

Mar 25 2024

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. 2024-000337
Circuit Court Case No. 2022-CP-40-03834

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

Plaintiffs

v.

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

Defendants,

Atlas Turner, Inc., f/k/a Atlas Asbestos Company, Ltd., by and through its duly appointed Receiver Peter D. Protopapas, ...	Third-Party Plaintiff/ Respondent,

v.

Zurich American Insurance Co., individually and as successor by merger to Maryland Casualty Company; Enstar (U.S.), Inc.; Federal Insurance Company; Continental Insurance Company; Insurance Company of North America; Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.; Marsh & McLennan Companies, Inc., ...	Third-Party Defendants,

of which

Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co., is the	Appellant.

APPENDIX REGARDING APPEALABILITY

<u>Document</u>	<u>Appendix Page</u>
Summons and Complaint (July 25, 2022)	1
Atlas Motion to Dismiss and accompanying materials (Sept. 9, 2022).....	80
Atlas Amended Memorandum in Support of Motion to Dismiss (Dec. 30, 2022).....	97
Atlas Motion for Protective Order (Jan. 3, 2023)	114
Atlas Motion for Summary Judgment and accompanying materials (Mar. 20, 2023)	132
Atlas Second Motion for Protective Order (Apr. 6, 2023)	151
Order Holding Atlas in Contempt (May 11, 2023).....	170
Plaintiffs’ Motion for Sanctions and for the Appointment of a Receiver and accompanying materials (May 11, 2023).....	173
Atlas Response and Objection to Plaintiffs’ Motion to Appoint a Receiver (May 15, 2023) ...	197
Atlas Motion to Reconsider and Vacate Contempt Order (May 22, 2023)	212
Atlas Objection to Plaintiffs’ Motion to Strike Answer (May 23, 2023)	229

Atlas Supplemental Response and Objection to Plaintiffs’ Motion to Appoint a Receiver (June 14, 2023)	232
Order Striking Atlas’s Answer (June 20, 2023).....	241
Order on Plaintiffs’ Motion to Appoint a Receiver (June 21, 2023)	245
Receiver’s Summons and Third-Party Complaint (June 21, 2023)	253
Receiver’s Amended Third-Party Complaint (June 26, 2023)	270
Atlas Notice of Appeal (July 6, 2023)	292
Travelers’ Motion to Dissolve the Receivership (Aug. 28, 2023).....	295
Travelers’ Motion for Protective Order (Aug. 28, 2023).....	336
Receiver’s Opposition to Dissolution and Dismissal (Oct. 16, 2023)	368
Travelers’ Reply in Support of Dissolving the Receivership (Jan. 16, 2024)	397
Travelers’ Objections and Proposed Orders (Jan. 29, 2024)	422
Travelers’ Objection to Receiver’s Amended Proposed order (Feb. 16, 2024).....	430
Orders on Appeal (Feb. 26, 2024)	431
Order in <i>Link v. 4520 Corp., Inc.</i> , Case No. 2022-CP-40-05543, and <i>Donaghy v. 4520 Corp., Inc.</i> , No. 2023-CP-40-03108 (Feb. 23, 2024)	457

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

MELVIN G. WELCH and
DONNA B. WELCH,

Plaintiffs,

v.

3M COMPANY

ACCEL PERFORMANCE GROUP LLC

ADVANCE AUTO PARTS, INC.

AMERICAN HONDA MOTOR CO., INC.

ATLAS ASBESTOS CO

ATLAS TURNER, INC.

AUTOZONE, INC.

BAHNSON, INC.

BEATY INVESTMENTS, INC.

BELDEN INC.

BELDEN WIRE & CABLE COMPANY

BRIDGESTONE AMERICAS TIRE
OPERATIONS, LLC

CAROLINA TOOL COMPANY

COPELAND CORPORATION LLC

COVIL CORPORATION

DANIEL INTERNATIONAL CORPORATION

DAVIS MECHANICAL CONTRACTORS,
INC.

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

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

DCO LLC)
)
EATON CORPORATION)
)
ELLINGTON INSULATION COMPANY,)
INC.)
)
FISHER CONTROLS INTERNATIONAL LLC)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL)
)
FLUOR CONSTRUCTORS)
INTERNATIONAL, INC.)
)
FLUOR DANIEL SERVICES CORPORATION)
)
FLUOR ENTERPRISES, INC.)
)
FORD MOTOR COMPANY)
)
GENERAL ELECTRIC COMPANY)
)
GENERAL PARTS, INC.)
)
GENUINE PARTS COMPANY)
)
GOODRICH CORPORATION)
)
THE GOODYEAR TIRE & RUBBER)
COMPANY)
)
GRAYBAR ELECTRIC COMPANY, INC.)
)
HEAT & FROST INSULATION COMPANY,)
INC.)
)
HENNESSY INDUSTRIES, LLC)
)
HONEYWELL INTERNATIONAL, INC.)
)
INDUSTRIAL HOLDINGS CORPORATION)
)
JOHNSON CONTROLS, INC.)
)
MERITOR, INC.)
)

METROPOLITAN LIFE INSURANCE	)
COMPANY	)
	)
MORSE TEC LLC	)
	)
MW CUSTOM PAPERS, LLC	)
	)
OCCIDENTAL CHEMICAL CORPORATION	)
	)
O'REILLY AUTO ENTERPRISES, LLC	)
	)
O'REILLY AUTOMOTIVE STORES, INC.	)
	)
PARAMOUNT GLOBAL	)
	)
PFIZER, INC.	)
	)
PHARMACIA LLC	)
	)
PIEDMONT INSULATION, INC.	)
	)
PNEUMO ABEX LLC	)
	)
REDCO CORPORATION	)
	)
RILEY POWER INC.	)
	)
ROCKWELL AUTOMATION INC.	)
	)
RUST ENGINEERING & CONSTRUCTION,	)
INC.	)
	)
RUST INTERNATIONAL INC.	)
	)
SAINT-GOBAIN ABRASIVES, INC.	)
	)
SCHNEIDER ELECTRIC USA, INC.	)
	)
SOUTHERN INSULATION, INC.	)
	)
SPIRAX SARCO, INC.	)
	)
UNION CARBIDE CORPORATION	)
	)
VISTRA INTERMEDIATE COMPANY LLC	)
	)
WESTROCK MWV, LLC	)

WIND UP, LTD.

ZF ACTIVE SAFETY US INC.

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

Aaron D. Chapman (SC Bar No. 104485)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

achapman@dobslegal.com

Other email: drector@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

July 25, 2022
Columbia, South Carolina

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

MELVIN G. WELCH and
DONNA B. WELCH

Plaintiffs,

v.

3M COMPANY

f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY

ACCEL PERFORMANCE GROUP LLC

f/k/a PRESTOLITE PERFORMANCE LLC,
successor to HAYES PERFORMANCE
BRAKES

ADVANCE AUTO PARTS, INC.

AMERICAN HONDA MOTOR CO., INC.

ATLAS ASBESTOS CO

ATLAS TURNER, INC.

as successor to ATLAS ASBESTOS CO, a
foreign company

AUTOZONE, INC.

BAHNSON, INC.

BEATY INVESTMENTS, INC.

f/k/a GUY M. BEATY & CO.

BELDEN INC.

d/b/a BELDEN 2010 INC.

BELDEN WIRE & CABLE COMPANY

BRIDGESTONE AMERICAS TIRE

OPERATIONS, LLC

f/k/a BRIDGESTONE FIRESTONE NORTH
AMERICAN TIRE, LLC

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

In Re:

Asbestos Personal Injury Litigation

Coordinated Docket

Living Mesothelioma

COMPLAINT

(Jury Trial Demanded)

CAROLINA TOOL COMPANY	)
	)
COPELAND CORPORATION LLC	)
	)
COVIL CORPORATION	)
	)
DANIEL INTERNATIONAL	)
CORPORATION	)
	)
DAVIS MECHANICAL CONTRACTORS,	)
INC.	)
	)
DCO LLC	)
individually and as successor-in-interest to	)
VICTOR GASKET MANUFACTURING	)
COMPANY	)
	)
EATON CORPORATION	)
	)
ELLINGTON INSULATION COMPANY,	)
INC.	)
	)
FISHER CONTROLS INTERNATIONAL	)
LLC	)
	)
FLUOR CONSTRUCTORS	)
INTERNATIONAL	)
f/k/a FLUOR CORPORATION	)
	)
FLUOR CONSTRUCTORS	)
INTERNATIONAL, INC.	)
	)
FLUOR DANIEL SERVICES	)
CORPORATION	)
	)
FLUOR ENTERPRISES, INC.	)
	)
FORD MOTOR COMPANY	)
	)
GENERAL ELECTRIC COMPANY	)
	)
GENERAL PARTS, INC.	)
individually and as successor-in-interest to	)
CARQUEST CORPORATION	)
	)
GENUINE PARTS COMPANY	)
d/b/a NAPA	)

GOODRICH CORPORATION

f/k/a THE B. F. GOODRICH COMPANY

**THE GOODYEAR TIRE & RUBBER
COMPANY**

GRAYBAR ELECTRIC COMPANY, INC.

**HEAT & FROST INSULATION
COMPANY, INC.**

HENNESSY INDUSTRIES, LLC

f/k/a HENNESSY INDUSTRIES, INC.

HONEYWELL INTERNATIONAL, INC.

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

**INDUSTRIAL HOLDINGS
CORPORATION**

f/k/a THE CARBORUNDUM COMPANY

JOHNSON CONTROLS, INC.

MERITOR, INC.

f/k/a ARVINMERITOR, INC., successor-in-
interest to the former automotive products
segment of ROCKWELL INTERNATIONAL
CORPORATION

**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

MW CUSTOM PAPERS, LLC

individually and as successor-in-interest to
MEADWESTVACO

**OCCIDENTAL CHEMICAL
CORPORATION**

as successor to DUREZ CORPORATION)
)
O'REILLY AUTO ENTERPRISES, LLC)
 individually and as successor-in-interest, parent,)
 alter ego and equitable trustee of KRAGEN)
 AUTO PARTS, GRAND AUTO SUPPLY,)
 O'REILLY AUTO PARTS and CSK AUTO,)
 INC.)
)
O'REILLY AUTOMOTIVE STORES, INC.)
)
PARAMOUNT GLOBAL)
 f/k/a VIACOMCBS INC., f/k/a CBS)
 CORPORATION, a Delaware corporation f/k/a)
 VIACOM, INC., successor-by-merger to CBS)
 CORPORATION, a Pennsylvania corporation,)
 f/k/a WESTINGHOUSE ELECTRIC)
 CORPORATION)
)
PFIZER, INC.)
)
PHARMACIA LLC)
 f/k/a PHARMACIA CORPORATION f/k/a)
 MONSANTO COMPANY)
)
PIEDMONT INSULATION, INC.)
)
PNEUMO ABEX LLC)
 successor-in-interest to ABEX CORPORATION)
)
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)
)
ROCKWELL AUTOMATION INC.)
 individually and as successor-in-interest to)
 ALLEN-BRADLEY COMPANY LLC, f/k/a)
 ROCKWELL INTERNATIONAL)
 CORPORATION)
)
RUST ENGINEERING &)
CONSTRUCTION, INC.)
)

RUST INTERNATIONAL INC.	)
	)
SAINT-GOBAIN ABRASIVES, INC.	)
f/k/a NORTON COMPANY	)
	)
SCHNEIDER ELECTRIC USA, INC.	)
f/k/a SQUARE D COMPANY	)
	)
SOUTHERN INSULATION, INC.	)
	)
SPIRAX SARCO, INC.	)
	)
UNION CARBIDE CORPORATION	)
	)
VISTRA INTERMEDIATE COMPANY	)
LLC	)
individually and as successor-in-interest to	)
CRSS INC.	)
	)
WESTROCK MWV, LLC	)
individually and as successor-in-interest to	)
WESTVACO	)
	)
WIND UP, LTD.	)
individually and as successor-in-interest to	)
PIPE & BOILER INSULATION, INC.	)
f/k/a CAROLINA INDUSTRIAL	)
INSULATING CO.	)
	)
ZF ACTIVE SAFETY US INC.	)
f/k/a KELSEY-HAYES COMPANY	)
	)
Defendants.	)
	)

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, MELVIN G. WELCH and DONNA B. WELCH (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 Melvin G. Welch has been diagnosed with mesothelioma caused by exposure to asbestos dust and fibers. This exposure occurred as a result of his father Willis G. Welch's work with and around asbestos-containing products, which caused asbestos containing dust to cover his father's clothing, vehicle, and body which he brought home to Plaintiff Melvin G. Welch, who was then exposed to said asbestos dust and fibers. Plaintiff's exposure also occurred as a result of his own work with and around asbestos-containing products.

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 Melvin G. Welch and his father, Willis G. Welch, experienced

occupational exposure as a result of working with and around others working with asbestos and/or asbestos-containing products, materials, or equipment in their 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 Plaintiff Melvin G. Welch, as an instrumentation specialist helper and his father, Willis G. Welch, as a welder, on to Defendant’s premises to perform construction work for Defendant’s benefit. Plaintiff and his father were invitees 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 Melvin G. Welch’s mesothelioma.

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 Melvin G. Welch and his father Willis G. Welch 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 the purchase and use of asbestos-containing products on their premises located in South Carolina, with which Plaintiff's father Willis G. Welch, worked, and as a result were exposed to asbestos.

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 Melvin G. Welch 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 Melvin G. Welch 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 Melvin G. Welch was exposed to asbestos through asbestos dust and fibers brought home on his father's work clothes, from asbestos dust in his father's vehicle and asbestos dust on his father's body including his hair, and from the dust being distributed and re-entrained in their home. His exposure to asbestos dust and fibers occurred through his father's work clothing and person when greeting him at the end of his father's workday, through spending time in his 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's home.

11. Plaintiff Melvin G. Welch'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 Melvin G. Welch's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

12. Neither Plaintiffs, nor Plaintiff's father Willis G. Welch, were aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

13. Both Plaintiff Melvin G. Welch and his father Willis G. Welch 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 the Product Defendants and used on property owned and controlled by the Premises Defendants. Plaintiff's father Willis G. Welch brought asbestos home with him on his person and clothing, which caused Plaintiff Melvin G. Welch to be exposed to asbestos.

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
ACCEL PERFORMANCE GROUP LLC	PRESTOLITE PERFORMANCE LLC and HAYES PERFORMANCE BRAKES
ATLAS TURNER, INC.	ATLAS ASBESTOS CO
BEATY INVESTMENTS, INC.	GUY M. BEATY & CO.
BELDEN INC.	BELDEN 2010 INC.
BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC	BRIDGESTONE FIRESTONE NORTH AMERICAN TIRE, LLC
DCO LLC	VICTOR GASKET MANUFACTURING COMPANY
FLUOR CONSTRUCTORS INTERNATIONAL	FLUOR CORPORATION
GENERAL PARTS, INC.	CARQUEST CORPORATION
GENUINE PARTS COMPANY	NAPA
GOODRICH CORPORATION	THE B. F. GOODRICH COMPANY
HENNESSY INDUSTRIES, LLC	HENNESSY INDUSTRIES, INC.
HONEYWELL INTERNATIONAL, INC.	ALLIED SIGNAL, INC. and BENDIX CORPORATION
INDUSTRIAL HOLDINGS CORPORATION	THE CARBORUNDUM COMPANY
MERITOR, INC.	ARVINMERITOR, INC. and ROCKWELL INTERNATIONAL CORPORATION
METROPOLITAN LIFE INSURANCE COMPANY	METLIFE INC.

DEFENDANT	ALTERNATE ENTITY
MORSE TEC LLC	BORGWARNER MORSE TEC LLC and BORG-WARNER CORPORATION
MW CUSTOM PAPERS, LLC	MEADWESTVACO
OCCIDENTAL CHEMICAL CORPORATION	DUREZ CORPORATION
O'REILLY AUTO ENTERPRISES, LLC	KRAGEN AUTO PARTS, GRAND AUTO SUPPLY, O'REILLY AUTO PARTS, and CSK AUTO, INC.
PARAMOUNT GLOBAL	VIACOMCBS INC., CBS CORPORATION, a Delaware corporation, VIACOM, INC., CBS CORPORATION, a Pennsylvania corporation, and WESTINGHOUSE ELECTRIC CORPORATION
PHARMACIA LLC	PHARMACIA CORPORATION and MONSANTO COMPANY
PNEUMO ABEX, LLC	ABEX CORPORATION
REDCO CORPORATION	CRANE CO.
RILEY POWER INC.	BABCOCK BORSIG POWER INC., DB RILEY, INC., and RILEY STOKER CORPORATION
ROCKWELL AUTOMATION INC.	ALLEN-BRADLEY COMPANY LLC and ROCKWELL INTERNATIONAL CORPORATION
SAINT-GOBAIN ABRASIVES, INC.	NORTON COMPANY
SCHNEIDER ELECTRIC USA, INC.	SQUARE D COMPANY
VISTRA INTERMEDIATE COMPANY LLC	CRSS INC.

DEFENDANT	ALTERNATE ENTITY
WESTROCK MWV, LLC	WESTVACO
WIND UP, LTD.	PIPE AND BOILER INSULATION, INC. and CAROLINA INDUSTRIAL INSULATING CO.
ZF ACTIVE SAFETY US INC.	KELSEY-HAYES COMPANY

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, mesothelioma 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 Melvin G. Welch suffered permanent injuries, including, but not limited to, mesothelioma 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 Melvin G. Welch has 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 Melvin G. Welch's medical treatment is ascertained.

19. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff Melvin G. Welch has 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 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 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. Plaintiffs are not making any claims and are not alleging any causes of action against any entity for any asbestos exposure of any kind which occurred as a result of Plaintiff Melvin G. Welch's United States armed forces service. Moreover, Plaintiffs are 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. 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 Melvin G. Welch and Donna B. Welch are currently residents of the State of South Carolina. Plaintiff Melvin G. Welch was exposed to asbestos as a result of his father Willis G. Welch's career at various job sites, including but not limited to, locations in South Carolina. Plaintiff was exposed to asbestos dust and fibers taken home on his father, from asbestos dust in his father's vehicle, asbestos dust on his father's body including his hair, and from the dust being distributed and re-entrained. Plaintiff Melvin G. Welch was also exposed to asbestos during the course of his own career at various job sites, including but not limited to, locations in multiple states, including but not limited to South Carolina.

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 tape and 3M asbestos-containing products, including but not limited to auto body sealer. 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, **ACCEL PERFORMANCE GROUP LLC**, f/k/a PRESTOLITE PERFORMANCE LLC, successor to HAYES PERFORMANCE BRAKES, was and is a Delaware limited liability company with its principal place of business in Kentucky. At all times material hereto, ACCEL PERFORMANCE GROUP 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 Hayes performance brakes. ACCEL PERFORMANCE GROUP LLC is sued as a Product Defendant. Plaintiffs' claims against ACCEL PERFORMANCE GROUP LLC arise out of this Defendant's business activities in the State of South Carolina.

24. 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 brakes, clutches, and gaskets. ADVANCE AUTO PARTS, INC. is sued as a Product Defendant. Plaintiffs' claims against ADVANCE AUTO PARTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **AMERICAN HONDA MOTOR CO., INC.**, was and is a California corporation with its principal place of business in California. At all times material hereto, AMERICAN HONDA MOTOR CO., 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. AMERICAN HONDA MOTOR CO., INC. is sued as a Product Defendant. Plaintiffs' claims against AMERICAN HONDA MOTOR CO., INC. arise out of this Defendant's business activities in the State of South Carolina.

26. 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. 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.

27. 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. 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.

28. Defendant, **AUTOZONE, INC.**, was and is a Nevada corporation with its principal place of business in Tennessee. At all times material hereto, AUTOZONE, 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. AUTOZONE, INC. is sued as a Product Defendant. Plaintiffs' claims against AUTOZONE, INC. arise out of this Defendant's business activities in the State of South Carolina.

29. 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 Melvin G. Welch and his father Willis G. Welch, to lethal doses of asbestos. Plaintiffs' claims against BAHNSON, INC. arise out of this Defendant's business activities in the State of South Carolina.

30. 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 exposed tens of thousands of people, including the Plaintiff Melvin G. Welch and his father Willis G. Welch, 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.

31. Defendant, **BELDEN INC.**, d/b/a BELDEN 2010 INC., was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, BELDEN 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 wires, cables, panels, and electrical controls. BELDEN INC. is sued as a Product Defendant. Plaintiffs' claims

against BELDEN INC. arise out of this Defendant's business activities in the State of South Carolina.

32. Defendant, **BELDEN WIRE & CABLE COMPANY**, was and is a Delaware corporation with its principal place of business in Missouri. At all times material hereto, BELDEN WIRE & CABLE 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 wires, cables, panels, and electrical controls. BELDEN WIRE & CABLE COMPANY is sued as a Product Defendant. Plaintiffs' claims against BELDEN WIRE & CABLE COMPANY arise out of this Defendant's business activities in the State of South Carolina.

33. Defendant, **BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC**, f/k/a BRIDGESTONE FIRESTONE NORTH AMERICAN TIRE, LLC, was and is a Delaware limited liability company with its principal place of business in Tennessee. At all times material hereto, BRIDGESTONE AMERICAS TIRE OPERATIONS, 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 tires and friction products. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC is sued as a Product Defendant. Plaintiffs' claims against BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC arise out of this Defendant's business activities in the State of South Carolina.

34. Defendant, **CAROLINA TOOL COMPANY**, was and is a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, CAROLINA TOOL 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 brakes, clutches, and gaskets, and based upon information and belief Carolina Tool Company was and is an authorized NAPA dealer. CAROLINA TOOL COMPANY is sued as a Product Defendant. Plaintiffs' claims against CAROLINA TOOL COMPANY arise out of this Defendant's business activities in the State of South Carolina.

35. Defendant, **COPELAND CORPORATION LLC**, was and is a Delaware limited liability company with its principal place of business in Ohio. At all times material hereto, COPELAND CORPORATION 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 Copeland compressors. COPELAND CORPORATION LLC is sued as a Product Defendant. Plaintiffs' claims against COPELAND CORPORATION LLC arise out of this Defendant's business activities in the State of South Carolina.

36. 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 and materials 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 Melvin G. Welch and his father Willis G. Welch, to lethal doses

of asbestos. Plaintiffs' claims against COVIL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

37. 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 Melvin G. Welch and his father Willis G. Welch, 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.

38. 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 and materials 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 Melvin G. Welch and his father Willis G. Welch, 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.

39. Defendant, **DCO LLC**, individually and as successor-in-interest to VICTOR GASKET MANUFACTURING COMPANY, was and is a Virginia limited liability company with its principal place of business in Tennessee. At all times material hereto, DCO 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 Victor gaskets. DCO LLC is sued as a Product Defendant. Plaintiffs' claims against DCO LLC arise out of this Defendant's business activities in the State of South Carolina.

40. Defendant, **EATON CORPORATION**, was and is an Ohio corporation with its principal place of business in Ohio. At all times material hereto, EATON 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 Spicer brakes, Eaton brakes, and Cutler Hammer electrical products. EATON CORPORATION is sued as a Product Defendant. Plaintiffs' claims against EATON CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

41. 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 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, during the actual operations of Ellington Insulation Company, Inc., exposed tens of thousands of people, including the Plaintiff Melvin G. Welch and his father Willis G. Welch, 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.

42. 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 and controls. 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.

43. 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 Melvin G. Welch and his father Willis G. Welch, 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.

44. 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 Melvin G. Welch and his father Willis G. Welch, 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.

45. 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 Melvin G. Welch and his father Willis G. Welch, 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.

46. 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 Melvin G. Welch and his father Willis G. Welch, 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.

47. 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 friction products. FORD MOTOR COMPANY is sued as a Product Defendant. Plaintiffs' claims against FORD MOTOR COMPANY arise out of this Defendant's business activities in the State of South Carolina.

48. 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 electric panels and wires. 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.

49. Defendant, **GENERAL PARTS, INC.**, was and is a North Carolina corporation with its principal place of business in North Carolina. 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. Plaintiffs' claims against GENERAL PARTS, INC. arise out of this Defendant's business activities in the State of South Carolina.

50. 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, and based upon information and belief GENUINE PARTS COMPANY extended authorized dealership privileges to Carolina Tool Company. GENUINE PARTS COMPANY is sued as a Product Defendant. Plaintiffs' claims against GENUINE PARTS COMPANY arise out of this Defendant's business activities in the State of South Carolina.

51. Defendant, **GOODRICH CORPORATION**, f/k/a THE B. F. GOODRICH COMPANY, was and is a New York corporation with its principal place of business in North Carolina. At all times material hereto, GOODRICH 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 Goodrich brakes. GOODRICH CORPORATION is sued as a Product Defendant. Plaintiffs' claims against GOODRICH CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

52. 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 friction products. THE GOODYEAR TIRE & RUBBER COMPANY is sued as a Product Defendant. Plaintiffs' claims against THE GOODYEAR TIRE & RUBBER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

53. Defendant, **GRAYBAR ELECTRIC COMPANY, INC.**, was and is a New York corporation with its principal place of business in Missouri. At all times material hereto, GRAYBAR ELECTRIC 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 friction products. GRAYBAR ELECTRIC COMPANY, INC. is sued as a Product Defendant. Plaintiffs' claims against GRAYBAR ELECTRIC COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

54. Defendant, **HEAT & FROST INSULATION COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, HEAT & FROST 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. HEAT & FROST INSULATION COMPANY, INC. is sued as a Product Defendant. HEAT & FROST 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 Heat & Frost Insulation Company, Inc., exposed tens of thousands of people, including the Plaintiff Melvin G. Welch and his father Willis G. Welch, to lethal doses of asbestos. Plaintiffs' claims against HEAT & FROST INSULATION COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

55. Defendant, **HENNESSY INDUSTRIES, LLC**, f/k/a HENNESSY INDUSTRIES, INC., was and is a Delaware limited liability with its principal place of business in Tennessee. At

all times material hereto, HENNESSY 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, and/or equipment designed to be used with asbestos-containing products, including, but not limited to, Ammco Arc grinders and brake drum lathe and asbestos-containing grinders. HENNESSY INDUSTRIES, LLC is sued as a Product Defendant. Plaintiffs' claims against HENNESSY INDUSTRIES, LLC arise out of this Defendant's business activities in the State of South Carolina.

56. 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 friction products, valves, and controls. HONEYWELL INTERNATIONAL, INC. is sued as a Product Defendant. Plaintiffs' claims against HONEYWELL INTERNATIONAL, INC. arise out of this Defendant's business activities in the State of South Carolina.

57. 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 grinding wheels and Black Magic Diamond. INDUSTRIAL HOLDINGS CORPORATION is sued as a

Product Defendant. Plaintiffs' claims against INDUSTRIAL HOLDINGS CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

58. Defendant, **JOHNSON CONTROLS, INC.**, was and is a Wisconsin corporation with its principal place of business in Wisconsin. At all times material hereto, JOHNSON CONTROLS, 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 Johnson valves. JOHNSON CONTROLS, INC. is sued as a Product Defendant. Plaintiffs' claims against JOHNSON CONTROLS, INC. arise out of this Defendant's business activities in the State of South Carolina.

59. Defendant, **MERITOR, INC.**, f/k/a ARVINMERITOR, INC., successor-in-interest to the former automotive products segment of ROCKWELL INTERNATIONAL CORPORATION, was and is a Nevada corporation with its principal place of business in Michigan. At all times material hereto, MERITOR, 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 Rockwell brakes. MERITOR, INC. is sued as a Product Defendant. Plaintiffs' claims against MERITOR, INC. arise out of this Defendant's business activities in the State of South Carolina.

60. 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.

61. 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 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 brakes, including but not limited to Borg-Beck brakes, and clutches, including but not limited to Borg-Warner clutches and Rockford clutches. MORSE TEC LLC is sued as a Product Defendant. Plaintiffs' claims against MORSE TEC LLC arise out of this Defendant's business activities in the State of South Carolina.

62. Defendant, **MW CUSTOM PAPERS, LLC**, was and is a Delaware limited liability with its principal place of business in Georgia. At all times material hereto, MW CUSTOM PAPERS, 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 friction paper. MW CUSTOM PAPERS, LLC is sued as a Product Defendant. Plaintiffs' claims against MW CUSTOM PAPERS, LLC arise out of this Defendant's business activities in the State of South Carolina.

63. Defendant, **OCCIDENTAL CHEMICAL CORPORATION**, as successor to DUREZ CORPORATION, was and is a New York corporation with its principal place of business in Texas. At all times material hereto, OCCIDENTAL CHEMICAL 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 raw asbestos

fibers. OCCIDENTAL CHEMICAL CORPORATION is sued as a Product Defendant. Plaintiffs' claims against OCCIDENTAL CHEMICAL CORPORATION arise out of this Defendant's business activities in the State of South Carolina.

64. Defendant, **O'REILLY AUTO ENTERPRISES, LLC**, individually and as successor-in-interest, parent, alter ego and equitable trustee of KRAGEN AUTO PARTS, GRAND AUTO SUPPLY, O'REILLY AUTO PARTS and CSK AUTO, INC., was and is a Delaware limited liability with its principal place of business in Missouri. At all times material hereto, O'REILLY AUTO ENTERPRISES, 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 friction products. O'REILLY AUTO ENTERPRISES, LLC is sued as a Product Defendant. Plaintiffs' claims against O'REILLY AUTO ENTERPRISES, LLC arise out of this Defendant's business activities in the State of South Carolina.

65. Defendant, **O'REILLY AUTOMOTIVE STORES, INC.**, was and is a Missouri corporation with its principal place of business in Missouri. At all times material hereto, O'REILLY AUTOMOTIVE STORES, 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. O'REILLY AUTOMOTIVE STORES, INC. is sued as a Product Defendant. Plaintiffs' claims against O'REILLY AUTOMOTIVE STORES, INC. arise out of this Defendant's business activities in the State of South Carolina.

66. 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, 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 control panels and electrical equipment. 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.

67. Defendant, **PFIZER, INC.**, was and is a Delaware corporation with its principal place of business in New York. At all times material hereto, PFIZER, 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 talc. PFIZER, INC. is sued as a Product Defendant. Plaintiffs' claims against PFIZER, INC. arise out of this Defendant's business activities in the State of South Carolina.

68. Defendant, **PHARMACIA LLC**, f/k/a PHARMACIA CORPORATION f/k/a MONSANTO COMPANY, was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, PHARMACIA LLC owned and/or controlled premises at which Plaintiff Melvin G. Welch and his father Willis G. Welch were exposed to asbestos-containing products, equipment, and asbestos dust from said products at various facilities, including but not limited to, the Monsanto chemical plant in Greenwood, South Carolina. PHARMACIA LLC is sued as a Premises Defendant. Plaintiffs' claims against PHARMACIA LLC arise out of this Defendant's business activities in the State of South Carolina.

69. 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 thermal insulation and materials 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 Heat & Frost Insulation Company, Inc., exposed tens of thousands of people, including the Plaintiff Melvin G. Welch and his father Willis G. Welch, 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.

70. Defendant, **PNEUMO ABEX, LLC**, individually and as successor-in-interest to **ABEX CORPORATION**, was and is a Delaware limited liability company with its principal place of business in New Jersey. At all times material hereto, **PNEUMO ABEX, 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 friction products. **PNEUMO ABEX, LLC** is sued as a Product Defendant. Plaintiffs' claims against **PNEUMO ABEX, LLC** arise out of this Defendant's business activities in the State of South Carolina.

71. 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 Cranite gaskets, Crane valves, and Crane pumps. 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.

72. 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. 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 Riley boilers. 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.

73. Defendant, **ROCKWELL AUTOMATION INC.**, individually and as successor-in-interest ALLEN-BRADLEY COMPANY LLC, f/k/a ROCKWELL INTERNATIONAL CORPORATION, was and is a Delaware corporation with its principal place of business in Wisconsin. At all times material hereto, ROCKWELL AUTOMATION 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 Allen-Bradley electrical panels. ROCKWELL AUTOMATION INC. is sued as a Product Defendant. Plaintiffs'

claims against ROCKWELL AUTOMATION INC. arise out of this Defendant's business activities in the State of South Carolina.

74. 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 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. RUST ENGINEERING & CONSTRUCTION, INC. is sued as a Product Defendant and a Design 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 Melvin G. Welch and his father Willis G. Welch, to lethal doses of asbestos. Plaintiffs' claims against RUST ENGINEERING & CONSTRUCTION, INC. arise out of this Defendant's business activities in the State of South Carolina.

75. 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 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. RUST INTERNATIONAL INC. is sued as a Product Defendant and a

Design 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 Melvin G. Welch and his father Willis G. Welch, to lethal doses of asbestos. Plaintiffs' claims against RUST INTERNATIONAL INC. arise out of this Defendant's business activities in the State of South Carolina.

76. 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. Plaintiffs' claims against SAINT-GOBAIN ABRASIVES, INC. arise out of this Defendant's business activities in the State of South Carolina.

77. Defendant, **SCHNEIDER ELECTRIC USA, INC.**, f/k/a SQUARE D COMPANY, was and is a Delaware corporation with its principal place of business in Massachusetts. At all times material hereto, SCHNEIDER ELECTRIC 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 Square D electrical panels and components. SCHNEIDER ELECTRIC USA, INC. is sued as a Product Defendant. Plaintiffs' claims against SCHNEIDER ELECTRIC USA, INC. arise out of this Defendant's business activities in the State of South Carolina.

78. 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 Melvin G. Welch and his father Willis G. Welch, to lethal doses of asbestos. Plaintiffs' claims against SOUTHERN INSULATION, INC. arise out of this Defendant's business activities in the State of South Carolina.

79. 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. 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.

80. 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, raw asbestos fibers and asbestos-containing phenolic molding products. 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.

81. 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 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 Melvin G. Welch and his father Willis G. Welch, 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.

82. Defendant, **WESTROCK MWV, LLC**, as successor-in-interest to WESTVACO, was and is a Delaware limited liability company with its principal place of business in Georgia. At all times material hereto, WESTROCK MWV, 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 friction paper. WESTROCK MWV, LLC is sued as a Product Defendant. Plaintiffs' claims against WESTROCK MWV, LLC arise out of this Defendant's business activities in the State of South Carolina.

83. Defendant, **WIND UP, LTD.**, individually and as successor-in-interest to PIPE & BOILER INSULATION, INC. and 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. 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. 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 Melvin G. Welch and his father Willis G. Welch, to lethal doses of asbestos. Plaintiffs' claims against WIND UP, LTD. arise out of this Defendant's business activities in the State of South Carolina.

84. Defendant, **ZF ACTIVE SAFETY US INC.**, f/k/a KELSEY-HAYES COMPANY, was and is a Delaware corporation with its principal place of business in Michigan. At all times material hereto, ZF ACTIVE SAFETY 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 Kelsey-Hayes brakes and clutches. ZF ACTIVE SAFETY US INC. is sued as a Product Defendant. Plaintiffs' claims against ZF ACTIVE SAFETY US INC. arise out of this Defendant's business activities in the State of South Carolina.

85. Plaintiff Melvin G. Welch was exposed through his father, Willis G. Welch, and also experienced further occupational exposure himself, as a result of each of them working with and around asbestos-containing equipment in their immediate vicinities at their work sites,

including but not limited to, the premises of Defendant PHARMACIA LLC (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

86. Plaintiff Melvin G. Welch brings this action for monetary damages as a result of contracting an asbestos-related disease.

87. Plaintiff Melvin G. Welch was diagnosed with mesothelioma on or about June 27, 2022.

88. Plaintiff Melvin G. Welch’s mesothelioma was caused by his exposure to asbestos during the course of his own work in various roles, including but not limited to instrumentation specialist helper and mechanic, as well as through the asbestos carried home on the clothing and person of his father during the years he lived in the family home.

89. During his work history, Plaintiff Melvin G. Welch was exposed to Defendants’ asbestos-containing products through his work as an instrumentation specialist helper for Daniel Construction at the Monsanto chemical plant in Greenwood, South Carolina in the mid-late 1960s. Plaintiff performed a variety of tasks throughout the facilities where he worked, which included, but were not limited to, installing instrumentation on various forms of equipment. On these jobsites, he worked with and around asbestos-containing products, including but not limited to

pipe and block insulation, cements, spray insulation, gaskets, packing materials, refractory motor and firebrick for use on turbines, boilers, pipes, valves, steam traps, pumps, transformers, electrical equipment, compressors, generators, heaters, motors, and other industrial equipment. All of these activities exposed Plaintiff to asbestos and asbestos-dust.

90. During his work history, Plaintiff was further exposed through his work around other trades including but not limited to laborers, sheet metal workers, welders, pipefitters, boilermakers, insulators, electricians, and maintenance mechanics. Plaintiff worked near and closely to a variety of tradesmen working on asbestos-containing pipe and block insulation, cements, spray insulation, gaskets, packing material, refractory motor and firebrick for use on turbines, boilers, valves, steam traps, pumps, transformers, electrical equipment, compressors, generators, heaters, motors, and other industrial equipment. All of these activities exposed Plaintiff to asbestos and asbestos dust.

91. During his work history, Plaintiff was further exposed to Defendants' asbestos-containing products through his work as an automobile mechanic at various jobsites located in South Carolina from approximately the late 1970s to the mid-late 2000s. Plaintiff worked as a mechanic performing a variety of tasks including but not limited to preventative maintenance and repair work of engines, transmissions, shocks, exhaust, clutches, gaskets, and brakes. He was also required to clean the repair bays, which involved sweeping asbestos dust without any protection. All of these activities exposed Plaintiff to asbestos.

92. Through his work as a mechanic, Plaintiff 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, sold, supplied and/or distributed by Defendants identified above.

93. Plaintiff was exposed to Defendants' asbestos-containing products while employed as a mechanic at K-Mart in Greenwood, South Carolina from approximately the late 1970s to the late 1980s.

94. Plaintiff was exposed to Defendants' asbestos-containing products while employed as a mechanic at M&M Tire in Greenwood, South Carolina from approximately the late 1980s to the mid 1990s.

95. Plaintiff was exposed to Defendants' asbestos-containing products while employed as a mechanic at Western Auto in Greenwood, South Carolina from approximately the mid 1990s to the mid-late 2000s.

96. Plaintiff also was exposed to Defendants' asbestos-containing friction products during various times throughout his life while performing maintenance and changing the brakes, clutches, and gaskets on his personal vehicles and the vehicles of his friends and family throughout South Carolina from approximately the early 1970s to the present. These activities exposed Plaintiff to asbestos.

97. During the course of Plaintiff Melvin G. Welch's employment at the location(s) mentioned above, during other 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.

98. Plaintiff Melvin G. Welch was further exposed as a result of his father Willis G. Welch's employment for Daniel Construction as a welder at the Monsanto chemical plant in Greenwood, South Carolina from approximately the mid to the late 1960s. Plaintiff's father performed a variety of tasks throughout the facilities, and was further exposed through his work around various other trades, including, but not necessarily limited to, premises workers and other

maintenance workers, insulators, pipefitters, welders, boilermakers, electricians, and others who installed and removed asbestos materials.

99. While employed at the Monsanto chemical plant in Greenwood, South Carolina, Plaintiff's father Willis G. Welch 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 Melvin G. Welch to be exposed to said asbestos dust in sufficient amounts as to cause him to develop mesothelioma.

100. From approximately the early 1960s to the early 1970s, Plaintiff Melvin G. Welch 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 Willis G. Welch's jobsites which Plaintiff came in contact with off premises by 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 his 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.

101. Plaintiff Melvin G. Welch'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 Melvin G. Welch's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff's injuries and damages.

102. Plaintiffs and Plaintiff Melvin G. Welch's father Willis G. Welch were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

103. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease, mesothelioma 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.

104. As a direct and proximate result of the conduct as alleged within, Plaintiff Melvin G. Welch suffered permanent injuries, including, but not limited to, mesothelioma 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.

105. As a direct and proximate result of the conduct as hereinafter alleged, Plaintiff Melvin G. Welch has incurred, and will 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 Melvin G. Welch's medical treatment is ascertained.

106. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiffs 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:

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

108. At all times herein mentioned, each of the named Defendants were 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.

109. 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 Melvin G. Welch and

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

110. 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 Melvin G. Welch’s mesothelioma, 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 Melvin G. Welch and his father Willis G. Welch. 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.

111. 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 Melvin G. Welch and his father Willis G. Welch, would use or be in proximity to and exposed to said asbestos fibers.

112. 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 Melvin G. Welch, 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.

113. Plaintiff Melvin G. Welch, 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 Willis G. Welch’s exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

114. Plaintiff Melvin G. Welch suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff Melvin G. Welch and his father Willis G. Welch were not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

115. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Plaintiff Melvin G. Welch’s injuries, and all damages thereby sustained by

Plaintiff Melvin G. Welch. Plaintiffs therefore seek all compensatory damages in order to make them whole, according to proof.

116. Furthermore, the conduct of Defendants and/or their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Melvin G. Welch 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 Melvin G. Welch and others similarly situated.

117. 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, mesothelioma, 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.”

118. 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.

119. 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 Melvin G. Welch.

120. Plaintiff Melvin G. Welch, his father Willis G. Welch, 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 Melvin G. Welch, his father Willis G. Welch, 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.

121. 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.

122. 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:

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

124. Plaintiff Melvin G. Welch has suffered from mesothelioma, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Plaintiff Melvin G. Welch was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

125. The Products Defendants’ conduct and defective products as described above were a direct cause of Plaintiff Melvin G. Welch’s injuries, and the injuries and damages thereby sustained by Plaintiffs.

126. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Plaintiff Melvin G. Welch 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 Melvin G. Welch and others similarly situated.

127. 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.

128. Plaintiff Melvin G. Welch, 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 Melvin G. Welch’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.

129. 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.

130. 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 Melvin G. Welch's mesothelioma, 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.

131. 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 mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Plaintiff Melvin G. Welch herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

132. Plaintiff Melvin G. Welch, his father Willis G. Welch, 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 Melvin G. Welch, his father Willis G. Welch, or other exposed persons. Said Defendants and/or their "alternate

entities" further failed to adequately warn of the risks to which Plaintiff Melvin G. Welch and others similarly situated were exposed.

133. Defendants' defective products as described above were a direct cause of Plaintiff Melvin G. Welch's injuries, and the damages thereby sustained.

134. 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 Melvin G. Welch, his father Willis G. Welch, 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, mesothelioma, 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."

135. 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.

136. 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 Melvin G. Welch 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.

137. 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.

138. 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.

139. 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 Product and Premises Defendants Based upon Respondeat Superior and Allege as Follows:

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

141. 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 Melvin G. Welch and/or his father Willis G. Welch worked and/or spent time as alleged above.

142. 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 Melvin G. Welch and his father Willis G. Welch were exposed.

143. Employees handling and disturbing asbestos-containing products in Plaintiff Melvin G. Welch's and his father Willis G. Welch'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.

144. Employees handling and disturbing asbestos-containing products in Plaintiff Melvin G. Welch'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.

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

146. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Plaintiff Melvin G. Welch and his father Willis G. Welch, 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 Melvin G. Welch.

147. 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.

148. 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 mesothelioma and other lung damage, to exposed persons including Plaintiff Melvin G. Welch.

149. 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 and his father Willis G. Welch that he was being exposed to asbestos, failed to adequately warn Plaintiff Melvin G. Welch and his father Willis G. Welch of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

150. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Plaintiff Melvin G. Welch and his father Willis G. Welch.

151. Defendants' employees owed Plaintiff Melvin G. Welch and his father Willis G. Welch 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.

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

153. At all times mentioned, Plaintiff Melvin G. Welch and his father Willis G. Welch 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.

154. As a direct result of the Defendants' employees conduct, Plaintiff Melvin G. Welch's and his father Willis G. Welch'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 Melvin G. Welch and the damages and injuries as complained of herein by Plaintiffs.

155. The risks herein alleged and the resultant damages suffered by the Plaintiff Melvin G. Welch 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.

156. 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 Melvin G. Welch.

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:

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

158. 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 Melvin G. Welch and his father Willis G. Welch worked and/or spent time.

159. 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.

160. 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 Melvin G. Welch and his father Willis G. Welch and settled onto their clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and bystanders including Plaintiff Melvin G. Welch would be exposed to dangerous asbestos dust beyond the present.

161. 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 mesothelioma, lung cancer and other lung damage, to exposed persons, including Plaintiffs.

162. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff Melvin G. Welch and his father Willis G. Welch, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

163. 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 Melvin G. Welch and his father Willis G. Welch, 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.

164. 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 Melvin G. Welch and his father Willis G. Welch were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

165. At all times herein mentioned, Plaintiff Melvin G. Welch and his father Willis G. Welch were unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

166. 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.

167. 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 Melvin G. Welch, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

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

169. 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.

170. Defendants failed to warn their employees and bystanders thereto, including Plaintiff Melvin G. Welch and his father Willis G. Welch, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

171. 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 Melvin G. Welch became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff Melvin G. Welch to develop asbestos-related disease mesothelioma, 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:

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

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

174. 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 Melvin G. Welch. 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.

175. The negligence per se of Defendants was a proximate cause of Plaintiffs' 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:

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

177. 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 Melvin G. Welch and his father Willis G. Welch of dangers and risks associated with the conditions of the material and work product which was being installed for use by Plaintiff 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.

178. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiffs 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:

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

180. Design Defendants owed Plaintiff Melvin G. Welch and his father Willis G. Welch 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.

181. 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.

182. As a direct, proximate, and foreseeable result of the negligence of the Design Defendants, Plaintiffs have 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:

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

184. 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.

185. The implied warranty made by the Defendants, and/or their alter egos, 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 Melvin G. Welch and his father Willis G. Welch carried out their duties and was as a result inhaled by Plaintiff Melvin G. Welch.

186. 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 Melvin G. Welch and his father Willis G. Welch were exposed to Defendants’ asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently developed mesothelioma, 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:

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

188. That during, before and after Plaintiff Melvin G. Welch’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 Melvin G. Welch and his father Willis G. Welch 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 Melvin G. Welch. 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.

