, 2023 Order expressly held that receivership actions are not stayed and that the receiver could continue carrying out his duties during the pendency of an appeal challenging the validity of the receiver's appointment:

[T]he March 31, 2023 order [that is on appeal] is not stayed during pendency of this appeal. *See* Rule 62(a), SCRCP ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. § 14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330^[2] the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). ***Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.***

See Ex. A, at 3 (emphasis added).³

² Section 14-3-330 provides: "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: ... (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or ***granting, continuing, modifying, or refusing the appointment of a receiver.***" (emphasis added).

³ Subsequently, in its October 5, 2023 Order in the Payne & Keller receivership, this Court confirmed that the Court of Appeals' order "clarify[ed] that under the law and statutes of South Carolina, that while the appeal of this Court's orders proceeds, the Receivership action is not stayed." *See* Findings of Fact and Conclusions of Law on Plaintiffs' Motion to Revoke the Termination of Payne & Keller Company, Case No. 2021-CP-40-03484 (Oct. 5, 2023).

Certain insurers have filed a motion asking this Court to reconsider its October 5, 2023 in Payne & Keller, as well as an "emergency motion" asking the Court of Appeals to "enforce" Rule 205 in the Payne & Keller receivership—arguing that the Court of Appeals' September 8, 2023 Order did

Here, as in the Payne & Keller receivership, Rule 62(a) and Section 14-3-450 establish that there is no automatic stay of this receivership action under Rule 241(a) or otherwise.

2. Rule 205 does not prevent a receivership action from continuing during appeal.

The Insurers further contend that—irrespective of whether there is an automatic stay in place—the appeal divests this Court of any jurisdiction in this receivership action because the appellate court has exclusive jurisdiction under Rule 205, SCACR. The Insurers’ view of receivership law is wrong. As this Court knows, the Court of Appeals just heard and rejected this exact argument in Payne & Keller.

In Payne & Keller, at this Court’s request, the Receiver sought clarification from the Court of Appeals that the pending appeal challenging the validity of the receivership did not stay the underlying receivership action, and that the Receiver could continue his court-appointed duties while the appeal is pending. The Receiver argued:

[S]ection 14-3-450 and Rule 62(a) clearly provide that receivership actions are not stayed during the pendency of appeals. . . . Our state’s policy regarding receiverships underscores why the duties of the receiver should not be stayed while an appeal proceeds. Section 14-3-450 and Rule 62(a) are the vehicle that allows the courts of this state to protect the assets of a corporation under receivership, even during the pendency of an appeal. Allowing receiverships to be stayed while an appeal is pending would simply raise the “potential harm in not having an unbiased party to protect a corporation’s assets.” *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004). A finding to the contrary would allow any corporation wanting to defy a receivership to moot the litigation by liquidating or wasting the company’s assets while the appellate courts consider the appeal.

not address Rule 205, but rather only the question of a stay under Rule 241(a). At the time of the Receiver’s filing this brief, those motions remain pending.

Ex. F, Receiver's Expedited Motion to Clarify the Court's Order on Appealability, Aug. 9, 2023, Appellate Case No. 2023-000727, at 4.

In response, Travelers—also a defendant here—argued to the Court of Appeals that the question of a “stay” was beside the point, because the receivership action could not proceed in this Court during the appeal on jurisdictional grounds pursuant to Rule 205:

The Receiver's motion [to clarify] frames the question as one of a stay. But this is incorrect. As a matter of hornbook South Carolina law, once an issue is before the appellate courts, the circuit court loses jurisdiction over those issues. *See* Rule 205, SCACR (providing that upon service of a notice of appeal, “the appellate court shall have *exclusive jurisdiction* over the appeal”) (emphasis added); . . . Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”).

Because the very existence of the receivership is presently on appeal before this Court, there is nothing the Receiver can do at the trial level, as anything the Receiver does would, by definition, involve “matters affected by the appeal.” As such, the Receiver cannot continue to prosecute his third-party case or take other actions purportedly on Payne & Keller’s behalf while the validity of his appointment is on appeal.

Ex. G, Travelers' Response in Opposition to the Receiver's Motion to Clarify, Sept. 5, 2023, Appellate Case No. 2023-000727, at 4–5 (citations omitted) (emphasis added).

Travelers further argued to the Court of Appeals that Rule 62(a) and South Carolina Code § 14-3-450 were irrelevant—because Rule 205, standing alone, settled the question:

This is not at odds with Civil Rule 62(a) or South Carolina Code § 14-3-450, on which the Receiver exclusively relies. Rule 62(a), SCRCP, creates an automatic stay against executing on any judgment for a ten-day period after it has been entered, but then it exempts “injunctions, receivership, and accountings” from this automatic-stay period. ***That has nothing to do with whether the trial court still has jurisdiction to direct a receiver when the very existence of the receivership has been challenged on appeal and is squarely presented to this Court.*** *See* Rule 205, SCACR (vesting

the appellate court with “*exclusive jurisdiction*” over matters on appeal) (emphasis added).

[Section 14-3-450] is similarly inapplicable. It provides: “In case of an appeal under item (4) of Section 14-3-330 the proceedings *in other respects* in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.” *Id.* (emphasis added). On its face, this statute recognizes the jurisdictional limitations placed on the trial court when a matter is on appeal, but it authorizes “the other” parts of case—that is, the unappealed parts—to proceed unless the trial court decides to stay the entirety of the proceedings.

Id. at 5 (emphasis added).⁴

After considering these arguments—including specifically the insurers’ arguments regarding Rule 205, SCACR—the Court of Appeals found that the Receiver’s position was correct and confirmed that “*the receivership action and the receiver’s ability to carry out his duties are not stayed.*” Ex. A, at 3 (emphasis added).

There is no reason for a different outcome in this receivership action. In fact, there is a real question as to whether the Insurers (and particularly those insurers involved in the Payne & Keller receivership litigation) are acting in good faith by raising these same, rejected arguments here. The Court of Appeals in Payne & Keller considered all the same legal arguments that the Insurers raise here. In its order, the Court of Appeals confirmed that Rule 62(a) and South Carolina Code

⁴ Continental—also a defendant here—made the same argument to the Court of Appeals that Travelers made: “While the Receiver ostensibly asks for ‘clarification,’ what he actually seeks is permission from this Court to ignore Rule 205 and continue his efforts to litigate before the Circuit Court matters that are in this Court’s exclusive jurisdiction. . . . The language of Rule 205 is clear—as are the Supreme Court’s recent decisions reiterating Rule 205’s application in *Stokes-Craven [Holding Corp. v. Robinson]*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016)] and *Lancaster [v. Georgia-Pacific Corp.]*, 403 S.C. 136, 137 742 S.E.2d 867, 868 (2013)]. The issues the Receiver seeks to pursue in the Circuit Court are the very issues pending before this Court on appeal. Therefore, this Court has ‘exclusive jurisdiction’ over these issues.” Ex. H, Appellants’ Return to Respondent’s Expedited Motion to Clarify the Court’s Order on Appealability, Sept. 5, 2023, Appellate Case No. 2023-000727, at 10–13.

§ 14-3-450 were controlling. These authorities apply equally to this receivership action. Furthermore, the Court of Appeals' order was not premised on any unique facts or circumstances in Payne & Keller that might distinguish it from this action.⁵

South Carolina law on these issues—as confirmed by the Court of Appeals—applies equally to this action (and to any other receivership actions) as in the Payne & Keller action. This receivership action can continue during the pendency of ACL's appeal of this Court's order appointing the receiver.⁶

3. The Court should not exercise its discretion to enter a stay.

As an alternative request, the Insurers' Motions ask the Court to exercise its discretion to stay this action until the appeal is resolved. Respectfully, the Court should deny this request and allow the receivership action to proceed. The same policy reasons underlying the exception to the automatic stay rule for receiverships, codified in South Carolina Code § 14-3-450 and Rule 62(a), weigh strongly against this Court staying the Receiver's ongoing efforts to identify and marshal ACL's insurance assets.

⁵ Indeed, the Court of Appeals' order does not depend on any finding because the motion before the Court of Appeals simply sought *clarification* that the Receiver was correct (and the insurers incorrect) in their understanding of the procedural status of a receivership action on appeal under South Carolina law. The Receiver did not, for example, file a motion with the Court of Appeals for relief from an automatic stay—as there was no stay in place. In response, the Court of Appeals' order clarified that, under South Carolina law, a receiver's ability to carry out its court-appointed duties are not stayed during the pendency of an appeal challenging the receiver's appointment. *See* Ex. A at 3.

⁶ In light of the Court of Appeals' ruling that receivership actions in this Court may continue while an appeal challenging a receiver's appointment is pending, the Insurers cannot be heard to argue that this Court does not have jurisdiction to rule on the Insurers' pending motions. Indeed, it is the Insurers themselves who invoked the Court's jurisdiction—asking this Court to dismiss or stay the Receiver's claims in motions that the Insurers filed after ACL filed its Notice of Appeal on September 13, 2023. The Insurers cannot now complain if the Court rules on such motions.

A stay of a receivership during appeal could frustrate the purposes for which the Receiver was appointed in the first place. Without discovery, there is a lack of transparency regarding the status of ACL's insurance, and therefore ACL's insurance is at increased risk of liquidation, divestment or other impairment by persons purporting to act on behalf of ACL and/or the Insurers. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004) (recognizing "potential harm in not having an unbiased party to protect a corporation's assets" justifies allowing an immediate appeal of denial of request to appoint receiver).

Therefore, the Court should deny the Insurers' Motions seeking a stay during the pendency of ACL's appeal.⁷

B. The Insurers' Rule 12(b)(6) Motions to Dismiss for Failure to State a Claim Should Be Denied.

In addition to motions to stay, each of the Insurers have also filed Motions to Dismiss for Failure to State a Claim based on Rule 12(b)(6), SCRCP. For the reasons discussed below, and in accordance with this Court's previous rulings on substantially similar motions, these Motions should be denied.

1. Legal standard for a Rule 12(b)(6) motion to dismiss and declaratory judgment claims.

"[A] judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally" *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citation omitted). While a complaint may be dismissed for "failure to state facts sufficient to constitute a cause of action" under Rule 12(b)(6),

⁷ For the same reasons, the Court should also deny the motion for protective orders filed by Travelers, seeking relief from discovery in this action pending resolution of ACL's appeal. The Receiver filed a separate opposition to that motion on October 26, 2023.

SCRCP, a court “must presume all well pled facts to be true” and “should not dismiss the complaint merely because the court doubts the plaintiff will prevail in this action.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 633, 699 S.E.2d 699, 704 (Ct. App. 2010).

A defendant’s Rule 12(b)(6) motion cannot be granted “if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory on the case.” *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). “All properly pleaded factual allegations are deemed admitted for the purposes of considering a [12(b)(6)] motion for judgment on the pleadings.” *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 230 (Ct. App. 2002). A court must decide “whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

Here, the Receiver’s claims consist of three declaratory judgment causes of action. *See* Compl. ¶¶ 33–48. Under the Declaratory Judgment Act, “[a]ny person interested under . . . a written contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30. To state a claim for declaratory relief, a party must demonstrate “a justiciable controversy.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing S.C. Code Ann. § 15-53-30 (1977)). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and positive legal duty which is denied by the adverse party.” *Id.*

2. The Receiver has stated sufficient facts to plead justiciable declaratory judgment claims regarding current and future asbestos lawsuits.

The Insurers argue that the declaratory judgment causes of action in the Complaint do not allege justiciable controversies. This Court has previously denied substantially similar Rule

12(b)(6) motions in prior receivership insurance cases seeking declaratory judgments against insurers. The Insurers' Motions should be denied here as well. The Receiver has alleged a justiciable controversy with respect to future claims and additional policies.

Specifically, the Insurers assert that the Receiver cannot seek rulings on unidentified current and future claims. *See, e.g.*, Continental's Mot. at 11. This argument should be rejected because this Court has previously held that one plaintiff—here, the *Mitchell* plaintiff—is sufficient to move forward on the Receiver's claims. *See, e.g.*, Ex. C (denying motion to dismiss when Receiver noted one underlying plaintiff).

Additionally, as this Court has previously determined, after discovery as to the insurance coverage-related issues, this Court and the parties will be ready to litigate those issues. *See id.* Thus, the Insurers cannot assert that the Receiver's current claims regarding contract interpretation do not apply to properly identified asbestos suits. *See id.* Here, when viewed in the light most favorable to the Receiver, and with every doubt resolved in his behalf, the Complaint states a valid claim for relief. *See Toussaint*, 292 S.C. at 416, 357 S.E.2d at 9.

The Insurers' conclusory denials they issued insurance policies to ACL do not support dismissal of this action, as the Insurers contend. *See, e.g.*, Chubb's Mot. at ¶¶ 15–17. Rather, these denials simply confirm that there is in fact a justiciable controversy. The Receiver alleges that he holds property by the same right and title as ACL; that ACL purchased insurance policies from the Insurers; that these policies are ACL's property; and that the Receiver is entitled to these documents. Compl. ¶¶ 33–36. The Complaint therefore presents a definite assertion of the Receiver's legal rights. The Insurers' denials of the existence of policies and the Receiver's rights thereto is precisely what this dispute is all about.

Accordingly, the Receiver requests this Court deny the Insurers' Motions under Rule 12(b)(6).

C. The Insurers' Rule 14(a) Motions to Strike Should Be Denied.

All three Insurers also have moved to strike or sever the Receiver's claims based on Rule 14(a), SCRCP. For the reasons discussed below, and in accordance with this Court's previous rulings on substantially similar motions, the Insurers' Rule 14(a) Motions should be denied.

1. Legal standard for a Rule 14(a) motion.

Rule 14(a), SCRCP, provides:

At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him.

A third-party plaintiff states a Rule 14(a) claim if it has "a substantial claim against the third-party defendant founded upon derivative liability" and the outcome of the principal claim "impact[s] the third-party defendant's liability." *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994). Whether to grant a motion to strike a third-party claim is within "the sound discretion of the trial court." *Beach v. Hudson*, 298 S.C. 424, 426, 380 S.E.2d 869, 871 (Ct. App. 1989). The trial court may consider whether "joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way." *Id.*

2. The Receiver's claims are substantial claims founded upon derivative liability.

The Insurers' Rule 14(a) Motions fail for the same reasons as this Court has previously denied substantially similar Rule 14(a) motions in other receivership actions. *See* Ex. D, Payne & Keller Order, at 7 ("[T]he Receiver has asserted claims against Travelers, which he alleges issued insurance policies to Payne & Keller that may provide coverage for, and therefore trigger indemnity obligations in relation to, the claims brought by the plaintiff in this action. *Accordingly,*

the third-party claims are appropriate under Rule 14 and Travelers’ arguments for dismissal on this basis are rejected.”) (emphasis added).

As in prior receiverships, the Receiver properly commenced this third-party action against the Insurers because the Insurers may be liable to the underlying defendant (here, ACL) for all or part of the alleged liabilities in the underlying lawsuit. *See* Compl. at ¶ 16; *see also First Gen. Servs.*, 314 S.C. at 442, 445 S.E.2d at 447 (“Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability.”); *Mahaffey v. First Coast Intermodal Servs., Inc.*, No. CV 00-68-M2, 2001 WL 37126679, at *3 (M.D. La. May 29, 2001) (insured’s third-party “claims against [the insurer] are derivative of the claims asserted in the main [underlying tort] action and therefore [the insurer was] appropriately a third-party defendant”); *Hitachi Cap. Am. Corp. v. Nussbaum Sales Corp.*, No. CIV.A.09-731 (SDW), 2010 WL 1379804, at *7 (D.N.J. Mar. 30, 2010) (permitting a defendant to implead primary insurers, emphasizing that “Rule 14 is [intended] to reduce multiplicity of litigation and therefore is entitled to a liberal construction”); *Fid. State Bank of Garden City v. McNeilus Truck & Mfg., Inc.*, No. 96-1253-JTM, 1997 WL 446422, at *5 (D. Kan. Jul. 8, 1997) (permitting impleading liability insurer in a wrongful death case). As one district court has explained:

It is a common practice for an insured party, who is defendant in a case brought by an injured party, to implead her insurer . . . because it makes sense to determine within the same proceeding, not only liability and damages, but also the legal rights and obligations of involved parties with respect to the payment of those damages. Trying the latter issue separately in a different case or court system imposes an unnecessary burden on parties and the courts.

