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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

Jean Hoefer Toal, Circuit Court Judge

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

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 Aetna Life & Casualty Co., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

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

and

Peter D. Protopapas, Duly Appointed Receiver for Atlas Turner, Inc., are Respondents.

**THE RECEIVER FOR ATLAS TURNER, INC.'S RESPONSE REGARDING
APPEALABILITY**

Peter Protopapas, the court-appointed Receiver for the insurance assets of Atlas Turner, Inc. (“Atlas” or the “Receiver”), submits this Response regarding whether two interlocutory orders entered by the circuit court—specifically its Order Denying Motions to Dismiss, Stay, Strike, and Dissolve the Receivership and its Order Denying Motions for Protection from Discovery (collectively, the “Orders”)—are immediately appealable. Aetna Life & Casualty Co. (“Travelers”), The Continental Insurance Company (“Continental”, and Certain Underwriters at Lloyd’s London and Certain London Market Companies (collectively, “Lloyd’s”) have appealed these Orders, claiming they are immediately appealable.

This Court's resolution of this issue will be greatly facilitated because the South Carolina Supreme Court decided the issue when it took the rare step of granting a Motion to Certify Appeal (also joined by Travelers and its counsel), vacating an order denying sanctions, and dismissing the appeal. *See Childers v. Davis Mechanical Contractors*, No. 2024-000005 (March 27, 2024) (“*Childers*”). Despite the South Carolina Supreme Court rejecting the attempts by the Appellants to insist that certain interlocutory orders are immediately appealable, Travelers, and now Continental and Lloyd’s, has been undeterred in pursuing this inappropriate appeal of the Orders.¹

¹ After receiving the Supreme Court’s March 27 Order in *Childers*, the Receiver’s counsel reached out to Travelers, Continental, and Lloyd’s requesting they withdraw the interlocutory appeals. (Supp. App. 100). Appellants refused. (Supp. App. 106, 108.)

INTRODUCTION

Inappropriate appeals, like this case, have become an unfortunate pattern in the asbestos receivership litigation in South Carolina. Like the numerous other appeals of orders regarding receiverships filed by insurers in the last six weeks,² Appellants appeal two non-appealable interlocutory orders—one denying motions to dismiss or strike a third-party complaint and to dissolve the Receivership and the other an order on discovery in the face of controlling precedent holding that this appeal is improper. On Wednesday, March 27, 2024, all five justices of the South Carolina Supreme Court joined in an order dismissing an interlocutory appeal of a nearly identical order “because the underlying circuit court order at issue is not immediately appealable.” *Childers v. Davis Mechanical Contractors*, No. 2024-000005 (March 27, 2024) (“*Childers*”). The argument for immediate appealability raised in that appeal—Section 14-3- 330(4) of the South Carolina Code—is the same argued raised by Appellants here.³ The outcome should be no different, and Appellants should not be permitted to continue to clog our courts with meritless appeals like this one.

As the Supreme Court just recently held, the circuit court’s Order denying Appellants’ motions to dismiss, strike, and dissolve the receivership is not immediately appealable. Holding otherwise would create an exception to section 14-3-330 that the Legislature has not adopted.

² Since December 2023, at least nineteen notices of appeal have been filed in this Court from cases involving receiverships. See Appellate Case Nos. 2023-002006, 2023-002007, 2023-002008, 2023-002009, 2023-002010, 2023-002011, 2024-000342, 2024-000348, 2024-000341, 2024-000337, 2024-000501, 2024-000501. Thirteen of those were filed in the last six weeks.

³ Continental and Lloyd’s filed Notices of Appeal of these orders on March 27, 2024, after this Court requested appealability memoranda from the parties. The Court subsequently consolidated the appeal of Continental and Lloyd’s with Travelers’ appeal of the same Orders on April 1, 2024. Both appeals should be dismissed as interlocutory for the reasons discussed herein. The April 1, 2024 Motion to Enforce Exclusive Jurisdiction filed by Continental and Lloyd’s makes it clear that Continental and Lloyd’s join in Travelers’ belief that the orders are appealable pursuant to section 14-3-330(4). (Mtn to Enforce at p. 9.)

Section 14-3-330(4), which relates to receiverships, applies only to an order creating the receivership, not to subsequent orders denying efforts to limit or dismiss the receivership, and indeed, an appeal of the order appointing a receiver for Atlas already is pending. Similarly, this Court and the Supreme Court have held consistently that discovery orders like the circuit court's Order denying the motions for protection from discovery are not immediately appealable. *See, e.g.*, October 16, 2019 Order, Appellate Case No. 2019-001651 (denying petition for writ of certiorari filed by USF&G, Sentry, and Zurich related to interlocutory discovery order); August 9, 2022 Order, Appellate Case No. 2022-000761 (granting motion to dismiss because discovery order was not immediately appealable).

BACKGROUND

The circuit court appointed the Receiver for the insurance assets of Atlas on June 21, 2023, granting the Receiver “the power and authority [to] fully administer all insurance assets of [Atlas] 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.” (Travelers App. 250, Order on Plaintiffs’ Motion to Appoint a Receiver (June 21, 2023).) The Receiver’s charge is to “investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas.” (*Id.* at 251.) Atlas filed a timely Notice of Appeal with this Court of the order appointing the Receiver and related orders. (Travelers App. 292, Notice of Appeal (July 6, 2023).) Briefing in Atlas’s appeal has been completed.

Following his appointment and pursuant to the duties imposed on the Receiver in the Order appointing him, the Receiver initiated a third-party action against Travelers, Continental, Lloyd’s, and various other insurers of Atlas. (Travelers App. 25, 270, Summons and Third-Party Complaint (June 21, 2023); Amended Third-Party Complaint (June 26, 2023).) On August 28, Travelers filed

a “Motion to Stay or Dismiss the Atlas Receiver’s Third-Party Claims and to Dissolve the Receivership” (Travelers App. 295, Motion to Stay or Dismiss the Atlas Receiver’s Third-Party Claims and to Dissolve the Receivership (Aug. 28, 2023)) and a corresponding motion for protection from discovery (Travelers App. 336, Motion for Protective Order (Aug. 28, 2023)). Continental filed a Motion “to Enforce Automatic Stay or to Dismiss and/or Strike Amended Third-Party Complaint or, in the alternative, Sever Amended Third-Party Complaint, or, in the further alternative, for a More Definite Statement” on August 15, 2023, and a Motion for Protective Order on August 31, 2023. (Supp. App. 22, 34.) Lloyd’s also filed a Motion “to Enforce Automatic Stay or to Dismiss and/or Strike Amended Third-Party Complaint or, in the alternative, Sever Amended Third-Party Complaint, or, in the further alternative, for a More Definite Statement” on August 15, 2023. (Supp. App. 87.)

On February 26, 2024, the circuit court issued an Order on Insurers’ Motions to Stay, Motions to Dismiss, Motions for More Definite Statement, and Motion to Dissolve Receivership. (Travelers App. 431, Order Denying Motion to Dissolve (Feb. 26, 2024).) The court issued an additional order on February 26, 2024, denying the related motions for protection from discovery filed by Travelers, Continental, and other third-party defendants. (Supp. App. 1.) These are the two Orders that are the subject of the interlocutory appeals filed by Travelers, Continental, and Lloyd’s.

ARGUMENT

“The right of appeal arises from and is controlled by statutory law.” *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). “An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Id.* “The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section] 14-3-

330 [of the South Carolina Code].” *Id.* “Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable.” *Id.*

The Orders denying (1) the motions to dismiss and/or strike and to dissolve the receivership, and (2) the motions for protection from discovery are neither final nor in “one of the several categories set forth in [s]ection 14-3-330.” As a result, neither Order is immediately appealable.

Travelers claims that Section 14-3-330(4) entitles it to an immediate appeal of the circuit court’s order denying its motion to “dissolve” the receivership “and to vacate and terminate [the] appointment” of the Receiver.⁴ Travelers’ Resp. at 7. Travelers limits its claim to those portions of the Order and to that subsection of Section 14-3-330 because it recognizes that (1) other parts of the Orders on appeal are interlocutory orders not immediately appealable and (2) none of the other three categories authorized for appeal under Section 14-3-330 apply to an order denying a motion to “dissolve” a receivership.

But Appellants’ reliance on Section 14-3-330(4) rests on a misinterpretation of the statutory language, cites no supporting authority, and is simply incorrect. As Travelers is well aware, Travelers itself raised the same arguments on Section 14-3-330(4) in seeking immediate appeal in *Childers*; this Court should dismiss the appeal here just like the South Carolina Supreme Court dismissed the appeal in *Childers v. Davis Mechanical Contractors, Inc.* last week. See March 27 Order, Appellate Case No. 2023-000727.

⁴ The April 1 Motion filed by Continental and Lloyd’s makes it clear Continental and Lloyd’s also rely on section 14-3-330(4) for appealability.

A. The South Carolina Supreme Court’s March 27 Order in *Childers* is dispositive of the appealability question in this appeal.

In *Childers v. Davis Mechanical Contractors*, Travelers and other insurers appealed an Order denying Motions to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership. April 28, 2023 and May 5, 2023 Notices of Appeal, Appellate Case No. 2023-000727. This Court requested, and the parties filed, appealability memoranda in that appeal. The Receiver argued the Order was not immediately appealable because it was an interlocutory order that did not fall under the exceptions set forth in section 14-3-330. See May 15, 2023 Appealability Memorandum of the Receiver, Appellate Case No. 2023-000727. Travelers and the other insurer appellants argued the Order was appealable under section 14-3-330(4) because the appellants characterized the order as one that “continued a receivership.” See May 15, 2023 Appealability Memoranda, Appellate Case No. 2023-000727. This Court issued an Order on August 9, 2023, finding that the appeal could proceed but “nothing in th[e] order prevent[ed] the parties from raise the issues of appealability and standing in their briefs.” August 9, 2023 Order, Appellate Case No. 2023-000727. This Court did not find the orders appealable; instead, it postponed a decision on appealability until later in the appeal.

Travelers and the other insurers filed a motion requesting certification of the *Childers* appeal. Travelers and the other insurers wanted the issue of appealability of orders denying motions to dismiss or dissolve receiverships decided by the Supreme Court presumably to provide finality and clarity to their increasing reliance on the issue as a basis for appeals and refusals to participate in receivership actions. See Rule 204(b), SCACR (“Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.”). The South Carolina Supreme Court issued an Order on March 27, 2024, certifying the appeal, dispensing with further briefing, vacating this Court’s denial of sanctions,

and dismissing the appeal because “the underlying circuit court order at issue is not immediately appealable.” (Supp. App. 8.)

The order involved in the *Childers* appeal was the same type of order at issue in this appeal—an order denying motions to dismiss and dissolve the Receivership. The Supreme Court has found that this type of order is not immediately appealable. In *Childers*, the Supreme Court considered Travelers’ argument that an appeal from the same type of order involved in this appeal “is expressly authorized by South Carolina Code § 14-3-330(4).” May 15, 2023 Appealability Memorandum of Travelers at 4, Appellate Case No. 2023-000727. The Supreme Court also considered the other Payne & Keller insurers’ argument that the same type of order involved in this appeal was appealable under section 14-3-330(4) because it “denied a request to dissolve the receivership and dismissed the Receiver’s claims against Appellants, thereby ‘continuing’ the receivership over Payne & Keller.” May 15, 2023 Appealability Memorandum of Certain Insurers at 11, Appellate Case No. 2023-000727. The Supreme Court rejected these arguments, finding that section 14-3-330(4) does not apply to orders denying motions to dismiss and dissolve receiverships. That ruling is dispositive on the issue of appealability in this appeal.

In fact, Travelers implicitly concedes in its appealability memorandum that the Supreme Court’s March 27 order in *Childers* applies to this appeal. On page 9 of its memorandum, Travelers states: “Indeed, in the context of another receivership case, Payne & Keller, this Court recently held, on two separate occasions, that Travelers’ appeal of an order denying a motion to dissolve a receivership ‘shall proceed.’” Travelers has already conceded that the rulings as to appealability in the *Childers* appeal apply in the context of this appeal because the appeals involve the same type of orders. However, now, because it does not like the outcome, Travelers likely will attempt to walk back its previous reliance on appealability rulings in *Childers* to artfully maneuver

its way around the Supreme Court’s direct pronouncement and delay the proceedings in the receivership court further.

After receiving the Supreme Court’s March 27 Order in the *Childers* appeal, the Receiver’s counsel reached out to Appellants’ counsel, and counsel for a number of other insurers involved in appeals of similar interlocutory orders, requesting that the insurers withdraw the appeals due to the Supreme Court’s ruling that these appeals were interlocutory. (Supp. App. 100.) Travelers’ counsel wrote back on April 1, 2024, stating: “[T]he Supreme Court’s order of March 27th contains no information, discussion, or analysis as to why the order on appeal in that case is not immediately appealable” and continued to rely on “the plain language of South Carolina Code § 14-3-330(4)” to support this appeal because the Supreme Court “did not explain how that statute is inapplicable here.”⁵ (Supp. App. 108.)⁶

Notably, Travelers had no issue citing to this Court’s one-sentence ruling deferring the appealability question in the *Childers* appeal when it believed that ruling was in its favor. Now, faced with a clear ruling on appealability from the Supreme Court rejecting the application of

⁵ Counsel for Continental and Lloyd’s sent a similar letter questioning the applicability of the March 27 Order. (Supp. App. 106.)

⁶ Travelers has taken a similar stance in rejecting this Court’s September 8, 2023 Order and November 21, 2023 Order in the *Childers* appeal holding that “the receivership action and the receiver’s ability to carry out his duties are not stayed” during the pendency of appeal. August 9, 2023 Order and November 21, 2023 Order, Appellate Case No. 2023-000727. Travelers has argued to this Court and the circuit court that because the Court of Appeals did not embrace and specifically address their repeated briefing and arguments that Rule 205 deprives the Receiver Court and Receiver from the ability to proceed, this Court must be overlooking their arguments or wrongly ignoring their arguments. For Travelers, it seems to be beyond the realm of possibilities that the courts have heard, considered, and rejected Travelers’ efforts to prevent the Receivership court and the Receiver from identifying and securing Receiver assets during the artillery of appeals. The same is true with Continental and Lloyd’s, as these entities recently filed a Motion to Enforce Exclusive Jurisdiction, raising arguments that have already been rejected by this Court in the *Childers* appeal. Pursuant to C-Track, the appeal, including the Receiver’s deadline for responding to the motion filed by Continental and Lloyd’s, is being held in abeyance until the Court rules on the appealability issues.

section 14-3-330(4), Travelers feigns trouble understanding the ruling of the Supreme Court. The Supreme Court has spoken—section 14-3-330(4) does not apply to orders denying motions to dismiss third-party complaints filed by the Receiver and denying motions to dissolve receiverships.

Appellants' obstinate refusal to recognize and abide by orders of South Carolina appellate courts further their continued goal of frustrating the orderly administration of the asbestos docket and the chief administrative judge appointed by the Chief Justice to oversee this docket. These insurers, and insurers in other receivership cases, continuously raise already-rejected arguments under the guise that our appellate courts must speak individually in every receivership appeal, selectively refusing to listen to any rulings they do not like. While the insurers pursue meritless appeals and repetitive rulings from this Court and the Supreme Court, the receivership action continues to be delayed. The South Carolina courts involved in adjudicating these matters cannot move forward efficiently.

Both this Court and the Supreme Court have warned insurers numerous times that pursuing appeals for the purpose of delay is sanctionable conduct under Rule 269 of the South Carolina Appellate Court Rules. (Supp. App. 20 (March 9, 2021 Order, Appellate Case No. 2020-001670), 15 (February 5, 2024 Order, Appellate Case No. 2023-001461), 12 (February 14, 2024 Order, Appellate Case No. 2023-000727).) Despite the repeated warnings and orders instructing these vexatious appellants to cease these tactics, it is clear such warnings have fallen on deaf ears. To be sure, these improper appeals and refusals to abide by court orders have successfully accomplished the intended result of delay and obstruction. Pursuing legitimate appeals in good faith is one thing. Repeatedly pursuing rejected arguments and refusing to recognize orders of South Carolina courts is another matter. Appellants are four more insurers in a long line that have made it clear they will continue their abuse of the appellate process until this Court or the Supreme

Court refuse to allow it. Absent decisive and meaningful consequences, there will be no change in this contemptuous behavior.⁷

Accordingly, the Receiver believes the Supreme Court's March 27 Order is dispositive on the issue of appealability but addresses the merits of Appellants' repeated appealability arguments once again below.

B. The Order is not appealable under Section 14-3-330(4).

Like it did in the appeal at issue in *Childers*, Travelers claims the Order denying its motion to dismiss or dissolve is immediately appealable under section 14-3-330(4).⁸ In issuing its order in *Childers* last week, the South Carolina Supreme Court necessarily rejected this argument. The basis for doing so is rooted in the language of section 14-3-330(4), because neither the order in *Childers* nor the order at issue here is an order relating to an injunction, nor are they orders granting, continuing, modifying, or refusing the appointment of a receiver. See § 14-3-330(4). No injunctions have been sought or entered here, and although the third-party claims in the underlying action are brought by Atlas's Receiver—just like the third-party claims in *Childers* were brought by the receiver in that case—the Order did not alter or affect the Receiver's appointment in any way.⁹

⁷ In an ironic twist, Travelers' latest communication attempts to deflect from its pursuit of non-meritorious appeals by suggesting that it is somehow improper for the Receiver to continue its pleas to cease the frivolous appeals and point out the impropriety in refusing to do so. (Supp. App. 108.)

⁸ Although Continental and Lloyd's have not filed a memorandum on appealability due to their subsequently filed notices of appeal, their April 1 motion makes it clear that they also rely on section 14-3-330(4) for appealability.

⁹ As the Court is aware, the issues related to the initial order appointing the Receiver already are on appeal to this Court in *Tibbs v. 3M Company*, Appellate Case No. 2023-001461. Allowing an additional appeal that also seeks to challenge the legality and propriety of the appointment of the Receiver serves no purpose but to waste judicial resources and delay the underlying proceedings.