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

190. As a direct and proximate result Plaintiff Melvin G. Welch's and his father Willis G. Welch's reliance upon Defendants' false representations, Plaintiffs have 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, Plaintiffs Complain of Defendant Metropolitan Life Insurance Company, and Allege as Follows:

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

192. 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.

193. 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.

194. 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.

195. 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 Melvin G. Welch and his father Willis G. Welch were exposed to and breathed asbestos dust which resulted in Plaintiff Melvin G. Welch'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 Plaintiffs herein.

196. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff Melvin G. Welch 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 Melvin G. Welch's illness.

197. 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.

198. Plaintiff Melvin G. Welch 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.

199. 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 Melvin G. Welch from asbestos exposure was increased, and (ii) Plaintiffs suffered the injuries described herein.

200. 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.

201. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff and his father Willis G. Welch were caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff Melvin G. Welch, his father Willis G. Welch, their co-workers, their wives and families, and the general public to be unaware of the true and full dangers

of asbestos, depriving Plaintiff Melvin G. Welch and his father Willis G. Welch of the opportunity to decide for themselves whether they wanted to take the risk of being exposed to asbestos, denied Plaintiff Melvin G. Welch and his father Willis G. Welch the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's' damages herein.

202. During the relevant time period the Plaintiff Melvin G. Welch and his father Willis G. Welch 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.

203. 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 Melvin G. Welch, 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 Melvin G. Welch or his wife 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.
- (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, mesothelioma, 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, mesothelioma 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.

204. Plaintiff Melvin G. Welch and his father Willis G. Welch 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.

205. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff Melvin G. Welch and his father Willis G. Welch have 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 Plaintiffs have been damaged.

FOR AN ELEVENTH CAUSE OF ACTION
(Loss of Consortium)

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

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

207. Plaintiffs Melvin G. Welch and Donna B. Welch were married November 26, 1972 and at all times relevant to this action were husband and wife.

208. Prior to his injuries as alleged, Plaintiff Melvin G. Welch was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Plaintiff Melvin G.

Welch 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 Donna B. Welch 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.

209. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Plaintiff Melvin G. Welch as set forth herein, Plaintiff's spouse and co-Plaintiff Donna B. Welch 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. Plaintiffs pray 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 Plaintiffs' 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

Aaron D. Chapman (SC Bar No. 104485)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

achapman@dobslegal.com

Other email: drector@dobslegal.com

ATTORNEYS FOR PLAINTIFFS

July 25, 2022

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>MOTION TO DISMISS FOR LACK</u>
	)	<u>OF PERSONAL JURISDICTION OF</u>
vs.	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>
Defendants.	)	
	)	

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, hereby moves to dismiss Plaintiffs’ 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

1. Plaintiffs’ Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to various asbestos-containing products or raw asbestos materials.²

2. Plaintiffs’ Complaint lists Atlas Turner “as a Product Defendant” and alleges Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined... processed... imported... supplied... and/or retailed...” by Atlas Turner, including but not limited to raw asbestos.³

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

² Pl.’s Compl. at ¶¶ 1, 3.

³ Pl.’s Compl. at ¶¶ 26, 27.

3. Plaintiffs have failed to make a *prima facie* showing that Atlas Turner is subject to either general or specific personal jurisdiction in South Carolina. Whether a foreign defendant, such as Atlas Turner, 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, Plaintiffs' generic and conclusory jurisdictional allegations are just that: bare boilerplate statements, unsupported by fact, which are insufficient to establish this Court's jurisdiction over Atlas Turner. *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").

4. First, the Court does not have general personal jurisdiction over Atlas Turner 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. Atlas Turner 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.*

⁴ Plaintiffs correctly state that Atlas Turner "was and is" a Canadian corporation with its principal place of business in Canada. Pl.'s. Compl. at ¶ 27. *See also* ¶ 26.

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.’”).

5. Second, Plaintiffs have not shown that this Court has specific personal jurisdiction over Atlas Turner. Specific personal jurisdiction is granted pursuant to South Carolina’s long arm statute, 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 Atlas Turner 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 491-92, 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 Atlas Turner’s activities in South Carolina, (2) the character and circumstances of Atlas Turner’s acts, (3) the inconvenience resulting to Atlas Turner by either conferring or refusing jurisdiction, and (4) South Carolina’s interest in exercising jurisdiction. *Id.* at 492, 611 S.E.2d at 508.

6. Plaintiffs have not shown, and cannot show, Atlas Turner 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*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-297 (1980); *Hanson v. Denckla*, 357 U.S. 235, 251, 253 (1958). Atlas Turner 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.”)

7. Because the Court lacks both general personal jurisdiction and specific personal jurisdiction over Atlas Turner, Plaintiffs’ Complaint must be dismissed with respect to Atlas Turner.

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. Atlas Turner’s participation in discovery prior to a hearing on this Motion shall not be construed as a waiver by Atlas Turner of any rights, defenses, or objections, including lack of personal jurisdiction, all of which are expressly reserved.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

September 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>MEMORANDUM IN SUPPORT OF</u>
Plaintiffs,	)	<u>MOTION TO DISMISS FOR LACK</u>
	)	<u>OF PERSONAL JURISDICTION OF</u>
vs.	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC. ON BEHALF OF ITSELF AND</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>
Defendants.	)	
	)	

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co., by and through undersigned counsel, submits this memorandum and accompanying affidavit in support of its Motion to Dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.¹

FACTS

Plaintiffs’ Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to various asbestos-containing products or raw materials in several states, including South Carolina.²

Plaintiffs do not assert that Atlas Turner 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’

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

² Pl. Compl. at ¶¶ 1, 3.

³ See Pl. Compl. at ¶¶ 26, 27 .

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 Atlas Turner, Plaintiffs list it as a “Product Defendant” and allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined . . . processed . . . imported . . . supplied . . . and or retailed” by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege that their claim against Atlas Turner arises out of Atlas Turner’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 Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit A at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3.

⁴ Pl.’s Compl. at ¶ 2.

⁵ Pl.’s Compl. at ¶ 6, 9.

⁶ Pl.’s Compl. at ¶¶ 26, 27.

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit A at ¶ 4 .
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit A at ¶ 5.
- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit A at ¶ 6.

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.*, 379 S.C. at 433–36, 665 S.E.2d at 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. Savchuk*, 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 Atlas Turner and, therefore, Plaintiffs’ claims against Atlas Turner must be dismissed.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner 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 Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (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*, 137 S. Ct. 1549, 1558 (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 holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. 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.

Atlas Turner is not “at home” in South Carolina. It is undisputed that Atlas Turner 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 Atlas Turner “at home” in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner 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 Atlas Turner 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 Atlas Turner’s conduct within the State. Consequently, Atlas Turner 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, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (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 Atlas Turner 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*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner 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 Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit A at ¶ 5. As attested in Mr. Dufour's affidavit, all products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit A at ¶ 3. 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 Atlas Turner 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, Atlas Turner's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

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

CONCLUSION

Atlas Turner is not subject to general jurisdiction because it cannot fairly be said to be “at home” in South Carolina at any time. Atlas Turner is not subject to specific jurisdiction because Atlas Turner 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 Atlas Turner is entitled to an order dismissing Plaintiffs’ claims against it.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

September 9, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, et al.,	)	
	)	
Defendants.	)	
	)	

RICHARD DUFOUR AFFIDAVIT

DISTRICT OF FRONTENAC)
)
 PROVINCE OF QUEBEC)

I, Richard Dufour, being first duly sworn, depose and state:

1. I am over the age of eighteen and am competent to make this Affidavit.
2. I am counsel to Atlas Turner, Inc. ("Atlas Turner"). The facts set forth in this Affidavit are true to the best of my knowledge, information and belief.
3. Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. Atlas Turner did manufacture asbestos-containing products but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Montreal, Quebec, Canada.
4. Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently, nor has it ever been,

registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina.

5. Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and did not own any real property in the State of South Carolina. Atlas Turner has never transacted business in the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina.

6. Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers, or agents in the State of South Carolina.

FURTHER AFFIANT SAYETH NOT.


Richard Dufour

Subscribed and sworn to before me
this, the 7th day of September, 2022

Karen H. Giroux
COMMISSIONER OF OATHS FOR THE JUDICIAL DISTRICT
OF FRONTENAC, PROVINCE OF QUEBEC



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>AMENDED MEMORANDUM IN</u>
	)	<u>SUPPORT OF MOTION TO</u>
vs.	)	<u>DISMISS PLAINTIFFS' THIRD</u>
	)	<u>AMENDED COMPLAINT FOR</u>
	)	<u>LACK OF PERSONAL</u>
3M Company, et al.,	)	<u>JURISDICTION OF DEFENDANT</u>
	)	<u>ATLAS TURNER, INC. ON</u>
Defendants.	)	<u>BEHALF OF ITSELF AND</u>
	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. ("Atlas Turner"), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through undersigned counsel, submits this Amended Memorandum and accompanying exhibits² in support of its Motion to Dismiss Plaintiffs' Third Amended Complaint (hereinafter "Complaint") pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

² On November 17, 2022, Defendant Atlas Turner filed its Memorandum in Support of Motion to Dismiss Plaintiffs' Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on behalf of Itself and Defendant Atlas Asbestos Co. Defendant Atlas Turner also filed an accompanying affidavit from Richard Dufour dated September 7, 2022, which had also been filed with each of the earlier timely filed Motions to Dismiss and Supporting Memoranda in response to the Original Complaint, as well as the First and Second Amended Complaints. This Amended Memorandum includes the previously filed Affidavit dated September 7, 2022 and also includes relevant excerpts from the deposition of Mr. Welch taken on October 7, 11, 12 and 14, 2022 and a second Affidavit from Richard Dufour dated December 28, 2022.

FACTS

Plaintiffs' Complaint alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw materials in several states, including South Carolina.³

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.⁴ 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.⁵ 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."⁶

Specifically as to Atlas Turner, Plaintiffs list it as a "Product Defendant" and allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment "mined . . . processed . . . imported . . . supplied . . . and or retailed" by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege that their claim against Atlas Turner arises out of Atlas Turner's "business activities" in the State of South Carolina.⁷

In the Complaint, Plaintiffs allege that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company ("Daniel") at the Monsanto Chemical Plant [aka

³Pl. Compl. at ¶¶ 1,3.

⁴ See Pl. Compl. at ¶¶ 26, 27.

⁵ Pl.'s Compl. at ¶ 2.

⁶ Pl.'s Compl. at ¶ 6, 9.

⁷ Pl.'s Compl. at ¶¶ 26, 27.

Chemstrand], in Greenwood, SC “in the mid-late 1960s” and was exposed to, among other things, asbestos-containing insulation products.⁸ Plaintiffs also allege that Mr. Welch later worked as an “automobile mechanic at various job sites” in the “late 1970s to the mid-late 2000s” and was exposed to asbestos from “clutches, gaskets, and brakes.”⁹ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing “friction products” such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.¹⁰

Mr. Welch was deposed on October 7, 11, 12, and 14, 2022; and he testified about his alleged exposure to asbestos. Excerpts from the transcript dated October 7 are attached as Exhibit 1; excerpts from the transcript dated October 11 are attached as Exhibit 2; excerpts from the transcript dated October 12 are attached as Exhibit 3.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. See Exhibit 1, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” See Exhibit 1, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. See Exhibit 1, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. See Exhibit 1, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. See Exhibit 3, at pp. 74, 72-73. More specifically,

⁸ See Pl. Comp. at ¶ 91.

⁹ See Pl. Comp. at ¶ 93.

¹⁰ See Pl. Comp. at ¶ 98.

Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing new insulation on the pipes; and he was working under or below the insulators. See Exhibit 2, at pp. 90, 92, 96, 98. Not surprisingly, Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. See Exhibit 2, at p. 45. After working for Daniel at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. See Exhibit 1, at p. 19; see Exhibit 2, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. See Exhibit 1 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. See Exhibit 1, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. See Exhibit 1, at pp. 52-65.

In summary, Mr. Welch testified that he allegedly worked around asbestos-containing pipe insulation products while employed by Daniel at the Monsanto/Chemstrand Greenwood plant from approximately 1965 to 1966 and that he went into the Air Force from 1967 to 1970. Thereafter, he alleges he worked as a brake mechanic with asbestos-containing brake material from approximately 1977 until he retired around 2000, and alleges that he worked with asbestos-containing automotive brakes, gaskets, and clutches from approximately 1958 through the 2000s.

As attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), dated September 7, 2022, attached hereto as Exhibit 4, the jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit 4 at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit 4 at ¶ 3.
- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit 4 at ¶ 4 .
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within

the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit 4 at ¶ 5.

- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit 4 at ¶ 6.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. See Affidavit of Richard Dufour, dated December 28, 2022, attached as Exhibit 5, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. See Exhibit 5 at ¶ 13. Thus, Mr. Welch's cause of action did not arise out of or relate to the defendant's "contacts" with the forum because Atlas Turner had no contacts with the forum during the relevant time period at issue, which is 1965, 1966.

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.*, 379 S.C. at 433–36, 665 S.E.2d at 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. Savchuk*, 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 Atlas Turner and, therefore, Plaintiffs’ claims against Atlas Turner must be dismissed.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner 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 Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (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*, 137 S. Ct. 1549, 1558 (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 holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. 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.

Atlas Turner is not “at home” in South Carolina. It is undisputed that Atlas Turner 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 Atlas Turner “at home” in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner 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 Atlas Turner has never conducted business in South Carolina or purposefully directed business activities towards South Carolina, especially during the relevant time period, Plaintiffs' claims did not arise out of Atlas Turner's alleged conduct within the State. Consequently, Atlas Turner 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, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (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 Atlas Turner 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*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to, especially during the relevant time period; 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.”)

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit 4 at ¶ 5. All products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit 4 at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

Further, and most importantly, Mr. Welch's only alleged exposure to asbestos-containing insulation products occurred in 1965, 1966 while he was employed by Daniel at the Monsanto/Chemstrand Greenwood plant. Atlas Turner has no records of sales to any company in South Carolina prior to 1968. See Exhibit 5, at ¶ 12. In addition, Atlas Turner never manufactured or sold asbestos containing friction products such as automobile brakes, clutches, or gaskets. Thus, during the relevant time period – 1965, 1966 – Mr. Welch could not have been exposed to any alleged asbestos-containing products manufactured or sold by Atlas Turner. As such, his cause of action could not have arisen from any of Atlas Turner's "contacts" with South Carolina because Atlas Turner did not have any "contacts" with the State during the relevant time period. Atlas Turner did not purposefully avail itself of the privilege of conducting activities within South Carolina during the relevant time period and could not reasonably anticipate being haled into Court in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner 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, Atlas Turner's alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

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

CONCLUSION

Atlas Turner is not subject to general jurisdiction because it cannot fairly be said to be "at home" in South Carolina at any time. Atlas Turner is not subject to specific jurisdiction because Atlas Turner had no minimum contacts with South Carolina, especially during the relevant time

period, 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 Atlas Turner is entitled to an order dismissing Plaintiffs' claims against it.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

December 30, 2022

EXHIBIT 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna G. Welch,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, et al.,	)	
	)	
Defendants.	)	
_____	)	

RICHARD DUFOUR AFFIDAVIT

DISTRICT OF FRONTENAC)
)
 PROVINCE OF QUEBEC)

I, Richard Dufour, being first duly sworn, depose and state:

1. I am over the age of eighteen and am competent to make this Affidavit.
2. I am counsel to Atlas Turner, Inc. I know the truth of the following and could and would testify competently as follows:
3. Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.
4. Atlas Turner, Inc., is a corporation organized and existing under the laws of Canada, and is headquartered in the Province of Quebec.

5. Atlas Turner, Inc. has never held a Certificate of Authority to do business in South Carolina.
6. Atlas Turner, Inc. does not now, nor did it ever own, lease or otherwise use any real property in South Carolina.
7. Atlas Turner, Inc. never owned or operated any manufacturing facility in South Carolina.
8. Atlas Turner, Inc. never commenced any litigation in South Carolina.
9. Atlas Turner, Inc. never maintained any bank accounts in South Carolina.
10. Atlas Turner, Inc. ceased all operations of any kind in 1986.
11. Atlas Turner, Inc. has no current employees at all.
12. Atlas Turner, Inc. has no records of sales to any company in South Carolina prior to 1968.
13. Atlas Turner, Inc. never manufactured or sold asbestos containing friction products such as automobile brakes, clutches, or gaskets.
14. Atlas Turner, Inc. has no former employees competent to testify to the topics listed on the 30(b)(6) Notices of Deposition in this case, and for the most part Atlas Turner, Inc. does not even maintain or possess the records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices of deposition.
15. To the extent that relevant records do exist, their production would be prohibited by the Quebec Business Concerns Records Act as interpreted by the courts in Canada and the Province of Quebec.

SIGNATURE ON NEXT PAGE

FURTHER AFFIANT SAYETH NOT.


Richard Dufour

Subscribed and sworn to before me this,
the 28th day of December, 2022




my commission expires March 2, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, et al.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT ATLAS TURNER, INC.’S MOTION FOR PROTECTIVE ORDER AND
MEMORANDUM OF LAW IN SUPPORT ON BEHALF OF ITSELF AND
DEFENDANT ATLAS ASBESTOS CO.**

Defendant Atlas Turner, Inc., sued incorrectly as successor to Atlas Asbestos Co., (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through its undersigned counsel, and pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, files this motion seeking to be relieved from designating and producing a corporate representative for deposition, and from producing any information or documents, pursuant to the Notices of 30(b)(6) Deposition of Atlas Asbestos Co. and Atlas Turner, Inc. served by Plaintiffs in this case. First, nearly all the discovery Plaintiffs seek is merits discovery, and the Court should stay discovery as to Atlas Turner until the Court rules on Defendant Atlas Turner’s Motion to Dismiss for Lack of Personal Jurisdiction. Second, in the event the Court does not grant Atlas Turner’s motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by Plaintiffs’

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

Notices of 30(b)(6) Deposition because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices. Third, in the event the Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' Notices of 30(b)(6) Deposition, because of the Quebec Business Concerns Records Act (QBCRA), which subjects Atlas Turner to criminal penalties in Quebec if it produces information and documents sought by Plaintiffs in the Notices of 30(b)(6) Deposition. In support of this motion, Atlas Turner states as follows:

BACKGROUND

On July 25, 2022, Plaintiffs filed their original Complaint. Plaintiffs subsequently amended their Complaint several times, and most recently filed their Third Amended Complaint on November 3, 2022, in which they named approximately sixty five (65) Defendants. In response, Atlas Turner has timely filed Motions to Dismiss for Lack of Personal Jurisdiction and Memoranda in Support with accompanying affidavit and has filed an Amended Memorandum with affidavits and deposition testimony (Amended Memorandum with exhibits was filed December 30, 2022).

In the Third Amended Complaint, Plaintiffs allege that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company ("Daniel") at the Monsanto Chemical Plant [aka Chemstrand], in Greenwood, SC "in the mid-late 1960s" and was exposed to, among other things, asbestos-containing insulation products.² Plaintiffs also allege that Mr.

² See Third Amd. Complaint at ¶ 91.

Welch later worked as an “automobile mechanic at various job sites” in the “late 1970s to the mid-late 2000s” and was exposed to asbestos from “clutches, gaskets, and brakes.”³ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing “friction products” such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.⁴

On October 7, 11, 12, and 14, 2022, Mr. Welch was deposed and testified about his alleged asbestos exposure.⁵ Excerpts from the transcript dated October 7 are attached as Exhibit 1; excerpts from the transcript dated October 11 are attached as Exhibit 2; excerpts from the transcript dated October 12 are attached as Exhibit 3.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. See Exhibit 1, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” See Exhibit 1, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. See Exhibit 1, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. See Exhibit 1, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. See Exhibit 3, at pp. 74, 72-73. More specifically, Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing

³ See Third Amd. Complaint at ¶ 93.

⁴ See Third Amd. Complaint at ¶ 98.

⁵ No one appeared on behalf of Atlas Turner at the deposition.

new insulation on the pipes; and he was working under or below the insulators. See Exhibit 2, at pp. 90, 92, 96, 98. Not surprisingly, Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. See Exhibit 2, at p. 45. After working for Daniel at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. See Exhibit 1, at p. 19; see Exhibit 2, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. See Exhibit 1 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. See Exhibit 1, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. See Exhibit 1, at pp. 52-65.

In summary, Mr. Welch testified that he allegedly worked around asbestos-containing pipe insulation products while employed by Daniel at the Monsanto/Chemstrand Greenwood plant from approximately 1965 to 1966 and that he went into the Air Force from 1967 to 1970. Thereafter, he alleges he worked as a brake mechanic with asbestos-containing brake material from approximately 1977 until he retired around 2000, and alleges that he worked with asbestos-containing automotive brakes, gaskets, and clutches from approximately 1958 through the 2000s.

Defendant Atlas Turner was and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. See Affidavit of Richard Dufour dated September 7, 2022, which is attached as Exhibit 4, at ¶ 3.

Further, although Atlas Turner did manufacture asbestos-containing products, all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Montreal, Quebec, Canada. See Exhibit 4, at ¶ 3.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. See affidavit of Richard Dufour dated December 28, 2022, attached as Exhibit 5, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. See Exhibit 5, at ¶ 13. Thus, Mr. Welch's cause of action did not arise out of or relate to the defendant's "contacts" with the forum because Atlas Turner had no contacts with the forum during the relevant time period. See *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S. E. 2d 128, 131 (1992); *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1780 (2017).

On December 6, 2022, Plaintiffs served via email Plaintiffs' Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena Duces Tecum and Plaintiffs' Notice of 30(b)(6) Deposition of Defendant Atlas Turner, Inc. and Subpoena Duces Tecum ("30(b)(6) Notices"). A copy of each 30(b)(6) Notice is attached as Exhibits 6 and 7. The 30(b)(6) Notices contain 74 topics for questioning and 23 document requests. Plaintiffs scheduled the depositions for February 2, 2023 and requested that documents be produced no later than January 3, 2023, which is 28 days from the date the 30(b)(6) Notices were served. As set forth in Exhibits A and B of the 30(b)(6) Notices, Plaintiffs seek testimony and documents nearly all of which are related to merits discovery that are wholly unrelated to the question of the Court's personal jurisdiction over Atlas Turner.

LEGAL STANDARD

Pursuant to Rule 26(c), SCRCP, “[u]pon motion by a party... 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... (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions...; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters....” When the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E. 2d 852, 854 (1994).

If a person requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is “relevant and necessary” to the case. In determining whether a protective order is necessary, the trial judge is required to weigh the factors of whether the information sought is “relevant and necessary” evidence against any particularized harm the opposing party may suffer. In determining whether information is necessary, the party seeking the information must “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” The trial court must determine whether there are reasonable alternatives available to discover the information.

Hollman v. Woolfson, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009) (citing *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 474-76, 674 S.E.2d 154, 162-63 (2009); *Hamm*, 312 S.C. at 241, 439 S.E.2d at 854) (internal citations omitted).

Because Atlas Turner’s due process rights will be violated if it is required to participate in general discovery prior to this Court’s deciding whether it has personal jurisdiction over Atlas Turner, this Court should preclude Plaintiffs from requiring Atlas Turner to produce a corporate representative and produce information and documents in response to Plaintiffs’ 30(b)(6) Notices

until it determines whether it has personal jurisdiction over Atlas Turner. Further, in the event the Court does not grant Atlas Turner's motion to dismiss, then this Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by the 30(b)(6) Notices because of the absence of any current or former employees or individuals with personal knowledge and the inability to educate a witness due to the lack of most relevant records and because of the QBCRA.

ARGUMENT

I. Requiring Atlas Turner to Produce a Corporate Representative, Information, and Documents Before the Court Has Determined Whether It Has Personal Jurisdiction Over Atlas Turner Would Subject Atlas Turner to Particularized Harm.

Good cause for a protective order exists when a party will suffer particularized harm if the challenged discovery takes place. *Hamm*, 312 S.C. at 241, 439 S.E. 2d at 854. First, as explained in Atlas Turner's Motion to Dismiss and Amended Memorandum in Support, there is no general jurisdiction over Atlas Turner. As for specific jurisdiction, Atlas Turner lacks contacts with South Carolina sufficient for this Court to exercise specific personal jurisdiction over it. Atlas Turner did not manufacture or sell asbestos-containing friction products such as automotive brakes, clutches, or gaskets. Thus, the only relevant jobsite is the Monsanto/Chemstrand Greenwood plant where Mr. Welch was employed by Daniel and the relevant time period is 1966 or any time prior to 1966; and Atlas Turner has no records of sales to any company in South Carolina prior to 1968. Therefore, Atlas Turner could not anticipate being haled into this Court and there are no contacts with South Carolina out of which Mr. Welch's suit can arise. Consequently, requiring Atlas Turner to participate in general discovery in this matter violates Atlas Turner's due process rights and constitutes a particularized harm to Atlas Turner. Moreover, Plaintiffs are not even entitled to jurisdictional discovery because they cannot demonstrate enough facts to support a *prima facie*

showing of personal jurisdiction. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151-153, 723 S.E. 2d 835, 839-841 (2012). Based on bare allegations in the face of specific denials, the Court should not permit even limited discovery if it will be a fishing expedition. *Id.* at 151, 723 S.E. 2d at 840.

Second, precluding Plaintiffs from moving forward with the deposition is necessary to ensure that Atlas Turner is not forced to risk waiving its jurisdictional defense. Participation in substantive discovery has been found to waive a defendant's personal jurisdiction defense. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 564, 787 S.E. 2d 498, 510 (2016). To allow the deposition to proceed in this circumstance, thereby possibly forcing an involuntary "waiver" of the jurisdictional defense, is unfair and violates due process.

II. In the Event the Court Does not Grant Atlas Turner's Motion to Dismiss, Requiring Atlas Turner to Produce a Corporate Representative for Deposition, or Produce Information or Documents Sought by the 30(b)(6) Notices, Would Subject Atlas Turner to Particularized Harm Because it Lacks Individuals with Personal Knowledge and for the Most Part Does Not Maintain or Possess the Records That Would be Necessary to Educate a Witness to be Able to Testify to Matters Contained in the 30(b)(6) Notices.

As noted in Mr. Dufour's affidavit dated December 28, 2022, Atlas Turner ceased all operations in 1986; it has no current employees; it has no former employees competent to testify to the topics listed in the 30(b)(6) Notices, and for the most part does not even maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices; and 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. *See Exhibit 5 at ¶¶ 10, 11, 14, 15.*

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). Further, a party cannot produce documents it does not possess, and a party cannot create documents that do not exist. *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).

Due to Atlas Turner's unique circumstances, in the event the Court denies Atlas Turner's motion to dismiss, this Court should not order Atlas Turner to produce a corporate representative for deposition, or produce information or documents sought by the 30(b)(6) Notices.

III. In The Event the Court Does Not Grant Atlas Turner's Motion to Dismiss, Then Requiring Atlas Turner to Produce a Corporate Representative for Deposition, or Produce Information or Documents Sought by the 30(b)(6) Notices, Would Subject Atlas Turner to Further Harm Because of The QBCRA.

A. The QBCRA Prohibits Atlas Turner Under Threat of Criminal Penalties from Providing Business Records, or Information from Business Records, Located in Quebec.

Atlas Turner 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 8:

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 § 5 (emphasis added).

Quebec courts have made clear that other Quebec “concerns” would be subject to criminal penalties if they produced in U.S. litigation information or documents from their files in Quebec, and these opinions apply to Atlas Turner. In *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal, February 24, 1984), a copy of which is attached as Exhibit 9, the Court of Appeal ruled that, if a witness was required to consult business records or archives of the employer, a Quebec “business concern,” in order to provide his testimony, such testimony would fall under the prohibition set out in Section 2 of the QBCRA. See Exhibit 9 at p. 11. Further, Judge Beauregard stated that “the filing ... of the documents ... joined to an examination of an agent of [Asbestos Corporation Limited] (“ACL”) whose testimony on these documents will be taken down by a stenographer who will translate his notes for the purposes of the foreign tribunal is equivalent, ... to the transmission out of Quebec of a ‘résumé or summary’ of the files of [ACL].” *Id.* at p. 11. Also, Judge Tyndale’s opinion, which follows the opinion of Judge Beauregard, states the QBCRA “[o]bviously ... forbids production of the documents Moreover, inspection by an attorney acting for Respondent would be useless unless he took notes, and this would lead to the export of a résumé or digest. *Id.* at pp. 1-2.

In *Pelnar v. Ins. Co. of North America* (Court of Appeal, Montreal, June 25, 1985) a copy of which is attached as Exhibit 10, the court held that the prohibition set out in Section 2 of the QBCRA is not only aimed towards business concerns, their officers or employees, but equally towards any persons who may have, or have had, in their possession documents or résumés thereof. See Exhibit 10 at pp. 5-6. Further, Quebec courts have ruled that the application of the

QBCRA did not require a preliminary request from the Attorney General. See *Lac D'Amiante Du Quebec Limited v. Procureur General De La Province De Quebec* (Court of Appeal, R.D.J., 287, 1989), a copy of which is attached as Exhibit 11, at p. 289. In addition, in *Renault v. Bell Asbestos Mines, Ltd.* (Court of Appeal, Montreal, August 13, 1980), a copy of which is attached as Exhibit 12, the court ruled that the word “document” related to much more than just accounting documents and that the QBCRA must be interpreted liberally and broadly. See Exhibit 12 at pp. 4-5.

Court opinions outside of Quebec that ignore the QBCRA do not magically transmute Atlas Turner’s predicament.⁶ Such decisions only show that Atlas Turner is beholden to two masters – stuck between facing criminal penalties in its domicile or displeasing this Court if it does not produce discovery to Plaintiffs’ satisfaction. Atlas Turner takes its discovery obligations seriously but also asks this Court to recognize and consider that Atlas Turner cannot please both masters at the same time. Application of fairness to the situation should enable Plaintiffs to obtain as much discovery as possible while not subjecting Atlas Turner to criminal penalties in its domicile. Several of this Court’s sister courts have reached this precise result.

⁶ Atlas Turner is aware of two decisions in South Carolina in which the Courts 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). These cases are not binding on the Court. In addition, in *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal February 24, 1984), the Quebec Court of Appeal decided that if a witness is required to consult records or archives, such testimony would fall under the prohibition of the Section 2 of the QBCRA. See Exhibit 9. Further, in *Lac D'Amiante Du Quebec Limited*, the Court held that the application of the QBCRA did not require a preliminary request from the Attorney General. See Exhibit 11, at p. 289. Therefore, the South Carolina federal courts’ interpretations in *Lyons* and *Central Wesleyan* are erroneous and should not be based on their own interpretations of the law after the highest court in Quebec already ruled on the issue.

For example, 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 13, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. Exhibit 13, at p. 1. 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 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 14, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 14, 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 15, 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 15, 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.*

B. Atlas Turner Cannot Answer Most of the Topics or Produce Most of the Documents in the 30(b)(6) Notices Without Violating the QBCRA.

Given Quebec court opinions interpreting the scope of the QBCRA, and lacking any source for information not subject to the QBCRA, Atlas Turner is unable to answer the Topics and Requests for Production contained in the 30(b)(6) Notices.

1. Topics

Virtually all of these Topics seek information relating to Atlas Turner's activities from many years ago, and Atlas Turner either has no relevant documents or is prevented from providing information from any existing documents because of the QBCRA. In fact, the company has been closed since 1986. See Exhibit 5 at ¶ 10. Also, Atlas is unaware of any individual with personal knowledge of these Topics from whom it can obtain this information; and, 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. See Exhibit 5 at ¶¶ 14 and 15. Atlas is prohibited by the QBCRA from providing any information gleaned from its company records and

other documents located in Quebec, or even acknowledging the existence of the information and documents, and therefore cannot respond under threat of criminal prosecution. Thus, notwithstanding any other objections to particular topics, Atlas is between the proverbial “rock and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties.

2. **Requests for Production**

The same explanation with respect to the QBCRA applies to Atlas Turner’s inability to produce documents in response to nearly all of Plaintiffs’ requests. Atlas Turner either does not have the vast majority of relevant documents or the existing documents would be subject to the QBCRA. As discussed above, Atlas Turner is prohibited from producing any documents from its files in Quebec by the QBCRA, or even acknowledging the existence of responsive documents. As with its ability to answer Plaintiffs’ Topics, and notwithstanding any other objections to particular topics, Atlas Turner is between the proverbial “rock and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties. The QBCRA precludes Atlas Turner from producing the documents requested by Plaintiffs’ from its Quebec files, or even acknowledging the existence of such documents.

C. Based on the Unique Situation Involving Atlas Turner and the QBCRA, Atlas Turner is Entitled to Deferential Treatment under the Comity Principles of International Law.

Atlas Turner is not a typical asbestos defendant. Because it faces criminal penalties if it violates the QBCRA, it should be treated with deference. Consequently, this 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).⁷ In *Aerospatiale*, the Supreme Court dealt with a French “Blocking 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 deferential consideration for Atlas Turner. As for the second factor – the degree of specificity – many of plaintiffs’ requests are overly broad. For example, Topic 65 asks: beginning in the year that Defendant first manufactured, marketed, produced...sold...any asbestos-containing products and continuing through the present day, the identity [sic] each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person’s current or last known address and whether the person is currently alive or dead, if known. Also Topic 69 is “All information relating to the Defendant’s knowledge of asbestos.” As for the third factor – the origination of the information – this factor weighs heavily in favor of Atlas Turner since the information sought did not originate

⁷ Atlas Turner is aware of at least one decision in South Carolina in which the court referenced *Aerospatiale* in relation to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384 (D.S.C. 1988). In addition, the court in *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992) ruled unfavorably as to the QBCRA. See footnote 6 in this Memorandum. These two cases are not binding on this Court. This Court should adopt the reasoning set forth in *Fears, Jenness and Keene*.

in the United States. As for the fourth factor – the availability of alternative means for securing the information – this factor weighs in favor of Atlas Turner as will be discussed below.

D. Plaintiffs Have Alternative Sources for Information and Documents They Seek From Atlas Turner.

Plaintiffs have a number of alternative U.S. sources for many of the documents and much of the information contained therein which they seek here. Atlas Turner has no business records or other responsive documents in the United States in its possession, custody, or control. However, plaintiffs’ counsel, who are sophisticated and a premier asbestos plaintiffs’ law firm, undoubtedly have access to purported Atlas documents collected by other asbestos plaintiff’s counsel around the country in various lawsuits (“Repositories”). Plaintiffs’ counsel could also obtain various depositions that were taken many years ago. Further, plaintiffs can obtain, or have obtained in the past, information from co-defendants’ document productions, including co-defendants Daniel International and Pharmacia (Monsanto). If plaintiffs’ counsel have any relevant documents, Atlas Turner requests that they produce these documents. Plaintiffs should be able to obtain information they seek without exposing Atlas Turner to potential criminal penalties. Discovery should be the retrieval of available information from the least burdensome source.⁸

IV. Plaintiffs Cannot Demonstrate that Atlas Turner’s Requested Protective Order Will Impair Their Case.

After the party seeking the protective order demonstrates good cause by showing a particularized harm from the discovery, the party seeking the discovery must come forward and show that the information sought is “both necessary and relevant” to the case. *Hamm*, 312 S.C. 238, 242, 439 S.E.2d 854. Because the Court lacks personal jurisdiction over Atlas Turner,

⁸ Atlas Turner reserves the right to serve additional objections to the 30(b)(6) Notices should the Court order that a deposition may go forward.

Plaintiffs can make no such showing. As Atlas Turner shows in its Motion to Dismiss and Amended Memorandum in Support, this action should be dismissed pursuant to South Carolina law and the Due Process Clause of the United States Constitution. Further, Plaintiffs have alternative sources for information and documents they seek from Atlas Turner. Plaintiffs have not demonstrated a basis for jurisdictional discovery, much less a need for merits discovery in this action, and cannot show that the discovery they seek through the 30(b)(6) Notices is necessary and relevant to the case, nor that it is narrowly tailored to the allegations in the Third Amended Complaint.

CONCLUSION

For the reasons stated above, Atlas Turner respectfully requests that this Court issue a protective order precluding a deposition of Atlas Turner's corporate representative and precluding the production of documents pursuant to Plaintiffs' 30(b)(6) Notices pending the resolution of Atlas Turner's personal jurisdictional challenge. Further, in the event the Court does not grant Atlas Turner's Motion to Dismiss, the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' 30(b)(6) Notices, because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices. Finally, in the event this Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought

by the 30(b)(6) Notices, because of the QBCRA, which subjects Atlas Turner to criminal penalties in Quebec if it produces information or documents sought by Plaintiffs' 30(b)(6) Notices.

By the signature below, counsel for Atlas Turner affirms that he has communicated orally and in writing with opposing counsel and has attempted in good faith to resolve the matters contained in the motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

January 3, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	<u>DEFENDANT ATLAS TURNER,</u>
	)	<u>INC.'S MOTION FOR SUMMARY</u>
vs.	)	<u>JUDGMENT ON BEHALF OF</u>
	)	<u>ITSELF AND DEFENDANT ATLAS</u>
3M Company, et al.,	)	<u>ASBESTOS CO.</u>
	)	
Defendants.	)	
	)	

Defendant Atlas Turner, Inc. sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner” or “Defendant”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through undersigned counsel, hereby moves for an Order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues of material fact, and summary judgment is appropriate as a matter of law.

Specifically, the Court lacks personal jurisdiction over Defendant.² In addition, alternatively, Plaintiffs cannot meet the threshold requirements of actionable exposure set forth in

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

² On November 17, 2022, Defendant Atlas Turner filed its Memorandum in Support of Motion to Dismiss Plaintiffs’ Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on behalf of Itself and Defendant Atlas Asbestos Co. Defendant Atlas Turner also filed an accompanying affidavit from Richard Dufour dated September 7, 2022, which had also been filed with each of the earlier timely filed Motions to Dismiss and Supporting Memoranda in response to the Original Complaint, as well as the First and Second Amended Complaints. On December 30, 2022, Defendant filed an Amended Memorandum, which included the previously filed Affidavit dated September 7, 2022 and also relevant excerpts from the deposition of Mr. Welch taken on October 7, 11, 12 and 14, 2022 and a second Affidavit from Richard Dufour dated December 28, 2022. Defendant incorporates its prior Motions to Dismiss, its Memoranda in Support with exhibits, and its Amended Memorandum with affidavits and relevant deposition excerpts herein in support of its current Motion for Summary Judgment. Further, in an email to

Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162-63 (4th Cir. 1986), *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), and similar cases, such that there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law. This motion is supported by the two affidavits from Mr. Dufour, deposition testimony of Mr. Welch, previously filed motions to dismiss and memoranda in support, the Amended Memorandum in support with exhibits, and the attached Memorandum in Support of Motion for Summary Judgment, and may be further supported or supplemented by additional affidavits, deposition testimony, applicable law, and arguments of counsel that may be made subsequent to the filing of this motion.

the Court and counsel of record dated January 5, 2023, counsel for Atlas Turner requested that the Court hear at the January 27, 2023 motions hearing or as soon as possible thereafter the following motions: (1) Motion to Dismiss Plaintiffs' Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc., on Behalf of Itself and Defendant Atlas Asbestos Co. (filed November 17, 2022), and the Amended Memorandum with exhibits (filed December 30, 2022) and (2) Defendant Atlas Turner, Inc.'s Motion for Protective Order and Memorandum in Support on Behalf of Itself and Defendant Atlas Asbestos Co. (filed January 3, 2023). See Exhibit 1 to the accompanying Memorandum of Law in Support of Motion for Summary Judgment. Due to a schedule conflict, Plaintiffs' counsel requested that the motions be heard on another date and requested two weeks to respond. *Id.* Counsel for Atlas Turner requested a week after Plaintiffs' responses in which to file replies. *Id.* By filing the present Motion, Defendant is not waiving its previously requested hearing or its previously filed Motions to Dismiss, Memoranda in Support with exhibits, its Amended Memorandum in Support with exhibits, or its Motion for Protective Order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

March 20, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	<u>DEFENDANT ATLAS TURNER,</u>
Plaintiffs,	)	<u>INC.'S MEMORANDUM OF LAW</u>
	)	<u>IN SUPPORT OF ITS MOTION FOR</u>
vs.	)	<u>SUMMARY JUDGMENT ON</u>
	)	<u>BEHALF OF ITSELF AND</u>
3M Company, et al.,	)	<u>DEFENDANT ATLAS ASBESTOS</u>
	)	<u>CO.</u>
Defendants.	)	
	)	
	)	

Defendant Atlas Turner, Inc., sued incorrectly as Atlas Turner, Inc., as successor to Atlas Asbestos Co. (“Atlas Turner” or “Defendant”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through undersigned counsel, submits this Memorandum of Law and accompanying exhibits in support of its Motion for Summary Judgment.

Defendant is entitled to judgment on all claims because: (1) the Court lacks personal jurisdiction over Defendant²; and (2) alternatively, Plaintiffs do not have evidence that Mr. Welch

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

² On November 17, 2022, Defendant Atlas Turner filed its Memorandum in Support of Motion to Dismiss Plaintiffs’ Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on behalf of Itself and Defendant Atlas Asbestos Co. Defendant Atlas Turner also filed an accompanying affidavit from Richard Dufour dated September 7, 2022, which had also been filed with each of the earlier timely filed Motions to Dismiss and Supporting Memoranda in response to the Original Complaint, as well as the First and Second Amended Complaints. On December 30, 2022, Defendant filed an Amended Memorandum, which included the previously filed Affidavit dated September 7, 2022 and also relevant excerpts from the deposition of Mr. Welch taken on October 7, 11, 12 and 14, 2022 and a second Affidavit from Richard Dufour dated December 28, 2022. Defendant incorporates its prior Motions to Dismiss, its Memoranda in Support with exhibits, and its Amended Memorandum with affidavits and relevant deposition excerpts herein in support of its current Motion for Summary Judgment. Further, in an email to the Court and counsel of record dated January 5, 2023, counsel for Atlas Turner requested that the

was exposed to any product attributable to Atlas Turner, much less evidence of exposure to asbestos-containing products with the “frequency, regularity, and proximity” required by *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007), to establish causation.

STATEMENT OF FACTS

Plaintiffs’ Third Amended Complaint (“TAC”) alleges that Mr. Welch developed mesothelioma as the result of exposure to, among other things, various asbestos-containing products or raw materials in several states, including South Carolina.³

Plaintiffs do not assert that Atlas Turner is a South Carolina corporation or that its principal place of business was ever in South Carolina.⁴ 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.⁵ Further, Plaintiffs allege generally that

Court hear at the January 27, 2023 motions hearing or as soon as possible thereafter the following motions: (1) Motion to Dismiss Plaintiffs’ Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc., on Behalf of Itself and Defendant Atlas Asbestos Co. (filed November 17, 2022), and the Amended Memorandum with exhibits (filed December 30, 2022) and (2) Defendant Atlas Turner, Inc.’s Motion for Protective Order and Memorandum in Support on Behalf of Itself and Defendant Atlas Asbestos Co. (filed January 3, 2023). A copy of this email is attached as Exhibit 1. Due to a schedule conflict, Plaintiffs’ counsel requested that the motions be heard on another date and requested two weeks to respond. *See* Exhibit 1. Counsel for Atlas Turner requested a week after Plaintiffs’ responses in which to file replies. *See* Exhibit 1. By filing the present Motion, Defendant is not waiving its previously requested hearing or its previously filed Motions to Dismiss, Memoranda in Support with exhibits, its Amended Memorandum in Support with exhibits, or its Motion for Protective Order.

³TAC at ¶¶ 1,3.

⁴ *See* TAC at ¶¶ 26, 27.

⁵ TAC at ¶ 2.

“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.”⁶

Specifically as to Atlas Turner, Plaintiffs list it as a “Product Defendant” and generically allege Mr. Welch was exposed to asbestos and/or asbestos-containing products, materials, or equipment “mined . . . processed . . . imported . . . supplied . . . and or retailed” by Atlas Turner, including but not limited to raw asbestos fiber. Plaintiffs further allege, again generically, that their claim against Atlas Turner arises out of Atlas Turner’s “business activities” in the State of South Carolina.⁷

Plaintiffs claim that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company (“Daniel”) at the Monsanto Chemical Plant [aka Chemstrand], in Greenwood, SC “in the mid-late 1960s” and was exposed to, among other things, asbestos-containing insulation products.⁸ Plaintiffs also allege that Mr. Welch later worked as an “automobile mechanic at various job sites” in the “late 1970s to the mid-late 2000s” and was exposed to asbestos from “clutches, gaskets, and brakes.”⁹ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing “friction products” such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.¹⁰

Mr. Welch was deposed on October 7, 11, 12, and 14, 2022; and he testified about his alleged exposure to asbestos.¹¹ Excerpts from the “trial deposition” transcript dated October 7 are attached as Exhibit 2; excerpts from the “discovery deposition” transcript dated October 11 are

⁶ TAC at ¶ 6, 9.

⁷ TAC at ¶¶ 26, 27.

⁸ See TAC at ¶ 91.

⁹ See TAC at ¶ 93.

¹⁰ See TAC at ¶ 98.

¹¹ No one appeared on behalf of Atlas Turner at the deposition.

attached as Exhibit 3; excerpts from the “discovery deposition” transcript dated October 12 are attached as Exhibit 4.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. Exhibit 2, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” Exhibit 2, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. Exhibit 2, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. Exhibit 2, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. Exhibit 4, at pp. 74, 72-73.

More specifically, Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing new insulation on the pipes; and he was working under or below the insulators. Exhibit 3, at pp. 90, 92, 96, 98. Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. Exhibit 3, at p. 45.

After working for Daniel at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. Exhibit 2, at p. 19; Exhibit 3, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. Exhibit 2 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. Exhibit 2, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. Exhibit 2, at pp. 52-65.

