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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 Nos. 2022-CP-40-05543 and 2023-CP-40-03108
Appellate Case Nos. 2024-000342 and 2024-000348

Michael David Link and Sandra Strickland Link,

Plaintiffs,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; AT&T Corp.; Atlas Turner Inc.; Bahnson, Inc.; BASF Catalysts LLC; BASF Corporation; Beaty Investments, Inc.; Bechtel Corporation; Bellsouth, LLC; Bellsouth Telecommunications, LLC; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Heat & Frost Insulation Company, Inc.; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; J. & L. Insulation, Inc.; K-MAC Services, Inc.; Kohler Co.; Metropolitan Life Insurance Company; Michelin Corporation; Michelin North America, Inc.; Milliken & Company; Nokia of America Corporation; Occidental Chemical Corporation; The Okonite Company, Inc.; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Prysmian Cables and Systems USA, LLC; Raytheon Technologies Corporation; REDCO Corporation; Riley Power Inc.; Rockwell Automation Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; SPX Cooling Technologies, LLC; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company, Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; Whittaker, Clark & Daniels, Inc.; The William Powell Company; Wind Up, LTD.; York International Corporation; and Zurn Industries, LLC, Defendants,

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

and

Peter D. Protopapas, Asbestos Corporation Limited and Atlas Turner, Inc.'s Duly Appointed Receiver is the Respondent.

AND

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

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; Atlas Turner Inc.; Bahnson, Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Canvas CT, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Eaton Corporation; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; K-MAC Services, Inc.; Metropolitan Life Insurance Company; Occidental Chemical Corporation; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company; York International Corporation; Zurn Industries, LLC, Defendants,

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

and

Peter D. Protopapas, Asbestos Corporation Limited and Atlas Turner, Inc.'s Duly Appointed Receiver is the Respondent.

**THE RECEIVER FOR THE INSURANCE ASSETS OF ASBESTOS CORPORATION
LIMITED AND ATLAS TURNER, INC.’S RESPONSE REGARDING APPEALABILITY**

Peter Protopapas, the Receiver for the insurance assets of Asbestos Corporation Limited (“ACL”) and Atlas Turner, Inc. (“Atlas”), formerly known as Atlas Asbestos Company, Ltd. (the “Receiver”), submits this Response regarding whether an interlocutory scheduling order (the “Order”) is immediately appealable. ACL and Atlas contend that the Order is immediately appealable under South Carolina Code sections 14-3-330(2)(a) and (4). For the reasons set forth herein, neither provision renders the Order immediately appealable.

INTRODUCTION

The interlocutory Order at issue is not immediately appealable under South Carolina Code § 14-3-330 because, contrary to the Appellants’ characterization, the Order at issue neither divests ACL and Atlas of the civil counsel they selected nor modifies or continues the receivership. In fact, the circuit court specifically ordered ACL’s and Atlas’s chosen counsel to remain on the relevant cases, and the Order only enforces the Receiver’s duties already granted by the initial appointment order. Atlas and ACL remain frustrated at the appointment of the Receiver, but this frustration is insufficient to render an order immediately appealable.¹ As such, neither Section 14-3-330(2) nor Section 14-3-330(4) renders the Order immediately appealable.

BACKGROUND

Both Atlas and ACL have refused to participate in litigation before the circuit court. (App 2, Order at 2.) Both assert jurisdictional defenses, but when those defenses were overruled, both companies refused to answer discovery, present witnesses, or engage in the litigation

¹ Both ACL and Atlas have appealed the respective appointment orders of the Receiver, both of which appeals are still pending before this Court.

process. (*Id.*) This refusal led the circuit court to strike the answers of these companies. (*Id.*) Following these companies' decisions to place themselves into default in this manner, the circuit court appointed a receiver for each company for a limited purpose: to identify insurers with coverage responsive to the South Carolina asbestos claims faced by these companies. (*Id.*)

The circuit court granted the Receiver "the power and authority [to] fully administer all insurance assets of [the Appellants] and any subsidiaries, accept service on behalf of [the Appellants], engage counsel on behalf of [the Appellants,] and take any and all steps necessary to protect the interests of [the Appellants] whatever they may be." (App. 17, Order on Plaintiffs' Motion to Appoint a Receiver (June 21, 2023); App. 8, Order on Plaintiffs' Motion to Appoint a Receiver (Sept. 8, 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 [the Appellants]." (*Id.*)

Prior to appointment of the receiver, ACL and Atlas retained the Clement Rivers, LLP law firm ("Clement Rivers") as their defense counsel in the underlying asbestos litigation to implement the above-mentioned litigation strategy. (App. 3, Order at 3.) Atlas and ACL instructed Clement Rivers not to comply with the Receiver's directives, despite the fact that the circuit court has charged the Receiver with the responsibility for serving as the representative of ACL and Atlas as described above. (*Id.*) Pursuant to those instructions, Clement Rivers has declined to follow any of the Receiver's directives. (*Id.*)