O’Bannon v. Friedman’s Inc., 437 F. Supp. 2d 490, 493 (D. Md. 2006).

The Receiver has substantial claims against the Insurers founded upon derivative liability—that is, the *Mitchell* plaintiff’s primary claim against ACL impacts the Insurers’

obligations to the Receiver, who acts for ACL with respect to its insurance assets. The Receiver, meanwhile, must continue to spend time and effort defending ACL, identifying insurance policies, and litigating the third-party claims, and he will need to seek compensation from the Insurers.

The Insurers incorrectly argue that none of the Receiver's claims seek a ruling that the Insurers are "liable" to the Receiver and that the requested relief is not dependent on the outcome of the main claim in the *Mitchell* action. This argument is incorrect, as the declaratory judgments requested by the Receiver are inherently dependent on the alleged liability of ACL in the underlying lawsuits, including the *Mitchell* action. The allegations against ACL in the *Mitchell* plaintiff's complaint stem from ACL's business operations that were insured by the Insurers named in this action. *See* Compl. ¶¶ 8–9, 15, 21, 27.

As previously discussed, this Court has already decided that a single underlying plaintiff is sufficient to move forward on the Receiver's claims. *See, e.g.,* Ex. C (denying motion to dismiss when Receiver noted one underlying plaintiff). This is a proper third-party action against the Insurers based on derivative liability. *See Baker v. Moors*, 51 F.R.D. 507, 510 (W.D. Ky. 1971) (allowing an insured to implead insurer and stating, "[i]t is generally agreed . . . that where an insurer refuses to undertake the defense of its insured, the insured may implead the insurer in the tort action and have the issue of policy coverage decided in the same case as the issue of tort liability"). It is therefore squarely within this Court's discretion to allow the Receiver's Complaint to move forward as a third-party action.

3. The third-party action does not overly complicate the litigation or prejudice the Insurers.

The Insurers' arguments that the third-party action will complicate the underlying asbestos lawsuit should be rejected here for the same reasons the Court rejected those arguments in prior rulings. *See* Ex. D, at p. 7.

The Insurers assert that the Complaint improperly complicates this litigation simply because it adds new parties and causes of action to the underlying tort action. *See, e.g.*, Chubb’s Mot. at ¶ 34 (“Here, the Third-Party Complaint clearly complicates this litigation by adding three new causes of action seeking fourteen different declarations and adding four parties as third-party defendants”). However, there is no reason to believe these additions would “submerge the plaintiffs’ claim[s]” because—as in other coverage cases this Court has handled—the tort case and the third-party claims can and will be litigated on separate, parallel tracks. *See, e.g.*, Continental’s Mot. at 13–14 (quoting *Beach v. Hudson*, 298 S.C. 424, 427, 380 S.E.2d 869, 871 (Ct. App. 1989)). The Receiver has not argued that the Insurers’ coverage obligations need to be “*injected*” into the underlying litigation—this is a proper third-party action to address insurance issues that are derivative of the underlying litigation.

Additionally, the Complaint does not prejudice the Insurers. *See Rosalis v. Universal Distribs., Inc.*, 21 F.R.D. 169, 173 (D. Conn. 1957) (permitting delivery company to implead its insurer, rejecting prejudice argument because “it is common knowledge among jurors that truckers customarily insure their cargo”). This Court has the discretion and experience to manage its docket and properly adjudicate these issues. For example, in *Gottlieb v. Tropicana Hotel & Casino*, the court denied a motion to sever the case but granted a motion for a separate trial of the third-party claims. No. CIV. A. 99-6613, 2000 WL 806993, at *1 (E.D. Pa. Jun. 8, 2000). Similarly, this Court has the authority and discretion to manage the claims in the Complaint in a way this Court deems most appropriate. *See* Rule 42(b), SCRCP (providing a court “may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue”).

Finally, despite the Insurers’ arguments otherwise, *see, e.g.*, Chubb’s Mot. at ¶¶ 35–36, the Receiver has not argued that evidence of the Insurers’ policies needs to be introduced in the

underlying tort litigation. Accordingly, there is no potential prejudice against the Insurers on that basis.

The Receiver requests this Court deny the Insurers' Motions under Rule 14(a).⁸

D. The Insurers' Rule 12(e) Motions for More Definite Statement Should Be Denied.

Under Rule 12(e), SCRCP:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. This motion shall point out the defects complained of and the details desired.

Continental and Chubb—but not Travelers—assert that the Complaint is “so vague and ambiguous that it is not reasonable to request Continental to frame a responsive pleading.” *See, e.g.,* Continental's Mot. at 15. This is a mischaracterization of the Complaint's allegations. The Complaint does not rest on vague or ambiguous facts. Rather, it relies on, among other things, (1) this Court's Receivership Appointment Order; (2) the Receiver's tender of the Asbestos Suits to the Insurers; and (3) the search for applicable insurance policies and related documents to provide coverage for the Asbestos Suits, notwithstanding any refusal to cooperate by the Insurers. Compl. ¶¶ 1, 8–9, 15, 21, 27.

⁸ Chubb cursorily argues in a footnote that the Receiver's Complaint is improper under Rule 20, SCRCP, and should be severed because it is “not alleged to arise out of the same transaction, occurrence, or series of transactions or occurrences.” *See, e.g.,* Chubb Mot. at 12 n.2. This is plainly incorrect. The Receiver's dispute with the Insurers regarding the Insurers' obligations under third-party liability insurance policies arises from the same occurrence(s) or series of occurrence(s) giving rise to the underlying asbestos lawsuits against ACL, including the *Mitchell* suit, as the allegations regarding the legal liability of ACL as a defendant in underlying asbestos lawsuits triggers the Insurers' coverage obligations under third-party liability policies issued to ACL, giving rise to the Receiver's insurance claims at issue here.

The necessity for the Receiver to pursue discovery and declarations regarding the Insurers' policies is the result of Insurers' own conduct in responding to the Receiver's claims. The Insurers complain, on one hand, that the Complaint lacks specificity, while, at the same time, failing or refusing to produce the necessary policies and documents. The Insurers cannot dispute that discovery will uncover more details relating to ACL's insurance programs.

Accordingly, the Receiver requests this Court deny the Insurers' Rule 12(e) Motions for more definite statements.

E. Chubb's Rule 12(b)(1) Motion to Dismiss for Lack of Standing, and Travelers' Motion to Dissolve Receivership, Should Be Denied.

Chubb's Motion to Dismiss for Lack of Standing is based on Rule 12(b)(1), SCRCP. Travelers has also moved to dissolve the receivership based on essentially the same arguments challenging the validity of this Court's appointment of a receiver for ACL's insurance assets. For the reasons discussed below, and in accordance with this Court's previous rulings on substantially similar motions, these Motions should be denied.

1. Legal Standard for Standing.

The South Carolina Supreme Court has recognized three elements for standing:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a casual connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Smiley v. S.C. Dep't of Health & Env't Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (internal citations and quotations omitted) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

2. That the Insurers' policies may have been issued to ACL outside of South Carolina does not defeat the Receiver's standing to bring claims in this Court.

Here, the Receiver satisfies all three recognized standing elements—and Chubb does not attempt to argue otherwise. Rather, these Insurers sidestep any discussion of the applicable elements and argue instead that the Receiver lacks standing because the insurance policies at issue were allegedly written by insurers outside South Carolina. The Court has repeatedly heard and rejected this argument.

In its March 31, 2023 Order in the Payne & Keller receivership, the Court denied a challenge raised by Travelers to the Receiver's standing, holding that “the Receiver has alleged and presented sufficient evidence to demonstrate that [an insurer] issued insurance policies insuring [a Receivership entity's] risks nationwide, including within South Carolina.” Ex. D, at 3. “Accordingly, the Receiver was properly appointed under Section 15-65-10 and has standing to assert the third-party claims raised in this action.” *Id.* (citing S.C. Code Ann. § 38-61-10 (“All contracts of insurance on property, lives, or interests in this State are considered to be made in the State . . . and are subject to the laws of this State”); *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (“[I]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insureds be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located.”)).

This Court has also previously rejected the applicability of *Howard v. Allen*, 254 S.C. 455, 176 S.E.2d 127 (1970), on which the Insurers rely in their Motions for the proposition that insurance policies are not “property[.]” This Court held that *Howard* does not support such an argument. *See* Ex. D, at 4 (“*Howard* does not speak to whether . . . insurance policies protective of [a receivership entity] are property within South Carolina for the purposes of the receivership statute.”).

For the foregoing reasons, the Receiver requests this Court deny Chubb's Motion under Rule 12(b)(1).

3. Travelers' Motion to "dissolve the receivership" raising similar "standing" arguments should also be denied.

Based on similar arguments that Chubb asserts in support of its Motion to Dismiss under Rule 12(b)(1), Travelers moves to dissolve the ACL receivership. This Motion is a *de facto* motion for yet another rehearing of the arguments repeatedly raised by the Insurers in opposing the appointment of the receiver in the first place. This Court has rejected these arguments and should reject them again here.

First, Travelers contends the Receiver holds a "foreign receivership" with arguments mirroring Chubb's arguments that the Receiver lacks standing because ACL purportedly lacks property in South Carolina. The Court has rejected Travelers' contention before. Ex. D, at 3 ("[T]he Court finds the Receiver has alleged and presented sufficient evidence to demonstrate that Travelers issued insurance policies insuring [a receivership entity] nationwide, including in South Carolina. Accordingly, the Receiver was properly appointed under section 15-65-10"). Travelers' reliance upon *Howard* is misplaced, too. "Travelers cites *Howard v. Allen*, 254 S.C. 455, 176 S.E.2d 127 (1970) for the proposition that insurance policies are not 'property.'" Ex. D, at 4. "This case does not support Travelers' argument." *Id.* "*Howard* does not speak to whether the Travelers insurance policies protective of [a receivership entity] are property within South Carolina for the purposes of the receivership statute." *Id.* This Court squarely held such policies are in-state property. Thus, Travelers' argument that this is a foreign receivership should again be denied.

Second, Travelers argues that South Carolina Code § 15-65-10(4) does not support the Receiver's appointment. But this Court did not rely upon that provision to appoint the Receiver. Rather, this Court relied upon Section 15-65-10(5). *See* Ex. E, at 2.

Third, this Court has repeatedly ruled that "existing practice" allows for the Receiver to be appointed. "Here it is exactly the moral fraud of ACL's personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL's continued refusal to participate in this that warrants the appointment of a receiver." Ex. E, at 3. "Thus, where there is active wrongdoing and illegal refusal to comply with this Court's orders, the appointment of a receiver is appropriate." *Id.*

Travelers' argument that ACL did not engage in moral fraud that justifies the Receiver's appointment has been heard and rejected by this Court. *See id.* Accordingly, the arguments should be rejected again, and Travelers' Motion to Dissolve Receivership likewise should be denied.

F. Chubb's Rule 12(b)(7) Motion to Dismiss for Failure to Join Necessary Parties Should Be Dismissed.

Chubb bases its Motion to Dismiss for Failure to Join Necessary Parties on Rule 12(b)(7), SCRCPP. For the reasons discussed below, and in accordance with this Court's previous rulings on substantially similar motions, this Motion should be denied.

1. Legal standard for a Rule 12(b)(7) motion implicating Rule 19(a).

Generally, "[t]he inquiry contemplated by Rule 19 is a practical one," properly "addressed to the sound discretion of the trial court." *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 950 (4th Cir. 2020) (citations omitted). Pursuant to Rule 19(a):

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

- (1) in his absence complete relief cannot be accorded among those already parties, or

- (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

Rule 19(a), SCRCP (equivalent to Fed. R. Civ. P. 19(a)).

2. Other parties, if any, may be ordered into the action after discovery.

Chubb seeks dismissal of the Receiver's Complaint, arguing the potential liability of any insurer cannot be determined until the liability or potential liability of any underlying primary insurer is determined. Chubb's Mot. at ¶ 29 ("The Receiver has failed to join all necessary and indispensable parties to its action by failing to join all insurers that have issued policies that may provide coverage."). Chubb further argues that its potential liability cannot be determined if other insurers are not joined. *See id.* These arguments are premature and do not reflect the nature of the declaratory judgment action filed by the Receiver, or the allegations in the Complaint. As this Court is well aware, claimants in the underlying Asbestos Suits like the *Mitchell* lawsuit seek or may seek damages against ACL in an amount that could exhaust at least some of the insurance at issue in this action. *See generally Mitchell* Plaintiff's Amended Complaint (seeking punitive damages). The Receiver therefore seeks a determination of the obligations of the Insurers, including Chubb, to defend, reimburse, and indemnify in full against such suits.

In support of its Rule 12(b)(7) arguments, Chubb relies on *Evergreen Park Nursing & Convalescent Home, Inc. v. American Equitable Assurance Co.*, 417 F.2d 1113 (7th Cir. 1969) and *Schlumberger Industries, Inc. v. National Surety Corp.*, 36 F.3d 1274 (4th Cir. 1994), neither of which is binding on this Court and both of which are readily distinguishable. These cases

addressed another prong of Rule 19—part (b)—which Chubb’s Motion fails to address. *See Evergreen*, 417 F.2d at 1115; *see Schlumberger*, 36 F.3d at 1285 n.21. This prong says, “the court shall determine whether in equity and good conscious the action should proceed among the parties before it[.]” *Id.* (citing FED. R. CIV. P. 19(b) (mirroring South Carolina Rules)). While the Receiver maintains that Rule 19(a) is not applicable in this case, particularly at this juncture, the Receiver further submits that “equity and good conscious” weigh in favor of allowing this case to proceed. Furthermore, both the *Evergreen* and *Schlumberger* cases were being considered by federal courts sitting in diversity, which is not the situation here. In both cases, required joinder of the absent parties would have destroyed diversity. As such, absent joinder, the federal court in *Schlumberger* expressed concern that rulings in the federal forum would potentially prejudice absent parties who might be subject to conflicting rulings in a state court in a separate action. *Id.* at 1287 n.25 (citing *City of Littleton v. Comm. Union Assur. Co.*, 133 F.R.D. 159 (D. Colo. 1990)). Again, that is not the case here. Accordingly, Chubb’s Rule 12(b)(7) Motion should be denied.

G. Travelers’ Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction Should Be Denied.

Finally, Travelers’ Motion to Dismiss for Lack of Personal Jurisdiction is based on Rule 12(b)(2), SCRCF. For the reasons discussed below, and in accordance with this Court’s previous rulings on substantially similar motions, Travelers’ Motion should be denied.