In summary, Mr. Welch testified that he allegedly worked around asbestos-containing pipe insulation products while employed by Daniel at the Monsanto/Chemstrand Greenwood plant from approximately 1965 to 1966 and that he went into the Air Force from 1967 to 1970. Thereafter, he alleges he worked as a brake mechanic with asbestos-containing brake material from approximately 1977 until he retired around 2000, and alleges that he worked with asbestos-containing automotive brakes, gaskets, and clutches from approximately 1958 through the 2000s.

As attested to in the Affidavit of Richard Dufour (“Mr. Dufour”), dated September 7, 2022, attached hereto as Exhibit 5, Plaintiffs’ jurisdictional allegations as to Atlas Turner are unsupported by fact. Mr. Dufour’s Affidavit sets forth the following relevant facts on the issue of personal jurisdiction:

- Mr. Dufour is counsel to Atlas Turner. Exhibit 5 at ¶ 2.
- Since its incorporation, Atlas Turner has been and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. Atlas Turner never mined or milled asbestos. It did manufacture asbestos containing products, but all sales of said products were made

F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit 5 at ¶ 3.

- Atlas Turner is not now and never has been a corporation organized under the laws of the State of South Carolina, and Atlas Turner has no subsidiary company that did business in the State of South Carolina. Atlas Turner is not presently nor has it ever been, registered with the State of South Carolina, nor has Atlas Turner ever applied for authority to do business within the State of South Carolina. Exhibit 5 at ¶ 4.
- Atlas Turner has never appointed nor authorized any agent to accept process for it for suit in the State of South Carolina. Atlas Turner did not maintain, nor has it ever maintained, an office within the State of South Carolina. Atlas Turner had no bank accounts in the State of South Carolina and it did not own any real property in the State of South Carolina. Atlas Turner has never transacted business within the State of South Carolina. Atlas Turner has never made a contract within the State of South Carolina. Exhibit 5 at ¶ 5.
- Atlas Turner has paid no taxes or fees in the State of South Carolina and did not maintain any employees, officers or agents in the State of South Carolina. Exhibit 5 at ¶ 6.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. See Affidavit of Richard Dufour, dated December 28, 2022, attached as Exhibit 6, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. See Exhibit 6 at ¶ 13. Thus, Mr. Welch's cause of action did not arise out of or relate to the defendant's "contacts" with South Carolina because Atlas

Turner had no contacts with the forum during the relevant time period at issue, which is 1965, 1966. Moreover, even assuming the Court has jurisdiction over Atlas Turner, there is no evidence that Mr. Welch was ever exposed to a product attributable to Atlas Turner, much less evidence of any asbestos-containing product attributable to Atlas Turner on a frequent, regular, or proximate basis.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 81, 502 S.E.2d 78, 85-86 (1998). Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn [therefrom] must be viewed in the light most favorable to the non-moving party. *See Shaw v. City of Charleston*, 351 S.C. 32, 38, 567 S.E.2d 530, 534 (2002). The burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *See Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). An important distinction to make is that the moving party’s burden is not to disprove the claims, but to instead show that the plaintiff has no evidence to support his claims. *Id.*

In order to avoid summary judgment, a non-moving party must demonstrate a genuine existence of triable issue on all essential elements of his case. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A non-moving party must go beyond the pleadings, as “summary judgment should be granted when plain, palpable and undisputable facts exist on which reasonable minds

cannot differ.” *NationsBank v. Scott Farm*, 320 S.C. 299, 302-03, 465 S.E.2d 98, 100 (Ct. App. 1995).

In the present case, Plaintiffs have not produced sufficient evidence to establish personal jurisdiction or the elements necessary to pursue and prove the claims against Atlas Turner. Therefore, Atlas Turner is entitled to summary judgment.

ARGUMENT

I. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT.

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.*, 379 S.C. at 433–36, 665 S.E.2d at 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. Savchuk*, 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 Atlas Turner and, therefore, Atlas Turner is entitled to summary judgment on all of Plaintiffs’ claims.

B. Atlas Turner is Not Subject to General Jurisdiction in South Carolina.

Atlas Turner 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 Tires Operations, S.A. v. Brown*, 564 U.S. 915, 925 (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*, 137 S. Ct. 1549, 1558 (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 holding in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 347. 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.

Atlas Turner is not "at home" in South Carolina. It is undisputed that Atlas Turner 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 Atlas Turner "at home" in South Carolina, nor do Plaintiffs allege any such exceptional circumstances. Accordingly, Atlas Turner is not subject to general personal jurisdiction in this State.

C. Atlas Turner is not Subject to Specific Personal Jurisdiction in South Carolina.

Atlas Turner never conducted business activities within South Carolina or purposefully directed business activities towards South Carolina and, therefore, it 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 Atlas Turner never conducted business or purposefully directed business activities towards South Carolina, especially during the relevant time period, Plaintiffs' claims did not arise out of Atlas Turner's alleged

conduct within the State. Consequently, Atlas Turner 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, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (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 Atlas Turner 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*, 137 S.Ct. 1773, 1780 (2017); *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). Atlas Turner has not purposefully directed any activities at South Carolina that the cause of action arises out of or relates to, especially during the relevant time period; 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.”)

While Atlas Turner did sell asbestos containing products, it has never transacted business in South Carolina. Exhibit 5 at ¶ 5. All products sold by Atlas Turner were made F.O.B. Montreal, Quebec, Canada, and all payments were made to it in Quebec, Canada. Exhibit 5 at ¶ 3. By making all of its sales F.O.B. Canada, it has specifically abstained from conducting activities in South Carolina.

Further, and most importantly, Mr. Welch’s only alleged exposure to asbestos-containing insulation products occurred in 1965, 1966 while he was employed by Daniel at the Monsanto/Chemstrand Greenwood plant. Atlas Turner has no records of sales to any company

in South Carolina prior to 1968. Exhibit 6, at ¶ 12. In addition, Atlas Turner never manufactured or sold asbestos containing friction products such as automobile brakes, clutches, or gaskets. Exhibit 6 at ¶ 13. Thus, during the relevant time period – 1965, 1966 – Mr. Welch could not have been exposed to any alleged asbestos-containing products manufactured or sold by Atlas Turner. As such, his cause of action could not have arisen from any of Atlas Turner’s “contacts” with South Carolina because Atlas Turner did not have any “contacts” with the State during the relevant time period. Atlas Turner did not purposefully avail itself of the privilege of conducting activities within South Carolina during the relevant time period and, consequently, could not reasonably anticipate being haled into Court in South Carolina.

The proper inquiry must focus solely on whether Atlas Turner 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, Atlas Turner’s alleged conduct, and the State of South Carolina, there can be no specific jurisdiction over Atlas Turner.

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

II. PLAINTIFFS CANNOT SATISFY THE “FREQUENCY, REGULARITY, AND PROXIMITY” REQUIREMENT UNDER SOUTH CAROLINA LAW.

In order to recover against Atlas Turner, Plaintiffs must, among other things, present evidence that Mr. Welch was frequently, regularly, and proximately exposed to asbestos dust from an asbestos-containing product for which Atlas Turner is legally responsible. *See Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007); *see also Ryan v. Eli Lilly & Co.*, 514 F. Supp. 1004, 1006 (D.S.C. 1981) (*citing Gantt v. Columbia Coca-Cola Bottling Co.*, 193 S.C. 51, 7 S.E.2d 641 (1940)) (“It is elementary that in any action claiming injury from a product, the

plaintiff must show causal connection between the defendant manufacturer and . . . the specific instrumentality that allegedly caused the injury . . .”). In *Henderson*, the South Carolina Supreme Court established the following causal standard for a plaintiff to maintain an asbestos exposure claim:

In determining whether exposure is actionable, we adopt the “frequency, regularity, and proximity test” set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156, 1162 (4th Cir. 1986): “To support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a **specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.**”

Henderson, 373 S.C. at 185, 644 S.E.2d at 727 (emphasis added).

Plaintiffs have failed to meet the causal standard set forth in *Henderson* here. In the Third Amended Complaint, Plaintiffs generally alleged exposure to the defendants' asbestos-containing products, but the Complaint does not provide any specifics as to Mr. Welch's claimed asbestos exposure with respect to Atlas Turner products. See Third Amended Complaint at ¶¶ 26, 27. Plaintiffs have subsequently failed to provide evidence of any exposure resulting from an Atlas Turner product, much less the "regular" or "frequent" exposure from an Atlas Turner product as required by *Henderson*.

The testimony provided by Plaintiffs is insufficient to meet the causal standard set forth in *Henderson*. Mr. Welch never even mentioned Atlas Turner or any products associated with Atlas Turner in his deposition. Further, Atlas Turner introduced evidence that it has no records of sales to any company in South Carolina during the time period Mr. Welch claimed to be exposed to asbestos-containing insulation. Exhibit 6 at ¶ 12. Also, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. Exhibit 6 at ¶ 13. In short, Plaintiffs have not offered any exposure testimony with respect to Atlas Turner and have not otherwise offered any evidence to establish exposure from an Atlas Turner product. As a result,

under the standard set forth in *Henderson*, Atlas Turner cannot be legally responsible for Plaintiffs' alleged injuries, and this Court must grant summary judgment.

CONCLUSION

Defendant is entitled to summary judgment based on either of two grounds: (1) the Court lacks personal jurisdiction over Defendant, or (2) the Plaintiffs are unable to meet their burden to prove that Mr. Welch was exposed to asbestos from any product for which Defendant is alleged to be responsible. For these reasons, Defendant respectfully requests that the Court enter an Order granting its Motion for Summary Judgment, and that all claims be dismissed.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

March 20, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-03834
Melvin G. Welch and Donna B. Welch,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, et al.,	)	
	)	
Defendants.	)	

**DEFENDANT ATLAS TURNER, INC.’S MOTION FOR PROTECTIVE ORDER AND
MEMORANDUM OF LAW IN SUPPORT ON BEHALF OF ITSELF AND DEFENDANT
ATLAS ASBESTOS CO.**

Defendant Atlas Turner, Inc., sued incorrectly as successor to Atlas Asbestos Co., (“Atlas Turner”), on behalf of itself and Defendant Atlas Asbestos Co.,¹ by and through its undersigned counsel, and pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, files this Motion and Memorandum seeking to be relieved from designating and producing a corporate representative for deposition, and from producing any information or documents, pursuant to the First Amended Notice of 30(b)(6) Deposition of Atlas Asbestos Co. served by Plaintiffs in this case.² First, nearly all the discovery Plaintiffs seek is merits discovery, and the Court should stay

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company, and the proper name of the company is Atlas Turner, Inc.

² On July 25, 2022, Plaintiffs filed their original Complaint, and alleged Mr. Welch developed mesothelioma as the result of exposure to asbestos dust and fibers. *See* Complaint at ¶1. Atlas Turner, on behalf of itself and Defendant Atlas Asbestos Co., timely filed a Motion to Dismiss for Lack of Personal Jurisdiction with a Memorandum in Support and an affidavit from Richard Dufour dated September 7, 2022. Plaintiffs subsequently amended their Complaint several times, and most recently filed their Third Amended Complaint on November 3, 2022. In response, Atlas Turner timely filed Motions to Dismiss for Lack of Personal Jurisdiction and Memoranda in Support with the aforementioned affidavit of Mr. Dufour. On December 6, 2022, Plaintiffs served via email Plaintiffs’ Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena

discovery as to Atlas Turner until the Court rules on Defendant Atlas Turner's Motion to Dismiss for Lack of Personal Jurisdiction. Second, in the event the Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by Plaintiffs' Notice of 30(b)(6) Deposition because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even

Duces Tecum and Plaintiffs' Notice of 30(b)(6) Deposition of Defendant Atlas Turner, Inc. and Subpoena Duces Tecum ("30(b)(6) Notices").

The 30(b)(6) Notices contained 74 topics and 23 document requests. Plaintiffs scheduled the depositions for February 2, 2023, and requested that the documents be produced no later than January 3, 2023, which was 28 days from the date the 30(b)(6) Notices were served. On December 30, 2022 Atlas Turner filed an Amended Memorandum in Support of the Motion to Dismiss. On January 3, 2023, Atlas Turner filed a Motion for Protective Order and Memorandum and Law in Support with affidavits and other exhibits on behalf of itself and Defendant Atlas Asbestos Co. Further, in an email to the Court and counsel of record dated January 5, 2023, counsel for Atlas Turner requested that the Court hear at the January 27, 2023 motions hearing or as soon as possible thereafter the following motions: (1) Motion to Dismiss Plaintiffs' Third Amended Complaint for Lack of Personal Jurisdiction of Defendant Atlas Turner, Inc. on Behalf of Itself and Defendant Atlas Asbestos Co. (filed November 17, 2022), and the Amended Memorandum with exhibits (filed December 30, 2022) and (2) Defendant Atlas Turner, Inc.'s Motion for Protective Order and Memorandum in Support on Behalf of Itself and Defendant Atlas Asbestos Co. (filed January 3, 2023). A copy of this email is attached as Exhibit 1. Due to a schedule conflict, Plaintiffs' counsel requested that the motions be heard on another date and requested two weeks to respond. *See* Exhibit 1. Counsel for Atlas Turner responded and requested that the Court schedule a hearing at the Court's convenience on a date after January 27, 2023, and requested that Atlas Turner, on behalf of itself and Defendant Atlas Asbestos Co., be given a week after Plaintiffs' responses in which to file replies.

On February 1, 2023, counsel for Plaintiffs cancelled the depositions scheduled for February 2, 2023. On March 16, 2023, Plaintiffs served Plaintiffs' First Amended Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena Duces Tecum ("the 30(b)(6) Notice"). On March 20, 2023 Defendant Atlas Turner, Inc., on behalf of itself and Atlas Asbestos Co., filed a Motion for Summary Judgment and filed a Memorandum in Support with affidavits and other exhibits. On April 3, 2023, Atlas filed a Motion for Protective Order and Memorandum in Support regarding the First Amended Notice of 30(b)(6) Deposition of Atlas Asbestos Co. and Subpoena Duces Tecum that had been served on March 16, 2023. On April 4, 2023, Plaintiffs served via email Plaintiffs' Second Amended Notice of 30(b)(6) Deposition of Atlas Asbestos Co. and Subpoena Duces Tecum.

maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notice. Third, in the event the Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' Notice of 30(b)(6) Deposition, because of the Quebec Business Concerns Records Act (QBCRA), which subjects Atlas Turner to criminal penalties in Quebec if it produces information and documents sought by Plaintiffs in the Notice of 30(b)(6) Deposition. In support of this motion, Atlas Turner states as follows:

BACKGROUND

In the Third Amended Complaint, Plaintiffs allege that Mr. Welch worked as an instrumentation specialist helper for Daniel Construction Company ("Daniel") at the Monsanto Chemical Plant [aka Chemstrand], in Greenwood, SC "in the mid-late 1960s" and was exposed to, among other things, asbestos-containing insulation products.³ Plaintiffs also allege that Mr. Welch later worked as an "automobile mechanic at various job sites" in the "late 1970s to the mid-late 2000s" and was exposed to asbestos from "clutches, gaskets, and brakes."⁴ Plaintiffs further allege Mr. Welch was exposed to asbestos-containing "friction products" such as brakes, clutches, and gaskets while working on personal vehicles and vehicles of his family and friends.⁵

On October 7, 11, 12, and 14, 2022, Mr. Welch was deposed and testified about his alleged asbestos exposure.⁶ Excerpts from the "trial" transcript dated October 7 are attached as Exhibit 2;

³ See Third Amd. Complaint at ¶ 91.

⁴ See Third Amd. Complaint at ¶ 93.

⁵ See Third Amd. Complaint at ¶ 98.

⁶ No one appeared on behalf of Atlas Turner at the deposition.

excerpts from the “discovery” transcript dated October 11 are attached as Exhibit 3; excerpts from the “discovery” transcript dated October 12 are attached as Exhibit 4.

Mr. Welch testified that he believes he was exposed to asbestos when he was employed by Daniel at Chemstrand, which was the “same as the Monsanto plant,” in Greenwood, SC (“Monsanto/Chemstrand Greenwood plant”), and also later at several different garages where he worked as a brake mechanic. *See* Exhibit 2, at pp. 17-19.

He testified that he worked for Daniel at the Monsanto/Chemstrand Greenwood plant “in 1965, 1966.” *See* Exhibit 2, at p. 18. He was hired as an instrumentation installation and calibration specialist helper. *See* Exhibit 2, at p. 19. In describing his work for Daniel at the Monsanto/Chemstrand Greenwood plant from about “1965 to '66,” he testified that it was “new construction” and included working around insulators who were insulating overhead pipes. *See* Exhibit 2, at pp. 26-27, 28, 29-30. Further, he stated that during his work in “1965, '66” he believes he was around asbestos-containing insulation. *See* Exhibit 4, at pp. 74, 72-73. More specifically, Mr. Welch testified that Daniel was the general contractor on the job; as far as he knows, the insulators were Daniel employees; Daniel was building a new unit; the insulators were installing new insulation on the pipes; and he was working under or below the insulators. *See* Exhibit 3, at pp. 90, 92, 96, 98. Mr. Welch did not identify any insulation products allegedly manufactured or sold by Atlas Asbestos Co. or Atlas Turner and did not mention the names “Atlas Asbestos Co.” or “Atlas Turner.” In fact, Mr. Welch did not identify the brand name or manufacturer of any insulation products at the Monsanto/Chemstrand Greenwood plant. He also agreed that he had identified all the brand names and manufacturers of asbestos-containing products that he believed he had been exposed to during his working career. *See* Exhibit 3, at p. 45. After working for Daniel

at the Monsanto/Chemstrand Greenwood plant, he went into the Air Force in 1967 and got out in 1970. *See* Exhibit 2, at p. 19; *see* Exhibit 3, at p. 41.

In 1977, Mr. Welch went to work as a mechanic at K-Mart and became a certified brake mechanic. *See* Exhibit 2 at p. 30-31. Thereafter, he worked as a brake mechanic for various companies until he retired around 2000. *See* Exhibit 2, at pp. 21-26 and pp. 30-52. Further, he claims to have performed work for himself, family and friends on automotive brakes, gaskets, and clutches from about 1958 through the 2000s. *See* Exhibit 2, at pp. 52-65.

In summary, Mr. Welch testified that he allegedly worked around asbestos-containing pipe insulation products while employed by Daniel at the Monsanto/Chemstrand Greenwood plant from approximately 1965 to 1966 and that he went into the Air Force from 1967 to 1970.⁷ Thereafter, he alleges he worked as a brake mechanic with asbestos-containing brake material from approximately 1977 until he retired around 2000, and alleges that he worked with asbestos-containing automotive brakes, gaskets, and clutches from approximately 1958 through the 2000s.

Defendant Atlas Turner was and is a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. *See* Affidavit of Richard Dufour dated September 7, 2022, which is attached as Exhibit 6, at ¶ 3. Further, although Atlas Turner did manufacture asbestos-containing products, all sales of said

⁷ Mr. Welch's Social Security Itemized Statement of Earnings was received by defense counsel on March 29, 2023; it and the transmittal email are attached as Exhibit 5. There are some discrepancies between the dates of Mr. Welch's employment as testified by Mr. Welch compared to the Social Security document. Specifically, as to the dates of Mr. Welch's employment by Daniel, the records state that his employment by Daniel was from the last quarter of 1966 through the second quarter of 1967, not from 1965 to 1966. *See* Exhibit 5 at page 1. The discrepancy makes no difference to the position of Atlas Turner because Mr. Welch's dates of employment with Daniel ended before 1968.

products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Montreal, Quebec, Canada. *See* Exhibit 6, at ¶ 3.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968. *See* affidavit of Richard Dufour dated December 28, 2022, attached as Exhibit 7, at ¶ 12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. *See* Exhibit 7, at ¶ 13. Thus, Mr. Welch’s cause of action did not arise out of or relate to the defendant’s “contacts” with the forum because Atlas Turner had no contacts with the forum during the relevant time period. *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S. E. 2d 128, 131 (1992); *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1780 (2017).

As explained in footnote 2, on April 4, 2023, Plaintiffs served via email Plaintiffs’ Second Amended Notice of 30(b)(6) Deposition of Defendant Atlas Asbestos Co. and Subpoena Duces Tecum (“30(b)(6) Notice”). A copy of the 30(b)(6) Notice is attached as Exhibit 8. The 30(b)(6) Notice contains 75 topics and 25 document requests. Plaintiffs scheduled the deposition for April 20, 2023, and requested that documents be produced no later than April 6, 2023, which is two days from the date the 30(b)(6) Notice was served. As set forth in Exhibits A and B of the 30(b)(6) Notice, Plaintiffs seek testimony and documents nearly all of which are related to merits discovery that are wholly unrelated to the question of the Court’s personal jurisdiction over Atlas Turner.

LEGAL STANDARD

Pursuant to Rule 26(c), SCRCP, “[u]pon motion by a party... 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... (1) that the discovery not be had; (2) that the discovery may be had only on specified

terms and conditions...; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters....” When the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E. 2d 852, 854 (1994).

If a person requesting a protective order shows a particularized harm which will be caused by allowing the discovery, the opposing party has the burden of showing the information sought is “relevant and necessary” to the case. In determining whether a protective order is necessary, the trial judge is required to weigh the factors of whether the information sought is “relevant and necessary” evidence against any particularized harm the opposing party may suffer. In determining whether information is necessary, the party seeking the information must “demonstrate with specificity exactly how the lack of information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” The trial court must determine whether there are reasonable alternatives available to discover the information.

Hollman v. Woolfson, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009) (citing *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 474-76, 674 S.E.2d 154, 162-63 (2009); *Hamm*, 312 S.C. at 241, 439 S.E.2d at 854) (internal citations omitted).

Because Atlas Turner’s due process rights will be violated if it is required to participate in general discovery prior to this Court’s deciding whether it has personal jurisdiction over Atlas Turner, this Court should preclude Plaintiffs from requiring Atlas Turner to produce a corporate representative and produce information and documents in response to Plaintiffs’ 30(b)(6) Notice until it determines whether it has personal jurisdiction over Atlas Turner. Further, in the event the Court does not grant Atlas Turner’s motion to dismiss, then this Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition or produce information or documents sought by the 30(b)(6) Notice because of the absence of any current or

former employees or individuals with personal knowledge and the inability to educate a witness due to the lack of most relevant records and because of the QBCRA.

ARGUMENT

I. Requiring Atlas Turner to Produce a Corporate Representative, Information, and Documents Before the Court Has Determined Whether It Has Personal Jurisdiction Over Atlas Turner Would Subject Atlas Turner to Particularized Harm.

Good cause for a protective order exists when a party will suffer particularized harm if the challenged discovery takes place. *Hamm*, 312 S.C. at 241, 439 S.E. 2d at 854. First, as explained in Atlas Turner's Motion to Dismiss and Amended Memorandum in Support, there is no general jurisdiction over Atlas Turner. As for specific jurisdiction, Atlas Turner lacks contacts with South Carolina sufficient for this Court to exercise specific personal jurisdiction over it. Atlas Turner did not manufacture or sell asbestos-containing friction products such as automotive brakes, clutches, or gaskets. Thus, the only relevant jobsite is the Monsanto/Chemstrand Greenwood plant where Mr. Welch was employed by Daniel, and the relevant time period, based on the Social Security Itemized Statement of Earnings, is from the last quarter of 1966 through the second quarter of 1967; and Atlas Turner has no records of sales to any company in South Carolina prior to 1968. Therefore, Atlas Turner could not anticipate being haled into this Court and there are no contacts with South Carolina out of which Mr. Welch's suit can arise. Consequently, requiring Atlas Turner to participate in general discovery in this matter violates Atlas Turner's due process rights and constitutes a particularized harm to Atlas Turner. Moreover, Plaintiffs are not even entitled to jurisdictional discovery because they cannot demonstrate enough facts to support a *prima facie* showing of personal jurisdiction. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151-153, 723 S.E. 2d 835, 839-841 (2012). Based on bare allegations in the face of specific denials,

the Court should not permit even limited discovery if it will be a fishing expedition. *Id.* at 151, 723 S.E. 2d at 840.

Second, precluding Plaintiffs from moving forward with the deposition is necessary to ensure that Atlas Turner is not forced to risk waiving its jurisdictional defense. Participation in substantive discovery has been found to waive a defendant's personal jurisdiction defense. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 564, 787 S.E. 2d 498, 510 (2016). To allow the deposition to proceed in this circumstance, thereby possibly forcing an involuntary "waiver" of the jurisdictional defense, is unfair and violates due process.

II. In the Event the Court Does not Grant Atlas Turner's Motion to Dismiss, Requiring Atlas Turner to Produce a Corporate Representative for Deposition, or Produce Information or Documents Sought by the 30(b)(6) Notice, Would Subject Atlas Turner to Particularized Harm Because it Lacks Individuals with Personal Knowledge and for the Most Part Does Not Maintain or Possess the Records That Would be Necessary to Educate a Witness to be Able to Testify to Matters Contained in the 30(b)(6) Notice.

As noted in Mr. Dufour's affidavit dated December 28, 2022, Atlas Turner ceased all operations in 1986; it has no current employees; it has no former employees competent to testify to the topics listed in the 30(b)(6) Notice, and for the most part does not even maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notice; and 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. *See* Exhibit 7 at ¶¶ 10, 11, 14, 15.

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). Further, a party cannot produce

documents it does not possess, and a party cannot create documents that do not exist. *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).

Due to Atlas Turner's unique circumstances, in the event the Court denies Atlas Turner's motion to dismiss, this Court should not order Atlas Turner to produce a corporate representative for deposition, or produce information or documents sought by the 30(b)(6) Notice.

III. In The Event the Court Does Not Grant Atlas Turner's Motion to Dismiss, Then Requiring Atlas Turner to Produce a Corporate Representative for Deposition, or Produce Information or Documents Sought by the 30(b)(6) Notice, Would Subject Atlas Turner to Further Harm Because of The QBCRA.

A. The QBCRA Prohibits Atlas Turner Under Threat of Criminal Penalties from Providing Business Records, or Information from Business Records, Located in Quebec.

Atlas Turner 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 9:

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 § 5 (emphasis added).

Quebec courts have made clear that other Quebec “concerns” would be subject to criminal penalties if they produced in U.S. litigation information or documents from their files in Quebec, and these opinions apply to Atlas Turner. In *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal, February 24, 1984), a copy of which is attached as Exhibit 10, the Court of Appeal ruled that, if a witness was required to consult business records or archives of the employer, a Quebec “business concern,” in order to provide his testimony, such testimony would fall under the prohibition set out in Section 2 of the QBCRA. *See* Exhibit 10 at p. 11. Further, Judge Beauregard stated that “the filing ... of the documents ... joined to an examination of an agent of [Asbestos Corporation Limited] (“ACL”) whose testimony on these documents will be taken down by a stenographer who will translate his notes for the purposes of the foreign tribunal is equivalent, ... to the transmission out of Quebec of a ‘résumé or summary’ of the files of [ACL].” *Id.* at p. 11. Also, Judge Tyndale’s opinion, which follows the opinion of Judge Beauregard, states the QBCRA “[o]bviously ... forbids production of the documents Moreover, inspection by an attorney acting for Respondent would be useless unless he took notes, and this would lead to the export of a résumé or digest. *Id.* at pp. 1-2.

In *Pelnar v. Ins. Co. of North America* (Court of Appeal, Montreal, June 25, 1985) a copy of which is attached as Exhibit 11, the court held that the prohibition set out in Section 2 of the QBCRA is not only aimed towards business concerns, their officers or employees, but equally towards any persons who may have, or have had, in their possession documents or résumés thereof. *See* Exhibit 11 at pp. 5-6. Further, Quebec courts have ruled that the application of the QBCRA did not require a preliminary request from the Attorney General. *See Lac D’Amiante Du Quebec*

Limited v. Procureur General De La Province De Quebec (Court of Appeal, R.D.J., 287, 1989), a copy of which is attached as Exhibit 12, at p. 289. In addition, in *Renault v. Bell Asbestos Mines, Ltd.* (Court of Appeal, Montreal, August 13, 1980), a copy of which is attached as Exhibit 13, the court ruled that the word “document” related to much more than just accounting documents and that the QBCRA must be interpreted liberally and broadly. See Exhibit 13 at pp. 4-5.

Court opinions outside of Quebec that ignore the QBCRA do not magically transmute Atlas Turner’s predicament.⁸ Such decisions only show that Atlas Turner is beholden to two masters – stuck between facing criminal penalties in its domicile or displeasing this Court if it does not produce discovery to Plaintiffs’ satisfaction. Atlas Turner takes its discovery obligations seriously but also asks this Court to recognize and consider that Atlas Turner cannot please both masters at the same time. Application of fairness to the situation should enable Plaintiffs to obtain as much discovery as possible while not subjecting Atlas Turner to criminal penalties in its domicile. Several of this Court’s sister courts have reached this precise result.

For example, 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 14, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. Exhibit 14, at p. 1. ACL admitted that it had sold asbestos to the plaintiff’s employer but could not “give the detailed answers that are required to

⁸ Atlas Turner is aware of two decisions in South Carolina in which the Courts 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). These cases are not binding on the Court. In addition, in *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal February 24, 1984), the Quebec Court of Appeal decided that if a witness is required to consult records or archives, such testimony would fall under the prohibition of the Section 2 of the QBCRA. See Exhibit 10. Further, in *Lac D’Amiante Du Quebec Limited*, the Court held that the application of the QBCRA did not require a preliminary request from the Attorney General. See Exhibit 12, at p. 289. Therefore, the South Carolina federal courts’ interpretations in *Lyons* and *Central Wesleyan* are erroneous and should not be based on their own interpretations of the law after the highest court in Quebec already ruled on the issue.

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 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 15, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 15, 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 16, 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 16, 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.*

B. Atlas Turner Cannot Answer Most of the Topics or Produce Most of the Documents in the 30(b)(6) Notice Without Violating the QBCRA.

Given Quebec court opinions interpreting the scope of the QBCRA, and lacking any source for information not subject to the QBCRA, Atlas Turner is unable to answer the Topics and Requests for Production contained in the 30(b)(6) Notice.

1. Topics

Virtually all of these Topics seek information relating to Atlas Turner’s activities from many years ago, and Atlas Turner either has no relevant documents or is prevented from providing information from any existing documents because of the QBCRA. In fact, the company has been closed since 1986. *See* Exhibit 7 at ¶ 10. Also, Atlas is unaware of any individual with personal knowledge of these Topics from whom it can obtain this information; and, 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. *See* Exhibit 7 at ¶¶ 14 and 15. Atlas is prohibited by the QBCRA from providing any information gleaned from its company records and other documents located in Quebec, or even acknowledging the existence of the information and documents, and therefore cannot respond under threat of criminal prosecution. Thus, notwithstanding any other objections to particular topics, Atlas is between the proverbial “rock

and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties.

2. Requests for Production

The same explanation with respect to the QBCRA applies to Atlas Turner’s inability to produce documents in response to nearly all of Plaintiffs’ requests. Atlas Turner either does not have the vast majority of relevant documents or the existing documents would be subject to the QBCRA. As discussed above, Atlas Turner is prohibited from producing any documents from its files in Quebec by the QBCRA, or even acknowledging the existence of responsive documents. As with its ability to answer Plaintiffs’ Topics, and notwithstanding any other objections to particular topics, Atlas Turner is between the proverbial “rock and hard place” – subject both to South Carolina’s discovery rules, on the one hand, and to its own domestic prohibition which subjects violators to criminal penalties. The QBCRA precludes Atlas Turner from producing the documents requested by Plaintiffs’ from its Quebec files, or even acknowledging the existence of such documents.

C. Based on the Unique Situation Involving Atlas Turner and the QBCRA, Atlas Turner is Entitled to Deferential Treatment under the Comity Principles of International Law.

Atlas Turner is not a typical asbestos defendant. Because it faces criminal penalties if it violates the QBCRA, it should be treated with deference. Consequently, this 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).⁹ In *Aerospatiale*, the Supreme Court dealt with a French “Blocking

⁹ Atlas Turner is aware of at least one decision in South Carolina in which the court referenced *Aerospatiale* in relation to the QBCRA: *Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384

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 deferential consideration for Atlas Turner. As for the second factor – the degree of specificity – many of plaintiffs’ requests are overly broad. For example, Topic 66 asks: beginning in the year that Defendant first manufactured, marketed, produced...sold...any asbestos-containing products and continuing through the present day, the identity [sic] each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person’s current or last known address and whether the person is currently alive or dead, if known. Also Topic 70 is “All information relating to the Defendant’s knowledge of asbestos.” As for the third factor – the origination of the information – this factor weighs heavily in favor of Atlas Turner since the information sought did not originate in the United States. As for the fourth factor – the availability of alternative means for securing the information – this factor weighs in favor of Atlas Turner as will be discussed below.

(D.S.C. 1988). In addition, the court in *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628 (D.S.C. 1992) ruled unfavorably as to the QBCRA. See footnote 8 in this Memorandum. These two cases are not binding on this Court. This Court should adopt the reasoning set forth in *Fears, Jenness and Keene*.

D. Plaintiffs Have Alternative Sources for Information and Documents They Seek From Atlas Turner.

Plaintiffs have a number of alternative U.S. sources for many of the documents and much of the information contained therein which they seek here. Atlas Turner has no business records or other responsive documents in the United States in its possession, custody, or control. However, plaintiffs' counsel, who are sophisticated and a premier asbestos plaintiffs' law firm, undoubtedly have access to purported Atlas documents collected by other asbestos plaintiffs' counsel around the country in various lawsuits ("Repositories"). Plaintiffs' counsel could also obtain various depositions that were taken many years ago. Further, plaintiffs can obtain, or have obtained in the past, information from co-defendants' document productions, including co-defendants Daniel International and Pharmacia (Monsanto). If plaintiffs' counsel have any relevant documents, Atlas Turner requests that they produce these documents. Plaintiffs should be able to obtain information they seek without exposing Atlas Turner to potential criminal penalties. Discovery should be the retrieval of available information from the least burdensome source.¹⁰

IV. Plaintiffs Cannot Demonstrate that Atlas Turner's Requested Protective Order Will Impair Their Case.

After the party seeking the protective order demonstrates good cause by showing a particularized harm from the discovery, the party seeking the discovery must come forward and show that the information sought is "both necessary and relevant" to the case. *Hamm*, 312 S.C. 238, 242, 439 S.E.2d 854. Because the Court lacks personal jurisdiction over Atlas Turner, Plaintiffs can make no such showing. As Atlas Turner shows in its Motion to Dismiss and Amended Memorandum in Support, as well as in its Motion for Summary Judgment and supporting Memorandum with exhibits, this action should be dismissed pursuant to South Carolina

¹⁰ Atlas Turner reserves the right to serve additional objections to the 30(b)(6) Notice should the Court order that a deposition may go forward.

law and the Due Process Clause of the United States Constitution. Further, Plaintiffs have alternative sources for information and documents they seek from Atlas Turner. Plaintiffs have not demonstrated a basis for jurisdictional discovery, much less a need for merits discovery in this action, and cannot show that the discovery they seek through the 30(b)(6) Notice is necessary and relevant to the case, nor that it is narrowly tailored to the allegations in the Third Amended Complaint.

CONCLUSION

For the reasons stated above, Atlas Turner respectfully requests that this Court issue a protective order precluding a deposition of Atlas Turner's corporate representative and precluding the production of documents pursuant to Plaintiffs' 30(b)(6) Notice pending the resolution of Atlas Turner's personal jurisdictional challenge. Further, in the event the Court does not grant Atlas Turner's Motion to Dismiss, the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by Plaintiffs' 30(b)(6) Notice, because Atlas Turner has no current employees, has no former employees or individuals with personal knowledge, and for the most part does not even maintain or possess the records necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notice. Finally, in the event this Court does not grant Atlas Turner's motion to dismiss, then the Court should rule that Atlas Turner is not required to designate or produce a corporate representative for deposition, or produce information or documents sought by the

30(b)(6) Notice, because of the QBCRA, which subjects Atlas Turner to criminal penalties in Quebec if it produces information or documents sought by Plaintiffs' 30(b)(6) Notice.

By the signature below, counsel for Atlas Turner affirms that he previously communicated orally and in writing with opposing counsel and attempted in good faith to resolve the matters contained in the motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
Robert O. Meriwether
SC Bar No. 09828
E-Mail: robert.meriwether@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

April 6, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
MELVIN G. WELCH and DONNA B. WELCH,	)	C/A NO. 2022-CP-40-03834
	)	
Plaintiffs,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
3M COMPANY, et al.	)	
	)	
Defendants.	)	

ORDER HOLDING ATLAS TURNER, INC. IN CONTEMPT

Atlas Turner, Inc. (“Atlas”) is a defendant in the above referenced matter. On April 19, 2023, this Court, in open court ordered Atlas to appear for a deposition so that this matter could be prepared for trial.

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

On May 4, 2023, in an attempt to resolve Atlas’ intransigence, this Court held a status conference. Counsel for Atlas and counsel for Plaintiff were present. This Court attempted to ascertain Atlas’ positions on these matters and whether Atlas would participate in discovery or otherwise comply with this Court’s orders. After a comprehensive discussion it was clear to this Court that Atlas does not intend to participate in this matter and that this Court’s orders on discovery will continue to be ignored.

During the status conference, Plaintiffs’ counsel requested that this Court hold Atlas in contempt of Court. In response, Atlas relied in part on the arguments set forth in its prior filings.

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).

Here there is no dispute that Atlas has violated this Court's orders. Moreover, Atlas has indicated that it does not intend to comply with those orders in the future.

In light of Atlas' position, this Court has no choice but to find Atlas in contempt of court. In light of this finding, the Court directs Plaintiffs' counsel, not later than Monday, May 22, 2023, to submit briefing to this Court identifying the requested sanction this Court should impose on Atlas and for any other relief requested.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-05-11 15:39:42 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
MELVIN G. WELCH and DONNA B. WELCH,	)	C/A NO. 2022-CP-40-03834
	)	
Plaintiffs,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
v.	)	Coordinated Docket
	)	
3M COMPANY, et al.	)	<u>PLAINTIFFS' MOTION FOR SANCTIONS</u>
	)	<u>AND FOR THE APPOINTMENT OF A</u>
Defendants.	)	<u>RECEIVER</u>

On May 11, 2023, this Court found Atlas Asbestos Company, Ltd. ("Atlas") in contempt of court for its failure to comply with this Court's orders. This Court ordered Plaintiffs to brief the issue of the appropriate sanctions. In compliance with this Court's order, Plaintiffs submit this motion and would respectfully show the court as follows:

BACKGROUND

As this Court has already seen, Atlas supplied asbestos containing insulation to insulation contractors throughout the southeastern United States, including, without limitations, to insulation contractors in North and South Carolina. It was based on these facts and the Plaintiffs' exposure to insulation from certain contractors to which Atlas supplied, including Covil Corporation and Beaty Investments, f/k/a Guy M. Beaty among others. Plaintiffs served discovery on Atlas in the form of interrogatories and deposition notices with document requests. *See* Third Amended Notice of Deposition of Atlas attached hereto as Exhibit A. Despite having specifically sold to contractors in South Carolina, Atlas 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 Atlas' objections and ordered it to produce a fully prepared witness and documents. Atlas refused. This Court held a status conference to consult with counsel for Atlas. At the hearing it was clear that Atlas had no intention of complying with this Court's orders, producing a witness or otherwise participating in this litigation.

LAW AND ARGUMENT

A. Motion to Strike

A trial court has the "option to completely strike [a defendant's] pleadings in [a] matter as a sanction for failure to cooperate in discovery." *Scott v. Greenville Housing Authority*, 353 S.C. 639 (Ct. App. 2003)(citing Rule 37(b)(2)(C)). Here, Atlas has wholly failed to obey this court's orders ordering it to participate in discovery. Moreover, Atlas has demonstrated that it does not intend to participate in this matter in any meaningful way.

Therefore, Plaintiffs request that this court enter an order striking Atlas' pleading.

B. Motion to Appoint a Receiver

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

Atlas is a company organized and existing under the laws of Canada, with its principal place of business in Canada. At all times relevant, Atlas 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. Atlas 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, Atlas decided to simply contest personal jurisdiction and, where it loses that battle, the simply refuses to participate in cases in which they are a named defendant. Although Atlas stiff-arms its creditors in the United States—namely, workers exposed to asbestos and asbestos containing products manufactured and/or sold by Atlas—and absconded to Canada, certain of its insurance assets appear to remain. There is no evidence which suggests that Atlas currently operates in any way to do anything other than to defend and indemnify lawsuits, thus, making Atlas nothing more than an insurance company. The appointment of a receiver to marshal Atlas’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 Atlas 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 Atlas 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 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 Atlas is appropriate under subsection (5) because Atlas 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 Atlas’ counsel.

CONCLUSION

As set forth above, Atlas refuses to comply with this Court’s orders. The sanction for that action should be the striking of Atlas’ answer. After Atlas’ 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 Atlas.

Respectfully submitted,

/s/ Aaron D. Chapman

Aaron D. Chapman (SC Bar No. 104485)

DEAN OMAR BRANHAM SHIRLEY, LLP

302 N. Market Street, Suite 300

Dallas, TX 75202

T: 214-722-5990

F: 214-722-5991

achapman@dobslegal.com

Other email: mvarela@dobslegal.com

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

May 11, 2023
Dallas, Texas.

EXHIBIT A

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

MELVIN G. WELCH and
DONNA B. WELCH

Plaintiffs,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY, et al.

Defendants.

C/A NO. 2022-CP-40-03834

**PLAINTIFFS' THIRD AMENDED NOTICE OF 30(b)(6) DEPOSITION OF
DEFENDANT ATLAS ASBESTOS CO. AND SUBPOENA DUCES TECUM**

TO: ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of Defendant **Atlas Asbestos Co.** on **April 24, 2023 at 10:00 am (ET)** and will take place at the location indicated below, at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. If necessary, the deposition shall continue day to day.

DEPONENT: Atlas Asbestos Co.
DATE: Monday, April 24, 2023
TIME: 10:00 AM, EST.
ADDRESS: Kassel McVey; 1330 Laurel Street, Columbia, SC 29202

JOIN ZOOM MEETING

<https://us02web.zoom.us/j/81225112357?pwd=dko5ZU4vUC9wdHpaM1FVRFYxLyt6Zz09>

Meeting ID: 812 2511 2357
Passcode: 276891

One tap mobile

[+19294362866](tel:+19294362866) US (New York)
[+13017158592](tel:+13017158592) US (Washington DC)

Dial by your location

[+1 929 436 2866](tel:+19294362866) US (New York)
[+1 301 715 8592](tel:+13017158592) US (Washington DC)
[+1 305 224 1968](tel:+13052241968) US
[+1 309 205 3325](tel:+13092053325) US
[+1 312 626 6799](tel:+13126266799) US (Chicago)
[+1 646 931 3860](tel:+16469313860) US
[+1 669 444 9171](tel:+16694449171) US
[+1 669 900 6833](tel:+16699006833) US (San Jose)
[+1 689 278 1000](tel:+16892781000) US
[+1 719 359 4580](tel:+17193594580) US
[+1 253 205 0468](tel:+12532050468) US
[+1 253 215 8782](tel:+12532158782) US (Tacoma)
[+1 346 248 7799](tel:+13462487799) US (Houston)
[+1 360 209 5623](tel:+13602095623) US
[+1 386 347 5053](tel:+13863475053) US
[+1 507 473 4847](tel:+15074734847) US
[+1 564 217 2000](tel:+15642172000) US

Meeting ID: 812 2511 2357

Find your local number: <https://us02web.zoom.us/j/81225112357>

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit “A” attached hereto. Pursuant to Rule 30(b)(5), Defendant is requested to produce documents responsive to the requests listed in Exhibit “B” also attached hereto. Pursuant to Rule 30(b)(5) the time for production of these documents is governed by Rule 34, which holds all responsive documents are due produced to Plaintiffs in 2 weeks from service, or specifically no later than April 20, 2023.¹

¹ Please note, previous document productions made by Defendants in separate cases have no impact on Plaintiffs’ document requests in their current case and may not be relied upon by Defendants as production of documents responsive to Melvin and Donna Welch’s requests included herein.

Respectfully submitted,

/s/ Aaron D. Chapman

Aaron D. Chapman (SC Bar No. 104485)
Dana C. Simon (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: 214-722-5991
achapman@dobslegal.com
dsimon@dobslegal.com
Other email: mvarela@dobslegal.com

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

April 20, 2023
Dallas, Texas.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Receipt, U.S. Mail Standard First Class, and/or electronic mail this on April 20, 2023.

/s/ Aaron Chapman
Attorney for Plaintiffs

EXHIBIT A

For purposes of these topics, the following words shall have the following meanings: Definitions: "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors- in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means any of the following worksites where Melvin Welch worked during his career from approximately 1960s to 2000s including but not limited to:

1. K-Mart – Greenwood, SC
2. M&M Tire – Greenwood, SC
3. Western Auto – Greenwood, SC
4. Monsanto/Chemstrand Chemical Plant, Greenwood SC
5. Any other site identified by Melvin Welch
6. Any other site on which Melvin Welch's father worked

Please provide a corporate representative to be deposed on the following subject matters:

1. All information about tremolite, actinolite, or anthophyllite asbestos in the same ore from which your asbestos is mined.
2. The registered name of the answering Defendant as well as all prior names or predecessor entities by which the Defendant has existed. For each, the current address and the state of incorporation and whether or not it is an active corporation.
3. The full and correct name, the principal place of business and the state and date of incorporation of Defendant.
4. Whether Defendant has ever held a certificate of authority to do business in South Carolina and the addresses for your registered agents for service in South Carolina.