Travelers claims that because the circuit court’s order denying its motion to dismiss and “dissolve” the receivership “indisputably ‘continue[s]’ a receivership,” it is “squarely within the scope of Section 14-3-330(4).” Travelers’ Resp. at 7–8. Travelers’ interpretation of Section 14-3-330(4) is incorrect and contrary to the South Carolina Supreme Court’s order last week in *Childers v. Davis Mechanical Contractors*.

1. Section 14-3-330(4) is concerned with “appointments”—not “receiverships”

As an initial matter, the appealability statute only provides for immediate appellate review of orders affecting “the *appointment* of a receiver.” S.C. Code Ann. § 14-3-330(4) (emphasis added). Critically, the statute does not allow the interlocutory appeal of an order affecting “a receivership.” See *Aiken v. S.C. Dep’t of Revenue*, 429 S.C. 414, 420, 839 S.E.2d 96, 99 (2020) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous” (quoting *State v. Smith (In re Decker)*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995))); *Hartford Accident & Indem. Co. v. Lindsay*, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979) (“Full effect must be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away.”).

Although, upon first glance, the distinction between orders affecting the appointment of a receiver and a receivership per se may appear illusory, upon closer examination, the distinction is real, reflected in the language of the appealability statute, and has been acknowledged as legally significant by South Carolina courts, which have recognized that the creation of a receivership and the appointment of a receiver are separate acts. See, e.g., *In re Citizens’ Exch. Bank*, 140 S.C. 471, 493, 139 S.E. 135, 143 (1927) (“The power of the Circuit Judge to designate a receiver is, clearly, a matter of discretion; perhaps even of more enlarged discretion than that of deciding in the first instance whether or not there should be a receivership.”); *S. Tr. Co. v. Cudd*, 166 S.C. 108, 113-

14, 164 S.E. 428, 429-30 (1932) (“That the power to appoint a receiver is inherent in a Court of equity is fully realized and approved. Also, that the matter of ordering a receivership is very much within the discretion of the Circuit Judge, is likewise well realized.” (citations omitted)).

A receiver acts on behalf of, as an officer of, the appointing court. *See Ex parte Cusaac*, 244 S.C. 572, 580, 137 S.E.2d 764, 768 (1964) (“A receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts.”). Thus, the appealability statute rightly focuses on, and allows immediate appellate review of, orders conferring the authority of the court on an individual. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 479, 602 S.E.2d 83, 87 (Ct. App. 2004) (“The refusal of a trial court to appoint a receiver should be immediately appealable because of the potential harm in not having an unbiased party to protect a corporation’s assets.”). Admittedly, orders concerning receiverships often will affect both the receivership itself and the appointment of a receiver simultaneously—for example, when a receivership is created and a receiver appointed, or when a receivership is dissolved and a receiver relieved of the appointment. However, such is not the case here. In the circuit court, Appellants argued Atlas’s receivership itself was improper and sought the dissolution of the entire receivership. None of Appellants’ arguments related to the appointment of the Receiver as such; thus, the Order, which rejected those arguments, does not fall within the ambit of section 14-3-330(4).

2. Even if section 14-3-330(4) applies to “receiverships,” the circuit court’s Order denying Traveler’s motion did not “modify” or “continue” anything.

Even assuming section 14-3-330(4) applies to “receiverships” per se, the Order denying Traveler’s motion is nonetheless not immediately appealable because it did not “modify” or “continue” anything—either the Receiver’s appointment or the Atlas receivership as a whole.

First, the Order did not “modify[] . . . the appointment of [Atlas’s] receiver” or Atlas’s receivership generally. *Cf. In re Fifty-Four First Mortg. Bonds*, 15 S.C. 304, 314 (1881) (“The authority of a receiver rests . . . in the orders of the court by which he is appointed.”). Instead, the Court merely denied Appellants’ motions to stay or dismiss the third-party complaint and dissolve the Atlas Receivership.

Similarly, the Order did not “continu[e] . . . the appointment of [Atlas’s] receiver” or Atlas’s receivership generally. In arguing the Order “continued” Atlas’s receivership, Travelers relies on an overly broad interpretation of section 14-3-330 that is contrary to precedent and would ultimately lead to numerous improper appeals out of the asbestos Receivership Court and from unrelated actions involving receiverships. *See Tillman*, 420 S.C. at 250, 801 S.E.2d at 760 (“To avoid circuitous litigation and needless appeals, we construe section 14-3-330 narrowly . . .”).

The language of section 14-3-330(4) was first enacted into South Carolina law in 1901 (through Act 358) as section 11(4) of the Code of Civil Procedure.¹⁰ At the time South Carolina courts commonly appointed receivers on a temporary basis,¹¹ and it was likewise common for such

¹⁰ See 1901 S.C. Acts 623 (“Be it enacted by the General Assembly of the State of South Carolina: That section 11 of the Code of Civil Procedure of this State relating to the jurisdiction of the Supreme Court, be and the same is hereby amended by the addition thereto of the following subdivision to be numbered ‘4.’”); *id.* (“4. An interlocutory order or decree in the Court of Common Pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or refusing the appointment of a Receiver hereafter granted in any action . . .”); *see also Williams v. Jones*, 62 S.C. 472, 481, 40 S.E. 881, 884 (1902) (ruling an order “was appealable before the act of 1901, 23 Stat., 623--for it involved the merits; and secondly, it was appealable under said act just quoted, for that act provides that the Supreme Court may review ‘An interlocutory order or decree in the Court of Common Pleas, granting or continuing or modifying or refusing an injunction, or else granting or continuing or modifying or refusing the appointment of a receiver hereafter granted in any action’”). Although it has been recodified several times, the relevant language of section 14-3-330(4) has remained a part of South Carolina’s statutory scheme from 1901 to the present day.

¹¹ *See, e.g., Montgomery & Crawford, Inc. v. Arcadia Mills*, 173 S.C. 464, 483, 176 S.E. 589, 596 (1934) (“Judge Stoll signed the order making H. A. Ligon temporary receiver . . .”); *Moore v. S. Mut. B. & L. Ass’n*, 50 S.C. 89, 93, 27 S.E. 543, 545 (1897) (“[O]n the 12th of February, 1897, a temporary receiver of the defendant association was appointed . . .”); *Hughes v. Edisto Cypress*

temporary receiverships to be extended or made permanent—or “continued.”¹² This practice of “continuing” temporary receiverships still takes place in South Carolina. *See, e.g., Wilmington Trust Nat’l Assoc. v. Piedmont Center Owner, LLC et al.*, 2019 S.C. C.P. LEXIS 513, *1 (S.C. Ct. Comm. Pl., Greenville Cnty., Mar. 8, 2019) (“At the hearing held on March 8, 2019, Plaintiff submitted evidence and testimony from the interim Receiver in support of the **continued** Receivership, and requested that the Court extend the Receiver Order until subsequent order of this Court, in accordance with the terms of the Receiver Order, which are incorporated herein.” (emphasis added)). Accordingly, the language in section 14-3-330(4) allowing for the immediate appeal of orders “continuing . . . the appointment of a receiver” was not intended to apply to the

Shingle Co., 51 S.C. 1, 21, 28 S.E. 2, 9 (1897) (“C. B. Free was, under the order of Judge Witherspoon, appointed as temporary receiver”); *Tillinghast v. Bos. & Port Royal Lumber Co.*, 39 S.C. 484, 486, 18 S.E. 120, 121 (1893) (noting a party “applied for and obtained an order for the appointment of a temporary receiver”); *see also Hand v. Savannah & C. R. Co.*, 17 S.C. 219, 274 (1882) (“It can hardly be necessary to say, what has been so often held, that the objects for the appointment of a receiver are temporary in their character.”); *see also* 1930 S.C. Civil Code § 5564 (“If it appears to the Court that the corporation is insolvent or in imminent danger of insolvency the Court may appoint a temporary receiver of the corporation pending dissolution.”); Tardy’s *Smith on Receivers* 2d, § 3 (1920) (distinguishing temporary and permanent receivers).

¹² *See, e.g., Carroll v. Cash Mills*, 125 S.C. 332, 336, 118 S.E. 290, 291 (1923) (“On February 21, 1921, the temporary receivership was made permanent, by order of the Circuit Judge.”); *Wylie v. Commercial & Farmers’ Bank*, 63 S.C. 406, 408, 41 S.E. 504, 505 (1902) (“After answers were in, an application was made to have the temporary receiver made permanent receiver. This was ordered in June, 1899.”); *White v. Commercial & Farmers’ Bank*, 60 S.C. 122, 123, 38 S.E. 453, 454 (1901) (noting “a temporary receiver was appointed on the 3d day of February, 1900 (afterwards made permanent)”); *State v. Port Royal & Augusta R.R. Co.*, 45 S.C. 470, 477, 23 S.E. 383, 384 (1895) (“On the same day such temporary receiver was made permanent receiver.”); *see also* 75 C.J.S. *Receivers* § 79 (“According to the showing made, the court may make, or refuse to make, an order **continuing** a temporary receiver previously appointed.” (emphasis added)); *Stair v. Meissel*, 207 Ind. 280, 283, 192 N.E. 453, 454 (1934) (“It is, therefore, ordered by the court that the receivership herein be and the same is hereby **continued** and made permanent pending the determination of the main cause of action in this cause.” (emphasis added)); *Singer v. Goff*, 334 Mich. 163, 167, 54 N.W.2d 290, 292 (1952) (“Equity courts have inherent power to appoint a receiver, and it is a matter of discretion whether a receivership shall be **continued** or discontinued. The record in the instant case shows that, after the expiration of the 1-year period, the court issued various orders which necessarily imply a **continuance** of the Singer receivership.” (emphasis added) (citations omitted)).

current circumstance, in which a court simply rejects a third party’s attempt to challenge and dissolve a receivership. Instead, it was intended to apply to instances where a temporary receivership was explicitly extended in duration, whether made permanent or remaining as a temporary receivership with a later termination date.

For section 14-3-330(4) to allow the instant appeals of the Order—which did not “continue” Atlas’s receivership, and at most,¹³ simply declined to dissolve it—the statute would need to contain appropriate alternative language, as other jurisdictions have done. *See, e.g.*, Okla. Stat. tit. 12, § 993(4) (allowing the immediate appeal of an order that “refuses to vacate the appointment of a receiver”); Mo. Rev. Stat. § 512.020(2) (allowing the immediate appeal of an order “refusing to revoke, modify, or change an interlocutory order appointing a receiver or receivers”); Kan. Stat. Ann. § 60-2102(a)(3) (allowing the immediate appeal of “[a]n order that . . . refuses to wind up a receivership”); 4 V.I.C. § 33(b) (“The Supreme Court of the Virgin Islands has jurisdiction of appeals from . . . (2) Interlocutory orders . . . refusing orders to wind up receiverships . . .”).

Underlying and reinforcing Respondent’s interpretation of section 14-3-330(4) is an important consideration: that receivers, once appointed, should be able to carry out their court-ordered duties without other entities interfering by filing unnecessary, improper, and time-consuming appeals. If Appellants’ view of section 14-3-330(4) is accepted, insurers in the asbestos Receivership Court, and debtors to entities in receivership elsewhere, could invent any number of reasons why a receivership or a receiver’s appointment is improper, regardless of merit, move for

¹³ “[A]n appellate court should look to the effect of an interlocutory order to determine its appealability” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). Here, the Order had no effect on Atlas’s receivership, whether to its duration, scope, the identity of the Receiver, or otherwise. Consequently, the Order does not warrant review by this Court. *See, e.g., Cobb v. Maccaro*, 310 S.C. 303, 306, 423 S.E.2d 156, 157 (Ct. App. 1992) (ruling the refusal to dissolve a mechanic’s lien was not immediately appealable).

dissolution of the receivership on that basis, and appeal the denial of such motions as orders “continuing” the receivership. In fact, under such a broad interpretation as Appellants would have this Court adopt, ordinary motions to dismiss and motions for summary judgment against a receiver’s claims containing a perfunctory argument that, upon dismissal or adjudication of the claims, the receivership should be dissolved, would be immediately appealable. This interpretation would upend foundational appealability law in South Carolina. *See Silverman v. Campbell*, 326 S.C. 208, 211, 486 S.E.2d 1, 2 (1997) (recognizing “it is well-settled that the denial of summary judgment is not directly appealable”); *McLendon*, 313 S.C. at 526 n.2, 443 S.E.2d at 540 n.2 (observing “the denial of a motion to dismiss is not directly appealable”).

Allowing such appeals would also stymie actions involving receiverships in the circuit court, as each appellant would argue that the receivership’s propriety affects the viability of the entire action. Such an interpretation of section 14-3-330(4) is not what the legislature intended with respect to receiverships in enacting the section, nor would it be consonant with the general rule that section 14-3-330 should be narrowly construed. *See Stone*, 426 S.C. at 295, 826 S.E.2d at 870; *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. The appropriate time to challenge the propriety of a receivership is at its outset—which section 14-3-330(4) explicitly allows by providing for the immediate appeal of orders “granting . . . the appointment of a receiver”—not now, after the receivership has been established and the Receiver appointed. And, while the Receiver contests the merits of that appeal, that appeal is proceeding with regard to the Atlas receivership.

In sum, section 14-3-330(4) does not afford Appellants any basis to appeal the Orders, and their appeals should be immediately dismissed.

C. The Orders are not immediately appealable under Section 14-3-330(1)-(3).

Pursuant to section 14-3-330 of the South Carolina Code, appellate courts have jurisdiction

over interlocutory orders only if the interlocutory order involves the merits, affects a substantial right, or grants, continues, modifies, or refuses an injunction or receivership. “An order involves the merits when it ‘finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense[.]’” *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (quoting *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)). An order affects a substantial right when it “(a) in effect determines the action and presents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(2). The Orders on appeal here do not involve the merits or affect substantial rights, and even Travelers does not claim otherwise.¹⁴

¹⁴ Travelers does not argue that Sections 14-3-330(1)-(3) apply. The Orders on appeal do not “involve the merits” under section 14-3-330(1). “An order [that] involves the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’” *Edwards v. SunCom*, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (quoting *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)). Here, the Orders do not finally determine any matter concerning any party’s causes of action or defenses—they merely allow this case to proceed to the discovery phase of the litigation. See *McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) (“Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue[s] raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable . . .” (citation omitted)).

Next, the Orders do not affect any of Appellants’ substantial rights and do not also “in effect determine[] the action and prevent[] a judgment from which an appeal might be taken or discontinue[] the action,” “grant[] or refuse[] a new trial,” or “strike[] out an answer or any part thereof or any pleading.” § 14-3-330(2). As a result, the Orders are not immediately appealable under section 14-3-330(2). See, e.g., *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991) (“Avoidance of trial is not a ‘substantial right’ entitling a party to immediate appeal of an interlocutory order.”); *Du Pont v. Du Bos*, 33 S.C. 389, 394, 11 S.E. 1073, 1074-75 (1890) (“It is quite clear that the order here under review is not appealable . . . ; for even granting that it affects a substantial right, that is not sufficient, for it must also, in effect, determine the action and prevent a judgment from which an appeal might be taken, and this it certainly does

CONCLUSION

For the foregoing reasons, the Orders at issue are not immediately appealable, and the Court should dismiss this appeal.

(Signature page follows)

not do.”).

Because the Orders do not affect a substantial right of Appellants, they also do not fall within section 14-3-330(3). The Orders were not entered in a “special proceeding” or “after judgment.” § 14-3-330(3). Instead, the Orders were entered in a typical civil action before judgment, and so section 14-3-330(3) is inapplicable. *See Allen v. Partlow*, 3 S.C. 417, 418 (1872) (observing a special proceeding is “any remedy other than an action or ordinary proceeding in a Court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence” (emphasis added)); *see also Smith v. Saye*, 131 S.C. 378, 381, 127 S.E. 568, 569 (1925) (distinguishing between a “special proceeding” and a “civil action”); Rule 3, SCRCP (“A civil action is commenced when the summons and complaint are filed with the clerk of court . . .”).

Finally, Travelers does not address the order denying the motions for protective order in its appealability memorandum. It cannot and does not argue that the Order requiring it and Continental to participate in discovery is immediately appealable, which the South Carolina Supreme Court has made clear it is not. *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (holding discovery orders are interlocutory and are not immediately appealable because they do not involve the merits of the action or affect a substantial right); *Ex Parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986) (“An order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14–3–330 (1976)”; *Ex Parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) (“[A]n order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision.”); *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (“Discovery orders . . . are interlocutory and are not immediately appealable.”).

RESPECTFULLY SUBMITTED

s/ Shanon N. Peake

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April 3, 2024

RECEIVED

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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

Jean Hoefer Toal, Circuit Court Judge

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

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 Aetna Life & Casualty Co., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

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

and

Peter D. Protopapas, Duly Appointed Receiver for Atlas Turner, Inc., are Respondents.

SUPPLEMENTAL APPENDIX

ORDERS

February 26, 2024 Order denying Motions for Protective Order.....	1
March 27, 2023 Order, Appellate Case No. 2023-000727	8
February 14, 2024 Order, Appellate Case No. 2023-000727	12
February 5, 2024 Order, Appellate Case No. 2023-001461	15
March 9, 2021 Order, Appellate Case No. 2020-001670	20

MOTIONS

Continental’s Motion to Enforce Automatic Stay or to Dismiss and/or Strike Amended Third-Party Complaint or, in the alternative, Sever Amended Third-Party Complaint, or, in the further alternative, for a More Definite Statement, filed August 15, 2023	22
Continental’s Motion for Protective Order, filed August 31, 2023	34
Lloyd’s also filed a Motion to Enforce Automatic Stay or to Dismiss and/or Strike Amended Third-Party Complaint or, in the alternative, Sever Amended Third-Party Complaint, or, in the further alternative, for a More Definite Statement, filed August 15, 2023.....	87

OTHER MATERIALS

March 28, 2024 Correspondence from Jon Robinson	100
April 1, 2024 Correspondence from Vic Rawl	106
April 1, 2024 Correspondence from Todd Carroll	108

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
MELVIN G. WELCH and DONNA B. WELCH, Plaintiffs, v. 3M Company, et al., Defendants.	Civil Action No. 2022-CP-40-03834 In Re: Asbestos Personal Injury Litigation Coordinated Docket
ATLAS TURNER, INC., f/k/a Atlas Asbestos Company, Ltd., by and Through Its Duly Appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, v. ZURICH AMERICAN INSURANCE CO., et al., Third-Party Defendants.	ORDER ON THIRD-PARTY DEFENDANTS' MOTIONS FOR PROTECTIVE ORDERS FROM DISCOVERY

This matter comes before the Court on Motions for Protective Orders (collectively, the “Motions”), filed by certain Third-Party Defendants, specifically: (1) the Motion for Protective Order filed by Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co. (“Travelers”) on August 28, 2023, including a supplement thereto filed on September 1, 2023; (2) the Motion for Protective Order filed by The Continental Insurance Company (“Continental”) and Certain Underwriters at Lloyd’s, London and Various London Market Companies (collectively, “Lloyd’s, London Underwriters”) on August 31, 2023, including two supplements thereto filed on November 13, 2023 and December 19, 2023; and (3) the Motion for Protective Order filed by Canadian General Insurance Company, n/k/a Aviva Insurance Co. of Canada (“Aviva”) on September 8,

2023. Atlas Turner, Inc. (“Atlas”), by and through its duly appointed receiver, Peter D. Protopapas (“the Receiver”), filed responses to the Motions on October 19, 2023, and January 11, 2024. The Court held a hearing on these matters on February 2, 2024. After careful consideration of the parties’ arguments and filings, and for the reasons stated below, the Insurers’ Motions for Protective Orders are **DENIED**.

