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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

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

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

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 ZFActive 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.; Certain Underwriters at Lloyd's,
London, and Certain London Market Companies; Canadian General
Insurance Company, n/k/a Aviva Insurance Co. of Canada; Marsh &
McLennan Companies, Inc., ... Third-Party
Defendants,

of which

The Continental Insurance Company Market Companies and Certain
Underwriters at Lloyd's, London, and Certain London Market
Companies are the, ... Appellants.

APPENDIX IN SUPPORT OF MOTION TO ENFORCE EXCLUSIVE JURISDICTION

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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

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

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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 Plaintiffs' 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)

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ATTORNEYS FOR PLAINTIFFS

July 25, 2022
Columbia, South Carolina

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
	)	
	)	<i>In Re:</i>
Plaintiffs,	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
v.	)	
	)	
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

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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,

)

V.

)

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

)

ORDER STRIKING ATLAS TURNER'S ANSWER

)

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

)

Defendants.

)

)

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

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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.)

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

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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; 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

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.

**AMENDED THIRD-PARTY
COMPLAINT**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.

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 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; 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 **

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Russell G. Hines (SC Bar No. 72100)
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Attorneys for Respondent

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Brian M. Barnwell
RIKARD & PROTOPAPAS, LLC
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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)
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(843) 720-5488

Attorneys for Appellant

Charleston, South Carolina

July 6, 2023

The South Carolina Court of Appeals

Lenora Childers, Individually and as Personal
Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,
Inc.; General Boiler Casing Company, Inc.; HEFCO,
Inc.; J.R. Deans Company, Inc.; Payne & Keller
Company; SFB, Incorporated; Stafford Insulation
Company; Standard Insulation Company of N.C., Inc.;
Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; and Payne &
Keller Company, By and Through Their Duly Appointed
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and
as Successor to Northern Insurance Company of New
York, Maryland All American General Insurance
Company, and Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony Beatty;
Dennis William Cahill; Catherine Ann Carlino; Andre
Lefebvre; David Dean Shumway; Gil Chandler; Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace
Fuller; Daniel Robert Keddie; Julie Ann Fortune;
Michael John Crall; James Francis Meehan; Larry Gene
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital
Corp.; Admiral Insurance Company; Continental

Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

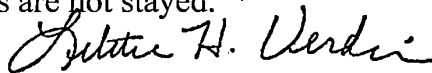
AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

ORDER

After consideration of Respondent's "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal. *See* Rule 62(a), SCRPC ("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.



FOR THE COURT

Columbia, South Carolina

FILED
Sep 08 2023

cc:

Wesley Brian Sawyer, Esquire
Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Harry Lee, Esquire
Brian Montgomery Barnwell, Esquire
John Belton White, Jr., Esquire
Marghretta Hagood Shisko, Esquire
Brady Edwards, Esquire
Scott Shutte, Esquire
Christopher Rutledge Jones, Esquire
G. Murrell Smith, Jr., Esquire

Jonathan M. Robinson, Esquire
Shanon N. Peake, Esquire

The South Carolina Court of Appeals

Lenora Childers, Individually and as Personal
Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,
Inc.; General Boiler Casing Company, Inc.; HEFCO,
Inc.; J.R. Deans Company, Inc.; Payne & Keller
Company; SFB, Incorporated; Stafford Insulation
Company; Standard Insulation Company of N.C., Inc.;
Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; and Payne &
Keller Company, By and Through Their Duly Appointed
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and
as Successor to Northern Insurance Company of New
York, Maryland All American General Insurance
Company, and Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony Beatty;
Dennis William Cahill; Catherine Ann Carlino; Andre
Lefebvre; David Dean Shumway; Gil Chandler; Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace
Fuller; Daniel Robert Keddie; Julie Ann Fortune;
Michael John Crall; James Francis Meehan; Larry Gene
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital
Corp.; Admiral Insurance Company; Continental

Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

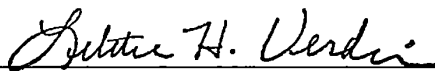
AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

ORDER

After careful consideration of Appellants' motion to "clarify and enforce Rule 205," SCACR, the motion is denied. Appellants' motion was prompted by an order issued by the circuit court on October 5, 2023, which Appellants contend the circuit court lacked jurisdiction to issue. Appellants request that this court "enforce" its exclusive jurisdiction over the matters on appeal, confirm that the circuit court acted outside its jurisdiction in issuing the October 5 order, and "enjoin[]" the circuit court from proceeding further with regard to matters affected by this appeal. The order that was properly appealed to this court is the circuit court's March 31, 2023 order denying Appellants' motion to dissolve the receivership and motion to dismiss. This court will take no action on any order which is not properly before it. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement . . ."). Moreover, further "motions to clarify" filed by any party may not be considered by this court. *See* Rule 221(c), SCACR ("The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.").