5. Whether Defendant has a registered agent currently in South Carolina. If yes, the full name and full address of the registered agent located in South Carolina.
6. Whether Defendant has ever owned, leased, rented or otherwise operated or used any real or personal property, facility, store or distribution center located in the State of South Carolina.
7. Whether any property and/or facility which Defendant owned, operated, or controlled had any connection to the manufacture, sale, purchase, distribution, advertisement, application, installation, removal, marketing, development and/or use of asbestos or asbestos-containing materials/products in the state of South Carolina.
8. The names and addresses of persons or entities in South Carolina to whom Defendant sold or distributed any asbestos or asbestos-containing material/product (including insulation contracting as a service, or insulation sold as a product, or otherwise), and the details around such sales.
9. Whether it is more likely than not that any asbestos or asbestos-containing materials or products (including insulation contracting as a service, or insulation sold as a product, or otherwise) sold or distributed by Defendant would be used by, or purchased by, any person or entity with its ultimate use in South Carolina and the basis for your answer.
10. All distributors or wholesalers of Defendant's asbestos and/or asbestos-containing product and/or asbestos covered product in South Carolina.
11. All products, other than asbestos or asbestos-containing products, Defendant has ever sold, distributed, or delivered for sale or distribution, to persons or entities in South Carolina
12. Any lawsuit or other legal action taken by Defendant in any Court in the State of South Carolina against any person or entity including, but not limited to, claims for damages, counterclaims, cross-claims, or third-party claims.
13. Any lawsuit against Defendant in the State of South Carolina or other legal action where Defendant was found subject to personal jurisdiction in the state of South Carolina.
14. Whether any of the contracts that Defendant entered into in the normal course of business contain a forum selection clause, including but not limited to, a clause specifying the forum in which a lawsuit must be filed in the event litigation occurs between Defendant and another party to the contract and if so, which jurisdiction(s) did you specify.
15. The complete present address of Defendant's principal place of business.
16. All documents and tangible things used, related to, or referred to in connection with the preparation of this deposition. For all such documents and tangible things state the number of the topic.

17. The identity of each person who has supplied any information or assisted in locating any documents or tangible things used in answering or responding to this notice, a year-by-year list of all positions or job titles held by each person.

18. The names and addresses of persons known to Defendant or to counsel that have knowledge concerning the jobsites of the Plaintiff or, otherwise, the facts of this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession, custody or control of such statements.

19. When and how Defendant first learned that inhalation of asbestos fibers can lead to the development of each of the following asbestos-related diseases:

- (a) asbestosis;
- (b) pleural plaques;
- (c) pleural thickening;
- (d) interstitial fibrosis;
- (e) scarring of the lungs;
- (f) colon cancer;
- (g) laryngeal cancer;
- (h) esophageal cancer;
- (i) lung cancer; and
- (j) mesothelioma (pleural, peritoneal, or pericardial)

20. All trade organizations, trade associations, and any other groups to which Defendant, Defendant's representative or Defendant's current or former employees belonged in which information relating to the hazards of asbestos or nuisance dust in general was discussed, disseminated, or in any way published before 1980. This list should include (but is not limited to) any membership in the American Hygiene Foundation, Industrial Hygiene Foundation, Chemical Manufacturer's Association (or its predecessor, the MCA), American Chemical Council, American Petroleum Institute, National Safety Council, American National Standards Institute (ANSI), Asbestos Information Association, Industrial Medical Association, American Society of Mechanical Engineers; American Society for Testing and Materials, Chlorine Institute, American Industrial Hygiene Association, National Insulation Manufacturers Association, Asbestos Textile Institute, Society of Automotive Engineers, Society of Petroleum Engineers, ACGIH, American Occupational Medicine Association, American Public Health Association, Friction Materials Standards Institute, Brake Lining Manufacturer's Association, American Medical Association, NIOSH and any state safety organizations. As to each listed group, please state:

- (a) the time period when Defendant, Defendant's representative or Defendant's current or former employee(s) was a member;
- (b) the identity of Defendant's employees, former employees, or representatives who attended any of the meetings held by each listed group, as well as the dates and locations of the meetings they attended;
- (c) the identity of Defendant's employees, former employees, or representatives who served on any committees or subcommittees of any listed group (e.g., a medical advisory committee or legal committee); and
- (d) the name of the committee or subcommittee on which such person served and the position occupied on the committee, if applicable.

21. The identity of each of Defendant's employees, former employees, or representatives who attended any proceeding, symposium, or conference of a scientific, medical, or technical nature, before 1972, during which information relating to the hazards of asbestos or nuisance dust in general was discussed, disseminated, or in any way published (e.g., the effects of human or non-human exposure to asbestos, populations at risk, etc.). A response to this topic should include any attendance at the Seventh Saranac Symposium in 1952, the Proceedings of the New York Academy of Sciences in October of 1964, any meetings held by any organization in Defendant's response to topic no. 2. For each person identified, the proceeding, symposium, or conference the person attended; the date and location of the proceeding, symposium, or conference; the identity of the person within Defendant's organization who received or was designated to receive the attending person's report of the information gathered at such proceeding, symposium, or conference; and the manner in which such reports were made.

22. Whether Defendant has ever been investigated or cited by OSHA or any other local, state, or federal governmental agency for any matter related to asbestos or asbestos exposure. If so, the dates of such investigations, the results that were communicated to Defendant, and the remedial measures (if any) which were undertaken by Defendant.

23. Whether and, if so, how Defendant stores its documents and records including but not limited to any document retention or document destruction policies throughout Defendant's history from inception to the present.

24. How Defendant's documents are stored, indexed, organized or maintained and identify all records custodians, librarians or other individuals who have presently or have had in the past access to Defendant's document repository.

25. Defendant's complete corporate history, including its ownership, sale, acquisition, or divestiture, and any mergers, acquisitions, consolidations, or other similar events involving Defendant at any time during its history.

26. The first time Defendant became familiar with the concept of a threshold limit value (TLV) or permissible excursion level (PEL), for airborne dust, and how was Defendant first made aware of this concept.

27. Information regarding each expert witness that Defendant may call during the trial of this case including:

- (a) The name, address, and job classification of each such witness;
- (b) The subject matter on which the expert is expected to testify; and
- (c) The substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds or bases for each opinion.

28. Whether any person filed a claim against a Worker's Compensation carrier covering Defendant or any of its subsidiaries or predecessor companies alleging that he/she contracted a disease from inhaling asbestos fibers and if so:

- (a) A list of the claims, including each claimant's name, address and the date each claim was filed, and including the caption and jurisdiction of the claim;
- (b) The disease alleged in each such claim;
- (c) A brief summary of the disposition of each such claim; and
- (d) The name, address, and title of the person having custody of the records pertaining to each such claim.

29. The identity and address of all of Defendant's insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, policy limits and coverage dates.

30. All information regarding the first three (3) times Defendant was sued for damages related to exposure to asbestos from working with or around Defendant's products (including date of filing, jurisdiction, name of plaintiff, causes of action alleged, resolution outcome as to Defendant, etc.)

31. The financial condition of Defendant. (The court has ruled that at the discovery phase, the Defendant's net worth for the previous 2 calendar years is sufficiently responsive to this topic.)

32. The basis for the net worth value provided (this topic seeks the underlying data that supports or justifies the net worth value of Defendant for each given year, which will support how Defendant arrived at the net worth number provided).

33. The names, phone numbers and addresses of all lay witnesses whom Defendant presently intends to call to testify at trial, and the subject matter of their testimony and what connection each such person has with matters relevant to this lawsuit (e.g., former co-workers of Plaintiff, former plant manager of plant X, etc.) and whether the witness is within your control and if the witness is retained by counsel.

34. When Defendant first became aware of the Fleischer-Drinker Report and Dreessen Report and how Defendant learned of these Reports.

35. Whether Defendant contends that the fault of a person or entity other than this Defendant was a substantial contributing factor in the development of Plaintiff's (or Plaintiff's decedent's) mesothelioma. If Defendant's answer is anything other than no, the identify of all such entities and people by name.

36. Whether Defendant is asserting affirmative defenses in this case. If Defendant's answer is anything other than no, please:

- (a) State all facts in support of each affirmative defense;
- (b) Identify all witnesses with information in support of each affirmative defense; and
- (c) Identify all documents containing information in support of each affirmative defense.

37. Information regarding each and every piece of equipment or product that Defendant designed, specified, recommended, mined, manufactured, marketed, sold, supplied, distributed,

or patented that incorporated asbestos-containing parts or specified the use of asbestos or asbestos-containing products or otherwise utilized asbestos containing component parts in the design, manufacture, construction, erection, operation, service, and/or repair of such equipment including but not limited to:

- (a) the trade name or brand name of the product designed, specified, recommended, mined, manufactured, marketed, sold, supplied, distributed, or patented by Defendant;
- (b) a detailed description of the product, including a description of how and why the equipment involved the use of asbestos or asbestos-containing products;
- (c) the date the product was patented (if patented), placed on the market (if marketed), and the inclusive dates of the product's manufacture or sale (if manufactured or sold);
- (d) the physical and chemical composition of the product, including the type and/or brandname of asbestos contained in the product and the percentage or amount of asbestos in each product;
- (e) the date Defendant stopped designed, specified, recommended, mined, manufactured, marketed, sold, supplied, and/or distributing the product;
- (f) the date the product was removed from the market (if marketed) and no longer sold or distributed and the reasons therefore;
- (g) the date asbestos was removed from the product or no longer specified for use with the product, if ever, and the reasons for removing it;
- (h) the seller(s), distributor(s) and/or supplier(s) from whom Defendant purchased the asbestos used in each particular product, and the type (example: crocidolite, amosite, chrysotile) and quantity of asbestos Defendant purchased from each seller(s);
- (i) whether Defendant ever conducted any testing on the product to determine whether it posed any potential hazard to human or non-human health;
- (j) the plant or facility where the product was mined, manufactured, produced, or researched;
- (k) identity of the intended as well as foreseeable users of the product (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (l) a description of any warnings related in any way to asbestos that Defendant placed on the product or its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the product or its packaging where the warning was printed, and when the warning was first placed on the product. In addition, provide the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

38. What year Defendant first begin selling or distributing each asbestos-containing product. Please be specific for each asbestos-containing product manufactured, sold or distributed by you.

39. What year defendant last sold, distributed or manufactured an asbestos-containing product. Please be specific for each asbestos-containing product.

40. Description of each product identified in response to topic number 36, as to its color and physical characteristics and appearances.

41. As to each product identified in response to topic number 36, information describing how such product was packaged or supplied.

42. As to each product identified in response to topic number 36, whether such product was ever further distributed, marketed, packaged, labeled, or sold by companies or individuals other than Defendant. If so, the identity of such companies or individuals, the dates those companies or individuals further distributed, marketed, packaged, labeled, or sold Defendant's asbestos-containing products, and the identity of the specific asbestos-containing products involved.

43. As to any product of Defendant identified in response to topic number 36, whether such product was generally expected to reach or packaged to reach, the consumer or user without substantial change in the condition in which it was sold. If not, with respect to each such product, what way Defendant claims such product was to be altered or substantially changed after sale or distribution and before reaching the consumer or user.

44. As to any product of Defendant identified in response to topic number 36, whether or not Defendant contends that such product can be generally utilized without liberating asbestos fibers into the air. If so, please identify such product, generally describe the intended use of the product, and explain how such use would not tend to liberate asbestos fibers into the air.

45. As to any product of Defendant identified in response to topic number 36, whether Defendant ever used any type of written sales contract between Defendant and the buyer of such equipment. If so, whether or not such written sales contract ever include a clause that Defendant would agree to repair and/or service the equipment if necessary.

46. If Defendant ever recommended the use of any asbestos-containing product with any equipment made or sold by Defendant.

47. If it was foreseeable to Defendant, at the time each type or piece of equipment identified in response to topic number 36 above was released for sale and distribution, that the asbestos or asbestos-containing products recommended or specified for use with such equipment might be removed, stripped, ripped out, or replaced at some time after installation.

48. If Defendant ever sold asbestos-containing replacement parts for any of the equipment made or sold by you. If so, the part and when it was sold.

49. For each type or piece of equipment identified in response to topic number 36, whether asbestos gaskets were utilized as component parts. If so, when?

50. For each type or piece of equipment identified in response to topic number 36, whether

asbestos packing was utilized as a component part at any time. If so, when?

51. For each type or piece of equipment identified in response to topic number 36, whether at any time, was it necessary, required or recommended for asbestos insulation to be utilized in conjunction with any of your equipment. If so, when and under what circumstances.

52. The serial numbers for any of your equipment identified that are (1) located in South Carolina and (2) located at jobsites in states other than South Carolina identified in the work histories of the Plaintiffs previously provided.

53. Whether Defendant claims that any patent would cover any product listed in response to the topics above. If so, the number of the patent, the date same was issued and the number of each patent application that is pending.

54. Whether Defendant sold and/or distributed products containing asbestos to the employers of Plaintiff (or Plaintiff's decedent) or the premises at issue during the time listed or any time prior thereto. Please note that this includes asbestos fiber, thermal insulation, refractory asbestos products or cloth or spray products containing asbestos, as well as all asbestos- containing equipment, and/or asbestos containing replacement component parts.

55. If the answer to the preceding topic is in the affirmative:

- (a) The names of the products sold;
- (b) To whom the product was sold and shipped;
- (c) As to each of the above-mentioned products, please include the quantities of each shipped to each company during the applicable time period; the site to which each product was shipped; and the date of shipment;
- (d) As to each of the products mentioned above, produce in electronic format copies of:
 - (1) Any pertinent trademark, copy of such trademark, and the trademark registration number;
 - (2) The label, or copy of the label, used in the packaging of the particular product;
 - (3) A photograph of the product itself;
 - (4) Sales brochures, specification sheets, performance data, or other promotional material as well as any and all installation materials, data or brochures which would have accompanied or been distributed in connection with the installation, application, or use of each of the above-mentioned products;
 - (5) Any invoices, purchase orders, sales receipts or other documents which show sales of any products to the worksites of Plaintiff or the employers of Plaintiff during the time Plaintiff was employed or worked at the worksite or prior.
- (e) If you cannot provide all of the above documents, please indicate the name or names of the individuals having custody of said documents or copies thereof.

56. Whether Defendant sold any products containing asbestos or any asbestos fiber to any of the defendants in this suit or their predecessors. If so, what years, to whom, and in what

quantities.

57. Whether Defendant sold any products containing asbestos or any asbestos fiber to any of the employers of Plaintiff. If so, what years, to whom, and in what quantities.

58. Whether Defendant sold any products containing asbestos or any asbestos fiber to any of premises at issue. If so, what years, to whom, and in what quantities.

59. Whether there was a service company associated with servicing your asbestos-containing products. (for example, Fisher Controls International was associated with Fisher Service Company who would be hired by customers such as Duke Energy to service the Fisher valves at the Duke Energy plants).

60. If your answer to the preceding topic is in the affirmative, the full name of the service company, the locations of the service company properties of which you are aware, and geographical jurisdiction of each service company.

61. Whether Defendant ever mined, manufactured, marketed, produced, researched, sold, distributed, or patent any product which did not contain asbestos and which could be substituted for any asbestos-containing product. If so, the identity of such asbestos-free product, and state the date such product was first placed on the market.

62. When, if ever, Defendant became aware of asbestos-free substitutes or alternatives for each asbestos-containing product mined, manufactured, marketed, produced, researched, sold, distributed, or patented by Defendant (e.g. mineral wool), regardless of Defendant's belief of the viability of such substitutes or alternatives.

63. Each asbestos-free substitute or alternative for any asbestos-containing product mined, manufactured, marketed, produced, researched, sold, distributed, or patented by Defendant, and when Defendant believed an asbestos-free alternative was an adequate substitute for the asbestos-containing product. If Defendant contends that asbestos free substitutes were not viable, the basis of that contention.

64. Any information about efforts by Defendant to protect users of the asbestos-containing product(s) you approved, designed, specified, sold, supplied or distributed to the premises at issue, from potential hazards associated with the use of said asbestos containing-product(s), and any such precautions and actions taken by you.

65. The identity of all persons with knowledge of facts relevant to the presence or absence of asbestos and/or asbestos-containing products approved, designed, specified, sold, supplied or distributed by Defendant at any of the premises at issue where Plaintiff, Plaintiff's decedent, or (in a household exposure case) exposed family member was present and any information as to the nature of the individual's knowledge as it relates to this subject matter.

66. Beginning in the year that Defendant first manufactured, marketed, produced, researched, sold, distributed, or patented any asbestos-containing product, and continuing

through the presentday, the identity each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person's current or last known address and whether the person is currently alive or dead, if known.

67. Whether there are any documents, including but not limited to, invoices, billing records, sales records, contracts, purchase orders, or any other like document that reflect the distribution, approval, specification or sale of asbestos-containing products (1) to premises at issue in South Carolina and (2) to premises at issue in states other than South Carolina identified in the work history of the Plaintiff previously provided.

68. Information regarding any contention that asbestos-containing products you specified, approved, or supplied were not or could not have been sold, distributed or otherwise present at any of the premises at issue which Plaintiff claims exposure to asbestos, and the reasons for this contention and the underlying basis for it. Also, the identity of the individual or individuals who will testify to this contention and the underlying basis for their testimony.

69. Information regarding any contention that there is another entity who was in an equal or better position to warn users of any asbestos related dangers of any asbestos-containing product or equipment made or sold by Defendant and the identity of that entity, the reasons you believe that entity had knowledge regarding the dangers of asbestos, when you believe that knowledge was obtained and the reasons you contend that the entity was in an equal or better position than you to make users aware of asbestos dangers relating to your products or equipment.

70. All information relating to Defendant's knowledge of asbestos hazards.

71. Detailed information about all insurance policies available to Defendant for the damages in the *Welch* case, and/or for premises at issue in the *Welch* case.

72. What You (the company) did to prepare for this deposition (documents searched for, documents reviewed, people searched for, people interviewed, etc.)

73. What the witness, in particular, did to prepare for this deposition, including but not limited to specifically how the witness prepared to discuss subjects outside of his/her personal knowledge (considering the former job duties and/or time period when the deponent was employed by You, if any).

74. Information regarding document searches You (the company) has performed at any time for litigation involving asbestos (i.e. when the search occurred, where it occurred, by whom, results, total bates-stamp range applied to all documents produced, etc.).

75. Information regarding document searches You (the company) has performed in this particular case. (i.e. when the search occurred, where it occurred, by whom, results, bates-stamp range applied to all documents produced, etc.).

EXHIBIT B

For purposes of these requests, the following words shall have the following meanings:

The terms "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors-in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means any of the following worksites where Melvin Welch worked during his career from approximately 1960s to 2000s including but not limited to:

1. K-Mart – Greenwood, SC
2. M&M Tire – Greenwood, SC
3. Western Auto – Greenwood, SC
4. Monsanto/Chemstrand Chemical Plant, Greenwood SC
5. Any other site identified by Melvin Welch
6. Any other site on which Melvin Welch's father worked

Please produce the following:

1. Please produce all documents that reference tremolite.
2. Please produce all documents that reference tremolite, actinolite, or anthophyllite asbestos in the same ore from which your asbestos is mined.
3. Please produce all documents showing any services provided by Defendant to the premises at issue or employers of Plaintiff during the same years Plaintiff alleges working at the premises.
4. Please produce all documents concerning any tests conducted by you or on behalf of you to determine potential health hazards associated with the use of or exposure to asbestos fibers

associated with any products Defendant specified, approved, sold to or used at any of the premises at issue.

5. Please produce all documents identifying each distributor or wholesaler located or authorized to sell or distribute asbestos-containing products for you (1) in or for South Carolina and (2) in or for any premises at issue outside of South Carolina identified in Plaintiff's work history previously provided. For each distributor or wholesaler, please produce documents containing the following information:

- (a) Name and last known address;
- (b) The years of, and the geographical area encompassed by the relationship;
- (c) Whether there was a written distributorship agreement;
- (d) Whether the distributorship was exclusive; and
- (e) The extent to which sales to customers in this state were handled through distributors or wholesalers located outside this state.

6. Please produce all documents identifying the names, phone numbers and addresses of all lay witnesses whom you presently intend to call to testify at trial, and briefly identify the subject matter of their testimony and what connection each such person has with matters relevant to this lawsuit (e.g., former co-workers of Plaintiff, former plant manager of plant X, etc.). Indicate if the witness is within your control and if the witness is retained by counsel.

7. Please produce all documents which identify each asbestos-containing product that Defendant designed, specified, sold, supplied or distributed to the premises at issue at any time before Plaintiff's last day of alleged work at said worksite. Please produce documents containing the following information:

- (a) the trade name or brand name of the product mined, manufactured, marketed, produced, researched, sold, distributed, and/or patented;
- (b) the date the product was patented (if patented), placed on the market (if marketed), and the inclusive dates of the product's manufacture or sale (if manufactured or sold);
- (c) the physical and chemical composition of the product, including the type of asbestos contained in the product and the percentage or amount of asbestos in each product;
- (d) the date Defendant stopped mining, manufacturing, marketing, producing, researching, selling, and/or distributing the product;
- (e) the date the product was removed from the market (if marketed) and no longer sold or distributed and the reasons therefore;
- (f) the date asbestos was removed from the product, if ever, and the reasons for removing it;
- (g) the seller(s), distributor(s) and/or supplier(s) from whom Defendant purchased the asbestos used in each particular product, and the type (example: amosite, chrysotile) and quantity of asbestos Defendant purchased from the seller(s);
- (h) whether Defendant ever conducted any testing on the product to determine whether it posed any potential hazard to human or non-human health;
- (i) the plant or facility where the product was mined, manufactured, produced, or researched;

- (j) the foreseeable users of the product (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (k) a description of any warnings that Defendant placed on the product or its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the product or its packaging where the warning was printed, and when the warning was first placed on the product. In addition, include the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

8. As to any asbestos-containing product designed, specified, sold, supplied or distributed by Defendant to the premises at issue at any time, produce all documents which indicate such products were ever further distributed, marketed, packaged, labeled, or sold by companies or individuals other than Defendant.

9. Please produce all documents that support Defendant's contention that as to each asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant for the premises at issue or employer of Plaintiff, such product was or was not to be altered or substantially changed after sale or distribution and before reaching the consumer or user.

10. Please produce all documents showing at the time each asbestos-containing product was approved, designed, specified, sold, supplied or distributed by Defendant, that the product or one or more of its components might be removed, stripped, ripped out, or replaced at some time after installation.

11. Please produce all documents showing when, if ever, did Defendant become aware of asbestos-free substitutes or alternatives for such product (e.g. mineral wool), regardless of Defendant's belief of the viability of such substitutes or alternatives.

12. Please produce all documents in Defendant's possession discussing any asbestos-free substitute or alternative for any asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant.

13. If it is your contention that you took the proper precautions to protect users of the asbestos-containing product(s) you approved, designed, specified, sold, supplied or distributed to the premises at issue, please produce all documents which support this contention.

14. Please produce all sales documents, including but not limited to, invoices, billing records, sales records, contracts, purchase orders, or any other like document that reflect the distribution, approval, specification or sale of asbestos-containing products (1) to premises at issue in South Carolina and (2) to premises at issue in states other than South Carolina identified in the work history of the Plaintiff previously provided.

15. If it is your contention that asbestos-containing products you specified, approved, or supplied was not or could not have been sold, distributed or otherwise present at any premises at issue at which Plaintiff claims exposure to asbestos, please produce all documents which support this contention.

16. Please produce all documents concerning each and every piece of equipment that Defendant approved, designed, specified, sold, supplied or distributed to the premises at issue or employers of Plaintiff in which asbestos containing parts are used or specified or otherwise utilized asbestos containing component parts in the design, manufacture, construction, erection, operations, service, and/or repair of such equipment. Specifically, please produce documents providing the following information:

- (a) the trade name or brand name of the equipment approved, designed, specified, sold, supplied or distributed by Defendant;
- (b) the type and/or brand name of asbestos or asbestos-containing product specified for use with the equipment;
- (c) the date the equipment was placed on the market, and the inclusive dates of the equipment's manufacture, sale, and distribution;
- (d) a detailed description of the equipment, including a description of how and why the equipment involved the use of asbestos or asbestos-containing products;
- (e) the date Defendant stopped approving, designing, specifying, selling, supplying or distributing the equipment;
- (f) if applicable, the date the equipment was removed from the market and no longer sold or distributed and the reasons therefore;
- (g) if applicable, the date asbestos was no longer specified for use with the equipment, and the reasons for no longer specifying it;
- (h) if applicable, the seller from whom Defendant purchased the asbestos containing equipment, and the type (example: amosite, chrysotile) and quantity of asbestos utilized in the product;
- (i) whether Defendant ever conducted any testing on the equipment to determine whether the use of the product posed any potential asbestos-related hazard to human or non-human health;
- (j) the plants or facilities where the equipment was installed;
- (k) the foreseeable users of the equipment (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (l) a description of any warnings regarding asbestos present on the equipment or its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the equipment or its packaging where the warning was printed, and when the warning was first placed on the equipment. In addition, include the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

17. As to any equipment identified in response to topic number 36, please produce any type of written sales contract between Defendant and the buyer of such equipment, including any agreement to repair and/or service the equipment.

18. Please produce all documents showing the sale, supply or distribution of any asbestos-containing replacement parts for any of the equipment approved, designed, specified, sold, supplied or distributed by you to the premises at issue or employers of the Plaintiff.

19. Please produce all documents that support your contention that for each type or piece of equipment identified in response to topic number 36, that asbestos insulation, was or was not necessary, required or recommended to be utilized in conjunction with any such equipment.

20. Please produce all documents showing the serial numbers for any equipment identified in your responses to topics above (1) located at the premises at issue or employers of Plaintiff in South Carolina and (2) located at premises at issue in states other than South Carolina identified in the work history of the Plaintiff previously provided.

21. If you contend that there is another entity who was in an equal or better position to warn users of any asbestos related dangers of any asbestos-containing product or equipment approved, designed, specified, sold, supplied or distributed by you to the premises at issue or employer(s) of Plaintiff, please produce all documents which support this contention.

22. Please produce all insurance policies available to Defendant for the damages in the *Welch* case, and/or for premises at issue in the *Welch* case.

23. Please produce all documents regarding Defendant's knowledge of asbestos hazards.

24. Please produce all documents reviewed by the witness, and any notes taken in review of such documents.

25. Please produce any written procedure for document searches, or notes taken during document searches or descriptions of document searches You (the company) has done at any time for litigation involving asbestos, including but not limited to the current case (i.e. when the search occurred, where it occurred, by whom, etc.).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Melvin G. Welch and Donna B. Welch,	)	C/A NO. 2022-CP-40-03834
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>Atlas Turner Inc.'s Response and</u>
	)	<u>Objection to Plaintiffs' Motion to</u>
3M Company, et al.,	)	<u>Appoint A Receiver</u>
	)	
Defendants.	)	
	)	
	)	

Atlas Turner, Inc. ("Atlas")¹ objects to Plaintiffs' Motion to Appoint a receiver for Atlas. The Court lacks statutory and constitutional authority and jurisdiction to appoint a receiver over Atlas, which is a Canadian corporation headquartered in the Province of Quebec, with no assets or property located in South Carolina.

On May 11, 2023, Plaintiffs filed a motion asking the Court to enter a receivership order appointing a receiver over Atlas pursuant to S.C. Code § 15-65-10(4) or (5). As set forth more fully below, Atlas objects on two grounds: (1) there is no factual or legal basis under S.C. Code Ann. §15-65-10(4) or (5) to appoint a receiver; and (2) as presented previously to this Court in multiple filings,² which are fully adopted and incorporated herein, the Court lacks personal

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not two separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner Inc. are two different names for the same company. The proper name of the sole defendant is Atlas Turner, Inc.

² The procedural history of this matter, with the name and date of Atlas' filings is summarized as follows:

- Plaintiffs filed the original complaint on July 25, 2022.

jurisdiction over it and there is no Atlas property or assets within South Carolina over which the Court can exercise jurisdiction.

-
- Atlas filed its Motion to Dismiss for Lack of Personal Jurisdiction with a Memorandum in Support and an affidavit from Richard Dufour dated September 7, 2022 (“9/7 Dufour Aff.”).
 - Plaintiffs amended the Complaint several times, and most recently filed their Third Amended Complaint on November 3, 2022.
 - Atlas timely filed Motions to Dismiss for Lack of Personal Jurisdiction and Memoranda in Support with the 9/7 Dufour Aff. for each amended complaint.
 - On December 30, 2022 Atlas filed an Amended Memorandum in Support of the Motion to Dismiss with exhibits, including a second affidavit from Richard Dufour dated December 28, 2022 (“12/28 Dufour Aff.”).
 - Atlas filed a Motion for Protective Order and Memorandum in Support on January 3, 2023, regarding a 30(b)(6) deposition noticed by Plaintiffs.
 - On January 5, 2023, counsel for Atlas requested that the Court hear at the January 27, 2023 Motions hearings or as soon as possible thereafter Atlas’ two pending motions. Due to a schedule conflict, Plaintiffs’ counsel requested that the motions be heard on another date and requested two weeks to respond. To accommodate opposing counsel, counsel for Atlas responded and requested that the Court schedule a hearing at the Court’s convenience on a date after January 27, 2023.
 - On March 20, 2023, Atlas filed a Motion for Summary Judgment (which included the Motion to Dismiss) and a Memorandum in Support with affidavits and other exhibits. Plaintiffs responded on April 12 with attached exhibits, and Atlas filed a reply on April 18.
 - At a hearing on April 19, 2023, the Court orally denied Atlas’ three pending motions. No written order or Form 4 order denying Atlas’ motions has been filed. Further, the case was continued to the August 28, 2023 trial term and notice was given that Mr. Welch had died on April 17, 2023, necessitating appointment of a Personal Representative and amendment of the pending complaint.

The 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 and Envtl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989). “[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 County v. SC. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018).

I. There is No Legal or Factual Basis in the Record for Appointment of a Receiver Under S.C. Code Ann. §15-65-10(4) or (5).

Plaintiffs’ receivership motion is predicated upon S.C. Code Ann. §15-65-10(4) & (5).³

Those subsections state:

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 property within this State of foreign corporations; and

(5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

Id.

In support of its motion, Plaintiffs make several demonstrably false assertions or assertions wholly unsupported by any evidence. First, Plaintiffs assert that Atlas mined “many thousands of tons of raw asbestos fibers” and sold raw asbestos to product manufacturers. (Pl.

³ Plaintiffs do not invoke the first three grounds for a receivership. There are no facts or law to support their invocation.

Receiver Mot., p. 2.) This statement is false. (9/7 Dufour Aff. ¶ 3 (“Atlas never mined or milled asbestos”), attached as Exhibit 1.)

Plaintiffs assert Atlas “stiff-arms its creditors in the United States” and “absconded to Canada.” (Pl. Receiver Mot., p. 3.) There is no evidence submitted with the motion or anywhere in the record before the Court showing Atlas has ever “stiff-armed” any creditor in the United States or anywhere in the world for that matter. Plaintiffs are not a creditor of Atlas. They have no judgment against Atlas. Not only is there no evidence that Atlas has not paid a judgment, there is no evidence that there even are any judgments.

In this case (and in others), Atlas has asserted the legitimate defense of lack of personal jurisdiction and is taking steps to fully protect and preserve that defense in this matter. Further, Atlas has not “absconded” to Canada. It is, as the record in this case shows, incorporated in Canada and operated from its principal place of business there and, when it was in the business of manufacturing products, shipped its products from Canada F.O.B. Montreal, Quebec, Canada with payment received in Canada. (9/7 Dufour Aff. ¶ 3, Exhibit 1.)

As to subsection (4), the language of the statute is plain. The first half of the provision, before the word “and,” lists four factual preconditions, one of which must exist before a receivership of any kind may be imposed. The second half of the statute differentiates the scope of the court’s power to act in the case of domestic, as opposed to foreign corporations, if one of the four factual circumstances exists that authorize a receivership in the first place. In that instance – “in like cases”—the court may only appoint a receiver to act upon “the property within this State of foreign corporations,” not generally assume control of the company or act upon any property belonging to it outside of South Carolina. This construction of the statute is consistent with United States Supreme Court precedent recognizing a receiver appointed by a state court has jurisdiction only over assets within that state. *Booth v. Clark*, 58 U.S. 322, 332, 15

L. Ed. 164 (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.”).

There is no evidence to support a finding that any one of the four necessary preconditions to appointment of a receiver under subsection (4) - dissolution, insolvency, imminent danger of insolvency, or forfeiture of corporate rights – exists. In their motion, Plaintiffs make the bald, unsupported assertion that Atlas “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.” (Pl. Receiver Mot., p. 3.) The record evidence is to the contrary or otherwise non-existent. Atlas is “a corporation incorporated and organized under the laws of Canada with its principal place of business in the Province of Quebec, Canada. (9/7 Dufour Aff. ¶ 3, Exhibit 1.) It has not dissolved or forfeited its corporate rights in its place of incorporation. Atlas, nor any subsidiary, ever was organized under South Carolina law. (9/7 Dufour Aff. ¶ 4, Exhibit 1.) Atlas never registered in or applied for authority to do business in South Carolina, never appointed a registered agent, maintained an office, opened a bank account, paid taxes or fees, or maintained any employees, officers or agents in South Carolina. (*Id.* at ¶¶ 4-6, Exhibit 1.) It never sought nor had any corporate rights in South Carolina to forfeit.

Atlas didn’t “flee the United States.” Its place of business has always been Canada and it sent its ordered product from there, F.O.B. Montreal, and received payment for its product there. (*Id.* at ¶ 3, Exhibit 1.)

There is no evidence of any kind in the record that Atlas is currently insolvent or in any imminent danger of being rendered insolvent. Plaintiffs, who make the motion, bear the burden of demonstrating the factual prerequisites for appointment of a receiver. Despite the fact that plaintiffs' counsel is a sophisticated and premier asbestos plaintiffs' law firm and has, in this very case in responding to Atlas' motions, demonstrated its ability to access information regarding Atlas' business operations from repositories of information collected about Atlas or its codefendants dealing with Atlas, it has not produced any document or witness indicating that Atlas has failed to pay judgments entered against it or otherwise demonstrate it is financially distressed. Atlas is actively defending this and other cases, which the law entitles it to do. In sum, there is no proof of any factual prerequisite to support appointment of a receiver despite the hyperbolic, and largely inaccurate statements of Plaintiffs to the contrary.

Further, even if there was record evidence of one of the four factual prerequisites to application of S.C. Code Ann. §15-65-10(4) (which Atlas denies), the court's power to act under that subsection—its subject matter jurisdiction—is limited by the statute to “property within this State” of Atlas, a foreign Corporation. *Id.* Atlas has no property “within this State.” As set forth in the 9/7 Dufour Aff., ¶¶ 5 & 6, Exhibit 1, Atlas has never had an office in South Carolina. It has never had a South Carolina bank account. It never owned real property in South Carolina. There is no property in South Carolina over which a court, and by extension a receiver, whose powers and jurisdiction are no greater than the court which appoints it, may act. There is no evidence of any Atlas property anywhere in South Carolina in the record before the Court.

In support of applying subsection (5), Plaintiffs again resort to hyperbole and inaccurate or unsupported statements. After quoting generally from two cases from the end of the Nineteenth century and beginning of the Twentieth Century, Plaintiffs assert Atlas is “engaged in

an intentional scheme to defraud its creditors by refusing to appear and accept service in the United States after being faced with substantial asbestos-related liabilities.” (Pl. Receiver Mot., p. 4.) There is no evidence that Atlas has defrauded any creditor. Plaintiffs are not creditors; they have no judgment and may never receive one, nor is there any other evidence of any unpaid creditor anywhere in the record of this case. It is obviously untrue that Atlas has refused to appear and accept service in the United States as Atlas has appeared in this very case and entered a defense of lack of personal jurisdiction, a perfectly legitimate defense under the Due Process Clause of the United States Constitution and the law of South Carolina and one it intends to fully pursue in this matter.

There is no evidence of any one factual predicate required to appoint a receiver under either subsection (4) or (5), or any evidence of any property of Atlas located within South Carolina upon which a court may act. Plaintiffs’ request for appointment of a receiver should be denied.

II. **The Appointment of a Receiver Over Atlas Would Violate The Due Process Clause of the United States Constitution Because the Court Lacks Personal Jurisdiction Over Atlas.**

“[T]he Fourteenth Amendment’s Due Process Clause ... limits the power of a state court to render a valid personal judgment against a nonresident defendant.” *Bristol-Meyers Squibb Co. v. Superior Court of California*, 582 U.S. 255, 261-62 (2017). “In order for a state court to exercise specific jurisdiction” under a state long-arm statute like S.C. Code Ann. §36-2-803, which purports to extend the state court’s jurisdiction to the full extent allowed by the Due Process Clause, *see S. Plastics co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 129, 130-31 (1992), “the *suit*’ must ‘aris[e] out of or relate[e] to the *defendant*’s contacts with the

forum’.” *Bristol-Myers Squibb*, 582 U.S. at 262 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); emphasis added).

A. A “Stream of Commerce” Theory is No Longer a Valid Basis for Asserting Specific Personal Jurisdiction Over a Non-Resident Defendant.

At the April 19 hearing on Atlas’ motions to dismiss, for summary judgment, and for a protective order, and at the status conference in which the Court orally held that Atlas was in contempt of the Court, the Court specifically referenced a “stream of commerce” theory of personal jurisdiction to support its denial of the motions, i.e., that Plaintiffs’ could satisfy their burden of proving due process simply by alleging in the complaint that Atlas placed its products into the stream of commerce and expected it to make its way to South Carolina. (See 5/4/2023 Hrg. Trans., p. 19, attached as Exhibit 2 (the transcript for the 4/19 hearing had not yet been received).) Since the South Carolina Supreme Court’s 2008 decision in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008) articulating a “stream of commerce” type of approach, *Id.* at 90, 666 S.E.2d at 222-23 (which involved a taxation matter, not a products liability suit), the United States Supreme Court has addressed the question of specific jurisdiction over a non-resident product manufacturer in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011); *Bristol-Myers*; and *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1025 (2021). In those decisions, the Supreme Court emphasized that, for specific jurisdiction, due process can only be satisfied if the suit is connected to the forum by the actions of the defendant, not by the actions of third parties. Here, there is a lack of allegations or evidence that could meet this standard.

To meet the power prong of the due process test for specific personal jurisdiction, the suit must arise out of or relate to the **defendant’s** contacts with the forum. See *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–94, 611 S.E.2d 505, 509–10 (2005); *Ford*, 141 S. Ct. at 1025; *Bristol-Myers*, 137 S. Ct. at 1780; *J. McIntyre*, 564 U.S. at 881. Specifically, the court must “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*, 310 S.C. at 260, 423 S.E.2d at 131 (emphasis added); *see also Ford*, 141 S. Ct. at 1025. Specific personal jurisdiction cannot exist if the cause of action is unrelated to the **defendant’s** contacts with the forum. *Id.*

Since *Sumatra* was decided in 2008—in addition to *J. McIntyre, Bristol-Myers*, and *Ford*—the United States Supreme Court has spoken several times on issues of personal jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Taken together, these cases reinforce two principles: (1) a non-resident defendant cannot be subject to personal jurisdiction in a state based on the unilateral actions of third parties, and (2) the exercise of specific jurisdiction requires a plaintiff to establish that his claims are sufficiently related to minimum contacts formed by the defendant with the forum state to satisfy due process.

Further, the United States Supreme Court rejected “nationwide” stream of commerce jurisdiction in *J. McIntyre*, decided three years after *Sumatra*. Indeed, the argument advanced by Plaintiffs and utilized by the Court in denying Atlas’ motions to dismiss, summary judgment, and for a protective order—that, irrespective of how a product arrived in the state, specific jurisdiction exists in every state when a manufacturer allegedly targets the United States as a whole—is precisely the argument that the New Jersey Supreme Court accepted in *Nicastro v. McIntyre Machinery America, Ltd.*, 987 A.2d 575, 592 (N.J. 2010), which the United States Supreme Court later reversed. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011). Notably, in reaching its conclusion, the New Jersey Supreme had cited to this Court’s opinion in *Sumatra* in support. 987 A.2d at 588, n.1.

Allowing the exercise of personal jurisdiction based on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina is inconsistent with the United States Supreme Court’s decisions. “[T]he mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” *Helicopteros Nacionales de Colombia, S.A.*

v. Hall, 466 U.S. 408, 417 (1984). The “defendant’s conduct [] must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014); *see also Cockrell*, 363 S.C. at 491–92, 611 S.E.2d at 508 (“[W]e conclude that South Carolina also does not have personal jurisdiction over the respondents in this case. The bats did not arrive in South Carolina through the respondents’ efforts.”); *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 334, 594 S.E.2d 878, 885 (Ct. App. 2004) (“The fruits of [defendant’s] labor . . . arrived in South Carolina not through his efforts, but through the efforts of others, and therefore cannot serve as the basis for jurisdiction.”).

B. Neither the Allegations of the Complaint Nor the Evidence Submitted by the Parties in Supporting or Opposing Atlas’ Motions Establish a Prima Facie Case of Specific Personal Jurisdiction.

“The question of personal jurisdiction over a nonresident defendant is one that 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). At the pretrial stage, the burden is on the plaintiff to prove personal jurisdiction over a nonresident by a prima facie showing of jurisdiction either in the complaint or in affidavits. *Id.* at 491, 611 S.E.2d at 508. “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.” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

1. Plaintiff’s Exposure Allegations

Plaintiffs allege that Mr. Welch suffered from mesothelioma caused by exposure to asbestos-containing insulation while working for Daniel Construction installing instruments at the Chemstrand/Monsanto plant in Greenwood, South Carolina. It is undisputed that Mr. Welch worked at this facility for less than a year, and that his employment at this plant began, at the

earliest, in 1965, and ended early in the second quarter of 1967. *See* excerpts from trial deposition of Mr. Welch taken October 14, 2022, attached as Exhibit 3 at pages 13-14; *see* Social Security print out, attached as Exhibit 4, at pages 1-2. He did not know the brand name or manufacturer of pipe insulation used at the Monsanto/Chemstrand plant. *See* excerpts from discovery deposition of Mr. Welch taken on October 11, 2022, attached as Exhibit 5 at p. 87; *see* excerpts from discovery deposition taken on October 7, 2022, attached as Exhibit 6 at p. 18. Not only did Plaintiff not identify Atlas products at the plant, nothing in the documents submitted by Plaintiffs, discussed *infra*, pp. 13-14 and Exhibit 8, and no witness/coworker or other testimony identify Atlas product at the plant at the relevant time period.

2. Plaintiff's Jurisdictional Allegations in the Operative Complaint.

The Third Amended Complaint contains four paragraphs that touch upon the issue of personal jurisdiction over defendants. (Third Amend. Compl. ¶¶ 2, 6, 9, and 27.) In the first three of these paragraphs, the allegations are conclusory and either apply to all Defendants named in the case or to a subset, "Product Defendants," not specifically to Atlas. Paragraph 27 actually names Atlas, but the allegation is again conclusory. It contains no facts concerning what business Atlas did in South Carolina, how Atlas carried out business allegedly done in South Carolina, or when any such business was supposedly done in South Carolina.

Settled precedent in this state requires the complaint to allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008). In *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), the complaint alleged that the court had personal jurisdiction based on the same kind of allegations as found in Plaintiffs' Third Amended Complaint:

[E]ach [defendant] has caused tortious injury within this State as set forth herein, and each regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this State as contemplated under the statute.

Id. at 148, 723 S.E.2d at 835. The South Carolina Court of Appeals held that, even with a liberal construction of the long-arm statute and the complaint, the plaintiff had “failed to allege any facts that show that [the defendants] (1) have regular transactions of business or solicitation, (2) engage in a persistent course of conduct, (3) derive substantial revenue, or (4) consume goods or services rendered in South Carolina.” *Id.* at 151, 723 S.E.2d at 839 (emphasis added). Here, as in *Sullivan*, merely alleging general legal conclusions does not establish a prima facie case of personal jurisdiction. *Id.*

3. Atlas’ Evidence

In support of its motion to dismiss, motion for summary judgment and motion for a protective order, Atlas submitted two affidavits from Mr. Richard Dufour, one dated September 7, 2022, attached as Exhibit 1, and one dated December 28, 2022, attached as Exhibit 7.

Pertinent, actual facts from the affidavits pertaining to Atlas and South Carolina are as follows:

- Atlas manufactured asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit 1 at ¶3.⁴
- Atlas Turner never has been a corporation organized under the laws of South Carolina, and Atlas Turner has no subsidiary company that did business in South Carolina. Atlas Turner has never been, registered with South Carolina, nor has Atlas Turner ever applied for authority to do business in South Carolina. Exhibit 1 at ¶4.
- Atlas Turner has never appointed nor authorized any agent to accept process for it in South Carolina. Atlas Turner has never maintained an office in South Carolina. Atlas Turner had no bank accounts in South Carolina and it never owned any real

⁴ As previously noted, *supra*, pp. 3-4, Atlas never mined or milled raw asbestos contrary to the bald statement in Plaintiffs’ Receiver Motion, p. 2, to the contrary.

property in South Carolina. Atlas Turner has never transacted business South Carolina. Exhibit 1 at ¶5.

- Atlas Turner paid no taxes or fees in South Carolina and did not maintain any employees, officers or agents in South Carolina. Exhibit 1 at ¶6.

Most importantly, however, Atlas Turner has no records of sales to any company in South Carolina prior to 1968, much less any sales to the plant where Plaintiff worked or to the contractor for work installing asbestos products at the Monsanto plant while Plaintiff worked there. See 12/28 Dufour Aff, attached as Exhibit 7 at ¶12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material. Id., Exhibit 7 at ¶13. Thus, Plaintiffs' causes of action did not arise out of or relate to *Atlas'* "contacts" with South Carolina because Atlas had no contacts with the forum or the sole place where Mr. Welch claims possible exposure to the type of products Atlas manufactured.