Although the Receiver filed a notice of termination of the Appellants' counsel of choice, Clement Rivers, on February 23, 2024, the circuit court issued the Order on appeal that *denies* the Receiver's motion to terminate Clement Rivers. (Order at 5.) The Order, in relevant parts, directs the Appellants' two sets of counsel "to cooperate with the Receiver," view the Receiver

“as the client for both Atlas and ACL in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets,” and “comply with the Receiver’s directives” when “a disagreement arises between [Clement Rivers] and the Receiver on matters related to the defense of asbestos matters or the management of insurance assets.” (*Id.* at 5–6.)

A review of the Order shows that the Order is simply a scheduling order. The Order reiterates the various duties of the parties in light of the fact that the Receiver has been appointed, continues the trial in the cases until April 5, 2024, orders that an in-person mediation must take place within the next two weeks, and denies consolidation of the matters for trial.

ARGUMENT

The Appellants only claim they are entitled to appeal of the circuit court’s Order under Section 14-3-330(2) or Section 14-3-330(4). Appellants’ Resp. at 1.²

The Order is not immediately appealable under either South Carolina Code § 14-3-330(2) or § 14-3-330(4) because (1) contrary to the Appellants’ mischaracterization, the circuit court specifically ordered ACL’s and Atlas’s chosen counsel to remain on the relevant cases and denied that the Receiver could terminate this counsel, and (2) the Order only enforces the Receiver’s duties already granted by the initial appointment order.

² Section 14–3–330 provides the following types of judgments, decrees, and orders are immediately appealable:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions . . . ;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents 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;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

A. Contrary to the Appellants’ mischaracterization, the Order at issue does not divest ACL and Atlas of the civil counsel they selected.

The Order at issue here does not disqualify any party’s counsel. In fact, the Order denies the Receiver’s attempt to terminate counsel.

Despite ACL and Atlas’s attempts to manufacture immediate appealability by mischaracterizing the Order, the Order specifically denies the Receiver’s motion to terminate Clement Rivers.³ (App. 5, Order at 5.) Appellants’ selected lawyers remain counsel in the relevant asbestos cases. Indeed, the Order, in relevant parts, directs Appellants’ two sets of counsel “to cooperate with the Receiver” and view the Receiver “as the client for both Atlas and ACL in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets.” (*Id.* at 5.) Indeed, Clement Rivers continues to act on behalf of both ACL and Atlas. As recently as April 1, Clement Rivers filed motions in limine on behalf of both entities in the *Heather Donaghy v. 4520 Corp., Inc.* asbestos action. *See* Case No. 2023-CP-40-03018. ACL and Atlas continue to have counsel of their choosing engage on their behalf in asbestos cases.

The fact that the circuit court directed Clement Rivers to “comply with the Receiver’s directives” when “a disagreement arises” (*Id.* at 6) does not divest Appellants of the counsel they selected. This instruction simply emphasizes the axiomatic principle that a lawyer needs to follow the directives of his client—the Receiver in this case. This appeal is not about whether Clement Rivers still represents ACL or Atlas. It is a Trojan horse Appellants are using to pursue

³ Over the years, parties involved in asbestos receivership cases have gone to great lengths to mischaracterize orders of the circuit court in an attempt to avoid the prohibition against the immediate appeal of interlocutory orders and to delay the proceedings below. Insurers involved in the Covil receivership previously attempted to mischaracterize an order compelling the production of documents as an order awarding sanctions. *See* Appellate Case Nos. 2022-01764, 2022-000761. Insurers in the Cape receivership recently attempted to mischaracterize an order compelling the production of documents as an injunction order. *See* Appellate Case Nos. 2023-002006, 2023-002007, 2023-002008, 2023-002009, 29203-002010, 2023-002011.

their real goal: to seek review of the Receiver's ability to act in any capacity on behalf of ACL and Atlas.

Appellants argue that the directive to view the Receiver as the client if a disagreement arises makes the Order appealable because it "purportedly vests the Receiver with the ultimate power to control Appellants' asbestos litigation." (App. Memo. at 2.) However, as Appellants have aptly noted, this characterization of the Order is only purported. Appellants do not make any arguments that this directive of the circuit court has actually divested them of their chosen counsel, only that at some time in the future there might be an unidentified disagreement with the Receiver which would have the effect of divesting them of their chosen counsel. In fact, Appellants themselves talk about "if" this scenario occurs. (App. Memo. at 5 ("Appellants do not have counsel of their choice *if Clement Rivers is forced to defer to the Receiver's directives regarding the defense of Appellants' asbestos litigation.*")) These are exactly the types of academic questions the appellate courts refuse to consider. *See Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("If there is no actual controversy, this Court will not decide moot or academic questions."). There is no controversy here. Appellants retain their chosen counsel. Their chosen counsel continues to defend Appellants in asbestos matters.

Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005) has no application here. *Hagood* involved an order granting a motion to disqualify a party's attorney, whereas the Order at issue here confirms that Clement Rivers, Appellant's chosen counsel, continues to serve as Appellants' counsel in the relevant cases. *See id.* at 197. More importantly, unlike here, *Hagood* did not involve a receivership and did not address whether directing counsel to follow a duly-appointed receiver's directives constitutes divesting the entity for which the Receiver was appointed of its selected counsel. It does not.

Accordingly, the Order at issue is not immediately appealable under section 14-3-330(2).

B. Contrary to the Appellants’ mischaracterization, the Order at issue does not continue or modify the receivership.

Section 14-3-330(4) allows appeal of an “interlocutory order or decree in a court of common pleas . . . granting, continuing, modifying, or refusing the appointment of a receiver.” Again, the Order at issue here is not one such an order or decree.

On Wednesday, March 27, 2024, all five justices of the South Carolina Supreme Court joined in an order dismissing an interlocutory appeal of an order that an insurance company sued in a third-party action by a receiver. *Childers v. Davis Mechanical Contractors*, No. 2024-000005 (March 27, 2024) (“*Childers*”). The *Childers* appeal was from an order denying motions to dismiss the third-party action and denying motions to dissolve the receivership. The Supreme Court reasoned that dismissal of the appeal from this interlocutory order was warranted “because the underlying circuit court order at issue is not immediately appealable.” *Id.* The argument for immediate appealability raised in that appeal—South Carolina Code Section 14-3- 330(4)—is the same as that raised by ACL and Atlas here. The outcome should be no different.

The Order only enforces and clarifies the Receiver’s duties already granted by the initial appointment order. The initial appointment order grants the Receiver the power and duty to engage counsel on behalf of the Appellants. (App. 17, Order on Plaintiffs’ Motion to Appoint a Receiver (June 21, 2023); App. 8, Order on Plaintiffs’ Motion to Appoint a Receiver (Sept. 8, 2023).) The Order at issue simply clarifies that the Receiver should be viewed as the client and that the counsel for the Appellants should follow the Receiver’s directives, and thus reiterates the powers and duties already granted in the initial appointment order due to Appellant’s refusal to abide by the appointment order. The Order at issue does not modify or continue the receivership.

Accordingly, the Order is not immediately appealable under section 14-3-330(4).

CONCLUSION

For the foregoing reasons, the Order is not immediately appealable, and the Court should dismiss these appeals.

RESPECTFULLY SUBMITTED

s/ Shanon N. Peake

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April 3, 2024

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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 Nos. 2022-CP-40-04453 and 2023-CP-40-03108
Appellate Case Nos. 2024-000342 and 2024-000348

Michael David Link and Sandra Strickland Link,

Plaintiffs,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; AT&T Corp.; Atlas Turner Inc.; Bahnson, Inc.; BASF Catalysts LLC; BASF Corporation; Beaty Investments, Inc.; Bechtel Corporation; Bellsouth, LLC; Bellsouth Telecommunications, LLC; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Heat & Frost Insulation Company, Inc.; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; J. & L. Insulation, Inc.; K-MAC Services, Inc.; Kohler Co.; Metropolitan Life Insurance Company; Michelin Corporation; Michelin North America, Inc.; Milliken & Company; Nokia of America Corporation; Occidental Chemical Corporation; The Okonite Company, Inc.; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Prysmian Cables and Systems USA, LLC; Raytheon Technologies Corporation; REDCO Corporation; Riley Power Inc.; Rockwell Automation Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; SPX Cooling Technologies, LLC; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company, Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; Whittaker, Clark & Daniels, Inc.; The William Powell Company; Wind Up, LTD.; York International Corporation; and Zurn Industries, LLC, Defendants,

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

and

Peter D. Protopapas, Asbestos Corporation Limited and Atlas Turner, Inc.'s Duly Appointed Receiver is the Respondent.

AND

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

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; Atlas Turner Inc.; Bahnson, Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Canvas CT, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Eaton Corporation; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; K-MAC Services, Inc.; Metropolitan Life Insurance Company; Occidental Chemical Corporation; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company; York International Corporation; Zurn Industries, LLC, Defendants,

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

and

Peter D. Protopapas, Asbestos Corporation Limited and Atlas Turner, Inc.'s Duly Appointed Receiver is the Respondent.