1. Legal standard for a Rule 12(b)(2) motion.

“In evaluating a Rule 12(b)(2) motion, ‘if the court addresses the personal jurisdiction question by reviewing only the parties’ motion papers, affidavits attached to the motion, supporting legal memoranda, and the allegations in the complaint, a plaintiff need only make a prima facie showing of personal jurisdiction to survive [a] jurisdictional challenge.’” *McCabe v. Fairfax Cnty. Animal Shelter*, 799 F. App’x 205, 206 (4th Cir. 2020) (quoting *Grayson v. Anderson*, 816 F.3d

262, 268 (4th Cir. 2016)). “[T]he court must take the allegations and available evidence relating to personal jurisdiction in the light most favorable to the plaintiff.” *Id.* (quoting *Grayson*, 816 F.3d at 268).

2. Travelers consented to general personal jurisdiction when it obtained a license to do business in South Carolina.

Recently, the United States Supreme Court confirmed that the personal jurisdiction rule set forth in the 100-year-old insurance case, *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), still applies: An out-of-state corporation that has consented to in-state suits in order to do business in the forum may be sued there, consistent with due process. *Mallory v. Norfolk Southern Railway*, 600 U.S. ---, 143 S. Ct. 2028 (2023).

In the *Pennsylvania Fire* case affirmed in *Mallory*, the Supreme Court held that Missouri courts had personal jurisdiction over an insurance company incorporated in Pennsylvania, in a dispute with a policyholder incorporated in Arizona, regarding policies covering buildings in Colorado. *Mallory*, 143 S. Ct. at 2035–36; *Pennsylvania Fire*, 243 U.S. at 94. The Supreme Court explained that the insurer had consented to personal jurisdiction in Missouri because, pursuant to a Missouri statute, it “had executed a power of attorney that made service on the superintendent [of insurance] the equivalent of personal service.” *Id.* at 94; *see also id.* at 95 (“If by a corporate vote [the insurer] had accepted service in this specific case, there would be no doubt of the jurisdiction of the state court of a transitory action of contract”).

South Carolina has enacted and enforces a similar insurance service statute to the one in *Pennsylvania Fire*. The South Carolina statute provides, in relevant part:

Every insurer shall, before being licensed, appoint in writing the [South Carolina] director [of insurance] and his successors in office to be its true and lawful attorney *upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon*

the insurer and that the authority continues in force so long as any liability remains outstanding in the State.

S.C. Code § 38-5-70 (emphasis added).

Travelers is subject to this statute because it is licensed to sell insurance in South Carolina. Indeed, the Receiver served process on Travelers in this action pursuant to S.C. Code § 38-5-70, by delivering the summons to the South Carolina Director of Insurance who, in turn, acknowledged successful service of process on Travelers. *See* September 21, 2023 Letter Confirming Acceptance of Service of Process on Travelers Casualty & Surety Company filed on the docket in this action. By agreeing to and accepting service of process in this manner, Travelers has duly consented to personal jurisdiction in South Carolina. *See Equilease Corp. v. Weathers*, 275 S.C. 478, 483 (1980) (South Carolina’s “substituted service or constructive service statutes” were “designed by the legislature to provide a simple and easy method of obtaining jurisdiction over a foreign insurance company”).

3. This Court also has specific personal jurisdiction over Travelers.

When determining whether personal jurisdiction exists, a court considers: “(1) the extent to which the defendant has purposefully availed [himself] of the privilege of conducting activities in the state; (2) whether the plaintiff[’s] claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Charleston Equities, Inc. v. Winslett*, No. 3:17-CV-137-JFA, 2017 WL 10504748, at *2 (D.S.C. Aug. 8, 2017) (citation omitted). The South Carolina long-arm statute has been construed to be coextensive with the constitutional limits of the Due Process Clause. *See South Carolina v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008). The inquiry thus becomes whether the exercise of personal jurisdiction comports with due process. *Id.*

In the Payne & Keller receivership, this Court found that it has personal jurisdiction over Travelers, holding that an insurer issuing policies to a receivership entity, such as ACL, that is being sued in South Carolina “supports a finding of personal jurisdiction and precludes dismissal on this basis.” *See* Ex. D at 7.

Here, Travelers insured ACL, which sold asbestos in the United States, including sales to South Carolina. ACL is now being sued in South Carolina. And the Receiver brings this proper third-party action for this Court to declare rights under Travelers’ policies covering ACL’s alleged tort liability in South Carolina. Accordingly, this Court has specific personal jurisdiction over Travelers pursuant to this Court’s prior rulings, and the Receiver requests this Court deny Travelers’ current Motion under Rule 12(b)(2).⁹

CONCLUSION

Based on the foregoing, the Receiver respectfully requests this Court deny the Insurers’ Motions in all respects.

Dated: November 6, 2023

Respectfully submitted,

/s/ John K. Chandler
 John K. Chandler (SC Bar 100837)
 Rikard & Protopapas
 2110 N. Beltline Blvd.
 Columbia, South Carolina 29204
 803.978.6111

***Attorney for the Receiver of Asbestos
 Corporation Limited***

⁹ In support of its Motion Dismiss, Travelers filed an affidavit of Ann B. Mulcahy, Travelers’ in-house counsel, on October 20, 2023. This affidavit is substantially similar to affidavits of Ms. Mulcahy that Travelers filed in support of prior unsuccessful motions to dismiss in other receivership actions. Travelers has not raised any new material facts in support of its challenge to this Court’s exercise of personal jurisdiction.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually and
as Executor of the Estate of PATSY ANN
MITCHELL,

2022-CP-40-02979

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M Company, et al.,

Defendants.

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver, Peter
D. Protopapas,

Third-Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, et al.,

Third-Party Defendants.

**THIRD-PARTY DEFENDANT TRAVELERS CASUALTY AND SURETY COMPANY'S
REPLY IN SUPPORT OF ITS MOTION TO STAY OR DISMISS THE THIRD-PARTY
CLAIMS OF THE PURPORTED RECEIVER FOR ASBESTOS CORPORATION
LIMITED AND TO DISSOLVE THE RECEIVERSHIP**

Third-Party Defendant Travelers Casualty and Surety Company ("Travelers")

respectfully submits this reply in support of its Motion to Stay or Dismiss the Third-Party Claims

of the Purported Receiver for Asbestos Corporation Limited (“ACL”) and to Dissolve the Receivership.

INTRODUCTION

As Travelers demonstrated in its motion, the purported ACL Receivership is unlawful and must be dissolved immediately. As a matter of law, because ACL is an active Canadian corporation without any assets or property in South Carolina, a state court in South Carolina did not have the power to appoint Mr. Protopapas as ACL’s Receiver, and Mr. Protopapas does not have the authority to take ACL’s property or to otherwise act on its behalf. The Receiver’s “omnibus” opposition brief fails to rebut any of the arguments or authorities set forth in Travelers’ motion—for the most part, he simply ignores them. Travelers’ motion to dismiss the Receiver’s third-party claims should be granted in full, and the ACL Receivership should be dissolved.

In the alternative, and at a minimum, this Court should find that pending resolution of ACL’s appeal of this Court’s order appointing Mr. Protopapas as ACL’s Receiver, the appointment order and this third-party case should be stayed. The appointment order is the sole basis for the Receiver’s purported authority to pursue his third-party claims in this case and to otherwise perform his Receivership duties. Under Rule 241(a), SCACR, ACL’s appeal “acts to automatically stay matters decided in the” appointment order “and to automatically stay the relief ordered” therein. Further, even if this case and the Receiver’s power to act are not stayed, under Rule 205, SCACR, this Court is divested of jurisdiction over all “matters affected by” ACL’s appeal—which necessarily includes issues relating to the validity of the Receivership and the Receiver’s authority to pursue any claims on ACL’s behalf.

The Receiver relies on a recent Order from the South Carolina Court of Appeals involving a different receivership, Payne & Keller, to argue that this Court somehow still has jurisdiction to address matters affected by ACL's appeal, and that nothing should be stayed with respect to the ACL Receivership. This argument should be rejected. The Court of Appeals' Order on which the Receiver relies says nothing about the issue of jurisdiction under Rule 205; it relates only to the subject of a stay in a different case. *See* Opp. at Ex. A (Sept. 8, 2023 Order from Appellate Case No. 2023-000727). The Receiver does not even attempt to explain how this Court retains jurisdiction over issues relating to the validity of the ACL Receivership in light of ACL's appeal of those same issues. Moreover, no exception to the automatic stay rule applies here given that ACL itself appealed the appointment order, and it did so in the context of a tort case, not a receivership case.

ARGUMENT

I. This Court is Divested of Jurisdiction Over Matters Affected by ACL's Appeal, and This Case is or Should be Stayed Pending Resolution of the Appeal

A. Rule 205, SCACR, Divests This Court of Jurisdiction to Address Matters Affected By ACL's Appeal

Rule 205 is clear: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal" Rule 205, SCACR (emphasis added). The trial court only retains jurisdiction to "proceed[] with matters not affected by the appeal." *Id.* Pursuant to this Rule, the service of ACL's notice of appeal of this Court's order appointing Mr. Protopapas as ACL's Receiver "divests" this Court of jurisdiction over all "matters affected by the appeal." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016).

The Receiver does not even attempt to explain how or why Rule 205 does not apply to divest this Court of jurisdiction over matters affected by the appeal, including issues relating to the legality of the Receivership and the Receiver's authority to take any actions on ACL's behalf. Nor can he. The law is clear and controlling. *See* Mot. at 8 (collecting cases); *see also* Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that "[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal").

The Receiver argues summarily that "[t]he Insurers' view of receivership law is wrong." Opp. at 7. But he fails to explain himself, ignoring a litany of *controlling* cases that refutes his half-hearted position. The Receiver relies entirely on the one-paragraph Order the South Carolina Court of Appeals issued on September 8, 2023, finding the Payne & Keller case is not stayed. *Id.* at 9. But that Order relates to a different case, and says *nothing* about the issue of jurisdiction under Rule 205; the Order relates only to the subject of a stay, not jurisdiction. *See* Opp., Ex. A.

Incredibly, the Receiver suggests that the Order somehow implicitly authorizes this Court to ignore its jurisdictional boundaries and to make rulings concerning the very same matters that are before the Court of Appeals in ACL's appeal. *See* Opp. at 7-10. Nonsense. The Order did not even hint at the issue of jurisdiction under Rule 205. The fact that the insurers raised Rule 205 in response to the motion for clarification does not mean the Court of Appeals authorized this Court to do what Rule 205 prohibits: proceed as to matters over which the Court of Appeals has "exclusive jurisdiction."

Indeed, Rule 205 expressly prevents this Court from addressing matters that are on appeal to the Court of Appeals: "[T]he appellate court shall have exclusive jurisdiction over the

appeal,” and the lower court can only “proceed[] with matters not affected by the appeal.” Rule 205, SCACR (emphasis added); *see also, e.g., Stokes-Craven Holding Corp*, 416 S.C. at 534, 787 S.E.2d at 494 (reiterating that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘matters affected by the appeal’”) (emphasis supplied by the Supreme Court); *Tillman v. Oakes*, 398 S.C. 245, 255 & n. 3, 728 S.E.2d 45, 51 & n.3 (Ct. App. 2012) (confirming that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and re-enforcing that the rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”). Rule 205 is not discretionary, and it is troubling that the Receiver continues to demand that this Court overstep its jurisdictional boundaries.

If this Court nonetheless chooses to issue an order that impacts an issue on appeal—such as an order continuing or modifying the ACL Receivership—any such order would be void for lack of jurisdiction. *See, e.g., Arnal v. Fraser*, 371 S.C. 512, 518–19, 521–22, 641 S.E.2d 419, 422, 423–24 (2007) (holding various parts of a trial court order issued after an appeal was taken were “void *ab initio*” because the trial court “did not have jurisdiction to modify matters in the final divorce order that were on appeal,” as Rule 205 prohibits the trial court from “issu[ing] orders that affect an issue on appeal”) (emphasis supplied by the Supreme Court); *Wingate v. Wingate*, 289 S.C. 574, 575, 347 S.E.2d 878, 878 (1985) (holding that a family court’s order reducing alimony payments “is void” because “alimony was an issue on appeal from the divorce decree” and “this Court had exclusive jurisdiction over the alimony issue”).

The Receiver’s opposition brief does not address any of this controlling authority and instead pretends that the Court of Appeals’ Order stating that a ‘stay’ is not in place somehow resolves the jurisdictional issue under Rule 205. But a stay has nothing to do with the exercise or

absence of jurisdiction. Whether a stay is in place only affects the enforceability of an order on appeal; regardless of the presence of a stay, the trial court has no jurisdiction to proceed as to matters affecting an issue on appeal. *See Arnal*, 371 S.C. at 519, 641 S.E.2d at 422 (“Because Father’s payment of child support and medical expenses as required by the final divorce order were not stayed by the appeal, the family court retained jurisdiction to enforce those payments. However, the family court did not have jurisdiction to modify matters in the final divorce order that were on appeal.” (citing Rule 205, SCACR)) (emphasis supplied by the Supreme Court); *Tillman*, 398 S.C. at 255, 728 S.E.2d at 51 (“Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter[] affected by the appeal’ under Rules 205 and 241(a).”) (quotation omitted).

This Court agrees:

Note that the existence or nonexistence of a stay under Rule 241 does not control the [lower] court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal under Rules 205 and 2041(a).

Toal, *Appellate Practice in South Carolina*, at 121 (citing *Tillman*). Simply put, the existence or nonexistence of a stay simply does not impact this Court’s lack of jurisdiction over matters on appeal. The Receiver’s argument to the contrary is frivolous and must be rejected.

B. The Appointment Order and This Case Should Be Stayed Pending Resolution of ACL’s Appeal

Because ACL has appealed the order appointing Mr. Protopapas as ACL’s Receiver, the broad “powers” supposedly given to him in that order are stayed. *See* Rule 241(a), SCACR

(“[T]he service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.”). This case should also be stayed pending resolution of ACL’s appeal—the Receiver should not be able to pursue any claims, purportedly on ACL’s behalf, unless and until the Court of Appeals determines the Receivership is lawful.

The Receiver again relies solely on the Court of Appeals’ September 8, 2023 Order in the Payne & Keller case to argue that “there is no automatic stay of this receivership action under Rule 241(a) or otherwise.” Opp. at 7. While the Court of Appeals determined that the Payne & Keller receivership action is not stayed, no such order exists with respect to the ACL Receivership. And the Payne & Keller case is obviously distinguishable.

Payne & Keller is a former Texas corporation that dissolved in Texas several decades ago. Travelers, a third-party defendant in a third-party case initiated by the purported receiver for Payne & Keller, filed a motion to dissolve the Payne & Keller receivership, which this Court denied. Travelers appealed that order and the appeal remains pending before the South Carolina Court of Appeals. By contrast, ACL is an active Canadian corporation that itself challenged the order appointing Mr. Protopapas as ACL’s Receiver, as well as predicate orders holding ACL in contempt, striking its answer and defaulting it. While both appeals challenge the validity of a receivership, ACL is unique in that it is an active foreign corporation, represented by its own counsel, that itself challenged imposition of a receivership. And it did so in the context of an asbestos tort case, not a third-party receivership case—unlike the Payne & Keller receivership, which Travelers appealed as a third-party defendant in a third-party receivership action. Thus, any “receivership action” exception under Rule 62(a), SCRCF, does not apply here. See Rule

62(a) (“Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.”).¹

Moreover, even if the Court were to find that the ACL Receivership appointment order is not automatically stayed, this Court should nonetheless issue a discretionary stay. It would be highly improper to allow an illegitimate receiver, or even a potentially illegitimate receiver, to continue to act on behalf of an active foreign corporation like ACL that has challenged the legality of the receivership. ACL believes the Receivership is unlawful and that the Receiver is not acting in its best interests. To allow the Receiver to take ACL’s property and to otherwise make decisions for ACL—decisions with which ACL disagrees—implicates serious constitutional concerns and risks irreparable harm. If the Court of Appeals ultimately determines that the Receivership is unlawful, everything the Receiver does will have to be unwound. There is no telling if or how that can be accomplished.