4. Plaintiffs' Alleged "Evidence" of Atlas Products at the Monsanto Plant

In Plaintiffs' Opposition, filed April 12, 2023, to Atlas' Motion for Summary Judgment and Motion to Dismiss, Plaintiffs included Exhibits 13-22 in an attempt to establish some contact by Atlas with Plaintiff and South Carolina during the relevant time period (before 1968) at the Monsanto plant. Assuming for sake of argument that Plaintiff could establish the admissibility of such documentation at trial,⁵ Atlas demonstrated in its document by document analysis of each piece of evidence submitted by Plaintiffs, which is incorporated into this memorandum by reference, that Plaintiffs' exhibits actually confirm Atlas' statements regarding sales of its products: there are no records of sales to any company in South Carolina prior to 1968; and

⁵ Atlas does not concede the authenticity (SCRE 901), relevance (SCRE 401, 402, & 403), requirement of personal knowledge (SCRE 602), hearsay (SCRE 801, 802), and other evidentiary objections that may be asserted against admission of these documents at trial of the case.

there are no records or any documents that show any Atlas products present at the Chemstrand/Monsanto plant during the relevant time at issue in this case, which is either 1965-66 or 1966 until early second quarter 1967. *See* Reply to Plaintiffs' Opposition (filed April 18, 2023), pages 11-16, attached as Exhibit 8.

While some of Plaintiffs exhibits show that Atlas— at various points in time — sold products to entities in South Carolina, simply showing Atlas sold products to the state is not sufficient to establish the Court has specific personal jurisdiction. South Carolina case law is clear: to establish specific personal jurisdiction over Atlas, Plaintiffs must show both sufficient minimum contacts with the forum and that Plaintiffs' claims arise out of those contacts. *S. Plastics*, 310 S.C. at 260, 423 S.E.2d at 131. *See also Bristol-Meyers*, 137 S.Ct. at 1780; *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). The documents Plaintiffs provide fail to establish that any Atlas product was at the Monsanto plant before, or during, the time Mr. Welch worked there. Consequently, Plaintiffs have failed to show that Mr. Welch was exposed to asbestos from an Atlas product. Because there is no evidence that Mr. Welch was exposed to an Atlas product, his claims cannot be said to arise out of Atlas' contacts with this State. The motion to appoint a receiver over Atlas should be denied because the Court lacks personal jurisdiction over Atlas.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion to appoint a receiver.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.

David G. Traylor, Jr.

SC Bar No. 05628

E-Mail: david.traylor@nelsonmullins.com

Robert O. Meriwether

SC Bar No. 09828

E-Mail: robert.meriwether@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

May 15, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Melvin G. Welch and Donna B. Welch,	)	C/A NO. 2022-CP-40-03834
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>Atlas Turner Inc.'s Motion to</u>
	)	<u>Reconsider and Vacate the Contempt</u>
3M Company, et al.,	)	<u>Order of May 11, 2023</u>
	)	
Defendants.	)	
	)	
	)	

Pursuant to SCRCP 52(b), Atlas Turner, Inc. ("Atlas")¹ moves the Court to reconsider and vacate its order finding Atlas in contempt of the Court on May 11, 2023. As set forth more fully below, Atlas seeks reconsideration on two grounds: (1) as presented in prior filings, which are fully adopted and incorporated herein², the Court lacks specific personal jurisdiction over Atlas

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not two separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner Inc. are two different names for the same company. The proper name of the sole defendant is Atlas Turner, Inc.

² See:

- Atlas' Motions to Dismiss for Lack of Personal Jurisdiction with a Memorandum in Support and an affidavit from Richard Dufour dated September 7, 2022 ("9/7 Dufour Aff.") filed with each iteration of Plaintiffs' complaint;
- Atlas' Amended Memorandum in Support of the Motion to Dismiss with exhibits, including a second affidavit from Richard Dufour dated December 28, 2022 ("12/28 Dufour Aff."), filed December 30, 2022;
- Atlas' Motion for Protective Order and Memorandum in Support filed January 3, 2023.
- Atlas' Motion for Summary Judgment (which included the Motion to Dismiss) and a Memorandum in Support with affidavits and other exhibits filed March 20, 2023;

pursuant to S.C. Code Ann. § 36-2-803 and the Due Process Clause of the United State Constitution as recently explicated by the United States Supreme Court; and (2) Atlas was not willfully disobedient, and did not voluntarily or intentionally fail to comply with this Court's order.

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). 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. *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.

-
- Atlas' Motions for Protective Orders/Memos in Support with exhibits, regarding newly served Notices of 30(b)(6) depositions filed April 3, 2023, and April 6, 2023;
 - Atlas' Motion to Quash Trial Subpoena, filed April 14, 2023;
 - Atlas' Replies to Plaintiffs' Responses in Opposition to Atlas' Motions to Dismiss and Motions for Protective Order, filed April 18, 2023;
 - Section II of Atlas' Response and Objection to Appointment of a Receiver, filed May 15, 2023.

ARGUMENT

I. The Order Holding Atlas Turner, Inc. in Contempt Violates The Due Process Clause of the United States Constitution Because the Court Lacks Personal Jurisdiction Over Atlas.

“[T]he Fourteenth Amendment’s Due Process Clause ... limits the power of a state court to render a valid personal judgment against a nonresident defendant.” *Bristol-Meyers Squibb Co. v. Superior Court of California*, 582 U.S. 255, 261-62 (2017). “In order for a state court to exercise specific jurisdiction” under a state long-arm statute like S.C. Code Ann. §36-2-803, which purports to extend the state court’s jurisdiction to the full extent allowed by the Due Process Clause, *see S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 129, 130-31 (1992), “‘the suit’ must ‘aris[e] out of or relate[e] to the defendant’s contacts with the forum’.” *Bristol-Myers Squibb*, 582 U.S. at 262 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); emphasis added).

A. A “Stream of Commerce” Theory is No Longer a Valid Basis for Asserting Specific Personal Jurisdiction Over a Non-Resident Defendant.

At the April 19 hearing on Atlas’ motions to dismiss, for summary judgment, and for a protective order, and at the status conference in which the Court orally held that Atlas was in contempt of the Court, the Court specifically referenced a “stream of commerce” theory of personal jurisdiction to support its denial of the motions, i.e., that Plaintiffs’ could satisfy their burden of proving due process simply by alleging in the complaint that Atlas placed its products into the stream of commerce and expected it to make its way to South Carolina. (See 5/4/2023 Hrg. Trans., p. 19, attached as Exhibit 1 (the transcript for the 4/19 hearing had not yet been received).) Since the South Carolina Supreme Court’s 2008 decision in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 666 S.E.2d 218 (2008) articulating a “stream of commerce” type of approach, *Id.* at 90, 666 S.E.2d at 222-23 (which involved a taxation matter, not a products liability suit), the United States Supreme Court has addressed the question of specific jurisdiction over a non-

resident product manufacturer in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011); *Bristol-Myers*; and *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1025 (2021). In those decisions, the Supreme Court emphasized that, for specific jurisdiction, due process can only be satisfied if the suit is connected to the forum by the actions of the defendant, not by the actions of third parties. Here, there is a lack of allegations or evidence that could meet this standard.

To meet the power prong of the due process test for specific personal jurisdiction, the suit must arise out of or relate to the **defendant’s** contacts with the forum. See *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491–94, 611 S.E.2d 505, 509–10 (2005); *Ford*, 141 S. Ct. at 1025; *Bristol-Myers*, 137 S. Ct. at 1780; *J. McIntyre*, 564 U.S. at 881. Specifically, the court must “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*, 310 S.C. at 260, 423 S.E.2d at 131 (emphasis added); see also *Ford*, 141 S. Ct. at 1025. Specific personal jurisdiction cannot exist if the cause of action is unrelated to the **defendant’s** contacts with the forum. *Id.*

Since *Sumatra* was decided in 2008—in addition to *J. McIntyre*, *Bristol-Myers*, and *Ford*—the United States Supreme Court has spoken several times on issues of personal jurisdiction. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Taken together, these cases reinforce two principles: (1) a non-resident defendant cannot be subject to personal jurisdiction in a state based on the unilateral actions of third parties, and (2) the exercise of specific jurisdiction requires a plaintiff to establish that his claims are sufficiently related to minimum contacts formed by the defendant with the forum state to satisfy due process.

Further, the United States Supreme Court rejected “nationwide” stream of commerce jurisdiction in *J. McIntyre*, decided three years after *Sumatra*. Indeed, the argument advanced by Plaintiffs and utilized by the Court in denying Atlas’ motions to dismiss, summary judgment, and for

a protective order—that, irrespective of how a product arrived in the state, specific jurisdiction exists in every state when a manufacturer allegedly targets the United States as a whole—is precisely the argument that the New Jersey Supreme Court accepted in *Nicastro v. McIntyre Machinery America, Ltd.*, 987 A.2d 575, 592 (N.J. 2010), which the United States Supreme Court later reversed. See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011). Notably, in reaching its conclusion, the New Jersey Supreme had cited to this Court’s opinion in *Sumatra* in support. 987 A.2d at 588, n.1.

Allowing the exercise of personal jurisdiction based on allegations that a defendant placed a product into the stream of commerce with knowledge or awareness or expectation it might make its way to South Carolina is inconsistent with the United States Supreme Court’s decisions. “[T]he mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). The “defendant’s conduct [] must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014); see also *Cockrell*, 363 S.C. at 491–92, 611 S.E.2d at 508 (“[W]e conclude that South Carolina also does not have personal jurisdiction over the respondents in this case. The bats did not arrive in South Carolina through the respondents’ efforts.”); *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 334, 594 S.E.2d 878, 885 (Ct. App. 2004) (“The fruits of [defendant’s] labor . . . arrived in South Carolina not through his efforts, but through the efforts of others, and therefore cannot serve as the basis for jurisdiction.”).

B. Neither the Allegations of the Complaint Nor the Evidence Submitted by the Parties in Supporting or Opposing Atlas’ Motions Establish a Prima Facie Case of Specific Personal Jurisdiction.

“The question of personal jurisdiction over a nonresident defendant is one that 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). At the pretrial stage, the burden is on the plaintiff to prove personal jurisdiction

over a nonresident by a prima facie showing of jurisdiction either in the complaint or in affidavits. *Id.* at 491, 611 S.E.2d at 508. “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.” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

1. Plaintiff’s Exposure Allegations

Plaintiffs allege that Mr. Welch suffered from mesothelioma caused by exposure to asbestos-containing insulation while working for Daniel Construction installing instruments at the Chemstrand/Monsanto plant in Greenwood, South Carolina. It is undisputed that Mr. Welch worked at this facility for less than a year, and that his employment at this plant began, at the earliest, in 1965, and ended early in the second quarter of 1967. *See* excerpts from trial deposition of Mr. Welch taken October 14, 2022, attached as Exhibit 2 at pages 13-14; *see* Social Security print out, attached as Exhibit 3, at pages 1-2. He did not know the brand name or manufacturer of pipe insulation used at the Monsanto/Chemstrand plant. *See* excerpts from discovery deposition of Mr. Welch taken on October 11, 2022, attached as Exhibit 4 at p. 87; *see* excerpts from discovery deposition taken on October 7, 2022, attached as Exhibit 5 at p. 18. Not only did Plaintiff not identify Atlas products at the plant, nothing in the documents submitted by Plaintiffs, discussed *infra*, pp. 8-9, and no witness/coworker or other testimony identify Atlas product at the plant at the relevant time period.

2. Plaintiff’s Jurisdictional Allegations in the Operative Complaint.

The Third Amended Complaint contains four paragraphs that touch upon the issue of personal jurisdiction over defendants. (Third Amend. Compl. ¶¶ 2, 6, 9, and 27.) In the first three of these paragraphs, the allegations are conclusory and either apply to all Defendants named in the

case or to a subset, “Product Defendants,” not specifically to Atlas. Paragraph 27 actually names Atlas, but the allegation is again conclusory. It contains no facts concerning what business Atlas did in South Carolina, how Atlas carried out business allegedly done in South Carolina, or when any such business was supposedly done in South Carolina.

Settled precedent in this state requires the complaint to allege specific facts, not just conclusory allegations, to establish the contacts necessary to invoke specific jurisdiction. *See Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 433, 434, 436, 665 S.E.2d 660, 665–67 (Ct. App. 2008). In *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835, 838 (Ct. App. 2012), the complaint alleged that the court had personal jurisdiction based on the same kind of allegations as found in Plaintiffs’ Third Amended Complaint:

[E]ach [defendant] has caused tortious injury within this State as set forth herein, and each regularly does or solicits business, or engages in a persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this State as contemplated under the statute.

Id. at 148, 723 S.E.2d at 835. The South Carolina Court of Appeals held that, even with a liberal construction of the long-arm statute and the complaint, the plaintiff had “failed to allege any facts that show that [the defendants] (1) have regular transactions of business or solicitation, (2) engage in a persistent course of conduct, (3) derive substantial revenue, or (4) consume goods or services rendered in South Carolina.” *Id.* at 151, 723 S.E.2d at 839 (emphasis added). Here, as in *Sullivan*, merely alleging general legal conclusions does not establish a prima facie case of personal jurisdiction. *Id.*

3. Atlas’ Evidence

In support of its motion to dismiss, motion for summary judgment and motion for a protective order, Atlas submitted two affidavits from Mr. Richard Dufour, one dated September 7, 2022, attached as Exhibit 6, and one dated December 28, 2022, attached as Exhibit 7. Pertinent, actual facts from the affidavits pertaining to Atlas and South Carolina are as follows:

- Atlas manufactured asbestos containing products, but all sales of said products were made F.O.B. Montreal, Quebec, Canada and all payments were made to it in Quebec, Canada. Exhibit 6 at ¶3.
- Atlas Turner never has been a corporation organized under the laws of South Carolina, and Atlas Turner has no subsidiary company that did business in South Carolina. Atlas Turner has never been, registered with South Carolina, nor has Atlas Turner ever applied for authority to do business in South Carolina. Exhibit 6 at ¶4.
- Atlas Turner has never appointed nor authorized any agent to accept process for it in South Carolina. Atlas Turner has never maintained an office in South Carolina. Atlas Turner had no bank accounts in South Carolina and it never owned any real property in South Carolina. Atlas Turner has never transacted business South Carolina. Exhibit 6 at ¶4.
- Atlas Turner paid no taxes or fees in South Carolina and did not maintain any employees, officers or agents in South Carolina. Exhibit 6 at ¶6.

Most importantly, however, Atlas has no records of sales to any company in South Carolina prior to 1968, much less any sales to the plant where Plaintiff worked or to the contractor for work installing asbestos products at the Monsanto plant while Plaintiff worked there. See 12/28 Dufour Aff, attached as Exhibit 7 at ¶12. Further, Atlas Turner never manufactured or sold any asbestos-containing brake material, clutch material, or gasket material, the only other type of exposure identified by Plaintiffs. *Id.*, Exhibit 7 at ¶13. Thus, Plaintiffs' causes of action did not arise out of or relate to **Atlas'** "contacts" with South Carolina because Atlas had no contacts with the forum or the sole place where Mr. Welch claims possible exposure to the type of products Atlas manufactured.

4. Plaintiffs' Alleged "Evidence" of Atlas Products at the Monsanto Plant

In Plaintiffs' Opposition, filed April 12, 2023, to Atlas' Motion for Summary Judgment and Motion to Dismiss, Plaintiffs included Exhibits 13-22 in an attempt to establish some contact by Atlas with Plaintiff and South Carolina during the relevant time period (before 1968) at the

Monsanto plant. Assuming for sake of argument that Plaintiff could establish the admissibility of such documentation at trial,³ Atlas demonstrated in its document by document analysis of each piece of evidence submitted by Plaintiffs, which is incorporated into this memorandum by reference, that Plaintiffs' exhibits actually confirm Atlas' statements regarding sales of its products: there are no records of sales to any company in South Carolina prior to 1968; and there are no records or any documents that show any Atlas products present at the Chemstrand/Monsanto plant during the relevant time at issue in this case, which is either 1965-66 or 1966 until early second quarter 1967. See Reply to Plaintiffs' Opposition (filed April 18, 2023), pages 11-16, attached as Exhibit 8.

While some of Plaintiffs exhibits show that Atlas— at various points in time — sold products to entities in South Carolina, simply showing Atlas sold products to the state is not sufficient to establish the Court has specific personal jurisdiction. South Carolina case law is clear: to establish specific personal jurisdiction over Atlas, Plaintiffs must show both sufficient minimum contacts with the forum and that Plaintiffs' claims arise out of those contacts. *S. Plastics*, 310 S.C. at 260, 423 S.E.2d at 131. See also *Bristol-Meyers*, 137 S.Ct. at 1780; *World-Wide Volkswagen Corp.*, 444 U.S. at 296-297; *Hanson v. Denckla*, 257 U.S. 235, 251, 253 (1958). The documents Plaintiffs provide fail to establish that any Atlas product was at the Monsanto plant before, or during, the time Mr. Welch worked there. Consequently, Plaintiffs have failed to show that Mr. Welch was exposed to asbestos from an Atlas product. Because there is no evidence that Mr. Welch was exposed to an Atlas product, his claims cannot be said to arise out of Atlas' contacts with this

³ Atlas does not concede the authenticity (SCRE 901), relevance (SCRE 401, 402, & 403), requirement of personal knowledge (SCRE 602), hearsay (SCRE 801, 802), and other evidentiary objections that may be asserted against admission of these documents at trial of the case.

State. The Order Holding Atlas Turner, Inc. in Contempt should be vacated because the Court lacks personal jurisdiction over Atlas.

II. Defendant Atlas Was Not Willfully Disobedient, and Did Not Voluntarily or Intentionally Fail to Comply With This Court's Order

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

Atlas Turner 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 9:

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 § 5 (emphasis added).

Quebec courts have made clear that other Quebec “concerns” like Atlas are subject to criminal and/or civil penalties if they produce, in United States litigation, information or documents from their files in Quebec. In *Asbestos Corporation Limited v. Eagle Picher Industries*,

Inc. (Court of Appeal, Montreal, February 24, 1984), a copy of which is attached as Exhibit 10, the court ruled that if a witness was required to consult business records or archives of the employer, a Quebec “business concern,” in order to provide his testimony, such testimony would fall under the prohibition set out in Section 2 of the QBCRA. *See* Exhibit 10 at p. 11. Further, Judge Beauregard stated that “the filing ... of the documents ... joined to an examination of an agent of [Asbestos Corporation Limited] (“ACL”) whose testimony on these documents will be taken down by a stenographer who will translate his notes for the purposes of the foreign tribunal is equivalent, ... to the transmission out of Quebec of a ‘résumé or summary’ of the files of [ACL].” *Id.* at p. 11. Also, Judge Tyndale’s opinion, which follows the opinion of Judge Beauregard, states the QBCRA “[o]bviously ... forbids production of the documents Moreover, inspection by an attorney acting for Respondent would be useless unless he took notes, and this would lead to the export of a résumé or digest. *Id.* at pp. 1-2.

In *Pelnar v. Ins. Co. of N. America* (Court of Appeal, Montreal, June 25, 1985) a copy of which is attached as Exhibit 11, the court held that the prohibition set out in Section 2 of the QBCRA is not only aimed towards business concerns, their officers or employees, but equally towards any persons who may have, or have had, in their possession documents or résumés thereof. *See* Exhibit 11 at pp. 5-6. In addition, in *Renault v. Bell Asbestos Mines, Ltd.* (Court of Appeal, Montreal, August 13, 1980), a copy of which is attached as Exhibit 12, the court ruled that the word “document” related to much more than just accounting documents and that the QBCRA must be interpreted liberally and broadly. *See* Exhibit 12 at pp. 4-5.

Atlas 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).

However, with due respect to the judges in each case, those cases failed to accurately assess the operation of the QBCRA upon Quebec entities like Atlas and the potential exposure they faced for compliance. For instance, in *Asbestos Corporation Limited v. Eagle Picher Industries, Inc.* (Court of Appeal, Montreal February 24, 1984), the Quebec Court of Appeal decided that if a witness is required to consult records or archives, such testimony would fall under the prohibition of the Section 2 of the QBCRA. See Exhibit 10, pp. 9-11; also Judge Tyndale's opinion at pp.1-2. Further, in *Lac D'Amiante Du Quebec Limited*, attached as Exhibit 13, the Court held that the application of the QBCRA did not require a preliminary request from the Attorney General. See Exhibit 13, at p. 289. Therefore, the South Carolina federal courts' interpretations in *Lyons* and *Central Wesleyan* understate the liability of a company in Atlas' position under the QBCRA and the dilemma it faces when called upon to produces documents and a witness in a Rule 30(b)(6) situation like the one that has prompted this Court's contempt order. Such decisions only show that Atlas is stuck between the proverbial "rock and a hard place" or beholden to two masters – stuck between facing mandatory contempt of court in its domicile or suffering contempt and displeasing this Court if it does not produce discovery to Plaintiffs' satisfaction.

Atlas takes its discovery obligations seriously but also asks this Court to recognize and consider that Atlas cannot please both masters at the same time. Application of fairness to the situation should enable Plaintiffs to obtain as much discovery as possible while not subjecting Atlas to criminal and/or civil penalties in its domicile. Several of this Court's sister courts have reached this precise result.

For example, in *Jennis v. Turner and Newall Ltd.*, No. 83-61-L (D. N.H. Dec. 5, 1984), a copy of which is attached as Exhibit 14, plaintiff served interrogatories to ACL to investigate how much raw asbestos ACL sold to her employer. Exhibit 14, at p. 1. 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 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 15, ACL sought a protective order from the plaintiff's discovery due to threat of sanctions under the QBCRA. Exhibit 15, 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 16, 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 16, 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 Atlas faces criminal and/or penalties if it violates the QBCRA or contempt and severe sanctions (Plaintiffs have requested that Atlas' answer be struck and it be placed effectively in default) 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).⁴ In *Aerospatiale*, the Supreme Court dealt with a French "Blocking 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

⁴ Atlas Turner 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. This is the approach taken by other United States courts cited *supra*, pp. 12-14.

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 Atlas. As for the second factor – the degree of specificity – many of Plaintiffs’ requests are overly broad.⁵ For example, Topic 65 asks: beginning in the year that Defendant first manufactured, marketed, produced...sold...any asbestos-containing products and continuing through the present day, the identity [sic] each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person’s current or last known address and whether the person is currently alive or dead, if known. Also Topic 69 is “All information relating to the Defendant’s knowledge of asbestos.” As for the third factor – the origination of the information – this factor weighs heavily in favor of Atlas since the information sought did not originate in the United States. As for the fourth factor – the availability of alternative means for securing the information – this factor weighs in favor of Atlas.

B. Atlas Lacks Individuals with Personal Knowledge and for the Most Part Does Not Maintain or Possess the Records That Would be Necessary to Educate a Witness to be Able to Testify to Matters Contained in the 30(b)(6) Notices.

As noted in Mr. Dufour’s affidavit dated December 28, 2022, Atlas Turner ceased all operations in 1986, 37 years or approximately a generation ago. It has no current employees; it has no former employees competent to testify to the topics listed in the 30(b)(6) Notices, and for the most part does not even maintain or possess records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notice. To the extent that relevant

⁵ See Plaintiffs’ First Amended Notice of 30(b)(6) Deposition of Atlas Turner, Inc. and Subpoena Duces Tecum, attached as Exhibit 17.

records do exist, their production would be prohibited by the QBCRA as interpreted by the courts in Canada and the Province of Quebec, as set forth above. See Exhibit 7 at ¶¶ 10, 11, 14, 15.

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).

Due to Atlas' unique circumstances, this Court should find that Atlas was not willfully disobedient and did not voluntarily or intentionally fail to comply with this Court's order. The Court's contempt order should be vacated.

CONCLUSION

For the foregoing reasons, the Court should vacate its Order Holding Atlas Turner Inc. in Contempt.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

May 22, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Melvin G. Welch and Donna B. Welch,	)	C/A NO. 2022-CP-40-03834
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>Atlas Turner Inc.'s Response and</u>
	)	<u>Objection to Plaintiffs' Motion to Strike</u>
3M Company, et al.,	)	<u>Its Answer</u>
	)	
Defendants.	)	
	)	
	)	

Atlas Turner, Inc. ("Atlas")¹ responds and objects to Plaintiffs' May 11, 2023 Motion to Strike its answer to the Third Amended Complaint as a punishment for this Court's finding Atlas in contempt of Court. Atlas objects on two grounds: (1) as argued in Atlas' Motion for Reconsideration filed May 22, 2023, which is incorporated in full into this response and objection, the Court lacks personal jurisdiction over Atlas pursuant to S.C. Code Ann. § 36-2-803 and the Due Process Clause of the United State Constitution as recently explicated by the United States Supreme Court;² and (2) striking Atlas's answer is unduly harsh and goes beyond that which is necessary. The Court should, therefore, deny Plaintiffs' request.

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not two separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner Inc. are two different names for the same company. The proper name of the sole defendant is Atlas Turner, Inc.

² See also the following filings of Atlas asserting in whole or in pertinent part the defense of lack of personal jurisdiction at each appropriate stage of the case, each of which are incorporated by reference into this response and objection:

- Atlas' Motions to Dismiss for Lack of Personal Jurisdiction with a Memorandum in Support and an affidavit from Richard Dufour dated September 7, 2022 ("9/7 Dufour Aff.") filed with each iteration of Plaintiffs' complaint;

As discussed in Section II of Atlas' motion to reconsider this Court's order finding it in contempt, which Atlas incorporates by reference as if set forth fully herein, Atlas's refusal to participate in discovery as ordered by the Court is not a willful act exhibiting bad faith or gross indifference to Plaintiffs' rights. Atlas's noncompliance stems from its repeatedly asserted position that this Court lacks personal jurisdiction over it, the fact that compliance with the Court's order would subject it to penalties in Canada, and the fact that Atlas has no records of sales to any company in South Carolina prior to 1968 (*see* 12/28 Dufour Affidavit ¶ 12; Mr. Welch's only alleged exposure to Atlas' insulation products occurred before 1968).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion to Strike Atlas' Answer.

-
- Atlas' Amended Memorandum in Support of the Motion to Dismiss with exhibits, including a second affidavit from Richard Dufour dated December 28, 2022 ("12/28 Dufour Aff."), filed December 30, 2022;
 - Atlas' Motion for Protective Order and Memorandum in Support filed January 3, 2023.
 - Atlas' Motion for Summary Judgment (which included the Motion to Dismiss) and a Memorandum in Support with affidavits and other exhibits filed March 20, 2023;
 - Atlas' Motions for Protective Orders/Memos in Support with exhibits, regarding newly served Notices of 30(b)(6) depositions filed April 3, 2023, and April 6, 2023;
 - Atlas' Motion to Quash Trial Subpoena, filed April 14, 2023;
 - Atlas' Replies to Plaintiffs' Responses in Opposition to Atlas' Motions to Dismiss and Motions for Protective Order, filed April 18, 2023;
 - Section II of Atlas' Response and Objection to Appointment of a Receiver, filed May 15, 2023.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ David G. Traylor, Jr.
David G. Traylor, Jr.
SC Bar No. 05628
E-Mail: david.traylor@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Atlas Turner, Inc.

Columbia, South Carolina

May 23, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO. 2022-CP-40-03834

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

vs.

3M Company, et al.,

Defendants.

**Atlas Turner Inc.'s Supplemental Response and
Objection to the Plaintiffs' Motion to Appoint a
Receiver**

Atlas Turner, Inc. ("Atlas")¹, by and through its undersigned counsel, submits this Supplemental Response and Objection to the Plaintiffs' Motion to Appoint a Receiver.² Plaintiffs have not identified any assets of Atlas located in the State of South Carolina. Atlas is a Canadian company, and South Carolina's receivership statute does not authorize a South Carolina court to create a receivership over a foreign company that does not have any assets located in South Carolina. To the contrary, principles of comity prohibit extraterritorial reach beyond the State's borders to property of a foreign company located outside of South Carolina. Therefore, Plaintiffs' Motion to Appoint a Receiver should be denied.

¹ Although Atlas Asbestos Co. and Atlas Turner, Inc. are named in the Third Amended Complaint as separate defendants, they are not two separate companies. Atlas Asbestos Co. changed its name to Atlas Turner, Inc. Therefore, Atlas Asbestos Co. and Atlas Turner, Inc. are two different names for the same company. The proper name of the sole defendant is Atlas Turner, Inc.

² Atlas previously submitted its Response and Objection to the Plaintiff's Motion to Appoint a Receiver on May 15, 2023. As the Court knows, prior counsel for Atlas faced a conflict that arose during the briefing of this motion. As a result, counsel submitted a substitution of counsel. This supplemental memorandum specifically addresses items not addressed fully in the prior memorandums. This filing is intended to supplement, rather than replace the prior filings. Atlas incorporates by reference its May 15, 2023 Response and Objection to Plaintiffs' Motion to Appoint a Receiver and the filings incorporated therein.

I. A receiver has no extraterritorial authority, and therefore no receivership can exist as to Atlas unless it has property located within the State of South Carolina.³

The limited territorial authority of a receiver is well established. As the United States Supreme Court recognized in *Booth v. Clark*, 58 U.S. 322 (1854), a receiver is an officer of the court, and his jurisdictional role is confined to the territory of the court. *Id.* at 332 (“Indeed, 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 him to sue for such property, we understand the decisions of that State as confining his action to the State of New York.”).

Recognizing this limitation, the General Assembly limited the creation of receiverships over foreign companies to property located within the State of South Carolina. S.C. Code § 15-65-10(4) (limiting receivership to “property within this State of foreign corporations”). Thus, without property located within the State, a receivership is improper.

Plaintiffs bear the burden of proving a receivership is proper, including showing the existence of property located within this State. They have not done so. Plaintiffs rely on alleged insurance policies, claiming that any such policies would be property located in South Carolina. This reliance is misplaced because the South Carolina Supreme Court has already held that policies of liability insurance are not property subject to in rem jurisdiction. Moreover, there is no evidence that any policies insured lives, interests or property in South Carolina. Atlas was a Canadian company that sold products from Canada that were shipped F.O.B. Montreal. Therefore, Plaintiffs have not presented any evidence of property located within the State.

³ To be clear, Atlas denies that the Court has personal jurisdiction over it. Therefore, no receiver can be appointed over it by this Court in any scenario.

Moreover, intangible assets such as insurance policies are deemed to be located in the place of the company's home office. Therefore, any potential liability insurance policies would not support a finding of property within the State, which is necessary for the appointment of a receiver.

I. The South Carolina Supreme Court has already ruled that liability insurance policies are not property subject to attachment in the State.

In the 1960s and 1970s, plaintiffs seeking more favorable venues or venues with longer statutes of limitation attempted to create personal jurisdiction over defendants by attaching liability insurance policies as a form of in rem jurisdiction. At the time, the New York courts approved of this approach. *See Seider v. Roth*, 269 N.Y.S.2d 99, 216 N.E.2d 312 (1966). However, the approach was largely rejected by other jurisdictions. As the Supreme Court of South Carolina recognized: “Apparently no state has followed the New York Court in this respect and it appears . . . that the decision in *Seider* has been much criticized by legal writers on both constitutional and practical grounds.” *Howard v. Allen*, 254 S.C. 455, 176 S.E.2d 127 (1970).

In *Howard*, a plaintiff attempted to convince a South Carolina court to adopt the New York approach. The plaintiff was injured by an aircraft propeller at the Greenville Municipal Airport. In an effort to create personal jurisdiction over the Ohio-based defendant, the plaintiff issued a summons, complaint, and a warrant of attachment directing the Spartanburg Sheriff to attach and seize “the applicable limits of liability and the duty to defend contained in Policy No. NM-6-625, issued by American Motorists Insurance Company . . .” *Id.* at 457, 176 S.E.2d at 128. When the Circuit Court quashed the attachment and dismissed the case, the plaintiff appealed, arguing that the “duty to defend and the limit of liability contained in a policy of liability insurance constitute a ‘debt’ owed to the policyholder which is subject to attachment, thereby conferring jurisdiction upon the Courts of this State.” *Id.*

Unsurprisingly, the South Carolina Supreme Court rejected this attempt at creating in rem jurisdiction, holding: “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.” *Howard*, 254 S.C. at 459, 176 S.E.2d at 128. The reason for this is simple. “[T]he insurer owes the insured nothing until the liability of the insured and the amount thereof has been determined.” *Id.* In fact, the Supreme Court noted that as long as an insurer’s “obligation to defend and indemnify are fully performed, ***there is nothing of economic value to which the insured may make claim, receive, or assign.***” *Id.* at 461, 176 S.E.2d at 129 (emphasis added).

Plaintiffs’ efforts to argue to the contrary highlight the very problem with their argument. Plaintiffs claim that a liability insurance policy is located essentially everywhere. Hypothetically, this means that fifty different states could appoint fifty different receivers over the same insurance policies. This approach would be completely unworkable. Fortunately, this is not the law. The rule set forth in *Howard* is plain: liability insurance policies are not a debt – i.e., property – located within the State or subject to attachment in the State of South Carolina.

II. South Carolina’s insurance choice of law statute does not apply because Plaintiffs have not identified any policies insuring lives, interests or property within this State.

South Carolina’s insurance choice of law statute provides: “All contracts of insurance on property, lives, or interests in this State are considered to be made in the State . . .” S.C. Code § 38-61-10. Atlas is, and always has been, a Canadian company. Therefore, any alleged insurance policy issued to Atlas insured an interest or property in Canada. There is no evidence that Atlas owned property in South Carolina.

The choice of law statute cannot be read without an understanding of its history and purpose. The statute has its roots in the historical sale of mail order insurance policies. *Johnston*

v. Commercial Travelers Mut. Acc. Ass'n of Am., 242 S.C. 387, 393, 131 S.E.2d 91, 94 (1963). Under traditional choice of law rules, mail order insurance often required the insured to litigate coverage issues in the insurer's home state, even if the policy insured a life located in South Carolina. This created hardships for local insureds who applied for coverage for life or property that was principally located in South Carolina. *Id.* ("The hardship of requiring an assured or his beneficiary to hire a lawyer to prosecute small claims in a state far from the residence of the policy holder soon became evident."). As a result, "a number of states . . . enacted statutes similar" to South Carolina's insurance choice of law statute. *Id.*

Viewed in the context of its purpose, South Carolina's choice of law statute is designed to allow persons purchasing insurance that is intended to insure lives, interests or property located in the State to expect that South Carolina law will apply to those insurance policies. In the mail order context, both the applicant and the insurer know – based on the application – that the focus of the insurance policy will be in South Carolina.

The facts of *Johnston* highlight the purpose of the statute. In that case, the plaintiff purchased an accident insurance policy in 1949. Under traditional insurance choice of law rules, the contract was governed by New York law. However, the policy insured the plaintiff, who from the time of application until the date of his injury six years later, was a resident of St. George, South Carolina. *Id.* at 390, 131 S.E.2d at 92-93. The only reason New York law would have otherwise applied was that the plaintiff applied for the policy via mail to the insurer's home office in New York. *Id.* The insurance company mailed the policy to the plaintiff's South Carolina address, and the plaintiff mailed premiums from South Carolina. *Id.* Based on these facts, the Supreme Court found the South Carolina choice of law statute applied. Although the parties may have technically entered the contract in New York, "South Carolina has sufficient connection with

the formation of such contract that our public policy demands that it conform with the requirements of our Insurance Code.” *Id.* at 393, 131 S.E.2d at 94.

The evidence in this case stands in stark contrast to the facts in *Johnston*. Here, the undisputed evidence is that Atlas was, and has always been, a Canadian company operating in Canada. Although Plaintiffs allege Atlas sold products that were shipped to contractors in North Carolina or South Carolina, there is no allegation that those products were shipped by Atlas from South Carolina, that they were made in South Carolina, or that Atlas had any property located in South Carolina. Whereas the insurance policy in *Johnston* insured a specific life in South Carolina, the application was mailed from South Carolina, the policy was mailed to South Carolina, and premium payments were made from South Carolina, there are no similar facts or allegations as to Atlas. Thus, there is no evidence or even allegation that policies of insurance insuring Atlas insured lives, interests, or property in this State.

Moreover, the purpose of the insurance choice of law statute does not apply here. The purpose of the statute is to ensure that South Carolina policyholders can litigate insurance disputes for policies purchased to insure South Carolina lives, interests or property in South Carolina. *See Johnston*, 242 S.C. at 94, 131 S.E.2d at 393-94. Here, any policy would have been issued to a Canadian company. The company did not have any property in South Carolina. In sum, the policies did not insure lives, interest or property in South Carolina.

Plaintiffs’ reliance on *Sangamo Weston, Inc. v. National Surety Corporation*, 307 S.C. 143, 414 S.E.2d 127 (1992), is misplaced. First and foremost, *Sangamo Weston* – like the choice of law statute itself – addresses choice of law questions. It does not hold that insurance policies for non-resident defendants are property within the State of South Carolina. Moreover, the insurance policy at issue in that case dealt with a company that manufactured products **in South Carolina**, and the

suit arose out of those South Carolina manufacturing operations. *Id.* at 146, 414 S.E.2d at 129. Specifically, Sangamo Weston operated a manufacturing facility in Pickens County, South Carolina, and the coverage litigation involved CERCLA environmental hazards from that South Carolina facility. Thus, the policy at issue in *Sangamo* insured property and interests – the manufacturing facility – in South Carolina. There is no allegation before the Court that any policies allegedly issued to Atlas insured facilities in South Carolina.

To the extent Plaintiffs allege that any policies insured lives, property or interests in South Carolina merely because the policies may provide liability coverage to an insured for injuries that occurred in South Carolina, South Carolina’s appellate courts have held that this is simply not enough. 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 subject automobile collision took place in South Carolina. The contract was negotiated in New York for a rental car rented from a location in New York. The fact that the claimant drove the vehicle to South Carolina where the accident occurred was insufficient to trigger South Carolina’s choice of law statute.⁴ *Id.* at 552, 436 S.E.2d at 184.

⁴ Numerous courts applying South Carolina law have reached the same conclusion. *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).

Plaintiffs bear the burden of showing that this Court has authority to appoint a receiver. Under the receivership statute, a receivership is limited to property within the State. Plaintiffs have not identified any property of Atlas located within the State. Rather, Atlas has confirmed that it does not own any property in this State. It has never owned real property in South Carolina, it never owned or operated any manufacturing facilities in the State, it never held any bank accounts in the State, and it has never maintained an office in this State. (Ex. 1, Aff. of Richard Dufour, Sept. 7, 2022); (Ex. 7, Aff. of Richard Dufour, Dec. 28, 2022).⁵ Thus, there is no basis in the record for this Court to appoint a receiver over a Canadian company.

III. Intangible assets are located at the domicile of either the debtor or the creditor – either way, not in South Carolina.

An insurance asset is either located at the domicile of the creditor – Atlas – or the debtor – the insurance company. As the Supreme Court of the United States has held:

The locality of things which may be said to be intangible is somewhat confusing, but, if it be kept up, the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place. But we do not think it is necessary to resort to the idea at all, or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a nonresident to the defeat of his creditors. To do it, you must go to the domicile of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He, and only he, has something in his hands. That something is the res, and gives character to the action, as one in the nature of a proceeding in rem.

Chicago, R.I. & P. Ry. Co. v. Sturm, 174 U.S. 710, 715-16, 19 S. Ct. 797, 799-800 (1899).

Alternatively, some courts have held for tax purposes that “the situs of intangible personal property is at the domicile of the owner . . .” *National Leather Co. v. Com.*, 256 Mass. 419, 424, 152 N.E.

⁵ Exhibit numbers reference the exhibits to Atlas’ Response and Objection to Plaintiffs’ Motion to Appoint a Receiver.

916, 918 (1926). Regardless of which rule applies, the insurance policies are not located in South Carolina.

CONCLUSION

For the above-stated reasons, as well as those stated in the incorporated filings, Plaintiffs' Motion to Appoint a Receiver should be denied. Atlas does not have any property located in South Carolina. Without property located in this State, the Court's appointment of a receiver over a Canadian company is improper.

s/ Wesley B. Sawyer

Jay Thompson, Esquire

State Bar No. 75030

Wesley B. Sawyer, Esquire

State Bar No. 100229

Murphy & Grantland, P.A.

Post Office Box 6648

Columbia, SC 29260

jay.thompson@murphygrantland.com

wsawyer@murphygrantland.com

Tel.: (803) 782-4100; Fax: (803) 782-4140

Counsel for Defendant Atlas Turner, Inc.

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

MELVIN G. WELCH and
DONNA B. WELCH

Plaintiffs,

v.

3M COMPANY
 f/k/a MINNESOTA MINING AND
 MANUFACTURING COMPANY, et al.

Defendants.

C/A NO. 2022-CP-40-03834

ORDER STRIKING ATLAS TURNER'S
ANSWER

BACKGROUND

On May 11, 2023, this Court found Atlas Turner, Inc. f/k/a Atlas Asbestos Company ("Atlas") to be in contempt of Court. The Court based its contempt order on Atlas' flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery. As part of this Court's order on contempt, the Court ordered Plaintiffs to brief the issue of the sanction requested.

On May 11, 2023, Plaintiffs filed their brief requesting that this Court strike Atlas' pleadings. Atlas' response was filed on May 15, 2023 and Plaintiffs' reply was filed on May 18, 2023. The Court reviewed and considered all of the briefing and evidence of the parties.

As set forth by this Court in its contempt order, Atlas failed to produce a witness as ordered by the Court. Atlas has also refused to identify a witness or a date on which it will

produce a witness. Moreover, Atlas has wholly failed to produce any documents as requested by the 30(b)(6) notice properly served on it.

On May 4, 2023, in an attempt to resolve Atlas' intransigence, this Court held a status conference. Counsel for Atlas and counsel for Plaintiff were present. This Court attempted to ascertain Atlas' positions on these matters and whether Atlas would participate in discovery or otherwise comply with this Court's orders. After a robust discussion with the parties, it was clear to this Court that Atlas does not intend to participate in this matter and that this Court's orders on discovery will continue to be ignored. In fact, on June 15, 2023, Counsel for Atlas confirmed that Atlas will not produce a witness or participate in any discovery.

LAW AND ANALYSIS

"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).

Atlas has failed to produce a witness. Indeed, it has articulated its intent not to over and over again. Atlas 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 Atlas’ pleadings.

AND IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-06-20 14:22:52 page 4 of 4

STATE OF SOUTH CAROLINA) **IN THE COURT OF COMMON PLEAS**

COUNTY OF RICHLAND) **FOR THE FIFTH JUDICIAL CIRCUIT**

MELVIN G. WELCH and
DONNA B. WELCH

Plaintiffs,

v.

3M COMPANY
f/k/a MINNESOTA MINING AND
MANUFACTURING COMPANY, et al.

Defendants.

ORDER ON PLAINTIFFS' MOTION TO APPOINT A RECEIVER

This order follows the Court’s order finding Atlas Turner Inc. f/k/a Atlas Asbestos Company (“Atlas”) in contempt of court and this Court’s entry of an order striking Atlas’ pleadings. Before the Court is Plaintiffs’ Motion to Appoint a Receiver over Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd (“Atlas”).

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets¹ of Atlas. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are

¹ This term is defined below.

reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court's Receiver in locating and marshalling those assets.

PROCEEDURAL BACKGROUND

On May 11, 2023, this Court found Atlas to be in contempt of Court. The Court based its contempt order on Atlas' flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery. As part of this Court's order on contempt, the Court ordered Plaintiffs to brief the issue of the sanction requested.

On May 11, 2023, Plaintiffs filed their brief requesting that this Court strike Atlas' pleadings. Atlas' response was filed on May 15, 2023 and Plaintiffs' reply was filed on May 18, 2023. After considering the briefing of the parties, this Court determined that striking Atlas' answer was the appropriate sanction for contempt of this Court's orders.

Now, having struck Atlas' answer, Atlas 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 unopposed striking of Atlas' answer. Atlas further argues that there is no evidence of its insolvency, yet it refuses to comply with this Court's orders to discovery that and many other issues. The Court does not believe it is appropriate for Atlas to use this refusal as a sword. Regardless, other elements of the receivership statute are satisfied and thus, this argument is unavailing.

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, Atlas’ has been struck, and thus only a ministerial action being left for Atlas to be in judgment, a receiver to take possession of and, to the extent necessary, litigate Atlas’ insurance assets is exactly the type of historical circumstances, the 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 Atlas’ personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas 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 Atlas’s insurance carriers.” 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 Atlas. Even assuming Atlas’ interpretation of §15-65-10 is correct, to the extent they exist, Atlas’ Insurance Assets⁴ 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.

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.

⁴ 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.

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 Atlas]” *Id.*⁵ Thus the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

Atlas continues to ignore the jurisprudence of this state which directly addresses its due process argument. Atlas ignores, again, the teachings of the South Carolina Supreme Court in *Sangamo*.

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. Atlas sold its poison 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,

⁵ As more fully set forth above, the funds at issue appear to be the proceeds from settlements involving insurance contracts designed to protect lives, interests and property within the state and thus would also be governed by substantive South Carolina law.

whatever insuring assets of Atlas 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 Atlas. 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 Atlas Turner, Inc. and any subsidiaries, accept service on behalf of Atlas, engage counsel on behalf of Atlas and take any and all steps necessary to protect the interests of Atlas whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of Atlas as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which the Atlas 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 Atlas; redirect the delivery of any such mail addressed to the Atlas or any business of the Atlas, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to Atlas 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 Atlas; 4) hire any person necessary to accomplish any right or power under this Order; and 5) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property

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

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas. 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 Atlas or any entity for whom Atlas 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 Atlas to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of Atlas and its subsidiaries, successors, and assigns, is appropriate. Peter Protopapas is hereby appointed the receiver over Atlas consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-06-20 14:50:19 page 8 of 8

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

v.

3M Company, *et al.*,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-03834

SUMMONS

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third Party Plaintiff,

v.