FOR THE COURT

Columbia, South Carolina

cc:

Wesley Brian Sawyer, Esquire
Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Harry Lee, Esquire
Brian Montgomery Barnwell, Esquire
John Belton White, Jr., Esquire

FILED
Nov 21 2023

Marghretta Hagood Shisko, Esquire
Brady Edwards, Esquire
Scott Shutte, Esquire
Christopher Rutledge Jones, Esquire
G. Murrell Smith, Jr., Esquire
Jonathan M. Robinson, Esquire
Shanon N. Peake, Esquire

The South Carolina Court of Appeals

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 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

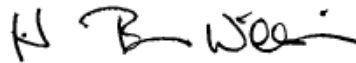
Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes
Company, Defendants,

of which Atlas Turner, Inc. is the Appellant.

Appellate Case No. 2023-001096

ORDER

Appellant's motion to "confirm" the automatic stay or, alternatively, petition for supersedeas is denied. Appellant failed to petition the circuit court first or to satisfactorily establish that extraordinary circumstances made it impracticable to do so. *See* Rule 241(d)(1), SCACR ("Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court."). Because Appellant did not first petition the circuit court to supersede its order, the petition is denied.



C.J.

FOR THE COURT

Columbia, South Carolina

cc:

Aaron Daniel Chapman, Esquire
John D. Kassel, Esquire
Theile Branham McVey, Esquire
Jamie Rae Rutkoski, Esquire
Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire
James D. Gandy, III, Esquire
Peter Demos Protopapas, Esquire
John Kenneth Chandler, Esquire
Brian Montgomery Barnwell, Esquire
Ka'Leya Q. Hardin, Esquire
Todd Barnes, Esquire

FILED
Dec 01 2023

The South Carolina Court of Appeals

John A. Tibbs and Margaret B. Tibbs, Respondents,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation;
A.W. Chesterton Company; ABB Inc.; Air & Liquid
Systems Corporation; AiW-2010 Wind Down Corp.;
Amentum Environment & Energy, Inc.; Anchor/Darling
Valve Company; Armstrong International, Inc.; Asbestos
Corporation Limited; ASCO, L.P.; Atlas Asbestos Co;
Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson,
Inc.; Banner Industries International, Inc.; Banner
Industries, LLC; Banner Industries Of N.E., Inc.; Barretts
Minerals Inc.; Beaty Investments, Inc.; Bechtel
Corporation; The Bonitz Company; Brand Insulations,
Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline
Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.;
Consolidated Electrical Distributors, Inc.; Copes-Vulcan,
Inc.; Covil Corporation; Crane Instrumentation &
Sampling, Inc.; Crosby Valve, LLC; Daniel International
Corporation; Davis Mechanical Contractors, Inc.;
Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke
Energy Corporation; Eaton Corporation; Ellington
Insulation Company, Inc.; Emerson Electric Co.; Fisher
Controls International LLC; Flame Refractories, Inc.;
Flowserve Corporation; Flowserve US Inc.; Fluor
Constructors International; Fluor Constructors
International, Inc.; Fluor Daniel Services Corporation;
Fluor Enterprises, Inc.; FMC Corporation; Foster
Wheeler Energy Corporation; Gardner Denver Nash,
LLC; General Boiler Casing Company, Inc.; General
Cable Corporation; General Cable Industries, Inc.;
General Electric Company; Gould Electronics Inc.;
Goulds Pumps, Incorporated; Goulds Pumps LLC; Great
Barrier Insulation Co.; Grinnell LLC; Hajoca
Corporation; Howden North America Inc.; HPC
Industrial Services, LLC; IMO Industries Inc.; ITT LLC;

Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC, Defendants,

Of which Asbestos Corporation Limited is the Appellant,

and

Peter Protopapas, Duly Appointed Receiver for Atlas Corporation Limited, is the Respondent,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa

LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC, Third-Party Defendants,

Of which Mohed Altrad, Altrad Investment Authority S.A.S., ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Anglo American PLC, De Beers, PLC, De Beers Centenary AG, De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., ESAB Corporation, Charter Consolidated Ltd., and Central Mining & Investment Corporation Ltd. are Appellants.

Appellate Case No. 2023-001461

ORDER

Century Indemnity Company and Federal Insurance Company (collectively, Chubb Insurers) have filed a motion to intervene in this appeal for the purpose of filing a "motion to clarify and enforce Rule 205" of the South Carolina Appellate Court

Rules. After careful consideration, the motion to intervene is denied and this court declines to act upon Chubb Insurers' concomitantly-filed motion.

Receiver Peter Protopapas has filed a motion to be added as a Respondent in this appeal. No return was filed. After careful consideration, we grant the motion and the caption is amended as set forth in this order.

Appellant Asbestos Corporation Limited (ACL) filed a petition for supersedeas on November 22, 2023. On December 7, 2023, ACL requested leave to withdraw the petition for supersedeas. After careful consideration, we grant the request to withdraw and therefore decline to act upon the petition.¹ Accordingly, the Receiver's motion to dismiss ALC's petition for supersedeas is denied as moot.