Accordingly, the Receiver’s third-party case, like that of the Receiver’s authority to act on ACL’s behalf in the tort action, is, or should be, stayed pending resolution of ACL’s appeal.

¹ Rule 62(a), SCRCP, creates an automatic stay against executing on any judgment for a ten-day period after it has been entered, but then it exempts “injunctions, receivership, and accountings” from this automatic-stay period. That has nothing to do with whether the trial court still has jurisdiction to direct a receiver when the very existence of the receivership has been challenged on appeal. *See* Rule 205, SCACR (vesting the appellate court with “*exclusive jurisdiction*” over matters on appeal) (emphasis added).

II. This Court Does Not Have the Power to Appoint a Receiver Over an Active Foreign Corporation Like ACL, Which Has No Assets or Property in South Carolina

A. ACL's Alleged Insurance Policies are Not Assets or Property in South Carolina

The Receiver does not dispute that a South Carolina state court lacks power to appoint a receiver over a foreign corporation without any assets or property located in South Carolina. Nor can he—the law is clear and unavoidable. *See* Mot. at 10-13 (collecting cases). Instead, he argues that ACL's alleged insurance policies somehow constitute assets or property located in South Carolina. *See* Opp. at 20-21. He is wrong as a matter of law. Insurance policies allegedly issued to ACL in Canada by non-South Carolina-based insurance companies are not assets or property located in South Carolina. The situs of intangible property such as a contractual obligation under an insurance policy is the domicile of the alleged debtor/obligor—here, the domicile of Travelers and the other alleged insurers of ACL—and none of the insurers are domiciled in South Carolina. *See* Mot. at 14-15 (collecting cases). Atlas is also a foreign corporation, and all of the subject insurance policies were allegedly issued to it outside of South Carolina. *See id.* at 10-14. The Receiver ignores nearly all of the cases cited in Travelers' motion on this issue.

One case the Receiver tries to distinguish is *Howard v. Allen*, 254 S.C. 455, 459, 176 S.E.2d 127, 128 (S.C. 1970). He suggests that, “[t]his Court has also previously rejected the applicability of” *Howard*, as it does not speak to whether insurance policies are property within South Carolina. Opp. at 20. But he fails to address the actual import of *Howard*: alleged obligations under an insurance contract do not constitute an attachable debt within this Court's jurisdiction. In *Howard*, the South Carolina Supreme Court held that liability insurance policies are not property subject to attachment in this state. *See Howard*, 254 S.C. at 459 (“We are not

convinced that the contractual obligations of defendant's insurer are a debt subject to attachment under the law of this state"). Indeed, an insurance policy is not property at all; it is a contract between the policyholder and the insurance company that provides coverage subject to certain terms, conditions, and exclusions. As such, the situs of an intangible contractual obligation under an insurance policy is the situs of the debtor—here, ACL's alleged insurers, all of which the Receiver admits are domiciled outside of South Carolina. *See* Mot. at 14-15 (collecting cases).

The Receiver also cites *Sangamo Weston, Inc. v. National Surety Corporation*, 307 S.C. 143 (S.C. 1992), an irrelevant choice-of-law case, yet makes no effort to explain its relevance here. *Sangamo* does not speak to the issue at hand: whether policies issued by a non-South Carolina-based insurer to a foreign policyholder constitute assets or property located in South Carolina over which a South Carolina state court has the power to appoint a receiver. Not only that, the policy at issue in *Sangamo* was issued to a company that manufactured products in South Carolina, and the suit arose out of those South Carolina manufacturing operations. *See id.* at 146. The *Sangamo* court made clear that "Sangamo's interest and property located outside of this state are not at issue here." *Id.* at 148. By contrast, all of ACL's alleged property is located outside of this state—this case only involves out-of-state insurance policies.

The Receiver does not even attempt to explain how *Porter v. Sabin*, 149 U.S. 473 (1893)—misquoted on pages 3-4 of the Court's appointment order—supports the Receiver's appointment here. In *Porter*, the United States Supreme Court held that a receivership court only has jurisdiction over property that is "within the jurisdiction of the court which appointed the receiver," *Porter*, 149 U.S. at 480, which is consistent with all of the other authority cited in

Travelers’ motion. A South Carolina state court and its receiver have no jurisdiction over foreign property. The law prohibits worldwide, extraterritorial state court receiverships.

Because ACL is a foreign corporation with no assets or property in South Carolina, the order appointing Mr. Protopapas as ACL’s Receiver should be vacated, the ACL Receivership should be dissolved in full, and the Receiver’s third-party claims should be dismissed.

B. The Receivership Statute, S.C. Code Ann. § 15-65-10(5), Does Not Authorize the Receiver’s Appointment

In appointing the Receiver, the Court relied solely on S.C. Code Ann. § 15-65-10(5), and the Receiver admits as much. *See* Opp. at 22.² Section 15-65-10(5) provides that a South Carolina court may appoint a receiver “[i]n 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 Receiver argues that “this Court has repeatedly ruled that ‘existing practice’ allows for the Receiver to be appointed” under section 15-65-10(5). Opp. at 22. Yet he cites this Court’s order appointing the Receiver in this case—nothing else. No other South Carolina court has ever authorized the appointment of a state court receiver under remotely similar circumstances. The appointment of the Receiver here was not at all consistent with South Carolina law or “existing practice.” It was unlawful, for all of the reasons set forth in Travelers’ motion and above.

Further, the appointment of a receiver is an extraordinarily harsh and drastic remedy, only to be made cautiously, reluctantly, and with great circumspection. *See* Mot. at 16-17 (collecting cases). That simply did not happen here. Even though ACL appeared and was actively defending itself in this case, the Court quickly found ACL—an active foreign corporation—in contempt, struck its pleadings, defaulted it, and appointed the Receiver over its

² As explained in Travelers’ motion, and as the Receiver concedes, section 15-65-10(4) also does not apply to support the appointment of the Receiver here. *See* Mot. at 12-15.

“insurance assets.” The Court did so primarily as a discovery sanction. None of this is consistent with South Carolina law or “existing practice.” Rather than treat the appointment of a receiver as a drastic and extraordinary remedy to be effected with great reluctance and caution—as South Carolina law requires—the Court rubberstamped the underlying plaintiff’s request for a receiver. It has become routine, not rare.

The Receiver does not even attempt to explain how ACL engaged in “moral fraud” sufficient to justify the appointment of the Receiver; instead, he simply cites to the Court’s appointment order in this case. *See* Opp. at 22. As Travelers explained in its motion, there is no evidence of “moral fraud,” and the only case the Court cites in its appointment order, *Virginia Carolina Chemical v. Hunter*, 84 S.C. 214 (1909), is easily distinguishable. *See* Mot. at 17-18. Section 15-65-10(5) plainly does not allow for the appointment of the Receiver; everything about his appointment was unlawful and inconsistent with existing practice.

III. The Court Lacks Personal Jurisdiction Over Travelers

A. The Court Does Not Have General Jurisdiction Over Travelers

It is undisputed that Travelers is not incorporated in South Carolina, it does not have its principal place of business in South Carolina, and it is not otherwise “at home” in South Carolina. The Receiver nonetheless argues, for the very first time, that Travelers is subject to general personal jurisdiction in South Carolina based on a theory of “consent.” *See* Opp. at 25-26. His unpled theory is that Travelers somehow consented to general personal jurisdiction in South Carolina because Travelers is registered to do business in South Carolina as an out-of-state insurer under S.C. Code § 38-5-70. The Receiver’s argument fails as a matter of law.

As an initial matter, the Receiver’s Amended Third-Party Complaint does not allege that Travelers is subject to general jurisdiction in South Carolina, much less that Travelers consented

to this state's jurisdiction under S.C. Code Ann. § 38-5-70. To the contrary, the Receiver alleges only that "[t]his Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court's plenary powers." Third-Party Compl. ¶ 6. The Receiver's failure to allege facts to support his general jurisdiction argument is reason alone to reject it.

Even if the Court were to look past this pleading deficiency, the Receiver's argument fails. Travelers has not consented to personal jurisdiction in South Carolina. S.C. Code § 38-5-70 does not confer general personal jurisdiction over out-of-state insurance companies like Travelers simply because they are licensed to do business in South Carolina.

Indeed, Judge Gergel of the U.S. District Court for the District of South Carolina recently considered and rejected the very same argument the Receiver makes here, finding S.C. Code § 38-5-70 does not confer general jurisdiction over out-of-state insurers licensed to do business in this state. *See In re: Aqueous Film-Forming Foams Product Liability Litigation Tyco Fire Products LP*, Nos. C.A. No. 2:18-2873-RMG, C.A. No. 2:23-2384-RMG, 2023 WL 6846676, at *5 (D.S.C. Oct. 17, 2023) (Gergel, J.).

The Receiver cites *Mallory v. Norfolk S. Railway Co.*, 600 U.S. 122 (2023), to support his theory. But that case is easily distinguishable, as the court explained in *In re: Aqueous Film-Forming Foams*:

A review of *Mallory* and the Pennsylvania business registration statute makes clear that the Supreme Court's ruling in *Mallory* is limited to the situation where a state's business registration statute provides that a foreign corporation must consent to personal jurisdiction within the state as a condition of doing business. Otherwise, *Mallory* would require any foreign corporation registered to do business within a state, regardless of where it was incorporated or had its principal place of business and regardless of its contacts with a state, to submit to personal jurisdiction within the state. This plainly exceeds the very limited scope of *Mallory*.

Id.

Unlike the Pennsylvania statute at issue in *Mallory*, S.C. Code Ann. § 38-5-70 is an insurance registration statute, not a consent-to-jurisdiction statute. Specifically, the South Carolina statute states in pertinent part:

Every insurer shall, before being licensed, appoint in writing the [South Carolina] director [of insurance] and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State.

S.C. Code § 38-5-70. Nothing in this statute requires a foreign insurance company to consent to jurisdiction in South Carolina as a condition of doing business in South Carolina.

In stark contrast to the South Carolina statute, the Pennsylvania statute at issue in *Mallory* explicitly provides that corporations registered to do business in the state will be subject to general jurisdiction. *Mallory*, 600 U.S. at 134 (explaining Pennsylvania’s statute “is explicit that ‘qualification as a foreign corporation’ shall permit state courts to ‘exercise general personal jurisdiction’ over a registered foreign corporation, just as they can over domestic corporations.”). To find that South Carolina’s insurance registration statute amounts to a consent to jurisdiction for Travelers and all other foreign insurers licensed to do business in this state would “plainly exceed[] the very limited scope of *Mallory*.” *In re: Aqueous Film-Forming Foams Product Liability*, 2023 WL 6846676, at *5.

Pennsylvania Fire is likewise inapposite. There, an Arizona corporation sued a Pennsylvania insurance company in Missouri for a claim arising from an insurance contract issued in Colorado and protecting property in Colorado. *See Pennsylvania Fire Ins. Co.*, 243 U.S. at 94. The insurance company defendant maintained that the Missouri court lacked

personal jurisdiction because the plaintiff's claim had no connection to the forum. *Id.* at 94-95. In compliance with Missouri law, the insurance company had filed with the Missouri superintendent of insurance "a power of attorney consenting that service of process upon the superintendent [of insurance] should be deemed personal service upon the company so long as it should have any liabilities outstanding in the state," *id.* at 94, which "made service on the superintendent the equivalent of personal service," *id.* at 95. The Missouri Supreme Court had previously construed such powers of attorney as express consent to personal jurisdiction in Missouri for all claims, including those arising from transactions outside the state. *Gold Issue Mining & Milling Co. v. Pennsylvania Fire Ins. Co. of Philadelphia*, 267 Mo. 524, 549-550, 184 S.W. 999, 1003-1005 (1916) (citing *State ex rel. Pacific Mut. Life Ins. Co. v. Grimm*, 239 Mo. 135, 159-171, 143 S.W. 483, 490-494 (1911)). The United States Supreme Court agreed with the Missouri Supreme Court, finding its construction of the statute did not violate due process. *See Pennsylvania Fire Ins. Co.*, 243 U.S. at 95. Notably, the Missouri Supreme Court subsequently concluded that it had misinterpreted the reach of the statute and overruled its prior approach. *State ex rel. Am. Central Life Ins. Co. v. Landwehr*, 318 Mo. 181, 190-192, 300 S.W. 294, 297-298 (1927) (requiring a connection to Missouri); *State ex rel. Phoenix Mut. Life Ins. Co. of Hartford v. Harris*, 343 Mo. 252, 258-260, 121 S.W.2d 141, 145-146 (1938). This remains the rule in Missouri today: Compliance with its registration statute does not constitute consent to general jurisdiction. *State ex rel. Norfolk Southern R. Co. v. Dolan*, 512 S.W.3d 41, 52-53, and n. 11 (Mo. 2017) (finding Missouri's registration statutes did not contemplate implied consent to the personal jurisdiction of Missouri courts, thus abrogating *Gold Issue*).

Unlike *Pennsylvania Fire*, nothing Travelers did, and nothing in the South Carolina statute itself, indicates Travelers consented to general personal jurisdiction in South Carolina.

See In re: Aqueous Film-Forming Foams Product Liability, 2023 WL 6846676, at *4 (“By registering to do business in South Carolina, Defendants [foreign insurance companies] have not consented to personal jurisdiction in South Carolina.”); *Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124, 137 (4th Cir. 2020) (rejecting an argument that a statutory provision stating that foreign corporations registered to do business in South Carolina would be “subject to the same duties, restrictions, penalties, and liabilities” as a domestic corporation rendered foreign corporations registered to do business in South Carolina subject to the general personal jurisdiction of South Carolina courts).

In short, Travelers did not consent to general jurisdiction by complying with South Carolina’s insurance registration statute. The Court should reject the Receiver’s unpled general jurisdiction argument.

B. The Court Does Not Have Specific Jurisdiction Over Travelers Either

The Receiver’s Third-Party Complaint does not include any jurisdictional allegations specific to Travelers. He does not allege a single fact sufficient to allow this Court to find that Travelers’ unidentified in-state activities subject it to jurisdiction in this case. Again, this deficiency is reason alone to find that specific personal jurisdiction is lacking. *See, e.g., Sullivan v. Hawker Beechcraft Corp.*, 723 S.E.2d 835, 839 (S.C. Ct. App. 2012) (the mere “repeating of the [long-arm] statute is insufficient to support a finding of personal jurisdiction”).

The Receiver argues that “[i]n the Payne & Keller receivership, this Court found that it has personal jurisdiction over Travelers, holding that an insurer issuing policies to a receivership entity, such as ACL, that is being sued in South Carolina ‘supports a finding of personal jurisdiction and precludes dismissal on this basis.’” Opp. at 27. But Payne & Keller is not this case, and “[p]ersonal jurisdiction over a nonresident defendant is a question to be resolved upon

the facts of each particular case.” *See Power Prods. & Servs. Co., Inc. v. Kozma*, 665 S.E.2d 660, 664 (S.C. Ct. App. 2008) (citation omitted). As “[t]he party seeking to invoke personal jurisdiction over a non-resident defendant” such as Travelers, the Receiver “bears the burden of establishing jurisdiction.” *See id.* (citation omitted). The Receiver has to come forward with evidence of claim-specific contacts between Travelers and South Carolina, and he must show that his specific declaratory judgment claims against Travelers in this case arise from or relate to those contacts. The Receiver has not come close to making that showing. Travelers’ limited contacts with South Carolina relate solely to its insuring relationship with certain South Carolina businesses and residents. And ACL, a Canadian corporation, is not one such business.