Zurich American Insurance Co., individually
and as successor by merger to Maryland
Casualty Company; Enstar (U.S.), Inc.;
Federal Insurance Company; Continental
Insurance Company; Insurance Company of
North America; Aetna Life & Casualty Co.,
n/k/a Travelers Casualty & Surety Co.; Marsh
& McLennan Companies, Inc.;

Third Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY 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 said 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: June 21, 2023

Respectfully submitted,

/s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111

***Attorney for the Receiver of Atlas Turner,
Inc.***

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

In Re: Coordinated Asbestos Docket

Plaintiffs,

Civil Action No: 2022-CP-40-03834

v.

THIRD-PARTY COMPLAINT3M Company, *et al.*,

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third Party Plaintiff,

v.

Zurich American Insurance Co., individually
and as successor by merger to Maryland
Casualty Company; Enstar (U.S.), Inc.;
Federal Insurance Company; Continental
Insurance Company; Insurance Company of
North America; Aetna Life & Casualty Co.,
n/k/a Travelers Casualty & Surety Co.; Marsh
& McLennan Companies, Inc.;

Third Party Defendants.

COMES NOW Atlas Turner, Inc., formerly known as Atlas Asbestos Company, Ltd. (“Atlas Turner”), by and through its duly appointed receiver Peter D. Protopapas (the “Receiver”) complaining of the third-party defendants Zurich American Insurance Co., individually and as successor by merger to Maryland Casualty Company; Enstar (U.S.), Inc.; Federal Insurance Company; Continental Insurance Company; Insurance Company of North America; Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.; and Marsh & McLennan Companies, Inc.;

(collectively, “Third-Party Defendants”), who through undersigned counsel respectfully show unto the Court as follows:

PARTIES

1. Atlas Turner, 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. This Court appointed the Receiver to undertake actions to administer all insurance assets of Atlas Turner. *See* Ex. A, Atlas Turner Receivership Order.
2. The Receiver is informed and believes that Third-Party Defendant Zurich American Insurance Co. (“Zurich”), is a corporation organized under the laws of Delaware, with its principal place of business located in the State of Illinois.
3. The Receiver is informed and believes that Third-Party Defendant Enstar (U.S.), Inc (“Enstar”), is a corporation organized under the laws of Delaware, with its principal place of business located in Florida.
4. The Receiver is informed and believes that Third-Party Defendant Federal Insurance Company (“Federal”) is a corporation organized under the laws of Indiana, with its principal place of business located in New Jersey.
5. Continental Insurance Company (“Continental”) is a corporation organized under the laws of Illinois, with its principal place of business located in Pennsylvania.
6. Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co. (“Aetna”) is a corporation organized under the laws of Connecticut, with its principal place of business located in Connecticut.
7. Marsh & McLennan Companies, Inc. (“Marsh”) is a corporation organized under the laws of Delaware, with its principal place of business located in New York.

8. The Receiver believes that one or more additional insurance companies issued or may have issued policies of insurance to the Third-Party Plaintiff that are responsive to the losses described herein (“Additional Third-Party Defendants”). Such Additional Third-Party Defendants may include one or more insurance companies managed by organizations located in New Hampshire, Massachusetts, the United Kingdom, or other jurisdictions. When the identities of these Additional Third-Party Defendants become known to Third-Party Plaintiffs, this Complaint may be amended nunc pro tunc to state the true identity of such Additional Third-Party Defendants.

JURISDICTION

9. 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 Plaintiffs.

VENUE

10. 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 over this matter.

FACTUAL BACKGROUND

11. Atlas Turner’s historic 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 Atlas Turner (“Atlas Turner Asbestos Suits”), including the instant suit filed by Melvin G. Welch and Donna B. Welch.

The Zurich Policies

12. Third-Party Defendant Zurich issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the “Zurich Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
56C104668	01/01/1961 – 01/01/1964
56C106117	01/01/1964 – 01/01/1967
56C107294	01/01/1967 – 01/01/1970
56C108541	01/01/1970 – 01/01/1973
56C108801	01/01/1970 – 01/01/1973

13. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by Zurich or any of its predecessors, successors, subsidiaries or affiliates. Should such additional policies be located, this Amended Third-Party Complaint will be amended to include such additional Zurich Policies.
14. Zurich has failed, or will fail, fully to acknowledge or accept its insuring obligations under the Zurich Policies. An actual and justiciable dispute exists between these parties.
15. On information and belief, Enstar is the entity responsible for liabilities associated with the Zurich Policies.

B. The Continental Policies

16. Third-Party Defendant Continental issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the “Continental Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
3147450	01/01/1971 – 01/01/1974

17. The Receiver for Atlas Turner 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 Amended Third-Party Complaint will be amended to include such additional Continental Policies.
18. Continental has failed fully to acknowledge or accept its insuring obligations under the Continental Policies. An actual and justiciable dispute exists between these parties.
19. 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.
20. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
21. The Receiver has satisfied, shall be deemed to have satisfied, or have 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

22. Third-Party Defendant Federal issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the “Federal Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
4400523	01/01/1971 – 01/01/1974

23. The Receiver for Atlas Turner 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 Amended Third-Party Complaint will be amended to include such additional Federal Policies.
24. Federal has failed fully to acknowledge or accept its insuring obligations under the Federal Policies. An actual and justiciable dispute exists between these parties.
25. 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.
26. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
27. The Receiver has satisfied, shall be deemed to have satisfied, or have 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 Aetna Policies

28. Third-Party Defendant Aetna issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the “Aetna Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
51LG26921 SCA	7/31/1975 - 4/1/1976
51LG26920 SCA	4/1/1976 – 7/1/1976
51LG30513 SCA	7/1/1976 – 7/1/1977
51LG31719 SCA	7/1/1977 – 7/1/1978
51LG31719 SCA	7/1/1978 – 7/1/1979

29. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by Aetna or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Amended Third-Party Complaint will be amended to include such additional Aetna Policies.
30. Aetna has failed fully to acknowledge or accept its insuring obligations under the Aetna Policies. An actual and justiciable dispute exists between these parties.
31. 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.
32. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
33. The Receiver has satisfied, shall be deemed to have satisfied, or have 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.

E. The INA Policies

34. Third-Party Defendant INA issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the “INA Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
CGL 5971	7/1/1978 – 7/1/1979
CGL 5971	7/1/1979 – 7/1/1980

35. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by INA or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Amended Third-Party Complaint will be amended to include such additional INA Policies.
36. INA has failed fully to acknowledge or accept its insuring obligations under the INA Policies. An actual and justiciable dispute exists between these parties.
37. 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.
38. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
39. The Receiver has satisfied, shall be deemed to have satisfied, or have 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.

F. Marsh

40. Marsh served as a broker for Atlas Turner.

41. Atlas Turner required general liability insurance coverage, as well as umbrella or excess insurance coverage, to insure its business. As broker for Atlas Turner, Marsh secured the required policies and documented all such purchases on behalf of Atlas Turner.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

42. Third-Party Plaintiff incorporates by reference paragraphs 1 through 41 as though fully set forth herein.

43. 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 Protopapas is the receiver for Atlas Turner's insurance assets.

44. Upon information and belief, Atlas Turner purchased insurance policies from Third-Party Defendants Zurich/Enstar, Continental, Federal, Aetna, and INA. These policies are the property of Atlas Turner to be administered by the Receiver.

45. Atlas Turner 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 Third-Party Defendants Zurich/Enstar, Continental, Federal, Aetna, INA, and Marsh 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

46. Third-Party Plaintiff incorporates by reference paragraphs 1 through 41 as though fully set forth herein.
47. The Receiver seeks a declaration and order that Third-Party Defendants Zurich/Enstar, Continental, Federal, Aetna, and INA issued primary general liability coverage to Atlas Turner, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend and to pay or reimburse defense costs.
48. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that Third-Party Defendants Zurich/Enstar, Continental, Federal, Aetna, and INA issued to Atlas Turner (the “Atlas Turner Insurance Policies”), as follows:
- a. The Atlas Turner Insurance Policies cover all Atlas Turner 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 Atlas Turner asbestos suit “triggers” the Atlas Turner Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
 - c. Atlas Turner may select the policy or policy years to which to assign or allocate in full each Atlas Turner Asbestos Suit-related loss;
 - d. In the case of any claimed ambiguity in any Atlas Turner Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Atlas Turner Insurance Policies;

- e. Defense costs for the Atlas Turner asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Atlas Turner Insurance Policies;
- f. If any allegation or cause of action in an Atlas Turner Asbestos Suit is potentially covered under the Atlas Turner 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 Atlas Turner 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 Atlas Turner Asbestos Suits;
- h. Each Atlas Turner Insurance Policy must indemnify covered Atlas Turner Asbestos Suits, in full, up to its “per occurrence” limit, regardless of whether a continuing injury spans multiple policy periods;
- i. The Atlas Turner Asbestos Suits that allege exposure to asbestos during Atlas Turner’s work are subject only to the “per occurrence” limits of the Atlas Turner Insurance Policies;
- j. Any aggregate limit on coverage in any of the Atlas Turner Insurance policies is a limitation on coverage, and therefore each insurer has the burden to prove, based on the evidence, that an Atlas Turner Asbestos Suit is subject to the aggregate limit in the Atlas Turner Insurance Policies, if any; and
- k. Each insurer has the burden to prove, based on the evidence, that any particular Atlas Turner Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the Atlas Turner Insurance Policies, in order

for the insurer to disclaim coverage for an Atlas Turner Asbestos Suit against Atlas Turner otherwise alleging injury during any Atlas Turner Insurance policy period.

49. Actual and justiciable controversies therefore exist between Atlas Turner and Third-Party Defendants Zurich/Enstar, Continental, Federal, Aetna, and INA concerning their obligations under the Atlas Turner Insurance Policies.

PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiff, by and through its duly appointed Receiver, demands judgment against the Third-Party Defendants as follows:

- A. 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 Atlas Turner, 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;
- B. For an order requiring Third-Party Insurer Defendants Zurich/Enstar, Continental, Federal, Aetna, and INA to defend Atlas Turner in full against all asbestos suits alleging bodily injury during the Third-Party Defendants' policy periods unless and until either Third-Party Defendants Zurich/Enstar, Continental, Federal, Aetna, and INA can show unequivocally, based on the evidence adduced in the litigation, that an exclusion in their respective policies otherwise bars coverage for a suit;
- C. As described in detail above, the Receiver seeks a further declaration as to the interpretation and meaning of the Third-Party Plaintiff's insurance policies:

- i. The Atlas Turner Insurance Policies cover all Atlas Turner 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 Atlas Turner Asbestos Suit “triggers” the Atlas Turner Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
- iii. Atlas Turner may select the policy or policy years to which to assign or allocate in full each Atlas Turner Asbestos Suit-related loss;
- iv. In the case of a claimed ambiguity in any Atlas Turner Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Atlas Turner Insurance Policies, and Third-Party Defendants bear the burden of proof as to any such ambiguity;
- v. Defense costs for the Atlas Turner asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Atlas Turner Insurance policies;
- vi. If any allegation in an Atlas Turner Asbestos Suit is potentially covered under the Atlas Turner 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 Atlas Turner 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 Atlas Turner Asbestos Suits;

- viii. Each Atlas Turner Insurance Policy must indemnify covered Atlas Turner Asbestos Suits, in full, up to its “per occurrence” limits, regardless of whether a continuing injury spans multiple policy periods;
 - ix. The Atlas Turner Asbestos Suits that allege exposure to asbestos during Atlas Turner’s work are subject only to the “per occurrence” limits of the Atlas Turner Insurance Policies;
 - x. Any aggregate limit on coverage in any of the Atlas Turner Insurance Policies is a limitation on coverage, and the insurers therefore have the burden to prove, based on the evidence, that an Atlas Turner Asbestos Suit is subject to the aggregate limit in the Atlas Turner Insurance Policies, if any; and
 - xi. Each insurer has the burden to prove, based on the evidence, that any particular Atlas Turner Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the Atlas Turner Insurance Policies, in order for the insurer to disclaim coverage for an Atlas Turner Asbestos Suit against Atlas Turner otherwise alleging injury during any Atlas Turner Insurance Policy period.
- D. Defendant Enstar is responsible for any and all amounts Zurich owes to Atlas Turner under the terms of the Zurich insurance policy.
- E. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina law.

Dated: June 21, 2023

Respectfully submitted,

/s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.

Columbia, South Carolina 29204
803.978.6111

***Attorney for the Receiver of Atlas Turner,
Inc.***

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

In Re: Coordinated Asbestos Docket

Plaintiffs,

Civil Action No: 2022-CP-40-03834

v.

SUMMONS3M Company, *et al.*,

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third Party Plaintiff,

v.

Zurich American Insurance Co., individually
and as successor by merger to Maryland
Casualty Company; Federal Insurance
Company; Continental Insurance Company;
Insurance Company of North America; Aetna
Life & Casualty Co., n/k/a Travelers Casualty
& Surety Co.; Certain Underwriters at
Lloyd's, London, and Certain London Market
Companies; Canadian General Insurance
Company, n/k/a Aviva Insurance Co. of
Canada; and Marsh & McLennan Companies,
Inc.;

Third Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended 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 said Amended 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: June 26, 2023

Respectfully submitted,

/s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111

***Attorney for the Receiver of Atlas Turner,
Inc. f/k/a Atlas Asbestos Company, Ltd.***

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

v.

3M Company, *et al.*,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-03834

**AMENDED THIRD-PARTY
COMPLAINT**Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third Party Plaintiff,

v.

Zurich American Insurance Co., individually
and as successor by merger to Maryland
Casualty Company; Federal Insurance
Company; Continental Insurance Company;
Insurance Company of North America; Aetna
Life & Casualty Co., n/k/a Travelers Casualty
& Surety Co.; Certain Underwriters at
Lloyd's, London, and Certain London Market
Companies; Canadian General Insurance
Company, n/k/a Aviva Insurance Co. of
Canada; and Marsh & McLennan Companies,
Inc.;

Third Party Defendants.

COMES NOW Atlas Turner Investments, Inc., formerly known as Atlas Turner Inc., f/k/a Atlas Asbestos Company, Ltd. ("Atlas Turner"), by and through its duly appointed receiver Peter D. Protopapas (the "Receiver") complaining of the third-party defendants Zurich American Insurance Co., individually and as successor by merger to Maryland Casualty Company; Federal Insurance Company; Continental Insurance Company; Insurance Company of North America;

Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.; Certain Underwriters at Lloyd's, London and Various London Market Companies; Canadian General Insurance Company, n/k/a Aviva Insurance Co. of Canada; and Marsh & McLennan Companies, Inc.; (collectively, "Third-Party Defendants"), who through undersigned counsel respectfully show unto the Court as follows:

PARTIES

1. Atlas Turner, 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. This Court appointed the Receiver to undertake actions to administer all insurance assets of Atlas Turner. *See* Ex. A, Atlas Turner Receivership Order.
2. The Receiver is informed and believes that Third-Party Defendant Zurich American Insurance Co. ("Zurich"), is a corporation organized under the laws of Delaware, with its principal place of business located in the State of Illinois.
3. The Receiver is informed and believes that Third-Party Defendant Federal Insurance Company ("Federal") is a corporation organized under the laws of Indiana, with its principal place of business located in New Jersey.
4. Continental Insurance Company ("Continental") is a corporation organized under the laws of Illinois, with its principal place of business located in Pennsylvania.
5. Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co. ("Aetna") is a corporation organized under the laws of Connecticut, with its principal place of business located in Connecticut.
6. Plaintiff is informed and believe that Certain Underwriters at Lloyd's, London ("Lloyd's Underwriters") and Various London Market Companies ("London Market Insurers") that

participated in any of the policies at issue in this action, are an association of underwriters and individual insurance companies existing under the laws of the United Kingdom or another foreign sovereign with their principal place of business in London, England, that sold or subscribed to insurance policies covering Atlas Turner (generally referred to herein as “Lloyd’s Underwriters and London Market Insurers”). At all times relevant hereto, defendants Lloyd’s Underwriters and London Market Insurers were authorized, through their respective agents, to underwrite insurance policies covering risks in the State of South Carolina and elsewhere. Defendants Lloyd’s Underwriters and London Market Insurers agreed further that “in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.” Moreover, defendants Lloyd’s Underwriters and London Market Insurers, and any defendant insurer(s) which issued follow form policies or otherwise incorporate the “service of suit” language in the Lloyd’s Underwriters and London Market Insurer policies by the terms of the policies issued and subscribed by them, have consented to the jurisdiction of this Court. In pertinent part, the Lloyd’s Underwriters and London Market Insurer policies, and any third party defendant insurer(s) that issued follow form coverage policies to the same, contain the following service of suit clause:

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

By virtue of the foregoing service of suit clause, Lloyd’s Underwriters and London Market Insurers, and the following form third party defendant insurer(s) agreed to the jurisdiction of this Court, agreed to comply with all requirements necessary to give this Court jurisdiction,

and further agreed that all matters pertinent to the instant dispute shall be determined by this Court. The portion of the “service of suit” clause which states that “all matters arising hereunder shall be determined in accordance with the law and practice of such Court” is a valid “choice of forum” clause.

7. Canadian General Insurance Company, n/k/a Aviva Insurance Co. of Canada (“Canadian General”), is a corporation organized under the laws of Canada, with its principal place of business located in Markham, Ontario, Canada;
8. Marsh & McLennan Companies, Inc. (“Marsh”) is a corporation organized under the laws of Delaware, with its principal place of business located in New York.
9. The Receiver believes that one or more additional insurance companies issued or may have issued policies of insurance to the Third-Party Plaintiff that are responsive to the losses described herein (“Additional Third-Party Defendants”). Such Additional Third-Party Defendants may include one or more insurance companies managed by organizations located in New Hampshire, Massachusetts, the United Kingdom, or other jurisdictions. When the identities of these Additional Third-Party Defendants become known to Third-Party Plaintiffs, this Complaint may be amended nunc pro tunc to state the true identity of such Additional Third-Party Defendants.

JURISDICTION

10. 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 Plaintiffs.

VENUE

11. 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 over this matter.

FACTUAL BACKGROUND

12. Atlas Turner's historic 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 Atlas Turner ("Atlas Turner Asbestos Suits"), including the instant suit filed by Melvin G. Welch and Donna B. Welch.

A. The Zurich Policies

13. Third-Party Defendant Zurich issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the "Zurich Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
56C104668	01/01/1961 – 01/01/1964
56C106117	01/01/1964 – 01/01/1967
56C107294	01/01/1967 – 01/01/1970
56C108541	01/01/1970 – 01/01/1973
56C108801	01/01/1970 – 01/01/1973

14. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by Zurich or any of its predecessors, successors, subsidiaries or affiliates. Should such additional policies be located, this Amended Third-Party Complaint will be amended to include such additional Zurich Policies.
15. Zurich has failed, or will fail, fully to acknowledge or accept its insuring obligations under the Zurich Policies. An actual and justiciable dispute exists between these parties.

B. The Continental Policies

16. Third-Party Defendant Continental issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the “Continental Policies”):

<u>Policy Number</u>	<u>Policy Period</u>
3147450	01/01/1971 – 01/01/1974

17. The Receiver for Atlas Turner 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 Amended Third-Party Complaint will be amended to include such additional Continental Policies.
18. Continental has failed fully to acknowledge or accept its insuring obligations under the Continental Policies. An actual and justiciable dispute exists between these parties.
19. 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.
20. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.

21. The Receiver has satisfied, shall be deemed to have satisfied, or have 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

22. Third-Party Defendant Federal issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the "Federal Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
4400523	01/01/1971 – 01/01/1974
unknown primary policy	03/31/1972 – 07/31/1975
unknown excess policy	03/31/1971 – 07/31/1975

23. The Receiver for Atlas Turner 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 Amended Third-Party Complaint will be amended to include such additional Federal Policies.

24. Federal has failed fully to acknowledge or accept its insuring obligations under the Federal Policies. An actual and justiciable dispute exists between these parties.

25. 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.

26. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
27. The Receiver has satisfied, shall be deemed to have satisfied, or have 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 Aetna Policies

28. Third-Party Defendant Aetna issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the "Aetna Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
51LG26921 SCA	7/31/1975 - 4/1/1976
51LG26920 SCA	4/1/1976 – 7/1/1976
51LG30513 SCA	7/1/1976 – 7/1/1977
51LG31719 SCA	7/1/1977 – 7/1/1978
51LG31719 SCA	7/1/1978 – 7/1/1979

29. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by Aetna or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Amended Third-Party Complaint will be amended to include such additional Aetna Policies.

30. Aetna has failed fully to acknowledge or accept its insuring obligations under the Aetna Policies. An actual and justiciable dispute exists between these parties.
31. 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.
32. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
33. The Receiver has satisfied, shall be deemed to have satisfied, or have 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.

E. The INA Policies

34. Third-Party Defendant INA issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the "INA Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
CGL 5971	7/1/1978 – 7/1/1979
CGL 5971	7/1/1979 – 7/1/1980

35. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by INA or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Amended Third-Party Complaint will be amended to include such additional INA Policies.

36. INA has failed fully to acknowledge or accept its insuring obligations under the INA Policies.

An actual and justiciable dispute exists between these parties.

37. 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.

38. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.

39. The Receiver has satisfied, shall be deemed to have satisfied, or have 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.

F. The Lloyd's Underwriters and London Market Insurers Policies

40. Third-Party Defendants Lloyd's Underwriters and London Market Insurers issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the "Lloyd's Underwriters and London Market Insurers Policies"):

<u>Policy Number</u>	<u>Policy Period</u>
unknown	03/31/1962 – 04/23/1962
unknown	04/23/1962 – 06/19/1965
unknown	06/19/1965 – 03/31/1968
unknown	03/31/1968 – 03/31/1971

41. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by Lloyd's Underwriters and London Market Insurers or any of their predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Amended Third-Party Complaint will be amended to include such additional Lloyd's Underwriters and London Market Insurers Policies.
42. Lloyd's Underwriters and London Market Insurers have failed fully to acknowledge or accept their insuring obligations under the Lloyd's Underwriters and London Market Insurers Policies. An actual and justiciable dispute exists between these parties.
43. 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.
44. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
45. The Receiver has satisfied, shall be deemed to have satisfied, or have 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.

G. The Canadian General Policies

46. Third-Party Defendants Canadian General issued at least the following policies to Atlas Turner that are responsive to this lawsuit (the "Canadian General Policies"):

Policy Number**Policy Period**

unknown

unknown date to 01/10/1964

unknown

06/30/1969 – 03/31/1972

47. The Receiver for Atlas Turner continues to require all pertinent parties to conduct a diligent search for additional policies issued by Canadian General or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Amended Third-Party Complaint will be amended to include such additional Canadian General Policies.
48. Canadian General has failed fully to acknowledge or accept their insuring obligations under the Canadian General Policies. An actual and justiciable dispute exists between these parties.
49. 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.
50. The Receiver also contends that third-party defendants are aware of the liability policies issued to Atlas Turner, have or should have copies of all liability policies issued to Atlas Turner that provide coverage for this lawsuit, and are aware of the terms and conditions thereof.
51. The Receiver has satisfied, shall be deemed to have satisfied, or have 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.

H. Marsh

52. Marsh served as a broker for Atlas Turner.

53. Atlas Turner required general liability insurance coverage, as well as umbrella or excess insurance coverage, to insure its business. As broker for Atlas Turner, Marsh secured the required policies and documented all such purchases on behalf of Atlas Turner.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

54. Third-Party Plaintiff incorporates by reference paragraphs 1 through 54 as though fully set forth herein.

55. 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 Protopapas is the receiver for Atlas Turner's insurance assets.

56. Upon information and belief, Atlas Turner purchased insurance policies from Third-Party Defendants Zurich, Continental, Federal, Aetna, INA, Lloyd's Underwriters and the London Market Insurers, and Canadian General. These policies are the property of Atlas Turner to be administered by the Receiver.

57. Atlas Turner 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 Third-Party Defendants Zurich, Continental, Federal, Aetna, INA, Lloyd's Underwriters and the London Market Insurers, Canadian General, and Marsh 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

58. Third-Party Plaintiff incorporates by reference paragraphs 1 through 54 as though fully set forth herein.
59. The Receiver seeks a declaration and order that Third-Party Defendants Zurich, Continental, Federal, Aetna, INA, Lloyd's Underwriters and the London Market Insurers, and Canadian General issued primary and/or excess general liability coverage to Atlas Turner, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend and to pay or reimburse defense costs.
60. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that Third-Party Defendants Zurich, Continental, Federal, Aetna, INA, Lloyd's Underwriters and the London Market Insurers, and Canadian General issued to Atlas Turner (the "Atlas Turner Insurance Policies"), as follows:
- a. The Atlas Turner Insurance Policies cover all Atlas Turner 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 Atlas Turner asbestos suit "triggers" the Atlas Turner Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
 - c. Atlas Turner may select the policy or policy years to which to assign or allocate in full each Atlas Turner Asbestos Suit-related loss;
 - d. In the case of any claimed ambiguity in any Atlas Turner Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Atlas Turner Insurance Policies;

- e. Defense costs for the Atlas Turner asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Atlas Turner Insurance Policies;
- f. If any allegation or cause of action in an Atlas Turner Asbestos Suit is potentially covered under the Atlas Turner 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 Atlas Turner 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 Atlas Turner Asbestos Suits;
- h. Each Atlas Turner Insurance Policy must indemnify covered Atlas Turner Asbestos Suits, in full, up to its “per occurrence” limit, regardless of whether a continuing injury spans multiple policy periods;
- i. The Atlas Turner Asbestos Suits that allege exposure to asbestos during Atlas Turner’s work are subject only to the “per occurrence” limits of the Atlas Turner Insurance Policies;
- j. Any aggregate limit on coverage in any of the Atlas Turner Insurance policies is a limitation on coverage, and therefore each insurer has the burden to prove, based on the evidence, that an Atlas Turner Asbestos Suit is subject to the aggregate limit in the Atlas Turner Insurance Policies, if any; and
- k. Each insurer has the burden to prove, based on the evidence, that any particular Atlas Turner Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the Atlas Turner Insurance Policies, in order

for the insurer to disclaim coverage for an Atlas Turner Asbestos Suit against Atlas Turner otherwise alleging injury during any Atlas Turner Insurance policy period.

61. Actual and justiciable controversies therefore exist between Atlas Turner and Third-Party Defendants Zurich, Continental, Federal, Aetna, INA, Lloyd's Underwriters and the London Market Insurers, and Canadian General concerning their obligations under the Atlas Turner Insurance Policies.

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT

62. The Receiver incorporates paragraphs 1 through 54 in full by this reference.

63. Peter Protopapas is the duly appointed Receiver of Atlas Turner, giving him the power and authority fully to administer all assets of Atlas Turner, accept service on behalf of Atlas Turner, engage counsel on behalf of Atlas Turner, and take any and all steps necessary to protect the interests of Atlas Turner, whatever they may be. Since appointment, the Receiver has expended substantial time and incurred expenses to identify potential assets and responsive policies and to defend the Atlas Turner Asbestos Suits in fulfillment of his responsibilities as Receiver. The Receiver will continue to expend substantial time and incur expenses in connection with Atlas Turner's Asbestos Suits.

64. An actual and justiciable controversy exists between the Receiver and the Insurer Third-Party Defendants, including their obligations to pay for the Receiver's activities in connection with the defense of the Atlas Turner Asbestos Suits.

65. 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.

66. Pursuant to S.C. Code Ann. § 15-65-100, the Receiver shall be allowed such commissions as may be fixed by the Court appointing the Receiver.

67. 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.

68. The Receiver respectfully requests this Court to declare that the Insurer 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 FOR RELIEF

WHEREFORE, Third-Party Plaintiff, by and through its duly appointed Receiver, demands judgment against the Third-Party Defendants as follows:

- A. For the Receiver's compensation in connection with the defense of asbestos suits against Atlas Turner 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 Atlas Turner, 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 Insurer Defendants Zurich, Continental, Federal, Aetna, and INA to defend Atlas Turner 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 Zurich, Continental, Federal, Aetna, INA, Lloyd's Underwriters and the London Market Insurers, and Canadian General 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 the Third-Party Plaintiff's insurance policies:

- i. The Atlas Turner Insurance Policies cover all Atlas Turner 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 Atlas Turner Asbestos Suit "triggers" the Atlas Turner Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
- iii. Atlas Turner may select the policy or policy years to which to assign or allocate in full each Atlas Turner Asbestos Suit-related loss;
- iv. In the case of a claimed ambiguity in any Atlas Turner Insurance Policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Atlas Turner Insurance Policies, and Third-Party Defendants bear the burden of proof as to any such ambiguity;
- v. Defense costs for the Atlas Turner asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Atlas Turner Insurance policies;
- vi. If any allegation in an Atlas Turner Asbestos Suit is potentially covered under the Atlas Turner 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 Atlas Turner 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 Atlas Turner Asbestos Suits;
 - viii. Each Atlas Turner Insurance Policy must indemnify covered Atlas Turner Asbestos Suits, in full, up to its “per occurrence” limits, regardless of whether a continuing injury spans multiple policy periods;
 - ix. The Atlas Turner Asbestos Suits that allege exposure to asbestos during Atlas Turner’s work are subject only to the “per occurrence” limits of the Atlas Turner Insurance Policies;
 - x. Any aggregate limit on coverage in any of the Atlas Turner Insurance Policies is a limitation on coverage, and the insurers therefore have the burden to prove, based on the evidence, that an Atlas Turner Asbestos Suit is subject to the aggregate limit in the Atlas Turner Insurance Policies, if any; and
 - xi. Each insurer has the burden to prove, based on the evidence, that any particular Atlas Turner Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the Atlas Turner Insurance Policies, in order for the insurer to disclaim coverage for an Atlas Turner Asbestos Suit against Atlas Turner otherwise alleging injury during any Atlas Turner Insurance Policy period.
- E. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina law.

Dated: June 26, 2023

Respectfully submitted,

/s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111

***Attorney for the Receiver of Atlas Turner,
Inc., f/k/a Atlas Asbestos Company, Ltd.***

**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. 2022-CP-40-03834

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

Respondent,

v.

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

Defendants,

Of whom Atlas Turner, Inc., 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

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
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
Receiver for "insurance assets" of Atlas Turner, Inc. per Order being appealed

Defendant Atlas Turner, Inc. hereby appeals the following orders of the Honorable Jean Hoefer Toal, Circuit Court Judge, copies of which are attached hereto:

- **Order Holding Atlas Turner, Inc. in Contempt**, filed May 11, 2023;
- **Form 4 Order, filed June 16, 2023**, denying Atlas Turner Inc.'s May 22, 2023 Motion to Reconsider and Vacate the Court's Contempt Order of May 11, 2023;
- **Order Striking Atlas Turner's Answer**, filed June 20, 2023;
- **Order on Plaintiffs' Motion to Appoint a Receiver**, filed June 21, 2023;
- **Form 4 Order filed June 28, 2023**, denying Atlas Turner Inc.'s Motion to Reconsider the June 20, 2023 Order Striking Atlas Turner's Answer.
- **Form 4 Order filed June 28, 2023**, denying Atlas Turner Inc.'s Motion to Reconsider June 21, 2023 Order on Plaintiff's Motion to Appoint a Receiver; and

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 June 28, 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

Charleston, South Carolina

July 6, 2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

2021-CP-40-03484

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M Company, *et al.*,

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

Zurich American Insurance Co., individually and
as successor by merger to Maryland Casualty
Company; Federal Insurance Company;
Continental Insurance Company; Insurance
Company of North America; Aetna Life &
Casualty Co., n/k/a Travelers Casualty & Surety
Co.; Certain Underwriters at Lloyd's, London,
and Certain London Market Companies;
Canadian General Insurance Company, n/k/a
Aviva Insurance Co. of Canada; and Marsh &
McLennan Companies, Inc.,

Third-Party Defendants.

**THIRD-PARTY DEFENDANT TRAVELERS CASUALTY AND SURETY COMPANY'S
NOTICE OF MOTION AND MOTION TO STAY OR DISMISS THE ATLAS
RECEIVER'S THIRD-PARTY CLAIMS AND TO DISSOLVE THE RECEIVERSHIP**

Third-Party Defendant Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (improperly named as Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.) (“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”); and (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 Amended Third-Party Complaint of Defendant/Third-Party Plaintiff “Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd., By and Through Its Duly Appointed Receiver Peter D. Protopapas” (“Atlas” or the “Receiver”) and (ii) vacating the Order appointing Peter Protopapas as the Receiver of Atlas’s “insurance assets” and dissolving the Atlas Receivership in its entirety.

INTRODUCTION

Atlas is a solvent Canadian corporation with its principal place of business in the Province of Quebec. It has no assets or property in South Carolina, and it has never conducted any business activities in South Carolina. *See* Atlas’s Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023, at 5-6 (citing Dufour Affidavit dated Sept. 7, 2022). Atlas filed multiple motions to dismiss Plaintiffs’ asbestos tort claims against it for lack of personal jurisdiction, and it also filed motions for protection from discovery. This Court not only rejected Atlas’s jurisdictional arguments, it found Atlas in contempt of Court, struck Atlas’s pleadings, placed Atlas in default, and appointed a Receiver over Atlas’s “insurance assets.” The

same day he was appointed, the Receiver filed a Third-Party Complaint against Travelers and various other alleged insurers of Atlas, seeking insurance coverage-related declarations and other relief. Atlas has appealed the Order appointing the Receiver (the “Appointment Order”), along with several predicate orders. The pending appeal acts to automatically stay the Receiver’s third-party case and to divest this Court of jurisdiction over the case. If, however, this Court finds that the third-party case somehow is not stayed, and that the Court retains jurisdiction over matters relating to the Atlas Receivership, the Court must dismiss the Receiver’s third-party claims against Travelers, vacate the Appointment Order, and dissolve the Atlas Receivership in its entirety.

First, as noted above, because the validity of the Receivership is on appeal, under Rules 205 and 241, SCACR, the Receiver’s third-party case is automatically stayed and this Court is divested of jurisdiction over matters relating to the Atlas Receivership. *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”). The Receiver cannot pursue claims on Atlas’s behalf while the validity of his appointment is on appeal.

Second, as an alternative to staying this case, this Court should vacate its Appointment Order and dissolve the Atlas Receivership in its entirety. This Court does not have the power to appoint a Receiver over a foreign corporation like Atlas, which has no assets or property in South Carolina. *See* Atlas’s Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023, at 5 (citing Dufour Affidavit dated Sept. 7, 2022). 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. Atlas is and always has been a Canadian corporation. *Id.* at 5 (citing Dufour Affidavit dated Sept. 7, 2022). It has no assets or property in South Carolina over which this Court, and by extension the Receiver, has any power to act. *Id.* at 5-6 (citing Dufour Affidavit dated Sept. 7, 2022). Insurance policies allegedly issued to Atlas, 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 undone. For the same reasons, the Receiver is without authority or standing to pursue any claims on Atlas's behalf.

Third, the Court lacks personal jurisdiction over Travelers. The Court does not have general personal jurisdiction over Travelers, because Travelers is not incorporated in South Carolina, it does not have its principal place of business in South Carolina, and it is not otherwise "essentially at home" in South Carolina. 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 Amended Third-Party Complaint includes three declaratory judgment claims against Travelers. Those claims seek (i) a declaration that Travelers has to produce Atlas's alleged liability insurance policy documents to the Receiver, (ii) coverage declarations 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. So there is no concrete dispute for this Court to resolve as to Travelers.

Fifth, the Receiver's third-party claims are improper under SCRCP 14(a), because they are not "derivative" of Atlas's alleged tort liability to the underlying Plaintiffs, Mr. and Mrs. Welch. A defendant/third-party plaintiff must have a substantive claim against the third-party defendant 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 Plaintiffs' claims.

Accordingly, Travelers respectfully requests that this Court either (i) issue an order confirming that this third-party case is stayed and that this Court is divested of jurisdiction over matters relating to the Atlas Receivership or, in the alternative, (ii) issue an order dismissing the Atlas Receiver's third-party claims against Travelers with prejudice, vacating the Appointment Order, and dissolving the Atlas Receivership in its entirety.

BACKGROUND

On July 25, 2022, Plaintiffs, Mr. and Mrs. Welch, filed their original Complaint in this case against dozens of asbestos tort Defendants, including Atlas. Plaintiffs amended their Complaint several times, most recently with the filing of a Fourth Amended Complaint on June 16, 2023. Plaintiffs allege that Mr. Welch developed mesothelioma caused by exposure to asbestos as a result of his father's "work with and around asbestos-containing products" and "as a result of his own work with and around asbestos-containing products." Fourth Am. Compl. ¶ 2.

In response to each of Plaintiffs' amended pleadings, Atlas filed motions to dismiss for lack of personal jurisdiction. Atlas also filed motions for protection from discovery. Atlas's motion papers explain in detail that, contrary to Plaintiffs' conclusory allegation that Atlas conducted business activities in South Carolina, Atlas is a Canadian corporation that has never

transacted any business in South Carolina. Atlas thus argued that it is not subject to this Court's jurisdiction.

The Court rejected Atlas's arguments. Not only that, at Plaintiffs' behest, the Court held Atlas in contempt of Court, it struck Atlas's answer, it defaulted Atlas, and it appointed a Receiver over Atlas's "insurance assets." Specifically:

- In an Order dated May 11, 2023, the Court held Atlas in contempt of Court as a discovery sanction.
- Several hours later, on May 11, 2023, Plaintiffs filed a "Motion for Sanctions and for the Appointment of a Receiver," in which they asked the Court to strike Atlas's answer and to appoint a Receiver over Atlas. Plaintiffs specifically asked the Court to name Peter Protopapas as Atlas's Receiver.
- On June 20, 2023, the Court issued an Order striking Atlas's answer, again as a discovery sanction.
- The very next day, June 21, 2023, the Court issued an Order finding Atlas in default (because the Court had just struck its answer) and appointing Peter Protopapas as Atlas's "insurance assets" Receiver.
- Just a few hours after he was appointed, on June 21, 2023, the Receiver filed his initial Third-Party Complaint against Travelers and various other alleged insurers of Atlas. The Receiver filed an Amended Third-Party Complaint on June 26, 2023.

Atlas filed several motions for reconsideration, asking this Court to reconsider its rulings. The Court summarily denied Atlas's motions for reconsideration, without any explanation. *See* Order dated June 16, 2023 (Form Order Denying Atlas's Motion to Reconsider Contempt Order); Order dated June 28, 2023 (Form Order Denying Atlas's Motion to Reconsider Order Striking Atlas's Answer); Order June 28, 2023 (Form Order Denying Atlas's Motion to Reconsider Order Appointing a Receiver Over Atlas's Insurance Assets).

On July 6, 2023, Atlas filed a Notice of Appeal with the South Carolina Court of Appeals as to the Appointment Order and others, specifically: (i) Order Holding Atlas in Contempt, filed May 11, 2023; (ii) Form 4 Order, filed June 16, 2023, denying Atlas's May 22, 2023 motion to

reconsider and vacate the Court's contempt order of May 11, 2023; (iii) Order striking Atlas's answer, filed June 20, 2023; (iv) Order on Plaintiffs' motion to appoint a receiver, filed June 21, 2023; (v) Form 4 Order filed June 28, 2023, denying Atlas's motion to reconsider the June 20, 2023 Order Striking Atlas's Answer; and (vi) Form 4 Order filed June 28, 2023, denying Atlas's Motion to Reconsider June 21, 2023 Order on Plaintiffs' Motion to Appoint a Receiver.

On July 25, 2023, the Receiver filed a "Motion to Clarify Receivership Order to Assume Control Over the Defense of Atlas Turner's United States Asbestos Litigation," in which the Receiver "seeks a Clarifying Order from this Court authorizing him to assume control of the defense of the asbestos litigation pending against Atlas in the United States."

On August 14, 2023, Plaintiffs filed a Motion to Lift Stay, asking this Court "to lift the automatic stay in this matter as to the appointment of a receiver." Plaintiffs' Motion to Lift Stay, filed Aug. 14, 2023, at 1. Plaintiffs argue: "Given that the appointed receiver is, during the pendency of this appeal, prohibited from acting to preserve Atlas' assets, Atlas is free to waste its insurance assets and retreat to Canada, making it difficult, if not impossible, for Plaintiffs to resolve their claims against Atlas or collect any judgment imposed." *Id.* at 5.

The Receiver's Amended 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 Atlas's insurance policy documents are "the property of the Receiver and shall be delivered [by Travelers] immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties." Am. Third Party Compl. ¶ 57. In Count II, the Receiver seeks a declaration that Travelers and Atlas's other alleged insurers "issued primary and/or excess general liability coverage to Atlas Turner, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited

supplemental duty to defend and to pay or reimburse defense costs,” and the Receiver also seeks a host of coverage-related declarations “as to the interpretation and meaning of the insurance policies” issued or allegedly issued by Travelers. *Id.* ¶¶ 59-60. 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.* ¶ 68.

ARGUMENT

I. Because the Validity of the Atlas Receivership Is on Appeal, the Receiver’s Third-Party Case Is Stayed and This Court Lacks Jurisdiction Over Matters Relating to the Receivership

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 Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532 (S.C. 2016) (“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)); 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. . . .”); *In re Estate v. Connor*, No. 2009-UP-502, 2009 WL 9530097, at *2 (S.C. Ct. App. Oct. 29, 2009) (“Appellants assert the circuit court erred in failing to find Slotchiver was precluded from bringing additional actions in the probate court while the validity of his appointment was on appeal. We agree. Service of a notice of appeal deprives the trial court of jurisdiction over the matters appealed”). The

Receiver thus cannot pursue his third-party claims while the validity of his appointment is on appeal, and this Court is deprived of jurisdiction over matters relating to the Receivership.

Indeed, the Receiver's right to sue is wholly dependent on, and derivative of, his authority as Receiver for Atlas—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 Atlas's alleged insurance policies or to otherwise pursue his third-party claims on Atlas'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); *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.”).

As a matter of law, Atlas's appeal divests this Court of jurisdiction over matters relating to the Appointment Order, and it automatically stays the relief granted therein, including the supposed authority of the Receiver to pursue his third-party claims in this case. Because Plaintiffs and the Receiver apparently believe the Receivership can proceed in spite of Atlas's pending appeal, this Court should issue an order making clear that, pending resolution of the appeal, the Receiver's third-party case is stayed and the Court is deprived of jurisdiction over matters relating to the appeal.

II. This Court Does Not Have the Power to Appoint a Receiver Over a Foreign Corporation Like Atlas, 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 relating to 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. The Appointment of a Receiver Is a Drastic Remedy That Should Be Reserved for Extraordinary Cases

"The 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 (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.*, 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)).

Further, a receiver is not supposed to be an advocate for one side or the other. Rather, “[a] receiver is an indifferent person between parties He is an officer of the court; his appointment is provisional. He is appointed in behalf of all parties, and not of the complainant or of the defendant only. He is appointed for the benefit of all parties who may establish rights in the cause.” *Booth v. Clark*, 58 U.S. 322, 331 (1854).

B. Foreign Receiverships Are Improper; A Receiver’s Authority Is Limited to In-State Property, if Any

“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*, 58 U.S. at 332 (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.”).

C. Because Atlas Is a Foreign Corporation with No Assets or Property in South Carolina, the Appointment Order Was Improper and Should Be Vacated

In their motion to appoint a receiver over Atlas, Plaintiffs relied on S.C. Code §§ 15-65-10(4) and (5). *See* Plaintiffs’ Motion for Sanctions and to Appoint, filed May 11, 2023, at 3-4. 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* Order on Plaintiffs’ Motion to Appoint a Receiver, dated June 21, 2023, at 2-4 (discussing and quoting both statutory provisions). Neither provision allows for the appointment of a Receiver here.

1. S.C. Code § 15-65-10(4) Does Not Apply Because Atlas 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 Atlas for at least two reasons: (1) Atlas has not been “dissolved,” it is not “insolvent or in imminent danger of insolvency,” and it has not “forfeited its corporate rights” and (2) Atlas is a foreign corporation that does not have any “property within this State,” *i.e.*, South Carolina.

First, by its plain terms, S.C. Code § 15-65-10(4) only 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[.]” As Atlas has explained in prior filings, Atlas has not been dissolved, it is not insolvent or in imminent danger of insolvency, and it has not

forfeited its corporate rights. *See, e.g.*, Atlas’s Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023, at 5 (citing Dufour Affidavit dated Sept. 7, 2022).

There is no evidence to the contrary. Because Atlas is an active, solvent corporation, S.C. Code § 15-65-10(4) does not apply.

Second, even if Atlas were dissolved or in imminent danger of insolvency (it is not), because Atlas is a foreign corporation, the Court’s authority to appoint a Receiver over Atlas is limited to its “property within this State,” if any. *See* S.C. Code § 15-65-10(4). But Atlas has no “property within this State.” As Atlas has explained, “[t]here is no evidence of any Atlas property anywhere in South Carolina in the record before the Court.” *See* Atlas’s Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023, at 6 (citing Dufour Affidavit dated Sept. 7, 2022). To the contrary, the record evidence shows that “Atlas has never had an office in South Carolina,” it “has never had a South Carolina bank account,” it “never owned real property in South Carolina,” it “never registered in or applied for authority to do business in South Carolina,” and it “never appointed a registered agent, maintained an office, opened a bank account, paid taxes or fees, or maintained any employees, officers or agents in South Carolina.” *Id.* at 5-6 (citing Dufour Affidavit dated Sept. 7, 2022). 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.” Order 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, S.C. Code § 15-65-10(4) limits this Court's authority to appoint a Receiver over a foreign corporation to its "property within this State." Principles of comity only underscore the impropriety of extraterritorial, foreign receiverships. *See supra* at 11-13 (collecting cases).

Atlas'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* Am. Third-Party Compl. ¶ 5; *see also* Ex. A, 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. ¶¶ 2-9. Insurance policies allegedly issued to Atlas in Canada by non-South Carolina insurance companies are not South Carolina property.

Notably, 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.* Thus, as long as an insurer's “obligation to defend and indemnify are fully performed, there is nothing of economic value to which the insured may make claim, receive, or assign.” *Id.* at 461, 176 S.E.2d at 129 (emphasis added).

Because Atlas is a solvent 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.” Far from it.

First, 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 11-13; *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”).

