

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

TED EVERETTE MITCHELL, individually
and as Executor of the Estate of PATSY ANN
MITCHELL,

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-02979

Plaintiffs,

ORDER ON:

v.

3M COMPANY, et al.,

**1. THIRD-PARTY DEFENDANT
TRAVELERS CASUALTY AND
SURETY COMPANY’S MOTION
FOR PROTECTIVE ORDER
(INCLUDING SUPPLEMENT
THERE TO); AND**

Defendants.

**2. THIRD-PARTY DEFENDANT
CONTINENTAL INSURANCE
COMPANY’S MOTION FOR
PROTECTIVE ORDER**

ASBESTOS CORPORATION LIMITED, by
and through its duly appointed Receiver,
Peter D. Protopapas,

Third Party Plaintiff,

v.

CENTURY INDEMNITY COMPANY, et
al.,

Third Party Defendants.

RECEIVED
Mar 27 2024
SC Court of Appeals

This matter comes before the Court on Motions for Protective Orders (collectively, the “Motions”) filed by Third-Party Defendants Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company (“Travelers”) on October 23, 2023, with a supplement filed on October 27, 2023; and The Continental Insurance Company (“Continental”) on November 2, 2023. (Travelers and Continental are referred to collectively herein as the “Insurers.”). Asbestos Corporation Limited (“ACL”), by and through its duly appointed receiver, Peter D. Protopapas (“the Receiver”), filed responses to the Motions on October 26, 2023, and January 19, 2024. This Court held a hearing on the matters on February 2, 2024. After careful consideration of the parties’

arguments and filings, and for the reasons stated below, the Insurers' Motions for Protective Orders are **DENIED**.

BACKGROUND

On September 8, 2023, this Court ordered that “Peter Protopapas . . . is appointed Receiver in this case with the power and authority [to] fully administer all insurance assets of Asbestos Corporation, Ltd. and any subsidiaries, accept service on behalf of ACL, engage counsel on behalf of ACL, to assume control of the defense of asbestos claims made against ACL in the United States, and take any and all steps necessary to protect the interests of ACL whatever they may be.” *See* Receivership Order at 6. The Court instructed, among other things, that the Receiver “investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL.” *Id.* at 7. On September 13, 2023, ACL filed in the Court of Appeals a Notice of Appeal that included an appeal of, *inter alia*, this Court’s September 8, 2023 Order appointing the Receiver. ACL’s appeal remains pending. *See* Appellate Case No.: 2023-001461.

Pursuant to his court-ordered power and authority, on September 19, 2023, the Receiver initiated a third-party insurance coverage action in this case against the Insurers, who allegedly issued policies providing insurance coverage to ACL, seeking declaratory relief regarding the Insurers’ coverage obligations. *See* Third-Party Complaint (the “Complaint”) at ¶¶ 33–48.

In the instant Motions, the Insurers contend that a stay applies to all discovery pursuant to Rule 26(c), SCRCP, (including written discovery, document discovery, or deposition notices) in connection with the Complaint filed by the Receiver until (1) ACL’s pending appeal in this

receivership action is resolved, and (2) the Court has resolved the Insurers' various pending motions to stay and dismiss the Complaint and/or to dissolve the receivership.¹

ANALYSIS

The Insurers first argue that the Receiver is precluded from seeking any discovery in this action in light of ACL's pending appeal, pursuant to Rules 241(a) and 205, SCACR.

Rule 241(a) provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR. The Insurers argue that, under the terms of Rule 241(a), as of September 13, 2023, when ACL filed its Notice of Appeal of the September 8, 2023 order appointing the Receiver, any authority of the Receiver was stayed, and as a result, the Receiver is precluded from pursuing any discovery in connection with this third-party action.

This state's receivership rules and statutes recognize exceptions to the general rule of automatic stays with respect to appeals in receivership actions.

Rule 62(a), SCRCP, provides:

Unless otherwise ordered by the court, *an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.*

¹ The Court also heard argument on these motions on February 2, 2024, and is addressing these pending motions in a separate order.