The Receiver argues that “Travelers insured ACL, which sold asbestos in the United States, including sales to South Carolina.” Opp. at 27. He does not cite any evidence to support this statement. But even if this were true, it involves ACL’s alleged conduct, not Travelers’ conduct, and as such it is insufficient to establish specific personal jurisdiction over Travelers.

The relevant contacts for jurisdictional purposes are Travelers’ contacts with the forum state, not anyone else’s. *See* Mot. at 27-28 (collecting cases). The Receiver does not address any of the cases cited in Travelers’ motion on this point. Contacts ACL or others may have had with South Carolina are irrelevant to whether Travelers has sufficient minimum contacts with South Carolina to give rise to specific personal jurisdiction in this case. *See id.* The Receiver simply has not shown, and cannot show, that Travelers directed any ACL-related activities at residents of South Carolina or that his claims against Travelers in this case arise out of or relate to any such in-state activities.

Moreover, it would be unreasonable and unfair for the Court to exercise personal jurisdiction over Travelers here. Each of the four factors South Carolina courts consider in

assessing the fairness prong of the due process analysis weighs in favor of declining to exercise jurisdiction over Travelers. *See* Mot. at 29-30 (discussing and applying the factors). The Receiver does not even attempt to explain how these factors support exercising jurisdiction over Travelers—he completely ignores the fairness analysis in his opposition. He should thus be deemed to have waived or conceded the point.

IV. The Receiver’s Third-Party Claims Are Non-Justiciable and Should Be Dismissed Under Rule 12(b)(6), SCRC P

The Receiver acknowledges in his opposition brief that, “[t]o state a claim for declaratory relief, a party must demonstrate ‘a justiciable controversy.’” Opp. at 12 (quotation omitted). He also acknowledges that “[a] justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and positive legal duty which is denied by the adverse party.” *Id.* (quotation omitted). The Receiver’s Third-Party Complaint does not come close to meeting that standard. All three declaratory judgment claims against Travelers are purely hypothetical and abstract; there is no concrete, justiciable controversy.

A. Count I Should Be Dismissed

In Count I, the Receiver asks this Court to declare that any insurance policies Travelers issued to ACL “are the property of ACL to be administered by the Receiver” and that any such policy documents “shall be delivered immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties.” Third-Party Compl. ¶¶ 35-36. But there are no allegations to show that a concrete, justiciable controversy exists. For example, there is no allegation that the Receiver requested ACL’s policy documents from Travelers or that Travelers refused to provide them. The Receiver does not even attempt to explain how there is a justiciable controversy on this issue sufficient to allow this claim to go forward. Count I should be dismissed for failure to state a claim.

B. Count II Should Be Dismissed

In Count II, the Receiver seeks declarations as to the “interpretation and meaning” of policies Travelers allegedly issued to ACL. *See* Third-Party Compl. ¶ 39. He alleges that Travelers has an “unlimited” duty to defend or reimburse defense costs with respect to “ACL Asbestos Suits,” *see id.* ¶¶ 38-39, but he fails to identify the particular “Suits,” let alone the allegations in each case, whether it has been tendered to Travelers, and whether Travelers has agreed or declined to defend. Without identification of specific cases and the specific facts in each case, the Third-Party Complaint does not present a live, concrete matter for judicial resolution. Rather, it improperly seeks abstract, hypothetical, and contingent declarations.

The Receiver argues that “[t]his argument should be rejected because this Court has previously held that one plaintiff—here, the *Mitchell* plaintiff—is sufficient to move forward on the Receiver’s claims.” Opp. at 13 (citing Opp., Ex. C). South Carolina law, and common sense, are to the contrary. The duty to defend cannot be determined without knowing the specific lawsuits at issue. Under basic principles, “the duty of a liability insurance company to defend a claim brought against its insured [is] determined by the allegations of the third party’s complaint.” *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 15 (Ct. App. 1994), *aff’d*, 321 S.C. 310 (1996). Similarly, issues relating to any duty to indemnify also cannot be adjudicated in a vacuum. *See Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595 (2013). A court cannot issue hypothetical rulings with respect to unidentified lawsuits and claims.

By way of example, the Receiver asks this Court to declare that ACL’s alleged insurance policies “cover all ACL Asbestos Suits,” that ACL “may select the policy or policy years to which to assign or allocate in full each ACL Asbestos Suit-related loss,” and that “[e]ach ACL Insurance Policy must indemnify covered ACL Asbestos Suits, in full, up to its ‘per occurrence’

limit, regardless of whether a continuing injury spans multiple policy periods.” Third-Party Compl. ¶¶ 39. This Court cannot make the broad, far-reaching declarations the Receiver seeks without knowing the specifics of each of the “ACL Asbestos Suits” about which the Receiver asks this Court to make the declarations. Any such opinion would be merely advisory, and “[i]t is elementary that the courts of this State have no jurisdiction to issue advisory opinions.” *Booth v. Grissom*, 265 S.C. 190, 192 (1975); *see also In re Chance*, 277 S.C. 161, 161 (1981) (noting South Carolina courts have “consistently refrained” from issuing advisory opinions); *Brockington v. Brockington*, 277 S.C. 304, 306 (1982) (“As to the future, appellant argues he will not be able to afford the current level of [spousal] support [payments] if he retires or limits his practice. Appellant is seeking an advisory opinion as to his support obligation after retirement. This Court has consistently refrained from rendering advisory opinions.” (citation omitted)).

C. Count III Should Be Dismissed

In Count III, the Receiver seeks a declaration that Travelers “must fairly compensate the Receiver for the substantial time, effort, and expenses expended in connection with the defense of asbestos suits potentially covered under [Travelers’] policies and to further declare that this obligation is unlimited.” Third-Party Compl. ¶ 48. Once again, the Receiver does not allege a single fact to demonstrate that there is a justiciable controversy on this issue. The Receiver does even allege or argue that he has asked Travelers to reimburse him or that Travelers has refused any such payment request.

This claim amounts to nothing more than an impermissible request for an advisory opinion. *See, e.g., Booth*, 265 S.C. at 192; *In re Chance*, 277 S.C. at 161; *Brockington*, 277 S.C. at 306. The Court cannot and should not declare, without any grounding in any supposed legal

duty, that Travelers has to reimburse the Receiver for “unlimited” expenses he has incurred, or may incur in the future, in connection with any number of cases that have been or may be brought against ACL at any time without regard to the allegations in each particular case.

V. The Third-Party Claims Are Improper Under Rule 14, SCRCP, Because They Are Not Based On Derivative Liability of Plaintiff Mitchell’s Tort Claims

The Receiver argues that, “[a]s in prior receiverships, the Receiver properly commenced this third-party action against the Insurers because the Insurers may be liable to the underlying defendant (here, ACL Turner).” Opp. at 15. The Receiver’s third-party claims are not at all derivative of the underlying tort claims of the plaintiff, Mitchell, however, so they should be dismissed under Rule 14, SCRCP.

The Receiver inexplicably cites a string of cases from other jurisdictions to support his view of Rule 14—federal district courts in Louisiana, New Jersey, Kansas, Maryland, and Kentucky. See Opp. at 14-16. These out-of-state cases are inapposite. They do not address Rule 14, SCRCP, and are inconsistent with South Carolina law.³

South Carolina law is clear that “a non-party is subject to impleader [under Rule 14, SCRCP] only if there is a basis to assert he is liable to the named defendant(s) for all or part of the plaintiff’s claim.” *Smith v. Tiffany*, 799 S.E.2d 479, 486 (S.C. 2017); see also *Gathings v. Robertson Brokerage Co., Inc.*, 367 S.E.2d 423, 426 (S.C. Ct. App. 1988) (“Rule 14 may be used only when the substantive law permits the defendant to shift some or all of his liability [on the principal claim] to the impleaded party.” (quotation omitted)). Here, there is no basis to

³ He cites just one South Carolina case for the basic proposition that “[u]nder Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability.” Opp. at 15 (citing *First Gen. Servs.*, 314 S.C. at 442, 445 S.E.2d at 447). Travelers agrees.

assert that Travelers is liable to ACL for anything; Mitchell does not have any judgment against ACL and may never get one.

South Carolina is also clear that tort claims and insurance coverage contract claims should be litigated separately. “It is hardly necessary to cite cases or authorities to the effect that in a tort action, suit must first be brought against the insured or party claimed to be liable, and that an insurance carrier cannot be joined in such a suit, or suit brought individually against such a company; and in fact, it is universally forbidden that any evidence or reference be made to the fact that the defendant is protected by insurance.” *Ford v. Glens Falls Indem. Co. of Glens Falls, N.Y.*, 80 F. Supp. 347, 348 (E.D.S.C. 1948); *see also Am. Fidelity Fire Ins. Co. v. Hood*, 37 F.R.D. 17, 24 (E.D.S.C. 1965) (dismissing tort cross-claims asserted in declaratory judgment action on insurance coverage because such claims did not arise from same transaction or occurrence as declaratory judgment claims); *Ex Parte Builders Mutual Ins. Co.*, 847 S.E.2d 87, 110-111 (S.C. 2020) (affirming trial court’s decision to deny insurers’ motions to intervene in underlying tort action, and recognizing that a separate declaratory judgment action is the proper forum to resolve insurance coverage issues). The Receiver ignores each of these cases. The Receiver cannot implead Travelers in a direct asbestos tort case, especially before ACL’s liability has been determined.

The Receiver nevertheless argues that he “has substantial claims against the Insurers founded upon derivative liability—that is, the *Mitchell* plaintiff’s primary claim against ACL impacts the Insurers’ obligations to the Receiver, who acts for ACL with respect to its insurance assets.” *Opp.* at 15-16. This argument fails.

As an initial matter, the Receiver’s argument is based on a false or at least a potentially false premise—that the Receiver “acts for ACL with respect to its insurance assets.” The order

appointing Mr. Protopapas as ACL's Receiver is on appeal; ACL has challenged the Receiver's authority to "act[] for" ACL, and thus it is improper for the Receiver to seek to establish any such claimed derivative liability pending resolution of that threshold issue.

More fundamentally, the Receiver's claims against Travelers are not at all derivative of or dependent on Mitchell's tort claims against ACL. The Receiver seeks declarations that Travelers must pay the Receiver for expenses he has supposedly incurred in serving as ACL's Receiver, and that Travelers has to produce policy documents to the Receiver—claims that indisputably are not founded upon derivative liability. As for the coverage-related judicial declarations the Receiver seeks, Travelers is not derivatively liable if ACL is found responsible for Mitchell's alleged asbestos exposure. Nor does the Receiver allege that Travelers has any obligation to *Mitchell*.

Indeed, rather than seeking to establish derivative liability, the Receiver's claims seek relief directly from and against Travelers. Again, Mitchell's underlying case is a tort lawsuit related to alleged asbestos exposure. It has nothing to do with insurance obligations. Travelers' alleged insuring relationship with ACL is not alleged to have caused Mitchell's injuries—nor could it—and Mitchell has yet to establish that ACL has any liability to Mitchell at all.

In short, the Receiver's third-party claims against Travelers improperly ask this Court for contract-related judicial declarations unrelated to Mitchell's asbestos tort action, and they are not premised on derivative liability. Travelers, therefore, cannot be impleaded, and the third-party claims against Travelers must be dismissed.

CONCLUSION

For all of the foregoing reasons and others appearing in the record, Travelers respectfully requests that if jurisdiction over this matter returns to this Court, it should dismiss the Receiver's

third-party claims against Travelers with prejudice and dissolve the ACL Receivership. In the alternative, Travelers respectfully requests that this Court stay this case and hold any ruling on Travelers' motion in abeyance pending resolution of ACL's appeal.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

STEPTOE LLP

Harry Lee (*pro hac vice*
application forthcoming)
hlee@steptoe.com
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for Third-Party Defendant Travelers
Casualty and Surety Company, formerly
known as The Aetna Casualty and Surety
Company

January 16, 2024

January 29, 2023

By E-Filing and E-Mail
The Honorable Jean Hoefer Toal
Chief Justice (retired)
Richland County Courthouse
1701 Main Street
Columbia, South Carolina 29201
jtoal@sccourts.org

Womble Bond Dickinson (US) LLP

1221 Main Street
Suite 1600
Columbia, SC 29201

t: 803.454.6504

Todd Carroll
Partner
Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wbd-us.com

Re: *Mitchell v. 3M Co. et al.*, No. 2022-CP-40-02979 –
Travelers’ Objections to the Proposed Order Submitted by
the Purported Receiver for Asbestos Corporation Limited
(ACL) Denying Travelers’ Motion to Stay or Dismiss the
ACL Receiver’s Claims and to Dissolve the ACL
Receivership

Dear Chief Justice Toal:

Third-Party Defendant Travelers Casualty and Surety Company (“Travelers”) objects to the proposed order submitted on January 24, 2024, by Third-Party Plaintiff Peter Protopapas, the purported Receiver for Asbestos Corporation Limited (“ACL”), in connection with the above-captioned case (the “Proposed Order”). The Receiver’s Proposed Order asks this Court to deny Travelers’ Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for ACL and to Dissolve the Receivership (the “Motion”).¹ This Court cannot and should not adopt the Receiver’s Proposed Order for myriad reasons.

1. **Lack of Jurisdiction Under Rule 205, SCACR.** Under Rule 205, SCACR, this Court is divested of jurisdiction over all “matters affected by” ACL’s pending appeal of this Court’s order appointing Mr. Protopapas as ACL’s Receiver, as well as the predicate orders finding ACL in contempt, in default, and striking its pleadings. *See* Mot. at 8-10; Reply at 3-6. In contravention of this Rule and a long line of *controlling* South Carolina precedent enforcing it, the Receiver’s Proposed Order asks this Court to find it somehow has jurisdiction to address matters affected by ACL’s pending appeal. *See* Proposed Order at 3-7. Remarkably, in asking this Court to overstep its clear jurisdictional boundaries, the Receiver does not address any of the authorities cited in Travelers’ Motion papers. *See* Mot. at 8-10; Reply at 3-6. He relies instead on a one-paragraph Order the South Carolina Court of Appeals issued on September 8, 2023, involving a different receivership, Payne & Keller. But this Order says *nothing* about the issue of jurisdiction under Rule 205; it relates only to the subject of a stay of a different case. *See* Reply at 4-5; Opp., Ex. A

¹ Travelers filed its Motion on October 23, 2023. The Receiver filed an “omnibus” response in opposition on November 6, 2023 (“Opposition” or “Opp.”). Travelers filed a reply in further support of its Motion on January 16, 2024 (“Reply”). Travelers incorporates as if fully stated herein its Motion and Reply and all accompanying papers.



(“[T]he [Payne & Keller] receivership action and the [Payne & Keller] receiver’s ability to carry out his duties are not stayed.”). The Receiver suggests the Order somehow implicitly authorized this Court to ignore its jurisdictional boundaries and to make rulings concerning the very same matters that are before the Court of Appeals. The Order did no such thing; it did not even hint at the issue of jurisdiction, and it certainly did not authorize this Court to do what Rule 205 prohibits: proceeding as to matters over which our Court of Appeals has “exclusive jurisdiction.”