APPENDIX

ORDERS

February 23, 2024 Order 1

September 8, 2023 ACL Appointment Order 8

June 21, 2023 Atlas Appointment Order 17

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL DAVID LINK AND SANDRA
 STRICKLAND LINK,
 Plaintiffs,

In Re:
 Asbestos Personal Injury Litigation
 Coordinated Docket

Vs.

CIVIL ACTION NO: 2022-CP-40-005543

4520 CORP, INC, et al.,

ORDER

Defendants.

HEATHER DONAGHY, AS PERSONAL
 REPRESENTATIVE OF THE ESTATE OF
 SHIRLEY SMILEY POTTER, DECEASED,
 Plaintiffs,

In Re:
 Asbestos Personal Injury Litigation
 Coordinated Docket

Vs.

CIVIL ACTION NO: 2023-CP-40-03108

4520 CORP, INC, et al.,

ORDER

Defendants.

This matter came before the Court by way of (1) a Motion by the Receiver to Enforce Order against Clement Rivers, LLP, (2) the Receiver for Asbestos Corporation Ltd.’s Notice of Filing of Termination of Representation, and (3) the Receiver’s request to continue trial of these matters from the February 12, 2024, trial setting. These issues arise from a series of conflicts between Peter D. Protopapas, the Receiver for the insurance assets of two companies—Asbestos Corporation Ltd. (“ACL”) and Atlas Turner, Inc. (“Atlas”)—and prior and current counsel for those entities.

BACKGROUND

On June 21, 2023, this Court appointed Peter Protopapas as Receiver for the insurance assets of Atlas. *See* Order on Plaintiff’s Motion to Appoint a Receiver, *Welch v. 3M Co.*, Case No. 2022-CP-40-03834 (Richland County, S.C. Ct. Common Pleas filed June 21, 2023). Atlas appealed that Order.

On September 8, 2023, this Court appointed Mr. Protopapas to serve as the Receiver for the insurance assets of Asbestos Corporation Ltd. (“ACL”). *See* Order on Plaintiff’s Motion to Appoint a Receiver, *Tibbs v. 3M Co.*, Case No. 2023-CP-40-01759 (Richland Co., S.C. Ct. Common Pleas filed Sept. 8, 2023). In that order, this Court gave the Receiver “the power and authority to fully administer all insurance assets of Asbestos Corporation, Ltd.” and “assume the control of the defense of asbestos claims made against ACL,” *Id.* at p. 6. ACL appealed that Order.

By way of brief background, both Atlas and ACL have consistently refused to participate in litigation before this Court. Both assert jurisdictional defenses, but when those defenses have been overruled, both companies refuse to answer discovery, present witnesses, or engage in the litigation process. This refusal has caused this Court to strike the answers of these companies. In light of these companies’ decisions to place themselves into defaults in this manner, this Court appointed a receiver in each instance in an effort to identify insurers with coverage responsive to the South Carolina asbestos claims faced by these companies in this Court.

The Receiver identified potential historic insurers for ACL and Atlas and initiated third-party litigation against the insurers in: *Asbestos Corporation Limited v. Century Indemnity Company, the Continental Insurance Company, Federal Insurance Company and Travelers Casualty and Surety Company*, Case no. 2022-CP-40-02979 (pending in Richland County) and

Atlas Turner Inc. v. Federal Insurance Company, Continental Insurance Company, Insurance Company of North America, Aetna Life & Casualty Co, and Certain underwriters at Lloyds, London and Certain London Market Companies, and Canadian General Insurance Company, Case No. 2022-CP-40-03484 (pending in Richland County). These insurers appeared before this Court on February 2, 2024, for a motions' hearing in these cases.¹

Both Atlas and ACL have retained the Clement Rivers, LLP law firm as (1) their defense counsel for the asbestos matter pending before this Court, and (2) their appellate counsel for the appeals referenced above. Mr. Stephen L. Brown is the lead lawyer assigned for these representations.² Mr. Brown has been hired directly by these companies, and he has not been appointed by any insurers of either company. In matters before this Court, Atlas and ACL have instructed Mr. Brown not to comply with the Receiver's directives, despite the fact that this Court has charged Mr. Protopapas with the responsibility for serving as the representative of ACL and Atlas as described above. Mr. Brown, to date, has declined to follow the Receiver's directives.

Twice since this Court appointed the Receiver for ACL, the Receiver has notified Clement Rivers, LLP, that its representation of ACL was terminated. Clement Rivers has continued to represent ACL and Atlas in the interim.

On January 26, the Receiver filed a motion with this Court to enforce his right to terminate Mr. Brown and Clement Rivers from their representation of ACL. *See* Notice of Motion and Motion to Enforce a Court Order Against Clement Rivers, LLP, *Link v. 3M Co.*, Case No. 2022-

¹ The Court has previously ordered that no liquidation of any insurance policy is permitted without the express consent of the Court during the pendency of these receiverships.