BACKGROUND

On June 21, 2023, this Court ordered that “Peter Protopapas ... is appointed Receiver in this case with the power and authority [to] fully administer all insurance assets of Atlas Turner ... and [to] take any and all steps necessary to protect the interests of Atlas whatever they may be.” See Receivership Order, at 6. The Court instructed, among other things, that the Receiver “investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas.” *Id.* at 7. On July 6, 2023, Atlas filed in the Court of Appeals a Notice of Appeal that included an appeal of, *inter alia*, this Court’s June 21, 2023 Order appointing the Receiver. Atlas’s appeal remains pending. See Appellate Case No. 2023-001096.

Pursuant to his court-ordered power and authority, on June 26, 2023, the Receiver filed an Amended Third-Party Complaint in this action against certain insurers (including the moving Insurers), who allegedly issued policies providing insurance coverage to Atlas, seeking declaratory relief regarding the Insurers’ coverage obligations. See Amended Third-Party Complaint (the “Amended Complaint”) at ¶¶ 54–68.

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

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

ANALYSIS

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

Rule 241(a) provides as follows:

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

Rule 241(a), SCACR. The Insurers argue that, under the terms of Rule 241(a), as of July 6, 2023, when Atlas filed its Notice of Appeal of the June 21, 2023 Order appointing the Receiver, any authority of the Receiver was stayed, and as a result the Receiver is precluded from pursuing any discovery in connection with this third-party action.

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

Rule 62(a), SCRCP, provides:

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

¹ The Court is addressing these pending motions in a separate order.

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** the Motions for Protective Orders filed by Third-Party Defendants Aetna Life & Casualty Co., n/k/a Travelers Casualty & Surety Co.; The Continental Insurance Company and Certain Underwriters at Lloyd's, London and Various London Market Companies; and Canadian General Insurance Company, n/k/a Aviva Insurance Co. of Canada, are hereby **DENIED**. The parties are hereby ordered to proceed expeditiously with discovery. Further delays will not be tolerated.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

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

Case Number: 2022CP4003834

Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2024-02-23 16:26:52 page 7 of 7

The Supreme Court of South Carolina

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

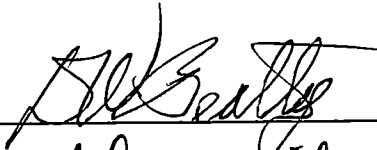
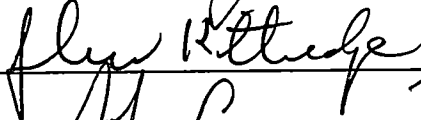
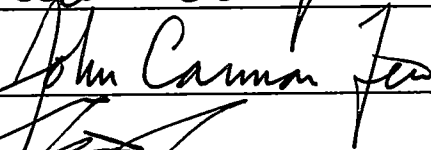
Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

ORDER

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
March 27, 2024

cc:

Wesley Brian Sawyer
Brian Montgomery Barnwell
John Belton White, Jr.
Marghretta Hagood Shisko
Scott Shutte
Christopher Rutledge Jones

G. Murrell Smith, Jr.
Jonathan M. Robinson
Shanon N. Peake
Matthew Todd Carroll
Mary Elizabeth O'Neill
Harry Lee
The Honorable Jenny Abbott Kitchings

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

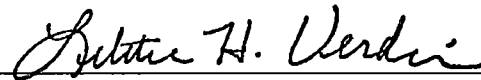
AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall 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, Respondent Peter Protopapas's motion for sanctions is 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.



FOR THE COURT

Columbia, South Carolina

FILED
Feb 14 2024

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

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

The Supreme Court of South Carolina

Ann Finch, Individually and as Executor of Estate of
Franklin Finch; and Peter D. Protopapas as Court
Appointed Receiver for Covil Corporation, Respondents,

v.

United States Fidelity and Guaranty Company; Zurich
American Insurance Company; and Wall, Templeton &
Haldrup, P.A., Defendants,

Of which United States Fidelity and Guaranty Company
is the Petitioner.

Appellate Case No. 2020-001670

ORDER

Respondent Peter D. Protopapas asks this Court to award sanctions and attorney's fees against Petitioner and its attorneys for filing a petition for a writ of prohibition with this Court. We deny the request.

We understand the complexity of the issues in this litigation, and we acknowledge parties in any given case have the right to protect and further their interests within the bounds of applicable rules and case law. Attorneys for the parties have an obligation to protect and further their clients' respective interests within the bounds of applicable rules and case law. We, in turn, expect the parties and their attorneys in this and any other case to fully cooperate with the trial court in order to ensure the case is tried or otherwise disposed of in a timely manner. Any action taken for the purpose of delaying the disposition of this case will, under appropriate

circumstances, merit the imposition of sanctions under Rule 269, SCACR.



FOR THE COURT
Few, J., not participating

C.J.

Columbia, South Carolina
March 9, 2021

cc: Theile Branham McVey, Esquire
Mark Weston Hardee, Esquire
Jonathan M. Robinson, Esquire
G. Murrell Smith, Jr., Esquire
Shanon N. Peake, Esquire
Jescelyn Tillman Spitz, Esquire
John Belton White, Jr., Esquire
Marghretta Hagood Shisko, Esquire
Christopher Rutledge Jones, Esquire
Austin Tyler Reed, Esquire
Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
William Pearce Davis, Esquire
Susan Drake DuBose, Esquire
Michael S. Carnevale, Esquire
Andrew T. Frankel, Esquire
Mary Beth Forshaw, Esquire
Alan Turner, Esquire
Jonathan Marshall Holder, Esquire

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.

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.

Case No. 2022-CP-40-03834

**NOTICE OF MOTION AND MOTION
BY THE CONTINENTAL INSURANCE
COMPANY TO ENFORCE
AUTOMATIC STAY OR TO DISMISS
AND/OR STRIKE AMENDED THIRD-
PARTY COMPLAINT OR, IN THE
ALTERNATIVE, SEVER AMENDED
THIRD-PARTY COMPLAINT, OR, IN
THE FURTHER ALTERNATIVE, FOR
A MORE DEFINITE STATEMENT**

**TO: BRIAN M. BARNWELL, ESQUIRE, ATTORNEY FOR THE THIRD-PARTY
PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Third-Party Defendant The Continental
Insurance Company ("Continental"), by and through its undersigned counsel, does hereby move:

(1) for an order that this third-party action and related matters are stayed pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules; and (2) if this third-party action is not stayed, for an order dismissing and/or striking the claims against Continental in the Amended Third-Party Complaint (the “Amended Third-Party Complaint” or “ATPC”) pursuant to South Carolina Rules of Civil Procedure 12(b)(6) and 14(a) or, in the alternative, severing such claims, or, in the further alternative, requiring a more definite statement pursuant to SCRCP 12(e). The grounds for this motion are summarized below and discussed more fully in Sections I through IV herein.

First, by Order dated June 21, 2023 (the “Receivership Order”), the Court appointed Peter D. Protopapas as Receiver (the “Receiver” or “Third-Party Plaintiff”) for Atlas Turner, Inc. (“Atlas Turner”) to “marshal all of the available insurance assets” for Atlas Turner and take other specified actions.¹ As the basis for the Receivership Order, the Court cited and relied upon its prior Order of May 11, 2023 holding Atlas Turner in contempt of court and its Order of June 20, 2023 striking Atlas Turner’s answer. On July 6, 2023, Atlas Turner filed a notice of appeal as to the orders on which the appointment of the Receiver was predicated, as well as the Receivership Order itself.² Because the present third-party action consists of claims asserted by Mr. Protopapas pursuant to the orders that have been appealed, this action is affected by the appeal and is automatically stayed

¹ Atlas Turner opposed and objected to the appointment of the Receiver in numerous filings. See *e.g.*, Atlas Turner, Inc.’s Motion to Reconsider the June 21, 2023 Order on Plaintiffs’ Motion to appoint a Receiver, filed on June 22, 2023; Atlas’ Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023; Atlas’ Supplemental Response and Objection to the Plaintiffs’ Motion to Appoint a Receiver, filed June 14, 2023.

² The orders identified in the Notice of Appeal are: Order Holding Atlas Turner, Inc. in Contempt (May 11, 2023); Form 4 Order denying Atlas Turner, Inc.’s Motion to Reconsider and Vacate Contempt Order (June 16, 2023); Order Striking Atlas Turner’s Answer (June 20, 2023); Order on Plaintiff’s Motion to Appoint a Receiver (June 21, 2023); Form 4 Order denying Atlas Turner Inc.’s Motion to Reconsider Order Striking Atlas Turner’s Answer (June 28, 2023); and Form 4 Order denying Atlas Turner Inc.’s Motion to Reconsider Order on Plaintiff’s Motion to Appoint a Receiver (June 28, 2023).

by filing of the notice of appeal. *See* Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . .”); Rule 241(a), SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.”). However, despite the pending appeal, the Receiver has maintained that the third-party action is not stayed.³ Out of an abundance of caution, Continental files this motion because the potential issues created by the current procedural posture clearly warrant a stay until resolution of the dispute that is the subject of the pending appeal.

Second, the claims asserted against Continental by the Receiver in the Amended Third-Party Complaint relate to an insurance policy that Continental allegedly issued to Atlas Turner. This complaint alleges that an unspecified number of lawsuits for asbestos-related bodily injury have been filed against Atlas Turner based on its historic operations that included the sale of asbestos-containing products and asbestos materials. These allegations do not state an actual justiciable controversy with Continental, and also do not allege that Continental is or may be liable to Third-Party Plaintiff for all or part of the claims of the underlying Plaintiffs Melvin and Donna Welch (collectively, “Plaintiffs”). Accordingly, if the third-party action is not stayed, the claims against Continental should: be dismissed and/or stricken under SCRCP Rule 12(b)(6) and Rule 14; in the alternative, be severed into a separate action; or, in the further alternative, be subject to an order requiring a more definite statement under Rule 12(e).

³ Counsel for Continental contacted counsel for the Receiver to seek agreement that the third-party action is currently stayed, but was advised that the Receiver’s position is that the action is not stayed.

ARGUMENT

I. The Court Should Affirm That the Third-Party Action Is Stayed

This third-party action is stayed as a matter of law under Rule 205 and Rule 241(a). Pursuant to Rule 205, “the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal.” *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 532 (2016); *accord Tillman v. Oakes*, 398 S.C. 245, 255 (2012). The Rule states:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR. In addition, Rule 241(a) provides:

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, 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. “Affected” as used in these rules has been defined as “to produce an effect on; to influence in some way.” *Stokes-Craven*, 416 S.C. at 534, quoting *Black’s Law Dictionary* 68 (10th ed. 2014).

Here, the third-party action involves an exercise of authority by the Receiver that wholly depends upon his appointment by the June 21, 2023 Receivership Order predicated upon the Orders of May 11, 2023 and June 20, 2023. The third-party action was expressly brought by Mr. Protopapas as “duly appointed receiver” for Atlas Turner. ATPC, p.1. This appointment was

based upon the Court's finding that "where, as here, Atlas' [answer] 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." Receivership Order, p.3. The Court further found that "where there is active wrongdoing and illegal refusal to comply with this Court's orders, the appointment of a receiver is appropriate." *Id.*

This action thus directly involves "matters decided in the order . . . on appeal." It unquestionably will be "affected by" the appeal of the Receiver's appointment and predicate orders striking Atlas' answer and holding it in contempt. By the terms of Rules 205 and 241, the notice of appeal by Atlas Turner acted to divest this Court of jurisdiction over these orders, and to "automatically stay" the relief ordered therein. The stay applies to the authority to act pursuant to the Receivership Order, including the authority invoked by the Receiver to prosecute the present third-party action. None of the exceptions set forth in Rules 205 and 241 are applicable and, because the appeal remains pending at this time, the automatic stay is in effect.

The Receiver has not articulated any reason why the automatic stay does not apply to this matter. To the contrary, it plainly would be inequitable, inefficient, and a waste of judicial resources to litigate insurance coverage issues raised by the Receiver before the threshold challenges to the orders relating to the receivership appointment have been resolved. Although a stay under Rule 241 is automatic and does not require an order by this Court, the Receiver's position concerning the automatic stay has made it necessary for Continental to raise the matter at this time. This Court should affirm that the Receivership Order and the Receiver's authority to act thereunder, including his prosecution of claims and discovery against Continental in this third-party action, are stayed.

II. The Claims In The Amended Third-Party Complaint Against Continental Should Be Dismissed Under Rule 12(b)(6)

If the third-party action is not stayed, the claims against Continental in the Amended Third-Party Complaint should be dismissed for failure to state a claim upon which relief can be granted.

To state a cause of action for declaratory judgment, “a party must demonstrate a justiciable controversy.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71 (1995). A justiciable controversy exists “[w]here a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party.” *Power v. McNair*, 255 S.C. 150, 153-54 (1970) (internal quotation and citation omitted). “An issue that is contingent, hypothetical, or abstract is not ripe for judicial review,” and there must be “a real or actual controversy between the litigants at the time of the institution of the DJ Action.” *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595 (2013) (internal citation and quotation omitted).

The Amended Third-Party Complaint fails to allege facts demonstrating an actual justiciable controversy with Continental, and the First, Second and Third Causes of Action should accordingly be dismissed as to Continental. Third-Party Plaintiff asserts that Continental has a duty to defend or reimburse defense costs with respect to the “Atlas Turner Asbestos Suits.”⁴ ATPC, ¶¶12, 60, 63-64, 68. Yet the Amended Third-Party Complaint never fully identifies the lawsuits at issue. See ATPC, ¶12, Prayer for Relief. The Amended Third-Party Complaint uses generic and nonspecific phrases, such as “Atlas Turner Asbestos Suits” and “asbestos suits potentially covered under the Third-Party Defendants’ policies” to refer to the lawsuits in which a justiciable controversy purportedly exists, but never defines or identifies these lawsuits. Likewise, the Amended Third-Party Complaint seeks declarations on various insurance coverage issues

⁴ Paragraph 12 only refers to “the instant suit filed by Melvin G. Welch and Donna B. Welch.”

concerning these unspecified lawsuits. With the exception of the *Welch* Complaint, the Third-Party Plaintiff fails to identify any particular pending asbestos action as to which these issues have allegedly arisen and as to which an actual controversy currently exists with Continental. Without identification of specific actions and the specific facts in each action required to allege a present controversy with Continental, the Amended Third-Party Complaint does not present a specific, concrete matter for judicial resolution, but rather seeks declarations that are abstract, hypothetical, and contingent.

The duty to defend, which is the subject of multiple declarations sought in the Second and Third Causes of Action, cannot be determined without identification of the specific lawsuit at issue. Under basic principles of law, “the duty of a liability insurance company to defend a claim brought against its insured [is] determined by the allegations of the third party’s complaint.” *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 15 (Ct. App. 1994), *aff’d*, 321 S.C. 310 (1996). Similarly, issues relating to any duty to indemnify (ATPC, ¶60) also cannot be adjudicated in a vacuum. *See Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595 (2013). Third-Party Plaintiff has not identified the particular lawsuits as to which it seeks relief – let alone the allegations of the complaints therein – and relief thus cannot be granted on these declarations concerning the duty to defend.⁵ Accordingly, the declaratory judgment claims by the Third-Party Plaintiff against Continental should be dismissed pursuant to Rule 12(b)(6).

The Amended Third-Party Complaint includes a request for a declaration as to present and

⁵ The First Cause of Action seeks a declaration that Continental and the other third-party defendants must provide the Receiver with copies of policies. The Amended Third-Party Complaint does not allege that any justiciable controversy exists in this regard. Nowhere does it claim that Continental refused to provide copies of any policies issued by Continental that had been located. The absence of such an allegation is dispositive because one of the requirements for a ripe controversy is that “there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party.” *Power*, 255 S.C. at 153-54.

future Receiver's fees and expenses. The Receiver requests declarations that Continental must compensate the Receiver for "asbestos suits potentially covered under the Third-Party Defendants' policies" and that "this obligation is unlimited" but fails to identify the underlying asbestos suits, nor could it identify such future lawsuits. ATPC, ¶68. Such an indefinite request about unknown and unknowable underlying lawsuits is an improper request for declaratory relief. As discussed above, the existence of an insurer's duty to defend cannot be determined without identification of the specific lawsuit(s) at issue and the allegations therein. In the absence of such allegations, there is no claim upon which relief can be granted and this request should be dismissed pursuant to Rule 12(b)(6).