In footnote 3 of his Proposed Order, the Receiver states: “On November 21, 2023, Court of Appeals in the Payne & Keller receivership action again denied a motion by the insurers raising the same arguments based on Rule 205, finding that an order entered by this Court on October 5, 2023, was not properly before the Court of Appeals.” This November 21, 2023 Order is irrelevant; it did not address the merits of the insurers’ Rule 205 argument at all. The Court of Appeals simply held that it could not grant the insurers’ motion, because it “was prompted by an order” this Court issued on October 5, 2023 (purporting to revoke Payne & Keller’s corporate termination in Texas) that had not yet been appealed, as the Court of Appeals “will take no action on any order which is not properly before it.” Indeed, the Court of Appeals has never taken a position on the merits of the insurers’ Rule 205 argument in the context of the ACL Receivership, the Payne & Keller receivership or any other receivership created by this Court.

The Receiver’s Proposed Order invites error. It asks this Court to ignore the plain language of Rule 205 and controlling caselaw. Incredibly, aside from misleading citations to the Court of Appeals’ recent Orders involving the Payne & Keller receivership, the Receiver has never explained how or why Rule 205 does not apply. Rule 205 indisputably divests this Court of jurisdiction over “matters affected by” ACL’s appeal—which necessarily includes issues relating to the validity of the Receivership and the Receiver’s authority to pursue any claims on ACL’s behalf. The Receiver does not even attempt to argue otherwise. If this Court were to adopt the Receiver’s Proposed Order, it would be void for lack of jurisdiction. *See* Reply at 5.

2. The Appointment Order and the Receiver’s Third-Party Case Are or Should be Stayed.

The Receiver’s Proposed Order asks this Court to find that neither the order appointing Mr. Protopapas as ACL’s receiver nor the third-party case initiated by the Receiver are stayed pending resolution of ACL’s appeal. *See* Proposed Order at 3-7. However, as a matter of law, because ACL has appealed the appointment order, the broad “powers” supposedly given to Mr. Protopapas in that order are stayed. *See* Rule 241(a), SCACR; Mot. at 8-9; Reply at 6-8. This case should also be stayed pending resolution of ACL’s appeal—the Receiver should not be able to pursue any claims, purportedly on ACL’s behalf, unless and until the Court of Appeals determines the Receivership is lawful. *See* Mot. at 8-9; Reply at 6-8.

The Receiver’s Proposed Order again relies on the Court of Appeals’ September 8, 2023 Order in the Payne & Keller case to argue that there is no “automatic stay” under Rule 241(a), SCACR, or otherwise. Proposed Order at 5-6. But while the Court of Appeals determined that the Payne & Keller receivership action is not stayed, no such order exists with respect to the ACL Receivership.



Further, the Payne & Keller case is clearly distinguishable. Unlike Payne & Keller, ACL is an *active* Canadian corporation that *itself* challenged the order appointing Mr. Protopapas as ACL’s Receiver, as well as predicate orders holding ACL in contempt, striking its answer and defaulting it. And it did so in the context of an asbestos tort case, not a third-party receivership case—unlike the Payne & Keller receivership, which Travelers appealed as a third-party defendant in a third-party receivership action. Thus, any “receivership action” exception under Rule 62(a), SCRCP, does not apply here. Section 14-3-450 of the South Carolina Code is likewise inapplicable. This statute provides that, when an order appointing a receiver has been appealed, “the proceedings *in other respects* in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.” S.C. Code Ann. § 14-3-450 (emphasis added). Nothing in the statute indicates that the appointment order itself is not stayed. Further, ACL has appealed multiple orders—not only the receivership appointment order, but also orders finding ACL in contempt, striking its answer and defaulting it. The Receiver does not cite any authority indicating that a trial court should proceed under circumstances such as this. At a minimum, this Court should issue a discretionary stay. It would be highly improper to allow an illegitimate receiver, or even a potentially illegitimate receiver, to continue to act on behalf of an active foreign corporation like ACL that has challenged the legality of the receivership. *See, e.g.*, Reply at 8.

3. **This Court Does Not Have the Power to Appoint a Receiver Over an Active Foreign Corporation Like ACL, Which Has No Assets or Property in South Carolina.** In both his Opposition and his Proposed Order, the Receiver appears to concede, as he must, that a South Carolina state court does not have the power to appoint a receiver over a foreign corporation without any assets or property located in South Carolina. *See* Mot. at 10-13 (collecting cases). He argues, however, that ACL’s alleged insurance policies somehow constitute assets or property located in South Carolina. *See* Opp. at 20-21; Proposed Order at 10-12. This is wrong as a matter of law. Insurance policies allegedly issued to ACL in Canada (or another state outside of South Carolina) by non-South Carolina-based insurance companies are not assets or property located in South Carolina. *See* Mot. at 14-15; Reply at 9-11. Further, South Carolina’s choice-of-law statute, S.C. Code § 38-61-10, is irrelevant to this analysis. *See* Mot. at 19-20.
4. **The Receivership Statute, S.C. Code Ann. § 15-65-10(5), Does Not Authorize the Receiver’s Appointment.** In appointing the Receiver, the Court relied solely on S.C. Code Ann. § 15-65-10(5), and the Receiver admits as much. *See* Opp. at 22; Proposed Order at 12.² Section 15-65-10(5) provides that a South Carolina court may appoint a receiver “[i]n 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 appointment of the Receiver here was not at all consistent with South Carolina law or “existing practice.” It was unlawful, for all of the reasons explained in Travelers’ Motion papers. *See, e.g.*, Mot. at 15-18; Reply at 11-12.

² As explained in Travelers’ motion, and as the Receiver concedes, section 15-65-10(4) also does not apply to support the appointment of the Receiver here. *See* Mot. at 12-15.



5. **The Receiver Does Not Have Standing.** The Receiver's Proposed Order asks this Court to find that the Receiver has standing to pursue his third-party claims and to otherwise act on ACL's behalf. *See* Proposed Order at 10-12. The Receiver does not have standing, as the Receivership is illegitimate. The Receiver's right to sue is wholly dependent on, and derivative of, his authority as Receiver. *See, e.g.,* Mot. at 9. Because ACL has no assets or property in South Carolina over which this Court, and by extension the Receiver, has any power to act, and the Receivership is otherwise unlawful, the Receiver does not have standing to pursue his claims in this case or to take any other actions on ACL's behalf.
6. **The Court Does Not Have General Jurisdiction Over Travelers.** The Receiver's Proposed Order asks this Court to find that it has general personal jurisdiction over Travelers based on an *unpled* theory of "consent." Proposed Order at 14-15. The Receiver's argument fails as a matter of law, for all of the reasons explained in Travelers' Reply brief, which the Receiver fails to address (let alone refute) in his Proposed Order. *See* Reply at 12-16.
7. **The Court Does Not Have Specific Jurisdiction Over Travelers Either.** The Receiver's Proposed Order also asks this Court to find that it has specific jurisdiction over Travelers. *See* Proposed Order at 15-16. The Receiver is wrong for numerous reasons, which, once again, the Receiver fails to address in his Proposed Order. *See* Mot. at 25-30; Reply at 16-18.
8. **The Receiver's Third-Party Claims are Non-Justiciable and Should Be Dismissed Under Rule 12(b)(6), SCRCP.** For all of the reasons explained in Travelers' Motion papers, the Receiver's Third-Party Complaint does not come close to stating a justiciable claim for relief against Travelers. All three declaratory judgment claims against Travelers are purely hypothetical and abstract; there is no concrete, justiciable controversy. *See* Mot. at 30-33; Reply at 18-21.
9. **The Receiver's Third-Party Claims are Improper Under Rule 14, SCRCP.** The Receiver's Proposed Order asks this Court to find that "the third-party claims are appropriate under Rule 14 and the Insurers' arguments for dismissal on this basis are rejected." Proposed Order at 9. However, as explained in Travelers' Motion papers, because the Receiver's third-party claims are not derivative of the underlying tort claims of the underlying tort plaintiff, the Receiver's claims should be dismissed under Rule 14, SCRCP. *See* Mot. at 34-36; Reply at 21-23.

Respectfully,

Womble Bond Dickinson (US) LLP

/s/ M. Todd Carroll

M. Todd Carroll, Partner

MTC;dhy

cc: Counsel of Record (by e-filing)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

**ORDER ON MOTION FOR
PROTECTIVE ORDER BY TRAVELERS
CASUALTY AND SURETY COMPANY**

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, *et*
al.,

Third Party Defendants.

Before the Court is a motion by Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company for a protective order to protect it from discovery while the status of the receivership over Asbestos Corporation Limited remains under judicial review. Because the validity of the receivership itself is an issue pending on appeal at the Court of Appeals, Rule 205, SCACR, divests this Court of jurisdiction over issues that could affect matters on appeal, including addressing whether the Receiver even has standing to conduct discovery.

Moreover, even if the Court had jurisdiction over these issues, it would be a waste of considerable resources to allow discovery to proceed at this point, given that Travelers has pending a motion to dismiss and whether Asbestos Corporation Limited should have been placed in or

should continue in receivership remains an open question before the Court of Appeals. There is no urgency involved here, and there is nothing lost if the Court conserves public and private resources by staying discovery pending resolution of the outstanding issues on appeal. *See, e.g., Boudreaux Grp., Inc. v. Clark Nexsen, Owen, Barbieri, Gibson, P.C.*, No. 8:18-cv-1498-TMC, 2018 WL 9785308, at *6 (D.S.C. Nov. 20, 2018) (staying discovery pending a ruling on a potentially-dispositive motion to dismiss); *Eleazu v. Dir. US Army Network Enter. Ctr., Natick*, No. 3:20-2576-JMC-SVH, 2020 WL 6875538, at *7 (D.S.C. Nov. 23, 2020) (staying discovery pending resolution of motion to dismiss); *Chaudhry v. Mobil Oil Corp.*, 186 F.3d 502, 505 (4th Cir. 1999) (affirming stay of discovery pending resolution of motion to dismiss); *Briggs v. T&D Plumbing & Hearing Co., Inc.*, No. WDQ-10-2714, 2011 WL 2970845, at *3 (D. Md. July 19, 2011) (granting motion for protective order staying discovery until resolution of motion to dismiss).

Accordingly, the Court grants Travelers' motion for a protective order and stays discovery pursuant to Rule 205, SCACR, and its inherent authority to regulate discovery until such time after the issues now pending on appeal are finally resolved and the case is remanded back to this Court.

And it is so ordered.

Judge's Electronic Signature Page Attached

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

**PROPOSED ORDER ON MOTION BY
TRAVELERS CASUALTY AND
SURETY COMPANY TO STAY OR
DISMISS THE THIRD-PARTY CLAIMS
OF THE PURPORTED RECEIVER FOR
ASBESTOS CORPORATION LIMITED
AND TO DISSOLVE THE
RECEIVERSHIP**

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, *et*
al.,

Third Party Defendants.

This matter comes before the Court on Third-Party Defendant Travelers Casualty and Surety Company's ("Travelers") Motion to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited ("ACL") and to Dissolve the Receivership (the "Motion"), filed October 23, 2023. Peter Protopapas, the Receiver for ACL, filed an "omnibus" response in opposition to Travelers' Motion on November 6, 2023, and Travelers filed a reply in support of its Motion on January 16, 2024. After careful consideration of the parties' filings and the record in this case, including oral argument, the Court finds as follows.

For the reasons stated in Travelers' Motion, the Court GRANTS the Motion insofar as Travelers asks this Court to dismiss the Receiver's third-party claims against Travelers for lack of

jurisdiction and for failure to state a claim. This Court lacks general or specific jurisdiction over Travelers, the Receiver's claims are non-justiciable, and the claims are improper under Rule 14, SCACR.

To the extent Travelers' Motion asks this Court to vacate its order appointing Mr. Protopapas as ACL's Receiver and to dissolve the Receivership, the Court finds it is currently divested of jurisdiction to address such issues under Rule 205, SCACR. ACL has appealed this Court's order appointing Mr. Protopapas as ACL's Receiver, as well as predicate orders finding ACL in contempt, striking its pleadings and defaulting it. As such, under Rule 205, the issues presented in ACL's appeal—including issues relating to the validity of the ACL Receivership and the ACL Receiver's authority to pursue claims or to otherwise act on ACL's behalf—are within the "exclusive jurisdiction" of the South Carolina Court of Appeals. These same issues are presented in Travelers' Motion, and this Court is divested of jurisdiction to address these or any other matters affected by ACL's appeal. Accordingly, this Court will hold any ruling on these issues in abeyance pending resolution of ACL's appeal, if jurisdiction returns to this Court.

The Court further finds that, pending resolution of ACL's appeal, the order appointing Mr. Protopapas as ACL's Receiver and the instant third-party case initiated by the Receiver are stayed. The Court makes this finding pursuant to its inherent authority and Rules 205 and 241, SCACR.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

Plaintiffs,

v.

3M COMPANY, et al.,

Defendants.

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, *et*
al.,

Third Party Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

ORDER ON:

- 1. MOTION BY THE CONTINENTAL INSURANCE COMPANY TO DISMISS, STAY AND/OR STRIKE THE THIRD-PARTY COMPLAINT, OR, IN THE ALTERNATIVE, TO SEVER THE THIRD-PARTY COMPLAINT OR, IN THE FURTHER ALTERNATIVE, FOR A MORE DEFINITE STATEMENT;**
- 2. MOTION BY CENTURY INDEMNITY COMPANY AND FEDERAL INSURANCE COMPANY TO ENFORCE RULE 205, SCACR, OR IN THE ALTERNATIVE, TO DISMISS AND/OR STRIKE THE THIRD-PARTY COMPLAINT; AND**
- 3. MOTION BY TRAVELERS CASUALTY AND SURETY COMPANY TO STAY OR DISMISS THE THIRD-PARTY CLAIMS OF THE PURPORTED RECEIVER FOR ASBESTOS CORPORATION LIMITED AND TO DISSOLVE THE RECEIVERSHIP**

This matter comes before the Court on various Motions for Stay, Motions to Dismiss, Motions to Strike, Motions for More Definite Statement, and Motion to Dissolve Receivership (collectively, the “Motions”) filed by certain Third-Party Defendants: (1) The Continental Insurance Company (“Continental”); (2) Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, together with Federal

Insurance Company (collectively, “Chubb”); and (3) Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers”) (collectively, the “Insurers”).¹ Asbestos Corporation Limited (“ACL”), by and through its duly appointed receiver, Peter D. Protopapas (“the Receiver”), filed an Omnibus Response to the Insurers’ Motions on November 6, 2023. Travelers filed a reply brief in support of its motion on January 16, 2024. The Court held a hearing on the Motions on February 2, 2024. After careful consideration of the parties’ arguments and filings, and for the reasons stated below, the Insurers’ Motions are **DENIED**.

BACKGROUND

ACL’s historical operations include the sale of asbestos-containing products and raw asbestos material. See September 19, 2023 Third-Party Complaint (the “Complaint”) at ¶ 8. Those operations allegedly exposed asbestos to persons who thereby suffered bodily injury (the “Asbestos Allegations”). *Id.* The alleged bodily injury resulting from the Asbestos Allegations has resulted in suits against ACL (the “Asbestos Suits”). *Id.*

This Court decided to appoint a receiver for ACL following ACL’s repeated defiance of this Court’s instructions. In open court on July 10, 2023, this Court “ordered ACL to fully answer discovery and appear for a deposition so that [an asbestos] matter could be prepared for trial.” Order Holding Atlas Asbestos Company, Ltd. in Contempt, *Tibbs v. 3 M Co.*, Case No. 2023-CP-40-01759 (Richland County, S.C. Ct. Common Pleas filed Sept. 8, 2023) (hereinafter, “Contempt Order”), at 1. The Court followed up with a written order denying ACL’s motion to dismiss for

¹ Specifically, on October 23, 2023, (1) Continental filed a motion to dismiss, stay and/or strike the third-party complaint, or, in the alternative, to sever the third-party complaint or, in the further alternative, for a more definite statement; (2) Chubb filed a motion to enforce Rule 205, SCACR, or in the alternative, to dismiss and/or strike the third-party complaint; and (3) 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.

lack of personal jurisdiction and noted that “[f]ailure to answer the Court ordered discovery and provide a corporate representative for deposition shall result in ACL being held in contempt.” *Id.*; *see also* Order Denying Asbestos Corporation’s Motion to Dismiss, Case No. 2023-CP-40-01759 (filed July 19, 2023). Subsequently, this Court held ACL in contempt for its “intentional and willful refusal to participate in discovery” and, as a sanction, struck the pleadings of ACL. Contempt Order at 3.

