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), SCRCP

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), SCRCP. The Court finds that the causes of action in the Receiver's Third-Party Complaint are sufficiently pled so as to give the Insurers notice of the claims against them. Accordingly, the Insurers' motions for a more definite statement are denied.

E. Motions to Dismiss for Lack of Standing—Rule 12(b)(1), SCRCP, and Motions to Dissolve Receivership

Chubb and Aviva have moved to dismiss for lack of standing based on Rule 12(b)(1), SCRCP. Travelers has also moved to dissolve the receivership based on essentially the same arguments challenging the validity of this Court's appointment of a receiver for 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, SCRCP, and should be severed, because it is "not alleged to arise out of the same transaction, occurrence, or series of transactions or occurrences." *See, e.g.*, Chubb Mot. at 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), SCRCP

Finally, Travelers' and Aviva's Motions to Dismiss for Lack of Personal Jurisdiction are based on Rule 12(b)(2), SCRCP. 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), SCRCP.

Court's previous rulings on substantially similar motions, Travelers' and Aviva's Motions[6] 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