III. The Claims In The Amended Third-Party Complaint Against Continental Should Be Stricken Pursuant to Rule 14(a) or, in the Alternative, Severed

Rule 14(a) provides that a defendant may commence a third-party complaint against a party "who is or may be liable to [defendant] for all or part of the plaintiff's claim." Rule 14(a), SCRCPP. The Rule further provides that "[a]ny party may move to strike the third-party claim, or for its severance or separate trial." *Id.*

Courts applying the South Carolina Rules and their federal counterparts have repeatedly held that claims regarding insurance coverage should not be combined in the same action as the underlying tort claims against the insured. *See Builders Mut. Ins. Co. v. Island Pointe, LLC*, 431 S.C. 93 (2020) (affirming denial of insurer's motion to intervene in tort action and trial court's decision "to leave all coverage issues to a subsequent declaratory judgment action"); *Thomas v. Tramaine-Frost*, 2017 U.S. Dist. LEXIS 29522 (D.S.C. Jan. 12, 2017) (severing negligence claims against an alleged tortfeasor from coverage claims against an insurer); *Todd v. Cary's Lake Homeowners Ass'n*, 315 F.R.D. 453 (D.S.C. 2016) (severing tort claims from claims against insurer); *Cramer v. Walley*, 2015 U.S. Dist. LEXIS 84400 (D.S.C., June 30, 2015) (holding that

claims for negligent operation of automobile should not be joined with claim against insurer for declaratory judgment on coverage).

A third-party complaint “must be derivative of the plaintiff’s claim because [d]erivative liability is central to the operation of Rule 14. It is not sufficient that the third-party claim is a related claim; *the claim must be derivatively based on the original plaintiff’s claim.*” *Johnson v. M.I. Windows and Doors, Inc.*, No. 2:11-CV-0167, 2012 WL 1015798 at *2 (D.S.C. Mar 23, 2012) (emphasis in original) (internal citations and quotations omitted); *Laughlin v. Dell Fin. Servs., L.P.*, 465 F. Supp. 2d 563, 566 (D.S.C. 2006). Stated another way, a third-party complaint “must involve an attempt to pass on to the third party all or part of the liability asserted against the defendant.... An impleader claim may not be used to assert any and all rights to recovery arising from the same transaction or occurrence as the underlying action.” *CNH Industrial Capital America LLC v. Able Contracting, Inc.*, No. 9:16-cv-2520-RMG, 2017 WL 512453, at *1 (D.S.C. Feb. 7, 2017) (internal quotations omitted) (dismissing third-party complaint because claims were not derivative); *Johnson*, 2012 WL 1015798, at *2 (severing third-party complaint because claims were not derivative).

In this action, the Third-Party Plaintiff improperly seeks to achieve this result by means of a third-party complaint under Rule 14. However, as noted above, this rule only permits impleader against a party “who is or may be liable to [defendant] for all or part of the plaintiff’s claim.” To be proper, a third-party complaint must allege that the liability of the third-party defendant on the claim against it “is in some way dependent upon the *outcome* of the main claim.” *Laughlin*, 465 F. Supp. 2d at 566.⁶ Rule 14 does not allow the defendant to assert a separate and independent

⁶ The Note to Rule 14 indicates that it was drafted to be “substantially the same as the Federal Rule” 14, so federal law is cited whenever squarely applicable.

claim, even if the claim arises out of the same general set of facts as the main claim. *Id.*

Here, none of the claims seek a ruling that Continental is liable to Atlas Turner for all or part of the tort claims by Plaintiffs. As discussed above, the Amended Third-Party Complaint does not seek any declaration specific to the claim of Plaintiffs. Furthermore, the declaratory judgment claims do not seek any determination that Continental is liable for indemnification or any other claim that is alleged to be dependent on the outcome of the main claim in the *Welch* action. Third-Party Plaintiff's claims against Continental therefore are not properly asserted under Rule 14. *See Cruz v. Weber-Stephen Prods., LLC*, 2018 U.S. Dist. LEXIS 1243, at *6 (N.D. Tex. Jan. 4, 2018) (quoting *Majors v. Am. Nat'l Bank of Huntsville*, 426 F.2d 566, 568 (5th Cir. 1970)) (Rule 14 "is not designed as a vehicle for the trying together of separate and distinct causes of action, or for the introduction, into the main action, of several parallel, but independent, actions, or separate and independent claims.").

Furthermore, even in instances where the requirements of Rule 14 are satisfied (which they are not here), third-party complaints may still be stricken or severed when the third-party lawsuit "will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way." *Beach v. Hudson*, 380 S.E.2d 869, 871 (S.C. App. 1989); *see Ballard v. S. Cotton Oil Co.*, 145 F. Supp. 886, 887 (E.D.S.C. 1956) (applying South Carolina law and refusing to permit the interpleader because injecting insurance into a trial would be prejudicial to the insurer). Here, the Amended Third-Party Complaint clearly complicates this litigation by adding three new causes of action for declaratory judgment and adding eight additional third-party defendants. By adding these claims, the Third-Party Plaintiff will "all but submerge" Plaintiffs' original claim and should be stricken. *Beach*, 380 S.E.2d at 871 (striking third-party complaint because court deemed that adding four additional parties and seven causes of action would unduly complicate the litigation).

Under South Carolina law, prejudice arises when the third-party complaint “introduce[s] unrelated issues and unduly complicate[s] the original suit.” *Id.* Furthermore, as commentators and courts have observed, a defendant’s insurer may also be prejudiced if insurance is injected into a tort action because, among other things, the jury “may decide to increase the damages awarded to plaintiff” if it is “aware of the insurance company’s existence.” 6 C. Wright, A. Miller & M. Kane, 6 Fed. Prac. & Proc. Civ. § 1443 (3d ed.). Additionally, Continental may be prejudiced by Third-Party Plaintiff’s decision to seek relief as part of the underlying tort action to the extent it allows Plaintiffs to take part in and/or be privy to discovery related to Continental and/or insurance related information that Plaintiffs would otherwise not be entitled to, including but not limited to information about the investigation, defense, and resolution of underlying claims.

Under these circumstances, the claims by the Receiver against Continental in the Amended Third-Party Complaint should be stricken or, in the alternative, severed into a separate action.⁷

IV. In The Further Alternative, The Court Should Require a More Definite Statement

In the further alternative, and to the extent that the Court does not stay, dismiss, strike, or sever the claims by the Third-Party Plaintiff, Continental moves for a more definite statement pursuant to Rule 12(e). For the reasons set forth above, the allegations in the Amended Third-Party Complaint are so vague and ambiguous that it is not reasonable to request Continental to frame a responsive pleading. At minimum, the Third-Party Plaintiff should be required to 1) set forth each specific claim(s) asserted against Continental for which a declaration as to coverage is

⁷ Even if the claims against Continental by the Receiver satisfied the requirements of Rule 14, the Amended Third-Party Complaint’s joinder of such claims with the claims against other insureds, other insurers, and other parties would be improper under Rule 20. The claims against these parties are not alleged to arise out of the same transaction, occurrence, or series of transactions or occurrences. *See Thomas*, 2017 U.S. Dist. LEXIS 29522, at *12; *Todd*, 315 F.R.D. at 457-58; *Cramer*, 2015 U.S. Dist. LEXIS 84400, at **10-11.

sought, 2) set forth each policy or policies that are allegedly implicated, and 3) set forth the specific facts and material policy terms that allegedly support the declaration sought and demonstrate that an actual dispute exists.

This motion is based upon the foregoing, any memorandum of support that may be filed later, the statutes and case law of the State of South Carolina, the pleadings filed in this matter, and such other material as may be properly received by the Court in connection therewith.

WHEREFORE, Continental respectfully requests that the Court:

- Issue an order that the Receivership Order and the Receiver's authority to act thereunder, including the Receiver's prosecution of claims and discovery against Continental in this third-party action, are stayed.
- If this action is not stayed, issue an order dismissing the claims against Continental in the Amended Third-Party Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(6) and 14(a) or, in the alternative, severing such claims, or, in the further alternative, requiring a more definite statement pursuant to SCRCP 12(e).

Dated: August 14, 2023

GORDON REES SCULLY MANSUKHANI, LLP

By: s/ A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (SC 09261)

Email: vrawl@grsm.com

40 Calhoun Street, Suite 350

Charleston, SC 29401

Telephone: 843-278-5900

*Counsel for Third-Party Defendant
The Continental Insurance Company*

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.

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.

Case No. 2022-CP-40-03834

**NOTICE OF MOTION AND MOTION
FOR PROTECTIVE ORDER**

Third-Party Defendants The Continental Insurance Company and Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively, the "Third-Party Defendants"), by and through their undersigned counsel, hereby move this Court for a protective order pursuant to Rule 26(c), SCRPC. Third-Party Defendants understand that because of the

filing of the Notice of Appeal in this matter by Atlas Turner, Inc., 1) the jurisdiction over all matters affected by the appeal is with the Court of Appeals, 2) the Receiver's authority to act is stayed, and 3) this third-party action is stayed. However, the Receiver disagrees and is attempting to move forward with discovery.¹ Accordingly, in an abundance of caution, Third-Party Defendants respectfully ask that the Court enter an order staying all discovery against them (including outstanding and future discovery requests and deposition notices) in this third-party action until after this Court has resolved (1) the Motion By The Continental Insurance Company To Enforce Automatic Stay Or To Dismiss And/Or Strike Amended Third-Party Complaint Or, In The Alternative, Sever Amended Complaint Or In The Further Alternative For A More Definite Statement, and (2) the Motion By Certain Underwriters At Lloyd's, London And Certain London Market Companies To Enforce Automatic Stay Or To Dismiss And/Or Strike Amended Third-Party Complaint Or, In The Alternative, Sever Amended Complaint Or In The Further Alternative For A More Definite Statement (collectively, the "Pending Motions").

1. This third-party action was filed on June 21, 2023. On June 26, 2023, the Third-Party Plaintiff filed an Amended Third-Party Complaint asserting three causes of action against the Third-Party Defendants and other parties. This third-party action was filed by Peter D. Protopapas as the "duly appointed receiver" for Atlas Turner, Inc. ("Atlas Turner"). Mr. Protopapas was appointed receiver in an order of this Court entered on June 21, 2023 (the "Receivership Order").

2. As the basis for the Receivership Order, the Court cited and relied upon its prior Order of May 11, 2023 holding Atlas Turner in contempt of court and its Order of June 20, 2023

¹ Undersigned counsel certifies that the Receiver's counsel was consulted prior to the filing of this motion in an unsuccessful attempt to resolve this matter.

striking Atlas Turner's answer.

3. On July 6, 2023, Atlas Turner filed a notice of appeal as to the orders on which the appointment of the Receiver was predicated, as well as the Receivership Order itself.²

4. On August 14, 2023, Third-Party Defendants responded to the Amended Third-Party Complaints by filing the Pending Motions. The Pending Motions, which are incorporated in full by reference herein, assert that this third-party action and related matters are stayed and that, if the action is not stayed, for an order dismissing the claims against the Third-Party Defendants pursuant to Rule 12(b)(6), Rule 14(a), and other grounds as set forth more fully therein.

5. On August 14, 2023, Plaintiffs Melvin G. Welch and Donna B. Welch ("Plaintiffs") filed a "Motion to Lift Stay" acknowledging that an automatic stay currently applied in this action. *See* Motion, 1, 3, 5.

6. At the hearing on Plaintiffs' motion on August 21, 2023, this Court declined to lift the stay as requested by Plaintiffs. Subsequently, on August 29, 2023, the Court issued a written Order stating "the Plaintiff has withdrawn its motion for the lifting of the stay . . ." This Order further provided that "this Court orders Atlas and its affiliates to refrain from liquidating or divesting any of its insurance assets, under the current protection of the Receiver, until further classification of the legal issues pending before the Court of Appeals is made."

7. The Receiver nevertheless has taken the position that, despite the pending appeal of the Receivership Order challenging his appointment and the predicate orders, the third-party

² The orders identified in the Notice of Appeal are: Order Holding Atlas Turner, Inc. in Contempt (May 11, 2023); Form 4 Order denying Atlas Turner, Inc.'s Motion to Reconsider and Vacate Contempt Order (June 16, 2023); Order Striking Atlas Turner's Answer (June 20, 2023); Order on Plaintiff's Motion to Appoint a Receiver (June 21, 2023); Form 4 Order denying Atlas Turner Inc.'s Motion to Reconsider Order Striking Atlas Turner's Answer (June 28, 2023); and Form 4 Order denying Atlas Turner Inc.'s Motion to Reconsider Order on Plaintiff's Motion to Appoint a Receiver (June 28, 2023).

action is not stayed pursuant to Rules 205 and 241 and that the Third-Party Defendants should respond to the written discovery directed to them. Specifically, the Receiver has served 103 document requests and 13 interrogatories on each of the Third-Party Defendants. The majority of these voluminous requests, which are attached hereto as Exhibits 1 and 2, seek to delve into matters that go beyond the *Welch* action and the policies that are alleged to have been issued by the Third-Party Defendants to Atlas Turner, Inc. In addition, on August 29, 2023, the Receiver unilaterally served deposition notices upon multiple individuals, including Keith Rahman (noticed for September 12, 2023) and R. Fletcher Koch (noticed for September 13, 2023).

8. Rule 26(c) provides that “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense,” including an “that the discovery not be had . . .” Rule 26(c), SCRCF.

9. Discovery should not go forward against the Third-Party Defendants until after a ruling has been issued on the Pending Motions. As discussed therein, discovery should be stayed pending resolution of the appeal noticed by Atlas Turner, Inc., which has challenged the validity of the Receivership and thus the Receiver’s standing to pursue third-party claims on behalf of Atlas Turner, Inc. In addition, broad-ranging discovery should not be permitted when the Court has not yet determined the threshold issues under Rule 12(b)(6), Rule 14(a), and other grounds in the Pending Motions that could limit or eliminate the need for discovery.

10. This motion is based upon the foregoing, any memorandum of support that may be filed later, the statutes and case law of the State of South Carolina, the pleadings filed in this matter, and such other material as may be properly received by the Court in connection therewith.

WHEREFORE, for the foregoing reasons and others appearing in the record, Third-Party Defendants respectfully request that the Court grant this motion and order that all discovery in this third-party action against the Third-Party Defendants, including the written discovery and depositions set forth in paragraph 7 above and any future discovery, shall not go forward until the Pending Motions are ruled upon.

Dated: August 31, 2023

GORDON REES SCULLY MANSUKHANI, LLP

By: s/ A. Victor Rawl, Jr.

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Charleston, SC 29401

Telephone: 843-278-5900

*Counsel for Third-Party Defendants
The Continental Insurance Company and
Certain Underwriters at Lloyd's, London
and Certain London Market Companies*

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

v.

3M Company, *et al.*,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-03834

**THIRD PARTY PLAINTIFF ATLAS
TURNER, INC.'S FIRST SET OF
INTERROGATORIES TO CERTAIN
UNDERWRITERS AT LLOYD'S,
LONDON, AND CERTAIN LONDON
MARKET COMPANIES**

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.

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Receiver for Atlas Turner, Inc. hereby propounds and serves this first set of interrogatories upon Certain Underwriters at Lloyd's, London, and Certain London Market Companies, each to be answered separately, in writing and under oath, within forty-five (45) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS

a. “Atlas Turner” shall be used collectively to refer to Atlas Turner, Inc. and any of its affiliates known to you.

b. “Documents” means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies such as drafts, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation, they shall be translated into a reasonably usable form through appropriate detection devices.

c. “All documents” means every document, as defined above, that is in your possession, custody, or control and includes documents that are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

d. “Communicate” or “communicated” means any manner or form of information, memoranda, notes or message transmissions, however produced or reproduced, whether by document or orally or otherwise, between two or more persons, whether made in person, by telephone or by other means, and any and all documents containing, consisting of, or relating or referring, in anyway, either directly or indirectly, to a communication, including but not limited to documents, audio recordings, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

e. “Correspondence” or “communications” mean all letters, telegrams, notices, messages, phone logs, text messages, electronic mail, instant messages (including those sent via social-networking or other messaging applications or platforms, including WhatsApp, Facebook Messenger, and Snapchat), communications sent via social-networking websites, or any other written or oral communications.

f. “Including” means including without limitation.

g. “Relate,” “relating,” and “reflecting” mean and include pertains, refers, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts.

These terms mean, without limitation, any reference or relationship that either (1) provides information with respect to the subject inquiry or (2) might lead to individuals who, or documents that, might possess or contain information with respect to the subject of inquiry.

h. “And” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

i. “Any,” “each,” or “all” mean each and every, as well as any one.

j. The terms “you” and “your” shall mean and refer to the business entity answering these discovery requests and any of its merged, consolidated, or acquired predecessors, divisions, joint ventures, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, parent companies, or sister companies. “Predecessors” further means any business entity, whether or not incorporated, which had all or sum of its assets purchased by the entity answering these requests, or came to be acquired by the entity answering these requests, whether by merger, consolidation, or other means. “Subsidiaries” further means any business entity, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part, by the entity answering these requests or its predecessors.

INSTRUCTIONS

a. In answering these Interrogatories, furnish all information that is available to you or your attorney(s), agent(s) or investigator(s), and not merely such information known of your own personal knowledge. If any Interrogatory cannot be answered in full, after exercising due diligence to secure the information to do so, so state and answer the Interrogatory to the extent possible, specifying the reasons for any inability to answer the remainder of any such Interrogatory and stating whatever information, knowledge, opinion, or belief presently is available concerning the portion of said Interrogatory that purportedly cannot be answered.

b. If you object to any part of any interrogatory because of a privilege, please provide the following information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document or oral communication;
- (4) if a document: its type (correspondence, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including, where appropriate, the author(s), the addressee(s), and, if not apparent, the relationship between the author(s) and addressee(s);

- (5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- (6) the general subject matter of the document or the oral communication.

c. If an Interrogatory asks that a document be identified, identify and describe the document with sufficient specificity to form the basis for an individual request pursuant to South Carolina Rules of Civil Procedure 34 for the production of documents. In lieu of identifying particular documents, such documents may, at your option, be attached to the answers to these Interrogatories with a designation made to each Interrogatory to which it applies and the specific page number(s) where the information pertinent to the Interrogatory response can be found.

d. If any Interrogatory asks that a date be identified, give the exact day, month, and year, if known. If the exact day, month, and year are not known, provide as precise a date as known or, if the date is unknown, so state and provide an approximate date (designated as such).

e. If any Interrogatory asks that a person be identified, give the person's full name, present or last known home, business, and cellular telephone numbers, present or last known home and business e-mail addresses, present or last known employer, present or last known position at such employer, and present or last known home and business addresses.

f. If an Interrogatory asks that an entity be identified, give the entity's full legal name, the name(s) under which the entity does or did business, the present or last known business telephone number, the present or last known business e-mail address, and the present or last known address.

g. You are under a continuing obligation to supplement your answers to these Interrogatories pursuant to South Carolina Rule of Civil Procedure 26(e).