On September 8, 2023, this Court ordered that “Peter Protopapas . . . is appointed Receiver in this case with the power and authority [to] fully administer all insurance assets of Asbestos Corporation, Ltd. 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.” *See* Order on Plaintiffs’ Motion to Appoint a Receiver, Case No. 2023-CP-40-01759 (filed Sept. 8, 2023), at 6. This Court ruled that the appointment of a receiver was warranted because of “the moral fraud of ACL’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL’s continued refusal to participate in this.” *Id.* at 3. The Court further explained that “where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.” *Id.*

In its order, this Court instructed, among other things, that the Receiver “investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL.” *Id.* at 7. On September 13, 2023, ACL filed in the Court of Appeals a Notice of Appeal that included an appeal of, *inter alia*, this Court’s September 8, 2023 Order appointing the Receiver. ACL’s appeal remains pending. *See* Appellate Case No. 2023-001461.

Pursuant to his court-ordered power and authority, on September 19, 2023, the Receiver initiated a third-party insurance coverage action in this case against the Insurers, who allegedly issued policies providing insurance coverage to ACL, seeking declaratory relief regarding the Insurers' coverage obligations. See Compl. at ¶¶ 33–48. Specifically, the Receiver seeks declaratory relief requiring the production of policies and related documents from all the Third-Party Defendants. *Id.* at ¶ 36 (First Cause of Action). The Receiver also seeks a declaration regarding the meaning and application of the policies issued by the Insurers to the Asbestos Suits. *Id.* at ¶ 39 (Second Cause of Action). Finally, the Receiver seeks a declaration that the Insurers must compensate the Receiver for his time and efforts spent in connection with the defense of ACL's asbestos cases. *Id.* at ¶ 48 (Third Cause of Action).

On October 23, 2023, the Insurers filed the instant Motions. Briefing was subsequently completed and arguments were held on February 2, 2024.

ANALYSIS

A. Motions for Stay—Rules 241(a) and 205, SCACR

The Insurers argue that this third-party action—including all investigation by the Receiver into the existence of ACL's insurance coverage—is automatically stayed during the pendency of ACL's appeal to the Court of Appeals, pursuant to Rules 241(a) and 205, SCACR.

Rule 241(a) provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR. The Insurers argue that, under the terms of Rule 241(a), as of September 13, 2023, when ACL filed its Notice of Appeal of the September 8, 2023 Order appointing the Receiver, any authority of the Receiver was stayed. Continental adds that as a result, the Receiver's Third-Party Complaint in this action is "void ab initio and should be dismissed." Continental Mot. at 6.

Subsection (b) of Rule 241, however, recognizes that "exceptions to the general rule [of an automatic stay] are found in statutes, court rules, and case law," and sets forth a "list of some, but not all, of the exceptions to the general rule." See Rule 241(b), SCACR.

This State's receivership rules and statutes recognize exceptions to the general rule of automatic stays with respect to appeals in receivership actions.

Rule 62(a), SCRCP, provides:

Unless otherwise ordered by the court, *an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.*

Rule 62(a), SCRCP (emphases added). Although ACL's appeal of this Court's order appointing a receiver is pending, because this matter is a receivership action, there is no stay pursuant to Rule 62(a).

In addition, ACL's appeal of the Court's order appointing the Receiver is an appeal of an order "granting . . . the appointment of a receiver" under Section 14-3-330(4) of the South Carolina Code. Section 14-3-450 of the South Carolina Code provides that there is no stay for such appeals:

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

See S.C. Code Ann. § 14-3-450.

Rule 62(a) and Section 14-3-450 provide that receivership actions are not stayed during the pendency of appeals. These exceptions to the general rule applicable to receivership actions are consistent with this state’s policy regarding receiverships, because they allow the courts of this state to protect the assets of a corporation under receivership, even during the pendency of an appeal. Allowing receiverships to be stayed while an appeal is pending would simply raise the “potential harm in not having an unbiased party to protect a corporation’s assets.” See *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004). A finding to the contrary would allow any corporation wanting to defy a receivership to moot the litigation by liquidating or wasting the company’s assets while the appellate courts consider the appeal.

This Court’s ruling that there is no automatic stay of this receivership action pursuant to Rule 241(a) is consistent with a September 8, 2023 Order entered by the Court of Appeals in the Payne & Keller receivership action. There, the Court of Appeals relied on Rule 62(a) and Section 14-3-450 to find that there was no automatic stay of a receivership action during the pendency of an appeal, and that a receiver’s court-appointed duties could continue:

[T]he March 31, 2023 order [that is on appeal] is not stayed during pendency of this appeal. See Rule 62(a), SCRCP (“Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.”); S.C. Code Ann. § 14-3-450 (2017) (“In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.”). ***Accordingly, the receivership action and the receiver’s ability to carry out his duties are not stayed.***

September 8, 2023 Order, Appellate Case No. 2023-000727, at 2 (emphasis added).

In their Motions, the Insurers further contend that—irrespective of whether there is an automatic stay in place—ACL’s pending appeal divests this Court of jurisdiction in this

receivership action because the Court of Appeals has exclusive jurisdiction under Rule 205, SCACR. However, the insurers in Payne & Keller—including Travelers and Continental, who are also third-party defendants here—unsuccessfully raised the same argument to the Court of Appeals.² After considering these arguments—including specifically the Insurers’ arguments regarding Rule 205, SCACR—the Court of Appeals entered its September 8 Order that the receivership action and the receiver’s ability to carry out his duties could continue during the pendency of the appeal.³

South Carolina law on these issues—as confirmed by the Court of Appeals—applies equally to this action (and to any other receivership actions) as in the Payne & Keller action. Accordingly, the Court rules that this receivership action, and the Receiver’s court-appointed duties to identify and marshal the insurance assets of ACL, are not stayed and should continue during ACL’s appeal.

As an alternative request, the Insurers’ Motions ask this Court to exercise its discretion to stay this action until the appeal is resolved. A stay of a receivership during appeal could frustrate the purposes for which the Receiver was appointed in the first place. In this matter, this Court is very concerned about the potential for dissolution of insurance assets responsive to the asbestos claims of South Carolinians. Without discovery, there is a lack of transparency regarding the status of ACL’s insurance, and therefore, ACL’s insurance is at increased risk of liquidation, divestment,

² See Travelers’ Resp. in Opp’n to the Receiver’s Mot. to Clarify, Sept. 5, 2023, Appellate Case No. 2023-000727, at 4–5; Appellants’ Return to Respondent’s Expedited Mot. to Clarify the Court’s Order on Appealability, Sept. 5, 2023, Appellate Case No. 2023-000727, at 10–13.

³ On November 21, 2023, the Court of Appeals in the Payne & Keller receivership action again denied a motion by the insurers raising the same arguments based on Rule 205, finding that an order entered by this Court on October 5, 2023, was not properly before the Court of Appeals. See November 21, 2023 Order, Appellate Case No. 2023-000727, at 3 (“After careful consideration of Appellants’ motion to ‘clarify and enforce Rule 205,’ SCACR, the motion is denied.”).

or other impairment by persons purporting to act on behalf of ACL and/or the Insurers. See *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004) (recognizing “potential harm in not having an unbiased party to protect a corporation’s assets” justifies allowing an immediate appeal of denial of request to appoint receiver). Accordingly, this Court denies the Insurers’ Motions asking that it exercise its discretion to stay this action during the pendency of ACL’s appeal.

B. Motions to Dismiss for Failure to State Claim—Rule 12(b)(6), SCRPC

In addition to motions to stay, each of the Insurers have also filed Motions to Dismiss for Failure to State a Claim based on Rule 12(b)(6), SCRPC. The Court finds the Receiver has stated sufficient facts to plead viable causes of action under Rule 12(b)(6), SCRPC.

“A judgment on the pleadings is considered to be a drastic procedure by our courts Therefore, pleadings in a case should be construed liberally” *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citation omitted). While a complaint may be dismissed for “failure to state facts sufficient to constitute a cause of action” under Rule 12(b)(6), SCRPC, a court “must presume all well pled facts to be true” and “should not dismiss the complaint merely because the court doubts the plaintiff will prevail in the action.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 633, 699 S.E.2d 699, 704 (Ct. App. 2010).

A defendant’s motion cannot be granted “if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.” *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). “All properly pleaded factual allegations are deemed admitted for the purposes of considering a [12(b)(6)] motion for judgment on the pleadings.” *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 230 (Ct. App. 2002). Thus, the Court must decide “whether in the light most favorable to plaintiff,

and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

Here, the Receiver’s claims consist of three declaratory judgment causes of action. See Compl. at ¶¶ 33–48. Under the Declaratory Judgment Act, “[a]ny person interested under . . . a written contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30. To state a claim for declaratory relief, a party must demonstrate “a justiciable controversy.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing S.C. Code Ann. § 15-53-30 (1977)). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and positive legal duty which is denied by the adverse party.” *Id.*

The Insurers argue that the Receiver cannot seek declaratory rulings related to unidentified current and future asbestos personal injury claims. As this Court has previously held, the existence of insurance issues related to one asbestos plaintiff is sufficient to move forward on the Receiver’s claims. See, e.g., *Childers v. Davis Mechanical Contractors, Inc.*, No. 2021-CP-40-03484 (Richland County, Ct. Comm. Pleas, S.C.). The facts alleged in the instant complaint would entitle the Receiver to declarations as to the existence and interpretation of the Insurers’ insurance policies, and a justiciable controversy exists as to the Receiver’s first cause of action for declaratory relief.

The Insurers also argue that the Receiver cannot seek declaratory relief because it is an indefinite request about unidentified lawsuits. The Court disagrees. The Receiver has met his burden to show that he may obtain relief on his theory of the case under S.C. Code Ann. § 15-65-

100, and as made clear in the parties' filings, a justiciable controversy exists between the Receiver and the Insurers on this issue.

The Insurers' conclusory denials that they issued insurance policies to ACL do not support dismissal of this action. *See, e.g.*, Chubb's Mot. at ¶¶ 15–17. Rather, these denials simply confirm that there is in fact a justiciable controversy. The Receiver alleges that he holds property by the same right and title as ACL; that ACL purchased insurance policies from the Insurers; that these policies are ACL's property; and that the Receiver is entitled to these documents. Compl. at ¶¶ 33–36. The Complaint therefore presents a definite assertion of the Receiver's legal rights. The Insurers' denials of the existence of policies and the Receiver's rights thereto is precisely what this dispute is all about.

For the foregoing reasons, the Court denies the Insurers' motion to dismiss under Rule 12(b)(6). Furthermore, to the extent that any question remains, the Court reminds the parties that the pendency of a Motion to Dismiss does not stay discovery.

C. Motions to Strike—Rule 14(a), SCRCP

All three Insurers also have moved to strike or sever the Receiver's claims based on Rule 14(a), SCRCP. For the reasons discussed below, and in accordance with this Court's previous rulings on many substantially similar motions, the Insurers' Rule 14(a) Motions are denied.

Rule 14(a), SCRCP, allows a defendant to bring third-party claims against "a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." Here, the Receiver has asserted claims against the Insurers, which he alleges issued insurance policies to ACL that may provide coverage for, and therefore trigger indemnity obligations in relation to, the claims brought by the plaintiff in this action. Accordingly, the third-party claims are appropriate under Rule 14 and the Insurers' arguments for dismissal on this basis are rejected.

The Insurers also seek severance of this third-party action. As this Court has repeatedly held in similar situations in the past, the Court finds that the Receiver's third-party complaint does not overly complicate the litigation because the third-party claims are related to the underlying asbestos claims, and the complaint does not prejudice the Insurers. The Insurers' arguments for severance of the third-party action under Rule 14 are likewise rejected.⁴

D. Motions for a More Definite Statement—Rule 12(e), SCRCP

The Insurers alternatively argue that because the allegations in the Third-Party Complaint are so vague and ambiguous, the Receiver should provide a more definite statement under Rule 12(e), SCRCP. The Court finds that the causes of action in the Receiver's Third-Party Complaint are sufficiently pled so as to give the Insurers notice of the claims against them. Accordingly, the Insurers' motions for a more definite statement are denied.

E. Motions to Dismiss for Lack of Standing—Rule 12(b)(1), SCRCP, and Motions to Dissolve Receivership

Chubb has moved to dismiss for lack of standing based on Rule 12(b)(1), SCRCP. Travelers has also moved to dissolve the receivership based on essentially the same arguments challenging the validity of this Court's appointment of a receiver for ACL's insurance assets. For the reasons discussed below, and in accordance with this Court's previous rulings on substantially similar motions, these Motions are denied.

The South Carolina Supreme Court has recognized three elements for standing:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and

⁴ Chubb also argues that the Receiver's Complaint is improper under Rule 20, SCRCP, and should be severed, because it is "not alleged to arise out of the same transaction, occurrence, or series of transactions or occurrences." Chubb Mot. at 12 n.2. The Court rejects Chubb's Rule 20 argument and finds that the Receiver's dispute with the Insurers regarding the Insurers' obligations under third-party liability insurance policies arises from the same occurrence(s) or series of occurrence(s) giving rise to the underlying asbestos lawsuits against ACL.

particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Smiley v. S.C. Dep’t of Health & Env’t Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (internal citations and quotations omitted) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

Here, the Receiver satisfies all three recognized standing elements. Chubb does not challenge these standing elements. Rather, Chubb argues that the Receiver lacks standing because the insurance policies at issue were allegedly written by insurers outside South Carolina. The Court has repeatedly heard and rejected this argument.

In its March 31, 2023 Order in the Payne & Keller receivership, the Court denied a challenge raised by Travelers to the Receiver’s standing, holding that “the Receiver has alleged and presented sufficient evidence to demonstrate that [an insurer] issued insurance policies insuring [a Receivership entity’s] risks nationwide, including within South Carolina.” March 31, 2023 Order Denying Third-Party Defendant Travelers Casualty and Surety Company’s Motion to Dismiss Third-Party Claims and Dissolve The Payne & Keller Receivership, Case No. 2021-CP-40-03484, at 3. “Accordingly, the Receiver was properly appointed under Section 15-65-10 and has standing to assert the third-party claims raised in this action.” *Id.* (citing S.C. Code Ann. § 38-61-10 (“All contracts of insurance on property, lives, or interests in this State are considered to be made in the State . . . and are subject to the laws of this State.”); *Sangamo Weston v. Nat’l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (“[I]t is immaterial where the contract was entered into. Further, there is no requirement that the policyholders or insureds be citizens of

South Carolina. What is solely relevant is where the property, lives, or interests insured are located.”)).

Based on similar arguments that Chubb asserts in support of its Motion to Dismiss under Rule 12(b)(1), Travelers moves to dissolve the ACL receivership.