² The Receiver's motions before this Court do not seek to impact counsel's role in pursuing the two pending appeals, and they will not. In the absence of the issues described herein, Mr. Brown of Clement Rivers, LLP is of course free to handle those appeals as directed by his clients, Atlas and ACL.

CP-40-05543 (Richland Co., S.C. Ct. Common Pleas filed Jan. 26, 2024). On February 6, ACL filed memoranda in opposition in *Link* and *Donaghy v. 4520 Corp., Inc.*, Case No. 2023-CP-40-03108 (Richland Co., S.C. Ct. Common Pleas).

On February 7, 2024, this Court held pretrial hearings in several asbestos matters, including *Link* and *Donaghy*, where it became necessary to determine the status of Clement Rivers' representation of ACL and Atlas and the Receiver's ability to control those representations. The Court subsequently held a video status conference in these two asbestos cases on February 8, 2024, regarding ACL and Atlas. Mr. Peter Protopapas appeared as the Receiver, Mr. Stephen Brown appeared for Atlas and ACL, and Ms. Theile McVey and Mr. Charles W. Branham, III appeared for the asbestos plaintiffs. Mr. Vic Rawl, counsel for Certain London Market Insurers with respect to Atlas, was also in attendance.

ACL argues that this Court cannot act on the question of Mr. Brown and Clement Rivers' representation of ACL because of its appeal of the receivership order in the *Tibbs* case. According to ACL, this Court is divested of any ability to direct actions related to the receivership under our state's appellate court rules. *See* Rule 205, SCACR.

The Court disagrees. As this Court and the Court of Appeals have found in similar litigation, because of our state's treatment of receiverships in its laws and rules, the Receiver may continue his duties while the appeal is pending. *See* Order, *Childers v. Davis Mechanical Contractors, Inc.*, Appellate Case No. 2023-000727 (S.C. Ct. App. Sept. 8, 2023) (finding that a receivership order was "not stayed during pendency of [an] appeal" and "the receivership action and the receiver's ability to carry out his duties are not stayed"). Many of the same arguments about Rule 205 were raised to the Court of Appeals in its consideration of this issue to no avail.

See Order, *Childers vs. Davis Mechanical Contractors, Inc.*, Appellate Case No. 2023-00727 (S.C. Ct. App Nov. 21, 2023).

This Court remains concerned that Atlas and ACL are taking improper steps to deplete their insurance assets or otherwise make them unavailable to respond to the asbestos cases filed by South Carolinians in this Court, as they were originally intended and designed to do.

Accordingly, this Court ORDERS as follows:

1. The Receiver's Notice of Termination of Clement Rivers, LLP is DENIED.
2. Neither Atlas nor ACL shall take any actions to deplete the insurance assets or otherwise make them unavailable to the cases pending in this Court.
3. Both prior and current counsel for Atlas and ACL are directed to cooperate with the Receiver for Atlas and ACL, including producing their complete files to the Receiver upon his request. From the perspective of these law firms, the Receiver for Atlas and ACL shall be viewed as the client for both Atlas and ACL in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets.
4. ACL, Atlas, and its counsel shall not interfere with the Receiver's tenders of cases to insurance carriers or with any insurers' provision of defense and indemnity. Furthermore, ACL, Atlas, and its counsel shall not hinder insurance carriers from cooperating with the Receiver.
5. The insurers for Atlas and ACL are expected to cooperate with the Receiver for Atlas and ACL. The Receiver for Atlas and ACL shall be viewed as the named insured and the representative for both Atlas and ACL in the defense of asbestos litigation matters and the management of any insurance or insurance-related assets.

6. If a disagreement arises between Mr. Brown and the Receiver on matters related to the defense of asbestos matters or the management of insurance assets, the Receiver's directives shall prevail. Mr. Brown is hereby ORDERED to comply with the Receiver's directives in these situations.
7. The *Link* and *Donaghy* asbestos matters are hereby CONTINUED until April 15, 2024.
8. The Court hereby ORDERS that in-person mediation take place in *Link* and *Donaghy* asbestos matters in South Carolina within the next 14 days. Atlas and ACL are hereby ORDERED to attend. The Receiver shall advise Atlas and ACL's respective insurers of the requirements of Rule 6 of the South Carolina Rules of Alternative Dispute Resolution and its mandate attendance that "a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim" on behalf of any insured party against whom a claim is made shall attend. SCRADR 6(b)(4).
9. The *Link* and *Donaghy* asbestos plaintiffs are ORDERED to provide settlement demands to Atlas and ACL within three days of the date of this Order.
10. The asbestos plaintiffs' oral motion to consolidate the *Link* and *Donaghy* asbestos matters for trial is DENIED at this time.