INTERROGATORIES

INTERROGATORY NO. 1:

Give the names and addresses of persons known to you or your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in your possession that relate to the claim or defense in the case.

INTERROGATORY NO. 3:

Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

INTERROGATORY NO. 4:

List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

INTERROGATORY NO. 5:

For each person known to you or your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Atlas Turner of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 6:

If you are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

INTERROGATORY NO. 7:

If you issued, sold, or subscribed to any insurance policy that covers any defendant in the *Welch* asbestos lawsuit (Case No. 2022-CP-40-03834), as an insured or an additional insured, please identify that coverage in detail.

INTERROGATORY NO. 8:

Please identify all insurance agents or brokers involved in the placement of insurance coverage for Atlas Turner.

INTERROGATORY NO. 9:

Do you deny that you issued insurance coverage to Atlas Turner for the policy periods March 31, 1962 – April 23, 1962; April 23, 1962 to June 19, 1965; June 19, 1965 to March 31, 1958; and March 31, 1968 to March 31, 1971? If not, what does each policy number tell you about the policy, what steps have you taken to locate these policies, and what explanation can you provide for your inability to locate it?

INTERROGATORY NO. 10:

Please identify all asbestos claims made against Atlas Turner by plaintiff name, identify of plaintiff's counsel, jurisdiction, cause number, and disease alleged.

INTERROGATORY NO. 11:

Please identify all law firms known to you to have represented Atlas Turner as defense counsel (in tort cases or workers' compensation cases) at any time.

INTERROGATORY NO. 12:

Please state the materials terms and conditions of each policy that you issued to Atlas Turner.

INTERROGATORY NO. 13:

Have you conducted a search for insurance policies which may afford “additional insured” protection to Atlas Turner that complies with the standard established by the receivership court for such a search in Order on Discovery Motions, *Covil v. Pennsylvania National Co.*, C.A. No. 2020-CP-40-02098 (Ct. C.P. for Richland Cnty. May 5, 2022) (attached as Exhibit A to the accompanying Requests for production)? If your answer is anything other than an unqualified yes, please explain your reasons for not conducting such a search.

Dated: June 27, 2023

Respectfully submitted,

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

***Attorney for the Receiver of Atlas Turner,
Inc. f/k/a Atlas Asbestos Company, Ltd.***

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

v.

3M Company, *et al.*,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-03834

**THIRD PARTY PLAINTIFF ATLAS
TURNER, INC.'S FIRST SET OF
INTERROGATORIES TO
CONTINENTAL INSURANCE
COMPANY**

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

Third Party Plaintiff,

v.

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

Third Party Defendants.

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Receiver for Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. hereby propounds and serves this first set of interrogatories upon Continental Insurance Company, each to be answered separately, in writing and under oath, within thirty (30) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS

a. “Atlas Turner” shall be used collectively to refer to Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. and any of its affiliates known to you.

b. “Documents” means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies such as drafts, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation, they shall be translated into a reasonably usable form through appropriate detection devices.

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These terms mean, without limitation, any reference or relationship that either (1) provides information with respect to the subject inquiry or (2) might lead to individuals who, or documents that, might possess or contain information with respect to the subject of inquiry.

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- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document or oral communication;
- (4) if a document: its type (correspondence, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including, where appropriate, the author(s), the addressee(s), and, if not apparent, the relationship between the author(s) and addressee(s);

- (5) if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- (6) the general subject matter of the document or the oral communication.

c. If an Interrogatory asks that a document be identified, identify and describe the document with sufficient specificity to form the basis for an individual request pursuant to South Carolina Rules of Civil Procedure 34 for the production of documents. In lieu of identifying particular documents, such documents may, at your option, be attached to the answers to these Interrogatories with a designation made to each Interrogatory to which it applies and the specific page number(s) where the information pertinent to the Interrogatory response can be found.

d. If any Interrogatory asks that a date be identified, give the exact day, month, and year, if known. If the exact day, month, and year are not known, provide as precise a date as known or, if the date is unknown, so state and provide an approximate date (designated as such).

e. If any Interrogatory asks that a person be identified, give the person's full name, present or last known home, business, and cellular telephone numbers, present or last known home and business e-mail addresses, present or last known employer, present or last known position at such employer, and present or last known home and business addresses.

f. If an Interrogatory asks that an entity be identified, give the entity's full legal name, the name(s) under which the entity does or did business, the present or last known business telephone number, the present or last known business e-mail address, and the present or last known address.

g. You are under a continuing obligation to supplement your answers to these Interrogatories pursuant to South Carolina Rule of Civil Procedure 26(e).

INTERROGATORIES

INTERROGATORY NO. 1:

Give the names and addresses of persons known to you or your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in your possession that relate to the claim or defense in the case.

INTERROGATORY NO. 3:

Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

INTERROGATORY NO. 4:

List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

INTERROGATORY NO. 5:

For each person known to you or your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Atlas Turner of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 6:

If you are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

INTERROGATORY NO. 7:

If you issued, sold, or subscribed to any insurance policy that covers any defendant in the *Welch* asbestos lawsuit (Case No. 2022-CP-40-03834), as an insured or an additional insured, please identify that coverage in detail.

INTERROGATORY NO. 8:

Please identify all insurance agents or brokers involved in the placement of insurance coverage for Atlas Turner.

INTERROGATORY NO. 9:

Do you deny that you issued Policy No. 3147450 to Atlas Turner? If not, what does each policy number tell you about the policy, what steps have you taken to locate these policies, and what explanation can you provide for your inability to locate it?

INTERROGATORY NO. 10:

Please identify all asbestos claims made against Atlas Turner by plaintiff name, identify of plaintiff's counsel, jurisdiction, cause number, and disease alleged.

INTERROGATORY NO. 11:

Please identify all law firms known to you to have represented Atlas Turner as defense counsel (in tort cases or workers' compensation cases) at any time.

INTERROGATORY NO. 12:

Please state the materials terms and conditions of each policy that you issued to Atlas Turner.

INTERROGATORY NO. 13:

Have you conducted a search for insurance policies which may afford “additional insured” protection to Atlas Turner that complies with the standard established by the receivership court for such a search in Order on Discovery Motions, *Covil v. Pennsylvania National Co.*, C.A. No. 2020-CP-40-02098 (Ct. C.P. for Richland Cnty. May 5, 2022) (attached as Exhibit A to the accompanying Requests for production)? If your answer is anything other than an unqualified yes, please explain your reasons for not conducting such a search.

Dated: June 21, 2023

Respectfully submitted,

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

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

EXHIBIT 2

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.

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.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-03834

**THIRD PARTY PLAINTIFF ATLAS
TURNER, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON, AND CERTAIN
LONDON MARKET COMPANIES**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Receiver for Atlas Turner, Inc. hereby propounds and serves this first set of requests for production upon Certain Underwriters at Lloyd's, London, and Certain London Market Companies, to be answered separately, in writing and under oath, within forty-five (45) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS

a. “Atlas Turner” shall be used collectively to refer to Atlas Turner, Inc. and any of its affiliates known to you.

b. “Documents” means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies such as drafts, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation, they shall be translated into a reasonably usable form through appropriate detection devices.

c. “All documents” means every document, as defined above, that is in your possession, custody, or control and includes documents that are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

d. “Communicate” or “communicated” means any manner or form of information, memoranda, notes or message transmissions, however produced or reproduced, whether by document or orally or otherwise, between two or more persons, whether made in person, by telephone or by other means, and any and all documents containing, consisting of, or relating or referring, in anyway, either directly or indirectly, to a communication, including but not limited to documents, audio recordings, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

e. “Correspondence” or “communications” mean all letters, telegrams, notices, messages, phone logs, text messages, electronic mail, instant messages (including those sent via social-networking or other messaging applications or platforms, including WhatsApp, Facebook Messenger, and Snapchat), communications sent via social-networking websites, or any other written or oral communications.

f. “Including” means including without limitation.

g. “Relate,” “relating,” and “reflecting” mean and include pertains, refers, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts.

These terms mean, without limitation, any reference or relationship that either (1) provides information with respect to the subject inquiry or (2) might lead to individuals who, or documents that, might possess or contain information with respect to the subject of inquiry.

h. “And” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

i. “Any,” “each,” or “all” mean each and every, as well as anyone.

j. The terms “you” and “your” shall mean and refer to the business entity answering these discovery requests and any of its merged, consolidated, or acquired predecessors, divisions, joint ventures, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, parent companies, or sister companies. “Predecessors” further means any business entity, whether or not incorporated, which had all or sum of its assets purchased by the entity answering these requests, or came to be acquired by the entity answering these requests, whether by merger, consolidation, or other means. “Subsidiaries” further means any business entity, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part, by the entity answering these requests or its predecessors.

l. “Asbestos related claims” means any claim for bodily injury or wrongful death allegedly relating to or arising from a person’s exposure to asbestos or any asbestos-containing product.

INSTRUCTIONS

a. In answering these Requests, you are required to furnish all documents and correspondence in the possession, custody, or control of you, your attorneys, or any of your agents.

b. If any requested document existed at one time and was in your possession, custody, or control, but has been lost, discarded or destroyed, or removed from your possession, custody or control, indicate for each such document:

- (1) the present location of any and all copies of each such document in your possession, custody, or control;
- (2) whether you claim any privilege or other reason for nonproduction with respect to each such document or copies thereof, and, if so, the factual and legal basis for the alleged privilege or non-production. In lieu of the foregoing, a copy of each such document may be supplied but said copy must indicate to which interrogatory it relates.
- (3) the identity of the document and a description of its contents indicating its date, title and type of document;
- (4) when the document was most recently in your possession, custody or control and what disposition was made of it;
- (5) the identity of any person which currently possesses the document;

- (6) a statement indicating whether the document was transferred or destroyed. State the person who transferred or destroyed the document and the person who authorized its transfer or destruction or who knows of its transfer or destruction. State the reason why the document was transferred or destroyed, and
- (7) the identities of all persons having knowledge of the contents of each document.

c. Pursuant to South Carolina Rule of Civil Procedure 26(b)(5), if you withhold any otherwise discoverable documents or correspondence based on a privilege objection, please provide a log of all such documents and correspondence detailing the following information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document;
- (4) If a document: its type (e-mail, text message, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document, including, where appropriate, the author(s), the addressee(s), its title, the subject line, and, if not apparent, the relationship between the author(s) and addressee(s); and
- (5) the general subject matter of the document or correspondence.

RELEVANT BACKGROUND INFORMATION

Please refer to the attached order in *Covil v. Pennsylvania National Corporation* for recent guidance from this Court regarding the standard for an appropriate policy search. See Exhibit A, Order on Discovery Motions, *Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas v. Pennsylvania National Mutual Casualty Insurance Co., et al.*; C.A. No. 2020-CP-40-02098; In the Court of Common Pleas for the Fifth Judicial District; Richland County, South Carolina (May 5, 2022) (reconsideration denied May 26, 2022).

REQUESTS FOR PRODUCTION

- 1. All documents identified in your responses to the Receiver's First Set of Interrogatories.
- 2. All documents you relied upon in answering Receiver's First Set of Interrogatories.

3. All insurance policies, of any type, that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured. This request specifically includes policies afford Atlas Turner coverage as an “additional insured”.
4. All certificates of insurance reflecting any insurance coverage that you provided to Atlas Turner, or which affords coverage to Atlas Turner as an “additional insured”.
5. All documents that relate to the underwriting of any insurance policy that you issued to Atlas Turner or which otherwise includes Atlas Turner as an insured.
6. All documents that relate to any claims submitted by, or on behalf of, Atlas Turner for coverage under any insurance policy issued to Atlas Turner by you. This request specifically includes claims made under workers’ compensation policies.
7. All documents that relate to any and all reserve accounts you have established for any insurance policy that you ever issued to Atlas Turner or which otherwise affords coverage to Atlas Turner as an insured or an “additional insured”.
8. All documents that relate to any loss run for any insurance policy that you ever issued to Atlas Turner or which otherwise includes Atlas Turner as an insured or an “additional insured”.
9. All documents that relate to any correspondence between you and Atlas Turner’s defense counsel at any time, specifically including all invoices from, or payments made to, Atlas Turner’s defense counsel. This request specifically includes counsel in workers’ compensation proceedings.
10. All subpoenas or requests you served in an effort to locate any insurance policy issued by you to Atlas Turner or which otherwise includes Atlas Turner as an insured or an

“additional insured”, as well as all correspondence and responses that you received in response to these requests or subpoenas.

11. All documents that relate to the steps taken by you to determine whether you issued any insurance policy to Atlas Turner or which otherwise includes Atlas Turner as an insured or an “additional insured”.
12. All documents that relate to the steps taken by you to identify the terms and conditions of each of the policies you issued to Atlas Turner or which otherwise name Atlas Turner as an insured or an “additional insured”.
13. All documents that relate to policies, treaties and/or arrangements obtained by you, or on your behalf, to reinsure all or a portion of the risk of any insurances policies that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured. This request specifically includes documents reflecting the related brokering activities and any subsequent claims submitted by you.
14. All documents evidencing what you contend are the material terms and conditions of the insurance policies issued by you to Atlas Turner.
15. All entries from your claims registers and microfiche archives regarding your insuring relationship with Atlas Turner.
16. All documents regarding Atlas Turner’s history or business activities.
17. All documents relating to the reasons why any insurance policy you issued to Atlas Turner, or any relevant document, is now lost or destroyed.
18. All documents reflecting any evidence of any insurance issued to, or protective of, Atlas Turner by any insurer at any time.

19. All documents reflecting your participation in any workers' compensation claim against Atlas Turner.
20. All documentation regarding any form of industrial hygiene survey or other consulting services that you provided to Atlas Turner.
21. All documents related to your document retention policies from 1934 through the present.
22. All documents that relate to the manner in which you maintained, organized, and stored your underwriting and liability claims files from 1934 through the present.
23. All documents that relate to the manner in which you maintained, organized, and stored your copies of claims drafts or payments made under comprehensive general liability policies or workers' compensation policies from 1934 through the present.
24. All documents that relate to the manner in which you maintained, organized, and stored your defense counsel billing and payment records from 1934 through the present.
25. All documents that relate to or describe all electronic systems you used in connection with claims handling from 1934 through the present, including your policies and practices for purging or deleting information contained in these systems throughout this time period.
26. All documents that relate to, describe, or discuss any forms you used in your comprehensive general liability policies from 1934 through the present.
27. All documents that relate to your process for assigning prefixes and/or policy numbers to comprehensive general liability policies issued before 1990.
28. All documents predating 1990 reflecting communications between you and the ISO, or any state or regulatory or insurance commission regarding the drafting or meaning of any general liability insurance policy or provision in any general liability insurance policy.

29. All documents that refer or relate to your participation in the April 21, 2017, meeting held by the American Insurance Association to discuss insurance coverage for asbestos bodily injury lawsuits.
30. All entries from your claims registers and microfiche archives regarding your insuring relationship with Atlas Turner.
31. All documents reflecting any sanction whereby you were sanctioned by any court or regulator for your handling or destruction of historical liability insurance policies.
32. All documents which mention or relate to Atlas Turner.
33. All documents relating to the negotiation or placement of any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
34. All documents relating to the calculation of premiums for any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
35. All documents relating to commissions paid to any insurance broker or agent on the sale of any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
36. All communications between you and Atlas Turner (or its counsel) during the period 1934 through the present.
37. All communications between you and any insurance broker or agent relating to Atlas Turner during the period 1934 through the present.

38. All documents relating to what you contend are the material terms and conditions of the insurance policies that you issued, sold, or subscribed to that cover Atlas Turner as an insured or an additional insured.
39. All documents relating to the reasons why any insurance policy that you issued, sold, or subscribed to that covers Atlas Turner as an insured or an additional insured is now lost or destroyed.
40. All documents relating to any forms used by you in your comprehensive general liability policies from 1934 to 1990, specifically including specimens or exemplars of these forms and any instructions or directions as to when the standard form or specimen policies should be or were required to be used.
41. All documents relating to any forms used by you in your excess and umbrella liability insurance policies from 1934 to 1990, specifically including specimens or exemplars of these forms and any instructions or directions as to when the standard form or specimen policies should be or were required to be used.
42. All underwriting manuals, procedures, and guidelines relating to general liability and product liability primary insurance policies issued by you from 1934 to 1990.
43. All underwriting manuals, procedures, and guidelines relating to excess and umbrella liability insurance policies issued by you from 1934 to 1990.
44. All documents relating to your process for assigning policy numbers to comprehensive general liability policies issued before 1934, specifically including documents reflecting the meaning of any policy number prefixes.
45. All communications relating to Atlas Turner's asbestos related claims (including workers' compensation claims).

46. All communications relating to any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
47. All communications relating to Atlas Turner.
48. All communications among any of your employees, officers, directors, agents, or representatives relating to Atlas Turner's asbestos related claims.
49. All communications among any of your employees, officers, directors, agents, or representatives relating to any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
50. All communications among any of your employees, officers, directors, agents, or representatives relating to Atlas Turner.
51. All documents relating to any meetings at which any of Atlas Turner's asbestos related claims were discussed.
52. All documents relating to any meetings at which any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured was discussed.
53. All documents relating to any meetings at which Atlas Turner was discussed.
54. All registers of insurance policies or any other documents that sufficiently identify the insurance policies and/or umbrella or excess policies you issued, sold, or subscribed to during the period 1934 through 1990.
55. All documents that evidence, refer to, or relate to, or constitute practices, policies, requirements and/or procedures used by you or on your behalf at any time during the period

- 1934 through the present concerning the handling, adjustment, investigation, or processing of general liability claims, including claims manuals, claim handling manuals, instructional manuals, training manuals, and policy manuals.
56. All documents relating to your policies, procedures, practices, standards, or guidelines in effect during the period 1934 through the present for the analysis and processing of claims for coverage of third-party bodily injury claims that do not come within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
57. All documents distributed to your claims personnel at any time setting forth any coverage position you take, should take, or have taken on asbestos related claims filed against your policyholders that are not within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
58. All documents relating to the existence of aggregate limits or lack thereof on coverage for asbestos related claims filed against your policyholders that are not within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
59. Any document that explains, describes or identifies the method by which you determine whether an asbestos related claim falls within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
60. All documents distributed to your claims personnel at any time providing guidance on your policies, procedures, practices, standards, or guidelines for determining whether an

asbestos related claim falls within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.