First, Travelers contends the Receiver holds a “foreign receivership” with arguments mirroring Chubb’s arguments that the Receiver lacks standing because ACL purportedly lacks property in South Carolina. The Court has rejected Travelers’ contention before. March 31, 2023 Order in Payne & Keller Receivership, Case No. 2021-CP-40-03484, at 3 (“[T]he Court finds the Receiver has alleged and presented sufficient evidence to demonstrate that Travelers issued insurance policies insuring [a receivership entity] nationwide, including in South Carolina. Accordingly, the Receiver was properly appointed under section 15-65-10”). Travelers’ reliance upon *Howard* is misplaced, too. “Travelers cites *Howard v. Allen*, 254 S.C. 455, 176 S.E.2d 127 (1970) for the proposition that insurance policies are not ‘property.’” March 31, 2023 Order, at 4. “This case does not support Travelers’ argument.” *Id.* “*Howard* does not speak to whether the Travelers insurance policies protective of [a receivership entity] are property within South Carolina for the purposes of the receivership statute.” *Id.* This Court squarely held such policies are in-state property. Travelers’ argument that this is a foreign receivership is again denied.

Second, Travelers argues that South Carolina Code § 15-65-10(4) does not support the Receiver’s appointment. However, this Court did not rely upon that provision to appoint the Receiver. Rather, this Court relied upon Section 15-65-10(5). See September 8, 2023 Order appointing the Receiver.

Third, this Court has repeatedly ruled that “existing practice” allows for the Receiver to be appointed. “Here it is exactly the moral fraud of ACL’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL’s continued refusal to participate in this that warrants the appointment of a receiver.” *Id.* at 3. “Thus, where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.” *Id.* Travelers’ argument that ACL did not engage in moral fraud that justifies the Receiver’s appointment has been heard and rejected by this Court. *See id.*

F. Motion to Dismiss for Failure to Join Party—Rule 12(b)(7), SCRCPP

Chubb bases its Motion to Dismiss for Failure to Join Necessary Parties on Rule 12(b)(7), SCRCPP. For the reasons discussed below, and in accordance with this Court’s previous rulings on substantially similar motions, this Motion is denied.

Chubb seeks dismissal of the Receiver’s Complaint, arguing the potential liability of any insurer cannot be determined until the liability or potential liability of any underlying primary insurer is determined. Chubb’s Mot. at ¶ 29 (“The Receiver has failed to join all necessary and indispensable parties to its action by failing to join all insurers that have issued policies that may provide coverage.”). Chubb further argues that its potential liability cannot be determined if other insurers are not joined. *See id.* These arguments are premature and do not reflect the nature of the declaratory judgment action filed by the Receiver, or the allegations in the Complaint. Claimants in the underlying Asbestos Suits, like the *Mitchell* lawsuit, seek or may seek damages against ACL in an amount that could exhaust at least some of the insurance at issue in this action. The Receiver therefore seeks a determination of the obligations of the Insurers, including Chubb, to defend, reimburse, and indemnify in full against such suits.

Accordingly, the motion to dismiss under Rule 12(b)(7) is denied.

G. Motion to Dismiss for Lack of Personal Jurisdiction—Rule 12(b)(2), SCRCF

Finally, Travelers’ Motion to Dismiss for Lack of Personal Jurisdiction is based on Rule 12(b)(2), SCRCF. For the reasons discussed below, and in accordance with this Court’s previous rulings on substantially similar motions, Travelers’ Motion is denied.

“In evaluating a Rule 12(b)(2) motion, ‘if the court addresses the personal jurisdiction question by reviewing only the parties’ motion papers, affidavits attached to the motion, supporting legal memoranda, and the allegations in the complaint, a plaintiff need only make a prima facie showing of personal jurisdiction to survive [a] jurisdictional challenge.’” *McCabe v. Fairfax Cnty. Animal Shelter*, 799 F. App’x 205, 206 (4th Cir. 2020) (quoting *Grayson v. Anderson*, 816 F.3d 262, 268 (4th Cir. 2016)). “[T]he court must take the allegations and available evidence relating to personal jurisdiction in the light most favorable to the plaintiff.” *Id.* (quoting *Grayson*, 816 F.3d at 268).

As an initial matter, the Court finds that Travelers has consented to personal jurisdiction in this state because it has consented to service of process in this state through the South Carolina Director of Insurance as a condition to being licensed to do business in this state. An out-of-state corporation that has consented to in-state suits in order to do business in the forum may be sued there, consistent with due process. *Mallory v. Norfolk Southern Railway*, 600 U.S. 122, 143 S. Ct. 2028, 2035-36 (2023) (confirming that this personal jurisdiction rule set forth in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), still applies).

South Carolina Code Section 38-5-70 provides, in relevant part:

Every insurer shall, before being licensed, appoint in writing the [South Carolina] director [of insurance] and his successors in office to be its true and lawful attorney *upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon*

the insurer and that the authority continues in force so long as any liability remains outstanding in the State.

S.C. Code § 38-5-70 (emphasis added).

Travelers is subject to this statute because it is licensed to sell insurance in South Carolina. The Receiver served process on Travelers in this action pursuant to S.C. Code § 38-5-70, by delivering the summons to the South Carolina Director of Insurance who, in turn, acknowledged successful service of process on Travelers. See September 21, 2023 Letter Confirming Acceptance of Service of Process on Travelers Casualty & Surety Company filed on the docket in this action. By agreeing to and accepting service of process in this manner, Travelers has duly consented to personal jurisdiction in South Carolina. See *Equilease Corp. v. Weathers*, 275 S.C. 478, 482–83, 272 S.E.2d 789, 791 (1980) (South Carolina’s “substituted service or constructive service statutes” were “designed by the legislature to provide a simple and easy method of obtaining jurisdiction over a foreign insurance company”).

In addition to Travelers’ consent to personal jurisdiction, the Court finds that it has specific jurisdiction over Travelers pursuant to this Court’s prior rulings. When determining whether personal jurisdiction exists, a court considers: “(1) the extent to which the defendant has purposefully availed [himself] of the privilege of conducting activities in the state; (2) whether the plaintiff[’s] claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Charleston Equities, Inc. v. Winslett*, No. 3:17-CV-137-JFA, 2017 WL 10504748, at *2 (D.S.C. Aug. 8, 2017) (citation omitted). The South Carolina long-arm statute has been construed to be coextensive with the constitutional limits of the Due Process Clause. See *South Carolina v. NV Sumatra Tobacco Trading Co.*, 379 S.C. 81,

89, 666 S.E.2d 218, 222 (2008). The inquiry thus becomes whether the exercise of personal jurisdiction comports with due process. *Id.*

In the Payne & Keller receivership, this Court found that it has personal jurisdiction over Travelers, holding that an insurer issuing policies to a receivership entity, such as ACL, that is being sued in South Carolina “supports a finding of personal jurisdiction and precludes dismissal on this basis.” See March 31, 2023 Order, at 7.

Here, Travelers insured ACL, which sold asbestos in the United States, including sales to South Carolina. ACL is now being sued in South Carolina. And the Receiver brings this third-party action for this Court to declare rights under Travelers’ policies covering ACL’s alleged tort liability in South Carolina. Accordingly, this Court has specific personal jurisdiction over Travelers pursuant to this Court’s prior rulings, and the Court therefore denies Travelers’ current Motion under Rule 12(b)(2).⁵

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** (1) the Motion by the Continental Insurance Company to Dismiss, Stay and/or Strike The Third-Party Complaint, or, in the Alternative, to Sever the Third-Party Complaint or, in the Further Alternative, for a More Definite Statement; (2) the Motion by Century Indemnity Company and Federal Insurance Company to Enforce Rule 205, SCACR, or in the Alternative, to Dismiss and/or Strike the Third-Party Complaint; and (3) the Motion by Travelers Casualty and

⁵ In support of its Motion Dismiss, Travelers filed an affidavit of Ann B. Mulcahy, Travelers’ in-house counsel, on October 20, 2023. This affidavit is substantially similar to affidavits of Ms. Mulcahy that Travelers filed in support of prior motions to dismiss in other receivership actions. Travelers has not raised any new material facts in support of its challenge to this Court’s exercise of personal jurisdiction.

Surety Company to Stay or Dismiss the Third-Party Claims of the Purported Receiver for Asbestos Corporation Limited and to Dissolve the Receivership, are hereby **DENIED**.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Ted Everette Mitchell , plaintiff, et al vs 3M Company , defendant, et al
Case Number: 2022CP4002979
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-02-23 15:51:33 page 19 of 19

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

Plaintiffs,

ORDER ON:

v.

3M COMPANY, et al.,

**1. THIRD-PARTY DEFENDANT
TRAVELERS CASUALTY AND
SURETY COMPANY'S MOTION
FOR PROTECTIVE ORDER
(INCLUDING SUPPLEMENT
THERE TO); AND**

Defendants.

**2. THIRD-PARTY DEFENDANT
CONTINENTAL INSURANCE
COMPANY'S MOTION FOR
PROTECTIVE ORDER**

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, et
al.,

Third Party Defendants.

This matter comes before the Court on Motions for Protective Orders (collectively, the “Motions”) filed by Third-Party Defendants Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers”) on October 23, 2023, with a supplement filed on October 27, 2023; and The Continental Insurance Company (“Continental”) on November 2, 2023. (Travelers and Continental are referred to collectively herein as the “Insurers.”). Asbestos Corporation Limited (“ACL”), by and through its duly appointed receiver, Peter D. Protopapas (“the Receiver”), filed responses to the Motions on October 26, 2023, and January 19, 2024. This Court held a hearing on the matters on February 2, 2024. After careful consideration of the parties’

arguments and filings, and for the reasons stated below, the Insurers' Motions for Protective Orders are **DENIED**.

BACKGROUND

On September 8, 2023, this Court ordered that "Peter Protopapas . . . is appointed Receiver in this case with the power and authority [to] fully administer all insurance assets of Asbestos Corporation, Ltd. 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." See Receivership Order at 6. The Court instructed, among other things, that the Receiver "investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL." *Id.* at 7. On September 13, 2023, ACL filed in the Court of Appeals a Notice of Appeal that included an appeal of, *inter alia*, this Court's September 8, 2023 Order appointing the Receiver. ACL's appeal remains pending. See Appellate Case No.: 2023-001461.

Pursuant to his court-ordered power and authority, on September 19, 2023, the Receiver initiated a third-party insurance coverage action in this case against the Insurers, who allegedly issued policies providing insurance coverage to ACL, seeking declaratory relief regarding the Insurers' coverage obligations. See Third-Party Complaint (the "Complaint") at ¶¶ 33–48.

In the instant Motions, the Insurers contend that a stay applies to all discovery pursuant to Rule 26(c), SCRCP, (including written discovery, document discovery, or deposition notices) in connection with the Complaint filed by the Receiver until (1) ACL's pending appeal in this

receivership action is resolved, and (2) the Court has resolved the Insurers' various pending motions to stay and dismiss the Complaint and/or to dissolve the receivership.¹

ANALYSIS

The Insurers first argue that the Receiver is precluded from seeking any discovery in this action in light of ACL's pending appeal, pursuant to Rules 241(a) and 205, SCACR.

Rule 241(a) provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR. The Insurers argue that, under the terms of Rule 241(a), as of September 13, 2023, when ACL filed its Notice of Appeal of the September 8, 2023 order appointing the Receiver, any authority of the Receiver was stayed, and as a result, the Receiver is precluded from pursuing any discovery in connection with this third-party action.

This state's receivership rules and statutes recognize exceptions to the general rule of automatic stays with respect to appeals in receivership actions.

Rule 62(a), SCRCP, provides:

Unless otherwise ordered by the court, *an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.*

¹ The Court also heard argument on these motions on February 2, 2024, and is addressing these pending motions in a separate order.

Rule 62(a), SCRCP (emphases added). Although ACL’s appeal of this Court’s order appointing a receiver is pending, because this matter is a receivership action, there is no stay pursuant to Rule 62(a).

In addition, ACL’s appeal of the Court’s order appointing the Receiver is an appeal of an order “granting . . . the appointment of a receiver” under Section 14-3-330(4) of the South Carolina Code. Section 14-3-450 provides that there is no stay for such appeals:

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

See S.C. Code Ann. § 14-3-450. In sum, Rule 62(a) and Section 14-3-450 provide that receivership actions are not stayed during the pendency of appeals.²

The Insurers further contend that—irrespective of whether there is an automatic stay in place—ACL’s pending appeal divests this Court of jurisdiction in this receivership action because the Court of Appeals has exclusive jurisdiction under Rule 205, SCACR. However, the insurers in Payne & Keller—including Travelers and Continental, who are also defendants here—unsuccessfully raised the same argument to the Court of Appeals.³ After considering these arguments—including specifically the Insurers’ arguments regarding Rule 205, SCACR—the Court of Appeals entered its September 8 Order that the receivership action and the Receiver’s

² This Court’s ruling that there is no automatic stay of this receivership action pursuant to Rule 241(a) is consistent with the September 8, 2023 order entered by the Court of Appeals in the Payne & Keller receivership action when faced with the same arguments under Rule 241(a) and Rule 205. See September 8, 2023 Order, Appellate Case No. 2023-000727, at 2 (“Accordingly, the receivership action and the receiver’s ability to carry out his duties are not stayed.”).

³ See Travelers’ Resp. in Opp’n to the Receiver’s Mot. to Clarify, Sept. 5, 2023, Appellate Case No. 2023-000727, at 4–5; Appellants’ Return to Respondent’s Expedited Mot. to Clarify the Court’s Order on Appealability, Sept. 5, 2023, Appellate Case No. 2023-000727, at 10–13.

ability to carry out his duties could continue during the pendency of the appeal.⁴ South Carolina law on these issues—as confirmed by the Court of Appeals—applies equally to this action (and to any other receivership actions) as in the Payne & Keller action.

The protective orders from discovery sought by the Insurers in this receivership action during the pendency of ACL’s appeal could frustrate the purposes for which the Receiver was appointed in the first place. Without discovery, there is a lack of transparency regarding the status of ACL’s insurance, and therefore ACL’s insurance is at increased risk of liquidation, divestment, or other impairment by persons purporting to act on behalf of ACL and/or the Insurers. See *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004) (recognizing “potential harm in not having an unbiased party to protect a corporation’s assets” justifies allowing an immediate appeal of denial of request to appoint receiver). Accordingly, this Court denies the Insurers’ motions for protective orders from discovery and orders that discovery proceed in this case notwithstanding the pendency of ACL’s appeal.

The Insurers also ask the Court to enter protective orders from discovery until the Court resolves the Insurers’ various pending motions to dismiss filed in this case on October 23, 2023. As the Court has now denied such motions by separate order, this basis for seeking protective orders from discovery is moot. Furthermore, to the extent that any question remains, the Court reminds the parties that the pendency of a Motion to Dismiss does not automatically stay discovery.

⁴ On November 21, 2023, the Court of Appeals in the Payne & Keller receivership action again denied a motion by the insurers raising the same arguments based on Rule 205, finding that an order entered by this Court on October 5, 2023, was not properly before the Court of Appeals. See November 21, 2023 Order, Appellate Case No. 2023-000727, at 3 (“After careful consideration of Appellants’ motion to ‘clarify and enforce Rule 205,’ SCACR, the motion is denied.”).

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** the Motions for Protective Orders filed by Third-Party Defendants Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company and The Continental Insurance Company (“Continental”) are hereby **DENIED**. The parties are hereby ordered to proceed expeditiously with discovery.

IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Ted Everette Mitchell , plaintiff, et al vs 3M Company , defendant, et al
Case Number: 2022CP4002979
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-02-23 16:00:43 page 7 of 7

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,

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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,

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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.

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

Electronically signed on 2024-02-23 09:52:43 page 7 of 7