AND IT IS SO ORDERED

[JUDGE'S E-SIGNATURE FOLLOWS]



Richland Common Pleas

Case Caption: Heather Donaghy , plaintiff, et al vs 4520 Corp Inc , defendant, et al

Case Number: 2023CP4003108

Type: Order/Other

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
JOHN A. TIBBS and)	C/A NO. 2023-CP-40-01759
MARGARET B. TIBBS)	
)	<i>In Re:</i>
Plaintiff,)	Asbestos Personal Injury Litigation
)	Coordinated Docket
v.)	
)	
3M COMPANY, et al.)	
)	
Defendants.)	

ORDER ON PLAINTIFFS’ MOTION TO APPOINT A RECEIVER

This order follows the Court’s order finding Asbestos Corporation Ltd. (“ACL”) in contempt of court and striking ACL’ pleadings. Before the Court is Plaintiffs’ Motion to Appoint a Receiver over ACL’s insurance assets.

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets¹ of ACL and to allow the Receiver to assume control of the defense of asbestos claims made against Asbestos Corporation, Ltd in the United States. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court’s Receiver in locating and marshalling those assets. Further, Mr. Protopapas is tasked with tendering current and future claims from Plaintiffs suffering from

¹ This term is defined below.

asbestos disease brought against ACL to which those policies are responsive. Finally, Mr. Protopapas is tasked with the control of the defense of those claims for ACL.

PROCEEDURAL BACKGROUND

On July 19, 2023, this Court ordered ACL to fully answer discovery and to provide a corporate representative for deposition. The Court further held that failure to do so would result ACL being held in contempt. Subsequently, this Court held ACL in contempt and, as a sanction, struck the pleadings of ACL. The Court based its contempt order on ACL's flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery.

Now, having struck ACL's answer, ACL is in default.²

LAW AND ANALYSIS

A. Appointment of a Receiver is Appropriate and Warranted

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).³

² The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

³ A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the striking of ACL's answer.

Historically, receivers are appointed by courts sitting in equity in order to ensure a fair result. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939). Indeed, “[t]he right to have a receiver appointed is an ancient one” *Pelzer v. Hughes*, 27 S.C. 408 (1887) But where, as here, ACL’s answer has been struck, and thus only a ministerial action being left for ACL to be in judgment, a receiver to take possession of and, to the extent necessary, litigate ACL’s insurance assets as well as to assume control of the defense of asbestos claims made against ACL in the United States is exactly the type of historical circumstances, the Court’s of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay or hinder creditors in the collection of debts—then a court will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and return of nulla bona on the execution.

Virginia Carolina Chemical v. Hunter, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of ACL’s personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and ACL’s continued refusal to participate in this that warrants the appointment of a receiver. Thus, where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer “any insurance assets” including “any claims related to the actions or failure to act of ACL’s insurance carriers.” The Receiver would assume control of the defense of asbestos claims made against ACL in the United States. This Court’s view of the scope of a receiver’s authority is not unique. The United States Supreme Court recognized in *Porter v. Sabin*, 149 U.S. 473 (1893) that “[t]he whole property of the corporation [is] within the jurisdiction of the court which

appointed the receiver, **including all its rights of action**, except so far as already lawfully disposed of under orders of that court, [and] remains in its custody, to be administered and distributed by it.” *Id.* at 480 (emphasis added).

That the South Carolina receivership references “property within this state” is not a limitation on the Receiver’s authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court’s authority to vest a statutory receiver to assert an insolvent corporation’s rights of action. *See e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff’d* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded “full faith and credit”). That is the authority given to be given the receiver here.

That authority includes the insurance assets of ACL, including the right to assume control of the defense of asbestos claims made against ACL in the United States and tender claims to applicable insurance policies. Even assuming ACL’s interpretation of §15-65-10 is correct, to the extent they exist, ACL’s Insurance Assets ² would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

² For purpose of clarity, this Court defines “Insurance Assets” as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

S.C. Code Ann §38-61-10 states that

[a]ll contracts of insurance on property, lives, or interests in this state are considered to be made in the State and all contracts of insurance the applications for which are taken within this State are considered to have been made within this State and are subject to the laws of this State.

In interpreting §38-61-10, the South Carolina Supreme Court held that “[i]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located.” *Sangamo Weston v. Nat’l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (Toal, C.J). The result is that “South Carolina substantive law governs [the insuring assets of ACL]” *Id.* Thus, the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

ACL continues to ignore the jurisprudence of this state which directly addresses its due process argument. Just as here, *Sangamo* argued that §38-61-10 was “unconstitutional.” *Id.* at 131.