61. All documents relating to reserves ever established by you for Atlas Turner’s asbestos related claims.
62. All documents relating to reserves ever established by you for Atlas Turner’s asbestos related claims that are not subject to aggregate limits.
63. All documents relating to any Atlas Turner’s asbestos related claims.
64. All documents relating to any notice of any Atlas Turner’s asbestos related claims received by you.
65. All documents relating to any acknowledgement by you of coverage under any of the insurance policies issued, sold, or subscribed to by you for any Atlas Turner’s asbestos related claims.
66. All documents relating to any payments that you have made to, or on behalf of, Atlas Turner under any of the insurance policies issued, sold, or subscribed to by you in connection with any Atlas Turner’s asbestos related claims.
67. All documents relating to any criteria used in determining whether to pay any settlements on behalf of Atlas Turner in any of Atlas Turner’s asbestos related claims.
68. All documents relating to any criteria used in determining whether to pay any judgments against Atlas Turner in any of Atlas Turner’s asbestos related claims.
69. All documents relating to the handling of any aspect of any Atlas Turner’s asbestos related claims by you or on your behalf.

70. All documents relating to your efforts to determine the potential exposure that Atlas Turner faced or faces from any of Atlas Turner's asbestos related claims.
71. All documents relating to any investigation conducted by your or on your behalf with respect to Atlas Turner's request for defense/indemnity coverage for any asbestos related claims.
72. All documents considered by you or on your behalf in any investigation regarding any of Atlas Turner's asbestos related claims.
73. All documents relating to any inspections, analyses, or audits, conducted by you or on your behalf in any investigation regarding any of Atlas Turner's asbestos related claims.
74. All documents relating to the applicability of any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
75. All documents relating to the applicability of any term contained in any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
76. All documents relating to the applicability of any exclusion contained in any of the insurance policies issued, sold, or subscribed to by you to any Atlas Turner's asbestos related claims.
77. All documents relating to the applicability of any condition contained in any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
78. All documents relating to any language contained in any of the insurance policies issued, sold, or subscribed to by you that you contend applies to exclude coverage for all or part of any of Atlas Turner's asbestos related claims.

79. All documents relating to any language contained in any of the insurance policies issued, sold, or subscribed to by you that you contend applies to limit coverage for all or part of any of Atlas Turner's asbestos related claims.
80. All documents relating to any coverage positions (for example, denials of coverage or reservations of rights) taken by you with respect to coverage under any of the insurance policies issued, sold, or subscribed to by you for any of Atlas Turner's asbestos related claims.
81. All documents you reviewed or relied on in considering whether to deny coverage, acknowledge coverage, or reserve rights as to any of Atlas Turner's asbestos related claims.
82. All communications between you and any other insurer regarding the handling of any of Atlas Turner's asbestos related claims.
83. All communications between you and any other insurer regarding the payment of any of Atlas Turner's asbestos related claims.
84. All documents relating to any claim for insurance coverage by Atlas Turner, other than with regard to any of Atlas Turner's asbestos related claims, under the insurance policies issued, sold, or subscribed to by you.
85. All documents relating to any payment that you have made to, or on behalf of, Atlas Turner with respect to any claim other than any of Atlas Turner's asbestos related claims.
86. All documents relating to any payment that you have made on behalf of Atlas Turner with respect to any claim other than any of Atlas Turner's asbestos related claims.
87. All documents relating to any exhaustion or impairment of any insurance policy that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.

88. All documents relating to your organizational structure at any time during the period 1934 through the present.
89. All documents relating to the organizational and reporting structure of any of your departments, groups, or units responsible for performing any function related to underwriting general liability policies at any time during the period 1934 through 1990.
90. All documents relating to your membership in the National Bureau of Casualty Underwriters (“NBCU”) and the Insurance Services Organization (“ISO”) between 1934 and 1990.
91. All documents relating to your use of NBCU and ISO forms to supply the terms and conditions of comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
92. All documents relating to your use of NBCU and ISO forms to supply the terms and conditions of excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
93. All documents relating to your use of NBCU and ISO rate manuals or ratings manuals on comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
94. All documents relating to your use of NBCU and ISO rate manuals or ratings manuals on excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
95. NBCU and ISO rate manuals or ratings manuals used by you in underwriting comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.

96. NBCU and ISO rate manuals or ratings manuals used by you in underwriting excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
97. All documents relating whether comprehensive or commercial general liability insurance policies issued, sold, or subscribed to by you between 1934 to 1990 could amend, modify, or discard any of the terms and conditions appearing in forms published by NBCU or ISO during this time period.
98. All documents relating whether excess liability insurance policies issued, sold, or subscribed to by you between 1934 to 1990 could amend, modify, or discard any of the terms and conditions appearing in forms published by NBCU or ISO during this time period.
99. NBCU and ISO forms supplying the terms and conditions of comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
100. NBCU and ISO forms supplying the terms and conditions of excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
101. All documents relating to or supporting the affirmative defenses enumerated in your answer.
102. Copies of all insurance policies, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that cover any defendant in the *Welch* asbestos lawsuit (Case No. 2022-CP-40-03834) as an insured or an additional insured.
103. All documents related to Atlas Turner's corporate history that you have obtained from other sources.

Dated: June 27, 2023

Respectfully submitted,

/s/ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)

Rikard & Protopapas

2110 N. Beltline Blvd.

Columbia, South Carolina 29204

803.978.6111

***Attorney for the Receiver of Atlas Turner,
Inc. f/k/a Atlas Asbestos Company, Ltd.***

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

v.

3M Company, *et al.*,

Defendants.

In Re: Coordinated Asbestos Docket

Civil Action No: 2022-CP-40-03834

**THIRD PARTY PLAINTIFF ATLAS
TURNER, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
CONTINENTAL INSURANCE
COMPANY**

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

Third Party Plaintiff,

v.

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

Third Party Defendants.

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Receiver for Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. hereby propounds and serves this first set of requests for production upon Continental Insurance Company, to be answered separately, in writing and under oath, within thirty (30) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS

a. “Atlas Turner” shall be used collectively to refer to Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd. and any of its affiliates known to you.

b. “Documents” means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies such as drafts, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation, they shall be translated into a reasonably usable form through appropriate detection devices.

c. “All documents” means every document, as defined above, that is in your possession, custody, or control and includes documents that are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

d. “Communicate” or “communicated” means any manner or form of information, memoranda, notes or message transmissions, however produced or reproduced, whether by document or orally or otherwise, between two or more persons, whether made in person, by telephone or by other means, and any and all documents containing, consisting of, or relating or referring, in anyway, either directly or indirectly, to a communication, including but not limited to documents, audio recordings, electronic or other computer generated mail, telephone or face-to-face conversations, or meetings.

e. “Correspondence” or “communications” mean all letters, telegrams, notices, messages, phone logs, text messages, electronic mail, instant messages (including those sent via social-networking or other messaging applications or platforms, including WhatsApp, Facebook Messenger, and Snapchat), communications sent via social-networking websites, or any other written or oral communications.

f. “Including” means including without limitation.

g. “Relate,” “relating,” and “reflecting” mean and include pertains, refers, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts.

These terms mean, without limitation, any reference or relationship that either (1) provides information with respect to the subject inquiry or (2) might lead to individuals who, or documents that, might possess or contain information with respect to the subject of inquiry.

h. “And” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

i. “Any,” “each,” or “all” mean each and every, as well as anyone.

j. The terms “you” and “your” shall mean and refer to the business entity answering these discovery requests and any of its merged, consolidated, or acquired predecessors, divisions, joint ventures, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, parent companies, or sister companies. “Predecessors” further means any business entity, whether or not incorporated, which had all or sum of its assets purchased by the entity answering these requests, or came to be acquired by the entity answering these requests, whether by merger, consolidation, or other means. “Subsidiaries” further means any business entity, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part, by the entity answering these requests or its predecessors.

l. “Asbestos related claims” means any claim for bodily injury or wrongful death allegedly relating to or arising from a person’s exposure to asbestos or any asbestos-containing product.

INSTRUCTIONS

a. In answering these Requests, you are required to furnish all documents and correspondence in the possession, custody, or control of you, your attorneys, or any of your agents.

b. If any requested document existed at one time and was in your possession, custody, or control, but has been lost, discarded or destroyed, or removed from your possession, custody or control, indicate for each such document:

- (1) the present location of any and all copies of each such document in your possession, custody, or control;
- (2) whether you claim any privilege or other reason for nonproduction with respect to each such document or copies thereof, and, if so, the factual and legal basis for the alleged privilege or non-production. In lieu of the foregoing, a copy of each such document may be supplied but said copy must indicate to which interrogatory it relates.
- (3) the identity of the document and a description of its contents indicating its date, title and type of document;
- (4) when the document was most recently in your possession, custody or control and what disposition was made of it;
- (5) the identity of any person which currently possesses the document;

- (6) a statement indicating whether the document was transferred or destroyed. State the person who transferred or destroyed the document and the person who authorized its transfer or destruction or who knows of its transfer or destruction. State the reason why the document was transferred or destroyed, and
- (7) the identities of all persons having knowledge of the contents of each document.

c. Pursuant to South Carolina Rule of Civil Procedure 26(b)(5), if you withhold any otherwise discoverable documents or correspondence based on a privilege objection, please provide a log of all such documents and correspondence detailing the following information:

- (1) the nature of the privilege claimed (including work product);
- (2) if the privilege is being asserted in connection with a claim or defense governed by state law, the state privilege rule being invoked;
- (3) the date of the document;
- (4) If a document: its type (e-mail, text message, memorandum, facsimile, etc.), custodian, location, and such other information sufficient to identify the document, including, where appropriate, the author(s), the addressee(s), its title, the subject line, and, if not apparent, the relationship between the author(s) and addressee(s); and
- (5) the general subject matter of the document or correspondence.

RELEVANT BACKGROUND INFORMATION

Please refer to the attached order in *Covil v. Pennsylvania National Corporation* for recent guidance from this Court regarding the standard for an appropriate policy search. See Exhibit A, Order on Discovery Motions, *Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas v. Pennsylvania National Mutual Casualty Insurance Co., et al.*; C.A. No. 2020-CP-40-02098; In the Court of Common Pleas for the Fifth Judicial District; Richland County, South Carolina (May 5, 2022) (reconsideration denied May 26, 2022).

REQUESTS FOR PRODUCTION

- 1. All documents identified in your responses to the Receiver's First Set of Interrogatories.
- 2. All documents you relied upon in answering Receiver's First Set of Interrogatories.

3. All insurance policies, of any type, that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured. This request specifically includes policies afford Atlas Turner coverage as an “additional insured”.
4. All certificates of insurance reflecting any insurance coverage that you provided to Atlas Turner, or which affords coverage to Atlas Turner as an “additional insured”.
5. All documents that relate to the underwriting of any insurance policy that you issued to Atlas Turner or which otherwise includes Atlas Turner as an insured.
6. All documents that relate to any claims submitted by, or on behalf of, Atlas Turner for coverage under any insurance policy issued to Atlas Turner by you. This request specifically includes claims made under workers’ compensation policies.
7. All documents that relate to any and all reserve accounts you have established for any insurance policy that you ever issued to Atlas Turner or which otherwise affords coverage to Atlas Turner as an insured or an “additional insured”.
8. All documents that relate to any loss run for any insurance policy that you ever issued to Atlas Turner or which otherwise includes Atlas Turner as an insured or an “additional insured”.
9. All documents that relate to any correspondence between you and Atlas Turner’s defense counsel at any time, specifically including all invoices from, or payments made to, Atlas Turner’s defense counsel. This request specifically includes counsel in workers’ compensation proceedings.
10. All subpoenas or requests you served in an effort to locate any insurance policy issued by you to Atlas Turner or which otherwise includes Atlas Turner as an insured or an

“additional insured”, as well as all correspondence and responses that you received in response to these requests or subpoenas.

11. All documents that relate to the steps taken by you to determine whether you issued any insurance policy to Atlas Turner or which otherwise includes Atlas Turner as an insured or an “additional insured”.
12. All documents that relate to the steps taken by you to identify the terms and conditions of each of the policies you issued to Atlas Turner or which otherwise name Atlas Turner as an insured or an “additional insured”.
13. All documents that relate to policies, treaties and/or arrangements obtained by you, or on your behalf, to reinsure all or a portion of the risk of any insurances policies that you issued to Atlas Turner or which otherwise include Atlas Turner as an insured. This request specifically includes documents reflecting the related brokering activities and any subsequent claims submitted by you.
14. All documents evidencing what you contend are the material terms and conditions of the insurance policies issued by you to Atlas Turner.
15. All entries from your claims registers and microfiche archives regarding your insuring relationship with Atlas Turner.
16. All documents regarding Atlas Turner’s history or business activities.
17. All documents relating to the reasons why any insurance policy you issued to Atlas Turner, or any relevant document, is now lost or destroyed.
18. All documents reflecting any evidence of any insurance issued to, or protective of, Atlas Turner by any insurer at any time.

19. All documents reflecting your participation in any workers' compensation claim against Atlas Turner.
20. All documentation regarding any form of industrial hygiene survey or other consulting services that you provided to Atlas Turner.
21. All documents related to your document retention policies from 1934 through the present.
22. All documents that relate to the manner in which you maintained, organized, and stored your underwriting and liability claims files from 1934 through the present.
23. All documents that relate to the manner in which you maintained, organized, and stored your copies of claims drafts or payments made under comprehensive general liability policies or workers' compensation policies from 1934 through the present.
24. All documents that relate to the manner in which you maintained, organized, and stored your defense counsel billing and payment records from 1934 through the present.
25. All documents that relate to or describe all electronic systems you used in connection with claims handling from 1934 through the present, including your policies and practices for purging or deleting information contained in these systems throughout this time period.
26. All documents that relate to, describe, or discuss any forms you used in your comprehensive general liability policies from 1934 through the present.
27. All documents that relate to your process for assigning prefixes and/or policy numbers to comprehensive general liability policies issued before 1990.
28. All documents predating 1990 reflecting communications between you and the ISO, or any state or regulatory or insurance commission regarding the drafting or meaning of any general liability insurance policy or provision in any general liability insurance policy.

29. All documents that refer or relate to your participation in the April 21, 2017, meeting held by the American Insurance Association to discuss insurance coverage for asbestos bodily injury lawsuits.
30. All entries from your claims registers and microfiche archives regarding your insuring relationship with Atlas Turner.
31. All documents reflecting any sanction whereby you were sanctioned by any court or regulator for your handling or destruction of historical liability insurance policies.
32. All documents which mention or relate to Atlas Turner.
33. All documents relating to the negotiation or placement of any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
34. All documents relating to the calculation of premiums for any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
35. All documents relating to commissions paid to any insurance broker or agent on the sale of any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
36. All communications between you and Atlas Turner (or its counsel) during the period 1934 through the present.
37. All communications between you and any insurance broker or agent relating to Atlas Turner during the period 1934 through the present.

38. All documents relating to what you contend are the material terms and conditions of the insurance policies that you issued, sold, or subscribed to that cover Atlas Turner as an insured or an additional insured.
39. All documents relating to the reasons why any insurance policy that you issued, sold, or subscribed to that covers Atlas Turner as an insured or an additional insured is now lost or destroyed.
40. All documents relating to any forms used by you in your comprehensive general liability policies from 1934 to 1990, specifically including specimens or exemplars of these forms and any instructions or directions as to when the standard form or specimen policies should be or were required to be used.
41. All documents relating to any forms used by you in your excess and umbrella liability insurance policies from 1934 to 1990, specifically including specimens or exemplars of these forms and any instructions or directions as to when the standard form or specimen policies should be or were required to be used.
42. All underwriting manuals, procedures, and guidelines relating to general liability and product liability primary insurance policies issued by you from 1934 to 1990.
43. All underwriting manuals, procedures, and guidelines relating to excess and umbrella liability insurance policies issued by you from 1934 to 1990.
44. All documents relating to your process for assigning policy numbers to comprehensive general liability policies issued before 1934, specifically including documents reflecting the meaning of any policy number prefixes.
45. All communications relating to Atlas Turner's asbestos related claims (including workers' compensation claims).

46. All communications relating to any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
47. All communications relating to Atlas Turner.
48. All communications among any of your employees, officers, directors, agents, or representatives relating to Atlas Turner's asbestos related claims.
49. All communications among any of your employees, officers, directors, agents, or representatives relating to any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.
50. All communications among any of your employees, officers, directors, agents, or representatives relating to Atlas Turner.
51. All documents relating to any meetings at which any of Atlas Turner's asbestos related claims were discussed.
52. All documents relating to any meetings at which any insurance policy, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured was discussed.
53. All documents relating to any meetings at which Atlas Turner was discussed.
54. All registers of insurance policies or any other documents that sufficiently identify the insurance policies and/or umbrella or excess policies you issued, sold, or subscribed to during the period 1934 through 1990.
55. All documents that evidence, refer to, or relate to, or constitute practices, policies, requirements and/or procedures used by you or on your behalf at any time during the period

- 1934 through the present concerning the handling, adjustment, investigation, or processing of general liability claims, including claims manuals, claim handling manuals, instructional manuals, training manuals, and policy manuals.
56. All documents relating to your policies, procedures, practices, standards, or guidelines in effect during the period 1934 through the present for the analysis and processing of claims for coverage of third-party bodily injury claims that do not come within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
57. All documents distributed to your claims personnel at any time setting forth any coverage position you take, should take, or have taken on asbestos related claims filed against your policyholders that are not within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
58. All documents relating to the existence of aggregate limits or lack thereof on coverage for asbestos related claims filed against your policyholders that are not within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
59. Any document that explains, describes or identifies the method by which you determine whether an asbestos related claim falls within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.
60. All documents distributed to your claims personnel at any time providing guidance on your policies, procedures, practices, standards, or guidelines for determining whether an

asbestos related claim falls within the “Products-Completed Operations Hazard” or “Products Hazard” coverage of the insurance policies issued, sold, or subscribed to by you during the period 1934 through 1990.