Receiver Protopapas's request to supplement the record on appeal is denied as premature. The Receiver's request for attorney's fees and sanctions, or, alternatively, to remand this appeal to the circuit court, is also denied. However, any further actions by any party taken for the purpose of delay during the pendency of this appeal may result in sanctions pursuant to Rule 269, SCACR.



C.J.

FOR THE COURT

Columbia, South Carolina

FILED
Feb 05 2024

cc:

Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire
James D. Gandy, III, Esquire
Theile Branham McVey, Esquire
Jamie Rae Rutkoski, Esquire
Aaron Daniel Chapman, Esquire
David Christopher Humen, Esquire

¹ We decline to act upon the relief requested by Respondents John and Margaret Tibbs' in their "return to request to set briefing schedule"; any request for action by this court must be in the form of a motion. Moreover, the Tibbs' request regarding the briefing schedule and their request to deny ACL's supersedeas on the merits are now moot.

Kevin Kendrick Bell, Esquire
Charles William Branham, III, Esquire
Matthew Todd Carroll, Esquire
Kevin A. Hall, Esquire
Mary Elizabeth O'Neill, Esquire
Shanon N. Peake, Esquire
G. Murrell Smith, Jr., Esquire
John Thomas Lay, Jr., Esquire
Gray Thomas Culbreath, Esquire
Lindsay Anne Joyner, Esquire
Laura Watkins Jordan, Esquire
Eleanor Lasseigne Jones, Esquire
Jonathan M. Robinson, Esquire
Steven James Pugh, Esquire
Benjamin Palmer Carlton, Esquire
Carmen Vaughn Ganjehsani, Esquire
Ashwin Ray Sanzgiri, Esquire
James H. Elliott, Jr., Esquire
Cameron D Berthelsen, Esquire
A. Victor Rawl, Jr., Esquire

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, Vs. 4520 CORP, INC, et al., Defendants.	In Re: Asbestos Personal Injury Litigation Coordinated Docket CIVIL ACTION NO: 2022-CP-40-005543 ORDER
HEATHER DONAGHY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SHIRLEY SMILEY POTTER, DECEASED, Plaintiffs, Vs. 4520 CORP, INC, et al., Defendants.	In Re: Asbestos Personal Injury Litigation Coordinated Docket CIVIL ACTION NO: 2023-CP-40-03108 ORDER

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: Michael David Link , plaintiff, et al vs 3M Company , defendant, et al
Case Number: 2022CP4005543
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-02-23 10:19:22 page 7 of 7

ELECTRONICALLY FILED - 2024 Feb 23 11:30 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4005543

000158

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), SCRCRCP, 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), SCRCRCP (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), 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 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), SCRCF (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

ELECTRONICALLY FILED - 2024 Feb 26 9:58 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4003834

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

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

Appellate Case No.
Circuit Court Case No. 2023-CP-40-03108

Heather Donaghy, as Personal Representative of the Estate of Shirley Smiley
Potter, Deceased,

Respondent,

v.

4520 Corp., Inc., et al,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

NOTICE OF APPEAL

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

Defendants Asbestos Corporation Limited and Atlas Turner, Inc. hereby appeal the following order of the Honorable Jean Hoefer Toal, Circuit Court Judge:

- **Order on Receiver's Motion to Enforce A Court Order Against Clement Rivers, LLP**, filed February 23, 2024

A copy of the appealed order is attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on February 23, 2024.

This order is immediately appealable pursuant to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). “[A]n order granting a motion to disqualify a party’s attorney in a civil case affects a substantial right and may be immediately appealed under Section 14-3-330(2) [of the South Carolina Code].” *Id* at 197, 607 S.E.2d at 710. “Such an order implicitly falls within the statutory definition of a substantial right under Section 14-3-330(2)(a).” *Id*.

The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Moreover, the right to be represented by one[']s preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.

Id. at 197-98, 607 S.E.2d at 710.

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[signature page for Notice of Appeal, Circuit Court Case No. 2023-CP-40-03108]

Respectfully submitted,

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Charleston, South Carolina

March 4, 2023

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

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

Appellate Case No.
Circuit Court Case No. 2022-CP-40-05543

Michael David Link and Sandra Strickland Link,

Respondents,

v.

4520 Corp., Inc., et al,

Defendants,

Of which Asbestos Corporation Limited and Atlas Turner, Inc. are

Appellants.

NOTICE OF APPEAL

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*Purported receiver for “insurance assets” of Asbestos Corporation Limited per Order being
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The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Moreover, the right to be represented by one[']s preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right.

Id. at 197-98, 607 S.E.2d at 710.

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[signature page for Notice of Appeal, Circuit Court Case No. 2022-CP-40-05543]

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March 4, 2023