The South Carolina Supreme Court there opined that

insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of the law of South Carolina when they respectively provided or received insurance on interests located in this state.

Id. ACL sold its products throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent, whatever insuring assets of ACL exist and related claims are subject to the substantive law of

South Carolina and nothing about that result is violative of due process.

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of ACL. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Asbestos Corporation, Ltd. and any subsidiaries, accept service on behalf of ACL, engage counsel on behalf of ACL, to assume control of the defense of asbestos claims made against ACL in the United States, and take any and all steps necessary to protect the interests of ACL whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of ACL as well as any claims related to the actions or failure to act of ACL insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of ACL against which the ACL may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the ACL; redirect the delivery of any such mail addressed to the ACL or any business of the ACL, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to ACL relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of ACL; 4) hire any person necessary to accomplish any right or power under this Order; 5) to assume control of the defense of asbestos claims made against ACL in the United States; and 6) take all action necessary to gain access to

all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of ACL may be situated, and to review and obtain copies of all documents related to insurance assets of ACL.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to ACL. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of ACL or any entity for whom ACL did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for ACL to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of ACL and its subsidiaries, successors, and assigns, is appropriate. Moreover, the Court authorizes Mr. Protopapas to assume the control of the defense of all litigation matters pending in the United States against ACL. Peter Protopapas is hereby appointed the receiver over ACL consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: John A Tibbs , plaintiff, et al vs 3M Company , defendant, et al

Case Number: 2023CP4001759

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2023-09-07 15:53:18 page 9 of 9

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

MELVIN G. WELCH and) C/A NO. 2022-CP-40-03834
DONNA B. WELCH)
)
Plaintiffs,)
v.)
)
3M COMPANY)
f/k/a MINNESOTA MINING AND)
MANUFACTURING COMPANY, et al.)
)
Defendants.)
)
_____)

ORDER ON PLAINTIFFS’ MOTION TO APPOINT A RECEIVER

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

BACKGROUND

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

¹ This term is defined below.

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

PROCEEDURAL BACKGROUND

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

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

Now, having struck Atlas' answer, Atlas is in default.²

LAW AND ANALYSIS

A. Appointment of a Receiver is Appropriate and Warranted

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).³

² The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

³ A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the unopposed striking of Atlas' answer. Atlas further argues that there is no evidence of its insolvency, yet it refuses to comply with this Court's orders to discovery that and many other issues. The Court does not believe it is appropriate for Atlas to use this refusal as a sword. Regardless, other elements of the receivership statute are satisfied and thus, this argument is unavailing.

Historically, receivers are appointed by courts sitting in equity in order to ensure a fair result. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939). Indeed, “[t]he right to have a receiver appointed is an ancient one” *Pelzer v. Hughes*, 27 S.C. 408 (1887) But where, as here, Atlas’ has been struck, and thus only a ministerial action being left for Atlas to be in judgment, a receiver to take possession of and, to the extent necessary, litigate Atlas’ insurance assets is exactly the type of historical circumstances, the Court’s of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay or hinder creditors in the collection of debts—then a court will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and return of nulla bona on the execution.

Virginia Carolina Chemical v. Hunter, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of Atlas’ personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas continued refusal to participate in this that warrants the appointment of a receiver.

Thus, where there is active wrongdoing and illegal refusal to comply with this Court’s orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer “any insurance assets” including “any claims related to the actions or failure to act of Atlas’s insurance carriers.” This Court’s view of the scope of a receiver’s authority is not unique. The United States Supreme Court recognized in *Porter v. Sabin*, 149 U.S. 473 (1893) that “[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver, **including all its rights of action**, except so far as already lawfully disposed of under

orders of that court, [and] remains in its custody, to be administered and distributed by it.” *Id.* at 480 (emphasis added).

That the South Carolina receivership references “property within this state” is not a limitation on the Receiver’s authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state’s borders and asserting jurisdiction over such property located in another jurisdiction. These same principles of comity support a state court’s authority to vest a statutory receiver to assert an insolvent corporation’s rights of action. *See e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff’d* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded “full faith and credit”). That is the authority given to be given the receiver here.

That authority includes the insurance assets of Atlas. Even assuming Atlas’ interpretation of §15-65-10 is correct, to the extent they exist, Atlas’ Insurance Assets⁴ would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

S.C. Code Ann §38-61-10 states that

[a]ll contracts of insurance on property, lives, or interests in this state are considered to be made in the State and all contracts of insurance the applications for which are taken within this State are considered to have been made within this State and are subject to the laws of this State.