Second, the appointment of a receiver is a drastic and extraordinary remedy that should only be granted with great reluctance and caution. *See supra* at 10-11. That did not happen here. The court quickly resorted to the appointment of a receiver over a foreign corporation that is not defunct and that was actively defending itself in this very case. To briefly reiterate the circumstances leading up to the Receiver’s appointment here: Because Atlas challenged this Court’s jurisdiction over it and Plaintiffs’ ability to take discovery from it, the Court (i) held Atlas in contempt of Court, (ii) struck its pleadings, (iii) defaulted it, and (iv) appointed a Receiver over its “insurance assets”—all at Plaintiffs’ urging. Nothing about the Court’s Appointment Order is consistent with existing practice.

Third, contrary to the Court’s assertion that Atlas engaged in some sort of “moral fraud” that justifies the appointment of a Receiver, *see* Appointment Order at 3, Atlas was well within its rights to contest personal jurisdiction. Actively defending oneself in a lawsuit is not fraudulent. Perceived discovery violations are not fraudulent. 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.” Appointment Order at 3. The Court 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 with, Atlas is not a debtor, and Plaintiffs are not creditors. They have no judgment against Atlas and may never receive one. Further, there is no evidence that Atlas engaged in a "conscious intent to defeat, delay or hinder creditors in the collection of debts." Nor is there any evidence that Atlas defrauded anyone, much less that it acted "illegal[ly]." Again, consistent with the law and existing practice, the appointment of a receiver must be reserved for extraordinary cases. Not this case.

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).

D. South Carolina's Insurance Choice of Law Statute, S.C. Code § 38-61-10, Does Not Apply

As a fallback position, the Court held that "[e]ven assuming Atlas' interpretation of §15-65-10 is correct, to the extent they exist, Atlas' 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." Order at 4. 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 or replace South Carolina's receivership statute or the general prohibition on extraterritorial receiverships over foreign property.

The Court's reliance on *Sangamo Weston, Inc. v. National Surety Corporation*, 307 S.C. 143 (S.C. 1992), *see* Appointment Order at 5, is misplaced. *Sangamo*, like the choice of law

statute itself, addressed choice of law questions. It did not hold that insurance policies for 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 Court made clear that “Sangamo’s interest and property located outside of this state are not at issue here.” *Id.* at 148. Here, by contrast, all of Atlas’s property is located outside of this State—this case only involves out-of-state property.

To the extent Plaintiffs or the Receiver assert that Atlas’s policies insure lives, property, or interests in South Carolina merely because they may provide liability coverage 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 rental 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

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).

There is simply no basis for this Court to appoint a receiver over Atlas. 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 SCRCP 12(b)(2), 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-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

² Travelers incorporates by reference the arguments Atlas made in opposing and objecting to the Court's appointment of a Receiver over Atlas.

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 fails to 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

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* Am. Third-Party Compl. ¶ 5; *see also* Ex. A, Mulcahy Affidavit at ¶ 3. Thus, 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 or why it could be. That is reason alone to reject any argument that Travelers is somehow 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:

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 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).

- Travelers is a corporation with its principal place of business and state of incorporation outside of South Carolina (*see* Ex. A at ¶¶ 3, 8);
- Travelers’ business operations are managed principally from its Connecticut offices (*see id.* at ¶ 5);
- None of Travelers’ senior officers or directors are located in South Carolina (*see id.* at ¶ 6);
- Travelers does not have employees in South Carolina (*see id.* at ¶ 8);
- Travelers does not own or rent office space in South Carolina (*see id.* at ¶ 8);
- Travelers does not have any loan applications with South Carolina banks or financial institutions (*see id.* at ¶ 8); and
- Travelers does not hold meetings of directors in South Carolina (*see id.* at ¶ 8).

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 Atlas, 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 has not come close to alleging specific jurisdiction facts sufficient to satisfy its burden as to either the “power” prong 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 activities in South Carolina in connection with the instant claims, given that there are no factual allegations or evidence that Travelers conducted activities in South Carolina that serve as the basis for the Receiver’s third-party claims against Travelers.

In his Amended 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 Plaintiffs [sic].” Am. Third-Party Compl. ¶ 10. 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 Atlas-related activities at residents of South Carolina, or that the Receiver’s third-party claims against Travelers in this case arise out of Travelers’ in-state activities. Indeed, Atlas is not and has never been a South Carolina company nor has it ever had any assets, property, or operations in South Carolina, *see* Atlas’s Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023, at 5-6 (citing Dufour Affidavit dated Sept. 7, 2022), and Travelers and the other insurance companies that allegedly issued policies to Atlas are also domiciled outside of 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”). Further, Travelers, a Connecticut insurance company, is not alleged to have ever manufactured, distributed, or sold any Atlas-related asbestos or asbestos-containing products in South Carolina or elsewhere.

The Receiver cannot argue that Travelers should have somehow foreseen that Atlas, a Canadian corporation with no operations or property in South Carolina, would be subject to asbestos tort lawsuits in South Carolina. Regardless, 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)); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). 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 show that Travelers conducted activities in South Carolina that serve as the basis for his third-party claims against 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 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

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).

(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 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. A, Mulcahy Affidavit ¶¶ 3, 5, 6, 8. In addition, Atlas 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. Indeed, the Receiver's claims against Travelers are premised on alleged liability insurance policies that were allegedly issued to a Canadian corporation with no operations or property in South Carolina and that cannot be South Carolina property.

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 third-party coverage case can proceed all the same without Travelers. If anything, the parties, particularly Plaintiffs, 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 Plaintiffs 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). Atlas is a foreign corporation with no assets or property in South Carolina, and Travelers is a foreign corporation whose in-State activities are minimal and entirely unrelated to Plaintiffs' 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 Atlas "are the property of Atlas Turner 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.” Am. Third-Party Compl. ¶¶ 56-57. 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. The absence of such an allegation is dispositive because one of the requirements for a ripe controversy is 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 Atlas,” and he seeks declarations as to the “interpretation and meaning” of those alleged policies, including that Travelers has an “unlimited supplemental duty to defend and to pay or reimburse defense costs.” *See* Am. Third-Party Compl. ¶¶ 59-60. There is no case or controversy on this issue.

If that were not enough, the relief the Receiver seeks is hypothetical and non-specific. He fails to allege facts demonstrating a specific, concrete matter for juridical resolution. The Receiver alleges generally that Travelers has a duty to defend or reimburse defense costs with respect to the “Atlas Turner Asbestos Suits,” and he seeks various coverage declarations as to those lawsuits. *See* Am. Third-Party Compl. ¶¶ 12, 60, 63-64, 68. Yet he never identifies the lawsuits at issue, other than “the instant suit filed by Melvin G. Welch and Donna B. Welch.”

Id. ¶ 12. 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 with Travelers. Without identification of specific actions and the specific facts in each action required to allege a present controversy with Travelers, the Amended Third-Party Complaint does not present a concrete matter for judicial resolution. Rather, it improperly seeks abstract, hypothetical, and contingent declarations.

Indeed, the duty to defend cannot be determined without identification of 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). 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.

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.” Am. Third-Party Compl. ¶ 68. Although the Receiver alleges that “[a]n actual and justiciable controversy exists between the Receiver and the Insurer Third-Party Defendants,” *see id.* ¶ 64, this vague and conclusory allegation is not

supported by a single fact. The Receiver does not so much as allege that he has asked Travelers to reimburse him or that Travelers has refused any payment request.

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 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 Atlas at any time.

V. The Third-Party Claims Are Improper Under SCRCP 14 Because They Cannot Establish, and Are Not Based On, Derivative Liability of Plaintiffs’ 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 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 Plaintiffs’ tort claims against Atlas. The Receiver does not and cannot allege that Travelers, an

⁵ Rule 14 of the Federal Rules of Civil Procedure is substantially the same as Rule 14 of the SCRCF. “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).

insurer, is derivatively liable if Atlas is found responsible for Plaintiffs' alleged asbestos exposure. Nor does the Receiver allege that Travelers has any obligation to Plaintiffs.

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 Plaintiffs 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)).

Again, Plaintiffs' 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 Atlas is not alleged to have caused Plaintiffs' injuries—nor could it—and Plaintiffs have yet to establish that Atlas has any liability to Plaintiffs.

"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 Atlas'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 Plaintiffs' 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

Accordingly, for the foregoing reasons and others appearing in the record, Travelers respectfully requests that this Court dismiss the Receiver's third-party claims against Travelers with prejudice and dissolve the Atlas 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 (improperly
named as Travelers Casualty & Surety
Company), formerly known as The Aetna
Casualty and Surety Company (improperly
named as Aetna Casualty & Surety Company)

August 28, 2023

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

BARBARA BULLARD MIMMS and JOHN
MIMMS,

2021-CP-40-05873

Plaintiff,

v.

BURLINGTON INDUSTRIES, INC.,

Defendants.

BURLINGTON INDUSTRIES, INC., by and
through its duly-appointed receiver, PETER M.
MCCOY, JR.,

Third-Party Plaintiffs

v.

AIU INSURANCE COMPANY, et al.

Third-Party Defendants

**DECLARATION OF ANN B. MULCAHY IN SUPPORT OF THIRD-PARTY
DEFENDANTS TRAVELERS CASUALTY AND SURETY COMPANY'S AND ST.
PAUL SURPLUS LINES INSURANCE COMPANY'S MOTION TO DISMISS**

STATE OF CONNECTICUT
COUNTY OF HARTFORD

1. My name is Ann B. Mulcahy. I am employed as Associate Group General Counsel of The Travelers Indemnity Company, located in Hartford, Connecticut. In addition, I am an Assistant Corporate Secretary of both Travelers Casualty and Surety Company and St. Paul Surplus Lines Insurance Company. In these roles, I am familiar with the nature of the business and corporate structure of Third-Party Defendants Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers”) and St. Paul Surplus Lines Insurance Company (“St. Paul,” and collectively with Travelers, the “Travelers Defendants”).

2. I am over 18 years of age. The facts stated herein are based on my personal knowledge or have been confirmed by me in the course of my regular duties, and are, to the best of my knowledge, true and correct. I am authorized to make this Affidavit on behalf of the Travelers Defendants.

3. Travelers is organized under the laws of Connecticut and has its principal place of business in Connecticut.

4. St. Paul is organized under the laws of Delaware and has its principal place of business in Connecticut

5. The Travelers Defendants’ operations are managed principally in Connecticut, not South Carolina.

6. None of the Travelers Defendants’ senior officers or directors are located in South Carolina.

7. The Travelers Defendants’ direct written premiums in South Carolina are immaterial to their financial positions.

8. In addition, the Travelers Defendants:

- a. are not incorporated or headquartered in South Carolina;
- b. do not have their principal places of business in South Carolina;
- c. have no employees in South Carolina;
- d. do not own or rent office space in South Carolina;
- e. have no loan applications with South Carolina banks or financial institutions;
- and
- f. do not have meetings of directors in South Carolina.

9. The Travelers Defendants are insurance companies. They do not and, to my knowledge, have not, owned, or operated any industrial plant.

FURTHER AFFIANT SAYETH NOT.

TRAVELERS CASUALTY AND SURETY COMPANY
ST. PAUL SURPLUS LINES INSURANCE COMPANY

Ann B. Mulcahy
Ann B. Mulcahy
Assistant Corporate Secretary

Subscribed and sworn to before me, the undersigned authority on this 15th day of December, 2022.

Debra J. Prisyon
Notary Public

DEBRA J. PRISYON
NOTARY PUBLIC
MY COMMISSION EXPIRES APR. 30, 2024



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

2021-CP-40-03484

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M Company, *et al.*,

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

Zurich American Insurance Co., individually and
as successor by merger to Maryland Casualty
Company; Federal Insurance Company;
Continental Insurance Company; Insurance
Company of North America; Aetna Life &
Casualty Co., n/k/a Travelers Casualty & Surety
Co.; Certain Underwriters at Lloyd's, London,
and Certain London Market Companies;
Canadian General Insurance Company, n/k/a
Aviva Insurance Co. of Canada; and Marsh &
McLennan Companies, Inc.,

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 (improperly named as Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.) (“Travelers”), by and through undersigned counsel, hereby moves this Court for a protective order with respect to the discovery requests served on Travelers by Defendant/Third-Party Plaintiff “Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd., By and Through Its Duly Appointed Receiver Peter D. Protopapas” (“Atlas” or the “Receiver”). Travelers respectfully asks this Court to enter an order finding that Travelers need not respond to the Receiver’s discovery requests—interrogatories and requests for production—until after the Court has resolved Travelers’ accompanying Motion to Stay or Dismiss the Atlas Receiver’s Third-Party Claims and To Dissolve the Receivership (“Motion to Stay, Dismiss, or Dissolve”), if at all.

PRELIMINARY STATEMENT

On July 25, 2022, Plaintiffs, Mr. and Mrs. Welch, filed their original Complaint in this case against dozens of asbestos tort Defendants, including Atlas. Plaintiffs amended their Complaint several times, most recently with the filing of a Fourth Amended Complaint on June 16, 2023. Plaintiffs allege that Mr. Welch developed mesothelioma caused by exposure to asbestos as a result of his father’s “work with and around asbestos-containing products” and “as a result of his own work with and around asbestos-containing products.” Fourth Am. Compl. ¶ 2.

In response to each of Plaintiffs’ amended pleadings, Atlas filed motions to dismiss for lack of personal jurisdiction. Atlas also filed motions for protection from discovery. Atlas’s motion papers explain that Atlas is a Canadian corporation that has never transacted any business in South Carolina. Atlas thus argued that it is not subject to this Court’s jurisdiction.

The Court rejected Atlas's arguments. Not only that, at Plaintiffs' behest, the Court held Atlas in contempt of Court, it struck Atlas's answer, it defaulted Atlas, and it appointed a Receiver over Atlas's "insurance assets." Specifically:

- In an Order dated May 11, 2023, the Court held Atlas in contempt of Court as a discovery sanction.
- Several hours later, on May 11, 2023, Plaintiffs filed a "Motion for Sanctions and for the Appointment of a Receiver," in which they asked the Court to strike Atlas's answer and to appoint a Receiver over Atlas. Plaintiffs specifically asked the Court to name Peter Protopapas as Atlas's Receiver.
- On June 20, 2023, the Court issued an Order striking Atlas's answer, again as a discovery sanction.
- The very next day, June 21, 2023, the Court issued an Order finding Atlas in default (because the Court had just struck its answer) and appointing Peter Protopapas as Atlas's "insurance assets" Receiver ("Appointment Order").
- Just a few hours after he was appointed, on June 21, 2023, the Receiver filed his initial Third-Party Complaint against Travelers and various other alleged insurers of Atlas. The Receiver filed an Amended Third-Party Complaint on June 26, 2023.

Atlas filed several motions for reconsideration, asking this Court to reconsider its rulings. The Court denied Atlas's motions for reconsideration, without any explanation. *See* Order dated June 16, 2023 (Form Order Denying Atlas's Motion to Reconsider Contempt Order); Order dated June 28, 2023 (Form Order Denying Atlas's Motion to Reconsider Order Striking Atlas's Answer); Order June 28, 2023 (Form Order Denying Atlas's Motion to Reconsider Order Appointing a Receiver Over Atlas's Insurance Assets).

On July 6, 2023, Atlas filed a Notice of Appeal with the South Carolina Court of Appeals as to the Appointment Order and others, specifically: (i) Order Holding Atlas in Contempt, filed May 11, 2023; (ii) Form 4 Order, filed June 16, 2023, denying Atlas's May 22, 2023 motion to reconsider and vacate the Court's contempt order of May 11, 2023; (iii) Order striking Atlas's answer, filed June 20, 2023; (iv) Order on Plaintiffs' motion to appoint a receiver, filed June 21,

2023; (v) Form 4 Order filed June 28, 2023, denying Atlas's motion to reconsider the June 20, 2023 Order Striking Atlas's Answer; (vi) Form 4 Order filed June 28, 2023, denying Atlas's Motion to Reconsider June 21, 2023 Order on Plaintiffs' Motion to Appoint a Receiver.

On July 25, 2023, the Receiver filed a "Motion to Clarify Receivership Order to Assume Control Over the Defense of Atlas Turner's United States Asbestos Litigation," in which the Receiver "seeks a Clarifying Order from this Court authorizing him to assume control of the defense of the asbestos litigation pending against Atlas in the United States."

On August 14, 2023, Plaintiffs filed a Motion to Lift Stay, asking this Court "to lift the automatic stay in this matter as to the appointment of a receiver." Plaintiffs' Motion to Lift Stay, filed Aug. 14, 2023, at 1. Plaintiffs argue: "Given that the appointed receiver is, during the pendency of this appeal, prohibited from acting to preserve Atlas' assets, Atlas is free to waste its insurance assets and retreat to Canada, making it difficult, if not impossible, for Plaintiffs to resolve their claims against Atlas or collect any judgment imposed." *Id.* at 5.

The Receiver's Amended 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 Atlas's insurance policy documents are "the property of the Receiver and shall be delivered [by Travelers] immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties." Am. Third Party Compl. ¶ 57. In Count II, the Receiver seeks a declaration that Travelers and Atlas's other alleged insurers "issued primary and/or excess general liability coverage to Atlas Turner, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend and to pay or reimburse defense costs," and the Receiver also seeks a host of coverage-related declarations "as to the interpretation and meaning of the insurance

policies” issued or allegedly issued by Travelers. *Id.* ¶¶ 59-60. 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.* ¶ 68. The Receiver also served extensive discovery requests on Travelers, including 13 interrogatories and 103 requests for production. *See* Ex. A.

On August 28, 2023, Travelers filed its accompanying Motion to Stay, Dismiss, or Dissolve, which Travelers incorporates in full by reference herein. As explained in Travelers’ Motion to Stay, Dismiss, or Dissolve, Atlas’s pending appeal acts to automatically stay the Receiver’s third-party case and to divest this Court of jurisdiction over the case; in the alternative, if the Court finds that the Receiver’s third-party case somehow is not stayed, and that the Court retains jurisdiction over matters relating to the Atlas Receivership, the Court must dismiss the Receiver’s third-party claims against Travelers, vacate the Appointment Order, and dissolve the Atlas Receivership in its entirety.

The Receiver should not be entitled to obtain discovery from Travelers while Travelers’ Motion to Stay, Dismiss, or Dissolve remains pending, because, if granted, it would eliminate the need for discovery altogether. At a minimum, discovery should be stayed pending resolution of Atlas’s appeal, as it challenges the validity of the Receivership. Because the Receiver was improperly appointed and does not have standing to pursue third-party claims on Atlas’s behalf, the Receiver should not be permitted to take discovery from Travelers.

Travelers respectfully requests that this Court grant this motion for protective order and enter an order finding that Travelers need not respond to the Receiver’s discovery requests until after the Court rules on Travelers’ Motion to Stay, Dismiss, or Dissolve, if at all.

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). Trial courts enjoy broad discretion when ruling on discovery matters. *See Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (“A trial judge’s rulings on discovery matters will not be disturbed by an appellate court absent a clear abuse of discretion.”) (citation omitted).

ARGUMENT

The Receiver has served extensive discovery requests on Travelers, including 103 document requests and 13 interrogatories. *See* Ex. A. The discovery requests seek, among many other things, “[a]ll insurance policies, of any type, that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured,” “[a]ll documents that relate to the underwriting of any insurance policy that you issued to Atlas Turner or which otherwise includes Atlas Turner as an insured,” “[a]ll documents that relate to any claims submitted by, or on behalf of, Atlas Turner for coverage under any insurance policy issued to Atlas Turner by you,” loss runs, broker correspondence, claims registers, policy forms, underwriting manuals, information regarding reinsurance and reserves, and information about insurance brokers and expert and fact witnesses. *See id.* The discovery requests seek information dating back to 1934. *See id.* The discovery

requests are improper. They are premature, overly broad, unduly burdensome, and seek irrelevant information. More critically, though, responding to the Receiver's extensive discovery requests at this time would impose an undue burden and expense on Travelers given that Travelers' Motion to Stay, Dismiss, or Dissolve is pending.

Indeed, a ruling on Travelers' potentially-dispositive motion may limit or do away with the need for discovery altogether. Before allowing discovery, the Court should first resolve threshold issues concerning 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 order that Travelers need not respond

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).

to the Receiver's discovery requests until after the Court has ruled on Travelers' Motion to Stay, Dismiss, or Dissolve, if at all.²

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 (improperly
 named as Travelers Casualty & Surety
 Company), formerly known as The Aetna
 Casualty and Surety Company (improperly
 named as Aetna Casualty & Surety Company)

August 28, 2023

² Undersigned counsel certifies that consultation to attempt to resolve this matter would serve no useful purpose.

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

In Re: Coordinated Asbestos Docket

Plaintiffs,

Civil Action No: 2022-CP-40-03834

v.

3M Company, *et al.*,

**THIRD PARTY PLAINTIFF ATLAS
TURNER, INC.'S FIRST SET OF
INTERROGATORIES TO TRAVELERS
CASUALTY & SURETY CO.**

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third Party Plaintiff,

v.

Zurich American Insurance Co., individually
and as successor by merger to Maryland
Casualty Company; Enstar (U.S.), Inc.;
Federal Insurance Company; Continental
Insurance Company; Insurance Company of
North America; Aetna Life & Casualty Co.,
n/k/a Travelers Casualty & Surety Co.; Marsh
& McLennan Companies, Inc.;

Third Party Defendants.

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Receiver for Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd., hereby propounds and serves this first set of interrogatories upon Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co., each to be answered separately, in writing and under oath, within thirty (30) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS

a. "Atlas Turner" shall be used collectively to refer to Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. and any of its affiliates known to you.

b. "Documents" means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies such as drafts, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation, they shall be translated into a reasonably usable form through appropriate detection devices.

c. "All documents" means every document, as defined above, that is in your possession, custody, or control and includes documents that are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

d. "Communicate" or "communicated" means any manner or form of information, memoranda, notes or message transmissions, however produced or reproduced, whether by document or orally or otherwise, between two or more persons, whether made in person, by telephone or by other means, and any and all documents containing, consisting of, or relating or referring, in anyway, either directly or indirectly, to a communication, including but not limited to documents, audio recordings, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

e. "Correspondence" or "communications" mean all letters, telegrams, notices, messages, phone logs, text messages, electronic mail, instant messages (including those sent via social-networking or other messaging applications or platforms, including WhatsApp, Facebook Messenger, and Snapchat), communications sent via social-networking websites, or any other written or oral communications.

f. "Including" means including without limitation.

g. "Relate," "relating," and "reflecting" mean and include pertains, refers, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts.

These terms mean, without limitation, any reference or relationship that either (1) provides information with respect to the subject inquiry or (2) might lead to individuals who, or documents that, might possess or contain information with respect to the subject of inquiry.

h. “And” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

i. “Any,” “each,” or “all” mean each and every, as well as any one.

j. The terms “you” and “your” shall mean and refer to the business entity answering these discovery requests and any of its merged, consolidated, or acquired predecessors, divisions, joint ventures, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, parent companies, or sister companies. “Predecessors” further means any business entity, whether or not incorporated, which had all or sum of its assets purchased by the entity answering these requests, or came to be acquired by the entity answering these requests, whether by merger, consolidation, or other means. “Subsidiaries” further means any business entity, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part, by the entity answering these requests or its predecessors.

INSTRUCTIONS

a. In answering these Interrogatories, furnish all information that is available to you or your attorney(s), agent(s) or investigator(s), and not merely such information known of your own personal knowledge. If any Interrogatory cannot be answered in full, after exercising due diligence to secure the information to do so, so state and answer the Interrogatory to the extent possible, specifying the reasons for any inability to answer the remainder of any such Interrogatory and stating whatever information, knowledge, opinion, or belief presently is available concerning the portion of said Interrogatory that purportedly cannot be answered.

b. If you object to any part of any interrogatory because of a privilege, please provide the following information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document or oral communication;
- (4) if a document: its type (correspondence, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including, where appropriate, the author(s), the addressee(s), and, if not apparent, the relationship between the author(s) and addressee(s);

(5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and

(6) the general subject matter of the document or the oral communication.

c. If an Interrogatory asks that a document be identified, identify and describe the document with sufficient specificity to form the basis for an individual request pursuant to South Carolina Rules of Civil Procedure 34 for the production of documents. In lieu of identifying particular documents, such documents may, at your option, be attached to the answers to these Interrogatories with a designation made to each Interrogatory to which it applies and the specific page number(s) where the information pertinent to the Interrogatory response can be found.

d. If any Interrogatory asks that a date be identified, give the exact day, month, and year, if known. If the exact day, month, and year are not known, provide as precise a date as known or, if the date is unknown, so state and provide an approximate date (designated as such).

e. If any Interrogatory asks that a person be identified, give the person's full name, present or last known home, business, and cellular telephone numbers, present or last known home and business e-mail addresses, present or last known employer, present or last known position at such employer, and present or last known home and business addresses.

f. If an Interrogatory asks that an entity be identified, give the entity's full legal name, the name(s) under which the entity does or did business, the present or last known business telephone number, the present or last known business e-mail address, and the present or last known address.

g. You are under a continuing obligation to supplement your answers to these Interrogatories pursuant to South Carolina Rule of Civil Procedure 26(e).

INTERROGATORIES

INTERROGATORY NO. 1:

Give the names and addresses of persons known to you or your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in your possession that relate to the claim or defense in the case.

INTERROGATORY NO. 3:

Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

INTERROGATORY NO. 4:

List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

INTERROGATORY NO. 5:

For each person known to you or your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Atlas Turner of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 6:

If you are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

INTERROGATORY NO. 7:

If you issued, sold, or subscribed to any insurance policy that covers any defendant in the *Welch* asbestos lawsuit (Case No. 2022-CP-40-03834), as an insured or an additional insured, please identify that coverage in detail.

INTERROGATORY NO. 8:

Please identify all insurance agents or brokers involved in the placement of insurance coverage for Atlas Turner.

INTERROGATORY NO. 9:

Do you deny that you issued Policy Nos. 51LG26921 SCA, 51LG26920 SCA, 51LG30513 SCA, 51LG31719 SCA, and 51LG31719 SCA to Atlas Turner? If not, what does each policy number tell you about the policy, what steps have you taken to locate these policies, and what explanation can you provide for your inability to locate it?

INTERROGATORY NO. 10:

Please identify all asbestos claims made against Atlas Turner by plaintiff name, identify of plaintiff's counsel, jurisdiction, cause number, and disease alleged.

INTERROGATORY NO. 11:

Please identify all law firms known to you to have represented Atlas Turner as defense counsel (in tort cases or workers' compensation cases) at any time.

INTERROGATORY NO. 12:

Please state the materials terms and conditions of each policy that you issued to Atlas Turner.

INTERROGATORY NO. 13:

Have you conducted a search for insurance policies which may afford “additional insured” protection to Atlas Turner that complies with the standard established by the receivership court for such a search in Order on Discovery Motions, *Covil v. Pennsylvania National Co.*, C.A. No. 2020-CP-40-02098 (Ct. C.P. for Richland Cnty. May 5, 2022) (attached as Exhibit A to the accompanying Requests for production)? If your answer is anything other than an unqualified yes, please explain your reasons for not conducting such a search.

Dated: June 21, 2023

Respectfully submitted,

/s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111

***Attorney for the Receiver of Atlas Turner,
Inc.***

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

In Re: Coordinated Asbestos Docket

Plaintiffs,

Civil Action No: 2022-CP-40-03834

v.

3M Company, *et al.*,

**THIRD PARTY PLAINTIFF ATLAS
TURNER, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
TRAVELERS CASUALTY & SURETY
CO.**

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third Party Plaintiff,

v.

Zurich American Insurance Co., individually
and as successor by merger to Maryland
Casualty Company; Enstar (U.S.), Inc.;
Federal Insurance Company; Continental
Insurance Company; Insurance Company of
North America; Aetna Life & Casualty Co.,
n/k/a Travelers Casualty & Surety Co.; Marsh
& McLennan Companies, Inc.;

Third Party Defendants.

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Receiver for Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. hereby propounds and serves this first set of requests for production upon Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co., to be answered separately, in writing and under oath, within thirty (30) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS

a. "Atlas Turner" shall be used collectively to refer to Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. and any of its affiliates known to you.

b. "Documents" means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies such as drafts, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation, they shall be translated into a reasonably usable form through appropriate detection devices.

c. "All documents" means every document, as defined above, that is in your possession, custody, or control and includes documents that are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

d. "Communicate" or "communicated" means any manner or form of information, memoranda, notes or message transmissions, however produced or reproduced, whether by document or orally or otherwise, between two or more persons, whether made in person, by telephone or by other means, and any and all documents containing, consisting of, or relating or referring, in anyway, either directly or indirectly, to a communication, including but not limited to documents, audio recordings, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

e. "Correspondence" or "communications" mean all letters, telegrams, notices, messages, phone logs, text messages, electronic mail, instant messages (including those sent via social-networking or other messaging applications or platforms, including WhatsApp, Facebook Messenger, and Snapchat), communications sent via social-networking websites, or any other written or oral communications.

f. "Including" means including without limitation.

g. "Relate," "relating," and "reflecting" mean and include pertains, refers, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts.

These terms mean, without limitation, any reference or relationship that either (1) provides information with respect to the subject inquiry or (2) might lead to individuals who, or documents that, might possess or contain information with respect to the subject of inquiry.

h. “And” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

i. “Any,” “each,” or “all” mean each and every, as well as anyone.

j. The terms “you” and “your” shall mean and refer to the business entity answering these discovery requests and any of its merged, consolidated, or acquired predecessors, divisions, joint ventures, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, parent companies, or sister companies. “Predecessors” further means any business entity, whether or not incorporated, which had all or sum of its assets purchased by the entity answering these requests, or came to be acquired by the entity answering these requests, whether by merger, consolidation, or other means. “Subsidiaries” further means any business entity, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part, by the entity answering these requests or its predecessors.

l. “Asbestos related claims” means any claim for bodily injury or wrongful death allegedly relating to or arising from a person’s exposure to asbestos or any asbestos-containing product.

INSTRUCTIONS

a. In answering these Requests, you are required to furnish all documents and correspondence in the possession, custody, or control of you, your attorneys, or any of your agents.

b. If any requested document existed at one time and was in your possession, custody, or control, but has been lost, discarded or destroyed, or removed from your possession, custody or control, indicate for each such document:

- (1) the present location of any and all copies of each such document in your possession, custody, or control;
- (2) whether you claim any privilege or other reason for nonproduction with respect to each such document or copies thereof, and, if so, the factual and legal basis for the alleged privilege or non-production. In lieu of the foregoing, a copy of each such document may be supplied but said copy must indicate to which interrogatory it relates.
- (3) the identity of the document and a description of its contents indicating its date, title and type of document;
- (4) when the document was most recently in your possession, custody or control and what disposition was made of it;
- (5) the identity of any person which currently possesses the document;

- (6) a statement indicating whether the document was transferred or destroyed. State the person who transferred or destroyed the document and the person who authorized its transfer or destruction or who knows of its transfer or destruction. State the reason why the document was transferred or destroyed, and
- (7) the identities of all persons having knowledge of the contents of each document.

c. Pursuant to South Carolina Rule of Civil Procedure 26(b)(5), if you withhold any otherwise discoverable documents or correspondence based on a privilege objection, please provide a log of all such documents and correspondence detailing the following information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document;
- (4) If a document: its type (e-mail, text message, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document, including, where appropriate, the author(s), the addressee(s), its title, the subject line, and, if not apparent, the relationship between the author(s) and addressee(s); and
- (5) the general subject matter of the document or correspondence.

RELEVANT BACKGROUND INFORMATION

Please refer to the attached order in *Covil v. Pennsylvania National Corporation* for recent guidance from this Court regarding the standard for an appropriate policy search. *See* Exhibit A, Order on Discovery Motions, *Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas v. Pennsylvania National Mutual Casualty Insurance Co., et al.*; C.A. No. 2020-CP-40-02098; In the Court of Common Pleas for the Fifth Judicial District; Richland County, South Carolina (May 5, 2022) (reconsideration denied May 26, 2022).

REQUESTS FOR PRODUCTION

- 1. All documents identified in your responses to the Receiver's First Set of Interrogatories.
- 2. All documents you relied upon in answering Receiver's First Set of Interrogatories.

3. All insurance policies, of any type, that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured. This request specifically includes policies afford Atlas Turner coverage as an “additional insured”.
4. All certificates of insurance reflecting any insurance coverage that you provided to Atlas Turner, or which affords coverage to Atlas Turner as an “additional insured”.
5. All documents that relate to the underwriting of any insurance policy that you issued to Atlas Turner or which otherwise includes Atlas Turner as an insured.
6. All documents that relate to any claims submitted by, or on behalf of, Atlas Turner for coverage under any insurance policy issued to Atlas Turner by you. This request specifically includes claims made under workers’ compensation policies.
7. All documents that relate to any and all reserve accounts you have established for any insurance policy that you ever issued to Atlas Turner or which otherwise affords coverage to Atlas Turner as an insured or an “additional insured”.
8. All documents that relate to any loss run for any insurance policy that you ever issued to Atlas Turner or which otherwise includes Atlas Turner as an insured or an “additional insured”.
9. All documents that relate to any correspondence between you and Atlas Turner’s defense counsel at any time, specifically including all invoices from, or payments made to, Atlas Turner’s defense counsel. This request specifically includes counsel in workers’ compensation proceedings.
10. All subpoenas or requests you served in an effort to locate any insurance policy issued by you to Atlas Turner or which otherwise includes Atlas Turner as an insured or an

“additional insured”, as well as all correspondence and responses that you received in response to these requests or subpoenas.

11. All documents that relate to the steps taken by you to determine whether you issued any insurance policy to Atlas Turner or which otherwise includes Atlas Turner as an insured or an “additional insured”.
12. All documents that relate to the steps taken by you to identify the terms and conditions of each of the policies you issued to Atlas Turner or which otherwise name Atlas Turner as an insured or an “additional insured”.
13. All documents that relate to policies, treaties and/or arrangements obtained by you, or on your behalf, to reinsure all or a portion of the risk of any insurances policies that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured. This request specifically includes documents reflecting the related brokering activities and any subsequent claims submitted by you.
14. All documents evidencing what you contend are the material terms and conditions of the insurance policies issued by you to Atlas Turner.
15. All entries from your claims registers and microfiche archives regarding your insuring relationship with Atlas Turner.
16. All documents regarding Atlas Turner’s history or business activities.
17. All documents relating to the reasons why any insurance policy you issued to Atlas Turner, or any relevant document, is now lost or destroyed.
18. All documents reflecting any evidence of any insurance issued to, or protective of, Atlas Turner by any insurer at any time.

19. All documents reflecting your participation in any workers' compensation claim against Atlas Turner.
20. All documentation regarding any form of industrial hygiene survey or other consulting services that you provided to Atlas Turner.
21. All documents related to your document retention policies from 1934 through the present.
22. All documents that relate to the manner in which you maintained, organized, and stored your underwriting and liability claims files from 1934 through the present.
23. All documents that relate to the manner in which you maintained, organized, and stored your copies of claims drafts or payments made under comprehensive general liability policies or workers' compensation policies from 1934 through the present.
24. All documents that relate to the manner in which you maintained, organized, and stored your defense counsel billing and payment records from 1934 through the present.
25. All documents that relate to or describe all electronic systems you used in connection with claims handling from 1934 through the present, including your policies and practices for purging or deleting information contained in these systems throughout this time period.
26. All documents that relate to, describe, or discuss any forms you used in your comprehensive general liability policies from 1934 through the present.
27. All documents that relate to your process for assigning prefixes and/or policy numbers to comprehensive general liability policies issued before 1990.
28. All documents predating 1990 reflecting communications between you and the ISO, or any state or regulatory or insurance commission regarding the drafting or meaning of any general liability insurance policy or provision in any general liability insurance policy.

29. All documents that refer or relate to your participation in the April 21, 2017, meeting held by the American Insurance Association to discuss insurance coverage for asbestos bodily injury lawsuits.
30. All entries from your claims registers and microfiche archives regarding your insuring relationship with Atlas Turner.
31. All documents reflecting any sanction whereby you were sanctioned by any court or regulator for your handling or destruction of historical liability insurance policies.
32. All documents which mention or relate to Atlas Turner.
33. All documents relating to the negotiation or placement of any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
34. All documents relating to the calculation of premiums for any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
35. All documents relating to commissions paid to any insurance broker or agent on the sale of any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
36. All communications between you and Atlas Turner (or its counsel) during the period 1934 through the present.
37. All communications between you and any insurance broker or agent relating to Atlas Turner during the period 1934 through the present.

38. All documents relating to what you contend are the material terms and conditions of the insurance policies that you issued, sold, or subscribed to that cover Atlas Turner as an insured or an additional insured.
39. All documents relating to the reasons why any insurance policy that you issued, sold, or subscribed to that covers Atlas Turner as an insured or an additional insured is now lost or destroyed.
40. All documents relating to any forms used by you in your comprehensive general liability policies from 1934 to 1990, specifically including specimens or exemplars of these forms and any instructions or directions as to when the standard form or specimen policies should be or were required to be used.
41. All documents relating to any forms used by you in your excess and umbrella liability insurance policies from 1934 to 1990, specifically including specimens or exemplars of these forms and any instructions or directions as to when the standard form or specimen policies should be or were required to be used.
42. All underwriting manuals, procedures, and guidelines relating to general liability and product liability primary insurance policies issued by you from 1934 to 1990.
43. All underwriting manuals, procedures, and guidelines relating to excess and umbrella liability insurance policies issued by you from 1934 to 1990.
44. All documents relating to your process for assigning policy numbers to comprehensive general liability policies issued before 1934, specifically including documents reflecting the meaning of any policy number prefixes.
45. All communications relating to Atlas Turner's asbestos related claims (including workers' compensation claims).

46. All communications relating to any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
47. All communications relating to Atlas Turner.
48. All communications among any of your employees, officers, directors, agents, or representatives relating to Atlas Turner's asbestos related claims.
49. ~~All communications among any of your employees, officers, directors, agents, or representatives relating to any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.~~
50. All communications among any of your employees, officers, directors, agents, or representatives relating to Atlas Turner.
51. All documents relating to any meetings at which any of Atlas Turner's asbestos related claims were discussed.
52. All documents relating to any meetings at which any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured was discussed.
53. All documents relating to any meetings at which Atlas Turner was discussed.
54. All registers of insurance policies or any other documents that sufficiently identify the insurance policies and/or umbrella or excess policies you issued, sold, or subscribed to during the period 1934 through 1990.
55. All documents that evidence, refer to, or relate to, or constitute practices, policies, requirements and/or procedures used by you or on your behalf at any time during the period

1934 through the present concerning the handling, adjustment, investigation, or processing of general liability claims, including claims manuals, claim handling manuals, instructional manuals, training manuals, and policy manuals.

56. All documents relating to your policies, procedures, practices, standards, or guidelines in effect during the period 1934 through the present for the analysis and processing of claims for coverage of third-party bodily injury claims that do not come within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
57. All documents distributed to your claims personnel at any time setting forth any coverage position you take, should take, or have taken on asbestos related claims filed against your policyholders that are not within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
58. All documents relating to the existence of aggregate limits or lack thereof on coverage for asbestos related claims filed against your policyholders that are not within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
59. Any document that explains, describes or identifies the method by which you determine whether an asbestos related claim falls within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
60. All documents distributed to your claims personnel at any time providing guidance on your policies, procedures, practices, standards, or guidelines for determining whether an

asbestos related claim falls within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.

61. All documents relating to reserves ever established by you for Atlas Turner’s asbestos related claims.
62. All documents relating to reserves ever established by you for Atlas Turner’s asbestos related claims that are not subject to aggregate limits.
63. All documents relating to any Atlas Turner’s asbestos related claims.
64. All documents relating to any notice of any Atlas Turner’s asbestos related claims received by you.
65. All documents relating to any acknowledgement by you of coverage under any of the insurance policies issued, sold, or subscribed to by you for any Atlas Turner’s asbestos related claims.
66. All documents relating to any payments that you have made to, or on behalf of, Atlas Turner under any of the insurance policies issued, sold, or subscribed to by you in connection with any Atlas Turner’s asbestos related claims.
67. All documents relating to any criteria used in determining whether to pay any settlements on behalf of Atlas Turner in any of Atlas Turner’s asbestos related claims.
68. All documents relating to any criteria used in determining whether to pay any judgments against Atlas Turner in any of Atlas Turner’s asbestos related claims.
69. All documents relating to the handling of any aspect of any Atlas Turner’s asbestos related claims by you or on your behalf.

70. All documents relating to your efforts to determine the potential exposure that Atlas Turner faced or faces from any of Atlas Turner's asbestos related claims.
71. All documents relating to any investigation conducted by your or on your behalf with respect to Atlas Turner's request for defense/indemnity coverage for any asbestos related claims.
72. All documents considered by you or on your behalf in any investigation regarding any of ~~Atlas Turner's asbestos related claims.~~
73. All documents relating to any inspections, analyses, or audits, conducted by you or on your behalf in any investigation regarding any of Atlas Turner's asbestos related claims.
74. All documents relating to the applicability of any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
75. All documents relating to the applicability of any term contained in any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
76. All documents relating to the applicability of any exclusion contained in any of the insurance policies issued, sold, or subscribed to by you to any Atlas Turner's asbestos related claims.
77. All documents relating to the applicability of any condition contained in any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
78. All documents relating to any language contained in any of the insurance policies issued, sold, or subscribed to by you that you contend applies to exclude coverage for all or part of any of Atlas Turner's asbestos related claims.

79. All documents relating to any language contained in any of the insurance policies issued, sold, or subscribed to by you that you contend applies to limit coverage for all or part of any of Atlas Turner's asbestos related claims.
80. All documents relating to any coverage positions (for example, denials of coverage or reservations of rights) taken by you with respect to coverage under any of the insurance policies issued, sold, or subscribed to by you for any of Atlas Turner's asbestos related claims.
81. All documents you reviewed or relied on in considering whether to deny coverage, acknowledge coverage, or reserve rights as to any of Atlas Turner's asbestos related claims.
82. All communications between you and any other insurer regarding the handling of any of Atlas Turner's asbestos related claims.
83. All communications between you and any other insurer regarding the payment of any of Atlas Turner's asbestos related claims.
84. All documents relating to any claim for insurance coverage by Atlas Turner, other than with regard to any of Atlas Turner's asbestos related claims, under the insurance policies issued, sold, or subscribed to by you.
85. All documents relating to any payment that you have made to, or on behalf of, Atlas Turner with respect to any claim other than any of Atlas Turner's asbestos related claims.
86. All documents relating to any payment that you have made on behalf of Atlas Turner with respect to any claim other than any of Atlas Turner's asbestos related claims.
87. All documents relating to any exhaustion or impairment of any insurance policy that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.

88. All documents relating to your organizational structure at any time during the period 1934 through the present.
89. All documents relating to the organizational and reporting structure of any of your departments, groups, or units responsible for performing any function related to underwriting general liability policies at any time during the period 1934 through 1990.
90. All documents relating to your membership in the National Bureau of Casualty Underwriters ("NBCU") and the Insurance Services Organization ("ISO") between 1934 and 1990.
91. All documents relating to your use of NBCU and ISO forms to supply the terms and conditions of comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
92. All documents relating to your use of NBCU and ISO forms to supply the terms and conditions of excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
93. All documents relating to your use of NBCU and ISO rate manuals or ratings manuals on comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
94. All documents relating to your use of NBCU and ISO rate manuals or ratings manuals on excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
95. NBCU and ISO rate manuals or ratings manuals used by you in underwriting comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.

96. NBCU and ISO rate manuals or ratings manuals used by you in underwriting excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
97. All documents relating whether comprehensive or commercial general liability insurance policies issued, sold, or subscribed to by you between 1934 to 1990 could amend, modify, or discard any of the terms and conditions appearing in forms published by NBCU or ISO during this time period.
- ~~98. All documents relating whether excess liability insurance policies issued, sold, or~~
subscribed to by you between 1934 to 1990 could amend, modify, or discard any of the terms and conditions appearing in forms published by NBCU or ISO during this time period.
99. NBCU and ISO forms supplying the terms and conditions of comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
100. NBCU and ISO forms supplying the terms and conditions of excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
101. All documents relating to or supporting the affirmative defenses enumerated in your answer.
102. Copies of all insurance policies, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that cover any defendant in the *Welch* asbestos lawsuit (Case No. 2022-CP-40-03834) as an insured or an additional insured.
103. All documents related to Atlas Turner's corporate history that you have obtained from other sources.

Dated: June 21, 2023

Respectfully submitted,

/s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111

*Attorney for the Receiver of Atlas Turner,
Inc.*

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
MELVIN G. WELCH and DONNA B. WELCH,	Civil Action No. 2022-CP-40-03834
Plaintiffs,	In Re: Asbestos Personal Injury Litigation Coordinated Docket
v.	
3M Company, <i>et al.</i> ,	
Defendants.	
ATLAS TURNER, INC., f/k/a Atlas Asbestos Company, Ltd., by and Through Its Duly Appointed Receiver Peter D. Protopapas,	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
Third-Party Plaintiff,	
v.	
ZURICH AMERICAN INSURANCE CO., <i>et al.</i> ,	
Third-Party Defendants.	

Third-Party Plaintiff Atlas Turner, Inc., formerly known as Atlas Asbestos Company, Ltd. ("Atlas Turner" or "Atlas"), 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) Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively, "Certain London Market Insurers"); (3) Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, together with Federal Insurance Company (collectively, the "Chubb

Defendants”); (4) Aviva Insurance Company of Canada f/k/a Canadian General Insurance Company (“Aviva”); and (5) Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers”) (collectively, the “Insurers”).¹

INTRODUCTION

The Insurers’ Motions seeking to “enforce” an “automatic stay” of this receivership action (or, in the alternative, asking this Court to enter a stay order), should be denied because they are directly contrary to South Carolina receivership law, as recently clarified by the Court of Appeals in the Payne & Keller receivership. *See* Ex. A, Order, Appellate Case No. 2023-000727 (S.C. App., Sept. 8, 2023). In the Payne & Keller action, the insurers—including two of the insurers also sued in this action—made the same arguments that Atlas Turner’s 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. 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), SCRCR, and South Carolina Code § 14-3-450. As in the Payne & Keller action, there is no “automatic stay” of this receivership action under Rule 205, Rule 241(a), or otherwise. Nor should the Court grant the Insurers’ alternative request to enter a stay pending resolution of Atlas Turner’s appeal.