61. All documents relating to reserves ever established by you for Atlas Turner’s asbestos related claims.
62. All documents relating to reserves ever established by you for Atlas Turner’s asbestos related claims that are not subject to aggregate limits.
63. All documents relating to any Atlas Turner’s asbestos related claims.
64. All documents relating to any notice of any Atlas Turner’s asbestos related claims received by you.
65. All documents relating to any acknowledgement by you of coverage under any of the insurance policies issued, sold, or subscribed to by you for any Atlas Turner’s asbestos related claims.
66. All documents relating to any payments that you have made to, or on behalf of, Atlas Turner under any of the insurance policies issued, sold, or subscribed to by you in connection with any Atlas Turner’s asbestos related claims.
67. All documents relating to any criteria used in determining whether to pay any settlements on behalf of Atlas Turner in any of Atlas Turner’s asbestos related claims.
68. All documents relating to any criteria used in determining whether to pay any judgments against Atlas Turner in any of Atlas Turner’s asbestos related claims.
69. All documents relating to the handling of any aspect of any Atlas Turner’s asbestos related claims by you or on your behalf.

70. All documents relating to your efforts to determine the potential exposure that Atlas Turner faced or faces from any of Atlas Turner's asbestos related claims.
71. All documents relating to any investigation conducted by your or on your behalf with respect to Atlas Turner's request for defense/indemnity coverage for any asbestos related claims.
72. All documents considered by you or on your behalf in any investigation regarding any of Atlas Turner's asbestos related claims.
73. All documents relating to any inspections, analyses, or audits, conducted by you or on your behalf in any investigation regarding any of Atlas Turner's asbestos related claims.
74. All documents relating to the applicability of any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
75. All documents relating to the applicability of any term contained in any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
76. All documents relating to the applicability of any exclusion contained in any of the insurance policies issued, sold, or subscribed to by you to any Atlas Turner's asbestos related claims.
77. All documents relating to the applicability of any condition contained in any of the insurance policies issued, sold, or subscribed to by you to any of Atlas Turner's asbestos related claims.
78. All documents relating to any language contained in any of the insurance policies issued, sold, or subscribed to by you that you contend applies to exclude coverage for all or part of any of Atlas Turner's asbestos related claims.

79. All documents relating to any language contained in any of the insurance policies issued, sold, or subscribed to by you that you contend applies to limit coverage for all or part of any of Atlas Turner's asbestos related claims.
80. All documents relating to any coverage positions (for example, denials of coverage or reservations of rights) taken by you with respect to coverage under any of the insurance policies issued, sold, or subscribed to by you for any of Atlas Turner's asbestos related claims.
81. All documents you reviewed or relied on in considering whether to deny coverage, acknowledge coverage, or reserve rights as to any of Atlas Turner's asbestos related claims.
82. All communications between you and any other insurer regarding the handling of any of Atlas Turner's asbestos related claims.
83. All communications between you and any other insurer regarding the payment of any of Atlas Turner's asbestos related claims.
84. All documents relating to any claim for insurance coverage by Atlas Turner, other than with regard to any of Atlas Turner's asbestos related claims, under the insurance policies issued, sold, or subscribed to by you.
85. All documents relating to any payment that you have made to, or on behalf of, Atlas Turner with respect to any claim other than any of Atlas Turner's asbestos related claims.
86. All documents relating to any payment that you have made on behalf of Atlas Turner with respect to any claim other than any of Atlas Turner's asbestos related claims.
87. All documents relating to any exhaustion or impairment of any insurance policy that you issued, sold, or subscribed to during the period 1934 through 1990 that covers Atlas Turner as an insured or an additional insured.

88. All documents relating to your organizational structure at any time during the period 1934 through the present.
89. All documents relating to the organizational and reporting structure of any of your departments, groups, or units responsible for performing any function related to underwriting general liability policies at any time during the period 1934 through 1990.
90. All documents relating to your membership in the National Bureau of Casualty Underwriters (“NBCU”) and the Insurance Services Organization (“ISO”) between 1934 and 1990.
91. All documents relating to your use of NBCU and ISO forms to supply the terms and conditions of comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
92. All documents relating to your use of NBCU and ISO forms to supply the terms and conditions of excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
93. All documents relating to your use of NBCU and ISO rate manuals or ratings manuals on comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
94. All documents relating to your use of NBCU and ISO rate manuals or ratings manuals on excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
95. NBCU and ISO rate manuals or ratings manuals used by you in underwriting comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.

96. NBCU and ISO rate manuals or ratings manuals used by you in underwriting excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
97. All documents relating whether comprehensive or commercial general liability insurance policies issued, sold, or subscribed to by you between 1934 to 1990 could amend, modify, or discard any of the terms and conditions appearing in forms published by NBCU or ISO during this time period.
98. All documents relating whether excess liability insurance policies issued, sold, or subscribed to by you between 1934 to 1990 could amend, modify, or discard any of the terms and conditions appearing in forms published by NBCU or ISO during this time period.
99. NBCU and ISO forms supplying the terms and conditions of comprehensive or commercial general liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
100. NBCU and ISO forms supplying the terms and conditions of excess liability insurance policies you issued, sold, or subscribed to between 1934 and 1990.
101. All documents relating to or supporting the affirmative defenses enumerated in your answer.
102. Copies of all insurance policies, of any type, that you issued, sold, or subscribed to during the period 1934 through 1990 that cover any defendant in the *Welch* asbestos lawsuit (Case No. 2022-CP-40-03834) as an insured or an additional insured.
103. All documents related to Atlas Turner's corporate history that you have obtained from other sources.

Dated: June 21, 2023

Respectfully submitted,

/s/ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)

Rikard & Protopapas

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803.978.6111

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Melvin G. Welch and Donna B. Welch,

Plaintiffs,

v.

3M Company, 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.

Case No. 2022-CP-40-03834

**NOTICE OF MOTION AND MOTION
BY CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON AND CERTAIN
LONDON MARKET COMPANIES TO
ENFORCE AUTOMATIC STAY OR
TO DISMISS AND/OR STRIKE
AMENDED THIRD-PARTY
COMPLAINT OR, IN THE
ALTERNATIVE, SEVER AMENDED
THIRD-PARTY COMPLAINT, OR, IN
THE FURTHER ALTERNATIVE, FOR
A MORE DEFINITE STATEMENT**

**TO: BRIAN M. BARNWELL, ESQUIRE, ATTORNEY FOR THE THIRD-PARTY
PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that Third-Party Defendants Certain Underwriters
at Lloyd's, London and Certain London Market Companies ("Certain London Market Insurers"),

by and through their undersigned counsel, do hereby move: (1) for an order that this third-party action and related matters are stayed pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules; and (2) if this third-party action is not stayed, for an order dismissing and/or striking the claims against Certain London Market Insurers in the Amended Third-Party Complaint (the “Amended Third-Party Complaint” or “ATPC”) pursuant to South Carolina Rules of Civil Procedure 12(b)(6), 12(b)(4), 12(b)(5) and 14(a) or, in the alternative, severing such claims, or, in the further alternative, requiring a more definite statement pursuant to SCRCP 12(e). The grounds for this motion are summarized below and discussed more fully in Sections I through IV herein.

First, by Order dated June 21, 2023 (the “Receivership Order”), the Court appointed Peter D. Protopapas as Receiver (the “Receiver” or “Third-Party Plaintiff”) for Atlas Turner, Inc. (“Atlas Turner”) to “marshal all of the available insurance assets” for Atlas Turner and take other specified actions.¹ As the basis for the Receivership Order, the Court cited and relied upon its prior Order of May 11, 2023 holding Atlas Turner in contempt of court and its Order of June 20, 2023 striking Atlas Turner’s answer. On July 6, 2023, Atlas Turner filed a notice of appeal as to the orders on which the appointment of the Receiver was predicated, as well as the Receivership Order itself.² Because the present third-party action consists of claims asserted by Mr. Protopapas pursuant to

¹ Atlas Turner opposed and objected to the appointment of the Receiver in numerous filings. See *e.g.*, Atlas Turner, Inc.’s Motion to Reconsider the June 21, 2023 Order on Plaintiffs’ Motion to appoint a Receiver, filed on June 22, 2023; Atlas’ Response and Objection to Plaintiffs’ Motion to Appoint a Receiver, filed May 15, 2023; Atlas’ Supplemental Response and Objection to the Plaintiffs’ Motion to Appoint a Receiver, filed June 14, 2023.

² The orders identified in the Notice of Appeal are: Order Holding Atlas Turner, Inc. in Contempt (May 11, 2023); Form 4 Order denying Atlas Turner, Inc.’s Motion to Reconsider and Vacate Contempt Order (June 16, 2023); Order Striking Atlas Turner’s Answer (June 20, 2023); Order on Plaintiff’s Motion to Appoint a Receiver (June 21, 2023); Form 4 Order denying Atlas Turner Inc.’s Motion to Reconsider Order Striking Atlas Turner’s Answer (June 28, 2023); and Form 4 Order denying Atlas Turner Inc.’s Motion to Reconsider Order on Plaintiff’s Motion to Appoint a Receiver (June 28, 2023).

the orders that have been appealed, this action is affected by the appeal and is automatically stayed by filing of the notice of appeal. *See* Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . .”); Rule 241(a), SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.”). However, despite the pending appeal, the Receiver has maintained that the third-party action is not stayed.³ Out of an abundance of caution, Certain London Market Insurers file this motion because the potential issues created by the current procedural posture clearly warrant a stay until resolution of the dispute that is the subject of the pending appeal.

Second, the claims asserted against Certain London Market Insurers by the Receiver in the Amended Third-Party Complaint relate to insurance policies that Certain London Market Insurers allegedly issued to Atlas Turner. This complaint alleges that an unspecified number of lawsuits for asbestos-related bodily injury have been filed against Atlas Turner based on its historic operations that included the sale of asbestos-containing products and asbestos materials. These allegations do not state an actual justiciable controversy with Certain London Market Insurers, and also do not allege that Certain London Market Insurers are or may be liable to Third-Party Plaintiff for all or part of the claims of the underlying Plaintiffs Melvin and Donna Welch (collectively, “Plaintiffs”). In addition, the Amended Third-Party Complaint and summons in this action refer only to “certain” Underwriters at Lloyds, London and London Market Companies without identifying the specific entities against which claims are made and relief is sought. Accordingly,

³ Counsel for Certain London Market Insurers contacted counsel for the Receiver to seek agreement that the third-party action is currently stayed, but was advised that the Receiver’s position is that the action is not stayed.

if the third-party action is not stayed, the claims against Certain London Market Insurers should be: dismissed and/or stricken under SCRCRCP Rules 12(b)(6), 12(b)(4), 12(b)(5) and 14; in the alternative, severed into a separate action; or, in the further alternative, subject to an order requiring a more definite statement under Rule 12(e).

ARGUMENT

I. **The Court Should Affirm That the Third-Party Action Is Stayed**

This third-party action is stayed as a matter of law under Rule 205 and Rule 241(a). Pursuant to Rule 205, “the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal.” *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 532 (2016); *accord Tillman v. Oakes*, 398 S.C. 245, 255 (2012). The Rule states:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR. In addition, Rule 241(a) provides:

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, 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. “Affected” as used in these rules has been defined as “to produce an effect on; to influence in some way.” *Stokes-Craven*, 416 S.C. at 534, quoting *Black’s Law Dictionary* 68 (10th ed. 2014).

Here, the third-party action involves an exercise of authority by the Receiver that wholly depends upon his appointment by the June 21, 2023 Receivership Order predicated upon the Orders of May 11, 2023 and June 20, 2023. The third-party action was expressly brought by Mr. Protopapas as “duly appointed receiver” for Atlas Turner. ATPC, p.1. This appointment was based upon the Court’s finding that “where, as here, Atlas’ [answer] 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.” Receivership Order, p.3. The Court further found that “where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.” *Id.*

This action thus directly involves “matters decided in the order . . . on appeal.” It unquestionably will be “affected by” the appeal of the Receiver’s appointment and predicate orders striking Atlas’ answer and holding it in contempt. By the terms of Rules 205 and 241, the notice of appeal by Atlas Turner acted to divest this Court of jurisdiction over these orders, and to “automatically stay” the relief ordered therein. This stay applies to the authority to act pursuant to the Receivership Order, including the authority invoked by the Receiver to prosecute the present third-party action. None of the exceptions set forth in Rules 205 and 241 are applicable and, because the appeal remains pending at this time, the automatic stay is in effect.

The Receiver has not articulated any reason why the automatic stay does not apply to this matter. To the contrary, it plainly would be inequitable, inefficient, and a waste of judicial resources to litigate insurance coverage issues raised by the Receiver before the threshold challenges to the orders relating to the receivership appointment have been resolved. Although a stay under Rule 241 is automatic and does not require an order by this Court, the Receiver’s

position concerning the automatic stay has made it necessary for Certain London Market Insurers to raise the matter at this time. This Court should affirm that the Receivership Order and the Receiver's authority to act thereunder, including his prosecution of claims and discovery against Certain London Market Insurers in this third-party action, are stayed.

II. The Claims In The Amended Third-Party Complaint Against Certain London Market Insurers Should Be Dismissed Under Rule 12(b)

If the third-party action is not stayed, the claims against Certain London Market Insurers in the Amended Third-Party Complaint should be dismissed for failure to state a claim upon which relief can be granted.

To state a cause of action for declaratory judgment, “a party must demonstrate a justiciable controversy.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71 (1995). A justiciable controversy exists “[w]here a concrete issue is present, and there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party.” *Power v. McNair*, 255 S.C. 150, 153-54 (1970) (internal quotation and citation omitted). “An issue that is contingent, hypothetical, or abstract is not ripe for judicial review,” and there must be “a real or actual controversy between the litigants at the time of the institution of the DJ Action.” *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595 (2013) (internal citation and quotation omitted).

The Amended Third-Party Complaint fails to allege facts demonstrating an actual justiciable controversy with Certain London Market Insurers, and the First, Second and Third Causes of Action should accordingly be dismissed as to Certain London Market Insurers. Third-Party Plaintiff asserts that Certain London Market Insurers have a duty to defend or reimburse defense costs with respect to the “Atlas Turner Asbestos Suits.”⁴ ATPC, ¶¶ 12, 60, 63-64, 68. Yet

⁴ Paragraph 12 only refers to “the instant suit filed by Melvin G. Welch and Donna B. Welch.”

the Amended Third-Party Complaint never fully identifies the lawsuits at issue. See ATPC, ¶ 12, Prayer for Relief. The Amended Third-Party Complaint uses generic and nonspecific phrases, such as “Atlas Turner Asbestos Suits” and “asbestos suits potentially covered under the Certain London Market Insurers’ policies” to refer to the lawsuits in which a justiciable controversy purportedly exists, but never defines or identifies these lawsuits. Likewise, the Amended Third-Party Complaint seeks declarations on various insurance coverage issues concerning these unspecified lawsuits. With the exception of the *Welch* Complaint, the Third-Party Plaintiff fails to identify any particular pending asbestos action as to which these issues have allegedly arisen and as to which an actual controversy currently exists with Certain London Market Insurers. Without identification of specific actions and the specific facts in each action required to allege a present controversy with Certain London Market Insurers, the Amended Third-Party Complaint does not present a specific, concrete matter for judicial resolution, but rather seeks declarations that are abstract, hypothetical, and contingent.

The duty to defend, which is the subject of multiple declarations sought in the Second and Third Causes of Action, cannot be determined without identification of the specific lawsuit at issue. Under basic principles of law, “the duty of a liability insurance company to defend a claim brought against its insured [is] determined by the allegations of the third party’s complaint.” *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 15 (Ct. App. 1994), *aff’d*, 321 S.C. 310 (1996). Similarly, issues relating to any duty to indemnify (ATPC ¶ 60) also cannot be adjudicated in a vacuum. See *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 595 (2013). Third-Party Plaintiff has not identified the particular lawsuits as to which it seeks relief – let alone the allegations of the complaints therein – and relief thus cannot be granted on these declarations

concerning the duty to defend.⁵ Accordingly, the declaratory judgment claims by the Third-Party Plaintiff against Certain London Market Insurers should be dismissed pursuant to Rule 12(b)(6).

The Amended Third-Party Complaint includes a request for a declaration as to present and future Receiver's fees and expenses. The Receiver requests declarations that Certain London Market Insurers must compensate the Receiver for "asbestos suits potentially covered under the Certain London Market Insurers' policies" and that "this obligation is unlimited" but fails to identify the underlying asbestos suits, nor could it identify such future lawsuits. ATPC ¶ 68. Such an indefinite request about unknown and unknowable underlying lawsuits is an improper request for declaratory relief. As discussed above, the existence of an insurer's duty to defend cannot be determined without identification of the specific lawsuit(s) at issue and the allegations therein. In the absence of such allegations, there is no claim upon which relief can be granted and this request should be dismissed pursuant to Rule 12(b)(6).

In addition, the Amended Third-Party Complaint and summons sent by certified mail to Lloyds America, Inc., a non-party, referred only to "Certain Underwriters at Lloyd's, London and Certain London Market Companies" without identifying the specific entities or specific alleged policies against which claims are made and relief is sought. As such, the Amended Third-Party Complaint should be dismissed pursuant to Rules 12(b)(6), 12(b)(4), and 12(b)(5).

⁵ The First Cause of Action seeks a declaration that Certain London Market Insurers and the other third-party defendants must provide the Receiver with copies of policies. The Amended Third-Party Complaint does not allege that any justiciable controversy exists in this regard. Nowhere does it claim that Certain London Market Insurers refused to provide copies of any policies that had been located. The absence of such an allegation is dispositive because one of the requirements for a ripe controversy is that "there is a definite assertion of legal rights and a positive legal duty with respect thereto, which are denied by the adverse party." *Power*, 255 S.C. at 153-54.