⁴ For purpose of clarity, this Court defines “Insurance Assets” as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

In interpreting §38-61-10, the South Carolina Supreme Court held that “[i]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located.” *Sangamo Weston v. Nat’l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992)(Toal, C.J). The result is that “South Carolina substantive law governs [the insuring assets of Atlas]” *Id.*⁵ Thus the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

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

Just as here, *Sangamo* argued that §38-61-10 was “unconstitutional.” *Id.* at 131. The South Carolina Supreme Court there opined that

insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of the law of South Carolina when they respectively provided or received insurance on interests located in this state.

Id. Atlas sold its poison throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent,

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

whatever insuring assets of Atlas exist and related claims are subject to the substantive law of South Carolina and nothing about that result is violative of due process.

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of Atlas. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Atlas Turner, Inc. and any subsidiaries, accept service on behalf of Atlas, engage counsel on behalf of Atlas and take any and all steps necessary to protect the interests of Atlas whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of Atlas as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which the Atlas may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to: 1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the Atlas; redirect the delivery of any such mail addressed to the Atlas or any business of the Atlas, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to Atlas relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of Atlas; 4) hire any person necessary to accomplish any right or power under this Order; and 5) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property

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

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of Atlas or any entity for whom Atlas did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for Atlas to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of Atlas and its subsidiaries, successors, and assigns, is appropriate. Peter Protopapas is hereby appointed the receiver over Atlas consistent with this order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

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

Case Number: 2022CP4003834

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

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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

Case Nos. 2022-CP-40-05543 and 2023-CP-40-03108

Appellate Case Nos. 2024-000342 and 2024-000348

Michael David Link and Sandra Strickland Link

Respondents,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; AT&T Corp.; Atlas Turner Inc.; Bahnson, Inc.; BASF Catalysts LLC; BASF Corporation; Beatty Investments, Inc.; Bechtel Corporation; Bellsouth, LLC; Bellsouth Telecommunications, LLC; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Heat & Frost Insulation Company, Inc.; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; J. & L. Insulation, Inc.; K-MAC Services, Inc.; Kohler Co.; Metropolitan Life Insurance Company; Michelin Corporation; Michelin North America, Inc.; Milliken & Company; Nokia of America Corporation; Occidental Chemical Corporation; The Okonite Company, Inc.; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Prysmian Cables and Systems USA, LLC; Raytheon Technologies Corporation; REDCO Corporation; Riley Power Inc.; Rockwell Automation Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; SPX Cooling Technologies, LLC; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company, Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; Whittaker, Clark & Daniels, Inc.; The William Powell Company; Wind Up, LTD.; York International Corporation; Zurn Industries, LLC,

Defendants,

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

and

Peter D. Protopapas, Duly Appointed Receiver for Asbestos Corporation Limited and Atlas Turner, Inc., is Respondent.

AND

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

Respondents,

v.

4520 Corp., Inc.; ABB Inc.; Amentum Environment & Energy, Inc.; Armstrong International, Inc.; Asbestos Corporation Limited; Atlas Turner Inc.; Bahnson, Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brenntag North America, Inc.; Brenntag Specialties, LLC; Canvas CT, LLC; Carboline Company; Carrier Corporation; Celanese Corporation; CNA Holdings LLC; Cooper Crouse-Hinds, LLC; Covil Corporation; Daniel International Corporation; Eaton Corporation; Emerson Electric Co.; Ericsson Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Graybar Electric Company, Inc.; Great Barrier Insulation Co.; Grinnell LLC; Henry Pratt Company, LLC; Howden North America Inc.; ITT LLC; K-MAC Services, Inc.; Metropolitan Life Insurance Company; Occidental Chemical Corporation; Paramount Global; PECW Holding Company; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; R.T. Vanderbilt Holding Company, Inc.; Rust Engineering & Construction, Inc.; Rust International Inc.; Saint-Gobain Abrasives, Inc.; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Siemens Industry, Inc.; Spence Engineering Company, Inc.; Spirax Sarco, Inc.; Standard Insulation Company of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Thermo Electric Company Inc.; Union Carbide Corporation; Vanderbilt Minerals, LLC; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell Company; York International Corporation; Zurn Industries, LLC, Defendants,

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

and

Peter D. Protopapas, Duly Appointed Receiver for Asbestos Corporation Limited and Atlas Turner, Inc., is Respondent.

PROOF OF SERVICE

I certify that a true copy of the Receiver of Asbestos Corporation Limited and 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](#); [Robert Bonds](#); [R. Brandon Larrabee](#); [Shanon Peake](#); [Jon Robinson](#); [Murrell Smith](#); [Lindsay Valek](#)
Subject: Link v 4520 Corp. etc., Case Nos. 2024-000342 and 2024-000348
Date: Wednesday, April 3, 2024 4:41:00 PM
Attachments: [The Receiver's Response re Appealability - Link, 2.pdf](#)
[Appendix Index w attachments- Link, 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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