¹ The specific motions filed by the moving Insurers and the dates those Motions were filed are identified in the chart on pp. 3-4 herein. The moving Insurers include all Third-Party Defendants in this action, except: (a) Zurich American Insurance Company, individually and as successor by merger to Maryland Casualty Company, which was dismissed without prejudice by stipulation filed on August 31, 2023; and (b) Marsh & McLennan Companies, Inc., an insurance broker for Atlas Turner, which filed a separate Motion to Dismiss on August 24, 2023, and to which the Receiver is separately responding.

The remaining Motions filed by the Insurers in this third-party action—motions to dismiss, sever and/or for more definite statements—raise substantially the same arguments that these Insurers and others have raised in response to third-party complaints filed in other receiverships. This Court has previously considered and denied such arguments. *See* 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 five 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 five 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 (Date Filed)				
		Continental (8/15/2023)	London Market Insurers (8/15/2023)	Chubb Defendants (8/21/2023)	Aviva (8/25/2023)	Travelers (8/28/2023)
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 Insufficient Process/ Service of Process Rules 12(b)(4) and (5), SCRCP	G		✓			
Motion to Dismiss for Lack of Personal Jurisdiction Rule 12(b)(2), SCRCP	H					✓

BACKGROUND

Atlas Turner’s historic operations include the sale of asbestos-containing products and raw asbestos material. *See* June 26, 2023 Amended Third-Party Complaint (the “Complaint”) at ¶ 12. 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 Atlas Turner (the “Asbestos Suits”). *Id.*

On June 21, 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 Atlas Turner ... and [to] take any and all steps necessary to protect the interests of Atlas 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 Atlas.” *Id.* at 7.

Atlas Turner 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 ¶¶ 16-21, 54-68. Specifically, the Receiver seeks declaratory relief requiring the production of policies and related documents from all the Third-Party Defendants. *Id.* at ¶ 57 (First Cause of Action). The Receiver also seeks declarations regarding the meaning and application of the policies issued by the Insurers to the Asbestos Suits. *Id.* at ¶ 60 (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 Atlas Turner’s asbestos cases. *Id.* at ¶ 68 (Third Cause of Action).

ARGUMENT

A. The Court Should Deny the Insurers’ Motions to “Enforce” a Purported “Automatic Stay,” Reject the Insurers’ Contention this Court Lacks Jurisdiction over the Receivership Action, and Deny the Insurers’ Request for a Discretionary Stay.

The Insurers’ Motions ask the Court to “enforce” an “automatic stay” that the Insurers mistakenly contend is in place under Rules 241(a) and 205, SCACR, as a result of the Notice of Appeal filed regarding various orders of this Court, including the June 21, 2023 Order appointing the Receiver. Contrary to the Insurers’ assertions, there is no automatic stay of this receivership under Rule 241(a), nor does Rule 205 prevent this receivership action from proceeding during the pendency of the appeal. The same policy reasons that underlie allowing the receivership action to proceed during the pendency of the appeal also warrant denial of the Insurers’ request for a discretionary stay pending appeal.

1. Appeal of a receivership action does not create an “automatic stay” under Rule 241(a) or otherwise.

Recently, in the Payne & Keller receivership, the Court of Appeals addressed whether a receivership action could proceed in this Court during the pendency of an interlocutory appeal challenging the validity of the receiver’s appointment. Relying on Rule 62(a), SCRCP and South Carolina Code § 14-3-450—which set forth a receivership action exception to the automatic stay rule—the Court of Appeals confirmed that the receivership action was not stayed, and that the receiver could continue carrying out his duties, notwithstanding the pending appeal:

[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

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 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[ied] 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).

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.

Ex. E, 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. F, Travelers's 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), SCRCR, 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 § 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

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. G, 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.

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’

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 Atlas Turner’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 Atlas Turner’s insurance assets.

As the Receiver argued in its motion for clarification to the Court of Appeals in Payne & Keller, a stay of a receivership during appeal could frustrate the purposes for which the Receiver was appointed in the first place. Here, the Insurers have refused to respond to initial discovery requests served by the Receiver—even after the Court of Appeals clarified in its September 8, 2023 order that the Insurers’ understanding of South Carolina law was wrong.⁷ As a result, there

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 Atlas Turner filed its Notice of Appeal on July 6, 2023. The Insurers cannot now complain if the Court rules on such motions.

⁷ After the Court of Appeals’ ruling, the Insurers ignored or rebuffed the Receiver’s request that they withdraw their pending arguments that this action was stayed pending appeal. *See* Ex. H (various emails with Insurers’ counsel).

is currently a lack of transparency regarding the status of Atlas Turner's insurance, and therefore Atlas Turner's insurance is at increased risk of liquidation, divestment or other impairment by persons purporting to act on behalf of Atlas Turner 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).

This Court recently entered an Order requiring "Atlas and its affiliates to refrain from liquidating or divesting any of its insurance assets, under the current protection of the Receiver," and later amended that Order, further requiring "Atlas to identify and set forth all applicable insurance policies and assets applicable to this case." *See* Aug. 29, 2023 Order and Sept. 11, 2023 Amended Order. However, in light of Atlas Turner's repeated refusals to comply with prior orders of this Court, these recent orders provide little comfort. Indeed, counsel for Atlas Turner has affirmatively informed the Court that Atlas Turner will continue to defy this Court's order by refusing to produce any insurance information as ordered by the Court. *See* Ex. I, Sept. 1, 2023 Letter from Stephen Brown. Given Atlas Turner's longstanding and ongoing recalcitrance and obfuscation, it is all the more important that the Receiver not be precluded from continuing his efforts to discover and marshal Atlas Turner's insurance assets via this third-party action. Therefore, the Court should deny the Insurers' Motions seeking a stay during the pendency of Atlas Turner's appeal.⁸

⁸ For the same reasons, the Court should also deny the motions for protective orders filed by Travelers, Continental, Certain London Market Insurers and Aviva, seeking relief from discovery in this action pending resolution of Atlas Turner's appeal. The Receiver filed a separate opposition to those motions on September 19, 2023.

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), 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. ¶¶ 54-68. 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.*, Lloyd’s Motion, at p. 8. This argument should be rejected because this Court has previously held that one plaintiff—here, the *Welch* 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 Atlas Turner do not support dismissal of this action, as the Insurers contend. *See, e.g.*, Chubb's Motion 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 Atlas Turner; that Atlas Turner purchased insurance policies from the Insurers; that these policies are Atlas Turner's property; and that the Receiver is entitled to these documents. Compl. ¶¶ 54-68. 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 five Insurers also have moved to strike or sever the Receiver's claims based on Rule 14(a), SCRCPP. 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), SCRCPP, 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, Atlas Turner) 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 *Welch* plaintiff's primary claim against Atlas Turner impacts the Insurers' obligations to the Receiver, who acts for Atlas Turner with respect to its insurance assets. The Receiver, meanwhile, must continue to spend time and effort defending Atlas Turner, 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 *Welch* action. This argument is incorrect, as the declaratory judgments requested by the Receiver are inherently dependent on the alleged liability of Atlas Turner in the underlying lawsuits, including the *Welch* action. The allegations against Atlas Turner in the *Welch* plaintiff's complaint stem from Atlas Turner's business operations that were insured by the Insurers named in this action. *See* Compl. ¶¶ 12, 13, 16, 22, 28, 34, 40, 46.

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 its 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 Motion ¶ 35 (“Here, the Third-Party Complaint clearly complicates this litigation by adding two new causes of action seeking thirteen different declarations and adding six additional parties as third-party defendants”). However, there is no reason to believe these additions would “submerge the plaintiffs’ claim[s]” because—similar to 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 Motion, at p. 10 (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 Motion at ¶¶ 36-37, 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.

Accordingly, the Receiver requests this Court deny the Insurers’ Motions under Rule 14(a).⁹

⁹ Continental, Certain London Market Insurers, the Chubb Defendants, and Aviva cursorily argue in footnotes 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 Defendants’ Mot. at 11 n.7. This is plainly incorrect. The Receiver’s dispute with the insurer-defendants 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 Atlas Turner, including the *Welch* suit, as the allegations regarding the legal liability of Atlas Turner as a defendant in underlying asbestos lawsuits triggers the Insurers’ coverage obligations under third-party liability policies issued to Atlas Turner, giving rise to the Receiver’s insurance claims at issue here.

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, Certain London Market Insurers, the Chubb Defendants and Aviva—but not Travelers—assert that the Complaint is “so vague and ambiguous that it is not reasonable to request Aviva to frame a responsive pleading.” *See, e.g.*, Aviva’s Mot. at 11. 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. ¶¶ 12, 14, 17, 23, 29, 35, 41, 47.

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 Atlas Turner’s insurance programs. Indeed, the Receiver has located a sworn interrogatory response that Atlas Turner served in South Carolina identifying each of the Insurers here as having issued liability policies. *Ex. J., Historical Atlas Turner Interrogatory Answers in South Carolina*, at p. 38.

Accordingly, the Receiver requests this Court deny the Insurers’ Rule 12(e) motions for more definite statements.

E. The Chubb Defendants’ and Aviva’s Rule 12(b)(1) Motions to Dismiss for Lack of Standing, and Travelers’s Motion to Dissolve Receivership, Should Be Denied

The Chubb Defendants’ and Aviva’s Motions 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 Atlas Turner’s insurance assets. 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 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 Atlas Turner 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 the Chubb Defendants and Aviva do not attempt to argue otherwise. Rather, these Insurers side-step 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 *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 the Chubb Defendants' and Aviva's Motions under Rule 12(b)(1).

3. Travelers's motion to "dissolve the receivership" raising similar "standing" arguments should also be denied.

Based on similar arguments that the Chubb Defendants and Aviva asserted in support of their Motions to Dismiss under Rule 12(b)(1), Travelers moves to dissolve the Atlas Turner receivership. This Motion is a *de facto* motion for yet another rehearing of the arguments

repeatedly raised by Atlas Turner in opposing the appointment of the receiver in the first place. This Court has twice rejected these arguments and should reject them again here.

First, Travelers contends the Receiver holds a “foreign receivership” with arguments mirroring the Chubb Defendants’ and Aviva’s arguments that the Receiver lacks standing because Atlas Turner purportedly lacks property in South Carolina. The Court has rejected Travelers’s 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’s 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.’” *Id.* at 4. “This case does not support Travelers’s 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’s 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 5. *See* Ex. D, at 2; *see also* Receivership Order at p. 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 Atlas’ personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas continued refusal to participate in this that warrants the appointment of a receiver.” *Id.* at p. 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's argument that Atlas Turner did not engage in moral fraud that justifies the Receiver's appointment has been heard and rejected twice by this Court. *See id.*; *see also* Order Denying Rehearing, Jun. 26, 2023. Accordingly, the arguments should be rejected a third time, and Travelers's Motion to Dissolve Receivership likewise should be denied.

F. The Chubb Defendants' and Aviva's Rule 12(b)(7) Motions to Dismiss for Failure to Join Necessary Parties Should Be Dismissed

Both the Chubb Defendants and Aviva base their respective Motions to Dismiss for Failure to Join Necessary Parties on Rule 12(b)(7), 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)(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), SCRCF (equivalent to Fed. R. Civ. P. 19(a)).

2. Other parties, if any, may be ordered into the action after discovery.

The Chubb Defendants and Aviva seek 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 Motion ¶ 30 ("The Receiver has failed to join all necessary and indispensable parties to its action ... including, but not limited, its primary insurers"). The Insurers further argument their 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 *Welch* lawsuit seek or may seek damages against Atlas Turner in an amount that could exhaust at least some of the insurance at issue in this action. *See generally* Welch Plaintiff's Fourth Amended Complaint (seeking punitive damages). The Receiver therefore seeks a determination of the obligations of the Insurers, including the Chubb Defendants and Aviva, to defend, reimburse, and indemnify in full against such suits.

In support of their Rule 12(b)(7) arguments, the Chubb Defendants and Aviva rely 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 are readily distinguishable. These cases addressed another prong of Rule 19—part (b)—which the Insurers' Motions fail 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, these Insurers’ 12(b)(7) motions should be denied.

G. Certain London Market Insurers’ Rule 12(b)(4) and (5) Motions to Dismiss Should Be Denied

Certain London Market Insurers also assert that the Complaint should be dismissed against them under Rules 12(b)(4) and (5) for insufficient service of process because the specific London syndicates subscribing to the policies issued to Atlas are not identified in the Complaint or individually served. This is unavailing.

First, as the Receiver has pleaded, policies issued by Certain London Market Insurers to Atlas Turner include “service of suit” clauses that waive any challenge by Certain London Market Insurers’ to an exercise of jurisdiction in U.S. courts. Compl., at ¶ 6. Accordingly, Certain London Market Insurers may not challenge personal jurisdiction, which in turn waives their arguments regarding the sufficiency of service here. *See Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 566, 683 S.E.2d 486, 492 (2009) (holding service complaints may be waived by agreement to personal

jurisdiction). All insufficient service of process does is withhold personal jurisdiction, but Certain London Market Insurers have contractually consented to personal jurisdiction.

Moreover, Certain London Market Insurers themselves should have knowledge of the specific “syndicates” that subscribed to Atlas Turner’s policies—but they have not identified those syndicates in response to this Court’s Receivership Order or the Receiver’s discovery requests served on Certain London Market Insurers. But the Receiver has already located undisputed evidence that Atlas Turner was insured by Certain London Market Insurers. *See* Ex. J., at p. 38. If Certain London Market Insurers dispute that they issued such policies as identified by Atlas Turner itself, they should be compelled to provide evidence to support such contention in discovery—rather than professing ignorance and attempting to evade their coverage obligations.

Accordingly, the Court should deny Certain London Market Insurers’ Motion to Dismiss under Rules 12(b)(4) and (5).

H. Travelers’s Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction Should Be Denied

Finally, Travelers’s Motion to Dismiss for Lack of Personal Jurisdiction is based on Rule 12(b)(2), SCRCPP. For the reasons discussed below, and in accordance with this Court’s previous rulings on substantially similar motions, Travelers’s 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* June 22, 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 Atlas Turner,

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 Atlas Turner, which sold asbestos in the United States, including sales to South Carolina. Ex. J., at p. 33 (Atlas Turner sold asbestos to Covil in South Carolina). Atlas Turner is now being sued in South Carolina. And the Receiver brings this proper third-party action for this Court to declare rights under Travelers’s policies covering Atlas Turner’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’s current Motion under Rule 12(b)(2).¹⁰

CONCLUSION

Based on the foregoing, the Receiver respectfully requests this Court deny the Insurers’ Motions in all respects.

Dated: October 13, 2023

Respectfully submitted,

/s/ John Chandler

John Chandler (SC Bar 100837)
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
803.978.6111

***Attorneys for the Receiver of Atlas Turner,
Inc., f/k/a Atlas Asbestos Company, Ltd.***

¹⁰ In support of its Motion Dismiss, Travelers filed an affidavit of Ann B. Malachy, Travelers’s in-house counsel, on August 31, 2023. This affidavit is substantially similar to affidavits of Ms. Malachy 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

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

2022-CP-40-03834

Plaintiff,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

v.

3M Company, *et al.*,

Defendants.

Atlas Turner, Inc. f/k/a Atlas Asbestos
Company, Ltd., By and Through Its Duly
Appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

Zurich American Insurance Co., individually and
as successor by merger to Maryland Casualty
Company; Federal Insurance Company;
Continental Insurance Company; Insurance
Company of North America; Aetna Life &
Casualty Co., n/k/a Travelers Casualty & Surety
Co.; Certain Underwriters at Lloyd's, London,
and Certain London Market Companies;
Canadian General Insurance Company, n/k/a
Aviva Insurance Co. of Canada; and Marsh &
McLennan Companies, Inc.,

Third-Party Defendants.

**THIRD-PARTY DEFENDANT TRAVELERS CASUALTY AND SURETY COMPANY'S
REPLY IN SUPPORT OF MOTION TO STAY OR DISMISS THE ATLAS RECEIVER'S
THIRD-PARTY CLAIMS 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 Atlas Receiver's Third-Party Claims and To Dissolve the Receivership.

INTRODUCTION

As Travelers demonstrated in its motion, the purported Receivership over Atlas Turner, Inc. ("Atlas") is unlawful and must be dissolved immediately. As a matter of law, because Atlas 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 Atlas's Receiver, and Mr. Protopapas does not have the authority to take Atlas'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 those arguments. Travelers' motion to dismiss the Receiver's third-party claims should be granted in full, and the Atlas Receivership should be dissolved.

In the alternative, and at a minimum, this Court should find that pending resolution of Atlas's appeal of this Court's order appointing Mr. Protopapas as Atlas'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, Atlas'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" Atlas's

appeal—which necessarily includes issues relating to the validity of the Receivership and the Receiver’s authority to pursue any claims on Atlas’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 Atlas’s appeal, and that nothing should be stayed with respect to the Atlas 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 Atlas Receivership in light of Atlas’s appeal of those same issues. Moreover, no exception to the automatic stay rule applies here given that Atlas 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 Atlas’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 Atlas’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 Atlas’s notice of appeal of this Court’s order appointing Mr. Protopapas as Atlas’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 Atlas’s behalf. Nor can he. The law is clear and controlling. *See* Mot. at 8 (collecting cases); *see also*, e.g., *Lancaster v. Ga.-Pac. Corp.*, 403 S.C. 136, 137, 742 S.E.2d 867, 868 (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, 728 S.E.2d 45, 51 & n.3 (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”).

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.* 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 Atlas’s appeal. *See* Opp. at 7-9. 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. at 255 & n.3, 728 S.E.2d at 51 & n.3 (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 demands 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 Atlas 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 Atlas's Appeal

Because Atlas has appealed the order appointing Mr. Protopapas as Atlas'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 Atlas's appeal—the Receiver should not be able to pursue any claims, purportedly on Atlas'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 6. While the Court of Appeals determined that the Payne & Keller receivership action is not stayed, no such order exists with respect to the Atlas 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, Atlas is an active Canadian corporation that itself challenged the order appointing Mr. Protopapas as Atlas’s Receiver, as well as predicate orders holding Atlas in contempt, striking its answer and defaulting it. While both appeals challenge the validity of a receivership, Atlas 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), SCRCPP, 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 Atlas 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 Atlas that has challenged the legality of the receivership. Atlas believes the Receivership is unlawful and that the Receiver is not acting in its best interests. To allow the Receiver to take Atlas’s property and to otherwise make decisions for Atlas—decisions with which Atlas disagrees—implicates serious

¹ Rule 62(a), SCRCPP, 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).

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 Atlas's behalf in the tort action, is, or should be, stayed pending resolution of Atlas's appeal.

II. This Court Does Not Have the Power to Appoint a Receiver Over an Active Foreign Corporation Like Atlas, Which Has No Assets or Property in South Carolina

A. Atlas'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 11-13 (collecting cases). Instead, he argues that Atlas's alleged insurance policies somehow constitute assets or property located in South Carolina. *See* Opp. at 20. He is wrong as a matter of law. Insurance policies allegedly issued to Atlas 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 Atlas—and none of the insurers are domiciled in South Carolina. *See* Mot. at 15-16 (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 11-15. 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 21. 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, Atlas’s alleged insurers, all of which the Receiver admits are domiciled outside of South Carolina. *See Mot.* at 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 Atlas’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 Atlas is a foreign corporation with no assets or property in South Carolina, the order appointing Mr. Protopapas as Atlas’s Receiver should be vacated, the Atlas 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. *See, e.g.*, Mot. at 11-13, 16.

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 13-16.

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 10-11 (collecting cases). That simply did not happen here. Even though Atlas appeared and was actively defending itself in this case, the Court quickly found Atlas—an active foreign corporation—in contempt, struck its pleadings, defaulted it, and appointed the Receiver over its “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 Atlas engaged in “moral fraud” sufficient to justify the appointment of the Receiver; instead, he simply cites to the Court’s appointment orders in this case. *See* Opp. at 23. 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 27-

28. 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." Am. Third-Party Compl. ¶ 10. 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. *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.). In *In re: Aqueous Film-Forming Foams*, the court held that S.C. Code § 38-5-70 "contains no consent by foreign corporations to the general jurisdiction of the South Carolina courts" and thus does not confer general jurisdiction over out-of-state insurers licensed to do business in this state. *See id.*

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 Insurance 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 argument that general jurisdiction exists.

B. The Court Does Not Have Specific Jurisdiction Over Travelers Either

The Receiver’s Amended 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 Atlas Turner, that is being sued in South Carolina ‘supports a finding of personal jurisdiction and precludes dismissal on this basis.’” Opp. at 28-29. 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 Atlas, a Canadian corporation, is not one such business.

The Receiver argues that “Travelers insured Atlas Turner, which sold asbestos in the United States, including sales to South Carolina.” Opp. at 29 (citing Ex. J. at p. 33 (Atlas Turner sold asbestos to Covil in South Carolina)). But even if that were true, it involves Atlas’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 Atlas 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 Atlas-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), SCRPC

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 13 (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 Amended 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 Atlas “are the property of Atlas Turner 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.” Am. Third-Party Compl. ¶¶ 56-57. But there are no allegations to show that a concrete, justiciable controversy exists. For example, there is no allegation that the Receiver requested Atlas’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 Atlas. *See* Am. Third-Party Compl. ¶ 60. He alleges that Travelers has an “unlimited” duty to defend or reimburse defense costs with respect to “Atlas Turner Asbestos Suits,” *see id.* ¶¶ 59-60, 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 Amended 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 Welch plaintiff—is sufficient.” 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 Atlas’s alleged insurance policies “cover all Atlas Turner Asbestos Suits,” that Atlas “may select the policy or policy years to which to assign or allocate in full each Atlas Turner Asbestos Suit-related loss,” and that “[e]ach Atlas Turner Insurance Policy must indemnify covered Atlas Turner Asbestos Suits, in full, up to its ‘per occurrence’ limit, regardless of whether a continuing injury spans multiple policy periods.” Am. Third-Party Compl. ¶¶ 60. This Court cannot make the broad, far-reaching declarations the Receiver seeks without knowing the specifics of each of the “Atlas Turner 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.” Am. Third-Party Compl. ¶ 68. 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 Atlas 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 Ms. Welch’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, Atlas Turner).” Opp. at 15. The Receiver’s third-party claims are not at all derivative of the underlying tort claims of the plaintiff, Ms. Welch, 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 15-17. These out-of-state cases are inapposite. They do not address Rule 14 and are inconsistent with South Carolina law.³

South Carolina law is clear that “a non-party is subject to impleader [under Rule 14, SCRCF] 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 assert that Travelers is liable to Atlas for anything; Ms. Welch does not have any judgment against Atlas 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,

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 14 (citing *First Gen. Servs.*, 314 S.C. at 442, 445 S.E.2d at 447). Travelers agrees.

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 Atlas’s liability has been determined.

The Receiver nevertheless argues that he “has substantial claims against the Insurers founded upon derivative liability—that is, the Welch plaintiff’s primary claim against Atlas Turner impacts the Insurers’ obligations to the Receiver, who acts for Atlas Turner with respect to its insurance assets.” Opp. at 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 Atlas Turner with respect to its insurance assets.” The order appointing Mr. Protopapas as Atlas’s Receiver is on appeal; Atlas has challenged the Receiver’s authority to “act[] for” Atlas, 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 Ms. Welch’s tort claims against Atlas. Travelers, an insurer, is not derivatively liable if Atlas is found responsible for Ms. Welch’s husband’s alleged asbestos exposure. Nor does the Receiver allege that Travelers has any obligation to Ms. Welch. Indeed, rather than seeking to establish derivative liability, the Receiver’s claims seek relief directly from and against Travelers. Again, Ms. Welch’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 Atlas is not alleged to have caused Ms. Welch’s husband’s injuries—nor could it—and she has yet to establish that Atlas has any liability to her at all.

In short, the Receiver's third-party claims against Travelers improperly ask this Court for contract-related judicial declarations unrelated to Ms. Welch'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 Atlas 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 Atlas's appeal.

Signature Page Attached

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 (improperly
named as Travelers Casualty & Surety
Company), formerly known as The Aetna
Casualty and Surety Company (improperly
named as Aetna Casualty & Surety Company)

January 16, 2024January 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: *Welch v. 3M Co. et al.*, No. 2022-CP-40-03834 – Travelers’
Objections to the Proposed Order Submitted by the Purported
Receiver for Atlas Turner, Inc. (Atlas) Denying Travelers’
Motion to Stay or Dismiss the Atlas Receiver’s Claims and to
Dissolve the Atlas 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 Atlas Turner, Inc., formerly known as Atlas Asbestos Company, Ltd. (“Atlas”), 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 Atlas Receiver’s Third-Party Claims 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” Atlas’s pending appeal of this Court’s order appointing Mr. Protopapas as Atlas’s Receiver, as well as the predicate orders finding Atlas in contempt, in default, and striking its pleadings. *See* Mot. at 8-9; Reply at 3-7. 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 Atlas’s pending appeal. *See* Proposed Order at 3-6. 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 8-9; Reply at 3-7. 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 that 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 (“[T]he [Payne & Keller] receivership action and the [Payne & Keller] receiver’s ability to carry out his duties are not stayed.”). The Receiver suggests this Order somehow implicitly authorized

¹ Travelers filed its Motion on August 28, 2023. The Receiver filed an “omnibus” response in opposition on October 16, 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.



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 the Court of Appeals has “exclusive jurisdiction.”

In footnote 2 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 Atlas 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” Atlas’s appeal—which necessarily includes issues relating to the validity of the Receivership and the Receiver’s authority to pursue any claims on Atlas’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 5-6.

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 Atlas’s Receiver nor the third-party case initiated by the Receiver are stayed pending resolution of Atlas’s appeal. *See* Proposed Order at 3-7. However, as a matter of law, because Atlas 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 7-9. This case should also be stayed pending resolution of Atlas’s appeal—the Receiver should not be able to pursue any claims, purportedly on Atlas’s behalf, unless and until the Court of Appeals determines the Receivership is lawful. *See* Mot. at 8-9; Reply at 7-9.

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 4-6. But while the Court of Appeals determined that the Payne & Keller receivership action is not stayed, no such order exists with respect to the Atlas Receivership.



Further, the Payne & Keller case is clearly distinguishable. Unlike Payne & Keller, Atlas is an *active* Canadian corporation that *itself* challenged the order appointing Mr. Protopapas as Atlas's Receiver, as well as predicate orders holding Atlas 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), SCRCF, 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, Atlas has appealed multiple orders—not only the receivership appointment order, but also orders finding Atlas 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 Atlas that has challenged the legality of the receivership. *See, e.g.* Reply at 8-9.

3. **This Court Does Not Have the Power to Appoint a Receiver Over an Active Foreign Corporation Like Atlas, 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 11-13 (collecting cases). He argues, however, that Atlas's alleged insurance policies somehow constitute assets or property located in South Carolina. *See* Opp. at 20; Proposed Order at 11-12. This is wrong as a matter of law. Insurance policies allegedly issued to Atlas 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 15-16; 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 18-19.
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 16-18; 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 13-16.



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 Atlas'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 Atlas 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 Atlas'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 15-16. This 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 16-17. The Receiver is wrong for numerous reasons, which, once again, the Receiver fails to address in his Proposed Order. *See* Mot. at 24-30; 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 33-36; Reply at 21-24.

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
MELVIN G. WELCH and DONNA B. WELCH, Plaintiffs, v. 3M Company, <i>et al.</i> , Defendants.	Civil Action No. 2022-CP-40-03834 In Re: Asbestos Personal Injury Litigation Coordinated Docket
ATLAS TURNER, INC., f/k/a Atlas Asbestos Company, Ltd., by and Through Its Duly Appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, v. ZURICH AMERICAN INSURANCE CO., <i>et al.</i> , Third-Party Defendants.	PROPOSED ORDER ON MOTION BY TRAVELERS CASUALTY AND SURETY COMPANY TO STAY OR DISMISS THE ATLAS RECEIVER'S THIRD-PARTY CLAIMS AND TO DISSOLVE THE RECEIVERSHIP

This matter comes before the Court on Third-Party Defendant Travelers Casualty and Surety Company's ("Travelers") Motion to Stay or Dismiss the Atlas Receiver's Third-Party Claims and to Dissolve the Receivership (the "Motion"). Peter Protopapas, the Receiver for Atlas Turner, Inc., formerly known as Atlas Asbestos Company, Ltd. ("Atlas"), filed an "omnibus" response in opposition to Travelers' Motion on October 16, 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 Atlas's Receiver and to dissolve the Receivership, the Court finds it is currently divested of jurisdiction to address such issues under Rule 205, SCACR. Atlas has appealed this Court's order appointing Mr. Protopapas as Atlas's Receiver, as well as predicate orders finding Atlas in contempt, striking its pleadings and defaulting it. As such, under Rule 205, the issues presented in Atlas's appeal—including issues relating to the validity of the Atlas Receivership and the Atlas Receiver's authority to pursue claims or to otherwise act on Atlas'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 Atlas's appeal. Accordingly, this Court will hold any ruling on these issues in abeyance pending resolution of Atlas's appeal, if jurisdiction returns to this Court.

The Court further finds that, pending resolution of Atlas's appeal, the order appointing Mr. Protopapas as Atlas'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
MELVIN G. WELCH and DONNA B. WELCH, Plaintiffs, v. 3M Company, <i>et al.</i> , Defendants.	Civil Action No. 2022-CP-40-03834 In Re: Asbestos Personal Injury Litigation Coordinated Docket
ATLAS TURNER, INC., f/k/a Atlas Asbestos Company, Ltd., by and Through Its Duly Appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, v. ZURICH AMERICAN INSURANCE CO., <i>et al.</i> , Third-Party Defendants.	PROPOSED ORDER ON MOTION BY TRAVELERS CASUALTY AND SURETY COMPANY FOR A PROTECTIVE ORDER

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 Atlas Turner, Inc., 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 Atlas Turner 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

February 16, 2024

By E-Filing and E-Mail

The Honorable Jean Hoefer Toal

Chief Justice (retired)

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: *Welch v. 3M Co. et al.*, No. 2022-CP-40-03834 –
Travelers’ Objections to the Proposed Orders Submitted
by the Purported Receiver for Atlas Turner, Inc. Denying
Travelers’ Motions to Stay or Dismiss the Atlas
Receiver’s Claims and to Dissolve the Atlas Receivership
and for Protective Order

Dear Chief Justice Toal:

Third-Party Defendant Travelers Casualty and Surety Company objects to the “revised” proposed orders submitted on February 9, 2024, by Third-Party Plaintiff Peter Protopapas, the purported Receiver for Atlas Turner, Inc., formerly known as Atlas Asbestos Company, Ltd. (“Atlas”), in connection with the above-captioned case. The Receiver’s revised proposed orders ask this Court to deny Travelers’ Motion to Stay or Dismiss the Atlas Receiver’s Third-Party Claims and to Dissolve the Receivership, and to deny Travelers’ Motion for Protective Order.

The revised proposed orders are substantially identical to proposed orders the Receiver submitted on January 24, 2024. Travelers submitted objections to the original proposed orders on January 29, 2024, along with competing proposed orders, which Travelers incorporates by reference as if fully stated herein. The Receiver’s revised proposed orders do not remedy any of the issues Travelers identified—nor can they, as they are contrary to long-established South Carolina and constitutional law. In particular, Rule 205, SCACR, precludes the circuit court from exercising jurisdiction over this matter at this time; the Receiver’s proposed orders disregard this black-letter rule of law and misrepresent the issue as being one of a “stay,” an argument that has been expressly rejected by our state’s courts.

For the reasons stated in Travelers’ January 29, 2024 letter and in Travelers’ Motion papers, this Court cannot and should not adopt the Receiver’s revised proposed orders. They are directly contrary to settled law. Additionally, Travelers incorporates as if fully stated herein its Motions, its Replies, and all accompanying papers and arguments that it submitted in support of dismissal, dissolving the receivership, and for a protective order.

Respectfully,

Womble Bond Dickinson (US) LLP

/s/ M. Todd Carroll

M. Todd Carroll, Partner

cc: Counsel of Record

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
MELVIN G. WELCH and DONNA B. WELCH, Plaintiffs, v. 3M Company, et al., Defendants.	Civil Action No. 2022-CP-40-03834 In Re: Asbestos Personal Injury Litigation Coordinated Docket
ATLAS TURNER, INC., f/k/a Atlas Asbestos Company, Ltd., by and Through Its Duly Appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, v. ZURICH AMERICAN INSURANCE CO., et al., Third-Party Defendants.	ORDER ON THIRD-PARTY DEFENDANTS' MOTIONS FOR PROTECTIVE ORDERS FROM DISCOVERY

This matter comes before the Court on Motions for Protective Orders (collectively, the “Motions”), filed by certain Third-Party Defendants, specifically: (1) the Motion for Protective Order filed by Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co. (“Travelers”) on August 28, 2023, including a supplement thereto filed on September 1, 2023; (2) the Motion for Protective Order filed by The Continental Insurance Company (“Continental”) and Certain Underwriters at Lloyd’s, London and Various London Market Companies (collectively, “Lloyd’s, London Underwriters”) on August 31, 2023, including two supplements thereto filed on November 13, 2023 and December 19, 2023; and (3) the Motion for Protective Order filed by Canadian General Insurance Company, n/k/a Aviva Insurance Co. of Canada (“Aviva”) on September 8,

2023. Atlas Turner, Inc. (“Atlas”), by and through its duly appointed receiver, Peter D. Protopapas (“the Receiver”), filed responses to the Motions on October 19, 2023, and January 11, 2024. The Court held a hearing on these 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 June 21, 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 Atlas Turner ... and [to] take any and all steps necessary to protect the interests of Atlas 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 Atlas.” *Id.* at 7. On July 6, 2023, Atlas filed in the Court of Appeals a Notice of Appeal that included an appeal of, *inter alia*, this Court’s June 21, 2023 Order appointing the Receiver. Atlas’s appeal remains pending. See Appellate Case No. 2023-001096.

Pursuant to his court-ordered power and authority, on June 26, 2023, the Receiver filed an Amended Third-Party Complaint in this action against certain insurers (including the moving Insurers), who allegedly issued policies providing insurance coverage to Atlas, seeking declaratory relief regarding the Insurers’ coverage obligations. See Amended Third-Party Complaint (the “Amended Complaint”) at ¶¶ 54–68.

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 Amended Complaint filed by the Receiver until (1) Atlas’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 Amended 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 Atlas'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 July 6, 2023, when Atlas filed its Notice of Appeal of the June 21, 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 is addressing these pending motions in a separate order.

Rule 62(a), SCRCP (emphases added). Although Atlas’s appeal of this Court’s Order appointing a receiver is pending before the Court of Appeals, because this matter is a receivership action, there is no stay pursuant to Rule 62(a).

In addition, Atlas’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—Atlas’ 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.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 recently twice 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 Atlas’ 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 Atlas’s insurance, and therefore, Atlas’s insurance is at increased risk of liquidation, divestment, or other impairment by persons purporting to act on behalf of Atlas 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 Atlas’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. Because the Court has 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 Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.; The Continental Insurance Company and Certain Underwriters at Lloyd's, London and Various London Market Companies; and Canadian General Insurance Company, n/k/a Aviva Insurance Co. of Canada, are hereby **DENIED**. The parties are hereby ordered to proceed expeditiously with discovery. Further delays will not be tolerated.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-02-23 16:26:52 page 7 of 7

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
MELVIN G. WELCH and DONNA B. WELCH, Plaintiffs, v. 3M Company, et al., Defendants.	Civil Action No. 2022-CP-40-03834 In Re: Asbestos Personal Injury Litigation Coordinated Docket
ATLAS TURNER, INC., f/k/a Atlas Asbestos Company, Ltd., by and Through Its Duly Appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, v. ZURICH AMERICAN INSURANCE CO., et al., Third-Party Defendants.	ORDER ON INSURERS' MOTIONS TO STAY, MOTIONS TO DISMISS, MOTIONS TO STRIKE, MOTIONS FOR MORE DEFINITE STATEMENT, AND MOTION TO DISSOLVE 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) Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively, "Certain London Market Insurers"); (3) Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, together with Federal Insurance Company (collectively, "Chubb"); (4) Aviva Insurance Company of Canada f/k/a Canadian General Insurance Company ("Aviva"); and (5) Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company

(“Travelers”) (collectively, the “Insurers”). Atlas Turner, Inc. (“Atlas”), by and through its duly appointed receiver, Peter D. Protopapas (“the Receiver”), filed an Omnibus Response to the Insurers’ Motions on October 16, 2023. Aviva filed a memorandum and reply in support of its motion on January 16, 2024. Travelers filed a reply brief in support of its motion on January 16, 2024. The Court held a hearing on these matters 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

Atlas’s historical operations include the sale of asbestos-containing products and raw asbestos material. *See* June 26, 2023 Amended Third-Party Complaint (the “Complaint”) at ¶ 12. 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 Atlas (the “Asbestos Suits”). *Id.*

On June 21, 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 Atlas Turner . . . and [to] take any and all steps necessary to protect the interests of Atlas 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 Atlas.” *Id.* at 7. On July 6, 2023, Atlas filed in the Court of Appeals a Notice of Appeal that included an appeal of, *inter alia*, this Court’s June 21, 2023 Order appointing the Receiver. Atlas’s appeal remains pending. *See* Appellate Case No. 2023-001096.

Pursuant to his court-ordered power and authority, on June 26, 2023, the Receiver filed an Amended Third-Party Complaint in this action against certain insurers (including the moving Insurers), who allegedly issued policies providing insurance coverage to Atlas, seeking declaratory

relief regarding the Insurers' coverage obligations. *See* Amended Third-Party Complaint (the "Amended Complaint") at ¶¶ 16–21, 54–68. Specifically, the Receiver seeks declaratory relief requiring the production of policies and related documents from all the Third-Party Defendants. *Id.* at ¶ 57 (First Cause of Action). The Receiver also seeks declarations regarding the meaning and application of the policies issued by the Insurers to the Asbestos Suits. *Id.* at ¶ 60 (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 Atlas's asbestos cases. *Id.* at ¶ 68 (Third Cause of Action).

The Insurers filed the instant Motions on August 15, 2023 (Continental and Certain London Market Insurers), August 21, 2023 (Chubb), August 25, 2023 (Aviva), and August 28, 2023 (Travelers). Briefing was subsequently completed, and this Court held a hearing 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 Atlas's insurance coverage—is automatically stayed during the pendency of Atlas'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 July 6, 2023, when Atlas filed its Notice of Appeal of the June 21, 2023 Order appointing the Receiver, any authority of the Receiver was stayed. Two of the Insurers—Continental and the Certain London Market Insurers—at least suggest that as a result, the Receiver’s Third-Party Complaint should also be dismissed.

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 Atlas’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, Atlas’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.

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—Atlas’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.¹ 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.²

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 Atlas, are not stayed and should continue during Atlas’s appeal.³

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. Without discovery, there is a lack of transparency regarding the status of Atlas’s insurance, and therefore Atlas’s insurance is at increased risk of liquidation, divestment, or other impairment by persons purporting to act on behalf of Atlas and/or the Insurers. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters,*

¹ 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.

² 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. 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.”).

³ Relatedly, this Court’s striking of the Answer of Atlas prior to the appointment of a Receiver and Atlas’s appeal of the same, has no impact on the Receiver’s ability to move forward in this case.

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 Atlas’s appeal.

B. Motions to Dismiss for Failure to State Claim—Rule 12(b)(6), SCRCP

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. The Court disagrees and finds the Receiver has stated sufficient facts to plead viable causes of action under Rule 12(b)(6), SCRCP.

“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), 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 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. ¶¶ 54–68. 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 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 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 argued 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 Atlas 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 Atlas; that Atlas purchased insurance policies from the Insurers; that these policies are Atlas's property; and that the Receiver is entitled to these documents. Compl. ¶¶ 54–58. 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 automatically stay discovery.

C. Motions to Strike—Rule 14(a), SCRCP

All five 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 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 Atlas 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. 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), SCRCF

Continental, Certain London Market Insurers, Chubb and Aviva—but not Travelers—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), SCRCF. 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), SCRCF, and Motions to Dissolve Receivership

Chubb and Aviva have moved to dismiss for lack of standing based on Rule 12(b)(1), SCRCF. 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 Atlas'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 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

⁴ Continental, Certain London Market Insurers, Chubb and Aviva also argue that the Receiver's Complaint is improper under Rule 20, SCRCF, 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 11 n.7. The Court rejects the Insurers' 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 Atlas.

“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 and Aviva do not challenge these standing elements. Rather, they argue 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 and Aviva raise in support of their Motions to Dismiss under Rule 12(b)(1), Travelers moves to dissolve the Atlas receivership.

First, Travelers contends the Receiver holds a “foreign receivership” with arguments mirroring Chubb’s arguments that the Receiver lacks standing because Atlas 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 Atlas’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas’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 Atlas 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), SCRCP

Chubb and Aviva base their Motions to Dismiss for Failure to Join Necessary Parties on Rule 12(b)(7), SCRCP. For the reasons discussed below, and in accordance with this Court’s previous rulings on substantially similar motions, these Motions are denied.

Chubb and Aviva seek 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. *See* Chubb’s Mot. at ¶ 30 (“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.”). These insurers further argue that their 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 *Welch* lawsuit, seek or may seek damages against Atlas 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 and Aviva, to defend, reimburse, and indemnify in full against such suits.

Accordingly, the motions to dismiss under Rule 12(b)(7) are denied.

G. Motion to Dismiss for Insufficient Process/Service of Process—Rule 12(b)(4) and (5)

Certain London Market Insurers argue that the Complaint should be dismissed against them under Rules 12(b)(4) and (5) for insufficient service of process because the specific London

syndicates subscribing to the policies issued to Atlas are not identified in the Complaint or individually served. The Court disagrees that dismissal is warranted.

First, as the Receiver has pleaded, policies issued by Certain London Market Insurers to Atlas include “service of suit” clauses that waive any challenge by Certain London Market Insurers’ to an exercise of jurisdiction in U.S. courts. Compl. ¶ 6. Accordingly, Certain London Market Insurers may not challenge personal jurisdiction, which in turn waives their arguments regarding the sufficiency of service here. *See Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 566, 683 S.E.2d 486, 492 (2009) (holding service complaints may be waived by agreement to personal jurisdiction). All insufficient service of process does is withhold personal jurisdiction, but Certain London Market Insurers have contractually consented to personal jurisdiction.⁵

Moreover, Certain London Market Insurers themselves should have knowledge of the specific “syndicates” that subscribed to Atlas’s policies—but they have not identified those syndicates in response to this Court’s Receivership Order or the Receiver’s discovery requests served on Certain London Market Insurers. But the Receiver has already located evidence—in the form of historical interrogatory responses verified by Atlas—which indicate that Atlas believes it was insured by Certain London Market Insurers. *See* Exhibit J to the Receiver’s opposition brief. If Certain London Market Insurers dispute that they issued such policies as identified by Atlas itself, then they can provide evidence to support such contention in discovery. Accordingly, the Court denies Certain London Market Insurers’ Motion to Dismiss under Rules 12(b)(4) and (5).

H. Motion to Dismiss for Lack of Personal Jurisdiction—Rule 12(b)(2), SCRC

Finally, Travelers’ and Aviva’s Motions to Dismiss for Lack of Personal Jurisdiction are based on Rule 12(b)(2), SCRC. For the reasons discussed below, and in accordance with this

⁵ Furthermore, Certain London Market Insurers made a voluntary appearance in the case and filed various motions. *See* Rule 4(d), SCRC.

Court's previous rulings on substantially similar motions, Travelers' and Aviva's Motions⁶ are 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*

⁶ The Court notes that Aviva's personal jurisdiction arguments were not contained in its original Motion. Its arguments, although noted in its Answer, were first presented in its Reply Brief and during subsequent argument to this Court. Nevertheless, the personal jurisdiction argument fails for the reasons set forth herein.

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 June 22, 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 and Aviva 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 Atlas, 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. A similar analysis applies to Aviva.

Here, Travelers and Aviva insured Atlas, which sold asbestos in the United States, including sales to South Carolina. Atlas is now being sued in South Carolina. And the Receiver brings this third-party action for this Court to declare rights under Travelers’ and Aviva’s policies covering Atlas’s alleged tort liability in South Carolina. Accordingly, this Court has specific personal jurisdiction over Travelers and Aviva pursuant to this Court’s prior rulings, and the Court therefore denies Travelers’ and Aviva’s current Motion under Rule 12(b)(2).⁷

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** the Motions for Stay, Motions to Dismiss, Motions to Strike, Motions for More Definite Statement, and Motion to Dissolve Receivership (collectively, the “Motions”) filed by (1) The Continental Insurance Company; (2) Certain Underwriters at Lloyd’s, London and Certain London Market Companies; (3) Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, together with Federal Insurance Company; (4) Aviva Insurance Company of Canada f/k/a Canadian General Insurance

⁷ In support of its Motion Dismiss, Travelers filed an affidavit of Ann B. Mulcahy, Travelers’ in-house counsel, on August 31, 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.

Company; and (5) Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company, are hereby **DENIED**.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Melvin G Welch , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2022CP4003834

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-02-23 16:15:42 page 19 of 19

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

Vs.

CIVIL ACTION NO: 2022-CP-40-005543

4520 CORP, INC, et al.,

ORDER

Defendants.

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

Plaintiffs,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Vs.

CIVIL ACTION NO: 2023-CP-40-03108

4520 CORP, INC, et al.,

ORDER

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