Rule 62(a), SCRCP (emphases added). Although ACL’s appeal of this Court’s order appointing a receiver is pending, because this matter is a receivership action, there is no stay pursuant to Rule 62(a).

In addition, ACL’s appeal of the Court’s order appointing the Receiver is an appeal of an order “granting . . . the appointment of a receiver” under Section 14-3-330(4) of the South Carolina Code. Section 14-3-450 provides that there is no stay for such appeals:

In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.

See S.C. Code Ann. § 14-3-450. In sum, Rule 62(a) and Section 14-3-450 provide that receivership actions are not stayed during the pendency of appeals.²

The Insurers further contend that—irrespective of whether there is an automatic stay in place—ACL’s pending appeal divests this Court of jurisdiction in this receivership action because the Court of Appeals has exclusive jurisdiction under Rule 205, SCACR. However, the insurers in Payne & Keller—including Travelers and Continental, who are also defendants here—unsuccessfully raised the same argument to the Court of Appeals.³ After considering these arguments—including specifically the Insurers’ arguments regarding Rule 205, SCACR—the Court of Appeals entered its September 8 Order that the receivership action and the Receiver’s

² This Court’s ruling that there is no automatic stay of this receivership action pursuant to Rule 241(a) is consistent with the September 8, 2023 order entered by the Court of Appeals in the Payne & Keller receivership action when faced with the same arguments under Rule 241(a) and Rule 205. *See* September 8, 2023 Order, Appellate Case No. 2023-000727, at 2 (“Accordingly, the receivership action and the receiver’s ability to carry out his duties are not stayed.”).

³ *See* Travelers’ Resp. in Opp’n to the Receiver’s Mot. to Clarify, Sept. 5, 2023, Appellate Case No. 2023-000727, at 4–5; Appellants’ Return to Respondent’s Expedited Mot. to Clarify the Court’s Order on Appealability, Sept. 5, 2023, Appellate Case No. 2023-000727, at 10–13.

ability to carry out his duties could continue during the pendency of the appeal.⁴ South Carolina law on these issues—as confirmed by the Court of Appeals—applies equally to this action (and to any other receivership actions) as in the Payne & Keller action.

The protective orders from discovery sought by the Insurers in this receivership action during the pendency of ACL’s appeal could frustrate the purposes for which the Receiver was appointed in the first place. Without discovery, there is a lack of transparency regarding the status of ACL’s insurance, and therefore ACL’s insurance is at increased risk of liquidation, divestment, or other impairment by persons purporting to act on behalf of ACL and/or the Insurers. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004) (recognizing “potential harm in not having an unbiased party to protect a corporation’s assets” justifies allowing an immediate appeal of denial of request to appoint receiver). Accordingly, this Court denies the Insurers’ motions for protective orders from discovery and orders that discovery proceed in this case notwithstanding the pendency of ACL’s appeal.

The Insurers also ask the Court to enter protective orders from discovery until the Court resolves the Insurers’ various pending motions to dismiss filed in this case on October 23, 2023. As the Court has now denied such motions by separate order, this basis for seeking protective orders from discovery is moot. Furthermore, to the extent that any question remains, the Court reminds the parties that the pendency of a Motion to Dismiss does not automatically stay discovery.

⁴ On November 21, 2023, the Court of Appeals in the Payne & Keller receivership action again denied a motion by the insurers raising the same arguments based on Rule 205, finding that an order entered by this Court on October 5, 2023, was not properly before the Court of Appeals. *See* November 21, 2023 Order, Appellate Case No. 2023-000727, at 3 (“After careful consideration of Appellants’ motion to ‘clarify and enforce Rule 205,’ SCACR, the motion is denied.”).

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** the Motions for Protective Orders filed by Third-Party Defendants Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company and The Continental Insurance Company (“Continental”) are hereby **DENIED**. The parties are hereby ordered to proceed expeditiously with discovery.

IT IS SO ORDERED.

[JUDGE’S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Ted Everette Mitchell , plaintiff, et al vs 3M Company , defendant, et al
Case Number: 2022CP4002979
Type: Order/Other

So Ordered

Jean H. Toal

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