III. The Claims In The Amended Third-Party Complaint Against Certain London Market Insurers Should Be Stricken Pursuant to Rule 14(a) or, in the Alternative, Severed

Rule 14(a) provides that a defendant may commence a third-party complaint against a party “who is or may be liable to [defendant] for all or part of the plaintiff’s claim.” Rule 14(a), SCRCP. The Rule further provides that “[a]ny party may move to strike the third-party claim, or for its severance or separate trial.” *Id.*

Courts applying the South Carolina Rules and their federal counterparts have repeatedly held that claims regarding insurance coverage should not be combined in the same action as the underlying tort claims against the insured. *See Builders Mut. Ins. Co. v. Island Pointe, LLC*, 431 S.C. 93 (2020) (affirming denial of insurer’s motion to intervene in tort action and trial court’s decision “to leave all coverage issues to a subsequent declaratory judgment action”); *Thomas v. Tramaine-Frost*, 2017 U.S. Dist. LEXIS 29522 (D.S.C. Jan. 12, 2017) (severing negligence claims against an alleged tortfeasor from coverage claims against an insurer); *Todd v. Cary's Lake Homeowners Ass'n*, 315 F.R.D. 453 (D.S.C. 2016) (severing tort claims from claims against insurer); *Cramer v. Walley*, 2015 U.S. Dist. LEXIS 84400 (D.S.C., June 30, 2015) (holding that claims for negligent operation of automobile should not be joined with claim against insurer for declaratory judgment on coverage).

A third-party complaint “must be derivative of the plaintiff’s claim because [d]erivative liability is central to the operation of Rule 14. It is not sufficient that the third-party claim is a related claim; *the claim must be derivatively based on the original plaintiff’s claim.*” *Johnson v. M.I. Windows and Doors, Inc.*, No. 2:11-CV-0167, 2012 WL 1015798 at *2 (D.S.C. Mar 23, 2012) (emphasis in original) (internal citations and quotations omitted); *Laughlin v. Dell Fin. Servs., L.P.*, 465 F. Supp. 2d 563, 566 (D.S.C. 2006). Stated another way, a third-party complaint “must

involve an attempt to pass on to the third party all or part of the liability asserted against the defendant.... An impleader claim may not be used to assert any and all rights to recovery arising from the same transaction or occurrence as the underlying action.” *CNH Industrial Capital America LLC v. Able Contracting, Inc.*, No. 9:16-cv-2520-RMG, 2017 WL 512453, at *1 (D.S.C. Feb. 7, 2017) (internal quotations omitted) (dismissing third-party complaint because claims were not derivative); *Johnson*, 2012 WL 1015798, at *2 (severing third-party complaint because claims were not derivative).

In this action, the Third-Party Plaintiff improperly seeks to achieve this result by means of a third-party complaint under Rule 14. However, as noted above, this rule only permits impleader against a party “who is or may be liable to [defendant] for all or part of the plaintiff’s claim.” To be proper, a third-party complaint must allege that the liability of the third-party defendant on the claim against it “is in some way dependent upon the *outcome* of the main claim.” *Laughlin*, 465 F. Supp. 2d at 566.⁶ Rule 14 does not allow the defendant to assert a separate and independent claim, even if the claim arises out of the same general set of facts as the main claim. *Id.*

Here, none of the claims seek a ruling that Certain London Market Insurers are liable to Atlas Turner for all or part of the tort claims by Plaintiffs. As discussed above, the Amended Third-Party Complaint does not seek any declaration specific to the claim of Plaintiffs. Furthermore, the declaratory judgment claims do not seek any determination that Certain London Market Insurers are liable for indemnification or any other claim that is alleged to be dependent on the outcome of the main claim in the *Welch* action. Third-Party Plaintiff’s claims against Certain London Market Insurers therefore are not properly asserted under Rule 14. *See Cruz v.*

⁶ The Note to Rule 14 indicates that it was drafted to be “substantially the same as the Federal Rule” 14, so federal law is cited whenever squarely applicable.

Weber-Stephen Prods., LLC, 2018 U.S. Dist. LEXIS 1243, at *6 (N.D. Tex. Jan. 4, 2018) (quoting *Majors v. Am. Nat'l Bank of Huntsville*, 426 F.2d 566, 568 (5th Cir. 1970)) (Rule 14 “is not designed as a vehicle for the trying together of separate and distinct causes of action, or for the introduction, into the main action, of several parallel, but independent, actions, or separate and independent claims.”).

Furthermore, even in instances where the requirements of Rule 14 are satisfied (which they are not here), third-party complaints may still be stricken or severed when the third-party lawsuit “will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.” *Beach v. Hudson*, 380 S.E.2d 869, 871 (S.C. App. 1989); see *Ballard v. S. Cotton Oil Co.*, 145 F. Supp. 886, 887 (E.D.S.C. 1956) (applying South Carolina law and refusing to permit the interpleader because injecting insurance into a trial would be prejudicial to the insurer). Here, the Amended Third-Party Complaint clearly complicates this litigation by adding three new causes of action for declaratory judgment and adding eight additional third-party defendants. By adding these claims, the Third-Party Plaintiff will “all but submerge” Plaintiffs’ original claim and should be stricken. *Beach*, 380 S.E.2d at 871 (striking third-party complaint because court deemed that adding four additional parties and seven causes of action would unduly complicate the litigation). Under South Carolina law, prejudice arises when the third-party complaint “introduce[s] unrelated issues and unduly complicate[s] the original suit.” *Id.* Furthermore, as commentators and courts have observed, a defendant’s insurer may also be prejudiced if insurance is injected into a tort action because, among other things, the jury “may decide to increase the damages awarded to plaintiff” if it is “aware of the insurance company’s existence.” 6 C. Wright, A. Miller & M. Kane, 6 Fed. Prac. & Proc. Civ. § 1443 (3d ed.). Additionally, Certain London Market Insurers may be prejudiced by Third-Party Plaintiff’s decision to seek relief as part of the underlying tort action to

the extent it allows Plaintiffs to take part in and/or be privy to discovery related to Certain London Market Insurers and/or insurance related information that Plaintiffs would otherwise not be entitled to, including but not limited to information about the investigation, defense, and resolution of underlying claims.

Under these circumstances, the claims by the Receiver against Certain London Market Insurers in the Amended Third-Party Complaint should be stricken or, in the alternative, severed into a separate action.⁷

IV. In The Further Alternative, The Court Should Require a More Definite Statement

In the further alternative, and to the extent that the Court does not stay, dismiss, strike, or sever the claims by the Third-Party Plaintiff, Certain London Market Insurers move for a more definite statement pursuant to Rule 12(e). For the reasons set forth above, the allegations in the Amended Third-Party Complaint are so vague and ambiguous that it is not reasonable to request Certain London Market Insurers to frame a responsive pleading. At minimum, the Third-Party Plaintiff should be required to 1) set forth each specific claim(s) and entity(ies) as to which a declaration as to coverage is sought, 2) set forth each policy or policies that are allegedly implicated, and 3) set forth the specific facts and material policy terms that allegedly support the declaration sought and demonstrate that an actual dispute exists.

This motion is based upon the foregoing, any memorandum of support to be filed later, the statutes and case law of the State of South Carolina, the pleadings filed in this matter, and such

⁷ Even if the claims against Certain London Market Insurers by the Receiver satisfied the requirements of Rule 14, the Amended Third-Party Complaint's joinder of such claims with the claims against other insureds, other insurers, and other parties would be improper under Rule 20. The claims against these parties are not alleged to arise out of the same transaction, occurrence, or series of transactions or occurrences. *See Thomas*, 2017 U.S. Dist. LEXIS 29522, at *12; *Todd*, 315 F.R.D. at 457-58; *Cramer*, 2015 U.S. Dist. LEXIS 84400, at **10-11.

other material as may be properly received by the Court in connection therewith.

WHEREFORE, Certain London Market Insurers respectfully request that the Court:

- Issue an order that the Receivership Order and the Receiver's authority to act thereunder, including the Receiver's prosecution of claims and discovery against Certain London Market Insurers in this third-party action, are stayed.
- If this action is not stayed, issue an order dismissing the claims against Certain London Market Insurers in the Amended Third-Party Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(6), 12(b)(4), 12(b)(5) and 14(a) or, in the alternative, severing such claims, or, in the further alternative, requiring a more definite statement pursuant to SCRCP 12(e).

Dated: August 14, 2023

GORDON REES SCULLY MANSUKHANI, LLP

By: s/ A. Victor Rawl, Jr.

A. Victor Rawl, Jr. (SC 09261)

Email: vrawl@grsm.com

40 Calhoun Street, Suite 350

Charleston, SC 29401

Telephone: 843-278-5900

*Counsel for Third-Party Defendants
Certain Underwriters at Lloyd's, London
and Certain London Market Companies*

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CAMDEN 935 Broad Street, Camden, SC 29020
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March 28, 2024

VIA Email Only:

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Dear Vic, Todd, James, Steven, and Stephen:

I am writing to advise that the Supreme Court confirmed yesterday, in an Order signed by all 5 justices (attached), that issues raised in your appeal are not immediately appealable. Additionally, the Court vacated a Court of Appeals decision denying sanctions against the parties and attorneys who have, after multiple warnings from the appellate courts, pursued these interlocutory and/or improper appeals. These issues are now back before the circuit court.

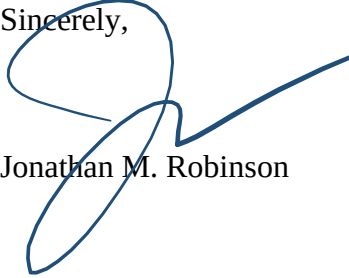
As you are aware, in the last 4 months you have collectively filed 16 appeals in the following cases:

1. Appellate Case No. 2023-002006
2. Appellate Case No. 2023-002007

3. Appellate Case No. 2023-002008
4. Appellate Case No. 2023-002009
5. Appellate Case No. 2023-002010
6. Appellate Case No. 2023-002011
7. Appellate Case No. 2024-000342
8. Appellate Case No. 2024-000348
9. Appellate Case No. 2024-000337
10. Appellate Case No. 2024-000341
11. Appellate Case No. 2024-002006 (second notice of appeal filed 3/19/2024)
12. Appellate Case No. 2024-002007 (second notice of appeal filed 3/19/2024)
13. Appellate Case Nos. 2024-002009, -002010, -002011 (second notice of appeal filed 3/19/2024)
14. Appellate Case No. 2024-_____ (notice of appeal filed 3/28/2024 in *Mitchell*)
15. Appellate Case No. 2024-_____ (notice of appeal filed 3/28/2024 in *Welch*)
16. Appellate Case No. 2024-_____ (notice of appeal filed 3/28/2024 in *Welch*)

As a courtesy, we are requesting you withdraw the improper appeals on or before close of business Monday, April 1, 2024. Please consider this notice a Rule 11 communication to the extent any such notice is required.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'J' followed by a horizontal line and a checkmark-like flourish.

Jonathan M. Robinson

JMR/dlf
Enclosure

The Supreme Court of South Carolina

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

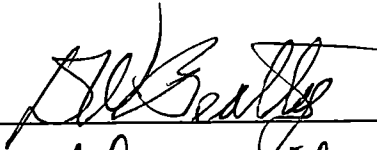
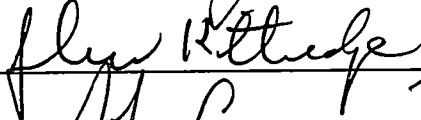
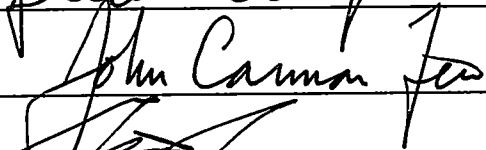
Casualty and Surety Company, are Appellants.

Appellate Case No. 2024-000005

ORDER

Appellant AIG Property Casualty Company (AIG) has filed a motion for certification of Appellate Case No. 2023-000727 pursuant to Rule 204(b), SCACR. Appellant Travelers Casualty and Surety Company has filed a motion joining AIG's motion for certification.

We grant the motion for certification and motion for joinder, dispense with further briefing, vacate the court of appeals denial of sanctions, and dismiss the appeal because the underlying circuit court order at issue is not immediately appealable.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
March 27, 2024

cc:

Wesley Brian Sawyer
Brian Montgomery Barnwell
John Belton White, Jr.
Marghretta Hagood Shisko
Scott Shutte
Christopher Rutledge Jones

G. Murrell Smith, Jr.
Jonathan M. Robinson
Shanon N. Peake
Matthew Todd Carroll
Mary Elizabeth O'Neill
Harry Lee
The Honorable Jenny Abbott Kitchings

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April 1, 2024

VIA E-MAIL

Mr. Jonathan M. Robinson, Esquire
Smith Robinson
2530 Devine Street
Columbia, SC 29205
jon.robinson@smithrobinsonlaw.com

Re: *Welch and Mitchel* Appeals – Response to March 28, 2024 Letter

Dear Jon:

I hope you are doing well. I represent third-party Continental Insurance Company (“Continental”) and Certain Underwriters at Lloyd’s, London, meaning those Syndicates which severally subscribed, each for itself and not for any other, and World Auxiliary Insurance Corporation Ltd. (“Certain London Market Insurers”) (together, the “Appellants”), concerning appeals pending in *Welch and Mitchell*. I am in receipt of your letter dated March 28, 2024, which appears to demand that all parties challenging the propriety of the appointment of Mr. Protopapas as the receiver for several different active UK and Canadian corporations (“the Receiver”) immediately dismiss all appeals. Appellants respectfully decline to voluntarily dismiss their appeals.

The Receiver’s demand appears to be based on the Supreme Court order of March 27, 2024 (“Order”), which the Receiver suggests confirms that the appeals are somehow improper. However, the Order consists of a single sentence that provides no explanation of the ruling, no analysis of South Carolina Code § 14-3-330(4), and no explanation as to why that statute would be inapplicable to the appeals at issue. Moreover, the Receiver offers no analysis or argument of any kind as to how or why the Order would apply to appeals in other matters and/or why the Order would require dismissal of all pending appeals against the Receiver. Based on the plain language of South Carolina Code § 14-3-330(4) (as well as other reasons), the orders at issue in these other appeals are immediately appealable.

Further, the parties to the *Payne & Keller* appeal have a period of time under the Appellate Court Rules to seek clarification of the Order. Until the time to request rehearing has expired, there does not appear to be any reason for parties in other cases to voluntarily withdraw their respective appeals, especially as the consequences of doing so would be highly prejudicial. In addition, the *Payne & Keller* appeal contains issues that are materially different than the appeals at issue. After the time has run for rehearing, Appellants would be happy to consider any argument by the

April 1, 2024

Page 2

Receiver as to how the present appeals may be impacted by the final resolution of the *Payne & Keller* appeal.

Finally, in addition to the above, Appellants adopt and incorporate by reference all arguments presented in response to your letter by the other recipients, and Appellants do not waive any of their objections or positions by responding to your letter.

As always, I am happy to discuss the above.

Sincerely,

GORDON REES SCULLY MANSUKHANI, LLP


A. Victor Rawl, Jr.

M. Todd Carroll
Direct Dial: 803.454.7730
Direct Fax: 803.381.9130
E-mail: todd.carroll@wbd-us.com

April 1, 2024

Via Electronic Mail Only

Mr. Jon Robinson
jon.robinson@smithrobinsonlaw.com

Re: Your Letter of March 28, 2024

Dear Jon:

We write on behalf of Travelers Casualty and Surety Company in response to your letter of March 28, 2024, in which the Receiver again threatens to seek sanctions if numerous parties do not voluntarily withdraw legitimate appeals. Respectfully, our client disagrees with several aspects of the Receiver's position as set forth in your correspondence. In addition to the below, our client adopts and incorporates by reference all arguments presented by the other recipients in response to your letter, and our client does not waive any of its objections or positions by responding to your letter.

Primarily, the Supreme Court order of March 27th contains no information, discussion, or analysis as to why the order on appeal in that case is not immediately appealable. Based on the plain language of South Carolina Code § 14-3-330(4), the order at issue in these cases are immediately appealable. Notably, the Receiver has never contended otherwise, and the Supreme Court's March 27th order did not explain how that statute is inapplicable here. The parties to the Payne & Keller appeal have a period of time under the Appellate Court Rules to seek clarification of the Supreme Court's March 27th order, and until that time has expired, there does not appear to be any reason for parties in other cases to voluntarily withdraw their respective appeals, as the consequences of doing so would be highly prejudicial.

Likewise, the issues raised in our client's appeals listed in your March 28th correspondence are materially different from those presented in the Payne & Keller matter. Without further explanation from the Receiver as to how the order in the Payne & Keller case can extend to other appeals that involve appealable issues different than those presented in Payne & Keller, our clients cannot agree to the voluntary withdrawal of any appeals.

Finally, we do not appreciate your client's continued threats of sanctions. They are baseless. Your client knows fully that our client is pursuing legitimate legal positions; each and every argument our client has presented in every case adverse to your client—regarding the merits, the procedure, the unconstitutionality of the proceedings, or otherwise—has been

supported by on-point statutes, cases, rules, or some combination thereof. The continuous threat of sanctions against our client if it does not simply submit to the Receiver's demands borders on the frivolous and is not a legitimate litigation tactic.

Respectfully,

/s/ M. Todd Carroll

cc: Counsel of Record

RECEIVED

Apr 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

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

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 Aetna Life & Casualty Co., The Continental Insurance Company, Certain Underwriters at Lloyd's London, and Certain London Market Companies are the Appellants,

and

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

and

Peter D. Protopapas, Duly Appointed Receiver for Atlas Turner, Inc., are Respondents.

PROOF OF SERVICE

I certify that a true copy of the Receiver for Atlas Turner Inc.'s Response Regarding Appealability and Supplemental Appendix in this case have been served on the following, this 3rd day of April, 2024, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to subsection (g)(3) of the South Carolina Supreme Court's March 20, 2020 Order, as amended May 29, 2020. Pursuant to subsection (g)(3) of the South Carolina Supreme Court's Order, service on the attorneys admitted pro hac vice is accomplished by service on the associated South Carolina lawyer.

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April 3, 2024

From: [Dot Faulkenberry](#)
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Cc: [John Chandler](#); [Brian Barnwell](#); [Shanon Peake](#); [Jon Robinson](#); [Murrell Smith](#); [Lindsay Valek](#)
Subject: Welch v Advance Auto Parts, etc. Case No. 2024-000337
Date: Wednesday, April 3, 2024 4:51:00 PM
Attachments: [The Receiver's Memo on Appealability Atlas - Welch, 2.pdf](#)
[Supp App Index w docs - Welch, 1.pdf](#)

Please find attached for service a copy of the Receiver's Response Regarding Appealability and Supplemental Appendix that we are filing with the Court today.

Thank you,
Dot

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